

Representation: Toward More Effective  
Representation for Acadian and  
African Nova Scotians

The Commission on Effective  
Electoral Representation  
of Acadian and  
African Nova Scotians

**Report and Recommendations**





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# Introduction

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World-renowned Acadian author **Antonine Maillet** once said that Acadians, as a people, will know that they have come into their own when they are focused on their contributions to society, rather than what they need to maintain their own vitality. This applies to any community. To contribute to society, a community must have something to contribute, the confidence it is welcome, and a healthy relationship with the society.

# The Commission on Effective Electoral Representation of Acadian and African Nova Scotians

The Acadian and African Nova Scotian communities have contributed greatly to this province and have much more to contribute. In our consultations, both communities spoke movingly of their desire to share their history and culture with the rest of society. This report suggests ways to strengthen their relationship with governments and the larger society, not only for their sake but for the sake of Nova Scotian society as a whole. We are all better off when everyone can contribute, and be recognized for their contributions.

## Mandate

The Government of Nova Scotia established our Commission<sup>1</sup> to recommend ways to best achieve effective representation for Acadians<sup>2</sup> and African Nova Scotians.

The Commission conducted a series of consultations in the Acadian and African Nova Scotian regions of the province.<sup>3</sup> Meetings in the Acadian regions were conducted in French, with English language translation provided for those requiring it.

Although the Commission's focus is on the effective representation of Acadians and African Nova Scotians, the invitation to participate was open to all Nova Scotians and indeed many other Nova Scotians attended and made submissions. Written submissions were also invited through our website and on social media.

## Commissioners

Doug Keefe is an independent consultant and former deputy minister of justice of Nova Scotia.

Sharon Davis-Murdoch is co-president of the Health Association of African Canadians and the health lead for the Local Immigrant Partnership. A social justice champion, Ms. Davis-Murdoch was a public servant for more than 20 years and led the development of the first Provincial Guidelines for Culturally Competent, Primary Health Care.

Dr. Kenneth Deveau is a vice-president at Université Sainte-Anne. Dr. Deveau has done extensive research on the overall vitality of Acadian and francophone minority communities in Canada and has authored more than 40 publications on the subject.

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<sup>1</sup> The Commission's terms of reference are in Appendix 1.

<sup>2</sup> 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>.

<sup>3</sup> Appendix 2.

## Staff

Francene Comeau is the Executive Assistant to the Clerk of the Executive Council and Deputy Minister of the Office of the Premier. Ms. Comeau was seconded to the Commission on a part-time basis. She coordinated the Commission's operations, managed its business processes, budget, finances, and records.

Joëlle Désy is a Policy Analyst and French-language Services Coordinator at the Department of Health and Wellness. She possesses over 20 years of experience working with government and the Acadian community. She was seconded to the Commission to act as a Research and Policy Advisor. She also organized all the meetings conducted in Acadian communities.

Tracey Thomas is the Senior Policy Analyst with African Nova Scotian Affairs. Previously, Tracey completed a sixteen-month secondment with the Nova Scotia Human Rights Commission where she restructured and advanced the work of the Race Relations, Equity and Inclusion unit, which included the development and delivery of public education across the province. Tracey was seconded to the Commission as the African Nova Scotian community engagement lead, and to provide support and analysis. She also organized the meetings conducted in African Nova Scotian communities.

Emma Richter is a marketing and outreach coordinator with the Nova Scotia Office of Immigration. She was previously with the Department of Communities, Culture and Heritage. She has been on loan to the Commission, assisting on their social media and engagement.

We were extremely fortunate in our staff and grateful for their contributions. They each brought an array of talents and perspectives, which they applied unstintingly and enthusiastically. While the Commissioners are solely responsible for the content of the report the contributions of our staff to our work cannot be overstated.

We also had the patient assistance of the people of Communications Nova Scotia who looked after translation services, designed the look of our materials, and once we had finished writing, prepared the report for publication in English and French.

## Method

We commissioned two reports by independent scholars; the Cardinal Report and Knight Report. Both are reproduced in full in Appendix 3. We also conducted our own literature research, some of which is reflected in the footnotes to this report. Most importantly, we conducted a series of consultations in 13 communities<sup>4</sup>; met with former Members of the Legislature (MLA) from the African Nova Scotian and Acadian communities and the former African Nova Scotian Member of Parliament (MP); and two of the MLAs currently representing portions of the former exceptional ridings. Because we are an independent commission charged with providing our report to the minister responsible for Acadian Affairs and Francophonie and the minister responsible for African Nova Scotian Affairs, we did not interview them.

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<sup>4</sup> Appendix 2.

Invitations to the consultation were sent through social media as well as through a bilingual press release that was distributed to local media outlets through Communications Nova Scotia. Although we indicated the consultations were on the subject of Acadian and African Nova Scotia effective representation, all Nova Scotians were invited to participate. People were encouraged to read a discussion paper (see Appendix 4), available in English and in French on our website, as a means of preparing for the consultations. This paper concluded with a series of six discussion questions. A bilingual one page summary of this paper was distributed to participants as they arrived at the sessions.

The consultations in the Acadian regions started with a presentation of the commissioners, the Commission's mandate and definition of effective representation. The sessions were informal and every effort was made to give participants an opportunity to provide their opinions on every subject. The discussion questions served as a guide and as prompts, not an agenda or list of subjects that needed to be addressed. The sessions in Acadian communities were conducted in French, with English translation provided to those requiring it. Dr. Deveau facilitated these sessions.

The approach in the African Nova Scotians communities was identical with two exceptions. A leader of the local community, acting as community host, introduced the Commission and spoke of its importance to their community. The host passed the baton to Ms. Davis-Murdoch who served as facilitator for these sessions. She commenced by reading key excerpts from a short synthesis (see Appendix 5) of the history of African Nova Scotian electoral representation. Copies of this synthesis were distributed to the participants.

All sessions were approximately two hours in length.

The previous African Nova Scotian MLAs (as well as the lone former African Nova Scotian MP), the previous Acadian MLAs and the current MLAs representing ridings covering the former "protected" or exceptional ridings were each invited to meet with the Commission. These three sessions can best be described as open round table discussion. Adaptations of the six questions presented were included in the letters of invitation as a primer for the discussions.

## Format

There are four parts to this report: what we heard, what we learned, our analysis of what we learned, and our advice and recommendations.

# Executive Summary

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**All citizens have the right to vote.**

The progressive removal of discriminatory barriers to voting – religion, race, and gender – culminated in Nova Scotia just under 100 years ago when women were granted the vote and the property ownership requirement was removed.

## Origins of Our Task

Today, voters are sorted by where they live, not who they are. Elections turn votes into political power and ours is a constituency-based system, where the boundaries of the constituencies are all important in both senses of the term. Voter equality is the ideal but would require each riding to have an equal number of voters. Instead, we prefer to vote together in our communities even if it means ridings – and votes – are not absolutely equal.

The courts have held that the right to vote is a right to effective representation. Its starting point is vote parity but it allows deviation from parity for factors such as geography and “communities of interest”. Deviation from the average allows flexible boundaries to ameliorate the tendency of our electoral system to submerge minority voters.

In 1992, four ridings, three Acadian and one African Nova Scotian, were tailored to “communities of interest” in order to improve the chances of electing Acadians and African Nova Scotians. The ridings – called “exceptional ridings” because they had exceptionally small populations compared to the others – remained until 2012. At that point, they were combined with portions of adjacent ridings due to changes to the electoral boundary-setting rules. Those rules required that all ridings fall within a range of plus or minus 25 percent of the average riding population, with no exceptions.

In 2017, Nova Scotia Court of Appeal said that the process by which the 2012 boundaries were established was unconstitutional.

Our commission was created on April 28, 2017 to make recommendations on the effective representation of Acadians and African Nova Scotians. According to our Terms of Reference, our report is to: “inform the Province on how best to achieve effective representation for all Acadian and African Nova Scotians, including in any future Electoral Boundary Review.” The terms also commit the government to initiating a boundary review in January, 2018.

## Representation

Acadians and African Nova Scotian communities are each, in their unique way, cornerstones of the province as we know it. Both suffered years of marginalization and require differential treatment if they are to attain equal results. Both communities also continue to offer great opportunities for the growth of the province. We explore both of these points in our report.

There are two kinds of electoral representation, substantive and descriptive. Substantive representation is when your MLA champions your values and views. Descriptive is when you and your MLA share a characteristic that is important to you, like race or language. Both forms of representation are valuable. Exceptional ridings promote representation by improving the chances of African Nova Scotians seeing someone who looks like them in the legislature, and of Acadians having an MLA they can talk to in their mother tongue. This is good for them and also makes the legislature more representative of our population, while adding more diverse voices to our political discourse.

## Parity and Deviation

The courts have not defined the limits of deviation from parity but, by saying parity is prime, they are saying there are limits. Plus or minus 25 percent is the most common standard deviation in Canada. All but three jurisdictions also allow exceptional deviation – that is deviation beyond the standard – in rare instances. All jurisdictions utilize independent, nonpartisan boundaries commissions. All jurisdictions, except Nova Scotia, legislate the fundamental principles for determining boundaries. Our first recommendation is to legislate the principles.

Boundaries are revised no less than every ten years because populations continually change.

## Populations

There are 923,598 Nova Scotians, 21,915 of whom are African Nova Scotians, and 33,345 of whom declared French as their mother tongue. That is enough Acadians and francophones to make two constituencies and enough African Nova Scotians to make one constituency under the current rules. The problem is their populations are dispersed, particularly African Nova Scotians. They are not a majority in any of our 51 ridings. Our electoral system rewards majorities with power. And, because they are such small minorities, even proportional representation would not assure either African Nova Scotians or Acadians of seats in the legislature. We decided to keep our recommendations within the current electoral system.

The fate of the exceptional ridings in 2012 is only the most visible impact of urbanization, a global trend. Our population is concentrating in and around Halifax. From 1991 to 2016 only Halifax, Colchester, Hants, and Kings Counties grew. The population of eight counties decreased by more than 15 percent. Guysborough lost close to 35 percent. As a result, Nova Scotia is creating fewer, larger ridings outside Greater Halifax.

Signs of this are present in the 2012 electoral map and we heard many complaints about the size and incongruity of some rural ridings. If we do nothing there will be more populous ridings in and around HRM and larger ridings, with unfamiliar boundaries, elsewhere.

## Method

We conducted research and consultations in 13 communities, spoke with members of the legislature and former members of the legislature, and received written submissions.

## A Suite of Measures

Seats in the legislature are not the only means of effective representation. Both the 2002 and 2012 boundaries commissions recommended other methods be studied. Canada is one of the most successful countries in the world in part because it has a long tradition of promoting minority interests in a variety of ways that enliven and enrich our politics and society.

We make 29 recommendations in support of two broad strategies:

1. Improve the chances of electing Acadians and African Nova Scotians.
2. Strengthen other means of representation.

We can improve the chances of electing Acadians and African Nova Scotians through:

- a. Legislation authorizing boundaries commissions to recommend exceptional ridings and more constituencies.
- b. Application of similar principles to municipal boundaries.
- c. Candidate schools, support for basic civic engagement, and by incenting political parties to recruit and run candidates from these communities.
- d. Consideration of Acadian and African Nova Scotian caucuses.

We can strengthen other means of representation through:

- e. Advisory committees for the Ministers of African Nova Scotian Affairs, and Acadian Affairs and Francophonie.
- f. Deputy Ministers and officials committees for Acadian matters and African Nova Scotian matters.
- g. Fresh community engagement mandates and more resources for African Nova Scotian Affairs and Acadian Affairs and Francophonie.
- h. Robust action on diversity in government, including appointments to agencies, boards and commissions and the public service.
- i. French language support for municipalities.
- j. Consideration of community committees for Acadian and African Nova Scotian areas under the *Municipal Government Act*.
- k. Development of an inventory of measures to improve the effective representation of minorities at the municipal level.

All of our recommendations are collected at the end of this executive summary and explained in the final section of our report.

## What We Do Not Recommend and Why

A boundaries commission will be initiated early in 2018. We recommend restoration of its discretion to recommend exceptional ridings but we do not recommend that the exceptional ridings, as they existed in 2002, be reinstated. We do this for four reasons:

- Populations have changed since 2002.
- We respect the independence of the 2018 boundaries commission and the integrity of the public consultations it will engage in.
- We do not presume to have consulted Nova Scotians on actual boundaries.
- It may be there are other geographic areas of the province where opportunities exist to improve the representation of Acadians or African Nova Scotians.

To be clear, we are not recommending against restoring the 2002 exceptional ridings. Instead, we have recommended principles for boundary setting that allow exceptional ridings and rely on the good judgement of the 2018 commission.

Similarly, we do not recommend more ridings. 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.

## Consolidated Recommendations

### Recommendation 1

The *House of Assembly Act* should be amended to include the broad principles for setting electoral boundaries and boundaries commissions should be required to adhere to those principles.

### Recommendation 2

The Electoral Boundaries Commission as currently constituted by the *House of Assembly Act* should continue.

### Recommendation 3

The legislation should include a standard for deviation from the constituency average.

### Recommendation 4

The standard deviation for setting electoral boundaries should be plus or minus 25 per cent of the result of the estimated population or voter population of Nova Scotia divided by the total number of constituencies.

### Recommendation 5

The legislation should authorize the boundaries commission to exceed the standard deviation in exceptional circumstances. The circumstances and tolerance should not be specified.

### Recommendation 6

Section 5 of the *House of Assembly Act* should be amended to

- include the principles by which the independent boundaries commission is to recommend electoral boundaries
- the principles should include a statement that voter parity is the primary factor and allow:
  - a standard deviation from the constituency average of plus or minus 25 per cent,
  - one or more exceptional deviations greater than the standard deviation,
  - the legislation should not restrict the circumstances or tolerance for deviation,
  - non-contiguous ridings.
- Authorize an all party select committee, acting unanimously, to
  - define terms and words in the principles established for boundaries setting in section 5 of the Act,
  - add terms of reference for the boundaries commission,
  - define the parameters of exceptional deviation including the scope for deviation, and circumstances such as communities and community interests, justifying exceptional consideration by the boundaries commission,
  - direct or authorize the boundaries commission to recommend the total number of constituencies,

- o direct the boundaries commission to prepare boundaries based on two or more total numbers of constituencies established by the select committee,
- o allow the boundaries commission to prepare boundaries based on two or more total numbers of constituencies.

## Recommendation 7

The select committee should instruct the boundaries commission to prepare electoral maps, one based on the present 51 constituencies and another based on a higher number such as 54. In the absence of instruction, the boundaries commission should prepare two or more maps on its own initiative.

## Recommendation 8

The Minister of Acadian Affairs and Francophonie should establish a formal advisory committee.

## Recommendation 9

A deputy ministers committee, supported by an officials committee, should be established with responsibility for Acadian and francophone issues in government.

## Recommendation 10

The Minister of African Nova Scotian Affairs should establish a formal advisory committee.

## Recommendation 11

The formal advisory committee to the Minister of African Nova Scotian Affairs should explore ways to address community concerns about the Black Learners Advisory (BLAC) Report.

## Recommendation 12

A deputy ministers committee, supported by an officials committee, should be established with responsibility for African Nova Scotian issues in government.

## Recommendation 13

That ANSA be appropriately resourced to increase its capacity to work directly with African Nova Scotians in their communities to facilitate the establishment of the political/social infrastructure necessary for their effective representation.

## Recommendation 14

That ANSA collaborate with other agencies such as the Union of Nova Scotia Municipalities, and the universities to develop and host civic engagement information sessions across the province.

## Recommendation 15

That ANSA promote and encourage African Nova Scotians to apply for Agencies, Boards and Commissions.

## Recommendation 16

The budget and operational plans for the Office of Acadian Affairs and Francophonie, and Office of African Nova Scotian Affairs should be reviewed to ensure the Offices have the resources and structure necessary to meet their objectives.

## Recommendation 17

The Public Service Commission should pursue robust action on the Raising the Bar goals.

## Recommendation 18

As part of its efforts to encourage departments to review their selection criteria for ABCs the Executive Council Office should provide assistance to the departments specifically to help them identify barriers and implicit assumptions that may discourage minority applicants or prejudice their evaluation.

## Recommendation 19

The Executive Council should continue its efforts to ensure minority communities are aware of the ABC application process through social media and community networks.

## Recommendation 20

The Department of Municipal Affairs in collaboration with the Municipality of the District of Clare should identify and implement a strategy to recognize the Municipality of Clare as officially bilingual as part of the *Municipal Government Act* review.

## Recommendation 21

The Department of Municipal Affairs should identify, in collaboration with the Office of Acadian Affairs and Francophonie, strategies and funding to support the provision of French services by municipalities, notably, but not limited to, the municipalities of Clare, Argyle, Richmond, Inverness, and Halifax.

## Recommendation 22

The principles of boundary setting proposed in this report for provincial electoral boundaries should be applied by municipalities and the Utility and Review Board when setting municipal electoral boundaries, with particular attention to the effective representation of Acadians and African Nova Scotians.

## Recommendation 23

The Department of Municipal Affairs, in collaboration with the Association of Municipal Administrators of Nova Scotia and the Union of Nova Scotia Municipalities, should consider ways to utilize and, if necessary, adapt section 27 of the *Municipal Government Act* to enable community committees to be established for Acadians and African Nova Scotians.

## Recommendation 24

The Union of Nova Scotia Municipalities should canvas its members to develop an inventory of measures in place or under consideration to improve the effective representation of minorities at the municipal level.

## Recommendation 25

The Election Commission should consider incentives to encourage the recognized political parties to nominate candidates from the Acadian and African Nova Scotian communities, and other underrepresented groups, including financial incentives to parties or candidates under the electoral finance regime.

## Recommendation 26

The recognized political parties should develop policies and practices that promote a slate of diverse bilingual candidates.

## Recommendation 27

The recognized political parties, if they have not already done so, should develop policies and programs to increase the involvement of Acadian and African Nova Scotians, particularly youth, in their party including measures to:

- Identify, recruit, and develop prospective Acadian and African Nova Scotian candidates, Encourage Acadian and African Nova Scotian membership in the party and inclusion on nominating committees,
- In consultation with the Acadian and African Nova Scotian caucuses (Recommendation 29) or with MLAs and former MLAs, develop strategies to engage the Acadian and African Nova Scotian communities in ridings where they are small minorities and might otherwise be overlooked.
- Ensure in a general election that the party fields a slate of candidates that is diverse and includes Acadian and African Nova Scotians.
- Ensure in a general election that the party platform includes measures pertinent to Acadian and African Nova Scotians.
- Consider bilingualism a key competency for candidates, particularly in ridings where Acadians and francophones are present in large numbers.

## Recommendation 28

The Office of Acadian Affairs and Francophonie, and the Office of African Nova Scotian Affairs should initiate a process of developing one or more models of culturally specific candidate training for African Nova Scotians and Acadians, both men and women.

## Recommendation 29

The Minister of Acadian Affairs and Francophonie and the Minister of African Nova Scotian Affairs should confer with current and former Acadian and African Nova Scotian MLAs regarding the feasibility and desirability of establishing Acadian and African Nova Scotian caucuses.

# What We Heard

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In this section we present a *synthesis* of what was said at the public meetings. Selected quotes are in italics.

## Effective Representation

We learned that people have a complex vision of effective representation that goes beyond the right to vote to include the right to have their community's voice heard.

Acadian and African Nova Scotians would like to see people that speak their language and that look like them as their representatives. The ability to speak to their MLA in French is crucial to the Acadian community. African Nova Scotians believe that if their MLA is of African descent, they can better understand the needs and interests of African Nova Scotians based on their lived experience.

On the other hand, some participants believed that their current representative, who was not Acadian or African Nova Scotian, did a good job of representing them. However, that individual needed to be familiar with the issues pertaining to the social, cultural and linguistic needs of that population.

“ ”  
IF THE REPRESENTATIVE IS NOT ONE OF US, WE ALWAYS HAVE TO EXPLAIN WHO WE ARE.

“ ”  
AT THE END OF THE DAY, I WANT SOMEONE WHO UNDERSTANDS ME.

“ ”

DEMOCRACY IS HARD WORK AND IT'S TIRING.

But all consulted agreed that effective electoral representation is much more than population quotas when designing electoral boundaries. It needs to include diversity, culture, language and communities of interest.

“ ”

... MINORITY GROUP CHARACTERISTICS HAVE TO BE TAKEN INTO CONSIDERATION IF WE WANT THE LEGISLATIVE ASSEMBLY TO REALLY REPRESENT OUR COMMUNITY.

## Exceptional Ridings

The Acadian community strongly recommended reinstatement of the three exceptional ridings of Argyle, Clare and Richmond. Some suggested a fourth one for Chéticamp. It was also clear in the African Nova Scotian consultations, but especially in the Cherry Brook consultation, that the population wants the return of the exceptional riding of Preston.

*... FÉDÉRATION ACADIENNE RECOMMENDS THAT THE TERMS OF REFERENCE FOR THE NEXT ELECTORAL BOUNDARIES COMMISSION TAKE INTO ACCOUNT THE DISTINCTIVE FEATURES RELATING TO GEOGRAPHY, HISTORY, COMMUNITIES OF INTEREST AND LINGUISTIC DIVERSITY OF THE REGIONS OF CHÉTICAMP, RICHMOND, CLARE AND ARGYLE ... TO RESTORE THE PROTECTED ACADIAN CONSTITUENCIES.*

Most people from Clare, Argyle and Richmond made very clear that the reestablishment of their exceptional ridings was their primary wish.

*THE EXCEPTIONS SHOULD BE THE RULE AND NOT AN EXCEPTION TO THE RULE.*

## Boundaries Setting

Although the Commission was not an electoral boundaries commission, most participants were interested in discussing boundaries and how the 2012 boundaries realignment affected them.

Although people are aware that populations in their regions are diminishing as HRM is growing, they still feel the need for a strong voice and reasonably sized rural constituencies. Increase in the number of ridings in the province was often discussed as a good option.

*CONSIDERING THAT RURAL NOVA SCOTIA MAKES UP HALF OF THE PROVINCE, WE NEED TO HAVE OUR OWN VOICE.*

The Commission was also told that the Select Committee that develops the terms of reference for the electoral boundaries commission needs to be equal and non-partisan.

*THE TERMS OF REFERENCE SHOULD TAKE INTO ACCOUNT THE CARTER DECISION.*

## Reserved Seats

The idea of seats in the legislature that would be reserved for Acadians or African Nova Scotians was brought up numerous times throughout the public consultations. Some speakers suggested that independent representatives in the Legislature would be a good option for representation, especially for smaller communities such as Pomquet and Lincolnville.

For the most part, Acadians who lived the Southwest of the province opposed reserved seats (also referred to as “designated seats”), at least for themselves, while some Acadians who lived in Cape Breton – particularly those at our meetings in Chéticamp and Richmond – favoured a reserved seat. Conversely, others felt that having an MLA at large would not work due to the difficulties of representing a whole population, with no attachment to a party or place. One person explained the problem with the reserved seat model as follows:



*YOU WOULD HAVE YOUR CULTURAL MLA REPRESENTING ACADIANS AND THEN YOU WOULD HAVE YOUR REAL MLA REPRESENTING YOUR REGION. WHICH ONE WOULD YOU GO SEE WHEN YOU REALLY NEEDED SOMETHING?*

Several African Nova Scotians look positively at creating three such seats for African Nova Scotians feeling it was the only way to ensure their representation in the legislature and, given their marginalization, the extra number of seats is justified.



*THERE IS QUITE A DIFFERENCE BETWEEN EQUITY AND EQUALITY*

## Municipal Districts

The Commission received written submissions from municipalities that highlighted the role they played in effective representation at the local level.

During our visit to Sunnyville, we learned that Guysborough Municipality created the equivalent of an exceptional riding among its districts to ensure the representation of the predominantly African Nova Scotian communities of Lincolnville, Sunnyville and Upper Big Tracadie.

Similarly, the Municipality of Argyle designed its electoral map along historic and linguistic lines. It was under some pressure to reduce the number of districts during its last boundary drawing exercise. However, when confronted with the fact that such a reduction would produce new districts combining traditional Anglophone villages and Francophone majority villages, the option of maintaining its nine original districts was preferred.



*GUYSBOROUGH HAS A MUNICIPAL DESIGNATED SEAT, WHY WAS THIS NOT DUPLICATED?*

We learn of another interesting model. A Community committee established in the Chéticamp region, the Comité communautaire de Chéticamp-LeMoine, acts as an advisory committee to the Municipality of Inverness on issues of concern to those Acadian villages in a predominantly Anglophone region. Speakers stressed that this relationship, though promising, is still in its infancy.

## Engagement

Although, the Acadian community was strongly engaged in the 2012 Electoral Boundaries Commission consultations, they felt their voices were not heard. African Nova Scotians would like to see more engagement from their people especially the young.

While some said MLAs have to be more visible and accessible to their constituents to develop mutual trust, others expressed satisfaction with their presence in the community. Many in rural areas and industrial Cape Breton are concerned the connection between them and their MLA will suffer due the increasing size of their constituency.



*CONSIDER RECIPROCAL ENGAGEMENT, WHAT DO I NEED TO DO, WHAT DO YOU NEED TO DO.*

## Social and Political Infrastructures

Many African Nova Scotians told us that their community is lacking in infrastructure to effect social and political change. They have no community radio stations, no community newspaper, and no educational institution like Université Sainte-Anne. Simply put, there is no structured way to share information with the community. Although African Nova Scotian Affairs' (ANSA) efforts to support their interests are highly regarded, people spoke of a need for a provincial structure outside government, similar to the Fédération acadienne de la Nouvelle-Écosse (FANE) for the Acadian community.



*WE CURRENTLY HAVE A LACK OF VOICE AND THE ONLY VOICE IS ANSA... THEY ARE EXPECTED TO BE PRODUCTIVE WITH MINIMAL RESOURCES.*

Still in its planning stage, the Digby Community Centre model is designed to be a hub for the community. That model could be reproduced in African Nova Scotian communities elsewhere in the province.

## Community Dynamics

Most communities we visited were in rural areas, sometimes as far as two hours' drive from the closest urban centre. Urbanization is compounding the challenges of effective representation for these communities. Demographic and economic difficulties in these communities were always at the forefront of our discussions with them.



*WE ARE NOT SELF-SUFFICIENT TO CONTINUE OUR DEVELOPMENT AND WE NEED TO ASSOCIATE WITH OTHER ACADIAN COMMUNITIES.*



*WE ARE THE DEFINITION OF ASSIMILATION BY THE ANGLOPHONE COMMUNITY.*

## Civic Education and Youth Engagement

Civic education is an important component of education that encourages citizens to participate in the public life of a democracy, to use their rights, and to discharge their responsibilities with the necessary knowledge and skills<sup>5</sup>.

Numerous communities said that civics should be re-introduced or bolstered in schools and be updated to include effective representation. People mentioned activities such as mock elections and model parliaments as a means of fostering understanding and developing engagement in the political process at an early age. It was also mentioned that civic education should go beyond the school system to ensure that people in the community understand the process including the possibility of serving on agencies, boards and commissions (ABCs).



“WE HAVE AN OBLIGATION TO OUR YOUTH TO BUILD SOMETHING FOR THEM SO THEY CAN SEE THEMSELVES AS PART OF IT. WE NEED TO BUILD IT IN THEM NOT JUST FOR THEM.

## Acadian Affairs and Francophonie (OAAF)

The FANE submission reiterated previous reports and recommendations for the OAAF and requested that they be enacted without further delay. Others in the consultations expressed their support for this request. In 2016, OAAF created the Committee Responsible for Making Recommendations to Enhance the Role of Acadian Affairs in Government to examine the role of OAAF with respect to the implementation of the *French-language Services Act*, with an emphasis on client services and

community development. The report includes a series of recommendations to the Office. FANE had previously submitted recommendations to OAAF pertaining to the *French-language Services Act* including front line services in both official languages, the creation of bilingual government services access centres in Acadian regions, as well as strengthening the current structure of Acadian Affairs and Francophonie.

The establishment of an advisory body for the OAAF to provide a formal structure for ongoing discussions between the community and government was the most often cited request in this regard.

## African Nova Scotian Affairs (ANSA)

It clearly emerged in our consultations that the African Nova Scotian community is seeking more support from ANSA. In the absence of an established stable provincial organization representing the community as a whole, the community looks to ANSA to serve as their spokesperson to inform government.

Some suggested a provincial advisory body to the Minister of African Nova Scotian Affairs as an important first step towards a positive means of representation in government.



AFRICAN NOVA SCOTIAN AFFAIRS CAN DO MORE AND BE MORE WITH ADDITIONAL SUPPORT AND FUNDING.

<sup>5</sup> [www.thenationalforum.org](http://www.thenationalforum.org)

## Acadian and African Nova Scotian Liaison/Outreach Worker

The Office of African Nova Scotian Affairs has a satellite office in Sydney where it offers front line support to community organizations and individuals. Many said that ANSA should have other regional offices in the Southwest and in the New Glasgow/Antigonish area. In a similar way, some Acadians requested the creation of a French-speaking navigator position in the provincial government to help the community find support and funding programs.

## Caucuses

It was suggested both in the Acadian and African Nova Scotian communities that representatives such as MLAs are expected to represent their respective communities and people across the province. We also heard that MLAs, who are neither African Nova Scotian nor Acadian, sometimes have trouble connecting with those communities in their ridings.

Acadians and African Nova Scotians caucuses were suggested as a mechanism to foster a stronger, influential and consistent presence for these communities in Nova Scotia's political system. They could be used as an effective way to engage representatives and their communities. They could mentor potential candidates from their communities.

There are different models of caucuses around the world and in Canada, which Nova Scotia could draw from to develop its own model to meet its own needs.

*EFFECTIVE REPRESENTATION CANNOT BE IN SILOS FROM THE BROADER ISSUES.*

## Inclusion and Culturally Specific Approaches

Inclusion occurs when people feel valued with a sense of belonging and engagement in an organization that applies the principles of equity and fairness in all aspects of its policies, practices and procedures.<sup>6</sup>

Participants in the consultations uniformly expressed their desire to be treated with dignity and respect.

*WE DO NOT ALWAYS NEED A PERSON OF AFRICAN DESCENT TO REPRESENT OUR INTERESTS AS LONG AS WE ARE ENGAGED IN MEANINGFUL DIALOGUE AND THEY ARE AWARE OF AFRICAN NOVA SCOTIANS' ISSUES.*

*THE WHOLE PROVINCE WOULD BENEFIT FROM HAVING MORE DIVERSE VOICES STARTING WITH THE CAMPAIGN SCHOOL TRAINING AND ALSO IN THE LEGISLATURE.*

Participants called for support of Acadian and African Nova Scotian candidates for public office, especially women. The Status of Women Office offers a campaign school that provides advice and information on election processes. Additional culturally relevant material could be included to that training,

*ONCE PEOPLE ARE EMPOWERED, THEY WILL THEN HAVE POLITICAL CAPITAL.*

<sup>6</sup> Behavioural Competency Dictionary for the Government of Nova Scotia.

Participants also suggested that political parties should examine their internal policies to include strategies to encourage candidates from diverse background and underrepresented populations to run in provincial and federal elections.

## Training and Support

Elected representatives are expected to be knowledgeable about the communities they represent. It is important that candidates and elected officials are educated in the history of Acadian and African Nova Scotians, and have the cultural competency to deal with the issues of importance to these communities. Workshops such as *Acadie at a Glance* and *African Nova Scotians: Historical and Contemporary Realities* already exist and are available through the Public Service Commission.

“REGARDLESS OF WHOMEVER IS ELECTED, THEY NEED TO KNOW THE ISSUES OF THE COMMUNITIES.”

## Financial Constraints

The consultations informed us of systemic barriers to Acadian and African Nova Scotians’ participation in the political process. The expression systemic barriers is defined as “behaviour, policies and practices that are part of the structures of an organization, and which create or perpetuate disadvantage for marginalized groups or persons.”<sup>7</sup>

African Nova Scotians, who ran in previous elections, highlighted that campaigning is a costly uphill battle. In our electoral system, donations to a party and to a candidate play an important role in elections. For example, if one does not have enough funds to cover signage, their presence will be less prominent in the mind of voters. But if a candidate comes from a marginalized community, funding and other support is more difficult to obtain.

## French-language Services

In all the Acadian communities we visited, we were told that provincial French-language services were lacking and sometimes regressing. People also spoke of the importance of French-language services at the municipal level. The Municipality of Clare, which functions in Canada’s two official languages offering its services and conducting business in French and in English, was proposed as a model. We were told however that this municipality does not receive external funding for interpretation or translation. There is some concern that this long-standing practice may become harder to maintain.

In its submission, FANE recommends that Clare’s bilingual approach be replicated by other municipalities with large Acadian populations such as Argyle, Inverness and Richmond.

FANE also wrote that many effective representation mechanisms need to be considered for remedial actions (*mesures de redressement*) in the areas of culture, education, politics, justice and health to enable the Acadian community to fully develop and contribute to the province and the country. It demands more services in French in family courts, for probating wills, and the adoption of a French version of the Rules of Civil Procedure. It also requests additional French-language services for emergency services, in hospitals and in long-term care facilities.

“SERVICE CUTS ARE ALWAYS BASED ON FUNDING AND WHEN IT COMES TO MINORITY, IT WILL ALWAYS BE MORE EXPENSIVE. HOWEVER, IT CAN’T BE THE ONLY FACTOR WHEN LOOKING AT FRENCH-LANGUAGE SERVICES BECAUSE THEY ARE NECESSARY.”

<sup>7</sup> Behavioural Competency Dictionary for the Government of Nova Scotia

## Representation in Government

In addition to the effective electoral representation, we heard that Acadians and African Nova Scotians are not properly represented in the public service. We were told that effective representation in the public service means that senior management, deputy ministers, judges and other people in power should be of African descent or Acadian. The Acadian community also recommended that funding from provincial departments should be ear-marked for the Acadian community.

There are more than 155 agencies, boards and commissions to which government appoints members. African Nova Scotians expressed dissatisfaction with the lack of transparency in the appointment process and evaluation of the applications.



... FOR THOSE WHO SAY THEY ARE COMMITTED TO DIVERSE HIRING – ALL NEXT HIRES SHOULD BE DIVERSE HIRES.

## Rural Depopulation

Demographic trends in Nova Scotia continue to hurt rural areas in terms of population and the economy. We heard about the reality of living in isolated rural communities and the lack of employment. Decentralization of government services and e-work was proposed as ways to counterbalance some of the economic challenges of Nova Scotia.



UNIVERSITÉ SAINTE-ANNE (IN POINTE-DE-L'ÉGLISE) IS AN EXAMPLE OF POSITIVE RURAL ECONOMY.

## Systemic Issues

Many African Nova Scotian participants spoke of barriers created by systemic racism. Racism is prejudice or discrimination stemming from beliefs in superiority over a person or a group because of a difference of racial, cultural or ethnic background. Systemic racism may be present consciously or unconsciously through policies and practices that are a dominant part of the fabric of society and that adversely affect members of ethno-racial and ethno-cultural communities<sup>8</sup>.

Many spoke with pride of how their communities have mobilized to overcome systemic issues and to solve problems despite not having proper representation. But they expressed frustration with what they regard as a failure of government to implement their work. Many cited the Black Learners Advisory Committee (BLAC) report as an example.

We were informed that when the Black Employment Centre closed in Sydney, it strongly affected the community and its workforce. Unemployment rates in the African Nova Scotian community are higher than that of the rest of Nova Scotia.



THE BLACK EMPLOYMENT PROGRAM CENTRE WAS CRITICAL, IT WAS THE HUB IN THE COMMUNITY.

Statistics show that over the years, the number of Acadians with French as a mother tongue has drastically decreased and that assimilation is rampant. We were told that assimilation is difficult to fight when the system marginalizes one's language and culture.

<sup>8</sup> These definitions are based on the Behavioural Competency Dictionary for the Government of Nova Scotia.

*IT'S ONLY IN 1981, THAT ACADIANS OBTAINED THE RIGHT TO EDUCATION IN FRENCH IN ELEMENTARY SCHOOL, BUT SECONDARY SCHOOL EDUCATION WAS STILL "BILINGUAL". THIS SITUATION PLAYED A MAJOR ROLE IN THE DELIBERATE ASSIMILATION OF THE ACADIANS BY THE GOVERNMENT.*

## Discrimination in the Legislature

Former members of the Legislative Assembly shared that when sitting in the Legislature, they faced racism, discrimination and marginalization. They mentioned experiencing harassment such as racial slurs, both as opposition members and as government members.

Discrimination is where a person makes a distinction, whether intentional or not, based on a characteristic or perceived characteristic. While marginalization is the process of establishing and maintaining a social division of people where the dominant group is considered the norm or the "centre".<sup>9</sup>

*"ATTITUDES IN THE HOUSE MUST CHANGE."*

## Respect and Trust

It is difficult to respect someone you don't trust or to trust someone you don't respect. The two terms go hand in hand.

African Nova Scotians expressed a certain lack of trust or faith in government and the parties. African Nova Scotians feel that they have not and still don't receive the respect they deserve. They therefore have difficulty trusting that their votes count and can have a positive impact. They feel that if there were true representatives of their community, people and youth may trust the system again.

*THERE'S A SYSTEM AND MENTALITY, WE NEED TO FEEL THAT THEY (POLITICAL LEADERS) REPRESENT US – CURRENTLY THEY ARE NOT.*

*REPRESENTATIVES PLEDGE THE PARTY FIRST AND NOT THE PEOPLE.*

## Electoral Representation

During the consultation process, concerns were expressed that the report may end up on a bookshelf and that the recommendations included in the report would not be enacted. Participants who invested time and energy to take part in the consultation process wanted to ensure that government will follow through on the report's recommendations.

*IT IS STRONGLY RECOMMENDED THAT THERE BE AN ACTION COMMITTEE PUT IN PLACE TO MONITOR THE RECOMMENDATIONS WITH SPECIFIC TIMEFRAMES, SO THAT IT DOESN'T GET STALE.*

<sup>9</sup> Behavioural Competency Dictionary for the Government of Nova Scotia.

# What We Learned

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It is fashionable to deride politics and politicians. However, there are only two ways to govern: politics and force. The fundamental principle of democracy is sovereignty of the people, that is, we confer the right to govern on people we elect. Politics is how we govern ourselves.

## Politics

We the people are, of course, individuals but we also see ourselves in terms of groups – families, communities, nationalities, societies, races, and so many other ways.

This Commission was asked to recommend ways to improve the representation of Acadians and African Nova Scotians. Some of the people we heard from were inclined to despair of politics or disparage politicians in general, but many liked their MLA while others complained that their MLA was no longer as accessible as in former times. In other words, people dislike politics in theory and want better access to it in practice. The Acadians and African Nova Scotians we heard from want to be *in*, not *out*, of politics.

### Equality, Community, and Carter

The arc of democracy has been toward equality. The right to vote in Nova Scotia has been progressively extended from property owning, white male, Protestants to all citizens.<sup>10</sup> Today, it and other individual and collective rights are embedded in our Constitution, principally but not exclusively, in the *Canadian Charter of Rights and Freedoms*<sup>11</sup>. But, equality is not strictly numerical because, in the real world, equality and equity do not always equate.

The *Charter* allows measures to ameliorate disadvantages suffered by individuals and groups:

*15. (1) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.*

*(2) Subsection (1) does not preclude any law, program or activity that has as its object the amelioration of conditions of disadvantaged individuals or groups including those that are disadvantaged because of race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.*<sup>12</sup>

This is a Commission on effective representation of Acadians and African Nova Scotians. The term “effective representation” comes from the decision of the Supreme Court of Canada (SCC) in **Saskatchewan v Carter**.<sup>13</sup> **Carter** is about the right to vote in s.3 of the *Charter*:

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

<sup>10</sup> It is not quite as linear as that. In 1854 Nova Scotia became the first colony in British North America to remove the property qualification. However, it was reinstated in 1863. Surprisingly, women voted in the 1793 and 1806 elections and were not disqualified until 1854. In 1918, the franchise was extended to women and two years later, the property qualification was removed once again. See Appendix 6 for a table drawn from A Short History of Elections and Voting in Nova Scotia 1758 – 2006 <http://0nsleg-edeposit.gov.ns.ca.legcat.gov.ns.ca/deposit/b10625410.pdf>. See also: A History of the Vote in Canada: <http://www.elections.ca/content.aspx?section=res&dir=his&document=index&lang=e>.

<sup>11</sup> <http://laws-lois.justice.gc.ca/eng/Const/page-15.html>

<sup>12</sup> Canadian Charter of Rights and Freedoms, s.15.

<sup>13</sup> The Attorney General for Saskatchewan v. Roger Carter *et al* [1991] 2 SCR 158.

The case dealt with whether the number of voters needs to be equal in all constituencies so that all voters would be equal. The Court determined that the right to vote in the *Charter* is a right to effective representation and that, while vote parity is the prime factor in setting electoral boundaries, deviation is permitted for practical and societal reasons.

However, **Carter** is more than simply an election boundary case. It is best seen in the larger context of a desire for a pluralistic society and the protection of individuals and minorities that is at the heart of Canada's Constitution.

At the most basic level it is in everyone's interest to be protected from the tyranny of the majority if for no other reason than that at some point everyone is in a minority of some sort. Whether you are in the majority or a minority depends on the characteristic selected as important. It also depends on the context in which you find yourself. You can be a member of a provincial minority but a majority in your neighbourhood. Some minority group statuses are systemic and transcend other group affiliations and, thus, are more present and significant.

Canada has a long tradition of protecting minority interests. Most of our public institutions are designed at least in part to protect individuals and groups from the hasty moods of a majority and encourage multiple voices. The court system is designed to assess the actions of individuals based on democratically established principles, not on majority vote. The legislative process is public, lengthy, and subject to constitutional scrutiny. Political parties compete for our support. We have a free press to encourage diverse discussion. Some of these measures specifically protect minority rights but they are all measures that enliven and enrich our politics and society, and affirm the norms of a healthy society. That is, instead of unbridled rugged individualism in Darwinian competition, Canadians see individuality expressed in a social mosaic. Acceptance of diversity was Canada's strategy for national unity at the start and encouragement of diversity is its strategy for the present and the future.

Effective representation is critical if we are to build on our diversity and achieve more equitable outcomes for all Nova Scotians. 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 accompanies effective representation provides a better, more responsive government for everyone.

## The Concept of a Minority

The purpose of this section is to expose some key research conducted on how minorities function. It draws from research on minorities in Canada and internationally. It is built around the study we commissioned by leading Canadian political scientists Linda Cardinal, Rémi Léger, and Martin Normand.<sup>14</sup> This is complimented by some of our own research as a Commission on the concept of effective representation of minorities in general.

According to Cardinal, Léger and Normand, the most often cited definition of a minority remains the one suggested by the former Special Rapporteur for the United Nations Sub-Commission on Prevention of Discrimination and Protection of Minorities, Francesco Capotorti, in 1977.

*A group numerically inferior to the rest of the population of a State, in a non-dominant position, whose members – being nationals of the State – possess ethnic, religious or linguistic characteristics differing from those of the rest of the population and show, if only implicitly, a sense of solidarity, directed towards preserving their culture, traditions, religion or language (Capotorti, 1977: 33).*

Justice Jules Deschênes brought an important precision to this definition in his work on minorities for the United Nations in the 1980s: a minority group must be understood within the context of the state that created it, be it implicitly or explicitly, through marginalisation or recognition. In Cardinal *et al.*'s words, "states confer minority status ... not [through] a natural process, but rather a political one."<sup>15</sup>

This definition isolates four essential characteristics of a minority as a group:

- numerically inferior to the majority
- in a hieratically non-dominant position

- with common racial, ethnic, linguistic or religious characteristics
- are citizens of a "state"

According to Giles, Bourhis and Taylor there are three groups of factors that affect the degree to which a community (or minority group) is an "active and distinct entity" in its intergroup relation:

- demographic factors (total number, concentration, growth/decline rate),
- factors related to control over institutions (organisations, educational institutions, clubs, churches, community centers) and,
- factors related to the group's status (recognition by the state, international recognition, prestige of the group's language and culture).

For example, there are more than twice as many francophones in California than in Nova Scotia but their vitality is much weaker, since they are not concentrated, have very few institutions, and French has little to no recognition locally. The case of Blacks in Apartheid South Africa provides a good illustration of Giles *et al.*'s model applied to a group that is not numerically inferior and therefore not technically a minority. Although this group constituted a large demographic majority in the country, their lack of control over social and political institutions and weak status had detrimental effects on their group vitality and assured their minority like status.

<sup>14</sup> Appendix 3A

<sup>15</sup> Cardinal, *supra* p.8.

## Identities

A person can simultaneously manage many identities. Different identities become salient, or important, in different intergroup situations. For example, an African Nova Scotian female lawyer will possibly identify more as a lawyer in court, and more as an African Nova Scotian when confronted with racism, and more as a female when socializing with other women. It is important to note, however that even if a person does not self-ascribe to the group he or she may still be regarded and treated as a member of that group.

The decision to identify or not with one's group of origin is quite complex and dynamic, and not necessarily conscious. According to Tajfel's social identity theory<sup>16</sup>, people tend to identify and participate in groups with high degrees of vitality that contribute to a positive sense of themselves. For many minority group members, the best way to achieve a positive social identity is quite simply by distancing themselves from their minority group. By moving their identifications from the minority group to the more positively perceived majority group, they improve their self image. This practice of assimilating into the majority has been a dominant strategy for many Acadians. In fact, it was historically promoted through schooling. However, this strategy is not only detrimental to the Acadian community, it is very difficult for individuals and can have a lasting impact on their sense of self. Given community and familial ties, the process is not simple and total assimilation generally happens over two or three generations.

For an African Nova Scotians, distancing oneself from their community is only possible to some extent given that they are a visible minority. They can however develop strategies to dissociate themselves from their community and these strategies can be promoted through schooling. This form of assimilation happens at the expense of losing cultural identity and significance.

In both cases, assimilation is often forced and as a result is often accompanied by in-group self-degradation and internalized racism.<sup>17</sup>

## State Ideologies

Modern liberal democratic states tend to have a positive disposition to minorities and, in many instances, support their efforts to develop their vitality.

Various authors have developed conceptual models to determine the ideological positions of States toward linguistic minorities. Such positions can be placed on a continuum ranging from pluralism to ethnicism, with the intermediate space covered by varying degrees of ideologies such as civism and assimilationism.<sup>18</sup>

States with a pluralist ideology recognize their minorities and support their vitality through policies and programs provided for by public funds. States with civic ideology tend to manifest a position of benevolent indifference towards their minorities that translates into policies and attitudes of tolerance but they do not actively promote their development. Ideologies are assimilationist when State policies actively aim to assimilate linguistic communities. Ethnicism is used to describe ideologies that reject or marginalize minorities (for example, policies of apartheid). In extreme cases, this ideology leads to genocide.

A state's political ideology tends to evolve over time and a given state can have a different ideological positioning relative to different groups. Demographic, political, economic and cultural factors may be at issue in these changing ideologies. For example, Canada's ideological framework has evolved over the past half century to the point where it tends to see itself as a pluralistic society. The strongest manifestations of this ideology are found in its recognition of the French language and its francophone minority. Arguably, the primary motivation for this evolution came as a reaction to the rise of the sovereigntist movement in Québec and the renegotiation of our national identity or identities that it prompted. This ideology is embodied in the *Official Languages Act* and the *Canadian Charter of Rights and Freedoms*. The *French-language Services Act* of Nova Scotia can be seen as an extension of this ideology.

The move towards an ideology of pluralism in Canada is not restricted to the francophone minority. Canada adopted multiculturalism in the same period and context since bilingualism was not sufficient to grasp the full complexity of the Canadian mosaic. Section 27 of the *Charter*, and the *Canadian Multiculturalism Act* guarantee equal treatment and opportunity for, and participation of, all Canadians regardless of ethnic, religious or linguistic origin, in the affairs of the state. Furthermore, Section 15 of the *Charter* affirms the equality and protection from discrimination of all Canadians regardless of their race, national or ethnic origin, colour, religion, sex, age or mental or physical disability and allows for laws, programs and activities that can ameliorate the conditions of disadvantaged individuals or groups.

It is important to note the special provision for groups and collective rights in these laws. Will Kymlicka, a renowned specialist of multiculturalism argues that the strength of Canada's approach and its great success in integrating ethnic minorities derives from the provisions in these policies that allow the government to treat minorities as groups and support their collective participation in the state.<sup>19</sup> Improving conditions for the group improves conditions for its members and thus for the populace.

Cardinal *et al.* demonstrates that Canada is not alone in its move towards the differentiated treatment of minorities as a means of improving their participation in public affairs. Drawing on the *Lund Recommendations*<sup>20</sup> and on examples from different countries, they show a growing tendency on the international scene towards minority recognition and support for the democratic participation of minorities in state affairs

It is therefore not unusual or exceptional for the Government of Nova Scotia to want to provide positive measures to improve the representation and participation of Acadians and African Nova Scotians in public affairs and to protect the French language. Nova Scotia's efforts to improve the effective representation of Acadians and people of African descent fall well within this global tendency.

To better understand what mechanisms to apply in what situation, and where to concentrate efforts given limited resources, it can be helpful to understand the ensemble of factors at play in a minority community's vitality and how they interact on different levels.

<sup>16</sup> Tajfel, H. (1981). *Human groups and social categories: Studies in social psychology*. Cambridge: Cambridge University Press.

<sup>17</sup> Internalized Racism is defined as the perception among those from outside the dominant culture that racist ideology is true and inevitable. It is racism turned inward. This definition is from the Behavioural Competency Dictionary for the Government of Nova Scotia.

<sup>18</sup> Bourhis, R. (2001). Acculturation, language maintenance and language loss. In Jetske Klatter-Folmer and Piet Van Avermaet (Eds.), *Language maintenance and language loss*. Tilburg, The Netherlands: Tilburg University Press.

<sup>19</sup> Kymlicka, W. (1998). *Finding our way: Rethinking ethnocultural relations in Canada*. Toronto: Oxford University Press.

<sup>20</sup> *Lund Recommendations on the Effective Participation of National Minorities in Public Life* (1999). Available at <http://www.osce.org/hcnm/32240?download=true>

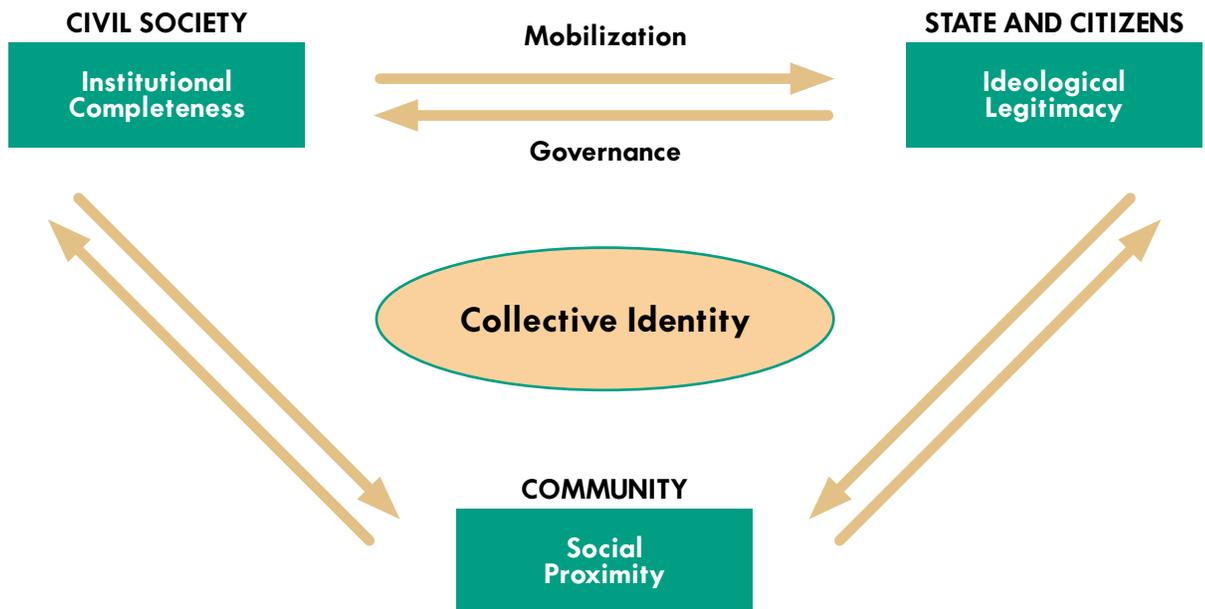
## Cultural Autonomy: A Roadmap for Revitalization of a Minority Community

Guided by the concept of cultural autonomy, first proposed by the renowned sociolinguist Joshua Fishman, Rodrigue Landry<sup>21</sup> developed the Cultural Autonomy Model, presented in the Figure 1, as a roadmap for the protection and revitalisation of linguistic communities. Cultural autonomy is distinct from the concept of “political autonomy”. In the former, the group seeks to take charge of its collective destiny while remaining in and even increasing its participation in the affairs of its state. Unlike in the case of the latter, the minority is not searching for political sovereignty.

For the purposes of this report we have adapted and applied the concepts to both linguistic and non-linguistic minority groups as a means of laying out the factors affecting the vitality of the African Nova Scotian and Acadian communities.

“Collective identity” is at the heart of the cultural autonomy model. In concrete terms, collective identity is the central support of a tripod, the three components of the model being the tripod’s legs. These represent the three categories of variables necessary to maintain and develop a community’s vitality: “social proximity”, “institutional completeness” and “ideological legitimacy”. Like a tripod, if one of these legs fails the entire structure collapses. Each of these components is associated with different categories of social actors. These components, the groups of actors, and the interactions between them determine if the minority can maintain itself as an active and distinct entity in its relations with the dominant majority.

We will explain each of the components of this model but first we will elaborate on the concept of “collective identity”.



<sup>21</sup> Landry, R. (2009). Autonomie Culturelle et vitalité des communautés de langue officielle en situation minoritaire. Revue de la Common Law en Français. No. 11, p. 19-43

## Collective Identity

Contrary to a common misconception, collective identity is not the aggregate of the individual identities of the members of a community. Rather, it is the expression of the group's "public image", at a societal level, by the group's social actors. A group's collective identity operates at a macrosocial or collective level, and expresses the group's sense of community. It constitutes the image that the group or community has of itself, of its place in society, of its legitimacy, status, culture, history and future. When a collective identity is expressed and asserted, it is the entire community that is put forward. Metaphorically speaking, it is the forest not the trees and a forest is much more than a collection of trees.

"Collective identity" manifests itself through the group's institutions and social organizations. It is the image the community has of itself and which it projects onto others. Collective identity can be asserted vis-à-vis the government or the State through the voice of the community's representatives or through its governance structures. It can also express the different aspects of its personality through the discourse of its leaders and intellectuals; it can be told in history books, displayed through the media, brought to life in literature. Educational institutions are the cornerstone of a group's collective identity in that they construct it, express it, and re-construct it. It is reflected in a multitude of social arenas, for example, in the way a community cares for the well-being of its members in health facilities. For linguistic groups, the linguistic landscape, such as public and commercial signage, is an important marker of a group's sense of its status. It is through its collective identity that the community develops its aspirations and translates them through its collective projects.

The three components of cultural autonomy interact with and support the group's collective identity through collective action to build the community's vitality. A community that ceases to work on the factors affecting its vitality loses ground. The dominant group continually exerts pressure on the members of the minority group. Without cultural and social institutions and some form of effective political power a minority will not develop. One can compare this to rowing a boat against the current. If you stop rowing, or if you lose an oar, you inevitably go backwards. Collective identity enables a community to set collective goals and to undertake collective projects.

## Social Proximity

The "social proximity" component fosters the development of a community as it is experienced by the people daily. The community actors that animate this component can be described as a "community of intimacy," meaning a communitarian dynamic in the private sphere that favours the transmission of the language and/or culture across generations. This community of intimacy is the product of the individual members, families and the intimate bonds forged by geographic proximity. Individuals and families are the main actors of this component.

Social proximity is the foundational component without which there is no community life. It guarantees primary socialization in the group's language and/or culture. Most notably, the "home-family-neighbourhood-community core" enables children to learn the language and internalize the culture through their contacts. Primary socialization is favoured by bonds of social proximity but also through a context of geographic proximity.

Geographic concentration is thus one of the main factors related to the power of primary socialization in a minority community. The ever-increasing influence of media and more recently social media on the socializing of youth only heightens the importance of the core socialisation.

There are numerous African Nova Scotian and Acadian communities, villages, and neighbourhoods in Nova Scotia where this primary socialisation can take place. The collective life of the minority is more readily achieved where members of the community live near their institutions such as schools, churches, health facilities, workplaces, and community centres.

It is difficult to act directly on this component. Community centres are recognized as preferred means of favouring this aspect of community development.

Although this component is essential to a community's vitality, it is insufficient on its own. Even in the regions where social proximity is strongest, it will be active only in the private sphere, without the support of the two other components of the model. Such a community runs the risk of being lacking in history and unable to find a place in the public sphere. Without the support of the two other components, a community will not be able to bear a collective character; it will remain a "community of individuals." Such a community would have little if any chance of maintaining itself as a distinct and active entity.

### **Institutional Completeness**

This component is where the group's civil society becomes the principal actor. The members of this civil society represent the community's leadership in the public sphere. Institutional completeness can provide the "operational footing" on which cultural autonomy stands. It is through this component that the community takes charge of those cultural and social institutions that give it life in the public sphere. Essentially, institutions enable the group to manage the "frontiers of its identity." Ideally, a community will have some degree of control over the institutions of importance to it.

The level of social participation in institutions is stimulated by the territorial concentration of the minority. The greater the concentration of group members living near an institution, the greater its impact is. Reciprocally, institutions tend to attract group members and therefore increase social proximity.

In the case of linguistic minorities, bilingual institutions do not have the same impact. In bilingual institutions, even with the best of intentions, the majority's language and world view will generally dominate and the minority group's imperatives will take second stage. For example, even in the federal civil service, the beacon of bilingualism in Canada, research shows that French is very much a "low language" and that most francophone civil servants work primarily in English.

Civil society as both a source of power and influence tends to develop around these institutions. Institutional completeness thus nurtures leadership in the community. It is normally the leaders of the community who manage these institutions. People who work within these institutions become models for other members of the community. They symbolize the community's potential, represent models of success for youth, mobilize resources and imagine its future.

It can also provide forms of governance allowing for the representation of the community and its collective expression. It does not however act as a government or in lieu of government. The group's civil society is made up of a variety of social actors who function as individuals and as agents of their respective institutions and act as intermediaries between families and individual members of the group and the State.

It is most likely on this component that the Acadian community in Nova Scotia is strongest, most notably in the field of education with its autonomous school board and Université Sainte-Anne. In urban areas where French-speaking parents were not used to sending their children to French-language schools, the establishment of school-community centres has generally had the effect of attracting more children than was, at first, expected. Similarly, the creation of community radio stations has generally increased the appetite for French language media. Supporting the Acadian community on this component would be playing to its strengths.

The lack of institutional infrastructure was a recurring theme in our consultation with the African Nova Scotian community. The Dixon Centre, the Black Cultural Centre, the Black Loyalist Heritage Centre and African Nova Scotian Cultural Centre to be established in Digby were cited as examples of what could be done in other communities. Several participants in the consultations pointed to the lack of political/social infrastructure as a primary factor in the community's inability to mobilize a strong and vocal reaction to the elimination of their exceptional riding in Preston, in comparison to the response led by the FANE on the Acadian side.

### Ideological Legitimacy

The third component of the cultural autonomy model, "ideological legitimacy", relates to the support of the State and its citizens. In this model, the role of the state and its representatives is to legitimize the existence and continuity of the minority community, be it through its legislative, administrative or judicial roles. In a democratic society, citizens elect representatives to the State's governing body whose role, in the cultural autonomy model, is to legitimize the existence of the minority through policies of recognition and to provide for the delivery of programs and services that stem from such policies. In the absence of such official legitimacy, the minority is left alone to fulfil its own needs by its own means and more often than not outside the public sphere.

The minority's legitimacy is also increased by the support of the citizens or the populace at large. For example, citizens' positive attitudes toward the minority language influence the State ideology and subsequently promote the implementation of policies of recognition. Also, such attitudes could lead to an increased desire by the majority to learn the minority's language. This in turn becomes a form of recognition and influences the vitality of the minority. The great demand for French immersion programs in Nova Scotia is thus a form of recognition of the Acadian community's prestige. Often heard comments on the hierarchal and qualitative difference between the varieties of French spoken in the immersion programs and in the French community however have a detrimental effect and in fact delegitimized the Acadian community. These perceptions are most detrimental when internalized and propagated by members of the community themselves.

Similarly, racist attitudes about, and systemic discrimination towards African Nova Scotian's are very harmful to the community. This negative effect is greatly multiplied when faced with microaggressions and then internalized by members of the community. The isolation and relative invisibility of the African Nova Scotian community in Nova Scotia constitutes another important hindrance to the community's vitality. Thus, it is very important for governments to work with the African Nova Scotian communities to overcome this. This endeavour must not be limited to communications and publicity campaigns. It must include actual living initiatives that illustrate examples of positive societal contributions by African Nova Scotians in various sectors, such as law, medicine, education, business, and politics. Also, it is important that African Nova Scotians have equitable representation in the public service, including senior levels.

The arrows in Figure 1 show that all three components of the cultural autonomy model interact with one another.

Institutional completeness plays a key role in establishing the structures of governance and in leading the political mobilization of the community. Without representative governance and the active participation of members of the minority community within these structures, the community can gradually develop apathy toward collective issues related to its vitality. For its part, social proximity favours the participation of the members of a community in its institutions and, conversely, institutions favour the development of some social proximity. Ideological legitimacy not only provides policies and services, it also has an influence on the collective self-image of the members of a community, more specifically their perception of their community's vitality and legitimacy.

In short, a group's cultural autonomy is the result of a complex and dynamic set of interrelated factors. These components are interdependent and mutually reinforcing and can lead to positive results when conditions are generally affirmative. Weakening one component tends to weaken the other components simultaneously. A minority group's vitality tends to be very precarious and fragile. Negative conditions for this vitality will lead to disempowerment and collective resignation and simultaneously to the acculturation and linguistic assimilation of its members.

## Conclusion

In light of this model, it is clear the ridings of Argyle, Clare, Richmond and Preston can serve as powerful source of ideological legitimacy for these communities. They can also provide vital contributions to the institutional completeness of these communities. Not only did they delineate the political frontier and an improved chance for these communities of electing one of their members, they provided a political playing field for these minority communities, a place for political organisation and debate. They also helped nurture leadership and historical continuity.

The cultural autonomy model demonstrates that weakening any one of the three components, simultaneously weakens the other two and consequently the group's capacity for cultural autonomy. The elimination of the Acadian and African Nova Scotian ridings had a direct weakening effect on two of the three components: Institutional Completeness and Ideological Legitimacy. It follows from the model that there was also an indirect weakening of Social Proximity. The synergy between these components predicts a multiplicative weakening and long term effect on the group's collective identities and capacity for cultural autonomy.

Summarily, we see in this section how minority groups can develop as vital and productive entities within a state. The cultural autonomy model lays out the myriad of factors associated to this development as well as how these factors interact. Essentially, the model shows how a minority community can take charge of its own destiny. The community must be the primary actor in its own development. Government's role is however crucial in supporting this development. Through services, policies and governance structures, it gives the community legitimacy. Further in this report we will consider various policies, services and governance structures that could support effective representation and consequently the cultural autonomy of the Acadian and African Nova Scotian communities.

## Why These Minorities?

Why were the Acadian and African Nova Scotians chosen for a different treatment in the alignment of electoral boundaries in 1992 and again in 2002? How are they different from other Nova Scotians? Why should they be treated differently from other Nova Scotians now?

There are two arguments, one is about Nova Scotia's past and the other about its future.

We frequently heard during our consultations that Acadians and African Nova Scotians are founding communities. The Acadians and African Nova Scotians communities have a long history in this province and are both in their unique way cornerstone communities at the origin of the province as we know it today. To use Kymlicka's<sup>22</sup> expression, the province and the country came to them, they did not come to it. Such minorities, often called national minorities, tend to have different ideologies about their status in a country's social fabric. In Canada, this status is embodied in these groups' historic position as host communities through which newcomers can integrate into the country. In the case of Acadians, as Nova Scotia's Official Languages Minority Community, they are afforded a special status through the *Charter*.

Both these groups have suffered from marginalization and require differential treatment if they are to attain equal results. Both communities also continue to offer great opportunities for the growth of the province. We explore each of these points in this section.

## Brief History

Despite having very different histories, both Acadians and African Nova Scotians have historic ties and collective identities that precede the establishment of the province and that have very much become part of the fabric of modern day Nova Scotia.

### Acadians

Acadians were the first Europeans to establish permanent settlements in Nova Scotia, founding small hamlets around the French fort at Port-Royal in the first half of the 17th century. Due to a high fertility rate and to some extent additional arrivals from France, this community quickly expanded and new ones were established all around the Bay of Fundy, in Southwestern Nova Scotia, and in Northern Nova Scotia, during the second half of the century. This growth continued well into the first half of the 18th century even after mainland Nova Scotia had fallen under British control after the Treaty of Utrecht, in 1713. Although some Acadians moved to the French controlled Ile Royale (Cape Breton Island), Ile St-Jean (Prince Edward Island) and to the West of the New France border (present day New Brunswick) to establish new hamlets, most remained in Nova Scotia.

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<sup>22</sup> Supra, Kymlicka, W. (1998).

Despite their precarious status, the Acadians who remained became a vital part of the socio-economic fabric of the colony of Nova Scotia from its beginning and in many respects, were economic drivers of the colony selling the bounty of their prosperous farming and fishing operations to both the British and the French.<sup>23</sup>

Acadians forged a unique identity over several generations as a border people involved in never ending political and economic negotiations with British and French powers and in constant contact with the Mi'kmaq people. Keeping one foot in each European camp, and one foot in their North American camp, they evolved as a New World people entangled in European rivalries and religious wars. As Naomi Griffiths' work shows, the Acadian community developed into a self-defined group with a perceived right to their land, a right to make decisions about their lives, and a right to be consulted by others when decisions were made that concerned them.<sup>24</sup> This was quite revolutionary for the 18th century. The deportation of the Acadians from this province between 1755 and 1763 spelled the end of these communities but not the Acadian identity. The subsequent return of Acadians to Nova Scotia, New Brunswick and Prince Edward Island only strengthened this identity and further entrenched their connection to this place known to them as Acadie.

Due to the emergence of this original and unique prototypically North American identity, Acadians do not see themselves as European settlers of this province but rather as a people of this province. This makes Acadians quite different from other people of European descent in North America, in Canada or even in French Canada. This distinctiveness from other francophone communities is often affirmed by Acadians in their relationship with these communities as is illustrated by the name of the national association of francophones, la Fédération des communautés francophones et acadienne du Canada, of which the FANE is a member.

## African Nova Scotians

People of African descent have a history that spans more than 400 years in Nova Scotia. Mathieu da Costa, an African navigator and interpreter of French and Mi'kmaq languages is credited with being the first person to arrive as part of the expedition that founded Port Royal in 1605. Between 1713 and 1758 small populations of enslaved and free Blacks were brought to colonial towns such as Louisbourg and early Halifax. The present day African Nova Scotia community however traces its origins to the late 18th century and to several successive waves of immigration. The first and largest wave of Black immigrants arrived between 1782 and 1785, when approximately 3,500 Black Loyalists came to Nova Scotia as refugees after the American Revolution, settling in Annapolis, Shelburne, Halifax and Guysborough counties. Some 600 exiled Jamaican Maroons followed, settling in Preston Township shortly thereafter. The War of 1812 triggered another important influx of people of African descent in the early 19th century when approximately 2,000 people came and settled in the Halifax and Dartmouth areas. The last large migration of people of African descent came to the province from the Caribbean to work in the steel mill and coal mines in industrial Cape Breton at the beginning of the 19th century.

As late as 1962, over half of people of African descent in Canada lived in Nova Scotia. Nova Scotia was home to the largest communities of people of African descent as it was seen as a place to live independently. Although the land was barren and the settlements were isolated and far from the centre, cohesive, self reliant communities were formed. Today, each African Nova Scotia community in the province is different in many ways, but the community has forged a strong and distinctive sense of their collective self as a unique Nova Scotian people.

Both the Acadian and African Nova Scotian built unique Nova Scotian communities. The histories of these communities speak of marginalization and assimilation but also adaptation and resilience.

<sup>23</sup> Faragher, J.M. (2006). *Great and Noble Scheme: The Tragic Story of the Expulsion of the French Acadians*. New York: Norton publishing.

<sup>24</sup> Griffiths, N.E.S. (2004). *From Migrant to Acadian: A North American Border People, 1604-1755*. Montreal: McGill University Press.

## Marginalization

### Acadians

Acadians who returned to Nova Scotia after the deportation were dispersed to the four corners of the province as means of minimizing their impact and in the hope that they would assimilate into the larger Nova Scotian society<sup>25</sup>. Although many Acadians did assimilate, and many continue to do so, others resisted be it intentionally for linguistic and cultural reasons or unintentionally due to geographic and social isolation.

Like so many people in rural regions of this province, education leads to leaving the region.<sup>26</sup> The collective impact for the Acadians was however much greater. Leaving for them generally also meant abandoning the French language and the Acadian culture due to a lack of access to French language schooling and Acadian community infrastructure in the destination region, quite often metropolitan Halifax.

The establishment of the Conseil scolaire acadien provincial (CSAP) and a provincial network of Acadian schools and community centers gives the opportunity to many more Acadians in the province to have their children educated in French. Assimilation is however a difficult tendency to combat, let alone reverse. The ratio between the number of people who speak English most often at home and the number who have French as a mother tongue is most often utilized as an indicator of francophone assimilation. According to this indicator, the rate of transfer or assimilation from French to English in Nova Scotia over the past four decades has continually increased, going from 34.1 per cent in 1971, to 41.7 per cent in 1991, to 45.6 per cent in 2001, to 48.3 per cent in 2006.<sup>27</sup> To be clear, in 2006, 48.3 per cent of people who indicated that French is their mother tongue spoke primarily in English at home. Despite substantial institutional progress, the French language in Nova Scotia remains in a precarious position.

The Acadian population in Nova Scotia is increasingly dispersed and Halifax Regional Municipality (HRM) is the region with the largest number of francophones in the province. Argyle, Clare, Richmond and Chéticamp remain the communities where the concentration is greatest and are still the heartbeat of the provincial Acadian and francophone community's vitality.

Although arguments can be made that these communities suffer from marginalization, this may not be the primary argument to justify an exceptional treatment for Acadians in the same way as it is for African Nova Scotians. In most socio-economic and political regards, the communities of Argyle, Clare and Richmond are not unlike other rural communities in the province. The economic and demographic challenges of rural Nova Scotia apply in Clare just as much as Cumberland. However, the consequences for the Acadian community take on a much greater dimension when one considers the collective linguistic and cultural impact. For a member of the majority, adaptation to global trends is primarily an economic decision – which is not to trivialize the difficult personal consequences that it brings. But, for minorities, adaptation necessarily entails fear of assimilation and loss of culture, language, and identity – to the detriment of these communities and all Nova Scotians.

When taken in the overall context of the *Charter* ss. 16 to 23, and the importance given to Canada's official languages communities, a strong argument can be made for the exceptional treatment of Acadians. This argument is particularly strong given the fact that the exceptional ridings of Argyle, Clare and Richmond had existed for two decades and, as we were repeatedly told, their elimination has substantially weakened the community's vitality.

<sup>25</sup> Ross, S. & Deveau, A. (1995) *Acadians of Nova Scotia*. Halifax: Nimbus.

<sup>26</sup> Corbett, M. J. (2007) *Learning to Leave: the Irony of Schooling in a Coastal Community*. Halifax: Fernwood publishing.

<sup>27</sup> Landry, R., Allard, R. & Deveau, K. (2010) *Schooling and Cultural Autonomy: a Canada-wide study in Francophone minority schools*. Ottawa: New Canadian Perspectives.

## African Nova Scotians

As victims of the transatlantic slave trade, one of the greatest crimes against humanity committed by European colonial powers, people of African descent, who fled either slavery or the American Revolution as loyalists, may have come to Nova Scotia with high hopes for their future and that of their children. They were however soon disappointed. In his book, *How the Blacks Created Canada*, Fil Fraser notes how, “(initially) perceived as a threat to the White community,” Nova Scotian Blacks “suffered more severe discrimination than other (ethnic minority) communities”<sup>28</sup> in Canada. Frequently relegated to undesirable lands for which they often were not granted legal title, they were generally forced to work in subservient positions. African Nova Scotians were scattered in some fifty small enclaves throughout the province, living in chronic poverty. Limited access to quality education for their children afforded little chance for social mobility.

Substantial employment and educational gaps between Black Nova Scotians and the general population still exist and African Nova Scotians still struggle to this day to achieve an equal playing field and equitable treatment.<sup>29</sup>

Section 15 of the *Charter* allows for measures to ameliorate disadvantages suffered by individuals and groups based on race, ethnicity, and language. In fact, the identification of African Nova Scotians for exceptional measures to improve their effective representation rights under s. 3 of the *Charter* in the terms of reference for both the 1992 and 2002 Electoral Boundaries Commissions fall well within s.15.

## Open and Inclusive Communities

In 2016, almost one in five residents in the Atlantic provinces was 65 years of age and older — the highest proportion in the country. In Alberta that proportion was just 12.3 per cent. A few years ago, Nova Scotia’s population was projected to decline over the next 20 years as young people continued to leave the province to search for work. By 2036, the province was predicted to have 100,000 fewer working-age people than it did in 2010.

Three of the 19 “stretch goals” proposed by the Ivany Commission in its seminal report on building Nova Scotia’s economic future “Now or Never: An Urgent Call to Action for Nova Scotia”<sup>30</sup> are directed at reversing the province’s population decline:

- Nova Scotia will be averaging a net gain of 1,000 working age people per year.
- With the cooperation of the federal government, Nova Scotia will be receiving annually its proportionate share of all new international immigrants to Canada.
- 10% of foreign students stay in Nova Scotia (up from 5%).

We have a long way to go to achieve those goals but there are some hopeful signs. Since mid-2014, Nova Scotia has seen a decrease in the number of people leaving for other provinces. Between July 1, 2015 and July 1, 2016, Nova Scotia saw a net loss of 1,358 people between the ages of 18 and 64 to other provinces but that is an improvement over the net loss of 3,000 in 2012-2013.

This means that more working age Nova Scotians are remaining in Nova Scotia, more working age people from other provinces are moving here, and some Nova Scotians who have left in the past are now returning. It also means we are slowly becoming more welcoming and diverse.

<sup>28</sup> Fraser, F. (2005). *How the Blacks Created Canada*. Edmonton: Dragon Hill Publishing Ltd. p.100.

<sup>29</sup> <https://ansa.novascotia.ca/community>

<sup>30</sup> The Nova Scotia Commission on Building Our New Economy (2014). *Now or Never: An Urgent Call to Action for Nova Scotia*. Government of Nova Scotia. <https://onens.ca/img/now-or-never.pdf>.

Linguistic diversity is on the rise in Canada and Nova Scotia: in 2016, 22,740 Nova Scotians reported speaking a language other than English or French at home, up from 18,510 in 2011 – an increase of 4,230 (18.6%) in five years.

Although immigrant languages show a strong growth in Nova Scotia, English and French are still the most spoken languages in the province with 96.2 per cent of Nova Scotians who speak English or French at least on a regular basis at home.

In addition to attracting and retaining immigrants and expatriates, the Ivany Report also calls for raising the labour force participation rate of First Nations and African Nova Scotians. Both communities enjoy growth rates higher than the provincial average. Membertou First Nation (pop. 1,015) enjoyed a massive 11.3 per cent growth while Eskasoni First Nation, the province's largest reserve (pop. 3,422), saw a 3.4 per cent growth rate. African Nova Scotians are also younger and growing faster than the provincial average.

Acadians and African Nova Scotians can play a key role in attracting and integrating immigrants. Although 80.7 per cent of African Nova Scotians were born in the province and 71.8 per cent are Canadians of three or more generations, 12.9 per cent are newcomers to Canada. The Acadian and African Nova Scotian communities offer the province unique opportunities in this regard. Although the 2014 study by the investment bank Natixis that predicted that French would become the world's most widely spoken language by 2050 may have been flawed in some respects, given the fast-growing economies and population of French speaking countries in West Africa, there is a consensus that French is regaining importance on the world economic stage<sup>31</sup>.

Both the Acadian and African Nova Scotian communities are open and inclusive communities. The Acadian community, the province of Nova Scotia, and the government of Canada have a collaborative immigration strategy and the greatest potential for this immigration is in western Africa. The African Nova Scotian community is built on successive immigration waves. Could this be another such wave?

Université Sainte-Anne and its approximately 150 international students (most of whom are African) provides an interesting opportunity for the cultural and economic growth of Nova Scotia in this area. Programs aimed at encouraging these students to stay in the province after graduation, and others to draw on their connections and families in their countries of origin, could be key pillars of an immigration initiative that would benefit Acadians, African Nova Scotians and the province.

Strengthening the voice of these communities in the public affairs of the province through improved effective representation can be a strategic endeavor for the growth of Nova Scotia.

<sup>31</sup> Gobry, P.-E. (2014) Want To Know The Language Of The Future? The Data Suggests It Could Be...French. Forbes. <https://www.forbes.com/sites/pascalmanuelgobry/2014/03/21/want-to-know-the-language-of-the-future-the-data-suggests-it-could-be-french/#233bdaaf6d58>

## Demography

### Acadians

As table 1 shows, in 2016, 33,345 Nova Scotians declared French as a mother tongue, a 3.5 per cent decrease from the 2011 census. This figure represents 3.2 per cent of the 912,295 Nova Scotians who answered the National Household Survey. This questionnaire includes multiple languages responses for mother tongue.<sup>32</sup>

In its memorandum to the Commission, the Fédération acadienne de la Nouvelle-Écosse (FANE) states that “while the francophone population numbered 80,000 in 1981, it was only 42,000 in 1996”. However, despite its steady decline, French is still the second most often spoken language in Nova Scotia as well as in HRM.

**Table 1 – French Mother Tongue Nova Scotia**

	2016			2011			
	Total population <sup>33</sup>	Fr Mother Tongue	% Fr Mother Tongue	Total population	Fr Mother Tongue	% Fr Mother Tongue	Change in population 2011-2016
<b>Municipality of Argyle</b>	7,855	3,585	45.6%	8,215	3,885	47.3%	-4.3%
<b>Municipality of Clare</b>	7,885	5,030	63.7%	8,160	5,320	65.2%	-3.6%
<b>Municipality of the County of Richmond</b>	8,860	2,015	22.5%	9,170	2,235	24.4%	-3.5%
<b>Inverness Subdivision A (Chéticamp)</b>	4,990	1,950	39.1%	5,190	2,130	41.0%	-3.9%
<b>Halifax Reg. Municipality</b>	399,315	12,250	3.1%	386,200	11,940	3.1%	3.3%
<b>Nova Scotia, all included</b>	912,295	33,345	3.7%	906,175	34,585	3.8%	0.2%

<sup>32</sup> Mother tongue is defined as the first language learned in childhood and still understood today. Statistics Canada recognizes that two languages can be learned at the same time in early childhood; therefore, the census includes multiple languages responses.

<sup>33</sup> The discrepancy between the total population in this table and the actual population of the province (923,598 in 2016 and 921,727 in 2011) can be attributed to two factors. First, in 2011, information previously collected by the mandatory long-form census questionnaire for demographic, social and economic characteristics, was collected as part of the voluntary National Household Survey (NHS). It went to 33 per cent of Canadian households. Secondly, in 2016, one in four households received the new mandatory long-form census questionnaire including questions on demography, economy and social characteristics.

<sup>34</sup> The 2016 census data on immigration and ethnocultural diversity that includes the African Nova Scotian population was released October 25, 2017 as we were completing our report. It is available at <http://www12.statcan.gc.ca/census-recensement/2016/dp-pd/prof/details/page>.

<sup>35</sup> The National Household Survey (May 2011) is a voluntary survey for which approximately 4.5 million households received a questionnaire.

<sup>36</sup> The discrepancy between this number that was estimated from the National Household Survey and the actual population of the province (921,727) can be attributed to the fact that the National Household Survey was a voluntary survey in 2011 and that its response rate was somewhat low.  
[cfm?Lang=E&Geo1=PR&Code1=12&Geo2=PR&Code2=01&Data=Count&SearchText=nova%20scotia&SearchType=Begins&SearchPR=01&B1=All&TABID=1](http://www12.statcan.gc.ca/census-recensement/2016/dp-pd/prof/details/page)

### Distribution of Acadians

As seen in the section devoted to the history of Acadians, when they returned to Nova Scotia following the Deportation, Acadian people were dispersed across the province to settle in isolated regions. This division into smaller communities would favour their assimilation. Paradoxically, their isolation would slow it.

As in many other rural regions in Nova Scotia, in 2016 the traditional Acadian regions of Argyle, Clare, Chéticamp and Richmond show a decrease in population between -3.5 per cent and -4.3 per cent. However, the proportion of people who have French as a mother tongue is declining at an even faster rate. For example, in the Municipality of Argyle, the population between 2011 and 2016 fell by 4.3 per cent, but the French-speaking population fell by 7.7 per cent. The same is true for the Municipality of Clare where the total population dropped by 3.6 per cent but the population of Acadians decreased by 5.4 per cent. In Cape Breton, the Municipality of Richmond County and the Inverness, Subdivision A that includes the region of Chéticamp, show respectively a decrease of 3.5 per cent and 3.9 per cent of the general population, but the Acadian population fell by 9.8 per cent in Richmond and 8.4 per cent in Inverness, Subdivision A.

HRM is different. French-speaking respondents have increased from 11,940 in 2011 to 12,250 in 2016. However, their percentage of the population living in HRM has stayed the course at 3.1 per cent.

In Nova Scotia, the percentage of French-speaking people has slightly dropped from 3.8 in 2011 to 3.7 per cent in 2016.

### African Nova Scotians

The 2016 census shows that there are now 21,915 African Nova Scotians, making up 2.4 per cent of the Nova Scotian population. They are the largest racially visible group in Nova Scotia. They are represented in all 18 counties, but the three largest concentrations are 15,090 in Halifax County, 1,105 in Cape Breton County and 865 in Colchester County.

At the time our statistical analysis was done and tables developed, the 2016 census data on African Nova Scotians was not available.<sup>34</sup> Therefore, our detailed tables present data from the 2011 National Household Survey.<sup>35</sup> The trends we observed in the 2011 data are still present in the 2016 data. We are therefore confident that the conclusions drawn from the 2011 data continue to be well founded.

Table 2 below presents the African Nova Scotian population by age distribution. It shows a different picture than that of the general population. African Nova Scotians are younger by a broad margin.

- Nova Scotia’s population under age 15 represents 14.8 per cent while in the African Nova Scotian community, this figure rises to 28.2 per cent.
- It is a similar trend for age 15 to 24 with a proportion of 12.4 per cent for the general population and 16.2 per cent for African Nova Scotians.

The ratio inverts with the population 35 and above when the general population consists of a broader percentage than the African Nova Scotians.

**Table 2 – African Nova Scotian Population by age groups, 2011**

	<b>Total pop</b>	<b>Under 15 yrs. old</b>	<b>15-24 yrs.</b>	<b>25-34 yrs.</b>	<b>35-44 yrs.</b>	<b>45-54 yrs.</b>	<b>55-64 yrs.</b>	<b>65 +</b>
<b>African Nova Scotians</b>	20,785	28.2%	16.2%	12.0%	12.1%	12.5%	9.8%	9.0%
<b>Nova Scotia</b>	858,905 <sup>36</sup>	14.8%	12.4%	11.0%	12.9%	17.1%	15.3%	16.4%

## Distribution of African Nova Scotians

In most cases, African Nova Scotia communities are on the outskirts of towns, away from essential services and generally on unfertile lands. This was a way of segregating the African Nova Scotians from the rest of the population. Today, the Prestons (North Preston, East Preston, Cherry Brook and Lake Loon) make up the largest African Nova Scotian community with approximately 2,050 residents.

Table 3 shows the African Nova Scotian population in each county in 2011. In general, the populations are small and spread out. African Nova Scotians represent 3 per cent or more of the population in only three counties, Guysborough, Halifax and Digby. In Yarmouth and Shelburne counties they represent 2.98 per cent and 2.97 per cent of the population, respectfully.

**Table 3 – African Nova Scotians Population by County, 2011<sup>37</sup>**

County	Total Population	African Nova Scotian Population	African Nova Scotian, Per cent of Total Population
Annapolis	20,380	290	1.42%
Antigonish	19,350	245	1.26%
Cape Breton	99,690	1,140	1.14%
Colchester	50,030	640	1.28%
Cumberland	30,230	460	1.52%
Digby	17,700	590	3.33%
Guysborough	8,025	330	4.11%
Halifax	384,540	13,780	3.58%
Hants	41,820	460	1.1%
Inverness	17,605	55	0.31%
Kings	59,350	775	1.30%
Lunenburg	46,480	125	0.27%
Pictou	44,865	590	1.32%
Queens	10,770	100	0.93%
Richmond	9,155	25	0.27%
Shelburne	14,335	425	2.97%
Victoria	7,055	20	0.28%
Yarmouth	24,800	740	2.98%
<b>Nova Scotia</b>	<b>906,175<sup>38</sup></b>	<b>20,790</b>	<b>2.3%</b>

<sup>37</sup> The data for the total population of the province and for each county are different from the Census 2011 data found in other tables. The data shown here is extracted from the National Household Survey (May 2011), a voluntary survey in which approximately 4.5 million households received a questionnaire.

## Unemployment

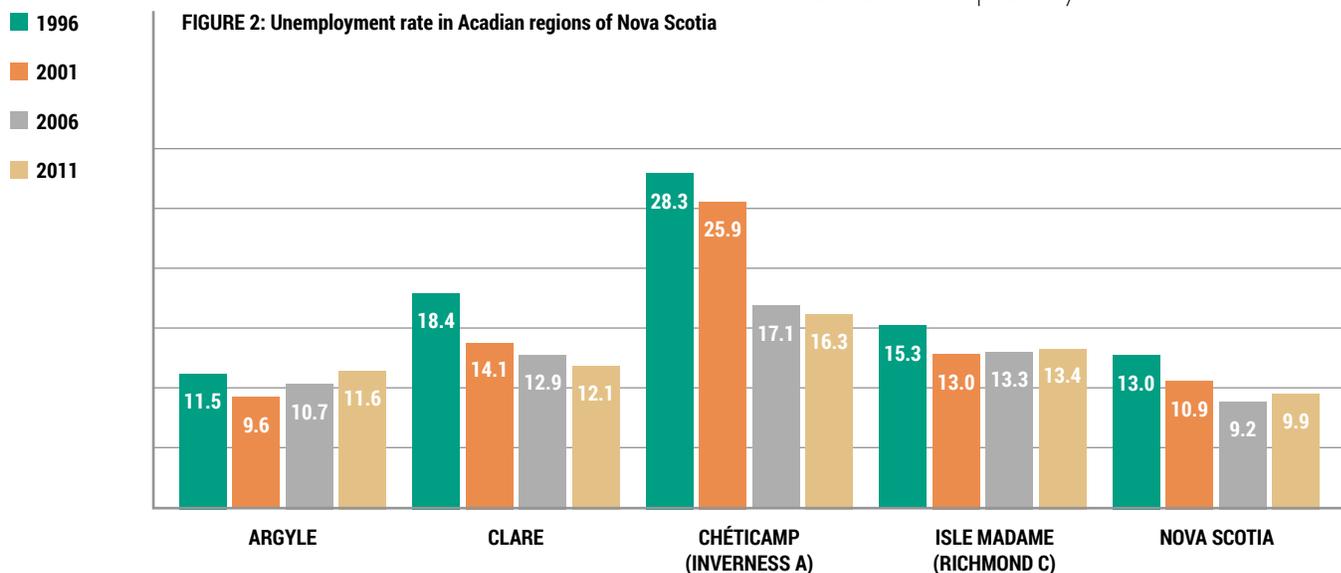
### Acadian Regions

In figure 2, we show the unemployment rate for each of the Acadian regions of Argyle, Clare, Chéticamp and Isle Madame in 1996, 2001, 2006 and 2011. Data for this figure is drawn from the Community profiles provided on the Conseil de développement économique de la Nouvelle-Écosse website.<sup>38</sup> The numbers are for all the residents in these regions. We were not able to find data specifically for Acadians or francophones in Nova Scotia. The unemployment rate in each region, except Argyle, was invariably higher than the provincial rate. In Argyle, the unemployment rate was actually 1.5 and 1.3 points lower than the provincial rate in 1996 and 2001. However, while the provincial rate was decreasing in 2006 and 2011, the rate in Argyle increased and passed the rate for the province. In Clare and on Isle Madame, despite some improvement, the unemployment rate has remained between 2 and 5 percentage points above the provincial rate. In Chéticamp, the situation is far more dire. Even after some improvement, the unemployment rate in this region remains close to twice what it is for the province.

The education level in these regions is lower than the provincial average. Even in Clare, the home of Université Sainte-Anne, only 65.7 per cent of the adult population has done some postsecondary studies (completed or not), whereas for the rest of the province this figure is 77.7 per cent.<sup>39</sup> Whether this is due to the linguistic composition of these regions, or (more probably) other factors related to their remoteness and rurality, the fact remains that a lagging education level and a concomitantly high unemployment rate severely hinders their socioeconomic development.

### African Nova Scotian

Figure 3 demonstrates that African Nova Scotians have a higher unemployment rate than Nova Scotians and African Canadians. Although there has been improvement since 1996, when was the difference was close to 7 per cent, the 2011 figures still show a wide gap of 4.8 per cent between Nova Scotians and African Nova Scotians. Many African Nova Scotians experience low income, challenges in educational attainment, health and life expectancy.

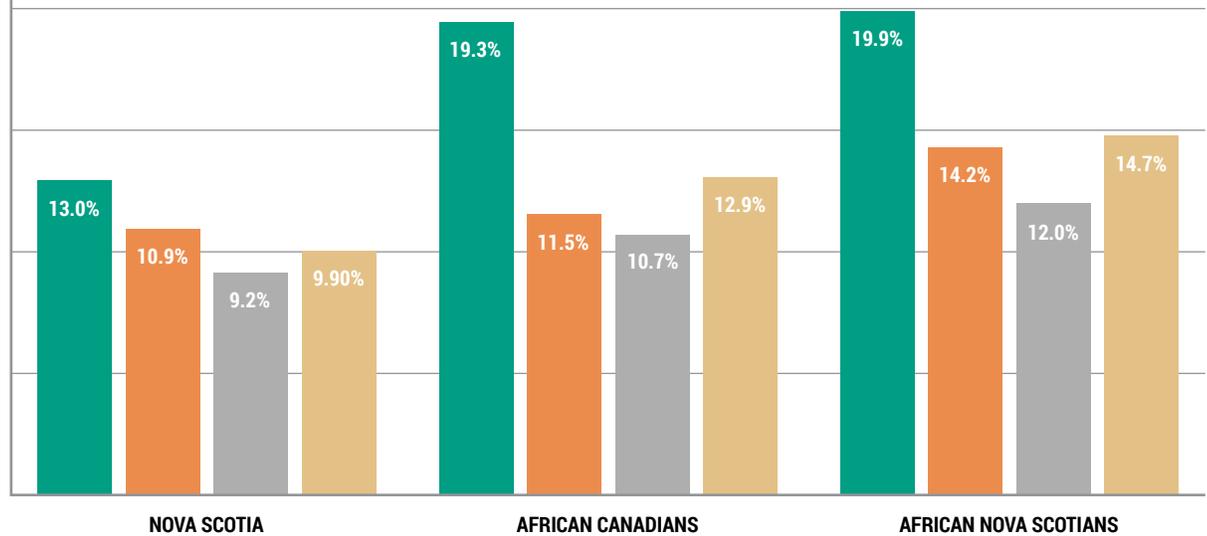


<sup>38</sup> <http://www.cdene.ns.ca/fr/ressources/publications>

<sup>39</sup> Profil Communautaire 2012-2013 : Communauté acadienne et francophone de la région de Clare. Conseil de développement économique de la Nouvelle-Écosse. 2013. <http://www.cdene.ns.ca/images/profil-communautaire/Profil-Clare.pdf>



FIGURE 3: African Nova Scotian Unemployment Rate, by Group, 1996 to 2011 (Ages 15–64 yrs, both genders)



Sources: African Nova Scotian Affairs and Careers Nova Scotia (IMS 2014)

## Exceptional Ridings Pre and Post 2012 Realignment

In 2012, the four exceptional ridings of Argyle, Clare, Richmond and Preston were eliminated to form part of larger constituencies. In many cases, this realignment meant that the voting weight of the Acadian and the African Nova Scotian populations was significantly diminished in the new constituencies.

Tables 4 and 5 provide a comparison between the exceptional ridings before and after the 2012 realignment.

- In Argyle, prior to 2012, the French-speaking population was 47.4 per cent of the total, and after, in the Argyle-Barrington riding, it was 25.1 per cent.
- In Clare, prior to 2012, the French-speaking population was 65.5 per cent and after it was 32.4 per cent in Clare-Digby.

- In Richmond, prior to 2012, the Acadian population was 24.3 per cent, while after it was 17.8 per cent in Cape Breton-Richmond.
- In Preston, prior to 2012, the African Nova Scotian population 21.3 per cent, while post 2012 it was 19.0 per cent in Preston-Dartmouth, the smallest of the differences for the exceptional ridings.

The Acadian communities of Clare and Argyle were most strongly disadvantaged in this realignment with the weight of their vote being halved.

Decreasing the number of constituencies in 2012 from 52 to 51 compounded the underrepresentation of minorities.

**Table 4 – Population in exceptional constituencies prior to 2012 realignment.<sup>40</sup>**

Riding	Population 2011	French Mother Tongue	African Nova Scotian	Population 2016	French Mother Tongue	African Nova Scotian
Argyle	8,215	3,890 (47.3%)	0	7,884	3,585 (45.4%)	Not available
Clare	8,320	5,450 (65.5%)	45 (0.5%)	8,019	5,094 (63.5%)	Not available
Preston	9,595	240 (2.5%)	2,043 (21.3%)	9,579	256 (2.7%)	Not available
Richmond	9,290	2,255 (24.2%)	0	8,953	2,064 (23.0%)	Not available
<b>Nova Scotia</b>	<b>921,727</b>	<b>35,080 (3.8%)</b>	<b>20,790 (2.2%)</b>	<b>923,595</b>	<b>33,780 (3.7%)</b>	<b>Not available</b>

**Table 5 – Population in exceptional constituencies after 2012 realignment<sup>41</sup>**

Riding	Population 2011	French Mother Tongue	African Nova Scotian	Population 2016	French Mother Tongue	African Nova Scotian
Argyle-Barrington	16,065	4,030 (25.1%)	0	15,296	3,723 (24.3%)	Not available
Clare-Digby	18,035	5,845 (32.4%)	495 (2.7%)	17,315	5,490 (31.7%)	Not available
Preston-Dartmouth	14,240	470 (3.3%)	2,698 (19%)	13,789	441 (3.2%)	Not available
Cape Breton-Richmond	13,695	2,440 (17.8%)	0	13,094	2,219 (17.0%)	Not available
<b>Nova Scotia</b>	<b>921 727</b>	<b>35,080 (3.8%)</b>	<b>20,790 (2.2%)</b>	<b>932,595</b>	<b>33,780 (3.6%)</b>	<b>Not available</b>

## Nova Scotia: Moving to the Centre

The fate of the exceptional ridings and, more generally, rural ridings, is a manifestation of a larger trend: urbanization. Urbanization is a global phenomenon that governments, including small governments like that of Nova Scotia, are powerless to stem. At best, they can mitigate some of the negative effects on their rural regions. If anything, the process has been slower here than in some other places. Nevertheless, it is relentless.

The latest figures from the Statistics Canada 2016 census show that the total population of Nova Scotia is 923,598 people, up slightly from 921,727 in 2011. At 0.2 per cent, this is the second lowest growth rate in the country. The national growth rate for the same period was five per cent. Only New Brunswick, which declined by -0.5 per cent in the past five years, lagged Nova Scotia.

Nearly 40 per cent of Canadians live in the country's 15 largest municipalities. Nova Scotia is following this trend towards increased urbanisation. From 2011 to 2016, HRM's population increased by 3.3 per cent, moderately lower than its 4.7 per cent growth during the previous five years.

From 1991 to 2016 only Halifax county and three counties clustered around it – Kings, Hants, and Colchester – grew. At the other end of the spectrum, Guysborough is leading the rural depopulation trend with a decline of close to 35 per cent in those 25 years.

<sup>40</sup> Sources: Statistics Canada 2011 compiled by the Institute on Linguistic Minorities 2014 (French Mother Tongue includes French only, and both French and English as mother tongue); Elections Nova Scotia, 2016 Census Population Count; Department of Finances, Economics and Statistics Division.

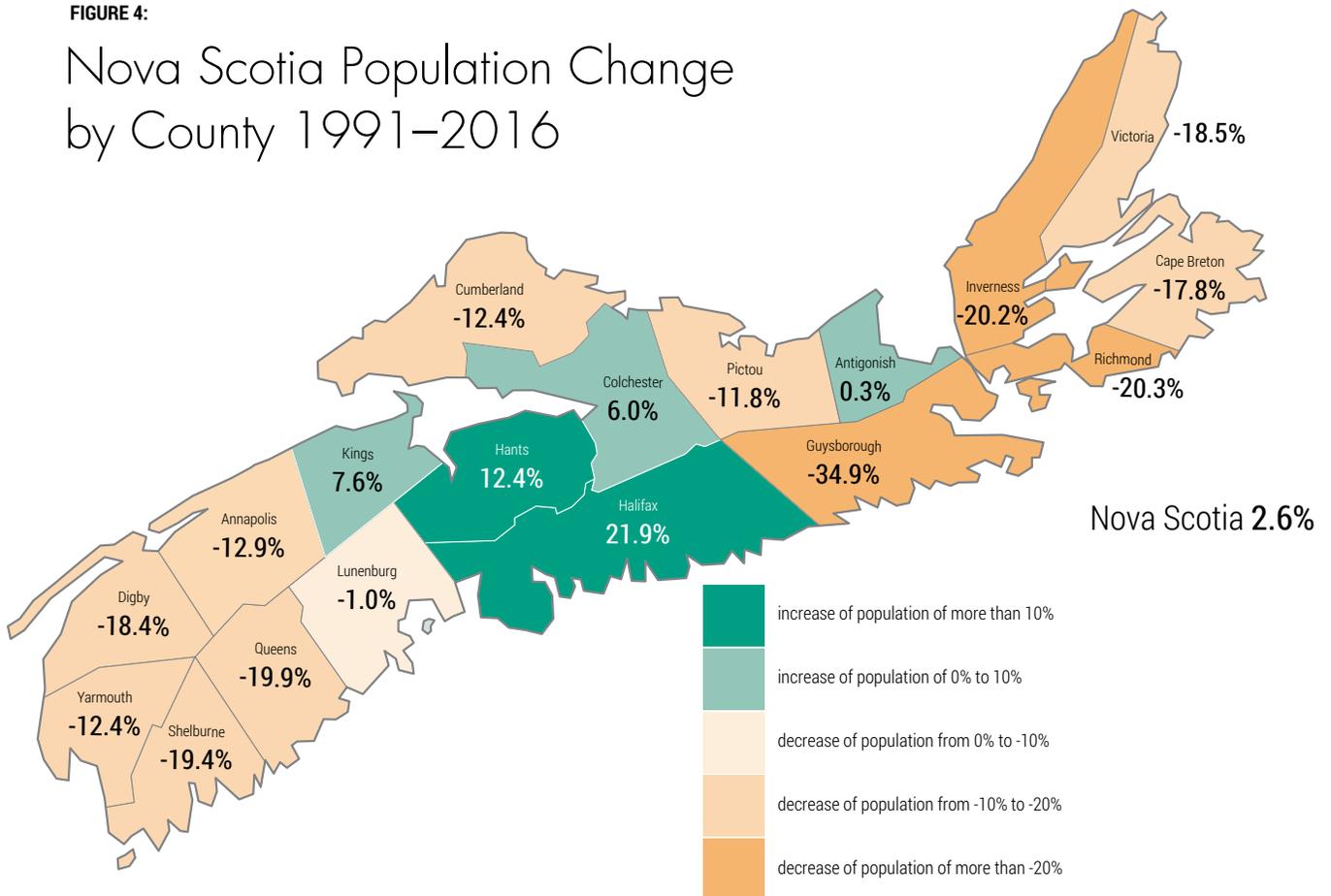
<sup>41</sup> *ibid*

As we see in Figure 4, from 1991 to 2016, the population of Nova Scotia increased by only 2.6 per cent from 899,942 to 923,598. During the same 25 years, only four counties experienced an increase in population: Colchester, Halifax, Hants and Kings. Antigonish remained flat. Eight counties experienced a decrease of more than 15 per cent: Cape Breton, Digby, Guysborough, Inverness, Queens, Richmond, Shelburne and Victoria.

Except for Cape Breton County, these counties have a mostly rural population. Guysborough is leading the rural depopulation trend with a change of close to minus 35 per cent.

Additional information can be found at Appendix 9.

**FIGURE 4:**  
Nova Scotia Population Change by County 1991–2016



<sup>42</sup> Source: Statistics Canada, 2011 Census of Population.

<sup>43</sup> An urban area was defined as having a population of at least 1,000 and a density of 400 or more people per square kilometre.

<sup>44</sup> A map of the Guysborough constituency can be found here [http://electionsnovascotia.ca/sites/default/files/ED20\\_EDMap.pdf](http://electionsnovascotia.ca/sites/default/files/ED20_EDMap.pdf)

## Long-term Trend

As we see in Table 6, urbanisation is a long-standing trend. It accelerates and decelerates but never reverses.

Year	Population	Urban <sup>43</sup>	Rural	Urban %	Rural %
1851	276,854	20,749	256,105	7	93
1861	330,857	25,026	305,831	8	92
1871	387,800	32,082	355,718	8	92
1881	440,572	63,542	377,030	14	86
1891	450,396	76,993	373,403	17	83
1901	459,574	129,383	330,191	28	72
1911	492,338	186,128	306,210	38	62
1921	523,837	227,038	296,799	43	57
1931	512,846	231,654	281,192	45	55
1941	577,962	267,540	310,422	46	54
1951	642,584	344,831	297,753	54	46
1956	694,717	399,094	295,623	57	43
1961	737,007	400,512	336,495	54	46
1966	756,039	438,907	317,132	58	42
1971	788,965	447,405	341,560	57	43
1976	828,570	462,590	365,975	56	44
1981	847,442	466,842	380,600	55	45
1986	873,175	471,125	402,050	54	46
1991	899,942	481,508	418,434	54	46
1996	909,282	497,858	411,424	55	45
2001	908,007	507,009	400,998	56	44
2006	913,462	506,932	406,530	56	45
2011	921,727	521,338	400,389	57	43

Urbanization causes a decrease in the number of rural ridings and an increase in their size. This is not a deliberate strategy but largely the application of the requirement to maintain a degree of relative parity in voting populations between constituencies – which we will examine in greater detail later. Constituency population averages have their own, remorseless logic.

In Sunnyville, a small African Nova Scotian community near Guysborough town, we heard that the constituency of Guysborough-Eastern Shore-Tracadie,<sup>44</sup> which now includes a small part of Antigonish County and a large part of Halifax County and of course all of Guysborough County, is so large that it is extremely difficult for the MLA to stay in touch with his constituents.

Some considered themselves fortunate because his constituency office is in nearby Guysborough town.

In both Saulnierville and Digby we heard that the riding of Clare-Digby is geographically too large with too many distinctly different communities for one MLA to effectively represent everyone. The drive from one end of this riding to the other is some 2.5 hours and includes two ferry rides.

It had been the practice in Nova Scotia to respect county boundaries wherever possible. That is, we tried to avoid scattering parts of counties among constituencies. If nothing changes this practice will increasingly be honoured in the breach until it can no longer be called a practice.

## Effective Political Representation

*What is representation? How does one feel represented?* Clearly if you receive assistance from your MLA or municipal councillor in addressing a grievance or support for a project, you will feel represented. If your views have been championed, even if they did not prevail, you have been represented. Sometimes it is enough to have been accorded the respect of having been heard in a public forum. And sometimes you just want to see someone who looks or sounds like you in a position of authority.

Every citizen has the right to run for office, vote, and participate fully in the political and economic life of the province. However, minorities are often submerged in society and in constituencies. For this reason, political parties generally have little incentive to develop minority candidates or platforms. Despite legal equality, minority voices may not be heard in public affairs unless special or alternative measures are taken to promote them.

### Two Kinds of Representation

*When I see a person that looks like me in the House I feel represented and have a sense of trust and feel my needs are being represented, because our lived experiences may be similar.*

- Participant in a public forum.

*We don't always need a person of African descent to represent our interests. We need to be engaged in meaningful dialogue.*

- Participant in a public forum.

These comments are not contradictory. They are examples of two kinds of electoral representation – descriptive and substantive. A study recently conducted in Nova Scotia by Carbert & Black<sup>45</sup> explains that descriptive representation, sometimes called “mirror representation”, occurs when a group elects one of its members to the Legislature. Substantive representation occurs when elected officials represent the values and interests of the electors. Both are good. They can be complementary and are certainly not mutually exclusive. But they should not be confused. Descriptive representation, for instance, is good because the members of the group see themselves mirrored in their government. This has the dual benefit of adding legitimacy to the government in the eyes of the group and acknowledging the importance of the group in the eyes of the general population. However, a human characteristic is not necessarily indicative of shared values, interests, and aspirations. 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 that was not substantive in the eyes of many women.

<sup>45</sup> Carbert, 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).

## Mirrors and Meaning

*"At various times in Canada's history, a few federal ridings were represented by two members. In some cases, the dual-member ridings existed so that each political party could field both a Protestant and a Roman Catholic candidate in the same riding. The practice ended in 1966."<sup>46</sup>*

Descriptive representation is not new. But it can seem that way because it changes as the relative significance of personal characteristics – how we identify ourselves in terms of others – changes. As the quote above indicates, at one time, religion was politically significant. We each have multiple identities and whether representation is descriptive or not depends on the identity selected. Is it gender, income, education, and ethnicity, language, or a host of other factors? A Marxist might identify with the working poor over any other factor, while a young person might feel better represented by a young person regardless of any other characteristic. Further, as we explained previously in the section on minorities, a person's identity tends to change as a function of the environment or context they are in. So, what they would consider good descriptive representation as a function of one of their multiple identities in one context would not be in another. If we return to the example of the African Nova Scotian female lawyer presented in that section, she may very well feel better represented, both descriptively and substantively, by a female MLA in certain situations and better represented by an African Nova Scotian man in another.

While, in general, a woman has a better chance of understanding the interests and values of other women, a man living in rural Nova Scotia might actually have more interests in common with a woman living in rural Nova Scotia than a woman living in an apartment in Halifax. The rural residents might be passionate about keeping their school open while Haligonians might be worried about overcrowding in theirs. We heard both these concerns when rural and urban Acadians and francophones discussed French language schools.

While acknowledging the fluidity of identity, it has value, particularly in the case of a historically marginalized group. The election of African Nova Scotians to Parliament and the Legislature – three of whom became cabinet ministers - was of historic significance to African Nova Scotians and Nova Scotians generally.

Descriptive representation does not guarantee substantive representation. But, then again as any voter will tell you, nothing does.

## The Hall of Mirrors

Then there is a separate but related question of the legislature itself. How representative is it of the population? This is not simply a matter of counting MLAs by identity and checking to see if they reflect Statistics Canada's data. While underrepresentation of a certain group is a problem, it does not necessarily render any particular House unrepresentative. And it may not affect substantive representation at all. African Nova Scotians in one community were happy with their relationship with their white MLA and his efforts on their behalf. But, the optimum result is descriptive representation that is also substantive. While descriptive representation of each person in each constituency is impossible, it should be possible in the Legislature as a whole at least in respect of major personal characteristics.

<sup>46</sup> <http://www.elections.ca/content.aspx?section=res&dir=eim/issue6&document=p9&lang=e>  
For many years, the old City of Halifax had dual municipal wards and a dual federal riding so that Catholics and Protestants could be assured of having a representative. As Christian sectarianism faded in Halifax the practice became irrelevant and ceased, un-mourned.

## Legislative Representation in Context

At present, there are 51 MLAs in the House. They each have one vote. Their effectiveness depends on their influence on the other fifty and that depends on many factors.

There is a tension at the heart of democratic government. On one hand MLAs are expected to represent all their constituents. On the other hand, to be effective one must subordinate some interests, personal and political, to achieve anything. Sometimes MLAs must choose between fighting for a local project and supporting the government's budget, or toeing the party line on a measure that is good for the province but unpopular at home. Representation in the legislature is a tug-of-war in three dimensions with the MLA in the middle. Effectiveness requires a dynamic balance and someone will always feel left out.

### The Roles of MLAs

In her affidavit provided to the Nova Scotia Court of Appeal on the boundaries reference, Dr. Jennifer Smith explained that MLAs have many roles including:

- assistance to individual constituents, sometimes known as the ombudsman role
- advocate for local projects, employment, services;
- contributor to policy development and intelligence on the ground;
- supervisor of the executive branch of government;
- member of a political Caucus.

One MLA put it more simply. He said he had three roles:

- provide navigation and advocacy for his constituents;
- vote and debate in the legislature;
- support projects that are good for his constituency or the province.

Of the three, he said, serving his constituents is the most important and knowledge of their needs is necessary for the other two.

But even that is not as simple as it sounds. The context in which an MLA operates includes the competitiveness and, consequently, partisanship of the legislature and politics, which necessitates party discipline and a province-wide perspective.

### Political Parties and Party Discipline

During our consultations, several people expressed frustration with party discipline feeling that it prevents politicians from representing them. Some wanted MLAs that were independent of any party so they would be free to speak for them. Other people suggested that independent MLAs are largely ineffective. The debate about whether members of a legislature owe their constituents their obedience or their best judgment is as old as parliamentary democracy. The question is most acute for cabinet ministers. Is their time better spent in their ministerial office in Halifax or their constituency office?

The expression “where you stand depends on where you sit” is literally true in the Legislature. The MLAs’ effectiveness depends on whether they sit on the government or the opposition benches. If the goal is to obtain a benefit for their constituency then a government member, particularly a cabinet minister, is in a much better position than someone on the back benches of the opposition. On the other hand, if the goal is to hold the government to account, an opposition member has a much freer hand than someone on the government side – particularly a cabinet minister who must maintain cabinet solidarity. A government member seeking to change government policy must work behind the scenes, in caucus and perhaps in cabinet. He or she does not have the luxury of grandstanding in public.

Many people, political scientists among them, argue that in Canada party discipline is too strict but, whatever its drawbacks, it enables us to hold the party that formed the government accountable at the next election. It may very well be that we would all benefit from some relaxing of this discipline, but some discipline is important to good government. We only have to look south of the border to see what happens when party discipline breaks down.

### The Nature of Rural Constituencies

The size, population density, and distance from the seat of government of constituencies, and the difficulties that creates for representation, has always been recognized as a factor when establishing electoral boundaries in Canada and throughout the democratic world. Even the contested 2012 Nova Scotia boundaries have what are in effect two averages: one for rural constituencies and another for urban constituencies. The rural constituencies are below the average and all the urban constituencies are above it. (We examine this in greater detail below.)

Several rural MLAs and former rural MLAs explained to us that, not only are rural constituencies larger than urban consistencies, they are also different. They told us in rural areas there is greater reliance on the provincial government for services and consequently on the MLA. Rural residents are often less networked than urban residents and tend to be older and more reliant on direct, personal service. Rural MLAs who are cabinet ministers, and all MLAs when the House is in session, spend most of their time in Halifax and cannot simply step away from their official duties for a couple of hours to attend an event in their constituency or meet with a constituent. All of which is to say that it is more difficult to provide effective representation in rural constituencies than in urban constituencies.

### Conclusion

Representation is a dynamic and complex mix of factors that we know when we see it, and more acutely, when we don’t. It defies quantification and formulation. But it is the concept on which democracy is built.

## Electoral Representation: The Sovereignty of the People

Representative government through free, fair and periodic elections is the hallmark of contemporary democracy. The fundamental objective is, in the words of Article 21 (3) of the **Universal Declaration of Human Rights**, that “The will of the people shall be the basis of the authority of government.”<sup>47</sup>

### The Right to Vote

Democracy is based on the sovereignty of the people and so the people choose who governs them through elections. In our system, the province is divided into ridings and elections are held not less than every five years. What we call a general election is really fifty-one simultaneous by-elections. The person who gets the greatest number of votes in each constituency wins a seat in the legislature. The leader of the party with the most seats almost invariably becomes premier, selects a cabinet, and forms the government.

There are many ways to participate in a democracy but the method that underpins all others is the right to vote. Section 3 of the *Charter* affirms universal suffrage – the right of all citizens of Canada to vote and to run for elected office. These rights are so fundamental to our system that they cannot be overridden by the so-called “Notwithstanding clause” of the *Charter*.<sup>48</sup>

### The Weight of Votes

Also fundamental to democracy is the concept of legal equality. The progressive removal of discriminatory barriers to voting, such as religion, race, gender, and the requirement to own land, has left us with a “place based” system. Meaning, we separate voters according to where they live, not who they are. Ideally, every vote should have the same weight. But they never do and for some very practical reasons.

We will discuss other electoral systems later. For now, suffice to say that constituencies establish where votes will be counted so that people will know for whom they are voting and, when the election is over, who represents them. The word “commons” – both the pasture land and the House – has the same root as “community”. The House consists of the representatives of the people in places on the ancient assumption that “place” is the fundamental political unit that ties together peoples’ interests.

This assumption is being challenged in several ways.

<sup>47</sup> *Lund Recommendations* OSCE High Commissioner on National Minorities, 1999 p 23.

<sup>48</sup> Section 33 (1) Parliament or the legislature of a province may expressly declare in an Act of Parliament or of the legislature, as the case may be, that the Act or a provision thereof shall operate notwithstanding a provision included in section 2 or sections 7 to 15.

## People and Places

The advent of mass communication, cheap transportation, and, most recently, information technologies is diluting the cohesive forces of “place”. At one time, you talked politics with the person you shared a neighbourhood with, today you might not even share a time zone with them. Our interests are increasingly more likely to relate to a virtual community than our local community. Our professional networks tend to be more important than neighbourhoods and modern neighbourhoods, villages and even counties are less and less homogeneous. Communities where people work in the same place, go to the same church, speak the same language, are the same race or even send their kids to the same school are far less common. Suffice to say, that the concept of place is becoming more elusive. Although, it must be said, this can be overstated. We are still interested in schools for our children, policing for our neighbourhoods, and getting together with friends to share a meal. Place still has its place in our lives.

We are so used to a place based electoral system that we sometimes forget that it could be otherwise. There are many electoral systems. As we shall see, in other countries some legislative seats are allocated based on race, ethnicity, or other factors considered politically significant in that country. Constituencies can be as large as the whole country, or great swaths of it, while in others people are represented by multiple legislators. In other words, a legislature can be “a House of the Peoples”, a House of multiple parties representing multiple interests, or some combination of people, Peoples, and interests. Each option has strengths and weaknesses and it is more a matter of deciding what sort of society and democracy we want than assuming one is better than the other. We discuss electoral systems below.

## Parity and Disparity

If every vote were to be equal then each constituency would have to have the same number of electors. That would require boundaries to be drawn without regard to communities, geographical features, patterns of settlement, and so on. People do continue to identify with the place where they live and do not like it when these things are not considered. During our consultations, many people complained about electoral boundaries that split up their counties. Since we want members of the legislature to represent us, defining who “us” is cannot be a purely arithmetic exercise.

A willingness to deviate from voter parity is as old as Canada. It was part of the bargain that created Canada. The Senate was intended to be a powerful institution to counterbalance the dominant populations of the larger provinces in the Commons. Seats in the Senate were allocated in three groups of 24 each to Ontario, Quebec, and jointly to New Brunswick and Nova Scotia. Even the Commons, which from the outset was based on representation by population, required concessions. In 1867, a province could not lose seats unless its relative population declined by five per cent. “Thus, began the Canadian tradition of minimizing the effects of declining relative population on representation.”<sup>49</sup> This tradition continues, with various permutations, to the benefit of provinces such as our own.<sup>50</sup>

So, we accept variances between constituencies as inevitable and necessary. We always have. Rural ridings generally have fewer voters than urban ridings due to their greater area. See, for example Tables 5, 6, and 7 below.

There are always two questions nevertheless:

- What is the reason for the deviation from equality?
- How great is the deviation?

<sup>49</sup> The Royal Commission on Electoral Reform and Party Financing (1991) v1 p 126. <http://epe.lac-bac.gc.ca/100/200/301/pc0-bcp/commissions-ef/lorlie1991-eng/lorlie1991-eng.htm> (The Lortie Commission)

<sup>50</sup> The “senatorial clause” and “grandfather clause” guarantee that no province has fewer MPs than senators and no fewer seats than it had in 1985. See <http://elections.ca/content.aspx?section=res&dir=cir/red/form&document=index&lang=e>

## Carter and the Effective Representation Standard

The Supreme Court of Canada considered these questions in **Carter**<sup>51</sup> and said that the right to vote in section 3 of the *Canadian Charter of Rights and Freedoms* is a right to “effective representation”. The case involved electoral boundaries established by Saskatchewan’s electoral boundaries commission. The dispute was over parameters imposed on the commission by the Legislature that resulted in variances of greater than 15 per cent between some ridings and, more generally, underrepresentation of urban ridings.<sup>52</sup> The Saskatchewan Court of Appeal found that the quotas infringed s. 3 of the *Charter*. The Supreme Court of Canada overturned the Court of Appeal, although it was a split decision.

The court delivered three different opinions but all nine judges agreed on the fundamental principle:

*“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 to another’s should not be countenanced.”*

The judges also agreed that deviations from voter parity must be “justified on the ground that they contribute to the better government of the populace as a whole.”

All the judges in **Carter** argued that they were merely confirming the long-standing Canadian practice of crafting ridings according to what might be called the facts on the ground – geography and community – particularly that of allowing fewer voters in rural ridings than urban ridings.

Deviation from voter parity has a long history that is both honourable and dishonourable. On one hand there is gerrymandering, the partisan practice of adjusting electoral boundaries in order to influence outcomes; on the other there is the laudable desire to ensure sparsely populated constituencies and minorities are adequately represented.

**Carter** validates an open-ended list of factors that can be used to justify variance from voter parity. The Court neither specified the factors nor quantified the variance and, depending on your point of view, that is either its strength or weakness. It allows boundary commissions enormous latitude and allows the dilution of vote equality, which can be calculated objectively, by a potentially infinite variety of subjective factors. As circumstances change new concerns arise and can affect electoral boundaries.

There is no formula for effective electoral representation nor, with all the possible and unforeseeable variables in the kaleidoscope that is politics, any guarantee of it. As with democracy itself, effective representation is an ideal, not an exact science. But **Carter** does give it a starting point and an open list of exceptions. 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. But 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.

<sup>51</sup> *Saskatchewan v Carter* [1991] 2 SCR 158

<sup>52</sup> Too much significance should not be placed on the degree of variance in this case. The dissenting judges, who objected to the boundaries, allowed that “In other provinces, these concerns [variation between ridings] will be balanced differently. Depending on the characteristics of each province, non-population factors may require greater or less deviation. Thus, for example, a 25 per cent variation has been found to be necessary and acceptable in British Columbia, whereas the legislation in Manitoba limits the variation to 10 per cent.” (p 173)

For example, geographic features and political boundaries, such as county lines, are routinely considered when setting electoral boundaries. Dividing a community simply to assure an equal number of voters in two adjacent constituencies could impair the effective representation of the community or at least the transplanted portion of it. Communities like to vote together – a moderate departure from parity between two ridings can actually produce more effective representation than strict equality. 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.

Conditions change and so do the relative values of factors which define communities. The **Carter** decision doesn't constitutionalize a particular factor, interest or identity. It simply allows an unspecified deviation from voter equality to respond to specific representation problems as arise from time to time.

**Carter** embodies an important Canadian principle. Attempting to assure the representation of at least some minorities is as old as Canada. For twenty years in Nova Scotia we had four exceptional or protected ridings<sup>53</sup> in an attempt to do just that. Nevertheless, it is important to remember that exceptional ridings are not the only means of effective representation. There are also other ways of achieving effective representation for Acadians and African Nova Scotians; some have been adopted here already. We return to this below.

## Electoral Boundaries Setting in Nova Scotia

It is the legislature that sets the boundaries of each constituency. Traditionally electoral boundaries setting was an exclusively political activity, unaided by independent advice and unsupervised by the courts. As the 1992 Nova Scotia Electoral Boundaries Commission observed "Such procedure... often resulted in charges of gerrymandering, that is, the drawing of constituency boundaries for explicit partisan gain."<sup>54</sup> When that Commission was created the variation in ridings in Nova Scotia was plus or minus (+/-) 33.3 per cent. That is, the smallest riding might be 33.3 per cent below the average while the most populous was 33.3 per cent above. As the Commission observed:

*"A +/- factor produces inequalities far greater than one might expect from a first glance at the issue. For example, if the average-sized constituency is 12,000 voters and a +/- factor of 331/3 is allowed, the largest constituency could contain 16,000 voters while the smallest constituency could have 8,000 voters. Thus a +/- factor of 331/3 in this example produces differences in actual constituency size of 100% ..."*

Nova Scotia's electoral boundaries continue to be enacted by the legislature but, since 1992, on the advice of an independent commission in accordance with the *House of Assembly Act*<sup>55</sup>, section 5:

*(1) In this Section, "commission" means the independent electoral boundaries commission appointed pursuant to this Section.*

*(2) The electoral districts described in Section 4 have effect until new electoral districts are approved pursuant to this Section.*

<sup>53</sup> We found in our research that the terms "protected" and "exceptional" are used interchangeably. Where possible we have used "protected" when referring boundaries Commission from 1992 to 2001 and "exceptional" from 2002 onwards because that is what the boundaries commissions called them. The boundaries of the four minority ridings remained exactly the same during their twenty years.

<sup>54</sup> Effective Political Representation in Nova Scotia: The 1992 Report of the Provincial Electoral Boundaries Commission, March 1992, p. 4. One boundary change that was alleged to have targeted a popular member whose first name was William was referred to as the "Bye Bye Bill". (Proceedings of the House of Assembly 90/92-124 at p. 81. <http://0nsleg.edeposit.gov.ns.ca.legcat.gov.ns.ca/deposit/HansardDeposit/55-02/19920428.pdf>)

<sup>55</sup> Chapter 1 (1992 Supplement) of the Revised Statutes, 1989.

*(3) No later than the thirty-first day of December, 2012, and, thereafter, within ten years after the last change in electoral districts made pursuant to this Section, and at least once in every ten years from the thirty-first day of December, 2012, an independent electoral boundaries commission shall be appointed and issued terms of reference by a select committee of the House constituted to appoint the members of the commission.*

*(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;*

*(aa) the commission prepare a draft of proposed boundary changes prior to its first public hearings;*

*(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.*

*(6) The final report of the commission shall be laid before the House, if the House is then 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 of the commission 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.*

Thus, a select committee of the Legislature sets the membership and terms of reference for an independent advisory commission and the Government is obliged to introduce legislation with the boundaries recommended by the Commission. The principle of parliamentary sovereignty is preserved because the Legislature can amend the boundaries at subsequent readings of the Bill. However, through the combination of this process and the *Charter*, not without informed public and judicial scrutiny.

### Exceptional Ridings

From 1992 until 2011 Nova Scotia had four protected or exceptional ridings to improve the effectiveness of representation of Acadians and African Nova Scotians. The goal of the exceptional constituencies was to convert small provincial-wide minorities into a local majority, or at least a significant minority, by drawing the boundaries around a concentrated minority population even though the result was a significantly smaller population than in standard ridings.

The exceptional ridings did not guarantee the election of an Acadian or African Nova Scotian. Rather, they were intended to increase the possibility of their election and afford Acadian and African Nova Scotians greater influence on the political parties as they recruited candidates and built platforms. And, indeed, the so-called African Nova Scotian riding, after returning two African Nova Scotians, has not elected another since 1999, even though the boundaries of this riding did not change until 2012.

## Short History of Electoral Boundaries Setting

### NS BOUNDARIES COMMISSION 1992

The **Carter** decision came down 6 June 1991 and clearly guided the Terms of Reference set later that year by the Select Committee of the House for the 1992 Commission which states in part:

*In keeping with the constitutional right to "effective representation", the Committee recommends the following terms of reference (...):*

1. *The Primary factors to be considered by the Boundaries Commission to ensure "effective representation" are:*

- i. *of paramount importance, relative parity of voting power achieved through constituencies of equal population to the extent reasonably possible;*
- ii. *geography;*
- iii. *community history;*
- iv. *community interests*
- v. *minority representation, including, in particular, representation of the Acadian, Black and Mi'kmaq peoples of Nova Scotia;*
- vi. *population rate of growth projections.*

*The commission is to be guided by the principle that deviations from parity of voting power are only justified on the ground that they contribute to better government of the populace as a whole, giving due weight to regional issues within the populace and geographic factors within the territory governed.<sup>56</sup>*

The Commission was directed to achieve a 52-seat legislature plus an additional member to represent the Mi'kmaq people if they so choose, and to "seek out the advice, support and cooperation of (...) Black, Native and Acadian communities."

Given the concentration as well as the dispersion of the Acadian community, the Commission decided to maintain the existing constituencies of Argyle, Clare and Richmond. It determined it could design a constituency around the Prestons with a Black population of between 20-30 per cent of the total riding population. Victoria became the fifth protected riding because of its geographic size and low population density.

### The Commission Concluded,

*"... that a fair and nonpartisan drawing of constituency boundary lines, based around areas of minority group population concentration, was the best method for encouraging the effective representation of such groups in the Nova Scotia House of Assembly. Thus, there are no specifically-designated Acadian seats, nor is there a specifically-designated Black seat. Instead, boundary lines are recommended that encourage, but do not guarantee, minority group representatives in the House of Assembly. The seat entitlement or population size for such protected constituencies would be less than that for the ideal average-sized constituency." (emphasis added)<sup>57</sup>*

Forty-five of the remaining forty-seven ridings fell within a factor of +/-15 per cent of the adjusted provincial average constituency population of 18,100. The commission did not apply +/-15 per cent as a rigid factor<sup>58</sup> but simply accepted that, where possible, rural ridings would be under the constituency average and urban ridings above the provincial average.<sup>59</sup>

The populations of the protected ridings were appreciably lower than average. Argyle, Clare, Preston, and Victoria were all below 60 per cent of the average, while Richmond stood at 65 per cent of the average.

<sup>56</sup> Effective Political Representation in Nova Scotia: The 1992 Report of the Provincial Electoral Boundaries Commission. March 1992 (Page 12)

<sup>57</sup> The 1992 Report of the Provincial Electoral Boundaries Commission, P 28.

<sup>58</sup> The Commission calculated that the average riding without protected constituencies would have a population of 17,300. With protected ridings, the average population in the remaining ridings rose to 18,100.

<sup>59</sup> Source: 1992 Report of the Provincial Electoral Boundaries Commission, Table 4. The two largest ridings, Halifax Atlantic and Dartmouth South had populations of 20,700 each.

## NS BOUNDARIES COMMISSION 2002

The 2002 Commission's mandate was to achieve a 52-member Legislative Assembly, not counting any additional member authorized by section 6 of the *House of Assembly Act (Mi'kmaq Representative)*.

Unlike the previous commission, this Commission was,

*"...to be governed by the general principle that a constituency should not deviate by greater or lesser than 25 per cent from the average number of electors per constituency, except in extraordinary circumstances. Extraordinary circumstances are the desire to promote minority representation by Nova Scotia's Acadian and Black communities."<sup>60</sup>*

This was a significant change from 1992. That Commission was "not to be governed by a predetermined population factor or by a predetermined split between urban and rural ridings."<sup>61</sup> The 2002 Commission was confined to +/- 25 per cent except in one circumstance—the promotion of representation of Acadian and Black communities where its discretion was unfettered.

The Commission acknowledged that the five primary factors in the Terms of Reference required it "to make 'judgement calls' in recommending a pattern of effective representation for the people of Nova Scotia."<sup>62</sup> The Commission decided that rural constituencies could have fewer electors than urban constituencies but, under its Terms of Reference, the disparity could not exceed +/- 25 per cent. The sole exception would be with respect to minority representation.

The Commission reviewed the protected constituencies created in 1992.

*"...Statistics Canada data reveals an estimated 35,040 Nova Scotians whose mother tongue is French, 19,955 whose home language is French, and 18,155 who are visible minority, black. In percentage terms these estimates equal 3.8%, 2.2% and 2.0% of the Nova Scotia population. These results suggest both minorities are substantial in number and greater than an average constituency. (emphasis added)<sup>63</sup>*

*In three counties, the percentage of the population whose mother tongue is French exceeded 20 percent: Digby (33 percent), Richmond (29 percent) and Yarmouth (23 percent). Within the District of Clare..., 70 percent of the population have French as their mother tongue, while in the District of Argyle..., that percentage is 54 percent."*

*Nova Scotia's black population is spread more evenly throughout the province than is its Acadian population. Only three counties report black population percentage above 3 percent... In absolute terms, however, 66 percent of all black Nova Scotians (12,005 of 18,155) reside in Halifax County. Of these, about 2,500 reside within the Preston riding, with another 2,500 residing in the north end of the former city of Halifax in the Halifax Needham constituency. Given the absolute size of these two constituencies (Preston 7,335 electors and Needham 15,847 electors), however, the percentage of black voters in Preston is considerably higher.<sup>64</sup>*

<sup>60</sup> Just Boundaries: Recommendations for Effective Representation for the People of Nova Scotia, 2002 Commission Report, Terms of Reference, p. 5.

<sup>61</sup> The 1992 Report of the Provincial Electoral Boundaries Commission Terms of Reference, p 12-13.

<sup>62</sup> Just Boundaries: 2002 Commission Report p. 13.

<sup>63</sup> Just Boundaries: 2002 Commission Report p. 36.

<sup>64</sup> Just Boundaries: 2002 Commission Report p. 36.

The Commission recommended that the four constituencies for minority representation (Clare, Argyle, Richmond and Preston) be retained as delineated in 1992.<sup>65</sup>

A sense of the result can be seen in a few selected constituencies.

- Argyle: electors = 6,718;  
Ratio to average = 0.50
- Preston: electors = 7,335;  
Ratio to average = 0.55
- Glace Bay: electors = 13,378;  
Ratio to average = 1.00
- Bedford: electors = 15,944;  
Ratio to average = 1.20

As a result, a vote in the smallest constituency weighed 2.3 times that in the largest. Perhaps the Commission felt the gap was becoming unsustainable because it also recommended that “during the next electoral redistribution... the method of encouraging minority representation” be re-evaluated.<sup>66</sup>

#### NS BOUNDARIES COMMISSION 2012

The third Electoral Boundaries Commission process was different in two, tightly related ways: its discretion was narrower than 2002 and the Select Committee setting the terms of reference split acrimoniously along party lines. The government members used their majority on the Select Committee to remove the discretion the two previous Commissions had enjoyed to exceed the +/- 25 per cent standard<sup>67</sup> — effectively eliminating the exceptional ridings.<sup>68</sup> All four opposition members dissented.

The Commission initially decided that the word “guidelines”<sup>69</sup> in the Terms of Reference meant they were not binding. So, its Interim Report recommended retaining the exceptional ridings even though they fell far outside the 25% range specified in the Terms. The Attorney General (AG), who was delegated under the legislation to receive the report from the Electoral Boundaries Commission, wrote to the Commission on 14 June 2012. His letter stated in part:

*...I am not able to accept the interim report as drafted, as it does not follow the requirements set out in the terms of reference in the final report of the Select Committee. I have been advised by the Chief Legislative Counsel of the House of Assembly that the terms of reference are legally binding on the Commission, and that the interim report is therefore null and void...<sup>70</sup>*

The Commission issued a revised Interim Report 20 July 2012 in which all constituencies fell within the +/- 25% bracket.

The Commission expressed its misgivings about the results in its final report and 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.”<sup>71</sup> The lone Acadian on the Commission wrote a dissenting opinion arguing that the Commission ought to have ignored the terms of reference.

The elimination of the exceptional ridings caused a great deal of controversy.

<sup>65</sup> “The Victoria riding was the fifth protected constituency in 1992, but its basis for protection was geography, which is not an ‘extraordinary circumstance’ as specified in the current Commission’s Terms of Reference.” 2002 Commission Report p 37.

<sup>66</sup> Just Boundaries: 2002 Commission Report p 37.

<sup>67</sup> Report of the Select Committee on Establishing an Electoral Boundaries Commission, December 30, 2011. <http://nslegislature.ca/pdfs/committees/el/FinalReport.pdf>

<sup>68</sup> “The Select Committee’s Terms of Reference to the 2012 Commission excluded the option of maintaining the protected ridings. All ridings in Nova Scotia were to satisfy the same maximum variance of population ratio. It was clear from the outset that Clare, Argyle and Richmond offended the prescribed maximum variance.” Reference re the Final Report of the Electoral Boundaries Commission, 2017 NSCA 10 (NSCA Reference).

<sup>69</sup> See Final Report of the 2012 Commission p. 7.

<sup>70</sup> As quoted at para 52 of the NSCA opinion.

<sup>71</sup> Final Report of the 2012 Provincial Electoral Boundaries Commission, p. 51

## Nova Scotia Court of Appeal Reference

The Fédération acadienne de la Nouvelle-Écosse (FANE) challenged the electoral map on constitutional grounds, and in October of 2014 the new Government referred the matter to the Nova Scotia Court of Appeal (NSCA).<sup>72</sup>

The NSCA delivered its opinion in January 2017. It accepted the Boundaries Commissioners' assertion that, because of the Attorney General's letter "we found ourselves without any discretionary authority"<sup>73</sup> and found that:

*"The Attorney General's intervention... prevented the Commission from performing the balance, (required by the Charter) and from expressing its authentic view of effective representation...Hence the Attorney General's intervention violated the precepts of s. 3 of the Charter."<sup>74</sup>*

That was as far as the Court was prepared to go however. The FANE's constitutional arguments pertaining to the protection of minorities and linguistic rights were not addressed in the decision, and the Court had this to say about the exceptional ridings themselves:

*"We do not state that s. 3 of the Charter requires that there be protected ridings in Clare, Argyle and Richmond. Rather, under s. 3, the body that is authorized by law to craft the electoral boundaries must be allowed to balance the constitutional criteria as set out by the majority's reasons in Carter, and to express its views on the matter."*

In other words, the Court objected to the process and said nothing about the ridings.

## This Commission

On 28 April 2017, the Government appointed our Commission to consult and examine means of effective representation for Acadians and African Nova Scotians, and promised to initiate a new electoral boundaries commission in January 2018.

<sup>72</sup> The government referred two questions to the Court:

1. Does Section 1 of Chapter 61 of the Acts of Nova Scotia 2012 (the boundaries) ..., by which provisions the recommendations tendered by the Electoral Boundaries Commission by its Final Report...to the House of Assembly were enacted, violate Section 3 of the Canadian Charter of Rights and Freedoms by abolishment of the electoral districts formerly known as Clare, Argyle and Richmond?

2. If the answer to question 1 is "yes", is the impugned legislation saved by operation of section 1 of the Charter of Rights and Freedoms? OIC 2014 – 414, 1 October 2014.

<sup>73</sup> This of course is not completely correct. The Commission still had the +/- 25% variance discretion, which amounts to a potential difference of 50% between the least and most populous constituencies. The Commission and the Court must be taken to be saying that the 2012 Commission's discretionary authority was not as broad as that of the two previous commissions.

<sup>74</sup> Reference re the Final Report of the Electoral Boundaries Commission, 2017 NSCA 10, p. 57 Para 136.

## Protected/Exceptional Ridings

As we have explained, the exceptional ridings of Argyle, Clare, Richmond and Preston improved the chances of electing Acadians and African Nova Scotians. They were never intended to guarantee it. By the same token, Acadian and African Nova Scotian MLAs do not have to represent an exceptional riding. Acadians, constituting a greater proportion of the electorate in their exceptional ridings than African Nova Scotians in theirs, elected Acadian MLAs in all but one, but three of the five African Nova Scotians MLAs were elected in general ridings where the African Nova Scotian population was much smaller than in the Preston riding. Since 1992, five African Nova Scotians have been elected to the Legislature. Three have served in Cabinet, the Hon. Wayne Adams, Hon. Percy Paris, and Hon. Tony Ince. Winning an election is a significant accomplishment for anyone and all the more remarkable given the historical marginalization of African Nova Scotians. Whether these individuals were elected to specifically represent the views and aspirations of African Nova Scotians or not, they had, and have, the opportunity to influence and initiate policy decisions on matters of importance to African Nova Scotians.

As we have seen, no African Nova Scotian has held the Preston seat since 1999. So, while African Nova Scotians have enjoyed political success roughly equivalent to their percentage of the overall population, and perhaps the exceptional Preston riding was the ignition point, it has neither been relied on nor reliable as a political base for African Nova Scotians.

Furthermore, although people who attended the consultations, and who were not from the exceptional ridings, spoke of their importance for the African Nova Scotians and Acadians, there was a consensus that it would be unwise to rely on these ridings alone for their effective representation.

Even if exceptional ridings return it would be a mistake to place too much reliance on them:

- A growing proportion of Acadians and most African Nova Scotians do not live in the regions covered by the former exceptional ridings.
- They do not guarantee election of an African Nova Scotian or Acadian MLA.
- Even if one or more African Nova Scotian or Acadian is elected, he or she does not actually represent Acadians or African Nova Scotians across the province although that burden falls on them symbolically and often practically.
- The African Nova Scotian or Acadian MLA may be on the opposition benches.

This is not an argument against exceptional ridings but an argument for not relying exclusively on them and for other measures to improve the responsiveness of the political process regardless of exceptional ridings or not.

## Not by Ridings Alone: Other Means of Effective Representation

*Measures to ensure minority effective participation are wide-ranging, as the “conduct of public affairs” is “a broad concept which relates to the exercise of legislative, executive and administrative powers... (Covering) all aspects of public administration, and the formulation and implementation of policy...”<sup>75</sup>*

It would be wrong to think of electoral success as the only means of effective representation. For one thing, it is too uncertain and unreliable. For another, it is too narrow a view of politics. Political participation involves, not just the right to vote, but also 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.

Canada and Nova Scotia are not alone in examining minority representation. The Organization for Security and Cooperation in Europe High Commissioner on National Minorities commissioned a study known as the *Lund Recommendations on the Effective Participation Of National Minorities In Public Life*.<sup>76</sup> Without being prescriptive, the *Lund Recommendations* present several areas of intervention for improving

the representation and participation of minority groups in public affairs. They make two types of recommendations: those pertaining to shared governance (for example reserved seats) and those pertaining to self-governance, notably in key areas of interest for the community (for example a separate school board). Mechanisms for improved participation in public governance structures can be further divided into direct and indirect. For example, naming a judge from the community assures direct participation in the decision-making process whereas establishing an advisory body is indirect given that such a body does not make or execute decisions. All of these strategies are important and can have a great effect on the outcomes for the minority. Their effect and applicability will depend on the circumstances. The variety of mechanisms possible is limited only by the creativity of the community and the state.<sup>77</sup>

<sup>75</sup> Indigenous Participation in Elective Bodies: The Maori in New Zealand. Alexandra Xanthaki and Dominic O’Sullivan, *International Journal on Minority and Group Rights* 16 (2009) 181 at 184.

<sup>76</sup> *Lund Recommendations on the Effective Participation of National Minorities in Public Life* (1999). Available at <http://www.osce.org/hcnm/32240?download=true>

<sup>77</sup> See the Cardinal, Leger and Normand report in Appendix 3 for a more detailed presentation of the *Lund Recommendations*.

## 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 community, manages a school system comprising of 22 schools and 5000 primary 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.<sup>78</sup>

Other institutions may be largely controlled by the minority but serve a larger population. For example, New Brunswick accorded francophones a degree of self-governance in health by establishing a francophone managed health authority, Réseau de santé Vitalité<sup>79</sup>, to run health services in both official languages in northern and southeastern regions of that province. Université Sainte-Anne would fall in this category of institutions. Its contribution to the Acadian community, since its establishment, is immeasurable, but its ongoing contribution to Nova Scotia is also very important. As we learned from the cultural autonomy model such institutional control is a key component for a minority group's vitality and it can still save the larger population.

## Municipal Government

The *Lund Recommendations* point to municipalities, because of their size and proximity to their residents, as a promising means of promoting the effective representation of minorities. Many municipalities are home to significant Acadian or African Nova Scotian populations.

Because municipal districts are smaller than provincial constituencies, there are more opportunities to draw boundaries that would enable Acadian and African Nova Scotian communities to elect representatives at this level. During our visit to Sunnyville we learned that Guysborough Municipality created the equivalent of an exceptional riding among its districts to ensure the representation of the predominantly African Nova Scotian communities of Lincolnville, Sunnyville and Upper Big Tracadie. Similarly, the Municipality of Argyle draws its electoral map along historic and linguistic lines. It was under some pressure to reduce the number of districts during its last boundary drawing exercise. However, when confronted with the fact that such a reduction would produce new districts combining traditional anglophone villages and francophone majority villages the option of maintaining its nine original districts was preferred. The municipalities of Argyle, Clare and Richmond each have significant concentrations of Acadians. Respectively, the proportions of French speakers in each of these municipalities was 47.4 per cent, 65.5 per cent and 24.3 per cent in 2012 and have decreased to 45.4 per cent, 63.5 per cent and 23 per cent in 2016. 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, this municipality offers all its services in both French and English and its council meetings are conducted in French with simultaneous translation provided in English.

<sup>78</sup> Education Act (NS) s.42A.

<sup>79</sup> <http://www.vitalitenb.ca>

When we were in Chéticamp, we learned that the Municipality of the County of Inverness has recently established a community committee under Section 27 of the *Municipal Government Act*<sup>80</sup>. According to this section, a municipality “may establish, by policy, a community committee for an area”. This policy “shall define the boundaries of the area for which the committee is responsible” and set out its mandate. The Chéticamp-Le Moine Community Committee is composed of 12 community representatives chosen on a sectorial basis at the Committee’s annual general meeting. The two councillors whose districts cover the villages of Chéticamp and St-Joseph-du-Moine are ex officio members of the committee. This committee reports to Municipal Council by means of an annual report. In its presentation to our Commission, representatives of this committee expressed their hope that this new model of representation for their community would lead to substantive improvements in their municipality’s responsiveness to their needs. The committee recommended that the *Municipal Government Act* be amended to compel municipalities to establish such committees in certain instances.

## Administrative and Institutional

The Lund Report suggests the designation of key and strategic management positions for a minority in the public service, boards or agencies as a means of 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. At the very least, this practice recognizes the legitimacy of the community’s needs.

## The Courts

The courts are one of the main institutions in a democracy. During our consultations people commented on the need for more diversity on the bench. The courts of Nova Scotia are probably more diverse than many people realize. We mention this not because the courts are fully diverse but because it is instructive. Getting to this level of diversity is not an accident. It is, of course, first and foremost the result of individual efforts of young people who chose to become lawyers and then had distinguished legal careers. But it is also the result of institutional support and deliberate policy that improved access and opened pathways to success.

<sup>80</sup> Municipal Government Act (NS), C. 18, 1998. [2017]. <http://nslegislature.ca/legc/statutes/municipal%20government.pdf#page=22>

## Institutional Support

The Indigenous Blacks & Mi'kmaq (IB&M) Initiative at the Schulich School of Law was established in 1989 as part of a comprehensive response to systemic racism in the justice system. As a result, significant numbers of African Nova Scotians excelled and are now at senior levels of the judicial system.

Acadians wishing to study law in French must leave the province. Programs in Common Law are offered in French at Université de Moncton and the University of Ottawa. However, as mentioned in Université Sainte-Anne's submission to our commission, a recent agreement allows Sainte-Anne students to enter Moncton's law program after the 3rd year of certain 4 year programs and save a year of study. This may help bring more Acadians into the legal profession and improve access to legal services in French in the province.

## Policy

Nova Scotia has two levels of court. Judges of the Nova Scotia Court of Appeal and the Supreme Court of Nova Scotia are federally appointed. Judges of the Provincial Court and Family Court are appointed by the provincial government. Both governments now utilize an advisory committee process to screen applicants.

The provincial appointment criteria include:

### Diversity

The provincial judiciary should be reasonably representative of the population it serves. This requires overcoming the under-representation of women, racial and ethnocultural minorities and persons with disabilities.

Candidates will be invited to self-identify as a diversity candidate. When a candidate has self-identified as such, this information will be supplied to the Minister in the event that they are a recommended candidate.

### Language

It is important for the provincial judiciary to reflect the bilingual nature of the province.

Candidates will be invited to self identify as a bilingual candidate when a candidate has self identified as such, this information will be supplied to the Minister in the event they are a recommended candidate.<sup>81</sup>

The Federal process and criteria for appointment does not seem to be an equivalent requirement for diversity.<sup>82</sup>

There is a judicial Mentorship Initiative for African Nova Scotian And Indigenous Lawyers which pairs lawyers from these communities who have applied for or are eligible for a judicial appointment.<sup>83</sup>

<sup>81</sup> [http://www.novascotia.ca/just/court\\_services/\\_docs/guidelines\\_provincial\\_judicial\\_appts\\_september\\_2016.pdf](http://www.novascotia.ca/just/court_services/_docs/guidelines_provincial_judicial_appts_september_2016.pdf)

<sup>82</sup> <http://www.fja.gc.ca/appointments-nominations/index-eng.html> However, the Chair of this Commission is not as familiar with the federal process as the provincial process.

<sup>83</sup> [http://www.courts.ns.ca/Bar\\_Information/documents/MenteeEnrollmentFormcommuniqufinal20170403.pdf](http://www.courts.ns.ca/Bar_Information/documents/MenteeEnrollmentFormcommuniqufinal20170403.pdf)

## Diversity of the Judiciary

As of Oct. 24, 2017, this is the information that was available on diversity for the Nova Scotia Judiciary. Note that there is a degree of double counting; if the female, Mi'kmaq is also fluent in French, she would appear in three places. Ages are not included but judges serve long terms which can include part-time or supernumerary service post retirement. On the Provincial Court, male judges outnumber female judges but full time female judges slightly outnumber male judges.

### Provincial and Family Courts of Nova Scotia

- 19 female judges (17 full-time, 2 part-time)
- 24 male judges (16 full-time, 8 part-time)
- 1 female Mi'kmaq judge
- 5 African Nova Scotian judges
- 4 judges fluent in French<sup>84</sup>

### Supreme Court of Nova Scotia – General Division

- 9 female judges (6 full-time, 3 part-time)
- 21 male judges (14 full-time, 7 part-time)
- 2 male aboriginal judges
- 3 judges fluent in French

### Supreme Court of Nova Scotia – Family Division

- 12 female judges (9 full-time, 3 part-time)
- 7 male judges (5 full-time, 2 part-time)
- 1 Sri Lankan-Canadian judge
- 3 judges fluent in French

### Nova Scotia Court of Appeal

- 5 female judges (3 full-time, 2 part-time)
- 7 male judges (5 full-time, 2 part-time)
- 1 Chinese-Canadian judge
- 4 judges fluent in French.

Because of a systematic approach of institutional support and a deliberate policy of inclusion, the Bench is becoming more diverse. By improving the feeder stream of legal professionals, the pool of qualified people to choose from has increased and inclusion is facilitated. The results should be communicated and replicated.

## Acadian Affairs and Francophonie

Acadian Affairs and Francophonie, established in 2004 as a separate office and now under the Department of Communities, Culture and Heritage (CCH)<sup>85</sup>, 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. It is also expected to maintain an ongoing dialogue with Acadians and francophones and encourage their participation in government consultations in order to promote 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. As a result, in 2016 a new Minister of Acadian Affairs formed a committee tasked with identifying ways of increasing the role of Acadian Affairs in government.<sup>86</sup> In all, the Committee made 13 recommendations. The Committee's report, a series of recommendations submitted by the Fédération acadienne de la Nouvelle-Écosse (FANE) to the Premier, as well as a written response by the Minister to these recommendations can be found on the Office's website<sup>87</sup>. 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.

<sup>84</sup> The judges define "fluent in French" as judges who can hear trials and other court matters in French. There are other judges who can speak French or who come from traditionally Acadian regions but there is no data available.

<sup>85</sup> Department of Communities, Culture and Heritage

<sup>86</sup> 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>.

<sup>87</sup> <https://acadien.novascotia.ca/en/reports>

## African Nova Scotian Affairs

Created in 2003, African Nova Scotian Affairs' (ANSA) mandate is to work 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. During our consultations, we were told that this led the African Nova Scotian community to feel a loss of connection. 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. At the time of this report, this request has not been acted on.

# Discussion

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There is no formula for effective electoral representation. It is an ideal, not an exact science. Carter does give it a starting point, parity, and an unspecified deviation from parity for an open list of exceptions. It doesn't constitutionalize a particular factor, interest or identity.

## Effective Electoral Representation: A Norm Not a Formula

The Carter decision has been the subject of two kinds of criticism. The first is that it is too vague and open ended. The second is surprising – that it hurts minorities.

### Vague and Open-ended

The **Carter** approach to vote parity has been called

*...narrow, questionable and, in certain respects, unprincipled... The bestowal of constitutional validity upon the factor of community of interest was acceptance of a factor so hopelessly indeterminate as to be worthless as a guiding principle in distribution. Similarly, the acceptance of minority representation as a factor which may need to be incorporated into decision making respecting distribution is a development which raises a host of practical and theoretical problems related directly to the nature of the system of representation in this country.”<sup>88</sup>*

Carter does not address the “tough theoretical and practical issues” regarding the definition of community of interest:

*“...a community can be understood as a collectivity of individuals, of varying numbers, sharing certain interests, attributes and characteristics with one another. On this basis, communities can be defined by gender, language, ethnicity, race, religion, age, class, profession, occupation or geography; and this list is not exhaustive. The problem then faced in thinking of community of interest in relation to (electoral) distribution is not that there is no such thing as community, but rather that any society is composed of an array of varied yet interrelated communities. Which communities are then deserving of special attention in distribution through the concept of community of interest? The concept itself provides no answer to this question.”<sup>89</sup>*

The argument, in other words, is not that there aren't communities of interest but that there are too many for electoral purposes.

<sup>88</sup> Johnson, David, Canadian Electoral Boundaries and the Courts: Practices, Principles and Problems, McGill Law Journal [1994] vol. 39 p. 224 at 226.

<sup>89</sup> *ibid.* at 238.

The case, it is argued, raises the question of

*"...whether there should be a paradigm shift away from the concept of territorially based constituencies to interest group based constituencies, thereby providing for the possibility of distinct native ridings, women's ridings, elderly ridings, ethnic ridings, class and occupational ridings, and so forth... We will be witnessing a profound and complex change in our system of representation."<sup>90</sup>*

And, if so, whether:

*"such a development would not only challenge the principle of 'one person – one vote', but would also challenge the concept of citizenship in this country, as well as the traditional role of elected representatives being the guardians of common interest of the community as a whole... As Katharine Swinton has argued, individuals do not possess a unidimensional identity routed to but one aspect of their character. Rather, we are complex individuals with multiple identities".<sup>91</sup>*

That is, the concept of minority representation, based as it is on the (implied or explicit) assumption that only members of a group can represent that group, would fundamentally reengineer our political system if taken to its logical extreme. The question is whether it must inevitably be taken that far.

## Minorities

**In Still Not Equal? Visible Minority Vote Dilution in Canada<sup>92</sup>** Michael Pal and Sujit Choudhry argue that the wide scope for deviation hurts minorities – at least those concentrated in Canada's major cities.

*"Canada is becoming more diverse due to immigration by visible minorities, particularly into the largest urban areas in the country – Greater Toronto, Montréal and Vancouver. Deviations from representation by population decreased the value of votes in exactly those urban areas of the country where visible minority immigrants are settling."<sup>93</sup>*

*"Changing demographics have altered the constitutional consequences of vote dilution. The impact of over representing rural voters, which the (Supreme) Court permitted in Carter, does not simply fall on urban voters.... The demographics of the country in 2014 are very different from what was before the court in 1991. Visible minority immigration drives nearly all population growth, the proportion of visible minorities*

*and the foreign-born are increasing, and the vast majority of visible minority immigrants settle in the largest urban areas which are traditionally under-represented."<sup>94</sup>*

Using the 2004 federal boundaries and the 2006 population data they determine that the average visible minority individual has a voting power of 0.89. Ridings in which a visible minority constitutes 1 per cent or less of the population (66 of 308) have an average voting power of 1.37. This is not deliberate but the unintended consequence of the traditional allowance for lower populations in rural and remote constituencies and the rapid growth in the visible minority populations of the three major urban centres.

<sup>90</sup> Ibid at 241.

<sup>91</sup> Ibid. at 242.

<sup>92</sup> Still Not Equal? Visible Minority Vote Dilution in Canada, Michael Pal & Sujit Choudhry; Canadian Political Science Review Vol. 8, No. 1, 2014 85 to 101.

<sup>93</sup> Supra Pal *et al.*, p. 86.

<sup>94</sup> Supra Pal *et al.*, p. 95.

The authors blame **Carter**:

*"We have criticized Carter for failing to justify its interpretation of the Charter as permitting significant deviations from voter equality...In a parallel fashion other commentators have argued that Carter's doctrine of effective representation is inconsistent with the rationale underpinning s 3 (Studniberg, 2008)... Carter's lasting impact has been the validation of significant deviations from voter parity and a near abdication of constitutional oversight of the design of electoral districts."<sup>95</sup>*

They call for the federal variance to be reduced from 25 per cent to 5 per cent or 10 per cent and cite the United Kingdom's legislation<sup>96</sup> which requires redistribution every five years and sets a 5 per cent deviation, with only a few very tightly controlled exceptions.

## Summary

It is true that Carter liberates more than it illuminates and there are a "variety of alternative instruments which can be used to enhance effective communication between the represented and the representative" to address large distances in sparsely populated rural ridings.<sup>97</sup> Improvements in transportation and communications, and urbanization are chipping away at the traditional arguments on which Carter is founded.

However, Nova Scotia is neither as compact and densely populated as the United Kingdom nor is it experiencing the disproportional growth of Canada's largest cities. But *Pal et al* are a reminder that cases on voting rights can arise anywhere in Canada, and the arguments that were successful in the Nova Scotia Court of Appeal for our minorities can be turned on their head elsewhere. In other words, we cannot take unlimited deviation from parity for granted.

Nevertheless, **Carter** is the law so recently restated by the NSCA.

<sup>95</sup> *Supra Pal et al.*, p. 94

<sup>96</sup> Parliamentary Voting System and Constituencies Act 2011 <https://www.legislation.gov.uk/ukpga/2011/1/contents>

<sup>97</sup> Johnson, David, *Canadian Electoral Boundaries and the Courts: Practices, Principles and Problems*, McGill Law Journal [1994] vol. 39 p. 224 at 235.

## Principles Of Effective Electoral Representation

In one particularly compelling presentation at a public meeting we were reminded that, in a multicultural society like Canada, “exceptional is the rule”. We agree. But in a democracy like Canada vote parity is also the rule and in **Carter** the Supreme Court explains how they are reconciled. Deviation from parity is allowed – encouraged even – but, the Court was clear, it is the exception to the rule.

### Grounds for Deviation?<sup>98</sup>

If parity is prime then deviation from voter parity should not be undertaken without good reasons that carefully define the need and show that there are not other, more flexible, less intrusive, or adaptive solutions available. The Court allowed that the list of justifications is open and includes both objective and subjective factors. As we have seen, that is one of the main objections to **Carter** but in our view, it is not so much a problem as an opportunity that must be handled with caution and precision.

Population density can be measured objectively and has been legislatively quantified in the United Kingdom and some Canadian provinces. Geographic features and existing political boundaries are also objective, or at least facts on the ground apparent to any observer. These are the foundation upon which subjective, unquantifiable factors are introduced. Nova Scotia utilized the scope granted in **Carter** to address societal issues through exceptional ridings. Arguably it improved governance because the legislature was more representative, at least in descriptive terms, of the population as a whole. African Nova Scotians and Acadians went, respectively, from no MLA to an MLA, and from a

few MLAs to a few more MLAs. The quantifiable impact on the House was slight while the representational impact was significant.

So, this demonstrates that Nova Scotians are prepared to accept deviation on the basis of subjective factors to achieve sociological objectives.

### What is the Tolerance for Deviation?

#### Legal Tolerance

Courts will defer to legislatures and independent boundaries commissions unless they believe there has been partisan gerrymandering. So, the scope a legislature may establish for deviation (“tolerance”) is broad. A general tolerance of +/- 25% has been upheld as constitutional. Rules favoring rural voters over urban voters are acceptable. Greater than 25% to 50% is acceptable in Northern and remote regions. Deviations on exceptional grounds are acceptable but to an unquantified extent. But, by the same token, as we show below, tolerances as narrow as +/- 5% are also apparently acceptable.

<sup>98</sup> The terms “variation” and “deviation” are used interchangeably in the context of electoral boundaries to refer to the divergence from the constituency average. They are also used indiscriminately. In this Chapter we use “deviation” to describe the difference between the average constituency and the legal standard or norm. “Tolerance” refers to the scope allowed in terms of reference for differences between constituencies. It is further divided into two categories: “standard” and “exceptional”. Standard tolerance is the range allowed in the terms of reference in any and all circumstances. Exceptional tolerance is the extended range sometimes provided for exceptional circumstances. Variance refers to differences between actual constituency populations.

## Political Tolerance

There is no unconstrained power in a democracy. Discretion may be broad but never unbounded. Electoral boundaries and processes for setting them are subject to both public and judicial scrutiny. That is, the scope is not infinite and anyone can challenge boundaries at any time in either forum. The question is whether the basis for the boundaries is demonstrably defensible.

The standard deviation should be established with reference to democratically acceptable norms in order to pass judicial and public muster.

## Standard Tolerance in Canada

Standard tolerances range from a low of 5% for Saskatchewan to unlimited in Yukon and Northwest Territories. Seven of the fourteen (federal, provincial, territorial) Canadian jurisdictions use 25% as the standard tolerance.

Provinces with large, sparsely populated northern regions make special allowances for extreme variations between northern and southern population densities. For example, Ontario, Saskatchewan and Manitoba separate the northern and southern parts of their provinces in order to authorize significant deviation between constituencies in the more densely populated southern areas and more sparsely populated northern areas.

The southern regions of Canada and the provinces are more analogous to Nova Scotia's situation. If we exclude the special rules made for remote northern regions of the provinces, the standard tolerances are:

- Saskatchewan 5%
- Manitoba 10%
- Newfoundland and Labrador 10%.
- New Brunswick 15%
- Alberta 25%.
- PEI 25%.<sup>99</sup>
- Canada and Ontario 25%.
- British Columbia 25%.
- Nova Scotia does not have legislated standards but at present the scope is 25%.
- Québec 25%
- Nunavut 25% but not specified in the Act
- Northwest Territories and Yukon, no numerical target or range.

## Actual Deviation Nationally

If there is a typical standard tolerance for Canadian jurisdictions it is +/-25 per cent. However, the actual deviation is thought to be much narrower<sup>100</sup> — suggesting that the norm for standard deviation in Canadian democracy is narrower than the statutory allowance — and that exceptions are rare (leaving aside remote regions). In a May 2005 report<sup>101</sup> Elections Canada recommended:

*The deviation from the provincial quotient permitted under paragraph 15(2)(b) of the Act should be reduced from 25% to 15%.*

*Where a commission proposes boundaries that deviate from the quotient by more than 15%, in circumstances that the commission finds to be extraordinary, it shall explain, in its report, its reasons for doing so.*

<sup>99</sup> The actual variance is very small (5.8%) except for Evangeline-Miscouche which has a greater tolerance because it was established to protect Acadian culture on the Island but is still well within 25%. See the Report of the Electoral Boundaries Commission of Prince Edward Island, May 5th, 2017, <http://s3.documentcloud.org/documents/3711001/Report-of-the-Electoral-Boundaries-Commission-of.pdf>

<sup>100</sup> We do not have up-to-date figures for each jurisdiction but a study prepared by Elections Canada shows that actual deviation in federal constituencies is much narrower than the statutory tolerance allowance and the number of exceptional constituencies very small. See *Enhancing the Values of Redistribution: Chief Electoral Officer of Canada, 2005*

<sup>101</sup> *Enhancing the Values of Redistribution: Recommendations from the Chief Electoral Officer of Canada, 2005* at pp 21 and 22.

The report went on to note that an earlier report had recommended reduction of the standard tolerance from 25% to 15% and went further, recommended elimination of the exceptional tolerance authority but Parliament did not adopt the recommendations:

*Reporting in 1991, the Lortie Commission recommended the reduction of the permissible deviation from the (25%) quotient to 15%, and the elimination of the “extraordinary circumstances” provision in order to ensure that votes were more equally weighted. Bill C-69 did not propose any changes to either the 25% deviation or the “extraordinary circumstances” clause. The Standing Committee recommended that some mechanism be found to deal with the need for representation in sparsely populated ridings (Recommendation 6). The Standing Committee stated that if such a method were found, consideration should be given to reducing the permissible deviation to 15% (Recommendation 7).*

Elections Canada, looking at a similar situation, reached the same conclusions regarding standard tolerance but the opposite conclusion for exceptional tolerance. After noting that “Canada is an enormous country with regions of sparse population, especially in the north, at a certain point, a member of Parliament may no longer be capable of providing effective representation to a geographically large area” it took comfort from the fact that the extraordinary circumstances provision has not been overused by commissions in the three redistributions that have taken place since it was added to the Act. “In the most recent redistribution, commissions only used this provision to create two electoral districts (Labrador and Kenora). In the 1996 redistribution it was used twice, while in 1987 it was used five times.”

The report concludes:

*Having provided a means to protect the rare cases of regions of extremely sparse population, consideration should be given to the permissible deviation in the vast majority of cases. As the Supreme Court of Canada has said that relative population equality is the “primary factor” in achieving effective representation, a move towards requiring greater population equality will improve effective representation.*

*The vast majority of districts are already drawn to fall within 15% of the provincial quotient. In the 2003 redistribution, only 17 out of 305 (5.6%) districts drawn by the commissions were outside the 15% deviation from the provincial quotient. A requirement to draw all districts within a 15% deviation will therefore not place a great additional burden on commissions. For these reasons, the allowable deviation from the provincial quotient should be lowered from 25% to 15%.( Emphasis added.)*

In the 2003 redistribution, only 17 out of 305 (5.6%) districts fell outside a 15% deviation.

### Deviation Limits

The first thing to note is that deviation is wider than first appears. At the present time, the average population for a Nova Scotia riding is 18,110. Applying the plus or minus 25 per cent standard, with no exceptions, would still mean the smallest riding could have a population of 15,000 and the largest, 25,000. In other words, the smallest could be 60 per cent of the largest. A 50 per cent tolerance would allow the smallest riding to have a population of 9,055 and the largest 27,165 – meaning votes in the smallest riding would have triple the “weight” of those in the largest riding. It could be challenged in court as contravening the Carter principal that vote parity is prime. In fact, as we have seen, the challenge could come from urban minorities seeking to narrow the scope for deviation.

Nova Scotia does not have vast, sparsely populated areas that other provinces and territories – aside from New Brunswick and Prince Edward Island – have. We have a population density of 17.4, the second highest in Canada.<sup>102</sup> The difficulty of justifying a 300 per cent standard departure from voter parity to a court should not be taken lightly. It would however be more easily justified if it were exceptional and that there were relatively few exceptions.

### Exceptional Tolerance

All jurisdictions allow exceptional tolerance apart from Manitoba, Northwest Territories, and Yukon. But NWT and Yukon do not impose any standard tolerance. However, the exceptional tolerance for both Newfoundland & Labrador and New Brunswick is 25% - the same as or greater than, the standard tolerance for all Canadian jurisdictions except Nunavut (30%). In other words, their exceptional tolerance is essentially the standard tolerance everywhere else.

Grounds for deviation can be classified as objective and subjective. Some exceptions are entirely related to population density. That is, sparsely populated ridings, particularly in the North, have significantly lower populations in order to allow constituencies of a manageable size.

Canada (and Ontario as a result), British Columbia, Saskatchewan, Québec, New Brunswick (but only to the extent of 15%) and Prince Edward Island, allow boundaries commissions to apply their subjective judgment based on broad criteria (such as geography, population density, population growth, community or diversity of interests, historical settlement patterns, cultural diversity and existing political boundaries) or their own judgment – “circumstances viewed by the commission as being extraordinary” (Canada) or “where it considers that very special circumstances exist” (BC).

Alberta allows deviation of up to 50% but in no more than four electoral divisions and under very strict conditions describing low population density in the remote part of the province.<sup>103</sup> That is, the exception is defined objectively.

### Summary

Canadian jurisdictions have, for the most part, established similar principles for boundary setting. Plus or minus 25 per cent is a common standard deviation allowance. All jurisdictions allow exceptional tolerance apart from Manitoba, Northwest Territories, and Yukon.

There are three hard realities: Carter requires vote parity and allows deviations, not the other way around, the allowable deviation has not been determined, and court challenges can arise from both sides of the equation and in any part of Canada. In other words, there are judicial and political limits on the scope, circumstances, and justifications for deviation. We just do not know what they are. So we must be cautious.

The +/-25 per cent tolerance imposed in 2012 is, in and of itself, probably not unconstitutional. The NSCA did not comment on it. It is difficult to see a standard tolerance greater than 25 per cent but it is also difficult to see how a boundaries commission can respond to Nova Scotia’s demographic challenges without some flexibility to adjust boundaries in response to exceptional circumstances.

In the next section we show how three boundaries commissions have tried to balance social and demographic considerations, on the basis of different terms of reference, with progressively disparate results.

<sup>102</sup> Statistics Canada 2016 <http://www12.statcan.gc.ca/census-recensement/2016/dp-pd/hlfst/pd-pl/Table.cfm?Lang=Eng&T=101&SR=1&S=10&O=A#PopDwell>

<sup>103</sup> Electoral Boundaries Commission Act <http://www.qp.alberta.ca/documents/Acts/E03.pdf> S. 15 (2) Notwithstanding subsection 15(1), in the case of no more than 4 of the proposed electoral divisions, if the Commission is of the opinion that at least 3 of the following criteria exist in a proposed electoral division, the proposed electoral division may have a population that is as much as 50% below the average population of all the proposed electoral divisions:

(a) the area of the proposed electoral division exceeds 20 000 k2 or the total surveyed area of the proposed electoral division exceeds 15 000 k2;

(b) the distance from the Legislature Building in Edmonton to the nearest boundary of the proposed electoral division by the most direct highway route is more than 150 km;

(c) there is no town in the proposed electoral division that has a population exceeding 8000 people;

(d) the area of the proposed electoral division contains an Indian reserve or a Metis settlement;

(e) the proposed electoral division has a portion of its boundary coterminous with a boundary of the Province of Alberta.

## The Demographic Challenge to Effective Representation

*In 2012, we talked about protected ridings. In 2018 and beyond, we'll talk about rural ridings.*

The sentiment is correct but the controversy was never limited to the exceptional ridings and the talk didn't stop in 2012. More than 30 people turned out for our public meeting at the Black Loyalist Centre in Birchtown to complain about the partition of Shelburne County<sup>104</sup> because of the abolition of the exceptional riding next door in Argyle.

It is impossible to change one riding without affecting the adjacent ridings. Boundaries by their very nature shape two or more constituencies.

### Demographic Pressure on Boundaries

#### Introduction

The bar graphs presented below help us better visualize how the average population<sup>105</sup> of the individual ridings were dispersed around the provincial average as they were set in 1992, 2002 and 2012 respectively. Each riding is attributed to a category or bin as a function of its deviation from the provincial average. The categories correspond to non-overlapping intervals of 5%. The 0 to 5% category includes all ridings with a population that is equal or greater than the provincial average but less than 5% above the provincial average, the 5% to 10% category includes all the ridings that have a population equal to or greater than 5% above but less than 10% above the provincial average and so forth. Each bar in the graph provides the number of ridings in each category. A trend line (in green) is included in each graph to better show what patterns if any are emerging in the data.

#### 1992 Boundaries

The 1992 boundaries commission terms of reference did not impose any tolerance, standard or exceptional. And the commission did not adopt one:

*... the Commission did not adopt any specific +/-factor... We decided to aim for a plus/minus factor of 25%, if possible. However, the figure of 25% was not a hard and fast rule, but a general guideline or rule of thumb. The commission hoped to be able to produce an electoral redistribution with a smaller plus/minus factor, which it eventually was able to achieve. Even so, while most of the proposed constituencies fall within the range of a plus/minus factor of 15%, again this was not a rigid standard...<sup>106</sup>*

Not counting the "protected constituencies", the constituencies range from a high of 1.14 per cent to a low of 73 per cent of average.<sup>107</sup> The Halifax and environs ridings are densely clustered in a range between 1.07 per cent and 1.11 per cent while the rural ridings are mostly clustered between 90 and 100 per cent. In other words, the tolerance reflects an urban/rural distinction with both tightly clustered for the most part.

<sup>104</sup> Queens-Shelburne [http://electionsnovascotia.ca/sites/default/files/ED42\\_EDMap.pdf](http://electionsnovascotia.ca/sites/default/files/ED42_EDMap.pdf) and Argyle-Barrington [http://electionsnovascotia.ca/sites/default/files/ED03\\_EDMap.pdf](http://electionsnovascotia.ca/sites/default/files/ED03_EDMap.pdf)

<sup>105</sup> The population numbers used to produce these graphs are taken from the 1992, 2002 and 2012 boundary commission reports. The 1992 and 2002 commissions used total population numbers, whereas 2012 commission did its work based on the number of electors (people 18 of age and older).

<sup>106</sup> Report of the 1992 Boundaries Commission (1992) at page 40.

<sup>107</sup> 1992, table 3 at page 35.

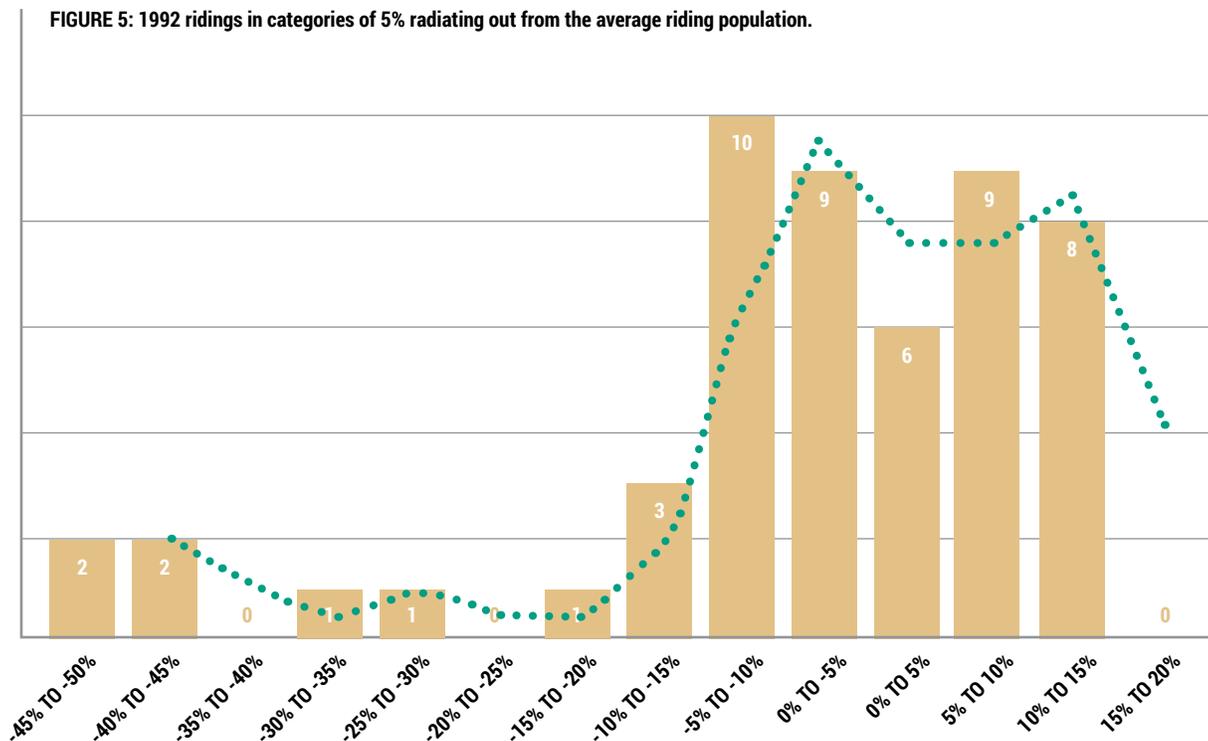
Figure 5 shows the 52 ridings recommended by the 1992 Electoral Boundaries Commission distributed as a function of their population according to 1991 Census data. The average riding population was 17,307 people in 1992. We note that the majority of the ridings were fairly well distributed around the provincial average at this time. More precisely, we observe that:

- Fifteen ridings (9 between 0 and -5% and 6 between 0 and +5%) fell within plus or minus 5% of the average.
- Thirty-four ridings fell within plus or minus 10% of the average.
- Forty-five of the ridings, representing 87% of the 52 ridings are within plus or minus 15% of the provincial average.
- One other riding is relatively close to the provincial average falling between -15% and -20%.

- Six ridings could be considered outliers: two were between -25% and -35%, Queens which was at -27% and Victoria, which was protected based on geography, fell right at -35%. The four remaining ridings situated between -40% and -50% of the average population were the protected ridings of Argyle, Clare, Preston and Richmond.

However, the two peaks in the green trend line point to what seems to be an underlying pattern in the data around two distinct averages, one slightly less than the provincial average and one slightly larger. The ridings grouped around the lower of the two averages were mostly rural ridings and remote ridings. Whereas the ridings grouped around the higher of the two averages were mostly urban ridings and generally closer to the provincial capital.

FIGURE 5: 1992 ridings in categories of 5% radiating out from the average riding population.



As to the protected ridings, the commission explained:

*... minorities have a greater need for political representation than the majority, which will predominate no matter what pattern of constituencies is recommended. In political terms however, the over representation of minorities has to be tempered by a realization that the majority has legitimate rights and demands for political representation as well. As usual, the trade-off between minority rights and majority rule is a judgmental one must be tempered by understanding and respect by and for all members of the political community.<sup>108</sup>*

## 2002 Boundaries

The terms of reference for the 2002 boundaries commission introduced a requirement that constituencies not deviate from plus/minus 25 per cent of the constituency average “except in extraordinary circumstances” which was defined as promoting minority representation by Nova Scotia’s Acadian and African Nova Scotian communities.

In the ten years since the 1992 boundaries, six constituencies had grown to exceed the 25% tolerance. Halifax Bedford Basin and Bedford Fall River were 1.55 per cent and 1.48 per cent of the constituency average respectively. Eastern Passage and Timberlea were 1.35 per cent each. And six had fallen below 75 per cent: Victoria at 47 per cent, Argyle 50 per cent, Clare 52 per cent, Preston 59 per cent, Richmond 59 per cent, and Queens 67 per cent of the average.

The shift from rural to urban was already clear.

The Commission continued the four “extraordinary circumstances” ridings. (The Commission substituted “extraordinary” for the term “protected” coined by its predecessor.) It also said:

*The Commission recommends, during the next electoral redistribution, that the Provincial Electoral Boundaries Commission re-evaluate the method of encouraging minority representation.<sup>109</sup>*

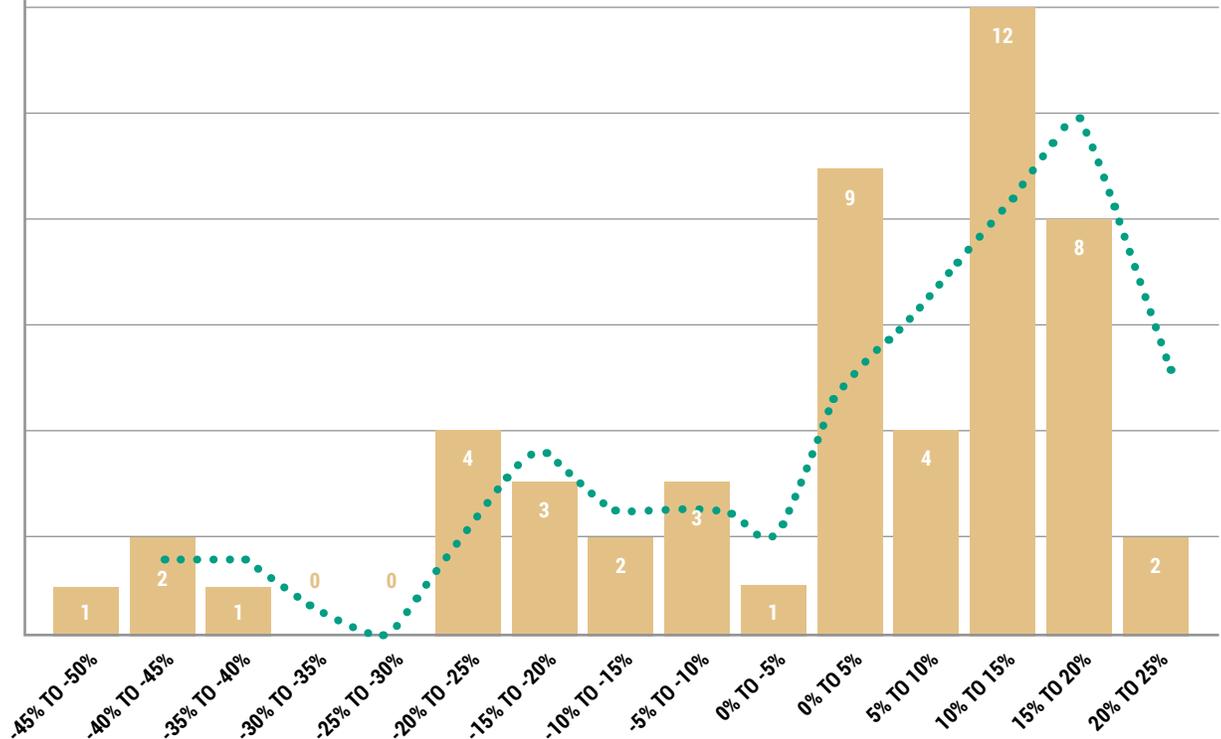
Figure 6 presents the provincial ridings after the 2002 realignment in categories of 5% radiating out from the provincial average of 17,462. The ridings’ populations were not as tightly distributed around the provincial average as they were in 1992.

- Only 10 ridings fall between the plus or minus 5% range from the average and 17 between the plus or minus 10% range.
- Although 31 ridings (or 62% of the ridings) are in the plus or minus 15% range, 12 of these are tightly grouped in the +10% to +15% category.
- The exceptional ridings of Argyle, Clare, Preston and Richmond remained clear outliers situated between -35% to -50% of the provincial average.
- Victoria lost its exceptional status due to a change in the Commission’s terms of reference.
- An emerging group of ridings appears between -25% and -10% in 2002. Whereas there were only 4 ridings in the three categories in this range in 1992, there were 9 in 2002.

<sup>108</sup> 1992 at page 38.

<sup>109</sup> Report of the 2002 boundaries commission [2002] at page 37.

FIGURE 6: 2002 ridings in categories of 5% radiating out from average riding population.



When we look at the trend line we clearly see three categories of ridings forming, the exceptional ridings and two others. There is a group of 12 ridings between -5 per cent and -25 per cent below the average. The peak in the trend line above the -15 per cent to -20 per cent category points to an average for this group in the 14,000 to 14,800 range.

The second group to the right of the graph is comprised of an increasing number of largely urban ridings with growing populations. The average population for this group was 20,000 to 21,000. A divide between rural/urban provincial ridings is becoming evident.

## 2012 Boundaries

This, of course, is the controversial redistribution. The terms of reference maintain the deviation range of  $\pm 25$  per cent of constituency average. However, the allowance for extraordinary circumstances was removed. Nevertheless, it is a good indication of actual distribution under standard tolerance rules. The commission stated:

*... Despite the challenges posed by Nova Scotia's geography and population distribution, all of the province's geographic regions<sup>110</sup> fall within a 15% variance from equal electoral population. Electoral populations in 31 constituencies fall within  $\pm 15\%$  variance; 22 constituencies fall within  $\pm 10\%$  variance. In some instances, achieving greater voter parity required crossing municipal or county boundaries.*

<sup>110</sup> The Commission identified the Annapolis Valley, Cape Breton, Central Nova, Fundy North East, South Shore, Southwest Nova Scotia, And Halifax Regional Municipality as regions.

However, a number of proposed constituencies fall within the higher range of variance from parity (greater than 15%) that is allowable under the terms of reference. Those that fall below -15% tend to be geographically large and sparsely populated rural constituencies, while those above +15% or more are compact and densely populated urban districts.

The 2012 ridings distribution, shown in Figure 7 at first glance seems relatively flat. That is, the 51 ridings appear to be distributed somewhat evenly across the 10 categories in the -25 per cent to +25 per cent from which they were allowed to deviate from the average.

The trend line however has two peaks, pointing to two distinct groups of ridings.

- One of the peaks is right around the average riding population which was 18,073.
- The second peak is situated in the +10 per cent to +15 per cent interval, which would point to an average of between 1000 to 2000 people larger in this group of ridings.
- There is also a growing number of ridings in the +20 per cent to +25 per cent range.

It is apparent that the 2012 electoral realignment did not completely remedy the growing population divide between urban and rural ridings.

**FIGURE 7: 2012 ridings in categories of 5% radiating out from provincial average population.**



## The Gathering Storm

Nova Scotia is growing very slowly and the growth is confined to a one hour radius of Halifax. Rural depopulation is not confined to the former exceptional ridings. They were simply among the first casualties. The trend is long-term and shows no sign of a significant reversal. Nova Scotia faces a choice: either create more seats in the legislature or have progressively fewer and larger rural ridings. There are cogent arguments for and against.

### Option 1 Status Quo: Retain the Current 51 Seats

#### PRO

This is instinctively popular. In the abstract, people do not want more politicians and they would like to avoid the expense of additional MLAs. The current level of 51 seats is a reduction from 52. Adding seats is the solution to a problem most people do not feel they have.

#### CON

The ridings that are not growing in terms of people will grow geographically, reducing access to their MLAs. It will disrupt familiar boundaries and combine unrelated communities against their will.

Larger constituencies make it harder to encourage minority representation.

### Option 2: Create More Constituencies

#### PRO

This would slow the geographic expansion of rural ridings and facilitate the maintenance and perhaps restoration of traditional electoral boundaries. It would allow a boundaries commission greater flexibility and is consistent with other measures in support of effective representation of rural residents in general, and Acadians and African Nova Scotians in particular.

Given that the additional seats would almost certainly be in HRM, it increases opportunities for representation of newer Nova Scotians.

It is a tangible demonstration of the shared interests of rural Nova Scotians and minority populations.

It would bring Nova Scotia closer to the Atlantic Canadian norm, shown in table 7.

Province	Population	No. of seats	Average per ridings
Nova Scotia	923,598	51	18,110
New Brunswick	747,101	49	15,247
Prince Edward Island	142,907	27	5,293
Newfoundland and Labrador	519,716	40	12,993

#### CON

Politically this is more difficult to explain than the status quo. The demographic problem facing rural Nova Scotia is not well understood and there will likely be a visceral negative reaction to adding more politicians. There will be a cost. Each MLA living less than 100 km from Province House costs, on average, \$220,000 per year. Each MLA living more than 100 km costs, on average, \$246,600 per year.<sup>111</sup>

<sup>111</sup> MLA living less than 100 km from Province House: \$101,700 (salary + fringe); constituency assistant, \$56,700 (salary + fringe); constituency expenses, \$56,600 (avg urban MLA), includes constituency related travel, max \$65,443; travel – Other Travel \$5,000 (avg urban MLA). Total, \$220,000 per year. MLA living more than 100 km from Province House: \$101,700 (salary + fringe); constituency assistant, \$56,700 (salary + fringe); constituency expenses, \$55,200 (avg rural MLA) includes constituency related travel, max \$65,443 to \$69,942; Other Travel (commutes (kms + per diems), conferences, out of town caucus, legislative per diems), \$15,000; living allowance, \$18,000. Total \$246,600 per year. Constituency expenses are averaged because the amount available to an MLA is based on the geographic area of his or her constituency, and this will change if there is any significant redistribution. The breakdown is found in Section 43A of the House of Assembly Management Commission Regulations 43A (1). Source: Speakers Office.

The other problem is that adding constituencies does not significantly reduce the average population of constituencies. The current average constituency population at 51 seats is 18,110. Restoring the 52nd seat, which was removed in the controversial 2012 redistribution, reduces the average to 17,756. The reduction achieved each additional seat is small:

- 53 = 17,421
- 54 = 17,099
- 55 = 16,788
- 60 = 15,392.

#### COMMENTS

The cons depend on the number of constituencies added. One possible way to better explain the demographic challenge to electoral boundaries is to require the boundaries commission to prepare two or more scenarios. The first based on 51 seats and one or more based on progressively greater numbers of seats. In this way, the public would understand the consequences of each option. The scenarios might move the debate from the simplistic “no more politicians” to the more significant issue of the size and shape of constituencies. As we discuss elsewhere, the people of Argyle were in favour of reducing the number of municipal councillors until they saw its consequences on the district boundary map.

#### Summary

Nova Scotia is facing a choice. If we do nothing there will be more populous ridings in and around HRM and larger ridings with unfamiliar boundaries everywhere else. Both would experience reduced contact between MLAs and constituents. On the other hand, the more constituencies there are the more flexibility boundaries commissions have to craft constituencies in accordance with the principles of effective electoral representation.

## Options For Increasing the Electoral Representation of Acadians and African Nova Scotians

During our public consultations five broad options for increasing the electoral representation of Acadians and African Nova Scotians were suggested:

- Create dedicated or reserved seats. In this section we examine reserved seats and
- Proportional representation. We have already
- Restore exceptional ridings. discussed exceptional ridings and additional
- Allow non-contiguous ridings. constituencies and have recommendations about
- Create more constituencies. them, and non-contiguous ridings, below.

### Reserved Seats

#### Introduction

During our consultations, there was a great deal of discussion about reserved seats (also referred to as “designated” or “set aside” seats). Reserved seats ensure the presence of a designated minority in the legislative body by creating one or more constituencies exclusively for candidates and voters of the minority.

#### Opinions on Reserved Seats

For the most part, Acadians who lived in the south/west of the province opposed reserved seats, at least for themselves, while at least some Acadians who lived in Cape Breton – particularly those at our meeting in Chéticamp – favoured a reserved seat. A number of African Nova Scotians spoke in favour of them. This is likely because there are several reasonably concentrated Acadian communities in south/west Nova Scotia and so reinstatement of the exceptional constituencies

affords Acadians a good chance of electing two or three members. African Nova Scotians are more widely dispersed and Chéticamp was never part of an “Acadian” riding.

The dispersal problem is particularly acute for African Nova Scotians. Even inside HRM, where 13,780 African Nova Scotians reside<sup>112</sup>, they live in many smaller communities, or are distributed across the rest of HRM. Even in the former exceptional Preston riding, African Nova Scotians never represented even 30% of the population.

The precedent most speakers cited was the African Nova Scotian seat on each of the province’s seven school boards. The other precedent is the Mi’kmaq seat provided in the *House of Assembly Act*<sup>113</sup> — which the Mi’kmaq have so far declined.

There were several variations among the proposals. The most ambitious suggestion was for three seats reserved for African Nova Scotians in the Legislature plus return of the Preston exceptional seat. Most African Nova Scotians who supported reserved seats suggested three seats instead of an exceptional riding.

<sup>112</sup> Source: Statistics Canada National Household Survey 2011.

<sup>113</sup> House of Assembly Act RSNS c1, s. 6 <http://nslegislature.ca/legc/statutes/house%20of%20assembly.pdf>

The rationale for three African Nova Scotian reserved seats was twofold. First, there were three Acadian exceptional ridings and a number of people assumed that the two populations were roughly equivalent. Second, one or two seats would leave the African Nova Scotian MLAs with impossibly large constituencies so three was seen to be the minimum practical requirement.

## IN THE HOUSE

The possibility of there being no African Nova Scotians in the legislature is real. (The same is true for Acadians of course, but is far less likely at least in the near term due to the still relatively large populations of Clare and Argyle.) It is for this reason that reserved seats are attractive. One speaker summed up the feeling well – “representation of African Nova Scotians in the House cannot be left to chance.”

So, we took a very serious look at reserved seats. In fact, no other issue was the subject of as intense analysis.

## International Precedents

Reserved seats are not abundant in democracies but there are examples.

*In India...two reserve seats for members nominated by the president to represent the Anglo-Indian community are included among the 550 members of the (Parliament). Further provisions ensure the representation of scheduled castes and scheduled tribes with reserved constituencies where only candidates for these communities can stand for election...*

*In Ethiopia, the (Council of the Federation) includes one member each with 22 minority nationalities in its membership of 117.<sup>114</sup>*

Slovenia has a system of reserved seats for its national minorities. The Hungarian and Italian communities are guaranteed one deputy each in its National Assembly. These deputies can veto legislation pertaining to the special rights of their respective communities under the Constitution.<sup>115</sup>

Croatia has reserved seats for national minorities based on their population. There are eight reserved seats in a “constituency” which is the entire country.

*“The Serbian national minority elects three deputies, the Hungarian and Italian minority elect one deputy each, and Czech and Slovak minorities jointly elect one deputy. The Austrian, Bulgarian, German, Polish, Roma, Romanian, Ruthenian, Russian, Turkish, Ukrainian, Vlach, and Jewish minorities jointly elect a single deputy. Additionally, the Albanian, Bosniac, Montenegrin, Macedonian and Slovenian minorities jointly elect a single parliamentary deputy.”<sup>116</sup>*

## The New Zealand Model

The most instructive model for Nova Scotia is New Zealand’s electoral system because it is a parliamentary democracy in the Westminster tradition like Nova Scotia. It has seven reserved seats for its indigenous Maori population.<sup>117</sup>

The Maori electoral system exactly parallels the general electoral system in that elections are held in conjunction with the general election and it is constituency based. However, because there are only seven Maori ridings, their geographic areas are much larger than the other constituencies.<sup>118</sup>

The only other difference is that candidates and voters for the Maori seats must self identify as Maori. The number of seats is proportional to the number of Maori who choose to register on the Maori roll, as a percentage of the New Zealand population.<sup>119</sup>

<sup>114</sup> Indigenous Participation in Elective Bodies: The Maori In New Zealand. Alexandra Xanthaki and Dominic O’Sullivan, *International Journal on Minority and Group Rights* 16 (2009) 181 at 195.

<sup>115</sup> European Centre for Minority Issues: handbook, December 2015 p.25. [http://ecmi-epp.org/wp-content/uploads/2016/01/ECMI\\_Handbook\\_12-2015.pdf](http://ecmi-epp.org/wp-content/uploads/2016/01/ECMI_Handbook_12-2015.pdf)

<sup>116</sup> *Ibid*

<sup>117</sup> For a complete description of the Maori electoral system see: <http://www.elections.org.nz/m%C4%81ori-and-vote>

<sup>118</sup> “The boundaries of these dual electorates are superimposed on the same geographical space. There are far fewer Maori electorates so the area of these electorates is much larger than that of the general electorates” S. Banducci, T. Donovan, J. Karp, *Minority Representation, Empowerment and Participation*, 66 *The Journal of Politics* May 2004, p 534 at 536.

<sup>119</sup> “After each five-year census, the drawing of the new electoral boundaries begins with a four-month Maori Electoral Option during which time those who indicate on their enrolment forms that they are of Maori descent are sent letters asking them to choose between registering on the Maori or the general election roll. Thus, one major difference between Maori electorates and the majority-minority districts in the United States the Maori can choose whether they want separate representation. It is estimated that of all Maori were enrolled on the Maori role, there would be about 13 Maori electorates...” Banducci *et al* p 536.

## Reservations

Doubts have been raised about the benefits of reserve seats.

*Opinions vary as to the effectiveness of reserve seats, and critics warn that they may only have tokenistic value. Many countries, however, practice the system for instance when minorities are too small to be able to compete in the regular political party system. Countries also combine reserve seats with other arrangements for representation.*<sup>120</sup>

And according to the Cardinal report:

*"Columbia established the practice of reserve seats for aboriginal communities (two in the Senate and one in the House of Representatives) in 1991 and for African Colombians (two in the House of Representatives) in 1993. The latter make up 10.6% of the national population, but according to a recent report, they have benefited less from this institutional mechanism due to the internal rivalry that it gave rise to."*<sup>121</sup>

Even the New Zealand example may not be as straightforward as first appears. It was established in 1867 as a temporary political compromise to allow the Maori to vote but not in general elections. It remains controversial:

*The positions of political parties vary from unconditional support; qualified support until Maori decide otherwise; support for a national referendum on the future of the seats; and outright rejection...A question often asked is whether it is fair that indigenous peoples have the option of being included in a separate system that guarantees their representation in Parliament, when non-indigenous people, even members of minorities in immigrant groups, do not have this choice...*<sup>122</sup>

The article also says that, because of Maori candidates winning conventional seats as well as the reserved seats, "Maori parliamentary representation has increased to slightly more than a proportionate level."<sup>123</sup>

## Analysis

There are three issues raised by reserved seats:

- the number of seats,
- the practicalities of elections and representation,
- the concept.

## The Number

Proponents of reserved seats within the African Nova Scotian community who argued for three seats suggested one for HRM, and one for each half of the rest of the province. Most, if not all, believed that three is the minimum number of reserved seats.

There are problems with three seats. The African Nova Scotian population, according to 2016 Statistics Canada census data, is about two thirds of the Acadian population. At 21,915, it is about the population of the average urban riding and smaller than the current populations of five constituencies.<sup>124</sup> The three exceptional Acadian ridings were not reserved seats. French speaking Acadians were a majority in only one of them. So, justifying three African Nova Scotian seats is difficult in terms of the overall provincial population or former exceptional ridings.

Even though special considerations apply due to historical injustices, similar arguments can be made by others including Acadians and Mi'kmaq. Three for African Nova Scotians would appear to justify five reserved seats for Acadians and perhaps as many as eight for First Nations based on 2016 census figures. The international experience discussed above suggests that this is a likely outcome once reserved seats are taken up.

<sup>120</sup> European Centre for Minority Issues: handbook, December 2015 p.25.

<sup>121</sup> Cardinal Report appendix 3A.

<sup>122</sup> Indigenous Participation in Elective Bodies: The Maori in New Zealand. Alexandra Xanthaki and Dominic O'Sullivan, International Journal on Minority and Group Rights 16 (2009) 181 footnote 53.

<sup>123</sup> Xanthaki et al, at 192.

<sup>124</sup> See Table Appendix 10.

## Practical Concerns

### NEW ZEALAND TO NOVA SCOTIA

There are doubts whether the New Zealand system of reserved seats for its indigenous people, the Maori, would work to the advantage of Acadians and African Nova Scotians. The Maori constitute 15 per cent of the electorate. Acadians and African Nova Scotians together constitute about 6 per cent of our electorate. If the Maori reserved seat system were replicated in Nova Scotia, the result would be one African Nova Scotian seat and two Acadian seats, representing the whole province.

Even if Nova Scotia adopted New Zealand's MMP electoral system,<sup>125</sup> the incentive to place Acadians and African Nova Scotians high on the party list is not nearly as strong as for the Maori in New Zealand. We discuss electoral systems in the next section.

## Set Aside

Xanthaki *et al* point out another possible problem with reserved seats:

*...Indeed, it must be acknowledged that not all affirmative measures have positive consequences... Measures specifically for members of cultural groups focus on the minority element of their identities and separate them on this basis from the rest of the population; apart from ignoring other elements of their identity, these measures can perpetuate their exclusion*<sup>126</sup>

The article goes on to say that this is not an argument against affirmative measures. It is simply a note of caution when considering them.

There is a danger of designated MLAs being seen as representing all members of that community for all purposes. While it is argued that Acadians and African Nova Scotians should be able to go to their local MLA for local issues and their designated MLA for their overarching issues, we were told, by other Acadians and African Nova Scotians, of a tendency to assume their MLA is the voice in the Legislature for all Acadians or African Nova Scotians as the case may be. Reserved seats would lend weight to this sentiment at the very least. It is possible it would have the perverse effect of institutionalizing it. We are not saying this would be fair or desirable, simply that a separate electoral map would tend to leave Acadians and African Nova Scotians with, at best, "their MLAs" spanning very large geographic areas.

This would be detrimental. We were told by MLAs and former MLAs that most constituents, particularly rural constituents, approached them about local matters such as policing, roads, schools, and medical facilities. And while the African Nova Scotian MLAs may better understand what it means to be an African Nova Scotian, they may not understand what it is like to live in a particular part of the province as well as the local MLA. As we mentioned earlier, during our consultation one person explained it, in an Acadian context, this way:

*"You would have your cultural MLA representing Acadians and then you would have your real MLA representing your region. Which one would you go see when you really needed something?"*

Whether the worst-case scenario arises or not, there will, in any case, be some level of confusion between reserved seat MLAs and local MLAs in normal constituencies. Ideally the local and reserved seat MLAs would work together, but this could be difficult if they are members of different parties and sit across from each other in the House.

<sup>125</sup> New Zealand has a mixed member proportional electoral system (MMP). Every voter casts two votes, one for their candidate of choice in a first past the post system (FPP) and a second for their party of choice in a proportional representation system. Parties that gain 5 per cent of the nationwide vote can appoint members from their nationwide ranked list of candidates called the party list.

<sup>126</sup> Xanthaki *et al*, at 194 citing K. "Fierlbeck," *The Ambivalent Potential of Cultural Identity*, 29 *Canadian Journal of Political Science* (1996) 3, at 21.

One solution that was advanced for African Nova Scotians was to have two votes; one for the African Nova Scotian reserved seat, and one for the local MLA. The African Nova Scotian would represent overarching African Nova Scotian issues and the local MLA, local issues.

Aside from the idea of one group of Nova Scotians having two votes because of their identity while others have one because of theirs, would take some getting used to, there is a more immediate, practical problem. Who gets two votes?

During our public discussions, we were told of difficulties regarding voting for school board elections - both the CSAP and African Nova Scotian seats. At present, the poll clerks simply rely on voters to self identify. In the current school board elections, there is only one vote so there is inherently no advantage to choosing one over the other. If the choice were instead between having one vote or two, there is an incentive for members of the majority to lie.

Legislative elections would require a higher level of scrutiny if the results are not to be contested by unsuccessful candidates. Presumably, separate electoral rolls would have to be prepared requiring both a full enumeration and a legally precise definition of who is a member of the group for whom a reserve seat was created. It would also be necessary to have an appeal process from the decision of the enumerator. The creation of definitions has the potential to cause considerable strain within one or more of these communities.

Given the special nature of reserved seats, there may be a tendency to perceive these MLAs as not quite on a par with MLAs from ordinary geographic ridings. There is a risk that minorities and their MLAs will once again – and for very different reasons – occupy the margins of the mainstream of politics and public administration.

Finally, both African Nova Scotian and Acadian speakers expressed concern the larger African Nova Scotian or Acadian (as the case may be) communities would always elect their members to the designated seats and the MLA would always attend to the larger communities.

## THE CONCEPT

A particularly attractive aspect of this idea is that it would compel political parties to actively recruit African Nova Scotian and Acadian candidates and include their issues in the party platform. It guarantees an Acadian and African Nova Scotian presence in the House. It may avoid the voter parity issue, at least notionally, by removing the dedicated seat from the general constituencies. Although it must be acknowledged that dedicated seats are open to scrutiny for voter parity by the courts.

While the African Nova Scotian school board seat is an interesting precedent, it is not a precise analogy. School boards are, like all boards, bodies whose members are collectively accountable and expected to work together. The legislature is deliberately competitive and partisan. A school board is a creature of statute with an important but specific mandate. The legislature on the other hand is the source of legislation and has an expansive public policy mandate and responsibilities as broad as provincial jurisdiction.

There is a long tradition in Canada of separate schools and school boards based on religion and culture. Education is the key to advancement in our society, so there is a strong desire to make schools more pertinent to young African Nova Scotians. Acadians and Francophones have their own school board. Therefore, a special measure on school boards to provide an African Nova Scotian perspective is consistent with common practice and long-standing in the field of education.

Then there is the concern with formalizing identity in elections and the democratic process however well intended. The universal franchise – the right to vote regardless of gender, race, creed, and wealth – is not quite 100 years old in Nova Scotia. Reintroducing personal characteristics in elections should be a last resort, not the first. If the argument can be made for one characteristic, it can be made for any other basis by which we differentiate ourselves socially. (The Croatian example described above where eight reserved seats are divided between 21 minorities is instructive.) Our parliamentary democracy aggregates political interests. Admittedly, it is at times so good at aggregation that the interests of a minority can be overlooked. However, differentiating people by characteristic places an additional strain on social cohesion.

## DISCUSSION

The proposal for reserved seats was the subject of intense analysis by the commissioners. We share the view that representation of Acadians and African Nova Scotians in the Legislature is vital and an important symbol of both the diversity of our society and the importance of Acadians and African Nova Scotians in it. We recognize the effects of historical marginalization of both communities remain with us today. We share the view that, given the size and dispersal of these two communities – and of African Nova Scotians in particular – there is no way to assure their representation in the Legislature under the current electoral system.

However, while we are strongly inclined to the view, as was said by one African Nova Scotian speaker, that it “should not be left to chance,” we acknowledge that there is an element of chance in all elections. One’s choice of candidate may not be elected, may not sit on the government side, may turn out to be feckless, and may take positions opposed to one’s own.

Our decision not to recommend reserved seats at this time was a difficult one – we discussed it until the end. It is important to us that the people who offered this proposal know it was taken very seriously.

Our decision is based on three grounds:

- Practical
  - enumeration requiring racial/ethnic delineation to a legal standard,
  - the number of seats required exceeds the Carter parity standard,
- Conceptual
  - our place-based system, whatever its shortcomings, at least proceeds from a factor capable of uniting us – the place where we live,
  - enshrining racial and ethnic identities in elections law encourages further delineation by other identities and can be used by some people who wish to divide us and undermine social cohesion.
- There are other options for improving representation of Acadians and African Nova Scotians.

The choice is not between having reserved seats and being entirely unrepresented. Descriptive representation is not the only form of representation and reserved seats are not the only means of descriptive representation. We believe other measures to improve the effectiveness of the representation of African Nova Scotians and Acadians are available within our system of public administration. Effective representation does not rise or fall on the shoulders of an MLA or even three or five MLAs. In this report, we propose numerous measures which, taken in combination, will improve the effectiveness of representation for Acadians and African Nova Scotians without creating parallel electoral systems. On balance, while we share the aspirations that gave rise to the suggestion, we think that for conceptual and practical reasons it is unlikely to be workable and might create more difficulties than it will resolve.

We believe restoring the boundaries commission's authority to recommend exceptional ridings is a better option than reserved seats.

We are also suggesting the possibility of creating non-contiguous ridings which would allow the boundaries commission to create a riding out of areas that are separated from one another geographically but have strong community connections. A riding composed of islands in a sense. There are many concerns about non-contiguous ridings, not least of which is voter confusion. But it might be a way to connect pockets of small, minority communities. To be clear, we are not recommending non-contiguous ridings but we are recommending that a boundaries commission have the option of considering them. The debate about their desirability should take place as part of that commission's work.

Although, in the end, we are not recommending reserved seats, we wanted to explain the topic since we heard so much about it. If none of the measures we recommend in this report are implemented, or if Nova Scotia embarks on significant change to its electoral system, it may be desirable for a future government to reconsider reserved seats and, at the very least, we have offered our analysis.

## Electoral Systems

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 model (SMP) usually referred to as "First-Past-the-Post" (FPP) 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) and becomes the "single member" representing the constituency.

An electoral system should be principled, practical, and simple so citizens understand and trust it. "One person, one vote" is a simple rule that meets this criterion but is weak on diversity and minority interest representation. But every electoral system has inbuilt tendencies, strengths and weaknesses. We are not an electoral reform commission. Still, it is important for us to note that there are alternatives to the present system. One submission was brief and to the point:

*Proportional representation is the best way to effectively represent all Nova Scotians, especially those from traditionally underrepresented backgrounds.*

So, while it is fair to say that electoral reform is a subject all to itself, we thought it relevant enough to our subject to include it in our background paper. Despite that, we received very few comments either in writing or during the public meetings. We did commission a paper on the impact of electoral systems on African Nova Scotians and it appears in Appendix 3B.

In the broadest possible terms there are two systems: FPP (the one we have now) and proportional representation (PR).

## FIRST PAST THE POST

FPP is simple and tends to produce stable majority governments because it usually converts the largest minority of votes into a majority of seats. In the last federal election, the Liberals won 54.4 per cent of the seats on 39.5 per cent of the votes. Of the 1,309,257 votes in Atlantic Canada, 58.7 per cent went to Liberals, 21.8 per cent went to Conservatives, 17.9 per cent to the New Democrats, and 3.5 per cent to the Greens. Yet, the Liberals swept all 32 seats. This is the political equivalent of a sports team winning many games by a few goals while another team wins a few games by many goals. Their goal total is the same but their ranking is not.

There is evidence that “ethnic and racial minorities across the world are far less likely to be represented in legislatures elected by FPP.”<sup>127</sup> If, for example, the United Kingdom’s House of Commons reflected the population, there would be 117 Black and minority ethnic (BME) MPs. Instead, there are only 27.<sup>128</sup>

In the United States FPP is considered by many observers and academics to be at the heart of the systemic disempowerment of minorities and the poor. FPP 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.”<sup>129</sup> 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).

## PROPORTIONAL REPRESENTATION

Proportional representation, or PR, is a family of electoral systems in which legislative seats more closely match votes cast than in FPP.<sup>130</sup> The argument for PR starts with a complaint about FPP:

*Under FPP, parties had a strong incentive to appeal to the broadest possible audience to win the most votes. The result was a system often characterized by two large parties sharing often very similar platforms. In a PR system, parties can maintain their ideological stigmas and focus more specifically on their core supporters. This increases the number of parties ... and offers clearer choices to voters. Advocates of the new system also argued that PR would not only be fairer but would encourage a politics of consensus, requiring cooperation between several parties to achieve effective government, in contrast to the dominance in government of one party and the resulting adversarial nature of politics under FPP.<sup>131</sup>*

The Law Commission of Canada concluded that Canada should consider adding an element of proportionality to the system.<sup>132</sup> 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.”<sup>133</sup> 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.<sup>134</sup>

<sup>127</sup> ACE, The Electoral Knowledge Network, “Electoral Systems,” <http://aceproject.org/ace/en/topics/es/onePage>

<sup>128</sup> Dr. Andrew Knight, “The Political Representation of African Descended People - the UK, the US and Canada”, prepared for the Commission. Appendix 3B.

<sup>129</sup> 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](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)

<sup>130</sup> 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).

<sup>131</sup> Indigenous Participation in Elective Bodies: The Maori In New Zealand. Alexandra Xanthaki and Dominic O’Sullivan, International Journal on Minority and Group Rights 16 (2009) 181 at 199.

<sup>132</sup> Voting Counts, Law Commission of Canada 2004, p. 172.

<sup>133</sup> 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>

<sup>134</sup> Don’t Waste Your Best Asset by Bernard Owen and Guy Lardeyret\*

One problem is that there is an array of proportional representation options and most countries that have proportional representation in fact use a hybrid of the two systems. So, a detailed examination of the options is not possible here. New Zealand, for example, uses a hybrid system in which 69 of its 120 MPs are elected through FPP and the rest through PR. In the PR districts the parties run slates of candidates from which, following the election, the party appoints the number of MPs that corresponds with the percentage of votes it gets.

According to Xanthaki the Mixed Member Proportional (MMP) system “has delivered what was predicted: a more representative and diverse Parliament.”<sup>135</sup> Probably the most critical point is that one of the major incentives to political parties to run minority candidates is the ability to run a slate of candidates in each constituency. That is, a system of multi-member constituencies. This is possible under both FPP and PR. Nova Scotia has had dual member constituencies in the past in order to accommodate religious differences. The difficulty is that multi-member constituencies inevitably require either many more MLAs or far fewer – and geographically larger – constituencies. But, as a general proposition, multi-member constituencies and low party thresholds – that is the minimum number of votes a party must have to win a seat – tend to increase the representation of minorities in legislative bodies.

That threshold is a problem for Acadians and African Nova Scotians. There are doubts about whether the populations of Acadians and African Nova Scotians are sufficiently large to benefit from PR. In his paper Dr. Knight,<sup>136</sup> while supporting PR in principle, cautions that “it is unclear which PR version would actually result in effective political representation for the African Descended populations (in Nova Scotia).”<sup>137</sup> Similar skepticism has been expressed about the practical benefits of PR to the Acadian communities. PR systems must have a minimum vote threshold if there are to be any parties at all. In some countries, it is 5 per cent of the vote. Sometimes 10 per cent is required to win a seat. As our report was being written New Zealanders have just learned which parties will form their next government nearly a month after the September 23 election. The Maori Party did not return any members under PR because it fell below the 5 per cent threshold for seats.<sup>138</sup> There are more than twice as many Maori as a proportion of New Zealand’s population than Acadians and African Nova Scotians put together as a proportion of ours.

So, although PR in one form or another tends to improve the standing of minorities in legislative bodies, we cannot say with confidence that it would improve the standing of Acadians and African Nova Scotians in our legislature. PR would also represent a major upheaval in our electoral system affecting every Nova Scotian. We are not an electoral commission and, although we received a few comments in favour of PR, it was not major subject of comment or discussion. Therefore, we make no recommendation regarding electoral systems except that, should electoral change come under consideration, the effective representation of Acadians and African Nova Scotians must be considered including designated seats.

<sup>135</sup> *Supra*, Xanthaki and Dominic O’Sullivan p. 199.

<sup>136</sup> Knight *supra*.

<sup>137</sup> *Ibid*.

<sup>138</sup> [http://www.electionresults.govt.nz/electionresults\\_2017/](http://www.electionresults.govt.nz/electionresults_2017/)

## Boundaries: What Are the Rules For Making the Rules?

As we have seen above the Nova Scotia Court of Appeal said:

*We do not state that s. 3 of the Charter requires that there be protected ridings in Clare, Argyle and Richmond. Rather, under s. 3 (of the Charter) the body that is authorized by law to craft the electoral boundaries must be allowed to balance the constitutional criteria as set out by the majority's reasons in Carter, and to express its views on the matter.*<sup>139</sup>

*The Attorney General's intervention on June 14, 2012 prevented the Commission from performing the balance, and from expressing its authentic view of effective representation for electors in Clare, Argyle and Richmond. Hence the Attorney General's intervention violated the precepts of s.3 of the Charter. The violation (1) led directly to the Final Report's recommendation to eliminate the protected ridings which, in turn, (2) led directly to their abolition....*<sup>140</sup>

### The NSCA Reference

Taken on its own, this suggests a boundaries commission cannot be constrained in any way. On its face this would preclude anyone, including the Legislature, establishing terms of reference for a boundaries commission – a body that is neither democratically elected nor publicly accountable. This is a worrying interpretation, particularly for minorities. As we hope to show, the better reading is that the problem was the way the terms were established and enforced.

### The AG's Letter

The fatal error, ostensibly, was that the AG prevented the Commission from "expressing its authentic view of effective representation". If this is the sole basis for the decision then our advice to the government is not to write letters to boundaries commissions. But there are two reasons to believe the AG's letter was not really the problem. If for instance, the Electoral Boundaries Commission had accepted its terms from the outset and (just as reluctantly) recommended abolition of the exceptional ridings there would have been no letter from the AG. But would that make the abolition of the ridings constitutional?

It is doubtful the AG had any power to constrain the Commission and he did not claim to. His letter cites as authority the Electoral Boundaries Commission's terms of reference and the legal advice of the lawyers for the Legislature.<sup>141</sup> That is, the Attorney General is not imposing his terms but reminding the Electoral Boundaries Commission of theirs.

<sup>139</sup> Paras 135 and 136.

<sup>140</sup> *ibid.*

<sup>141</sup> It is important to draw a distinction between the House of Assembly (the legislative branch) and the Government (the executive branch) and between Ross Landry MLA and Ross Landry, AG. The Boundaries Commission functions under the authority of the House of Assembly Act and the mandate given it by the Select Committee of the House (which, to add to the muddle, Ross Landry chaired in his capacity as an MLA). The Commission is a creation of the legislative branch. The AG is the law officer of the Executive branch and is not an officer of the legislative branch. In the House, the person who is the AG, at the time, Ross Landry, is simply another MLA. The report was submitted to the AG as directed by article 2(i) of the terms of reference which names the AG as the Premier's delegate under the House of Assembly Act. In short, the AG is merely the delegate for delivery of the Commission's reports to the Government because it must be introduced as a government bill. Ross Landry, in his capacity as the AG delegated to receive the report, states he is rejecting the first Interim Report based on legal advice of the Legislative Counsel - the lawyers for the legislative branch. He does not purport to rely on his own authority as the AG, nor does he cite the advice of his Justice Department lawyers. They are the lawyers for the executive branch, not the legislative branch.

We conclude that the actual constraint on the Commission was the terms of reference set by the Select Committee. Thus, we get to the real issue: what is constitutionally objectionable, the terms or the manner of their making? This is more than mere hair splitting. If the boundaries commission must be free to express its “authentic view” of boundaries as a matter of constitutional law without constraint then the right to establish the principles for boundaries setting has been effectively removed from democratic control.

However, there is reason to believe the NSCA did not intend such an extreme result.

## Commissions’ Boundaries

The *Charter* does not require an independent boundaries commission. But once one is established, the NSCA says it can be constrained in only three ways:

*Provided the Commission may express its view of effective representation under its constitutional mandate, nothing prevents suggestive terms of reference. In this case, the 2012 Commission’s first Interim Report took clause 2(d) [the +/- 25% variance] as suggestive only. The Commission gave it consideration, but decided that the constitutional criteria of minority representation and cultural identity outweighed it.*

*Subject to the same proviso, nothing prevents the Commission being tasked with an additional assignment. A supplementary assignment occurred in 1992. That additional assignment might be to append provisional boundaries under an alternative assumption. One alternative might be the elimination of ‘protected ridings’.*

*Finally, nothing precludes administrative terms of reference that do not usurp the Commission’s assessment of effective representation. An example is 52 seats for the Province.<sup>142</sup>*

So, except for “administrative terms”, like the number of seats, the terms are not so much terms as suggestions and questions.

However, the NSCA cites the majority opinion of the Supreme Court in the Carter case as its authority. So, to fully understand its position we must interpret the NSCA’s opinion in light of Carter.

## The Process

The NSCA declared the boundary setting process unconstitutional, not the boundaries themselves. In Carter, the judges disagreed or were at least unclear on whether the process by which boundaries are set is constitutionally protected. The case was about the provision in Saskatchewan’s legislation that allocated seats between urban and rural areas in a way that enhanced the rural representation.

Justice McLachlin, writing for the majority, clearly reviewed the origin of the conditions imposed on the Saskatchewan boundaries commission and says<sup>143</sup> “I conclude that the process used here (to set the terms) did not in fact violate s. 3 (of the *Charter*).” That is a clear indication that the process is subject to *Charter* scrutiny, but perhaps not constitutional protection. The opening line of her opinion says:

*I am of the view that it is the boundaries themselves which are at issue on the appeal. The (reference) questions focus, not on the Act, but on the constitutionality of ‘the variance in the size of voter populations...and the distribution of those constituencies among urban, rural and northern areas.’ In so far as The Representation Act, 1989 defines the constituencies, the validity of that Act is indirectly called into question. And in so far as The Electoral Boundaries Commission Act provides the criteria by which the boundaries are to be fixed, that Act may affect the answers given to the questions posed. But the basic question put to this Court is whether the variances and distribution reflected in the constituencies themselves violate the *Charter* guarantee of the right to vote.<sup>144</sup>*

<sup>142</sup> Paragraphs 94 -96.

<sup>143</sup> At page 190 of the decision.

<sup>144</sup> At p 178.

It seems that, while McLachlin reviewed the process, she rested her opinion on the results.<sup>145</sup> Given that the right to vote in the *Charter* belongs to the voters, not the boundaries commission, it might have been expected that the constitutional protection applied to the boundaries, not the process. Only the boundaries affect the voter. This is not to say that, in considering the constitutionality of boundaries, a court cannot examine the process by which they were derived. A dubious process, say an unduly partisan process, might attract greater judicial scrutiny and justify judicial skepticism about the boundaries. That appears to have been the approach followed by the majority. The important thing for us is that, in the end, the majority upheld the imposition of terms on the boundaries commission by the legislature, even though the terms clearly limited the discretion of the boundaries commission. So, the majority in Carter upheld the statutory imposition of terms on the Saskatchewan boundaries commission.

In fact, the NSCA's comments about the Attorney General's letter seem more akin to the position of the minority of the Supreme Court justices. Cory J, for the minority in Carter says:

*Thus, while the actual distribution map may appear to have achieved a result that is not too unreasonable, I am of the view that the effect of the statutory conditions has been to interfere with the rights of urban voters. Once an independent boundaries commission was established, it was incumbent upon the Saskatchewan legislature that it was able to fulfill its mandate freely and without unnecessary interference.*<sup>146</sup>

Whether what really troubled the NSCA was the terms or their partisan imposition is not clear. We believe the NSCA's real process problem was not the constraints on the Boundaries Commission imposed by the terms but that the terms were not legislated.

## THE REAL PROBLEM

There are three reasons to believe the NSCA's real concern was that the terms of reference for Nova Scotia's boundaries commission were set by a select committee.

First, there is no clear authority in the *House of Assembly Act* for the Select Committee to establish restrictive terms. The NSCA pointed out that:

*Section 5 of (the House of Assembly) Act neither says nor contemplates that the Select Committee, with its majority of government members, may (1) make binding rulings on effective representation, or (2) impede the Commission's expression of its views on the core analysis of effective representation.*<sup>147</sup> (emphasis added)

And:

*...In Carter, Saskatchewan's statute articulated the limitation. Nova Scotia's statute does not. Clause 2(d) is the work of the Select Committee. The Terms of Reference are a subordinate instrument under s. 5(3) and (5) of the House of Assembly Act, ...*<sup>148</sup> (emphasis added)

Second, the NSCA specifically quoted McLachlin J. in Carter on the standard of deference the courts owe "the legislature's electoral map":

*"The court may be asked to review the enacted boundaries for compliance with s. 3 of the Charter. Justice McLachlin described the standard of review:*

*'This Court has repeatedly affirmed that the courts must be cautious in interfering unduly in decisions that involve the balancing of conflicting policy considerations [citations omitted]. These considerations led me to suggest in Dixon, supra at p. 419 that 'the courts ought not to interfere with the legislature's electoral map under s. 3 of the Charter unless it appears that reasonable persons applying the appropriate principles ... could not have set the electoral boundaries as they exist'' [emphasis added by the NSCA]*

<sup>145</sup> The difference between the outcomes of the cases in Nova Scotia and Saskatchewan may have more to do with the questions the courts were asked than anything else. The questions in Nova Scotia were specifically directed at "the abolishment" of the three ridings.

<sup>146</sup> At p 171.

<sup>147</sup> Para 92.

<sup>148</sup> Para 110.

Third, the Saskatchewan legislation upheld in Carter was more restrictive than the Select Committee's terms examined by the NSCA. Saskatchewan's Act prescribed that there be 29 urban ridings and 35 rural ridings which arbitrarily allocated 53% of the seats to 50.4% of the population – the rural voters – and 43.9% of seats to urban voters, who comprised 47.6% of the population.<sup>149</sup> In effect, the legislation precluded the boundaries commission from applying vote parity, which the Supreme Court referred to as being of "prime importance". The Saskatchewan Legislature also imposed a maximum variance of 25%<sup>150</sup> - which is the figure imposed on the 2012 commission in Nova Scotia. Thus, the Saskatchewan commission had less room to "express its true opinion" than the 2012 Nova Scotia boundaries commission. The Nova Scotia Commission was, at least, free to apply the prime test of vote parity within the same variance range as Saskatchewan. The only legal distinction between what was upheld in Saskatchewan and struck down in Nova Scotia was that Saskatchewan's terms were legislated and Nova Scotia's were not.

## Some House of Assembly Required

While the NSCA did not deal with the argument put forward by the Fédération Acadienne de la Nouvelle-Écosse (FANE) that s. 3 of the *Charter* must be interpreted in light of constitutional principles for the protection of minorities and minority language rights<sup>151</sup>, it was clearly influenced by one aspect of the argument:

*The protected constituencies were an existing right of vital importance to the Acadian community. To abolish them without any discussion, justification, or consideration of the harmful consequences, violated s.3 of the Charter, when properly interpreted in light of the constitutional principle of the protection of minorities and constitutional minority language rights.<sup>152</sup>*

This is precisely the problem with having a committee of the Legislature, as opposed to the Legislature itself, establish boundary setting principles. The exceptional circumstances provision that allowed exceptional ridings was removed by the government members of the select committee between the fourth and fifth drafts of the terms of reference without, as FANE says, "any discussion, justification, or consideration". There was instead the exercise of the democratic equivalent of brute force. Legislation often comes down to the same end but only after debates in the House and public submissions to the Law Amendments Committee. The opportunities for questions, discussion, public input and scrutiny are far greater.

Legislating the principles for electoral boundaries offers three advantages: stability, clarity, and accountability. There is one disadvantage but it can be mitigated.

### Stability

At present in Nova Scotia the principles for establishing boundaries are fixed by a government dominated committee every time the boundaries are revised.

Nothing is permanent but statute law is second only to a constitution for permanence in a democracy. It is true that the governing majority can always amend or repeal legislation but not without scrutiny. Legislation must be debated on the record and in public, and that leads to accountability.

<sup>149</sup> At p 192. The two northern ridings were not in issue, which accounts for the numbers totaling less than 100%.

<sup>150</sup> At p 193.

<sup>151</sup> We examine this more fully in the section discussing the special status of Acadians and francophones.

<sup>152</sup> FANE factum para 110.

## Accountability

Ministers must explain, give reasons, debate, defend, and answer questions about their Bills. MLAs vote on the record. A bill must pass three readings and the Committee of the Whole House and the Law Amendments Committee where any member of the public who wishes to speak on a bill must be heard. The government majority is restrained by public scrutiny if not fear of judicial scrutiny later.

## Clarity and Deference

The 2012 Boundaries Commission first regarded the principles for setting boundaries as guidance only. The Attorney General thought otherwise and told them so. There may be debates about the meaning and constitutionality of a statute but there is no doubt it is the law and must be followed unless and until a court declares it unconstitutional. And, as we have seen, the case law is very clear, the courts will defer to the Legislature on any reasonable principles established by statute for determining electoral boundaries.

Given that elections are the base upon which democratic government rests it stands to reason that the principles upon which electoral boundaries are determined should be legislated. True, there is a problem with legislation, sometimes it is stable to the point of rigidity but that can be mitigated.

## Flexibility

The downside of stability can be inflexibility. It is sometimes difficult to amend legislation as circumstances change and novel situations arise. This may be particularly problematic regarding minorities as the majority may not notice or care sufficiently about the minority's situation to motivate the government to initiate a legislative amendment.

A controlled degree of flexibility can be attained by authorizing a select committee of the House to modify the application of the statutory terms to varying degrees. However, to prevent the government majority once again imposing its will, we suggest a requirement that the committee include members of all parties and act unanimously. This avoids both the tyranny of the majority and of the minority. The government majority cannot unilaterally impose new terms and, though a lone holdout can prevent new terms, a holdout cannot stop boundary setting in accordance with the basic principles.

An additional safeguard would be that any modification by a select committee would have effect only for that boundaries commission. Any modification must either be re-established by the next select committee or legislated, if it is to apply to the next boundaries commission.

## Conclusion

Our review shows that Nova Scotia is alone in Canada in not specifying the principles of boundary setting in legislation. It also shows that four jurisdictions have variances of 25% or less with no exceptions – Saskatchewan now has 10% - suggesting that terms can be imposed on boundaries commissions including terms that are narrower than those established by the Select Committee in 2011 in Nova Scotia.

This Commission concludes that the real message the NSCA was sending was that the fundamental principles for the determination of electoral boundaries should be in legislation, where they must be debated publicly and have the highest level of scrutiny and permanence possible in law. They should not be set in each instance by a select committee that can be controlled by the party in power. This is not to say that a select committee cannot set the terms under any circumstances. They did successfully in 1991 and 2001 but with all party support. The problem in 2011 was the division on partisan lines. To leave responsibility with a select committee at the mercy of one party after this Reference is to effectively require unanimity, thus giving each party a veto over the terms. With that being said, as we explain below, there may still be a role for a select committee.

Reading together the Carter, and the NSCA Reference, the two leading cases in Nova Scotia, we are guided by these key legal principles:

- The legislature enacts electoral boundaries.
- The process by which boundaries are established is subject to judicial scrutiny and at least some aspects of the process are protected by s.3 of the *Charter*.
- There is no constitutional requirement to establish an independent boundaries commission or to base boundaries on its recommendations.
- If the legislature establishes an independent boundaries commission it cannot be constrained except under explicit statutory authority.
- Within the generous parameters of the Carter principles, the legislature can establish the terms of an independent boundaries commission and the fundamental principles for the determination of electoral boundaries.
- The standard of judicial review is “deferential”; the courts will not interfere with boundaries, and terms and parameters of boundaries commissions, unless they are shown to be unreasonable.
- Setting the terms of a boundary commission and parameters of effective representation through subordinate instruments, such as a select committee or Executive action, will attract a high level of judicial scrutiny because it is susceptible to partisan manipulation.

# What We Conclude and Recommend

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The Commission's report shall contain a detailed analysis of how the Commission arrived at each recommendation and shall provide the supportive reasons/rationale for how the Commission believes each recommendation will achieve effective representation for Acadian and African Nova Scotians.

## ADVICE TO THE LEGISLATOR:

### Legislate Terms of Reference

The principle of vote parity – one person, one vote – is inherent in democracy, resting as it does, on the sovereignty of the citizens. Our electoral system ties representation to places. The constituency boundaries determine who represents whom. The procedures for establishing boundaries are legislated in Nova Scotia but the principles by which they are determined are not. Nova Scotia is the only Canadian jurisdiction not to legislate the principles for drawing electoral boundaries. Nova Scotia's are set by a select committee of the legislature, in the terms of reference for each boundaries commission. As a result, they are more fluid, more vulnerable to partisan manoeuvring and less authoritative than if they were legislated. There have been three boundaries commissions in Nova Scotia and the principles on which they did their work were different each time.

Our analysis of the NSCA **Reference** decision leads us to conclude that the principles for electoral boundary setting can and should be enacted in legislation and not left to a committee of the House or subordinate legislation.

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### RECOMMENDATION 1

*The House of Assembly Act* should be amended to include the broad principles for setting electoral boundaries and boundaries commissions should be required to adhere to those principles.

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## WHAT SHOULD BE IN THE LEGISLATION

### Boundaries Commission

Because elections turn votes into political power and because ours is a constituency based system, the boundaries of the constituencies are all important and therefore a tempting target for partisan gamesmanship. At the same time, electoral boundary setting requires the application of legal principles to ; geographic and social realities and therefore considerable, detached judgment. For this reason all Canadian jurisdictions have independent commissions to recommend electoral boundaries.<sup>153</sup> Nova Scotia has had one since 1991 and should continue to.

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### RECOMMENDATION 2

The Electoral Boundaries Commission as currently constituted by the *House of Assembly Act* should continue.

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### How Much Discretion Should the Boundaries Commission Have?

As we have seen, the NSCA appeared to suggest that a boundaries commission could not be fettered in any way. However, on further analysis we concluded that it could, provided it was done legislatively as it is in every other Canadian jurisdiction.

The question then is how much discretion should it have? The legislature could give the boundaries commission complete discretion, subject only to the constitutional requirements stated in **Carter**. This would provide the boundaries commission the maximum constitutional flexibility in drawing boundaries on the basis of their consultations and own judgment.

**Carter** says vote parity is prime but perfect parity is impossible and undesirable. Deviation is:

- Unavoidable: at the very least, geography compels deviations.
- Desirable: historical / cultural/linguistic settlement patterns, and political boundaries, have practical effects on citizen interests and identities.

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<sup>153</sup> Ontario has a commission for its far north constituencies only because constituencies in Southern Ontario are, by law, the same as the federal constituencies as they are established from time to time.

That is just about all **Carter** says. With only that to direct it, the boundaries commission, an unelected group of people, deliberating in secret, would be given very broad discretion to, not only set boundaries, but make electoral policy affecting the fundamental mechanism of our democracy. And because boundaries commissions are set up about every ten years, they are made up of mostly different people each time so the potential exists for wide swings in boundary setting principles and boundaries. Complete discretion also exposes the commission to pressure from whoever is best organized at the time.

If the Carter principle that parity is prime is to be maintained then a standard for deviation is desirable.

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### RECOMMENDATION 3

The legislation should include a standard for deviation from the constituency average.

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#### One Person, One Vote, One Place, One Winner, Multiple Identities and Interests, and Two Tolerances

MLAs are deemed to represent all the people in their constituency even though not all the people voted for them, or are the same race, gender, creed, or ethnicity as the MLA. In fact, only a small minority of constituents will have exactly the same characteristics as their MLA. This does not necessarily affect the MLA's ability to actually represent their interests but it can still leave some constituents feeling unrepresented. That is because, as we discussed earlier, there are two kinds of representation, descriptive and substantive. First past the post is a "winner take all" system which can submerge small, dispersed populations. Deviation from the average allows flexible boundaries as a way to ameliorate this tendency.

There are two categories of tolerance which we refer to as standard and exceptional. Standard is what is the acceptable variation between normal ridings.

#### Standard Deviation

The standard deviation in Nova Scotia in 2002 and 2012 was plus or minus 25 per cent. As we have already noted a plus or minus 25 per cent is generous and allows the boundaries commission considerable flexibility. Experience has shown that boundaries commissions in Canada, including Nova Scotia, use this discretion prudently.

This is the legislated standard in half of the Canadian jurisdictions. We conclude it is the political norm and, as it was upheld in the **Carter** decision of the Supreme Court and not commented on adversely by the NSCA in the Reference, it is constitutionally sound.

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## RECOMMENDATION 4

The standard deviation for setting electoral boundaries should be plus or minus 25 per cent of the result of the estimated population or voter population of Nova Scotia divided by the total number of constituencies.

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### Exceptional Tolerance

Should there be a further allowance beyond the standard range for deviation for use in exceptional circumstances?

In 2002 and 2012 in Nova Scotia the standard deviation was plus or minus 25 per cent of the constituency average. As we have seen the difference between 2002 and 2012 was that in 2002 the boundaries commission was authorized to exceed the standard tolerance to assure the effective representation of Acadians and African Nova Scotians. In 2012 this exception was removed. We have already concluded that this reduced the effectiveness of electoral representation for Acadians and African Nova Scotians. It also had a cascade effect that was detrimental to adjacent communities that we heard about as well.

Exceptional deviation is useful when certain unique or rare circumstances justify a result that falls outside the standard tolerance. There are two factors when considering exceptional tolerance: the scope and the circumstances that justify the deviation.

### Scope For Deviation

Boundaries commissions must always bear in mind that voter parity is prime. There is a point, as yet unspecified by the courts, where an exception goes too far for voter parity to still be regarded as prime. We have shown above that Nova Scotians can rely on the caution and good judgment of the boundaries commission.

## Exceptional Circumstances

What constitutes an exceptional circumstance for a variance? While most jurisdictions that allow exceptional circumstances rely on the judgment of their boundaries commissions, Ontario, Saskatchewan, Manitoba, and Alberta limit the number of exceptional constituencies either by creating a North/South division or imposing a specific number. The specification of the number of rural and urban ridings in Saskatchewan was upheld in the **Carter** decision.

Legislation tends to last for many years. Circumstances, on the other hand, change constantly. We do not believe it would be prudent to specify the exceptional circumstances in legislation. For the same reason we do not believe the legislation should specify the tolerance for exceptional deviation. We suggest instead a more flexible course of action which is still within democratic control.

While Elections Canada argued that, because the actual range is narrower than the statutory range, the statutory range should be narrowed to fit the actual, we take the opposite view. Experience demonstrates that boundaries commissions can be trusted with a broad discretion for deviation. Nova Scotia is a small, and relatively densely populated province (not because it is heavily populated but because of its small geographical size) in the midst of centralizing its population around HRM. We think it is important that boundaries commissions have broad latitude to deal with our shifting demography.

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## RECOMMENDATION 5

The legislation should authorize the boundaries commission to exceed the standard deviation in exceptional circumstances. The circumstances and tolerance should not be specified.

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## Select Committee

We have recommended there be no limits on exceptional deviation in the legislation. That is not because we feel there should never be limits on exceptional circumstances or deviation. It is because we believe there ought to be flexibility to allow democratically accountable people to give direction to boundaries commissions on these important matters as may be required from time to time. The best means of providing this direction is a select committee of the House but, in order to avoid a repetition of the 2012 problem, we recommend that it be an all party committee required to act unanimously.

## RECOMMENDATION 6

### Section 5 of the *House of Assembly Act* Should be Amended to

- Include the principles by which the independent boundaries commission is to recommend electoral boundaries
  - The principles should include a statement that voter parity is the primary factor and allow:
    - a standard deviation from the constituency average of plus or minus 25 per cent,
    - one or more exceptional deviations greater than the standard deviation,
    - the legislation should not restrict the circumstances or tolerance for deviation,
    - non-contiguous ridings.
  - Authorize an all party select committee, acting unanimously, to
    - define terms and words in the principles established for boundaries setting in section 5 of the act,
    - add terms of reference for the boundaries commission,
    - define the parameters of exceptional deviation including the scope for deviation, and circumstances such as communities and community interests, justifying exceptional consideration by the boundaries commission,
    - direct or authorize the boundaries commission to recommend the total number of constituencies,
    - direct the boundaries commission to prepare boundaries based on two or more total numbers of constituencies established by the select committee,
    - allow the boundaries commission to prepare boundaries based on two or more total numbers of constituencies.<sup>154</sup>
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<sup>154</sup> Note: it would not be prudent for this commission to attempt legislative drafting. Our intent here is to describe the principles, not to draft the legislation that embodies them.

## The 2002 Exceptional Ridings

We recommend restoration of the discretion to recommend exceptional ridings but we do not recommend that the exceptional ridings, as they existed in 2002, be restored. We do this for four reasons:

- Populations have changed since 2002.
- We respect the independence of the 2018 boundaries commission and the integrity of the public consultations it will engage in.
- We do not presume to have consulted Nova Scotians on boundaries delineation.
- It may be there are other geographic areas of the province where opportunities exist to improve the representation of Acadians or African Nova Scotians.

To be clear, we are not recommending against restoring the 2002 exceptional ridings. Instead we have recommended principles for boundary setting that allow exceptional ridings and rely on the good judgement of the 2018 commission.

## ADVICE TO THE SELECT COMMITTEE AND BOUNDARIES COMMISSION

We have recommended there be no limits on exceptional deviation in the legislation. We have suggested the discretion be placed in the hands of the boundaries commission or a select committee acting unanimously. And we have made no recommendation regarding restoration of the 2002 exceptional ridings.

Instead we offer five recommendations for consideration by the select committee and the boundaries commissions.

### Where To Start

The NSCA said that “in a boundaries case, the odds favour the *status quo*. It is the incumbent view of effective representation that attracts judicial deference.” While the Court was describing the legal standard of deference a court owes established boundaries, similar factors apply when a boundaries commission considers the work of its predecessors. The Chief Electoral Officer of Canada specifically recommends against moving boundaries “unless changes in populations and in communities require such a change so as to ensure effective representation”.<sup>155</sup> Moving electoral boundaries can be disruptive to communities and local political organizations. Therefore, the *status quo* is the presumptive starting point for a boundaries commission. However, the 2018 boundaries commission will be faced with the difficult choice between the 2002 boundaries, the last based on a nonpartisan standard, and the controversial and contested 2012 boundaries.

The terms of reference currently in force were established, or at least enforced, in 2012 by unconstitutional means. While the terms and resultant boundaries have not been declared unconstitutional they are in some degree of doubt and, from what we heard, disrepute in some quarters. So, we believe the boundaries commission should, at the very least not regard the 2012 boundaries with the same level of respect it might have extended in other circumstances. And the 2002 boundaries should be regarded as foundational, at least as they pertain to the exceptional ridings and adjacent areas.

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<sup>155</sup> Enhancing the Values of Redistribution: recommendations from the Chief Electoral Officer of Canada, 2005 at pp 20.

## Who To Start With

The manner in which the exceptional ridings were extinguished in 2012 was not only unconstitutional but also, as we were told a number of times, disrespectful to two of our founding communities. While this does not, in and of itself, constitute an exceptional circumstance for the purpose of calculating boundaries, it does place Acadians and African Nova Scotians first in line for consideration. Whether or not there is a constitutional right to an exceptional riding, one having been granted there is an expectation of at least some process for discussion prior to its removal.

We have heard the argument that sections 16 to 23 of the *Charter*, and the status of Acadians as one of Canada's official languages communities, justify exceptional treatment of Acadians. The NSCA was faced with the same argument and chose not to deal with it. We have already said that both Acadians and African Nova Scotians are deserving of measures, under Section 15 of the *Charter*, to ameliorate disadvantages suffered by individuals and groups based on race, ethnicity, and language.

We do not offer an opinion on whether the *Charter* imposes any legal obligation regarding electoral boundaries but it is a factor to be weighed by the select committee and boundaries commission.

The Supreme Court explains, in the **Succession of Québec Reference**, that the *Charter* is built on four underlying principles or values—federalism, democracy, constitutionalism and the rule of law, and the protection of minorities—and that “[n]o single principle can be defined in isolation from the others, nor does any single principle trump or exclude the operation of any other”.<sup>156</sup> The democratic rights set forth in *Charter* s. 3 must therefore be interpreted in a manner that is consistent with other principles in the *Charter*, including the protection of minorities set forth in s. 15 and the special constitutional status afforded to Acadians as an official language minority community in ss. 16-23.

The Supreme Court states that the linguistic rights set forth in these sections should be interpreted as remedial provisions “designed to correct, on a national scale, the progressive erosion of minority language groups and give effect to the concept of the ‘equal partnership’ of the two official language groups.”<sup>157</sup> In **Doucet-Boudreau**, the Court elaborates further that these rights are meant to “correct past injustices not only by halting the progressive erosion of minority official language cultures across Canada, but also by actively promoting their flourishing”.<sup>158</sup> These principles for the protection and promotion of official languages minorities must therefore be taken into account in the interpretation and application of s. 3, and the principle of effective representation it entails. The removal of the exceptional ridings in 2012 and the subsequent weakening of the Acadian community run contrary to these principles.

Similarly the historical dispersal of African descended people throughout Nova Scotia, which had, and still has, the effect of significantly weakening the impact of the votes of people who, if they all lived in one compact place, would constitute a constituency, is also an important consideration.

Finally, the fact that exceptional ridings for Acadians and African Nova Scotians were an accepted part of Nova Scotia's political landscape for 20 years is a further indication that they fall within Nova Scotia's political norms.

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<sup>156</sup> Reference re Secession of Quebec, [1998] 2 SCR, 217, para 49.

<sup>157</sup> Mahe v. Alberta [1990] 1 SCR 342 at 346 at 364.

<sup>158</sup> Doucet-Boudreau v. Nova Scotia (Minister of Education) [2003] SCC 62, para 27.

## Calculating Exceptional Deviation

The first question in determining deviation is the baseline from which the deviation is calculated. In the case of standard tolerance it is obviously the average constituency population. But how do we measure exceptional deviation? There are three possible starting points:

- the average constituency population,
- the statutory standard tolerance (i.e. +/- 25%).
- the actual deviation among standard ridings.

Deviation from the average is misleading. It falsely implies that the exceptional deviation is from the average, as if all other ridings were average when in fact some may be as low as 75 per cent of average. Deviation calculated from the standard tolerance better portrays the portion of the total deviation attributable to the exceptional circumstance as there is nothing exceptional about the first 25%. The boundaries commission should consider portraying it in that fashion.

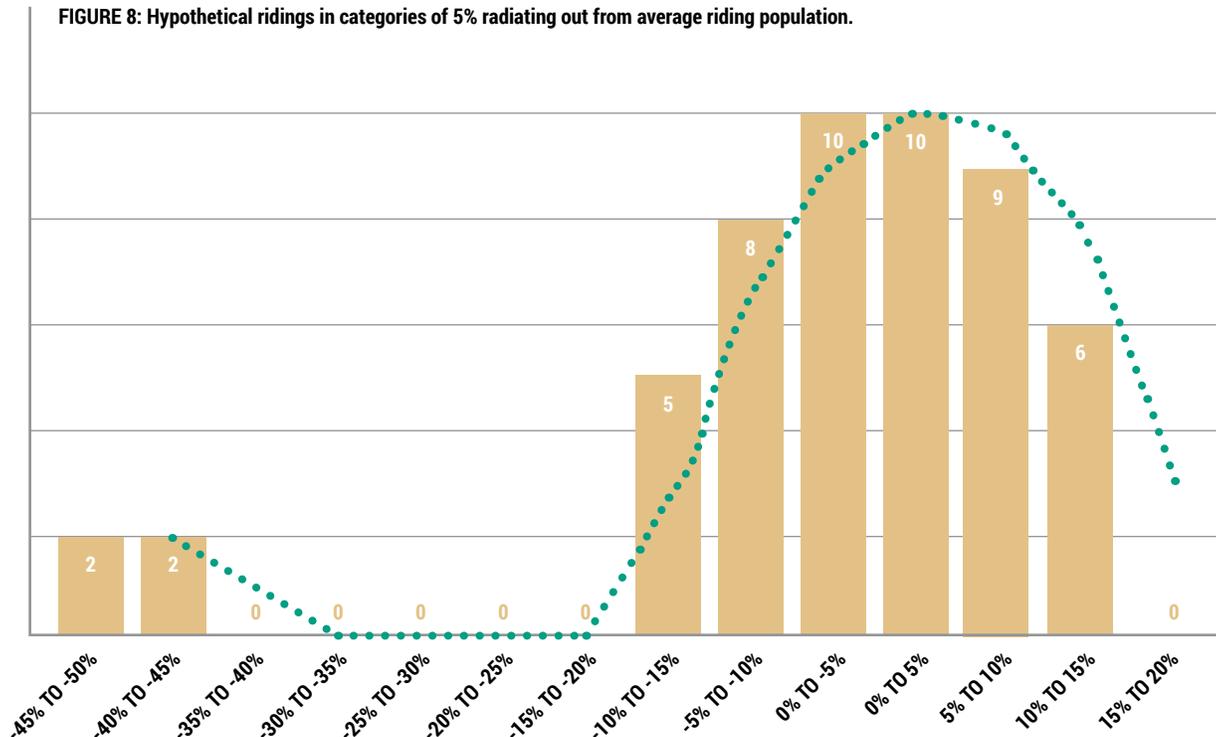
## The Impact of Deviation

The practice is to apply deviation from parity as the full measure of the impact. However, the impact of deviation is in the House, not the ballot box. As we said, the purpose of elections is to convert votes into political power. The true measure of the effect of a deviation is its impact on political power. A small deviation that applies to a large number of ridings, in conjunction with the tendency of FPP to exaggerate results, may convert an actual minority into a political majority. On the other hand, a large deviation in a small number of ridings will have little impact on the House. While it is true, in a close election every seat counts, that is by definition, true of every seat.

The smaller the number of exceptions the more exceptional they can be without significantly affecting the conversion of votes into political power.

In figure 8, we have taken the same graphical illustration we used earlier to portray actual constituencies to show how a distribution might look with four hypothetical exceptional ridings. Assuming an average constituency population of 20,000 and 48 of 52 constituencies are within plus or minus 15 per cent of average and the four exceptional ridings have a population of 10,000 each, it is apparent the actual impact of a 50 per cent exceptional deviation is small – four (instead of two) of 52 seats.

FIGURE 8: Hypothetical ridings in categories of 5% radiating out from average riding population.



### The Number of Constituencies

The more constituencies there are, the more responsive the electoral boundary setting process can be and the less deviation is required to ensure effective representation across the province and particularly in exceptional circumstances. We recognize the political hazards for politicians recommending there be more politicians. However, we have already explained the effects of maintaining the current 51 seats. The public discussion needs to move from the abstract question of the number of politicians to the concrete question of what Nova Scotians want their electoral map to look like. One way to manage this is to ask the electoral boundaries commission to prepare boundary maps for two or more numbers of constituencies.

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## RECOMMENDATION 7

The select committee should instruct the boundaries commission to prepare electoral maps, one based on the present 51 constituencies and another based on a higher number such as 54. In the absence of instruction, the boundaries commission should prepare two or more maps on its own initiative.

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## A SUITE OF MEASURES

Tangible progress on the issues of importance to Acadians and African Nova Scotians cannot rest solely on the shoulders of what will be a small number of MLAs at best. Nor, given the changing demographics, is it prudent to rely on electoral boundaries as the sole means of achieving effective representation. As we have seen, the numbers of francophones in the former protected ridings are declining at a faster rate than that of the local general populations. The 2002 Boundaries Commission recommended a search for alternatives as did the 2012 Commission. In any case a combination of measures is required and this should include all levels of government and people engaged in public affairs.

As we learned from the *Lund Recommendations* in the section on Other Means of Effective Representation, the political position of minorities can be improved at all levels and in many ways. School boards, agencies, boards and commissions (ABCs), and municipal governments provide important services and are also training grounds – and proving grounds – for provincial and federal politics. Political parties can also play a role.

### Advice to the Executive Council

Given that our electoral system tends to under represent minorities in the Legislative Branch, it is incumbent upon the Executive Branch to make extra efforts.

#### Offices

The Offices of Acadian Affairs and Francophonie and African Nova Scotian Affairs are key institutions to their respective communities. We heard and read numerous comments on their importance and received many suggestions for their improvement. We will look at both offices separately and recommend ways that they may be better utilized to improve the effective representation of each community. One theme pertaining to both offices emerged throughout our consultations, members of both communities reported having too little contact with these offices and too little knowledge of what they do. People feel that both Offices have become too inward looking, dealing with the affairs of government at the expense of building connections between government and the communities.

Moving these two offices into the Department of Communities, Culture and Heritage was seen as a diminution of their status. In part this was because there was no consultation with the affected communities. But it is also due to a misunderstanding we heard several times during our consultations about the status of the Offices and this is due to the obscure terminology of the public service. The term “deputy head”<sup>159</sup> refers to the member of the public service designated as the senior manager of a government entity.

<sup>159</sup> Civil Service Act, R.S., c.70, s.2 (1). “deputy head” means the deputy of the member of the Executive Council presiding over a department and all others whom the Governor in Council from time to time designates as having the status of deputy head;

A deputy head reports directly to a minister but the connection may be tenuous as the minister's department will generally be more demanding of their attention. All deputy ministers are deputy heads but not all deputy heads are deputy ministers. The executive directors of the Offices were both deputy heads and it was assumed they were deputy ministers but they were not. Never the less, moving the two Offices under a deputy minister was perceived as a demotion for them and the Offices.

There are normally between 15 and 18 deputy ministers and they are the administrative heads of the major departments. They are the principal administrators in government. They meet weekly and are responsible for implementation of government policy and the management of their departments. Independent offices, such as the Office of African Nova Scotian Affairs and the Office of Acadian Affairs, have a minister at the cabinet table but no deputy minister at the deputy table. Moving the offices into a department, all other things being equal, gives them access to a larger pool of resources and the attention of the deputy minister of CCH and, through her, the other deputy ministers. However poorly the transition was communicated, it offers internal structural advantages which can serve as a basis for improved impact within government and as a result government impact within the communities. Although the idea of independence for these offices is, on its face, attractive, in practical terms access to resources and senior decision-makers, has the potential to make them more effective. In government "independent" can mean "isolated".

### **Office of Acadian Affairs and Francophonie (OAAF)**

The establishment of an advisory committee to the Minister of Acadian Affairs and Francophonie was suggested numerous times in our consultations. Such a committee could provide formal structure for ongoing discussions between the government and the community. Albeit indirectly, it would improve the recognition and representation of Acadians in the affairs of the province. We also believe it would be very helpful to the Minister as well as the OAAF in their efforts to improve their connections with the community.

This committee should be chaired by the Minister of Acadian Affairs and Francophonie, the Executive Director of the OAAF could serve as secretary and the Deputy Minister of CCH could be an ex officio member. The committee's mandate would be to provide advice to the Minister on issues, policies and legislation of particular interest to the Acadian and francophone community of Nova Scotia. As for the composition of the committee and terms of reference, we recommend that OAAF establish these in consultation with the FANE. Further, we encourage the OAAF and the FANE to include the senior managers of the province's key Acadian institutions as non-voting, ex officio members, notably the executive director of the CSAP and of the CDÉNÉ and the president of Université Sainte-Anne. Finally, we propose that the mandate, composition and terms of reference of this body be enacted into law.

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## **RECOMMENDATION 8**

**The Minister of Acadian Affairs and Francophonie should establish a formal advisory committee.**

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We heard numerous, often disparate recommendations, pertaining to the availability of French language services in various parts of the province, improvement to the *French-language Services Act*, “ombudsmanship”, funding allocation, and so on. These issues can be discussed by, and possibly solutions found, through the advisory committee. However, although this advisory committee would constitute the key pillar in the OAAF strategy to improve its connectivity with the community, it should not be its only strategy. The OAAF should continue to pursue its efforts to help Acadians and their organisations navigate in government and help them find programs, services and initiatives.

To improve the understanding of and responsiveness to Acadian and francophone issues within government there should also be a deputy ministers committee for Acadian and francophone issues supported by an officials committee. This combination of committees has been employed in government with mixed results. Where they have worked, the deputy ministers have been supported by officials whose normal activities have some degree of pertinence to the subject matter and whose performance management plan includes the committee. We leave the composition and mandate of the committees to the Executive Council.

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## RECOMMENDATION 9

**A deputy ministers committee, supported by an officials committee, should be established with responsibility for Acadian and francophone issues in government.**

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### African Nova Scotian Affairs (ANSA)

One thing we heard frequently from the African Nova Scotian community was that it lacks the political infrastructure and network equivalent to that built up over the years by the Acadian community. The Acadian community has had a French language newspaper since 1937, an umbrella organization to coordinate the efforts of its many sectoral and community organizations, several community radio stations, the CSAP, and the support of the federal government both in the form of official languages legislation and programs, and Radio Canada. These organizations enable Acadians to build continuing relationships with government and among themselves. The African Nova Scotian community has many community level organizations and numerous long-standing networks such as the African United Baptist Association. Several speakers indicated the community is very good at organizing around an issue or to achieve a specific goal. However, the long-term, daily relations with governments that are so important for pursuing long-term, strategic goals are strained and weak.

It clearly emerged in our consultations that the African Nova Scotian community is seeking more support from African Nova Scotian Affairs. In the absence of an established stable provincial organisation representing their needs and desires to government, the community looks to ANSA to serve as their voice within government. Members of the African Nova Scotian community also often look to ANSA to inform them of government programs and services and in some instances to navigate them through application processes. They want ANSA to be more outward facing than it is at present.

The establishment of a provincial advisory body to the Minister of African Nova Scotian Affairs would be an important first step in establishing a better linkage between the Minister, ANSA and the community. Furthermore, this body would provide a formal structure for ongoing discussions between the community and an excellent means of representation, albeit indirect, in the public affairs of the province for the African Nova Scotian community in government.

This committee should be chaired by the Minister of African Nova Scotian Affairs, the Executive Director of the ANSA could serve as secretary and the Deputy Minister of CCH could be an ex officio member. The committee's mandate would be to provide advice to the Minister on issues, policies and legislation of particular interest to the African Nova Scotian community. As for the composition of the committee and terms of reference, we suggest these be recommended by ANSA following a consultation with key stakeholders including youth in the community.

The African Nova Scotian community seems best organised around the issue of education, with an elected representative on each regional school board and the existence of the African Canadian Services Division at the Department of Education. We recommend that these structures be considered as a starting point for other organizations. Another option for consideration for this organization would be to encourage regional representation or representation by focus area, for instance education, business, health, justice. We propose that the mandate, composition and terms of reference of this body be enacted into law.

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## RECOMMENDATION 10

The Minister of African Nova Scotian Affairs should establish a formal advisory committee.

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## The BLAC Report

The African Nova Scotian community has a proud history of championing equitable education for African Nova Scotian learners. During our consultations, people expressed frustration with government's handling of the Black Learners Advisory Committee (BLAC) Report.

The Black Learners Advisory Committee was appointed by the Government of Nova Scotia to conduct a thorough review of the past and present status of the education of African Nova Scotians. After four years of study and consultations, the committee released the BLAC Report on Education: Redressing Inequity – Empowering Black Learners<sup>160</sup>. The Report made recommendations on education and related issues such as community, justice, self esteem and anti-racism.

*“The report published in 1994, when the government of Nova Scotia and all political parties signed on to 46 recommendations aimed at transforming generations of injustice into seasons of hope for African Nova Scotian learners”.*<sup>161</sup>

It was remarkable how often the BLAC Report came up during our consultations in African Nova Scotian communities. So many feel the recommendations were never acted on and this has left the community with feelings of distrust towards government.

In 2009, Reality Check: A Review of key program areas in the BLAC Report for their effectiveness in enhancing the educational opportunities and achievement of African Nova Scotian learners<sup>162</sup>, was conducted. The independent review said that,

*“Some of the outcomes of the programs and initiatives put in place have been embraced and celebrated. ... Yet today African Canadian communities still seek precise numerical information on their young learners and reliable data on their progress as a group. All those with the interests of these young learners at heart want to know what compulsory education has done for them. Are the programs of equity and redress put in place for African Nova Scotian learners reaching them, or are they mostly still left standing outside... This study has demonstrated that transformation on a large scale does not necessarily translate into change on a daily level or touch the lives of those it is intended to serve. Clearly the true value of this report will be the successes and healthy experiences of African Nova Scotian learners in the province's schools.”*<sup>163</sup>

Whether it is lack of implementation, lack of communication or a combination of the two, we cannot say. We can say the frustration associated with the BLAC Report is an obstacle to progress and the Advisory Committee should consider how to resolve this.

<sup>160</sup> BLAC Report on Education: Redressing Inequity—Empowering Black Learners <https://acs.ednet.ns.ca/sites/default/files/BLAC%20Report%20on%20Education%20Vol%201-3.pdf>

<sup>161</sup> Reality Check: <https://www.ednet.ns.ca/docs/realitycheckfinalreportforweb.pdf>, p. 1.

<sup>162</sup> Ibid.

<sup>163</sup> Ibid.

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## RECOMMENDATION 11

The formal advisory committee to the Minister of African Nova Scotian Affairs should explore ways to address community concerns about the Black Learners Advisory (BLAC) Report.

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To improve the understanding and responsiveness of African Nova Scotian issues within government there should be a deputy ministers committee for African Nova Scotian issues supported by an officials committee. We leave the composition and mandate of the committees to the Executive Council.

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## RECOMMENDATION 12

A deputy ministers committee, supported by an officials committee, should be established with responsibility for African Nova Scotian issues in government.

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These internal committees can play a vital role within government but will not be well suited to building the linkages that are required between the community and government. From what we heard ANSA needs to increase its outreach capacity if it is to meet its mandate to “keep African Nova Scotians informed and encourage involvement”. This is of greatest importance in remote rural parts of the province. ANSA could help these communities build their local social infrastructure and networks. We suggest that ANSA explore establishing satellite offices in other parts of the province similar to the office it has in Sydney.

Furthermore, it seems a provincial African Nova Scotia body outside of government to act as a spokesperson for the community may be useful. ANSA could help facilitate the initiation of such a project. In recalling the Cultural Autonomy model presented earlier, one option worth exploring would be to support the development of local community centres and their activities while helping establish a provincial network of these centers as a means helping the community improve its voice independent of government. This strategy or one like it would simultaneously boost the communities’ social proximity and institutional completeness. Still in its planning stage, the Digby Community Centre model is designed to be a hub for the community. That model could be reproduced in African Nova Scotian communities elsewhere in the province.

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### RECOMMENDATION 13

That ANSA be appropriately resourced to increase its capacity to work directly with African Nova Scotians in their communities to facilitate the establishment of the political/social infrastructure necessary for their effective representation.

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The Commission heard at almost every consultation session that each community has unique needs and that there is a lack of communication especially in the rural areas. They feel disconnected from the “centre”. The people who attended the sessions said that the further away from Halifax they are, the more excluded they feel. Once ANSA has increased capacity, one of its focuses should be on communications and engagement. This would fulfil one of ANSA strategic priorities “to work collaboratively with the African Nova Scotian Community to foster development and capacity building”.

We heard that the African Nova Scotian community is seeking to be engaged, informed and feel represented. They had numerous suggestions on how to do this, but consistently we heard the need for information about the electoral process, appointments to Agencies Boards and Commissions (ABC’s), return of the Preston riding as an exceptional riding, and the overwhelming need to involve African Nova Scotian youth in all aspects.

Almost every community we visited requested additional information about the electoral process. Although most people that attended the sessions were familiar with the process, they are concerned about the youth as civics education is no longer a part of the school curriculum and they fear the youth are disengaged. Accompanying civic engagement is leadership development and together they could lead to greater participation of African Nova Scotians especially youth.

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### RECOMMENDATION 14

That ANSA collaborate with other agencies such as the Union of Nova Scotia Municipalities, and the universities to develop and host civic engagement information sessions across the province.

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## RECOMMENDATION 15

That ANSA promote and encourage African Nova Scotians to apply for agencies, boards and commissions.

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### Operational Plans and Resources for OAAD and ANSA

Given the increased mandate and responsibilities we propose for these Offices, it will be necessary to appropriately resource the Offices to fulfill their objectives. However, in saying this we are not proposing a blank cheque. It will be essential for these Offices to review their strategic and operational plans, to ensure they are set up not so much to do for communities as to instigate and support communities as they do for themselves. From what we heard, the Offices need to better “build the outside in” so they can share information across government and communities, encourage innovation, and build connections that will not require their constant support. We are not so presumptuous as to think we are telling these Offices something they do not already know and do. We have seen this approach in action. Their communities want them to do more and better. That will require a cheque but it need not be blank. As much as anything we are speaking here to the communities so they understand that the Offices will be working with and through communities and organizations. These Offices may grow but they will never be large.

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## RECOMMENDATION 16

The budget and operational plans for the Office of Acadian Affairs and Francophonie, and Office of African Nova Scotian Affairs should be reviewed to ensure the offices have the resources and structure necessary to meet their objectives.

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## Public Service

The Nova Scotia Public Service is a significant opportunity for effective representation of African Nova Scotians, Acadians and other marginalized populations. While Acadians have served at senior levels of government, only one African Nova Scotian has ever served at the deputy minister level and that was in the 1990's. Suffice to say very few members of these communities have served in senior positions. African Nova Scotians and Acadians want to be better represented in the public service, particularly at the senior levels.

The Diversity and Inclusion Strategy, "Raising the Bar"<sup>164</sup> is in place until 2018. Its goals include:

- Goal 1:** demonstration and accountability for an ongoing commitment to diversity and inclusion,
- Goal 2:** equitable reflection of the NS public at all levels of the workforce,
- Goal 3:** ensuring an inclusive and respectful workplace, free of harassment and discrimination; and;
- Goal 4:** being a culturally competent workforce that values diversity and inclusion.

The realization of these goals is widely endorsed as foundational to effective representation of marginalized populations.

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## RECOMMENDATION 17

**The Public Service Commission should pursue robust action on the raising the bar goals.**

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## Agencies, Boards and Commissions (ABCs)

Agencies, boards, and commissions (ABCs) offer African Nova Scotians and Acadians an opportunity to be heard, represented and be seen to be heard and represented. There are more than 155 ABCs to which the government of Nova Scotia appoints members.

African Nova Scotians in particular expressed dissatisfaction with the appointment process and lack of African Nova Scotian representation on ABCs. It must be said that it became apparent during the discussion that there are, as you would expect in any group of people, varying levels of familiarity with the application process ranging from people who had used it to apply to those who were entirely unaware of its existence. It must also be said that we do not know how many African Nova Scotians have been appointed to ABCs but we assume they are underrepresented, as does everyone we heard from.

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<sup>164</sup> RAISING THE BAR, A Strategy to Build Diversity and Inclusion in The Public Service <http://www.novascotia.ca/psc/pdf/employeecentre/diverseworkforce/raising%20the%20bar.pdf>

### *The Application Process*

It strikes the Commission that the issue with ABCs is not one of intentional exclusion but of gaps in communication and trust between the communities and government, and of overcoming implied assumptions and habits within government. As our report was being written the ABC appointments process was being revised to make it more streamlined and inclusive. Information about the process has been online for some time and an online application system was initiated in September 2017.

We are satisfied that the government officials overseeing the process are committed to inclusion and fully understand that it is not enough to simply put an application process on line. For example, they no longer rely primarily on print advertisements and instead are increasing efforts to reach out to diverse communities through online advertising, social media, and direct contact with stakeholders. Our own experience in organizing our public consultations confirmed to us that conventional media no longer has the reach it once had even in the broader community and perhaps never did in minority communities. So, we agree that it is necessary to tap into social networks and institutions in minority communities.

The new process encourages members of marginalized communities to self-identify. They may, for valid historical reasons, be uncomfortable with this. But encouraging applicants to self-identify is really the only tool available to government to encourage diversity and track results. Until recently only gender and regional representation on ABCs could be tracked. Now that applicants are being asked to complete an employment equity and diversity statement as part of their online profiles, the government will be able to compile data regarding other diversity criteria as well. The statement is voluntary but it is hoped applicants will be more willing to share information about themselves once they see it is being used to track progress, and connect good candidates with opportunities that might interest them. Given the voluntary nature of the statement, the data will not be an entirely accurate reflection of the diversity of our ABCs in the short term but it will at least provide some sense of how efforts to promote diversity on ABCs are going.

We were also pleased to learn that the Executive Council Office is enhancing recruitment efforts in targeted communities by, for example, reaching out to a wider range of stakeholder groups and featuring members of those communities in advertising for ABCs.

### *The Evaluation Process*

The appointment system is decentralized. That is, the Executive Council Office sits at the centre of government and, among its many responsibilities, manages the appointment process but the actual evaluation of applications and preparation of recommendations is done by the departments responsible for each of the ABCs. So, applications for board X will be collected and logged at the Executive Council but sent to the Department of X for evaluation and recommendation. While this distribution has much to recommend it – the subject matter experts are in the departments and anyway the Executive Council is too small an office to vet all the applications for more than 150 ABCs – it does make a comprehensive and strategic approach to inclusion more difficult.

More generally, research has shown that evaluation processes are prone to implicit assumptions and biases. That is, people – including people with the best intentions – tend to recruit people like them if they do not make a conscious effort to follow an unbiased recruitment process. As Albert Einstein is purported to have said “I don’t know who discovered water but it probably wasn’t a fish”. So we were pleased to learn that the Executive Council has asked departments to review their selection criteria to ensure they are not inadvertently discouraging or screening out good minority candidates, and changes have resulted in some departments as a result.

ABCs are an important means by which the government can bring Acadian and African Nova Scotian perspectives into public administration and at the same time have information about public affairs flow back to the communities. They are also opportunities for individuals to gain experience, burnish credentials, and build all-important networks. In any case, ABCs need to be more inclusive. While it is heartening this view is shared by those directly involved – this is not a case of beating on a closed door – the work that is underway to make the door wider and more welcoming needs to continue and expand. We were told that staff are actively examining the best methods of enhancing diversity with a view to developing and implementing a strategy specific to ABCs in the near term.

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### **RECOMMENDATION 18**

As part of its efforts to encourage departments to review their selection criteria for ABCs, the Executive Council Office should provide assistance to the departments specifically to help them identify barriers and implicit assumptions that may discourage minority applicants or prejudice their evaluation.

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### **RECOMMENDATION 19**

The Executive Council should continue its efforts to ensure minority communities are aware of the ABC application process through social media and community networks.

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## African Nova Scotian Seats on School Boards

During our consultations a number of participants cited the African Nova Scotian seats on the seven English language school boards as performing at least five important functions:

- providing the boards and senior administrators with an African Nova Scotian perspective on education;
- helping to link the schools and the African Nova Scotian community;
- providing political experience to board members and even unsuccessful candidates, for the position;
- acknowledging the importance of the African Nova Scotian community to the larger community;
- symbolizing the priority the African Nova Scotian community attaches to education as a means of advancement while simultaneously promoting education within the African Nova Scotian community.

As it continually adapts the education system, we urge the Department of Education to always consider the broader roles and significance of the African Nova Scotian school board seats.

## Municipalities

The municipal level of government, given its variety and scale, provides one of the most promising options for the effective representation of Acadians and African Nova Scotians. Our consultations brought to light several examples that could inform policy in this regard. The timing is favourable; the Department of Municipal Affairs is in the process of reviewing the *Municipal Government Act* in collaboration with the Association of Municipal Administrators of Nova Scotia and the Union of Nova Scotia Municipalities.<sup>165</sup>

## Bilingual Services

The Municipality of the District of Clare is for all intents and purposes a bilingual municipality offering its services and conducting its business in both French and in English. In FANE's submission it is cited as an example to be replicated by other municipalities with large Acadian populations, notably Argyle, Richmond, and Inverness. Halifax has the largest francophone population in the province and should be included in discussions pertaining to municipal services in French. Representatives from the municipality of Clare told us that they have no explicit bilingualism policy or bylaw and receive no external funding for interpretation or translation. They explained it is simply a long-standing practice in the municipality which its population expects. This practice continues at the pleasure of the municipal council and only to the extent to which the municipality can afford it. For example, Clare does not have the financial means to provide for translation of its bylaws, contracts and other legal documents as well some of its lengthier commissioned studies and strategies. Clare is bilingual to the degree which it can afford to be and will remain bilingual so long as it can afford it. Under such conditions, it could prove difficult for a Council in another municipality to move towards bilingualism services in the context of scarce budgetary resources.

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<sup>165</sup> <https://novascotia.ca/dma/>

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## RECOMMENDATION 20

The Department of Municipal Affairs in collaboration with the Municipality of the District of Clare should identify and implement a strategy to recognize the Municipality of Clare as officially bilingual as part of the *Municipal Government Act* review.

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## RECOMMENDATION 21

The Department of Municipal Affairs should identify, in collaboration with the Office of Acadian Affairs and Francophonie, strategies and funding to support the provision of French services by municipalities, notably, but not limited to, the municipalities of Clare, Argyle, Richmond, Inverness, and Halifax.

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### Municipal Electoral Boundaries

Earlier we referred to two measures employed by specific municipalities to improve the representation of Acadians and African Nova Scotians.

The first pertains to municipal electoral boundaries.

The electoral district maps of Argyle and Guysborough are drawn to improve Acadian and African Nova Scotian, respectively, representation on their municipal councils. In Argyle, the districts correspond to historic settlement patterns of the Acadian and anglophone communities. Guysborough deliberately created the municipal equivalent of an exceptional riding for the predominantly African Nova Scotian communities of Lincolnville, Sunnyville and Upper Big Tracadie.

These practices should be examined for applicability in other municipalities.

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## RECOMMENDATION 22

The principles of boundary setting proposed in this report for provincial electoral boundaries should be applied by municipalities and the Utility and Review Board when setting municipal electoral boundaries, with particular attention to the effective representation of Acadians and African Nova Scotians.

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### Community Committee

Secondly, as mentioned in *What We Learned: Other Means of Effective Representation*, the Municipality of the County of Inverness established a community committee to improve the representation of Acadians in the Chéticamp – Saint-Joseph-du-Moine area pursuant to section 27 of the *Municipal Government Act*. This committee offers interesting possibilities in terms of local governance and improved autonomy for minorities. It provides an interesting case study which could inform the development of a province wide strategy for improved representation of Acadians and African Nova Scotians at the municipal level. This section of the Act may however have to be adapted so that it can apply to communities that do not fall within the confines of an easily defined area of a municipality.

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## RECOMMENDATION 23

The Department of Municipal Affairs, in collaboration with the Association of Municipal Administrators of Nova Scotia and the Union of Nova Scotia Municipalities, should consider ways to utilize and, if necessary, adapt section 27 of the *Municipal Government Act* to enable community committees to be established for Acadians and African Nova Scotians.

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## RECOMMENDATION 24

The Union of Nova Scotia Municipalities should canvass its members to develop an inventory of measures in place or under consideration to improve the effective representation of minorities at the municipal level.

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### Civil Procedure Rules

The Civil Procedure Rules are, as the name suggests, the rules that govern procedures in the Supreme Court of Nova Scotia and Nova Scotia Court of Appeal. They have been translated into French<sup>166</sup> but the French version is for convenience only. That is, they do not have official status. The Rules are made by the judges of these courts.<sup>167</sup>

In 2005 at the beginning of the project to revise the Rules, l'Association des juristes d'expression française de la Nouvelle-Écosse (AJEFNE) secured funding for French translation of the Rules and the judges agreed to publish a French version.

The translated Rules are kept up to date but do not have the force of law because to enact the Rules and related court forms in both languages requires the prothonotaries and other court staff to understand and accept forms in either language. The courts do not have the capacity for that. Given the significant resource requirement and relatively limited and specialized utilization of the Rules, we think the resources required would be better allocated where they can affect the daily lives of more people, for instance in the Office of Acadian Affairs, Service Nova Scotia, and the municipalities. However, this should be discussed at the Advisory Committee recommended in the section on the Office of Acadian Affairs.

### Advice to Political Parties

#### Private Parties, Public Responsibilities

Political parties are private organizations and it is vital that they remain that way if we are to have a free democracy. At the same time, their purpose is to compete for political power and one of them will provide the people who govern the province while the others will populate the opposition with the equally important job of holding the government to account. For all practical purposes they are the sole route to political office and party discipline is a key element in a government's ability to stay in office and achieve its mandate. They are also publicly funded. Candidates who receive at least 10% of the vote in an election are reimbursed a portion of their expenses<sup>168</sup> and political contributors are entitled to a tax credit.

So, although they are private organizations, they perform a vital public function and are supported as key elements of our democratic institutions.

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<sup>166</sup> [http://www.courts.ns.ca/Civil\\_Procedure\\_Rules/cpr\\_in\\_french.htm](http://www.courts.ns.ca/Civil_Procedure_Rules/cpr_in_french.htm)

<sup>167</sup> [http://www.courts.ns.ca/Civil\\_Procedure\\_Rules/cpr\\_home.htm](http://www.courts.ns.ca/Civil_Procedure_Rules/cpr_home.htm)

<sup>168</sup> Elections Act, s.267.

## Discussion

No candidate can embody all the personal characteristics of the people in their riding but political parties are in a position to ensure their slate of candidates is diverse and reflects at least some of the major personal characteristics of our population.

Bilingualism is a competence the parties should value greatly especially in ridings like Inverness which has 2,134 francophones<sup>169</sup> and where Acadians have a large historic community, and also in ridings like Yarmouth (1,416 francophones), Bedford (1,018 francophones), Cole Harbour Eastern Passage (874 francophones) and Dartmouth East (836 francophones) where they are increasingly present in large numbers. Overall, 10.5 per cent of the Nova Scotian population is bilingual.

Descriptive representation is vital to equity seeking groups. Gender representation within the Acadian and African Nova Scotian communities is an equally important issue. Of the 6 Acadians and 2 African Nova Scotians elected in the exceptional ridings, only one, Yvonne Atwell, was female. Although, the most recent person to represent Richmond is an Acadian female, suffice to say that few female members of these communities have been elected.

We were encouraged to learn during our consultations in the African Nova Scotian community that two of the major parties are engaged with their community in promoting the advancement of female African Nova Scotian candidates.

These dimensions—African Nova Scotian, Acadian and gender—are important to descriptive representation. There is however also the question of substantive representation, that is representation on issues and policies for the community. It is hard to measure to what extent the exceptional seats favored the substantive representation of these two groups. This is better reflected in policy, legislation and programs. Regardless of whether the next boundary realignment includes exceptional ridings, it is vital to the effective representation of African Nova Scotian and Acadians that their issues and preoccupations find their way into each party's platform.

We often heard that there is a growing sense of apathy and complaisance in the electoral process in both communities. Members of the African Nova Scotian communities often mentioned that it is very hard to engage members of their community in the electoral process, particularly the youth, given the relative absence of any recognition of their existence in the political parties' platforms or mention of their issues in the media. As for the Acadian community, they spoke of an alarming decline in what was historically a very high degree of participation in their communities in the electoral process. Recognition of their issues in party platforms may also help alleviate some of this disengagement, particularly if they are developed with members of the respective communities.

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<sup>169</sup> French mother tongue population in the riding based on 2016 Census.

## Policy and Program

We suggest that, if they have not already done so, each of the five registered political parties in Nova Scotia publicly articulate a policy and a program to promote diversity in their slate of candidates—African Nova Scotians, Acadians as well as others. The program should include a process for early identification of potential African Nova Scotian and Acadian candidates—particularly promising young people—and for mentoring and promoting them. The candidate support we recommend (Recommendation 28) could play a role in this both as a training ground and talent pool.

The parties should also develop practices to ensure candidates who are neither Acadian nor African Nova Scotian build strong connections with those communities during their campaign and maintain them following their election in order to represent them effectively and encourage political engagement. The smaller the minority community in the riding, the greater the importance of outreach. We heard from people who feel forgotten and are resigned to being forgotten.

Such a strategy is particularly important for African Nova Scotians because they are too few and too dispersed to naturally hold the attention of the political parties. Reliance on the normal political processes could leave them unrepresented in the party, the platform, and the House.

Some have suggested that the three major parties take their commitment a step further and agree on a riding where all three would run an African Nova Scotian candidate, as was done in Preston in 1992.

One of the party leaders has suggested increasing election funding by 50 per cent for women, African Nova Scotians and Indigenous candidates. This would incent parties to seek out candidates from underrepresented groups. This seems to us to be an idea worth pursuing. Unfortunately, it came to our attention as we were completing our report and there ought to be an opportunity for discussion and study. There is, for instance, the potential for gaming the system. In their submission to the Commission on Electoral Reform in New Brunswick, the New Brunswick Women's Council, recommended that the Political Process Financing Act (NB)

*... be modified to include additional funding for parties with strong representation of women in their slate of candidates, as well as funding for parties which see their women candidates elected.*

*The latter measure may seem redundant or even problematic as it is based on the will of the electorate, but it serves an important function: to encourage parties to run women in competitive ridings. Were financial incentives only tied to parties running more women, parties could conceivably boost the number of women candidates they field by running women in their non-competitive ridings...*

We also believe the discussion of additional funding should extend beyond the two communities in our mandate. There may be other ways to incent political parties to make extra efforts and take chances on minority candidates. We recommend it for further consideration.

## RECOMMENDATION 25

The Election Commission<sup>170</sup> should consider incentives to encourage the recognized political parties to nominate candidates from the Acadian and African Nova Scotian communities, and other underrepresented groups, including financial incentives to parties or candidates under the electoral finance regime.

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## RECOMMENDATION 26

The recognized political parties should develop policies and practices that promote a slate of diverse bilingual candidates.

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<sup>170</sup> Established under Section 356 of the Elections Act, the purpose of the Commission is "to advise the Chief Electoral Officer regarding the administrative conduct of elections and the administration of the electoral finance regime; piloting of a procedure, equipment or technology; and initiation or conduct of studies respecting the voting procedure, voting by persons with disabilities, and improvements to the electoral finance regime. The Commission is composed of a Chair, appointed by the Governor in Council for a term of 5 years; and two persons appointed by each of the leaders of a recognized party". See <http://electionsnovascotia.ca/about/election-commission>

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## RECOMMENDATION 27

The recognized political parties, if they have not already done so, should develop policies and programs to increase the involvement of Acadian and African Nova Scotians, particularly youth, in their party including measures to:

- Identify, recruit, and develop prospective Acadian and African Nova Scotian candidates, encourage Acadian and African Nova Scotian membership in the party and inclusion on nominating committees,
- In consultation with the Acadian and African Nova Scotian caucuses (recommendation 29) or with MLAs and former MLAs, develop strategies to engage the Acadian and African Nova Scotian communities in ridings where they are small minorities and might otherwise be overlooked.
- Ensure in a general election that the party fields a slate of candidates that is diverse and includes Acadian and African Nova Scotian.
- Ensure in a general election that the party platform includes measures pertinent to Acadian and African Nova Scotian.
- Consider bilingualism a key competency for candidates, particularly in ridings where Acadians and francophones are present in large numbers.

### Candidate Support

We heard a great deal about the need for support of African Nova Scotian and Acadian candidates, especially women. This is an important strategy. The exceptional ridings were explicitly created to improve the chances of electing Acadians and African Nova Scotians. Recruitment, training, and support for candidates is another, complementary strategy. In fact, it is essential if African Nova Scotians and Acadians are to enjoy both descriptive and substantive representation.

Fortunately, there is a model at hand. For more than a decade, the Status of Women Office<sup>171</sup> has conducted a nonpartisan campaign school for women that offers data, advice and information relevant to any election process. The Status of Women Office has also partnered for some years with the Union of Nova Scotia Municipalities to deliver campaign schools in advance of municipal elections.

Participation in the campaign schools has typically been strong with schools at full capacity whenever offered. Several current politicians, federal, provincial and municipal, are graduates of the campaign school.

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<sup>171</sup> <https://women.gov.ns.ca/>

To date the school has been offered free of charge. Issues related to travel and access barriers are addressed with bursary supports to ensure women with distance or child care obligations are supported to attend.

The next campaign school will be offered in May 2018, with some new elements to ensure a more fully culturally grounded approach is developed that allows for the engagement of women from Nova Scotia's marginalized communities. The Status of Women Office is currently working with Diverse Voices for Change,<sup>172</sup> an HRM Based network that is exploring how to improve leadership outcomes for women from Nova Scotia's more marginalized communities.

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## RECOMMENDATION 28

The Office of Acadian Affairs and Francophonie, and the Office of African Nova Scotian Affairs should initiate a process of developing one or more models of culturally specific candidate training for African Nova Scotians and Acadians, both men and women.<sup>173</sup>

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The models could be developed in collaboration with the Status of Women Office, utilizing to the greatest extent possible its experience, network – particularly Diverse Voices for Change – and campaign school model as a base. Development should include models that can be delivered to Acadian and African Nova Scotian men as well.

### African Nova Scotian and Acadian Caucuses

We heard of the unique burden imposed on lone members of a minority surrounded by the majority. French-speaking Acadians, we were told, automatically switch to English even when Acadians are the majority and there is a single unilingual English speaker present. African Nova Scotians quite simply stand out in the crowd. Both Acadian and African Nova Scotian MLAs are expected to represent their respective communities in the broadest sense, even those who do not live in their communities in the physical sense. That is, the lone African Nova Scotian MLA, whoever he or she may be, is expected to represent “their people” across the province. We also heard that MLAs who are neither African Nova Scotian nor Acadian, sometimes have trouble connecting with those communities in their ridings.

We were told of a proven mechanism that could help Acadians and African Nova Scotians to have a stronger, more influential, and consistent presence in Nova Scotia's political system. African Nova Scotian and Acadian caucuses could be advantageous for communities and the political system overall.

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<sup>172</sup> Diverse Voices for Change

<sup>173</sup> It is important that candidate support be external to government so it would not be appropriate for the Offices to be involved in the development and delivery of the services.

With the support of the Nova Scotia government the caucuses could build on existing structures to address legislative and policy concerns of African Nova Scotians and Acadians. The caucuses could each discuss culturally effective ways of engaging their diverse populations in improving the procedural and substantive elements of Nova Scotia's democracy.

They could improve the means of those who have been traditionally under-represented in politics to enhance the existing policy agenda and strategically focus time and resources on specific issues thereby ensuring that the issues are part of the political agenda of the province.

There is a Canadian Caucus of Black Parliamentarians (CCBP) – which will meet in Nova Scotia in 2018<sup>174</sup> – that was formed at the beginning of the United Nations International Decade for People of African Descent. It has grown from the initial “Black Leaders Summit” hosted by Nova Scotia in 2015. It expanded this year to include federal members and senators as well as members of provincial legislatures. The group meets annually to share policy, deliberate and learn about issues of importance to African Canadians. CCBP aspires to provide leadership to create an integrated and national presence with workable solutions for issues and concerns affecting people of African descent and their communities.

The U.S. Congressional Black Caucus was envisioned to provide the opportunity to “ensure that marginalized communities have the opportunity to achieve and empower citizens to address their legislative concerns”<sup>175</sup>. A similar opportunity can be found in the establishment of Nova Scotia caucuses that are non-partisan and inclusive.

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<sup>174</sup> <http://thechronicleherald.ca/novascotia/1497192-black-parliamentarians-meeting-in-n.s.-in-2018>

<sup>175</sup> <https://cbc.house.gov/about/>

While it is important to complement and not duplicate the CCBP, the obvious difficulty in Nova Scotia is the number of sitting Acadian and African Nova Scotian MLAs. The Caucuses should consider achieving a critical mass by including former and present elected officials and welcoming current MLAs who represent substantial Acadian and African Nova Scotian populations in their constituencies.

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## **RECOMMENDATION 29**

The Minister of Acadian Affairs and Francophonie and the Minister of African Nova Scotian Affairs should confer with current and former Acadian and African Nova Scotian MLAs regarding the feasibility and desirability of establishing Acadian and African Nova Scotian caucuses

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# Appendices

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## Appendix 1 – Terms of Reference

### Commission on Effective Electoral Representation of Acadian and African Nova Scotians

1. The Province of Nova Scotia is committed to the creation of a Commission which shall be responsible to consult with Acadian and African Nova Scotians and those others the Commissioners deem it necessary to hear from, by travelling around the Province of Nova Scotia, to obtain their views and suggestions on how best to achieve effective representation for Acadian and African Nova Scotians in Nova Scotia.
2. In carrying out its public consultations and making its recommendations on how best to achieve effective representation for Acadian and African Nova Scotians, the Commission shall:
  - a. Consider the most recent census and other population data available;
  - b. Recognize the paramount importance of achieving relative parity of voting power through constituencies of equal electoral population to the extent reasonably possible, in a manner consistent with the principles enunciated in the *Carter* decision;
  - c. Be guided by the principle that deviations from parity of voting power are only justified on the basis they contribute to better government of the populace as a whole, giving due weight to regional issues within the populace and geographic factors within the territory governed;
  - d. Consider how the Government might best balance the competing social interests of all Nova Scotians;
  - e. Seek the advice and support of Acadian and African Nova Scotians as it relates to the consideration of such factors as community history, community interests and minority representation;
  - f. Seek the advice, support and hear such presentations and consider such other information in such ways, at such times and in such places as it deems advisable, respecting existing or former electoral districts;
  - g. Consider options for achieving effective representation for Acadian and African Nova Scotians, including, but not limited to, creating designated seats for Acadian and African Nova Scotians as may be similar to Section 6(1) of the *House of Assembly Act*;
  - h. Ensure all submissions to the Commission from individuals and organizations be made in public;
3. The Commission shall continue its work as it deems appropriate during the currency of any election general or otherwise, which might be called or occur during the mandate of the Commission;

4. After completing its public consultations, the Commission shall prepare a report which outlines the Commission's recommendations to inform the Province on how best to achieve effective representation for all Acadian and African Nova Scotians, including in any future Electoral Boundary Review. The Commission's report shall contain a detailed analysis of how the Commission arrived at each recommendation and shall provide the supportive reasons/rationale for how the Commission believes each recommendation will achieve effective representation for Acadian and African Nova Scotians;
5. The Commission shall be comprised of three to five persons appointed by the Governor in Council;
6. The Commission shall submit its report to the Minister of Acadian Affairs and Francophonie, and to the Minister of African Nova Scotian Affairs on or before November 1, 2017;
7. Following receipt of the recommendations of the Commission, the Province will take all steps necessary to establish a Select Committee of the House of Assembly, necessary to establish the terms of reference for an appointment of members of an Electoral Boundary Commission by January 31, 2018 in accordance with the provisions of the *House of Assembly Act*.

## Appendix 2 – Public Engagement Sessions

The Commission held 13 public consultations across the province from September 11 to October 4, 2017. The number of attendees varied greatly but all participants were interested in the topic and had important opinions to share with the Commission. We are grateful for their presence and their judicious comments.

<b>Date</b>	<b>Location</b>	<b>Number of participants</b>
September 11, 2017	Shelburne Black Loyalists Heritage Centre, Birchtown	32
September 12, 2017	Clare Salle des anciens combattants de Clare, Saulnierville	53
September 13, 2017	Argyle Centre communautaire de Par-en-Bas, Tusket	40
September 14, 2017	Digby Digby Regional High School, Digby	11
September 19, 2017	Prestons Black Cultural Centre, Cherry Brook	25
September 20, 2017	Halifax École secondaire du Sommet, Bedford	4
September 21, 2017	Halifax North End George Dixon Centre, Halifax	12
September 25, 2017	Richmond Centre communautaire La Picasse. Petit-de-Grat	25
September 26, 2017	Chéticamp Salle des retraités, Chéticamp	24
September 27, 2017	Whitney Pier Menelik Hall, Sydney	9
September 28, 2017	Antigonish Sunnyville Community Hall, Sunnyville	15
October 3, 2017	New Glasgow Ward One Social & Recreation Centre, New Glasgow	15
October 4, 2017	Dartmouth North Boys and Girls Clubs of Greater Halifax, North Dartmouth Site	7

## Appendix 3A – Commissioned Research Reports

### The Effective Electoral Representation of Acadian and African Nova Scotian Minorities by Linda Cardinal, Rémi Léger and Martin Normand

**The Effective Electoral Representation of Acadian and  
African Nova Scotian Minorities  
*Final Report***

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This report was undertaken by the Research Chair in Francophonie and Public Policies for the Commission on Effective Electoral Representation of Acadian and African Nova Scotians. It was written in French and translated in English by the Government of Nova Scotia.

@CRFPP | UOttawa 5 September 2017

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## EXECUTIVE SUMMARY

This report looks at political representation of ethnic and linguistic minorities as well as the best ways to foster their effective participation in political and public life. It forms part of the work being undertaken by the Commission on Effective Electoral Representation of Acadian and African Nova Scotians. This Commission must consult the Acadian and African Nova Scotian populations in order to determine the nature of this representation. The report lays out a conceptual and normative framework that includes the main concepts in the area of minority representation. It also compiles an inventory of the most appropriate mechanisms for effective representation of minorities and provides a summary analysis of their key attributes as they relate to the situation in Nova Scotia.

## HIGHLIGHTS

Nova Scotia is the first Canadian province to make a conscious effort to create an electoral map that ensures effective representation of its African Nova Scotian, Mi'kmaq and Acadian populations.

In 1991, the Supreme Court of Canada recognized that effective representation is a fundamental principle of Canadian democracy and confirmed the rights of individuals to be represented in legislatures and in the Canadian parliament.

Electoral boundaries are set based on a quotient that specifies the average population of a constituency. Norms allow deviations from this quotient, but in special circumstances they can be changed in order to allow a community of interest to exercise its right to effective representation.

At the international level, the *Lund Recommendations* established that there are numerous mechanisms to foster effective minority representation. These mechanisms can be electoral or non-electoral in nature and include participation and governance. There are five types of mechanisms: electoral, institutional, consultation-based, governance-based and self-governance based.

The electoral mechanisms include separate electoral maps for minorities, guaranteed constituencies, electoral seats and quotas. Institutional mechanisms include guaranteed seats in the courts, constitutional conventions and positions reserved for minorities in the public service. Consultation-based mechanisms include an obligation to consult, an obligation to be accountable and putting in place advisory committees. Governance mechanisms are characterized by federalism and the signing of specific agreements. Self-governance mechanisms include the governance of autonomous institutions and the creation of cultural or community parliaments.

In Canada, the mechanisms used are for the most part institutional mechanisms for direct participation, consultation-based mechanisms for indirect participation and mechanisms based on territorial and non-territorial self-governance.

To ensure effective representation of minorities, more than one mechanism may be needed. The analysis of the different mechanisms that exist shows that they must be able to contribute to the vitality of minorities and to strengthen their bond of trust with the state or their government.

## INTRODUCTION

This report deals with effective representation of Acadian and African Nova Scotian electors and the best ways to foster it in Nova Scotia's political and public life. It forms part of the work undertaken by the Commission on Effective Electoral Representation of Acadian and African Nova Scotians.

The report is made up of three parts. The first presents the normative and conceptual frameworks that will guide the examination of effective representation. The framework detailed here draws on three types of sources: i) Canadian constitutional history, ii) Canadian case law and iii) international work on minority representation. It lays out a synthesis of this work to extract the most useful elements for evaluating measures to foster effective representation of Acadian and African Nova Scotian electors.

The second part includes a catalogue of mechanisms organized around the four major models of representation at the international level, namely i) direct participation, ii) indirect participation, iii) territorial self-governance and iv) non-territorial self-governance. The catalogue includes 14 mechanisms or practices taken from 14 countries and 8 Canadian provinces and territories. Three methodological criteria guided our choice of mechanisms: i) they were adopted several decades ago and have a proven track record, ii) they meet the courts' requirements or iii) they give concrete expression to obligations set out in international treaties.

The third part provides an analysis of the key aspects of the mechanisms identified. It singles out the most appropriate mechanisms for Nova Scotia's situation and those that are most likely to meet the requirements for effective representation of electors from the Acadian and African Nova Scotian minorities.

## 1. NORMATIVE AND CONCEPTUAL FRAMEWORK

The first part of this report presents the normative and conceptual framework that will guide this study. It puts forth the main reasons why states or societies where minorities exist have to find models and measures to guarantee their effective representation.

First, we present the main definitions of the notion of minority used in the international and Canadian contexts. These definitions are used to identify the characteristics of a minority which would guide the actions of governments. Then, we proceed with Canadian jurisprudence on the issue of effective representation of minorities. Tribunals have rendered decisions on the issue of representation which entailed changes. Then, we present international norms which frame the issue of ethnic, linguistic and national minorities' representation, because these norms differ from the situation in Canada. Finally, by combining these elements, we mount a normative and conceptual framework which is useful to explain why the effective representation of Acadian and African Nova Scotian minorities has to be taken into account.

### 1.1 What is a minority?

Experts agree that there is no single and universal definition of the concept of a minority (Foucher, 2008). However, on an international level, Francesco Capotorti's definition enjoys consensus. According to Capotorti, the Special Rapporteur for the United Nations Sub-Commission on Prevention of Discrimination and Protection of Minorities during the 1970s, a minority is:

A group numerically inferior to the rest of the population of a State, in a non-dominant position, whose members – being nationals of the State – possess ethnic, religious or linguistic characteristics differing from those of the rest of the population and show, if only implicitly, a sense of solidarity, directed towards preserving their culture, traditions, religion or language (Capotorti, 1977: 33).

In addition to numbers, Capotorti recognizes the social and political nature of minority status. Essentially, his definition is composed of four main characteristics. They are: 1) the group's smaller numbers relative to the total population, 2) its non-dominant position within the state, 3) its common ethnic, linguistic or religious characteristics, and 4) its citizenship of the state of residence.

In a liberal society, individuals can obviously call into question their group membership. Members of an ethnic, religious or linguistic minority can also decide to assimilate into the dominant group for all sorts of reasons. Liberal political theory stresses this right of individuals to not be confined to the group in which they were born (Eisenberg and Spinner-Halev, 2005).

Despite this possibility, Capotorti's definition accepts that there are sociopolitical processes that impose minority status on individuals – even if this status is not always felt as a relationship of domination by these people. Minoritization processes in a given society do not cease to exist because an individual can decide to not identify with his or her group. Minority status is the product of relationships rooted in deep social and political connections.

In the 1980s, Justice Jules Deschênes, who was asked by the United Nations to update Capotorti's earlier work, added an important point to the definition outlined by the latter. According to Deschênes (1986: 287), not only is a minority defined by its particular characteristics, but it must always be understood in relation to the "state in which it is located." In other words, states confer minority status. This is not a natural process, but rather a political one.

However, states are also distinct. There are diverse state traditions that lead to thinking about minorities differently (Cardinal and Sonntag, 2016). Thus, each state represents a specific case for understanding the sociopolitical processes that lead to the birth of a minority group. It is also this same state that will recognize the minority group and confer it rights within a given tradition.

Finally, let's specify that Capotorti's definition does not include aboriginal peoples, as they do not wish to be compared to minorities. The concepts of minority nations or stateless nations are more appropriate for these peoples, as they better reflect the issue of inherent power and the history of colonization that characterize the mobilization of aboriginal peoples (Cardinal and Papillon, 2011).

### 1.1.1 The concept of minority in Canada

The concept of minority in Canada has a long history that goes back, in part, to the passing of the Quebec Act in 1774 and the establishment of Upper and Lower Canada in 1791, which included a legislature for each of these new entities, one of which would be controlled by French Canadians. In 1867, as the Canadian federation was being drawn up, the new constitution included a section on religious minorities. Section 93 stipulated that:

In and for each Province the Legislature may exclusively make Laws in relation to Education, subject and according to the following Provisions:

(1) Nothing in any such Law shall prejudicially affect any Right or Privilege with respect to Denominational Schools which any Class of Persons have by Law in the Province at the Union.

To simplify, this section recognizes the right of Catholic minorities in Ontario and Protestant minorities in Quebec to manage their own school system. Unfortunately, Catholic minorities in New Brunswick and Nova Scotia, notably French-speaking Acadian populations, would not enjoy this right (Cardinal and Foucher, 2017).

The Canadian Constitution of 1867 also includes a section on the use of French and English in the Canadian Parliament and in the Quebec Legislature, as well as in Canadian and Quebec courts. Section 133 stipulates that:

Either the English or the French Language may be used by any Person in the Debates of the Houses of the Parliament of Canada and of the Houses of the Legislature of Quebec; and both those Languages shall be used in the respective Records and Journals of those Houses; and either of those Languages may be used by any Person or in any Pleading or Process in or issuing from any Court of Canada established under this Act, and in or from all or any of the Courts of Quebec.

The Acts of the Parliament of Canada and of the Legislature of Quebec shall be printed and published in both those Languages.

In 1982, thanks to the enactment of the *Canadian Charter of Rights and Freedoms*, Canada affirmed the equality of French and English in the country (sections 16 to 20) as well as the constitutional status of official language minorities in the area of education (section 23). The recognition of the equal status of French and English expands and improves section 133. Through section 23 the federal government conferred the right to education in their mother tongue to official language minorities across the country, paid for with public funds, where numbers warrant.

Thus, thanks to the *Canadian Charter*, Francophones in a minority situation, including the Acadian population in Nova Scotia, would shift from being Catholic minorities to linguistic minorities. Nonetheless, due to the tradition of compromise and federalism, the project of Canadian bilingualism must be understood as belonging primarily to the federal government. Provinces are not required to subscribe to it. In other words, even if the *Canadian Charter* confers language rights to Canadians and recognizes official language minorities, public action is still guided by federalism.

The *Canadian Charter* also establishes Canada's multicultural nature. More specifically, section 27 stipulates that "This Charter shall be interpreted in a manner consistent with the preservation and enhancement of the multicultural heritage of Canadians."

Combined with the *Canadian Multiculturalism Act*, section 27 seeks to confirm the equality of citizens before the law as well as equality of opportunity regardless of ethnic, religious or linguistic origin. Note that Canadian multiculturalism also seeks to promote "full and equitable participation of individuals and communities of all origins" in all sectors of Canadian society.

What is more, the *Canadian Charter* affirms racial equality and gender equality in Section 15. (1), which reads as follows:

Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

(2) Subsection (1) does not preclude any law, program or activity that has as its object the amelioration of conditions of disadvantaged individuals or groups including those that are disadvantaged because of race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

Finally, let's reiterate that the Supreme Court also recognized the underlying constitutional principle of the protection of minorities, in its *Reference Re: Secession of Québec* (1998). It wrote that the protection of minority rights "is itself an independent principle underlying our constitutional order." This adds a constitutional dimension to government action with respect to minorities, even if such a principle remains dependant on the interpretation of existing laws.

In short, in 2017, we can therefore assert that Canada recognizes that our country is home to minorities. Official language minorities, among others, have constitutional provisions aimed at them just like visible, ethnocultural and religious minorities. In addition to its federal structure, Canada is a multinational country that includes first nations, Quebec and Acadia. Canada also recognizes the principles of racial equality and gender equality.

### 1.1.2 The concept of minority in Nova Scotia

Mi'kmaq, Acadian, francophone and African Nova Scotian populations have a historic presence in Nova Scotia. The Mi'kmaq were the first inhabitants of the province's territory and make up two percent of the province's population today or roughly 25,000 people (Nova Scotia, undated).

The Acadian population's history goes back to the arrival of the first European colonists, who founded their first settlement at Port Royal in 1605 (Nova Scotia, Acadian Affairs and Francophonie, undated). Between 1755 and 1763, the British expelled and deported between 10,000 and 18,000 Acadians. They were later allowed to return and Nova Scotia now has almost 35,000 people whose mother tongue is French.

The black community's presence in Nova Scotia goes back to the arrival of the Loyalists fleeing the American Revolution (Nova Scotia, Nova Scotia Archives, undated). Free Blacks as well as Black slaves settled in Nova Scotia during this period. Today, the African Nova Scotian population numbers more than 20,000 people, of which most live in the greater Halifax area, namely in the communities of Cherry Brook and Preston.

During the 1990s, Nova Scotia became the first Canadian province to make a conscious effort to create an electoral map that ensured effective representation of African Nova Scotian, Mi'kmaq and Acadian populations (Courtney, 2004).<sup>1</sup> In 1991, the provincial Electoral Boundaries Commission's mandate was very clear in this regard:

*In considering the factor of minority representation, the Commission shall seek out the advice, support and cooperation of, in particular, representatives of the Black, Native and Acadians communities of the Province.*

In its final report, the Commission recommended creating four "protected constituencies," including one for the Black population (Preston) and three for the Acadian population (Clare, Argyle and Richmond). These constituencies sought to "encourage, but do not guarantee, minority group representatives in the House of Assembly" (Reference re Final Report of the Electoral Boundaries Commission, 2017: 12). As there was no consensus in their community, the Mi'kmaq asked the Commission not to come up with a recommendation for them.

In 2001, the provincial Electoral Boundaries Commission had to ensure effective representation of African Nova Scotian and Acadian populations. Its mandate specified that the size of a constituency's population must not deviate by more than 25% from the province's electoral quotient, except in "extraordinary circumstances." These extraordinary circumstances were "the desire to promote minority representation by Nova Scotia's Acadian and Black communities" (Reference re Final Report of the Electoral Boundaries Commission, 2017: 16).

In 2011, due to its mandate, the provincial Electoral Boundaries Commission could not deviate from the 25% rule, which had the effect of eliminating the "protected constituencies" for the Acadian and African Nova Scotian minorities. This restriction was challenged by the Acadian community in the Nova Scotia Court of Appeal. In 2017, the Court agreed with the Acadian community in Reference re Final Report of the Electoral Boundaries Commission.

## 1.2 Why is effective representation of minorities important in Canada?

To put it succinctly, the idea of effective representation is a key principle of Canadian democracy. It affirms individuals' right to be represented in legislatures and the Canadian Parliament.

There is also a long history of effective representation of minorities in Canada. What is more, this history shows that effective representation is not solely of the electoral type.

In 1867, during the debates that led to the founding of the Canadian federation, French Canadians and those in Quebec in particular, understood that the principle of representation based on population, which they had accepted when it came to the House of Commons, was not to their advantage. A compromise had to be made in order to reassure them and protect their interests.

The Fathers of Confederation would create a mechanism that favoured maintaining an important francophone presence in the new Parliament, namely the establishment of the Senate. The creation of this Upper Chamber was based on the principle of equality of representation. This principle seeks to limit the negative impacts of representation based solely on demography, by which seats are divided up on a regional basis.

At the time, aboriginal peoples, as well as ethnic, religious and linguistic minorities, did not receive the same attention. However, a convention was established when it came to appointing Métis and francophone senators from provinces other than Quebec (Cardinal and Grammond, 2017). Since it was established, members of the Métis and francophone communities have been appointed to the Senate in a consistent way.

<sup>1</sup> According to Courtney (2004: 60), "The only commissions at either the federal or provincial level to have made a conscious effort to construct districts with targeted minority populations as the principal justification for a particular set of boundaries were those of the province of Nova Scotia."

### 1.2.1 Canadian jurisprudence

A convention cannot guarantee effective representation. In 1991, the Supreme Court of Canada affirmed Canadians' right to effective representation in its *Reference re Provincial Electoral Boundaries (Saskatchewan)*. It confirmed that the right to vote enshrined in Section 3 of the *Canadian Charter* "is not equality of voting power per se but the right to 'effective representation'" (*Reference*, 1991: 160).

According to the Supreme Court, effective representation is enshrined in the general philosophy that underpins Canadian democracy. The goal of the right to vote is to be "a system which gives due weight to voter equity but admits other considerations where necessary" (*ibid*). In other words, the electoral map must reconcile the principle of equality of electors and factors such as communities of interest and geography. That is to say that non-demographic factors can justify deviation from the principle of equality of electors. In this regard, the Supreme Court wrote "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" (*ibid*).

In 1996, the Prince Edward Island Supreme Court ruled in favour of "special consideration" for the Évangéline-Miscouche region because it is home to a substantial portion of the province's Acadian population. The Court brought forward non-demographic factors to justify an Acadian constituency in the context of the revision of the provincial electoral map. It wrote:

*The one district that the applicants agreed should be given special consideration is that of Evangeline-Miscouche in which a significant proportion of the Island's Acadian population resides. [...] However, there is no reason why this district could not be given special status and allowed to go below the 25% variance. By doing so, the Acadian population would have their exclusive district and a minority English population could be attached to an English district.*

In 2004, the federal court reiterated the importance of taking communities of interest into consideration when revising an electoral map in the *Raïche v. Canada (Attorney General)* case. It also ruled that a federal Electoral Boundaries Commission could choose whether or not to invoke Part VII of the *Official Languages Act*, which commits federal institutions to "enhancing the vitality of the English and French minorities and supporting their development." However, the federal Court believed that even if the Commission had "tried to apply Part VII of the *OLA* in a manner in keeping with the intention of Parliament," it had "failed to do so because its findings of fact were erroneous."

In 2017, the Nova Scotia Court of Appeal ruled that the Attorney General of Nova Scotia had prevented the Electoral Boundaries Commission from applying the constitutional principle of effective representation. According to the Court, by not allowing any constituency whose population size deviated by more than 25% from the province's electoral quotient, the Attorney General was in violation of Section 3 of the *Canadian Charter* and the established principles in the relevant case law. It must be noted that the Court of Appeal did not confirm that Section 3 guaranteed the existence of "Acadian constituencies," but rather that an Electoral Commission must be able to strike a balance between the principles of equality of electors and that of effective representation.

In short, the principle of effective representation in Canada is recognized as a right. It is chiefly applied with respect to defining electoral constituencies. It is a key element of Canadian democracy.

### 1.2.2 The matter of special circumstances

The principle of effective representation seeks among other things to guarantee electoral fairness. It is possible that special circumstances require governments to deviate from the norm. Among others, we have seen that the concept of communities of interest is particularly important in setting electoral district boundaries. For example, an electoral quotient is set to determine the average population of an electoral district. A norm exists which permit to deviate from this quotient to delimit electoral districts. But, this norm can be modified. As Table 1 shows, special circumstances, defined on a case-by-case basis, have prompted governments both at the federal level and in Canadian provinces to deviate from the norm. These special circumstances can apply to minorities that constitute communities of interest.

**Table 1 – Frequency of “Exceptional” Deviations Across Canada**

Jurisdiction	Year of redistribution	Permitted deviation	Assembly size	“Exceptional” seats	“Exceptional” deviation	“Exceptional” districts as percent
Canada	2003	+/-25%	308	2	-43%, -62%	0.6
British Columbia	1999	+/-25%	79	6	-27% to -34%	7.6
Alberta	1999	+/-25%	83	1	-32%	1.2
Saskatchewan	2002	+/-5%	58	2	+12%, -22%	3.4
Manitoba	1999	+/-10	57	2	-19%, -21%	3.5
Ontario	2005	+/-25%	103	10	-25.3% to -34%	9.7
Quebec	2001	+/-25%	125	6	-29% to -76%	4.8
New Brunswick	2006	+/-10	55	1	-20%	1.8
Nova Scotia	2002	+/-25%	52	4	-39% to -49%	7.7
P.E.I.	2006	+/-25%	27	1	-28%	3.7
Newfoundland & Lab.	2006	+/-10	48	4	-13% to -71%	6.3
Yukon	2002	+/-25%	18	4	+32% to -82%	22.2
Northwest Territories	2006	+/-25%	19	4	-26% to -58%	21.1
Nunavut	2006	+/-25%	23	3	+53% to -40%	13.0

Source: British Columbia, Electoral Boundaries Commission, 2007: 45.

### 1.3 International norms for minority representation

Canada affirmed the importance of effective representation of minorities at the same time as international norms in the area of self-governance and participation of minorities were recorded in several conventions. The Council of Europe’s *Framework Convention for the Protection of National Minorities* (1995) and the United Nations’ *Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities* (1992) set out that states are responsible for creating conditions that promote participation of minorities in social, cultural, economic and political life at all levels of public life.

From an effective minority representation perspective, let’s mention the framework developed by the Organization for Security and Cooperation in Europe’s (OSCE) High Commissioner on National Minorities: the *Lund Recommendations on the Effective Participation of National Minorities in Public Life* (1999). Published following a meeting of experts in Lund, Sweden, the document does not mandate any standards or prescriptive measures aimed at states. Nonetheless, it constitutes an essential resource with which to evaluate measures for participation of national minorities from country to country.

In simple terms, the *Lund Recommendations* consist of two types of recommendations. The first deals with participation of minorities in public governance – *shared rule*. The second type suggests self-governance of certain local or internal matters by minorities – *self-rule*.

With respect to mechanisms for participating in public governance, it was put forward that seats be reserved for minorities in the parliament, courts, parliamentary commissions and public service. These mechanisms can also include consultation mechanisms seeking to foster dialogue between the state and minorities.

Self-governance includes means made available to the minority group to allow it to govern itself or to control areas crucial to its future. For example, they can include the establishment of a parliament or granting specific powers in the areas of language and culture.

### 1.3.1 Models for effective representation

The Supreme Court of Canada focused attention on the conditions for effective representation of communities of interest in the electoral sphere. However, in light of the *Lund Recommendations*, there is a collection of models to promote effective representation. These can be electoral or non-electoral, which we have detailed below.

### 1.3.2 Direct or indirect participation

Direct or indirect participation are two of the most common types of models for effective representation. For example, if minority participation in public affairs is defined solely through consultation or as a means of transferring information, it would be indirect participation and the impact of minorities on decision-making is likely to be weak. By contrast, if the state guarantees seats or management positions in public governance, the influence will be more direct and is likely to be greater.

This direct or indirect participation of minorities takes place in different types of bodies: central governments, electoral processes, at regional and local levels and in advisory bodies. In Europe, there has also been a particular focus on the electoral system, as it is perceived as a form of direct participation and an important means for increasing participation of minorities.

In Canada, without guaranteeing seats for minorities in electoral terms, the recognition of electoral constituencies, as we have seen above is an appropriate mechanism in order to promote direct participation. What is more, since 2002, the requirement to consult official language minorities has been recorded in several government documents and judgements.

For example, the courts stressed the importance of consulting official language minorities in two specific cases: *Arsenault-Cameron* (2000) and *Lalonde* (2001). In the first case, the Supreme Court of Canada made it clear that the Prince Edward Island's Ministry of Education's lack of consultation of its francophone minority could be grounds for ruling that they had made a discretionary decision in contradiction with Section 23 of the *Canadian Charter*. In the second case, the Ontario Superior Court ruled that the Health Services Restructuring Commission had not taken the interests of the province's francophone minority into account.

### 1.3.3 Territorial and non-territorial self-governance

Under the self-governance heading of the *Lund Recommendations*, a distinction is made between "territorial autonomy" and "non-territorial autonomy." The former allows a group to govern itself, notably when it is concentrated in a specific area. Thus, minorities can perform functions or be assigned powers in areas critical to their development.

Non-territorial autonomy, for its part, means that powers can be transferred to a minority because it constitutes a community irrespective of its size and place of residence. In other words, non-territorial autonomy does not require that minorities be present in substantial concentrations in a given area. This can be achieved by putting in place subsidiarity or decentralization mechanisms. An example would be granting management of schools to minorities rather than to the majority, which is the case in Canada for official language minorities.

The *Lund Recommendations* stress that states should ensure that the rights of individuals are not violated and that the mechanisms adopted are compatible with democratic principles. As a general rule, participation must form part of a permanent process that allows minorities' concerns to always be taken into account. Thus, in addition to participation or self-governance, states should institutionalize consultation with minorities in order to ensure that they coordinate their actions in cooperation with them<sup>2</sup>.

#### 1.4 The conditions that allow special measures to be taken to ensure effective representation of groups such as Acadians and African Nova Scotians

Effective representation hinges on the recognition of communities of interest, geography or history and not solely on the principle of equality of voting power. This power can differ from one region to another or from one group to another. It is for this reason that special measures can be put in place in order to ensure fairness of the electoral process.

Factors such as the existence of communities of interest, geography or history also constitute conditions that define the very existence of minorities. What is more, in the latter case, the matter of special circumstances is an existential question that goes beyond the electoral process for minorities.

In other words, according to the definition of the concept of a minority, these special circumstances are based on history and on sociological, demographic and political conditions. These circumstances force minorities into formulating claims for special measures in order to continue their growth and development. This is what Part VII of the *Official Languages Act* recognizes when it states the federal government's obligation to see to the advancement of Canada's official language minorities. The fact that the Supreme Court recognizes the underlying principle of minority representation also confirms that these special circumstances are not going away.

Taking into account the sociological, demographic and political conditions in which minorities, such as the Acadian and African Nova Scotian minorities live, as well as the constitutional and legal dimensions recognizing the right to effective representation in Canada, the case is strong enough to justify long-term special measures for the purpose of ensuring effective representation. These extraordinary circumstances also have a strong normative dimension, because they are, as mentioned before, the result of the will of the government "to promote minority representation by Nova Scotia's Acadian and Black communities" (Reference re *Final Report of the Electoral Boundaries Commission*, 2017: 16).

From a normative point of view, a generous approach to effective representation of minorities also requires exploring other participation and self-governance mechanisms in addition to that of guaranteed constituencies. These mechanisms for direct and indirect participation or territorial and non-territorial governance as suggested in the *Lund Recommendations* are an important complement to electoral representation. These measures should also be sustainable so as to be at arm's length from the political arena. They could even be formalized in the context of a law on minority representation – on which we will return. These mechanisms sometimes need to be applied differently based on the needs of the groups concerned. Effective representation of Acadians could differ from that of the African Nova Scotian community, among others.

<sup>2</sup> In Canada, this is the case for Aboriginal people.

## 1.5 Conclusion

Since the enactment of the *Canadian Charter*, the Supreme Court has recognized that the constitution is based on the unwritten principle of minority rights. Canadian courts have also set out the obligation to consult official language minorities in two important rulings.

In 1991, the Supreme Court affirmed the importance of taking communities of interest into account in setting electoral boundaries of constituencies. Moreover, despite a lack of precision on the special circumstances to ensure effective representation of individuals or groups, we have seen that governments can deviate from the set norms.

By drawing inspiration from the *Lund Recommendations*, we have seen that the notion of effective representation can also fall under an approach defined more broadly including the concepts of participation and self-governance. These recommendations allow us to look at the question of representation in the context of a broader approach to minority participation and self-governance.

Finally, by combining the advancements in effective representation in Canada and the *Lund Recommendations*, we are provided with a normative and conceptual framework that can guide the choices of mechanisms for the representation of Acadian, francophone and African Nova Scotian minorities. In the following sections, we will set out examples of electoral and non-electoral measures that would contribute to effective minority representation. These measures will help to illustrate each facet of effective representation in a broad sense and in a concrete way.

## 2. EXAMPLES OF MECHANISMS OF EFFECTIVE REPRESENTATION

The second part of this report deals with the main models and mechanisms used in Canada and internationally to ensure effective representation of national, ethnic and linguistic minorities.

One of the points from the previous part worth mentioning again is that there are many states who have taken on the responsibility for creating favourable conditions for minority participation in public and political life in their respective countries. It is therefore not unusual that states take appropriate measures to foster effective representation and participation of minorities in their jurisdiction. Canada has also recognized the importance of these types of measures for enabling minority representation.

In this second part, we look at the models for representation documented in the *Lund Recommendations*. These are: i) direct participation, ii) indirect participation, iii) territorial self-governance, and iv) non-territorial self-governance. We have prepared a catalogue that describes the main mechanisms that were developed in Canada and internationally for each model.

We have listed five types of mechanisms: electoral, institutional, consultative, governance-based, and self-governance. In each case, we have offered examples that show how they can be operationalized in various contexts. These examples represent ways to enable effective representation of minorities.

The catalogue detailed here is not exhaustive, given the time allocated for this research. The choices are nonetheless based on a rigorous methodology that included several criteria. First, we have listed the most commonly used mechanisms. We believe that these mechanisms are sufficiently representative of the choices made by states to ensure effective representation of minorities both in elections as well as in public administration.

Second, we have chosen mechanisms that meet one of the three following criteria: i) were adopted several decades ago and have a proven track record, ii) meet the courts' requirements, or iii) give concrete expression to obligations set out in international treaties. Finally, we have also limited our choices to mechanisms which have clear and simple references available in French or in English. We have also attempted to identify examples or tools from each continent, with a view to being geographically representative.

## 2.1 Direct participation

The *Lund Recommendations* put forward the idea that participation of minorities in public life is an essential component of any democratic society. Direct participation of minorities in decision-making can be achieved through two main mechanisms: electoral and institutional.

### 2.1.1 Electoral mechanisms

Electoral mechanisms ensure that minorities' voices are heard in legislatures. There are a wide range of ways to implement them. These vary greatly depending on the electoral system, but we have identified scenarios below that serve to illustrate the types of mechanisms that can be used.

#### 2.1.1.1 Separate electoral map

A separate electoral map or list is one very ambitious way of ensuring the effective representation of a minority in the legislature.

This solution is rather rare, but is used in New Zealand for the Maoris, who made up 15.4% of the country's total population in 2016 (Stats NZ, online).

For more information on electoral mechanisms that facilitate minority representation in Europe: [http://ecmi-epp.org/wp-content/uploads/2016/01/ECMI\\_Handbook\\_12-2015.pdf](http://ecmi-epp.org/wp-content/uploads/2016/01/ECMI_Handbook_12-2015.pdf)

The tradition of reserving seats for the Maori population was established in 1867 and has seen some changes as late as 1993. In 1867, the measure was conceived as a transitional means for better integrating Maoris in the population of British origin with the stated aim of assimilating them. The Maoris succeeded in appropriating these seats and perpetuating the system (Fleras, 1985).

Maori representatives are elected from a separate electoral map superimposed over the general electoral map. Since 1993, the

For more information on the Maoris in New Zealand, refer to the New Zealand Electoral Commission website: <http://www.elections.org.nz/voting-system/maori-representation>

number of Maori constituencies has varied depending on the number of electors who register on the Maori voters list – Maori electors can also choose to register on the general list. For the last general election in 2014, New Zealand was divided into seven Maori constituencies covering the whole country. The elected representatives all sit in the House of Representatives and are from different political parties than those that run candidates for the general list.

This type of practice does not exist in Canada. However, various works suggest other avenues for improving representation of Aboriginal peoples in the House of Commons, such as setting of constituency boundaries to favour Aboriginal people, or even electing two members of Parliament in certain constituencies (Fleras, 1991; Niemczak and Jutras, 2008).

#### 2.1.1.2 Protected constituencies and reserved seats

The principle of guaranteed constituencies and of reserved seats, depending on the electoral system in which they are implemented, is much more widespread than that of separate electoral map or list. We have grouped them together here, despite the fact that they don't have precisely the same impact on represented minorities.

Protected constituencies are primarily found in territorial electoral systems where the community of interest is taken into account when setting constituency boundaries. The bodies responsible for setting boundaries can create constituencies where minorities are found in high enough concentrations.

States can also propose to reserve seats for members of the minority. There are a range of ways for allowing a minority to elect its own representative. For example, a seat can be added to those that were created for the general population. In various types of proportional representation systems, these matters are dealt with in the way in which seats are allocated.

In Europe, the examples of Slovenia and Croatia are often cited. In Slovenia, the Hungarian and Italian minorities can each elect a representative to the National Assembly. They are elected only by members of these minorities from separate lists of candidates. These two representatives have veto rights on any initiative that could have an impact on the rights conferred to them by the constitution. In Croatia, eight seats are reserved in the Parliament for national minorities. The Serbian minority elects three representatives, the Hungarian and Italian minorities both elect one and the Czech and Slovak minorities jointly elect a representative. Other national minorities are divided up into two groups that each elect a representative (Cârstocea, Kuklys and Malloy, 2015: 26).

In South America, Columbia established the practice of reserved seats for Aboriginal communities (two in the Senate and one in the House of Representatives) in 1991 and for African Columbians (two in the House of Representatives) in 1993. The latter make up 10.6% of the national population, but according to a recent report, they have benefited less from this institutional mechanism due to the internal rivalry that it gave rise to (Cortes, Vega and André, 2012: 4-5).

For more information on political representation in Columbia:  
<http://www.as-coa.org/sites/default/files/ColombiaFINAL.pdf>

In Canada, the practice of reserved seats for members of a particular group has seldom been used. With the exception of its use in Nova Scotia, constituencies were guaranteed for anglophone Quebecers at the time of Confederation. Section 80 of the British North America Act of 1867 had provisions preventing the Government of Quebec from changing the boundaries of 12 electoral constituencies without the consent of a majority of the members of the National Assembly that represented them. These constituencies all had a significant proportion of anglophone Quebecers. For a long time, this was respected by the Government of Quebec, but it became increasingly difficult to apply due to demographic growth, which created a need for electoral boundaries to be adjusted (Bonenfant, 1962). Section 80 and the protections that derive from it were abolished in 1970 (Quebec Chief Electoral Officer, online).

Nonetheless, the notion of communities of interest in Canada persisted and was used for setting constituency boundaries. We have already mentioned the Raïche case with respect to francophones in New Brunswick. The idea was also implemented in Ontario, where a second francophone majority constituency was created following a readjustment of the electoral map in the north of the province (Morrisette, 2017).

### 2.1.1.3 Quotas

Other practices like quotas can be put in place to compensate for the impacts of the existing electoral systems on minorities. These practices allow the flaws inherent in the system, which is designed for the majority, to be corrected.

The practice of quotas is more commonly used to increase the proportion of women who are elected to legislatures. These quotas can be reached in various ways. For example, in Afghanistan, 27% of seats in the House of the People are reserved for women, which amounts to two seats per province (IDEA, online).

Quotas can also be imposed on political parties by the electoral law, which would require that there be a certain percentage of women in the candidates standing for election. For example, in the South Korean National Assembly, 56 representatives are elected from the lists provided by the parties. These lists must include 50% women. Moreover, 243 representatives are elected in constituencies, and at least 30% of the candidates put forward by the parties must be female (IDEA, online).

We have not found examples of compulsory quotas in Canada. However, political parties can decide to impose voluntary quotas on themselves. Such is the case with Québec solidaire, a provincial party in Québec, which imposes parity of women and men in the candidates it puts forward in general elections. At the federal level, the New Democratic Party's statutes state that gender parity must be maintained in the party leadership.

### 2.1.2 Institutional mechanisms

Beyond representation in elected assemblies, another means of ensuring effective representation of minorities is through institutional mechanisms. This involves seeing to or guaranteeing the presence of people from minorities in key government institutions or in important positions that are filled through hiring processes or by appointments like in the courts. These positions allow representatives from minorities to participate, for example, in the implementation and evaluation of government programs and public policies.

#### 2.1.2.1 Reserved seats on the Supreme Court

Reserving seats on a state's Supreme Court is a way to ensure that the court's interpretation of the constitution is in keeping with the legal traditions of minorities. This practice is rather rare, but it has been legislated in Canada. Effectively, the Supreme Court Act provides that three of the nine judges of the Supreme Court must come from Québec. Québec is the only Canadian province that uses a civil law system. This representation

on the Supreme Court ensures that the judges of the highest court in the land can properly evaluate cases coming from this province.

#### 2.1.2.2 Constitutional conventions

Constitutional conventions are also more difficult to define, based on the fact that they are not written and less commonly recorded. They can also come into play in very varied contexts. According to Cardinal and Grammond (2017), there is a constitutional convention ensuring the representation of Canada's francophone communities in the Canadian Senate, which compensates for their lower numbers in the House of Commons. They have recorded the constant presence of francophones from outside Quebec in the Senate since the very beginnings of Confederation. In addition, the communities themselves consider representation in the Senate to be a right, and Canadian prime ministers have also felt bound by this convention. What is more, this convention draws on the principle of the protection of minorities, which has been identified as one of Canadian constitution's underlying principles (Cardinal and Grammond, 2017: 41).

#### 2.1.2.3 Reserved positions in the public service

The right of each individual to access employment in the public service was recognized in the 1966 International Covenant on Civil and Political Rights.

Belgium adopted a system that assigns only one language, either French or Flemish, to all positions in the public service. This system ensures that public servants work in one language only – either French or Flemish. At the entry-level, positions are divided up between the linguistic groups by department according to the work to be carried out in each language, which means that the allocation of positions can be different from one department to another. For higher-level positions, quotas were adopted, according to which positions are allocated to achieve parity between the two linguistic groups in each department (Turgeon and Gagnon, 2015: 120)

In Canada, the Official Languages Act of 1969 confirmed the requirement for fair representation of francophones and anglophones in the federal public service. In 1973, the federal public service instituted a rule to this effect, but without establishing precise quotas. In this case, fairness more or less translates to the weight of both major linguistic communities in the general population. In 1988, the new Official Languages Act renewed the requirement for fair representation.

Hudon (2009) noted large variations in fair participation based on the region of the country and professional categories in the federal public service. Nevertheless, bilingualism is now a standard marker of achievement for obtaining a position in the public service. Let's also mention that the Public Service Commission of Canada has specific obligations in this area. It plays a role in monitoring and applying linguistic provisions in staffing.

## 2.2 Indirect participation

While direct participation through electoral and institutional mechanisms is vital for minorities, it can also take other forms. Indeed, participation can be achieved through formal meetings or consultations with decision makers. This participation can also give a role to minorities in the implementation, follow-up and evaluation of legislative and administrative decisions. The *Lund Recommendations* identified these types of practices as being examples of good governance because they can improve decision-making and increase minorities' trust in institutions (OSCE, 1999: 26).

### 2.2.1 Advisory or consultative bodies

According to Cârstocea, Kuklys and Malloy (2015 : 30), consultation is a mechanism which works to compensate for the absence of electoral mechanisms ensuring that minorities have a presence in the legislature. This practice is becoming increasingly widespread because it is a low-cost way for governments to involve minorities in decision-making. It also creates communication

channels between governments and minorities in order to facilitate dialogue and minorities' trust in institutions. There are two types of consultation mechanisms, namely the duty to consult and the obligation to accountability.

#### 2.2.1.1 Duty to consult

The *Lund Recommendations* encourage states to create advisory councils with a view to establishing a dialogue with their national minorities. As we have already mentioned, the recommendations are not compulsory, although according to Poirier (2008: 534), their declaratory value has contributed to creating a framework for the protection of minorities that is often cited in Europe.

In Canada, the federal government has a legal obligation to consult Aboriginal peoples. This obligation, which stems from section 35 of the Constitution Act of 1982, has been confirmed by the Supreme Court of Canada in several decisions. For example, in July 2017, in the *Clyde River (Hamlet) v. Petroleum Geo-Services Inc.* case, it overturned the National Energy Board's decision because the process that it established "did not fulfill the Crown's duty to conduct deep consultation," noting that the Aboriginal community only had "limited opportunities for participation and consultation" (*Clyde River (Hamlet) v. Petroleum Geo-Services Inc.*, 2017 CSC 40: para. 47).

For the federal government, this obligation allows it to determine whether regulatory projects, operational decisions or public policies are likely to have harmful effects on the rights of Aboriginal peoples (Indigenous and Northern Affairs Canada, 2016,). It is a practice that promotes good governance in the context of the Canadian government's efforts at reconciliation with Aboriginal peoples (Government of Canada, 2011). Thus, the government wishes to incorporate the concerns of Aboriginal people in government institutions' day-to-day activities, while fostering a better relationship between the parties.

For more information on the obligation to consult Aboriginal peoples: [https://www.aadnc-aandc.gc.ca/DAM/DAM-INTER-HQ/STAGING/texte-text/intgui\\_1100100014665\\_fra.pdf](https://www.aadnc-aandc.gc.ca/DAM/DAM-INTER-HQ/STAGING/texte-text/intgui_1100100014665_fra.pdf)

### 2.2.1.2 Obligation to accountability

Aucoin and Jarvis (2005: 13) suggest that the obligation to accountability “is a fundamental principle of governance and public administration.” This principle can rely on institutional mechanisms based on accountability that are applied to those who participate in the exercise of power.

An obligation to accountability to a population following a consultation exercise was invoked by the Supreme Court of Canada in 2004, in the Haida ruling. It specifies that the consultation exercise can include “provision of written reasons to show that Aboriginal concerns were considered and to reveal the impact they had on the decision” (Haida Nation v. British Columbia (Minister of Forests), [2004] 3 RCS 511: para. 44).

Institutions should therefore think about how to be accountable from the start of the consultation process. In 2006, the Ontario Ministry of the Attorney

General put in place an informal process which amounts to a form of accountability with the Coalition des intervenantes et intervenants francophones de l’Ontario (Ontario Coalition of Francophone Stakeholders) in the area of justice. This Coalition was created in 2004 and sought to increase the active offer of French-language services in the area of justice, to participate in the development of policies and planning services. Since 2006, this network participates on the Supervisory Committee that sees to the implementation of the Government of Ontario’s strategic plan for the active offer of French-language services in the area of justice. During meetings of this committee, service directors must provide updates on their progress to members of the Coalition, who provide comments and suggestions with a view to improving the active offer of services in French in their area (Cardinal, Levert, Manton and Ouellet, 2015).

For more information on the Coalition des intervenantes et intervenants francophones for the justice sector:  
[http://socialsciences.uottawa.ca/cura/sites/socialsciences.uottawa.ca.cura/files/la\\_coalition\\_des\\_intervenantes\\_et\\_intervenants\\_francophones\\_en\\_justice\\_000.pdf](http://socialsciences.uottawa.ca/cura/sites/socialsciences.uottawa.ca.cura/files/la_coalition_des_intervenantes_et_intervenants_francophones_en_justice_000.pdf)

### 2.2.1.3 Advisory committees

To give substance to the duty to consult and the obligation to accountability, it is vital that transparent, independent and well-equipped committees be put in place. This practice is common throughout the world to ensure effective representation of minorities.

In 2009, Serbia established a Council for National Minorities that coordinates the work of specific committees for each of the 15 minorities identified by the national government. These committees have specific areas of expertise in the fields of education, culture and public use of languages. The Council, for its part, is used to discuss issues that relate to strengthening the rights of national minorities and to formulate advice for bills that relate to them (Bereška and Székely, 2016).

Romania also created a Council for National Minorities, which is a consultation body of government. Its objective is to facilitate relationships with recognized organizations of people belonging to national minorities. It includes three representatives from each of the minorities who sit in the Parliament. The council also takes care of coordinating and supporting these organizations’ activities, oversees the allocation of budgets allocated by the State to these organizations and suggests changes to the legislative framework governing national minorities (EURAC, 2010: 37-38).

In Canada, many provinces have advisory committees whose role is to advise government with respect to their official language minority. For example, in 2004, Ontario created the provincial Advisory Committee on Francophone Affairs, whose mandate is to advise the Minister of Francophone Affairs “on the development of strategies, priorities and programs, which affect Ontario’s Francophone community, and on the planning and delivery of government French-language services” (Public Appointments Secretariat, online). The composition of the committee must take into account the province’s regions, gender and cultural diversity. Members are appointed by the Minister.

In 2016, Manitoba established the Francophone Affairs Advisory Council and in 2017 Alberta announced that it would establish a Provincial Francophonie Advisory Council. Their mandates are similar to the Ontario committee, but the Manitoba council is also responsible for making “recommendations about measures to encourage representation of Manitoba’s Francophone community on the boards of government agencies and on administrative tribunals” (Manitoba 2016, online).

At the federal level, Cardinal, Lang and Sauvé (2008) described the implementation of shared governance mechanisms in the area of official languages. This practice emerged at the beginning of the 1980s and took off after the publication of the Action Plan on Official Languages in 2003. More recently, the authors noted that these mechanisms are characterized “by government’s commitment to the integration of communities in policy formulation in the area of official languages” (2008: 211). These mechanisms have increased, going from two in 1983 to 74 in 2005. They are used in various sectors, including justice, economic development, health and immigration. However, it is not possible to say from the research whether these mechanisms have been evaluated or whether they are still in use today in the federal government.

Finally, British Columbia established the Multicultural Advisory Council, whose mandate is to advise the Minister on issues relating to multiculturalism and anti-racism measures (British Columbia, online). Australia also has a committee of this sort, the Australian Multicultural Council, which advises the government on policies and programs relating to multiculturalism and which contributes to establishing partnerships with the population, the private sector and government institutions (Australian Government, online).

## 2.3 Territorial arrangements

Territorial self-governance is in itself a means for allowing a minority to have direct control over areas of particular relevance. Territorial self-governance becomes feasible when a minority is concentrated in a region of the country and it makes up the majority of the population in this region. As a result, the minority is granted the right to legislate or administer certain areas of government action in its territory while accepting that the central government will maintain certain prerogatives for areas of general public interest. Regional institutions are established in order to exercise legislative and executive powers, and sometimes even legal powers. Thus, the minority can fully exercise its rights to participate in regional institutions (Ghai, 2003: 23-24).

### 2.3.1 Territorial self-governance

The two most common types of territorial governance mechanisms are federalism and specific agreements.

#### 2.3.1.1 Federalism

Federalism is generally understood to be a form of political organization that allows for the recognition and coexistence of different groups. A federal organization hinges on the pooling of certain powers by the federated states that come under a central authority while preserving other areas of jurisdiction which are exclusive (Burgess and Gagnon, 2014).

The federal solution can be considered in an attempt to ease tensions between national groups that are found within the same state. Nigeria is an example. When the country was created in 1954, the federal option allowed the country to be divided into three regions based on the country's three largest ethnic groups. Over time, these three regions were redrawn to create several new federated entities in order to provide a form of self-governance to minorities and allow them to benefit more directly from the central government's support. The gradual adaptation of the federal system helped to reduce inequalities between national groups (Babalola, 2014).

Canada, for its part, was organized as a federation in order to accommodate the presence of two distinct national groups – English Canadians and French Canadians – and four provinces – Nova Scotia, New Brunswick, Ontario and Quebec. By creating the province of Quebec, French Canadians made up the majority of its residents and thus could control its institutions. For Poirier (2008: 535), federalism is one of the most advanced ways of recognizing a minority's autonomy. A federal system transforms a minority into a majority in one of the federated entities, where it can make tangible decisions for its community.

In Canada, Poirier also adds the example of the creation of the territory of Nunavut in 1999 as a specific case of territorial self-governance. Nunavut resulted from negotiations between the Canadian government and the Inuit people in order to divide up the Northwest Territories to give Inuits a form of governmental autonomy in a territory where they would be a majority. One of the objectives of this initiative was to "provide the Inuit people with the political tools needed to allow them to overcome the social problems that are prevalent in Inuit society" (Légaré, 2009: 24). Thus, by controlling their territory, the Inuit could define their own political agenda and face their challenges in their way. One of the issues on which the Government of Nunavut decided to act is the protection and promotion of the Inuit language. The Inuit Language Protection Act seeks to promote the use of the Inuit language in public institutions and in the private sector.

### 2.3.1.2 Specific agreements

Political systems that are not organized as federations can nonetheless decide to grant a degree of territorial self-governance to a minority that is concentrated territorially. It can be done through specific agreements or the devolution of powers.

The case of South Tyrol in Italy illustrates this approach well. It is considered to be one of the most successful examples of accommodating a linguistic minority on a territorial basis, even if it was only achieved after long negotiations and recourse to a variety of supranational bodies (Medda-Windischer, 2008). The Italian constitution grants special autonomous status to five regions. Among these there is the region of Trentino / Alto Adige. This region is made up of two provinces who themselves also have autonomous province status. One of these is the autonomous province of Bolzano, also known as South Tyrol, which is made up of a majority of German speakers. Several powers have been transferred to the province (rather than to the region) to guarantee that they are exercised in such a way as to grant a degree of territorial autonomy to the German-speaking population.

To protect the rights of this population, autonomy is based on four pillars (Cârstocea, Kuklys and Malloy, 2015: 40-41). The first is cultural autonomy, whereby German speakers and Italian speakers have a right to education in their mother tongue, coupled with an obligation to learn the other language. Both groups also have separate cultural institutions.

For more information on South Tyrol:  
[http://www.peace.ox/images/stories/publications/rapport\\_1-2011\\_webb.pdf](http://www.peace.ox/images/stories/publications/rapport_1-2011_webb.pdf)

The second pillar deals with linguistic rights. German and Italian are co-official languages and have equivalent status in public institutions, among other things. All laws and communications must be in both languages and all public servants must be bilingual.

The third pillar is the quota system in the public sector to protect proportional representation of linguistic groups. The final pillar is a right of veto that can be used through a very specific mechanism and allows any law that could be considered as harmful to one linguistic group to be contested.

In Canada, the federal government entered into a similar agreement to that of South Tyrol with the Quebec Cree. The objective of the Cree Nation Governance Agreement is to provide greater autonomy to the Cree people in the governance of their lands. It includes a new Cree Constitution that lays out the terms of how their governmental autonomy will be exercised, including the ways in which the Cree Nation Government can pass laws that no longer require external monitoring from the Minister of Aboriginal and Northern Affairs (Aboriginal and Northern Affairs Canada, online).

## 2.4 Non-territorial arrangements

The last model of effective representation from the *Lund Recommendations* is that of non-territorial self-governance. This form of governance can be useful for preserving and developing the identity and culture of minorities, notably where minorities are not found in sufficient concentrations to manage a territory or federated state themselves. In this case, institutional arrangements primarily seek to allow minorities to govern themselves in areas such as education, culture, the use of language and any other area that can have an impact on the identity or way of life of minorities. In short, rather than grant autonomy to the residents of a territory, autonomy is granted to a group based on a specific criterion, such as language.

### 2.4.1 Non-territorial self-governance

Non-territorial self-governance can result in institutional arrangements allowing minorities to govern themselves in what they consider to be key areas for ensuring that they thrive and develop. There are two types of arrangements: governance of autonomous institutions and cultural or community parliaments.

#### 2.4.1.1 The governance of autonomous institutions

The governance of autonomous institutions can be summed up by the objective of developing institutions that are run by and for minorities themselves. They have a greater impact on the minority's development when they are involved in areas of public life that are key to the minority in question.

The Sorbs have benefited from the political recognition obtained from the German Democratic Republic during the 1950s to form a network of cultural institutions whose objective was to see to their collective development. Among other things, they established schools, research institutes, media outlets and a museum. Since the reunification of Germany, the institutions and Sorbs' rights with respect to education, culture, research and media have been enshrined in the constitutions of the regional states of Brandenburg and Saxony (Carbonneau, Jacobs, Léger and Normand, 2016).

In Canada, education is considered a key area for official language minorities. Education was constitutionalized in section 23 of the Canadian Charter of Rights and Freedoms in 1982, giving official language minority communities the right to manage educational institutions funded from public funds. Since then, all Canadian provinces have established homogenous francophone school boards, though their powers and the way in which they are organized varies greatly from one province to another (Foucher, 2012; Cardinal and Foucher, 2017). These school boards are therefore spaces for autonomous power where minority communities can make their own decisions with respect to the running of schools, though these must meet the budgetary requirements of provincial governments.

Another example which is specific to the Canadian Francophonie is that of health, which is also considered to be a key area. In 2008, the francophone population in New Brunswick called for and obtained management of a health authority. The Réseau de santé Vitalité is a regional health authority that ensures the delivery and management of health care in northern and southeastern New Brunswick. This organization is unique in Canada – it is the only health authority that operates primarily in French outside of Quebec (Réseau Vitalité, online). Here again, it is an example of how a minority was able to claim a space for self-governance in an area that is essential to its development.

#### 2.4.1.2 Cultural or community parliaments

Another way to see to effective representation of minorities is through the creation of cultural or community parliaments that carry out very specific functions, without controlling a territory.

Finland's constitution guarantees linguistic and cultural autonomy to the Sámi people, an Aboriginal people settled in the northern parts of Scandinavian countries, in a defined geographic area. It is up to the Sámi Parliament, which was created in 1996, to exercise this autonomy. The Parliament represents the Sámi people during national and international events and attends to issues relating to language, culture and aboriginal status. It is made up of 21 members who are elected by the Sámi people every four years. Local, regional and national authorities in Finland also have an obligation to consult the Sámi Parliament on any matters that could impact the Sámi people and negotiate with it, should this be the case (Henriksen 2008, 31).

For more information on the  
Sámi Parliament:  
[http://www.samediggi.fi/  
index.php?option=com  
content&task=blogcategory&  
id=78&Itemid=193](http://www.samediggi.fi/index.php?option=com_content&task=blogcategory&id=78&Itemid=193)

Belgium's German-speaking community has also obtained a parliament elected by popular vote in the territory of certain municipalities with German-speaking majorities, which are all found in the francophone Walloon region of the country. The Parliament is made up of 25 elected members who have five-year mandates (Sägesser and Germani 2008, 19). Thus, this community governs itself democratically in the areas that are key to its vitality. Its scope of activities is focused "on culture, education, social services (with the exception of social security), tourism, youth protection and services for seniors and disabled people" (Poirier 2008, 545). In other areas that do not come under the jurisdiction of the central federal administration, it is the Parliament of the Walloon region that legislates and German speakers can elect representatives, but they do not have guaranteed seats.

## 2.5 Conclusion

The *Lund Recommendations* set out four basic models for ensuring effective minority representation: direct and indirect participation as well as territorial and non-territorial self-governance. The mechanisms detailed in this report illustrate these models and show that it is not unusual for states to engage in developing measures to foster effective representation of minorities. In all, we have described five categories of proven mechanisms that seek to foster this representation using a range of tools, from separate electoral maps, as was the case with the Maoris, to the creation of cultural parliaments, like in the case of the Sámi people.

Finally, certain mechanisms favour collective decision making while others are consultative in nature. They all seem to us to be important ways forward, tied to specific contexts from one continent to another and one system of representation to another. The next part of the study will provide a more detailed analysis of the situation and will identify avenues worth exploring to foster representation of Acadian and African Nova Scotian minorities.

### 3. ANALYSIS OF MECHANISMS FOR EFFECTIVE REPRESENTATION

The third part of this report lays out a summary analysis of the mechanisms for effective representation listed above. The question that needs to be answered is whether the mechanisms chosen by the different states align with the demands and needs of the groups concerned. The analysis detailed in this section will help draw lessons from the existing examples and to propose avenues for reflection to allow for effective representation of electors from the Acadian and African Nova Scotian minorities.

#### 3.1 Initial observations

Table 2 below provides a synthesis of the different mechanisms detailed in the previous part. While some mechanisms may confer more powers than others, it must be recognized that no mechanism is perfect. They all have advantages and disadvantages.

First, we note that the mechanisms listed are spread across all of the categories or models of effective representation. Second, there is a great variety of mechanisms. We have proposed a representative sample without claiming that these are exhaustive. Third, we note that in Canada, the mechanisms listed are for the most part institutional mechanisms for direct participation, consultation-based mechanisms for indirect participation and territorial and non-territorial self-governance.

Furthermore, let's note that in Canada's case many of these mechanisms for effective representation go back to the time of the establishment of the federation. What is more, at the time, federalism, like most institutional mechanisms, was chosen primarily to allay the concerns of francophones and anglophones in Quebec.

In comparison, mechanisms of effective representation for official language minorities, ethnocultural minorities, as well as aboriginal peoples were put in place much later. However, they are primarily consultation-based and non-territorial governance mechanisms that have been adopted for these groups and not mechanisms for direct participation or territorial governance, as was the case at the time of Confederation.

Finally, while the mechanisms were presented separately, we accept that they can be coupled with complementary mechanisms. It cannot be assumed that states will confine themselves to a single form of effective representation to respond to the concerns of their minorities.

**Table 2: Synthesis of the models and examples of mechanisms for effective representation of linguistic, national and ethnocultural minorities**

MODELS				
Direct Participation		Indirect Participation	Territorial Self-Governance	Non-Territorial Self-Governance
<b>Electoral Mechanisms:</b>	<b>Institutional Mechanisms:</b>	<b>Consultation-based Mechanisms:</b>	<b>Territorial Governance Mechanisms:</b>	<b>Self-governance Mechanism:</b>
Separate electoral map (New Zealand)	Reserved seats (Supreme Court, Canada)	Legal obligation to consult (aboriginals, Canada)	Federalism (Canada, Nigeria)	Governance of autonomous institutions (Sorbs)
Guaranteed constituencies (Europe)	Constitutional conventions (Canada)	Obligation for accountability (aboriginals, Canada)	Specific agreements (South Tyrol, Cree in Quebec)	School boards (Canada)
Reserved seats (Europe, South America)	Reserved positions in the public service (Belgium)	Informal consultation (Attorney General, francophones, Ontario)		Regional health authority (New Brunswick)
Quotas (women in Afghanistan, South Korea)	Obligation for equitable representation in the public service (Canada)	Council of national minorities (Serbia, Romania)		Cultural or community parliaments (Finland, Belgium)
		Advisory Committees on Francophone Affairs (Ontario, Manitoba and Alberta)		
		Multicultural advisory committees (British Columbia and Australia)		

### 3.2 Mechanisms for effective representation to serve the needs of minorities

A quick look at the literature on mechanisms for effective minority representation allows one to expand on these initial observations. Among other things, we can see from the analysis that the range of means for implementing effective representation varies depending on the context, legal framework and international rules. Mechanisms made available to minorities serve to fulfill the obligations or commitments made by states to them. Thus, the state must be involved in these measures. This can require, for example, allocating appropriate resources to minorities to ensure that the mechanisms function well, putting in place the appropriate regulatory frameworks so that they are accessible and ensuring that they meet the expectations of the minorities concerned.

However, we cannot assume that all mechanisms confer the same capacity for action to minorities. Each mechanism should be subjected to further analysis in order to see whether it addresses the concerns of the minorities in question. Despite this limitation, the proposed analysis attempts to identify the advantages and disadvantages of mechanisms in the different cases examined.

### 3.2.1 Mechanisms for direct and indirect participation

We note that the direct participation model is considerably more valued by researchers, notably because it provides certain guarantees for the minorities in question. As explained by Ghai (2003: 12), it is a model that allows minorities to participate directly in decision-making when it comes to decisions that affect them, be it at the local, regional or national level.

Furthermore, the model of direct participation allows minorities to protect their identities and particular characteristics, and states to promote good governance of their institutions. As we have seen above, this direct participation in public affairs can take many forms.

Ghai (2013: 12) notes that electoral mechanisms are catalysts for mobilizing a minority that would like to see improvements in terms of effective representation, namely by allowing it to participate in the political process and to influence the development of public policies. However, states that opt for this type of mechanism must also ensure that minorities have a right to vote during elections, that members of the minority can put themselves forward as candidates and that they believe in these candidates' chances of being elected (Reynolds, 2006: 3). It is therefore incumbent upon states to put in place mechanisms that will guarantee the success of electoral mechanisms.

For example, according to O'Sullivan (2008: 980), the approach taken by New Zealand in granting the Maori their own electoral map allowed the country's political structure to become more inclusive and to confer a certain degree of self-determination to the Maori. It provides them with the ability to choose their own political allegiances, directly influence the decision-making process and protect their ethnic, cultural and territorial identity. The Maori now view these seats as "an essential component of their cultural heritage and...absolutely necessary to their political aspirations" (Niemczak and Juras, 2008: 7).

Unlike the electoral map, guaranteed constituencies or seats can have their limits because the person from the minority group must first be elected, unless the seat is reserved exclusively for a person from this group. In other words, the constituency is only guaranteed if that person is elected, which can have some unexpected drawbacks.

For example, Cortes, Vega and André (2012: 4-5) showed that reserved seats for the African Columbian minority led to intense competition between different movements in the community. They contributed to dividing the community and limited the group's ability to develop a common political agenda.

When governments grant direct participation measures to minorities, they must therefore take into account this key piece of information in order to allow members of minority groups to get involved without fear of paralyzing the environment with political sparring. As Breton (1983) highlighted, minority communities are mini polities, that is, they are small, complex political communities. While it is also good to encourage conflicting points of view, including in minority communities, Breton reminds us that this confrontation needs resolution in order to avoid political fragmentation.

Quotas are also an increasingly common political practice in many countries, particularly to ensure women's representation. As Krook (2006; 2007) explained, quotas were demanded by feminist movements, but increasingly they form part of international norms on women's and minorities' participation in the decision-making process. However, quotas are not created equally. They can be compulsory but also adopted in a voluntary fashion – indeed, having recourse to reserved seats could be seen as a form of quota.

The work has demonstrated that the need for equitable representation of minorities in institutions like the public service is now widely recognized (Ghai, 2003: 12). It is a form of direct participation in decision-making on an institutional level that is similar to a quota.

According to Ghai (2003: 12), decisions on public policies and their implementation would be better adapted when minorities participate in the process. Among other things, hiring public servants from minority groups provides greater legitimacy for government policies, as we can assume that these people will have taken part in the various processes leading to their adoption.

Moreover, minorities' access to and relationship with state institutions can be improved when members from the community can interact with public servants from their community. A study by the Organization for Economic Cooperation and Development (OECD, 2009) reached a similar conclusion, highlighting that better representation of a society's diversity and greater recognition of the range of skills and experiences can improve the performance of government institutions.

However, guaranteeing positions in the public service for minorities must be accompanied by hiring measures in contexts where it is often believed that members of minority groups' access to positions of power goes against the principle of merit. In Canada, these criticisms are often heard with regard to the requirement that public servants to be bilingual in the federal public service (Turgeon and Gagnon, 2015).

The indirect participation model, for its part, includes consultation-based mechanisms and requirements, but without any guarantee of results. Thus, the level of trust that these types of mechanisms can inspire in minority groups can be an issue. As the research on consultation-based mechanisms shows, they can only be effective to extent that status, roles and tasks are clearly defined, that they operate in a transparent way, have sufficient resources to fulfil their mandates and that the work of committees are taken into consideration by government authorities (Cardinal et al., 2015; Cardinal et al., 2008). For example, minority councils have been criticized for lacking the means to play their role properly (Cârstocea, Kuklys and Malloy, 2015: 31).

### 3.2.2 Mechanisms for territorial and non-territorial self-governance

The *Lund Recommendations* remind us that all democracies have made some sort of arrangement to allow minorities to take part in the governance of the country at different levels. Indeed, the phenomenon of decentralization has been studied extensively as a way of fostering new forms of mobilization of regional minorities (Harguindéguy and Cole, 2009; Keating, Loughlin and Deschouwer, 2003). According to the *Lund Recommendations*, the integration of minorities in territorial governance also had the advantage of transferring certain legislative and executive functions to local administrations. It then becomes possible to increase opportunities for minorities to run institutions or initiatives in an autonomous way to support their development.

The governance of autonomous institutions is also a recurring demand in francophone minorities in Canada. As Breton (1964) demonstrated, thanks to the institutions it controls, a minority community can take the place of the majority and allow members of that community to pursue its development and contribute to its vitality. Breton (1964) proposed the concept of institutional completeness to translate a minority community's ambition to establish its own institutions. These institutions, as is the case with immigrant populations, often take a temporary form because they can act as a springboard to help these populations integrate into their new society.

However, in Canada, francophone minorities have taken up institutional completeness to ensure their vitality in a permanent way. These communities demand institutions run by and for francophones, a principle that was recognized in the field of education in the 1990s in the Mahé case and in health care, thanks to the Montfort case in the 2000s.

### 3.3 Lessons for Nova Scotia

What lessons should be drawn from this analysis for Nova Scotia? Three types of complementary mechanisms could be taken into account to ensure effective representation of Acadian and Nova Scotian electors. They are: i) the revision of the electoral map, ii) an obligation to consult or be accountable, and iii) mechanisms for non-territorial self-governance. These three types of mechanisms are forms of direct and indirect participation and non-territorial governance that best correspond to Nova Scotia's particular situation. Both the Acadian and African Nova Scotia minorities could benefit from these mechanisms, even if they are applied differently to better address their specific needs.

#### 3.3.1 Revision of the electoral map

As mentioned above, direct participation allows minorities to protect their identity or specific characteristics as well as states to promote good governance of their institutions. Electoral and institutional mechanisms allowing the operationalization of direct participation seem relevant in Nova Scotia's situation.

According to the *Lund Recommendations* (1999: 11), the electoral system should "facilitate minority representation and influence" and the electoral map should "allow national minorities to be represented in an equitable way." As Nova Scotia has already had an electoral system that attempted to ensure a certain level of representation of Acadian and African Nova Scotia electors, a way forward that meets the requirements of direct participation would be to pursue this approach and ensure their effective representation through revisions to the electoral map. The province could either put the guaranteed constituencies back on the agenda or develop a separate electoral map for the Acadian and African Nova Scotia populations. For example, the first avenue to explore would be to restore the four "protected constituencies," namely one for the African Nova Scotia minority (Preston) and three for the Acadian minority (Clare, Argyle and Richmond).

However, the electoral approach has two limitations. For one, reestablishing the constituencies leaves behind members of these minorities who do not live within the constituencies' boundaries. We are thinking here about the Acadians in Cape Breton and African Nova Scotians in Halifax who would be denied the right to effective representation of their interests in such a scenario.

Moreover, nothing guarantees that a person from the minority would be elected in one of these constituencies, as all residents have a right to vote, regardless of whether they belong to the minority. As the Nova Scotia Court of Appeal recognized in *Reference re Final Report of the Electoral Boundaries Commission*, the protected constituencies sought to "promote, but not ensure representation from minority groups."

However, another, more ambitious avenue that is in keeping with the British parliamentary tradition of democracy, namely in New Zealand, would be to propose that potential MLAs from the Acadian and African Nova Scotian populations be elected from a separate electoral map, similar to the current map for the Maori. This approach would superimpose the two electoral maps, one for the general electoral list, the other for the electoral list for minority groups. As was mentioned above, the number of Maori constituencies varies based on the number of electors who sign up for the Maori electoral list – for the last general election, the territory was divided into seven Maori constituencies.

#### 3.3.2 An obligation to consult or be accountable

The obligation to consult or be accountable is an approach to indirect participation that complements direct participation and that also deserves to be explored in the context of the reflection on effective representation of Acadian and African Nova Scotian electors. These mechanisms could either take the form of an advisory committee, as is the case in several Canadian provinces, or of a minorities council, as in certain European countries.

For example, by taking on the obligation to consult its minorities on matters or issues that affect them directly, the province would have to include them in the policy development process from the start and also provide greater legitimacy for its actions. Or alternatively, so that minorities feel that their participation in consultation initiatives is worth the effort, the province could impose on itself the obligation to be accountable to their representative organizations. Thus, it could see its bond of trust strengthened with its minority populations.

### 3.3.3 Mechanisms for non-territorial self-governance

There are already some mechanisms for non-territorial self-governance for francophone minorities in Canada that have proven their worth, namely school boards. This type of mechanism is a benchmark that could be used more extensively with the goal of connecting the ambition for institutional completeness of francophone minorities to the issue of effective representation. The African Nova Scotian minority could also benefit from a favourable commitment to its vitality within a reflection on the means for ensuring its representation in electoral processes and in the development of public policies.

It is possible that these communities' geographic dispersion or even demographic issues will be a significant constraint to institutional completeness. However, it seems important to ensure that there is support for these communities' activities in order to allow them to participate fully in their development and thus provide the continuity that will give greater legitimacy to the direct and indirect participation mechanisms chosen.

## 3.4 Conclusion

The lessons drawn from the analysis of the different models and mechanism for effective representation note the impact of two key elements: the vitality of minorities and their bond of trust with the state or their government. Mechanisms must be chosen based on these criteria and evaluated for their

impact on their ability to strengthen this vitality and bond of trust. We also acknowledge that the mechanisms chosen are not mutually exclusive. On the contrary, it seems improbable that only one mechanism for effective representation could meet all of these minorities' needs and aspirations. It is for this reason that we believe it would be advisable to explore several avenues at the same time.

## GENERAL CONCLUSION

This report allows us to conclude that Canada is not the only country with obligations when it comes to effective representation of its minorities. If there is an issue that comes up again and again in most societies, as seen in the news on a daily basis, it is that of states' treatment of their minorities. International organizations constantly remind states of their obligations in democratic and non-democratic countries. We have seen, however, that there is no shortage of models or mechanisms for fostering effective minority representation.

Canadian democracy, for its part, combined recognition and representation of the interests of minorities from the very start. This particular way of combining equity and equality in Canada is the first source that allows us to justify effective representation of minorities in Nova Scotia. The second source is Canadian case law which allowed effective representation to be established in the country, namely through *Reference re Provincial Electoral Boundaries (Saskatchewan)* (1991) and *Reference re Secession of Quebec* (1998), by combining the principle of equality of electors and non-demographic factors, such as communities of interest and geography.

Finally, the *Lund Recommendations* are an essential point of reference and allow us to enrich our concept of effective representation. It is the third source allowing the Government of Nova Scotia to justify effective representation of Acadian or African Nova Scotian minorities.

## BIBLIOGRAPHY

- Aucoin, Peter et Mark D. Jarvis (2005). *Moderniser l'obligation de rendre compte du gouvernement : Un cadre de réforme*, Ottawa, École de la fonction publique du Canada, [En ligne], [[http://publications.gc.ca/collections/collection\\_2008/csps-efpc/SC103-15-2005F.pdf](http://publications.gc.ca/collections/collection_2008/csps-efpc/SC103-15-2005F.pdf)] (11 août 2017)
- Babalola, Dele (2014). « Nigeria : Federalism Works », IPI Global Observatory, [online], [<https://theglobalobservatory.org/2014/08/nigeria-federalism-works/>] (11 août 2017).
- Bereika, Katinka et István Gergő Széleky (2016). « The national councils of national minorities in Serbia », *Autonomy Arrangements in the World*, [En ligne], [[http://www.world-autonomies.info/ntas/serb/Documents/Serbia\\_2016-01-15.pdf](http://www.world-autonomies.info/ntas/serb/Documents/Serbia_2016-01-15.pdf)] (11 août 2017).
- Bonenfant, Jean-Charles (1962). « Les douze circonscriptions électorales 'privilégiées' du Québec », *Cahiers de géographie du Québec*, vol. 6, no 2, p. 161-166.
- Breton, Raymond (1964). « Institutional Completeness of Ethnic Communities and Personal Relations of Immigrants », *American Journal of Sociology*, vol. 70, no 2, p. 193-205.
- Breton, Raymond (1983). « La communauté ethnique, communauté politique », *Sociologie et sociétés*, vol. 15, no 2, p. 23-38.
- British Columbia (s.d.). « Multicultural Advisory Council », [online], [<http://www2.gov.bc.ca/gov/content/governments/multiculturalism-anti-racism/multiculturalism/mac>] (11 août 2017).
- British Columbia, Electoral Boundaries Commission (2007). « Part 5, "Effective Representation" and "Very Special Circumstances" », [online], [<http://www.elections.bc.ca/docs/rpt/BCEBC-Prelim/Part%205-EffectiveRepresentation.pdf>] (7 juillet 2017).
- Burgess, Michael et Alain-G. Gagnon (2014). « Le fédéralisme et la démocratie », dans Alain-G. Gagnon (dir.), *La politique québécoise et canadienne. Une approche pluraliste*, Montréal, Presses de l'Université du Québec, p. 323-346.
- Canada, Affaires autochtones et du Nord Canada (2017). « Sommaire de l'entente sur la gouvernance crie », [online], [<http://www.aadnc-aandc.gc.ca/fra/1500394750433/1500394844909>] (11 août 2017).
- Canada, Affaire autochtones et du Nord Canada (s.d.). « Le gouvernement du Canada et l'obligation de consulter », [online], [<https://www.aadnc-aandc.gc.ca/fra/1331832510888/1331832636303>] (11 août 2017).
- Capotorti, Francesco (1977). *Étude sur les droits des personnes appartenant aux minorités ethniques, religieuses et linguistiques*, E/CN.4/Sub.2/384/Rev.1., New-York, Nations Unies.
- Carbonneau, Jean-Rémi, Fabian Jacobs, Rémi Léger et Martin Normand (2016). « Regards croisés sur les Sorabes de Lusace et les minorités francophones du Canada », *Astheure*, [online], [<https://astheure.com/2016/12/06/regards-croises-sur-les-sorabes-de-lusace-et-les-minorites-francophones-du-canada-collectif/>] (11 août 2017).
- Cardinal, Linda et Pierre Foucher (2017). « Minority Languages, Education and the Constitution », dans Peter Oliver, Patrick Macklem et Nathalie Des Rosiers, *The Oxford Handbook of the Canadian Constitution*, New York, Oxford University Press, p. 553-574.

- Cardinal, Linda et Sébastien Grammond (2017). *Une tradition et un droit : le Sénat et la représentation de la francophonie canadienne*, Ottawa, Presses de l'Université d'Ottawa.
- Cardinal, Linda, Stéphane Lang et Anik Sauvé (2008). « Les minorités francophones hors Québec et la gouvernance des langues officielles : portrait et enjeux », *Francophonies d'Amérique*, no 26, p. 209-233.
- Cardinal, Linda, Marie-Ève Levert, Danielle Manton et Sonia Ouellet (2013). *La Coalition des intervenantes et intervenants francophones en justice : une innovation communautaire pour accroître l'offre de services en français en Ontario*, Ottawa, Alliance de recherche Les savoirs de la gouvernance communautaire, [online], [[http://socialsciences.uottawa.ca/cura/sites/socialsciences.uottawa.ca.cura/files/la\\_coalition\\_des\\_intervenantes\\_et\\_intervenants\\_francophones\\_en\\_justice\\_000.pdf](http://socialsciences.uottawa.ca/cura/sites/socialsciences.uottawa.ca.cura/files/la_coalition_des_intervenantes_et_intervenants_francophones_en_justice_000.pdf)] (11 août 2017).
- Cardinal, Linda, Marie-Ève Levert, Danielle Manton et Sonia Ouellet (2015). « De la judiciarisation à l'innovation : la Coalition des intervenantes et intervenants francophones de l'Ontario pour le secteur de la justice », dans Linda Cardinal et Éric Forgues (dir.), *Gouvernance communautaire et innovations au sein de la francophonie néobrunswickoise et ontarienne*, Québec, Presses de l'Université Laval, p. 147-172.
- Cardinal Linda et Martin Papillon (2011), « Le Québec et l'analyse comparée des petites nations », *Politique et Sociétés*, vol. 30, no 1, 2011, p. 75-94.
- Cardinal et Sonntag et Selma Sonntag (2016), « Traditions étatiques et régimes linguistiques : Comment et pourquoi s'opèrent les choix de politiques linguistiques? », *Revue internationale de politique comparée*, vol. 22, no 1, pp. 115-133.
- Cârstocea, Andreea, Mindaugas Kuklys et Tove H. Malloy (2016). *Participatory Mechanisms for National Minorities*, Flensburg, European Centre for Minority Issues, [En ligne], [[http://www.ecmi.de/uploads/tx\\_lfpubdb/ECMI\\_Handbook\\_12-2015\\_01.pdf](http://www.ecmi.de/uploads/tx_lfpubdb/ECMI_Handbook_12-2015_01.pdf)] (11 août 2017).
- Conseil de l'Europe (1995). *Convention-cadre pour la protection des minorités nationales*, [En ligne], [<https://rm.coe.int/168007cdb8>] (4 septembre 2017).
- Courtney, John C. (2004). *Elections*, Vancouver, UBC Press, coll. Canadian Democratic Audit.
- Cortes, Andrés Felipe Jacobo, Marcela Escandón Vega et Richard André (2012). *Political Representation & Political Inclusion : Columbia Case Study*, New York, Americas Society et Council of the Americas, [En ligne], [<http://www.as-coa.org/sites/default/files/ColombiaFINAL.pdf>] (4 septembre 2017).
- Deschênes, Jules (1986). « Qu'est-ce qu'une minorité? », *Les Cahiers de droit*, vol. 27, n° 1, p. 255-291
- Directeur général des élections du Québec (s.d.). « Historique de la carte électorale du Québec », [En ligne], [<http://www.electionsquebec.qc.ca/francais/provincial/carte-electorale/historique-de-la-carte-electorale-du-quebec-depuis-1792.php>] (11 août 2017).
- Eisenberg, Avigail et Jeff Spinner-Halev (2005). *Minorities Within Minorities*, Cambridge, Cambridge University Press.
- Eurac Research (2009). « Legal Country Study : Romania », *Best Practices of Minority Protection in Central Europe*, [online], [<http://www.eurac.edu/en/research/autonomies/minrig/projects/Pages/projectdetails.aspx?pid=4688>] (11 août 2017).

- Foucher, Pierre (2012). « Autonomie des communautés francophones minoritaires du Canada », *Minorités linguistiques et société*, no 1, p. 90-114.
- Foucher, Pierre (2008). « Droits et lois linguistiques : le droit au service du Canada français », dans Joseph-Yvon Thériault, Anne Gilbert et Linda Cardinal (dir.), *L'espace francophone en milieu minoritaire au Canada : Nouveaux enjeux, nouvelles mobilisations*, Montréal, Fides, p. 463-511.
- Fleras, Augie (1985). « From Social Control towards Political Self-Determination? Maori Seats and the Politics of Separate Maori Representation in New Zealand », *Revue canadienne de science politique*, vol. 18, no 3, p. 551-576.
- Fleras, Augie (1991). « Aboriginal Electoral Districts in Canada. Lessons from New Zealand », dans Robert A. Milen (dir.), *Aboriginal Peoples and Electoral Reform in Canada*, volume 9 des études de la Royal Commission on Electoral Reform and Party Financing, Toronto, Dundurn Press, p. 67-104.
- Ghai, Yash (2003). *Public Participation and Minorities*, Londres, Minority Rights Group International, [En ligne], [[https://www.agora-parl.org/sites/default/files/public%20participation%20and%20minorities\\_0.pdf](https://www.agora-parl.org/sites/default/files/public%20participation%20and%20minorities_0.pdf)] (11 août 2017).
- Gouvernement du Canada (2011). *Consultation et accommodement des Autochtones. Lignes directrices actualisées à l'intention des fonctionnaires fédéraux pour respecter l'obligation de consulter*, Ottawa, Ministère des Affaires autochtones et Développement du Nord Canada, [En ligne], [[https://www.aadnc-aandc.gc.ca/DAM/DAM-INTER-HQ/STAGING/texte-text/intgui\\_1100100014665\\_fra.pdf](https://www.aadnc-aandc.gc.ca/DAM/DAM-INTER-HQ/STAGING/texte-text/intgui_1100100014665_fra.pdf)] (11 août 2017).
- Canada, Loi constitutionnelle de 1982, Annexe B de la Loi de 1982 sur le Canada (R-U), 1982.
- Canada, Loi constitutionnelle de 1867, 30 & 31 Victoria, c 3.
- Harguindeguy, Jean-Baptiste et Alistair Cole (2009). « La politique linguistique de la France à l'épreuve des revendications ethnoterritoriales », *Revue française de science politique*, vol. 59, no 5, p. 939-966.
- Henriksen, John B. (2008). « The continuous process of recognition and implementation of the Sami people's right to self-determination », *Cambridge Review of International Affairs*, vol. 21, no 1, p. 27-40.
- Hudon, Marie-Ève (2009), *Les langues officielles dans la fonction publique*, Ottawa, Bibliothèque du Parlement, [online], [<https://lop.parl.ca/content/lop/researchpublications/prb0256-f.htm#B-Equitable>] (11 août 2017).
- IDEA – International Institute for Democracy and Electoral Assistance (s.d.). *Gender Quotas Database*, [online], [<http://www.idea.int/data-tools/data/gender-quotas>] (11 août 2017).
- Keating, Michael, John Loughlin et Chris Deschouwer (2003). *Culture, Institutions and Economic Development: A Study of Eight European Regions*, Northampton, Edward Elgar Publishing.
- Krook, Mona Lena (2006). « Reforming Representation: The Diffusion of Candidate Gender Quotas Worldwide », *Politics & Gender*, vol. 2, no 3, p. 303-327.
- Krook, Mona Lena (2007). « Candidate Gender Quotas : A Framework for Analysis », *European Journal of Political Research*, vol. 46, no 3, p. 367-394.
- Légaré, André (2009). « Le Nunavut : entre le rêve et la réalité Bilan de dix années d'autonomie gouvernementale inuite et prospective socio-économique », *Revue d'études canadiennes*, vol. 43, no 2, p. 23-56.

- Manitoba (2016). « La Province nomme les membres du Conseil consultatif des affaires francophones », [online], [<http://news.gov.mb.ca/news/index.fr.html?item=39513>] (11 août 2017).
- Medda-Windischer, Roberta (2007). « Protection of Minorities Under International Law and the Case of South Tyrol », dans Jens Woelk, Joseph Marko et Francesco Palermo (dir.), *Tolerance through Law : Self Governance and Group Rights in South Tyrol*, Boston, Brill, p. 17-32.
- Morissette, Jean-François (2017). « Une nouvelle circonscription à majorité francophone voit le jour », #ONFR, [online], [<http://www5.tfo.org/onfr/une-nouvelle-circonscription-a-majorite-francophone-voit-le-jour/>] (11 août 2017).
- Niemczak, Peter et Célia Jutras (2008). *La représentation politique des autochtones au Canada et à l'étranger*, Ottawa, Bibliothèque du Parlement, [online], [<https://lop.parl.ca/content/lop/researchpublications/bp359f.pdf>] (11 août 2017).
- Normand, Martin (2015). *Gestion scolaire et habilitation des communautés minoritaires de langue officielle au Canada*, Ottawa, Programme d'appui aux droits linguistiques, [online], [<https://padl-hrsp.uottawa.ca/sites/default/files/17E12013%20Gestion%20scolaire%20et%20habilitation.pdf>] (11 août 2017).
- Nouvelle-Écosse (s.d.). « Culture Mi'kmaq », [online], [<http://www.novascotia.com/fr/explore/culture/mikmaq-culture>] (5 juillet 2017).
- Nouvelle-Écosse, Affaires acadiennes et Francophonie (s.d.). « Frise chronologique de l'histoire acadienne », [online], [<https://acadien.novascotia.ca/fr/frise-chronologique-de-l-histoire-acadienne>] (5 juillet 2017).
- Nouvelle-Écosse, Archives de la Nouvelle-Écosse (s.d.). « Les Afro-Néo-Écossais », [online], [<https://archives.novascotia.ca/fr/guide-de-généalogie/les-afro-néo-écossais>] (5 juillet 2017).
- Ontario, Secrétariat des nominations (s.d.). « Comité consultatif provincial sur les affaires francophones », [online], [<https://www.pas.gov.on.ca/scripts/fr/boardDetails.asp?boardID=141042>] (11 août 2017).
- Organisation des Nations Unies (1992). *Déclaration des droits des personnes appartenant à des minorités nationales ou ethniques, religieuses et linguistiques*, [online], [<http://www.ohchr.org/FR/ProfessionalInterest/Pages/Minorities.aspx>] (4 septembre 2017).
- Organisation for Economic Co-operation and Development (2009). *Fostering Diversity in the Public Service*, Paris, Public Governance and Territorial Development Directorate, [online], [<https://www.oecd.org/gov/pem/paper-fostering-diversity-public-service.pdf>] (11 août 2017).
- Organisation pour la sécurité et la coopération en Europe (1999). *Recommandations de Lund sur la participation effective des minorités nationales à la vie publique*, [online], [<http://www.osce.org/fr/hcnm/32245>] (11 août 2017).
- O'Sullivan, Dominic (2008). « Needs, Rights and 'One Law for All' : Contemporary Debates in New Zealand Maori Politics », *Revue canadienne de science politique*, vol. 41, no 4, p. 973-986.
- Poirier, Johanne (2008). « Au-delà des droits linguistiques et du fédéralisme classique : favoriser l'autonomie institutionnelle des francophones minoritaires du Canada », dans Joseph-Yvon Thériault, Anne Gilbert et Linda Cardinal (dir.), *L'espace francophone en milieu minoritaire au Canada : Nouveaux enjeux, nouvelles mobilisations*, Montréal, Fides, p. 513-562.

- Réseau de santé Vitalité (s.d.). « Qui sommes-nous? », [online], [<http://www.vitalitenb.ca/fr/le-reseau/qui-sommes-nous>] (11 août 2017).
- Reynolds, Andrew (2006). *Electoral systems and the protection and participation of minorities*, Londres, Minority Rights Group International, [online], [[https://tavaana.org/sites/default/files/electoral\\_systems\\_and\\_the\\_protection\\_of\\_minorities\\_-\\_pdf\\_-\\_english.pdf](https://tavaana.org/sites/default/files/electoral_systems_and_the_protection_of_minorities_-_pdf_-_english.pdf)] (11 août 2017).
- Sägesser, Caroline et David Germani (2008). « La communauté germanophone : histoire, institutions, économie », *Courrier hebdomadaire du CRISP*, no 1986, p. 7-50.
- Stats NZ (2017). « Maori Population Estimates: Mean year ended 31 December 2016 – tables », [En ligne], [[http://www.stats.govt.nz/browse\\_for\\_stats/population/estimates\\_and\\_projections/MaoriPopulationEstimates\\_HOTPMYe31Dec16.aspx](http://www.stats.govt.nz/browse_for_stats/population/estimates_and_projections/MaoriPopulationEstimates_HOTPMYe31Dec16.aspx)] (11 août 2017).
- Turgeon, Luc et Alain-G. Gagnon (2015). « Bureaucratic Language Regimes in Multilingual States : Comparing Belgium and Canada », dans Linda Cardinal et Selma K. Sonntag (dir.), *State Traditions and Language Regimes*, Montréal, McGill-Queen's University Press, p. 119-136.

### Case Law Cited

- Arsenault-Cameron c. Prince-Edward Island, 2000 CSC 1, [online], [<https://scc-csc.lexum.com/scc-csc/scc-csc/fr/item/1762/index.do>] (4 septembre 2017).
- Clyde River (Hameau) c. Petroleum Geo-Services Inc., 2017 CSC 40, [online], [<https://scc-csc.lexum.com/scc-csc/scc-csc/fr/item/16743/index.do>] (11 août 2017).
- Lalonde c. Commission de restructuration des services de santé, 2001 CanLII 21164 (ON CA), [online], [<https://www.canlii.org/fr/on/onca/doc/2001/2001canlii21164/2001canlii21164.html>] (4 septembre 2017).
- Mahe c. Alberta, [1990] 1 RCS 342, [online], [<https://scc-csc.lexum.com/scc-csc/scc-csc/fr/item/580/index.do?r=AAAAAQAFWfow6kB>] (4 septembre 2017).
- Nation haïda c. Colombie-Britannique (Ministre des Forêts), 2004 CSC 73, [online], [<https://scc-csc.lexum.com/scc-csc/scc-csc/fr/item/2189/index.do>] (11 août 2017).
- Raïche c. Canada (Procureur Général), [2005] 1 RCF 93, 2004 CF 679, [online], [<https://www.canlii.org/fr/ca/cfpi/doc/2004/2004cf679/2004cf679.html>] (4 septembre 2017).
- Reference re the Final Report of the Electoral Boundaries Commission, 2017 NSCA 10, [online], [[http://www.courts.ns.ca/Decisions\\_Of\\_Courts/documents/2017nsca10.pdf](http://www.courts.ns.ca/Decisions_Of_Courts/documents/2017nsca10.pdf)] (4 septembre 2017).
- Renvoi relatif à la sécession du Québec, [1998] 2 RCS 217, [online], [<https://scc-csc.lexum.com/scc-csc/scc-csc/fr/item/1643/index.do>] (4 septembre 2017).
- Renvoi sur les circonscriptions électorales provinciales (Saskatchewan), [1991] 2 R.C.S. 158, [online], [<https://scc-csc.lexum.com/scc-csc/scc-csc/fr/item/766/index>].

## Appendix 3B – Commissioned Research Reports

For the Independent Commission on Achieving Effective Representation for Acadian and African Nova Scotians  
by W. Andy Knight

### Introduction

This brief paper draws on a comparative analysis of various models of political representation in the UK, the US, and Canada – countries that have a minority population of African descended peoples. The goal is to understand the pressing need for reforming the electoral system in these countries and to decipher what changes are needed for the African Descended Peoples of the Province of Nova Scotia to achieve more effective representation for their communities.

### First-Past-the-Post (FPTP), Winner-Take-All Electoral System

Canada, the United States and the United Kingdom all share a similar single member plurality (SMP) electoral model. It is a “First-Past-the-Post” (FPTP) or “winner-take-all” electoral system. There are variations in how this system works in the United States compared to how it works in Canada and the UK. In both Canada and the UK, the First-Past-the-Post electoral system is used to elect politicians to parliament. Under FPTP voting takes place in single member districts, or constituencies. The voter is presented with the names of candidates nominated by political parties. The voter marks one, and only one, of the names on the ballot. The winning candidate is the

person who gets the most votes (a plurality) in the constituency. At the Federal and Provincial levels in Canada, the FPTP electoral system is the norm. At the Federal level, the candidate with the most votes in a riding wins a seat as a Member of Parliament (MP) in the House of Commons.

### First-Past-the-Post in the UK

Democracy is in crisis in the UK. During the last British elections, the Tory government was elected with less than a quarter of registered voters.

One of the major problems with the FPTP electoral system in that country is that it ostensibly excludes minorities from fair representation in Parliamentary bodies. Under the FPTP system, parties advance “the most broadly acceptable candidate in a particular district so as to avoid alienating the majority of electors.” It is very rare for a black person in the UK, for instance, to be nominated by a major party in a majority white district. There is strong evidence that “ethnic and racial minorities across the world are far less likely to be represented in legislatures elected by FPTP.” Thus, if voting behaviour dovetails with ethnic divisions, then one can expect that the exclusion from representation of members of ethnic minority groups can become a destabilizing factor for the political system as a whole.<sup>1</sup>

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<sup>1</sup> Ibid.

In the UK, the British Parliament is failing at representing ethnic diversity. If the House of Commons was to reflect the British population, there would be 117 black and minority ethnic members of parliament. Instead, there are only 27 of these individuals as Members of Parliament in the House of Commons. The minority population in the UK is therefore underrepresented. None of the political parties have been able to attract black and other minority ethnic candidates in proportion to the size of those black and ethnic groups within the various constituencies. So, for instance, the constituencies won by the Labour Party in the last election consisted of one-fifth black and minority ethnics (BME). Yet 93.8% of the Party's MPs are white. The Liberal Democratic Party does not have a single BME MP. Yet 11.4% of those who live in successful Liberal Democratic Party ridings are Black and Minority Ethnic (BME). In the Conservative Party, only 3.6 % of its MPs are Black and Minority Ethnic (BME).

There is a growing debate in the UK over how best to ensure that Parliament reflects better the diversity of the general population. That debate has not been resolved. But there are recommendations to introduce a BME shortlist to ensure that political parties field candidates that reflect their constituencies' population. Specifically, it has been argued in the UK that political parties ought to reflect the racial make-up of their constituents. Yet, black and ethnic minority representation in Parliament has stalled when one considers the increase in the growth of the BME population.

If the composition of the parties in the British Parliament was proportionate to the size of the Black minority ethnic communities they currently represent, then the Conservatives would have 26 BME MPs, Labour would have 49 BME MPs, and the Liberal Democratic Party would have at least 6 BME MPs. Instead, the Tory Party currently has 11 BME MPs, Labour has 16 BME MPs and the Liberal Democratic Party has none.

The 27 BME MPs are way short of the 117 required if the House of Commons in Britain is to be representative of the wider British population. It seems clear that both the Tory and the Liberal Democratic parties have difficulty appealing to BME groups, and while the Labour Party has been more successful than the other two parties, it is still failing in this representation of visible minority groups in the UK.<sup>2</sup>

This state of affairs caused Sir John Major to lament the failure of the Conservative Party over the years to reach out to the black and minority ethnic community. As a former British PM, he has also questioned the UK's record of tackling electoral inequality. In a speech to the Tory Reform Group on 28 April 2015, John Major said that the Tories "need to face up to its historic failure to win over black and minority voters." This failure has meant that the Tories have been unable to secure a foothold in many of the urban areas of the country where many black and minority ethnic people live.<sup>3</sup>

The concerns about underrepresentation of minorities in Britain has reached a point at which some MPs are now seriously considering scrapping the First-Past-the-Post voting system. Over 100,000 British citizens have signed a petition calling for electoral reform. As a result the subject had to be automatically considered for discussion and debate by MPs in the House of Commons.<sup>4</sup> Petition founder, Tim Ivorson issued a challenge to the British government by saying that if indeed the government is serious about fair and equal representation for the voting public, then it "should live up to its rhetoric by urgently reviewing our unfair and unrepresentative voting system."<sup>5</sup> Make Votes Matter co-founder, Katie Ghose, has pointed out that "every developed country that uses First Past the Post has a major grassroots campaign to abolish it."<sup>6</sup>

<sup>2</sup> See Rajeev Syal & Ami Sedghi, "Parliament failing to represent UK's ethnic diversity," *The Guardian* (31 July 2014).

<sup>3</sup> Note that 68% of the non-white voters in London prefer the Labour Party, whereas only 21% state a preference for the Tories. Nicholas Watt, "John Major laments Conservatives' failure with minority ethnic voters," *The Guardian* 6 May 2015.

<sup>4</sup> Jon Stone, "MPs set to debate changing Britain's Voting System to Proportional Representation," *Independent* (15 March 2017), [https://www.washingtonpost.com/news/work/wp/2016/06/09/how-a-widespread-practice-to-politically-empower-african-americans-might-actually-harm-them/?utm\\_term=.153b0056ae1b](https://www.washingtonpost.com/news/work/wp/2016/06/09/how-a-widespread-practice-to-politically-empower-african-americans-might-actually-harm-them/?utm_term=.153b0056ae1b)

<sup>5</sup> *Ibid.*

<sup>6</sup> *Ibid.*

## First-Past-the-Post in Canada

There are also some concerns in Canada that the winner-take-all voting system significantly distorts the will of the voters in many instances. Take for example the last federal elections. The Liberal Party earned 39.5% of the votes across Canada but the Party ended up with 54.4% of the seats in the House of Commons. This pattern was repeated across Atlantic Canada. Of the 1,309,257 votes cast by electors in Atlantic Canada, 58.7% went to Liberal candidates, 21.8% went to Conservatives, 17.9% to the New Democrats, and 3.5% to the Greens. Yet, the Liberals swept all 32 seats across Atlantic Canada.

In the last Provincial elections in Nova Scotia, the Liberal Party garnered 45% of the vote but came away with 65% of the seats in the Provincial Legislature. The New Democratic Party (NDP) received 27% of the popular vote to the Progressive Conservatives' (PCs) 26%, and yet the NDP ended up with four fewer seats than the PCs. Doug Bailie, president of Fair Vote Canada argues that the winner-take-all system is an antiquated one whose common outcome is the installation of "phony majority governments". And this FPTP system has benefitted all three of the major political parties in Nova Scotia at different times.<sup>7</sup>

## First-Past-the-Post in the United States

While the predominant electoral system in the United States is a "first past the post" voting system, there are some variations to the method of electoral representation at various levels in the political arena. For instance, in electing the US President, the Electoral College Electors are chosen using FPTP on a per state basis, with the exception of the states of Maine and Nebraska – where two electors are chosen using FPTP on a statewide basis, and one elector is chosen from each

Congressional district using FPTP on a per district basis. Elections to both the House and the Senate in the US is done largely utilizing FPTP. This winner-take-all electoral system is considered by many practitioner observers and academics in the US to be at the heart of the systemic disempowerment of minorities and the poor. FPTP is said 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.

Racial minorities in the US were given the right to vote, thanks largely to the Civil Rights Movement of the 1960s and the *Voting Rights Act* of 1965. But within that 'winner-take-all' voting system, minorities and the poor are often denied the equally fundamental right to effective representation. This problem is compounded by the racial gerrymandering practices that occurs in some states, "of spreading minorities across voting districts, leaving them too few in number in any given district to elect their preferred candidates."<sup>8</sup> It should not come as a surprise that these manoeuvres are done to disadvantage the Democratic Party in those areas, since African Americans are generally thought to favour that Party.

## Proportional Representation: Cumulative, Limited and Ranked Choice Voting

Proportional representation is the label given to a family of different electoral systems that produce outcomes in which the parliamentary or legislative seats won match closely with votes cast.<sup>9</sup> Voting systems that adopt proportional representation (PR) are designed to remedy some of the more glaring electoral injustices that minority groups face. There are different types of proportional representation system. But what they have in common is a design feature that makes government more representative.

<sup>7</sup> Fair Vote Canada, "Minority of Nova Scotia Voters Elect a Majority Government in Nova Scotia," (20 October 2015) <http://www.fairvote.ca/minority-of-nova-scotia-voters-elect-a-majority-government-in-nova-scotia-le-systeme-electoral-est-injuste-pour-les-electeurs-de-la-nouvelle-ecosse/>

<sup>8</sup> Kim Soffen, "How racial gerrymandering deprives black people of political power," *The Washington Post* (9 June 2016), [https://www.washingtonpost.com/news/work/wp/2016/06/09/how-a-widespread-practice-to-politically-empower-african-americans-might-actually-harm-them/?utm\\_term=.153b0056ae1b](https://www.washingtonpost.com/news/work/wp/2016/06/09/how-a-widespread-practice-to-politically-empower-african-americans-might-actually-harm-them/?utm_term=.153b0056ae1b)

<sup>9</sup> 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).

<sup>10</sup> Louisiana uses a variant of the blanket primary with the primary held on the day of the general election, and with a runoff if no candidate receives a majority. In California and Washington there is a primary before the general election, with the top-two candidates facing off in the general election regardless of whether or not one has a majority.

<sup>11</sup> Otherwise known as Instant Run-off Voting (IRV) – which allows voters to list candidates in order of preference so that if there is no clear winner in the first round of balloting officials can recount the ballots immediately until there is a winner (with a majority of the votes). Although IRV can be confusing, proponents argue that this voting method guarantees that whoever is elected has the support of a majority of the voters.

## The Case for PR in the US

In selecting members to the House of Representatives, FPTP is used for all seats with the following exceptions: in Georgia where there is a primary run-off balloting (two-round system), in California and Louisiana<sup>10</sup> (where there are nonpartisan blanket primaries), in Washington, and in Maine (which has adopted Ranked Choice Voting).<sup>11</sup> Similarly, at the Senate level, FPTP is utilized for all seat, with the exception of those states mentioned above.

It is also important to point out that variants of proportional representation are utilized in Texas, Alabama, Cambridge, Massachusetts, and Minnesota. Fifty Texas jurisdictions have adopted cumulative voting – an alternative to the single-member district form of representation. It is a voting system used by a number of boards and commissions that allows voters to cast as many votes as there are seats on a particular board or commission. And, in Cambridge, Massachusetts, ranked choice voting has been utilized in City Council and School Board elections. Andrew Douglas notes that ranked choice voting has enabled African Americans to have a consistent presence on both the Cambridge City Council and School Committee. In ranked choice voting, if no candidate has more than half the vote in the first round of balloting, the last placed candidates are eliminated round-by-round until two candidates are left. This method of voting, which is also used in some Minneapolis, Minnesota municipal board elections, “improves representation by allowing voters to elect candidates of choice in proportion to their share of the electorate.”<sup>12</sup>

Apart from lowering barriers to political participation for minority groups, ranked choice voting has the added advantage of preventing ‘spoiler’ candidates “from impacting the outcome of elections” by transferring the “excess votes from candidates who pass the threshold for election” and “votes for candidates with least support” to their voters’ subsequent choices after each round of tabulation.<sup>13</sup>

It may be surprising to learn that over 200 localities in the US use one of these forms of proportional representation (two round system, ranked choice voting and cumulative voting). The benefits of using such proportional representation electoral systems are: 1) all eligible voters can have an effective voice in who gets to represent them; 2) as many voters as possible will have someone to represent them in policymaking bodies; 3) PR systems enable both majority and minority groups to have fair representation within the political arena; and 4) a legislature is created that truly reflects the wide diversity of the electorate’s political opinions and interests. US Congresswoman, Cynthia McKinney has been introducing a *Voters’ Choice Act* bills since 1995 that, if they had passed, would have allowed states to use proportional representation systems in US House of Congress elections.<sup>14</sup> North Carolina Congressman, Melvin Watts introduced in 1999 a ‘States’ Choice of *Voting Systems Act*’ which was intended to do something similar.<sup>15</sup>

Clearly, there is strong interest particularly among African American legislators in the US to introduce proportional or semi-proportional electoral systems as a means of improving the representation of minority groups within Congress and the Senate. Since 2000, the Southern Centre for Studies in Public Policy has been running ambitious educational outreach programmes on proportional representation systems to black elected officials and historically black colleges and universities. The Centre has argued that proportional representation has proven to be a “most effective solution to minority underrepresentation.”<sup>16</sup>

The goal of proportional systems of voting is simple: they are designed to provide a means “to allow fair and realistic opportunities for citizens to elect individuals of their own choosing.” While proportional representation systems are certainly not a cure all for the injustices of the FPTP system of voting, according to some observers in the US, PR systems are seen as a “necessary step towards the

<sup>12</sup> Andrew Douglas, “Cambridge Massachusetts Elections a Model for America,” Fair Vote (1 November 2013), <http://www.fairvote.org/cambridge-massachusetts-elections-a-model-for-america>

<sup>13</sup> *Ibid.*

<sup>14</sup> See US GovTrack, “H.R. 2545 — 104th Congress: Voters’ Choice Act.” [www.govtrack.us](http://www.govtrack.us). 1995. August 7, 2017 <https://www.govtrack.us/congress/bills/104/hr2545> and Fair Vote, <http://archive.fairvote.org/?page=1055>

<sup>15</sup> Institute for Local Self Reliance, “States’ Choice of Voting Systems Act – Federal – HR 1173,” 17 March 1999, <https://ilsr.org/rule/voting-systems/2173-2/>

<sup>16</sup> Robert Richie, Douglas Amy, and Frederick McBride, “How Proportional Representation can empower minorities and the poor,” [http://www.fairvote.org/how\\_proportional\\_representation\\_can\\_empower\\_minorities\\_and\\_the\\_poor](http://www.fairvote.org/how_proportional_representation_can_empower_minorities_and_the_poor)

creation of a more inclusive, responsive political system” and for many, this alternative electoral mechanism holds the promise of finally giving “badly needed representation to poor and minority Americans who have been systematically denied access to power in the US because of our flawed winner-take-all election rules.”<sup>17</sup>

## The Case for PR in the UK

The British election in 2015 resulted in a clear majority victory for the Conservatives. But the FPTP electoral system came under increased scrutiny and criticism because there was a considerable discrepancy between vote share and seats won when the results came in. The Conservatives, under David Cameron, saw a swing in the results of 0.8% but managed to gain 23 seats. Whereas, the Labour Party saw a positive swing of 1.5% but actually lost 26 seats. The Scottish National Party won a total of 56 seats but garnered just under 1.5m votes. The UKIP won only one seat but attracted 3.8 million voters. The Liberal Democrats with 1.4 million votes less than the UKIP was rewarded with 8 seats.

There is something radically wrong with an electoral system that produces those ‘out of whack’ results. Critics of the winner-take-all system made a compelling case that the UK was holding on to an outmoded “19th-century system of voting” which no longer made sense in terms of effective political representation.<sup>18</sup> Clearly the two major established parties, Labour and the Conservatives, have benefitted at different times from this disproportional system. But the FPTP heavily discriminates against the smaller parties, and as was shown earlier, it also leads to the underrepresentation of Black and Minority Ethnic (BME).

The reality of the 2015 election in the UK is that the Conservative Party was able to form a majority government despite the fact that 63% of the voters did not support the party. In other words, their “majority is an artifact of the electoral system and not a true reflection of the choices of voters.”<sup>19</sup>

It is no wonder that the Liberal Democrats, the Green Party and UKIP are all clamoring for electoral reform. Although the Labour Party is split on the issue, some of its key players have endorsed the idea of the introduction of proportional representation. Cat Smith, a strong ally of Labour leader Jeremy Corbyn, described proportional representation as a system used by “the kind of social democracies that we in the Labour Party want to create.” Smith has come to the view that proportional representation is “a prerequisite of a properly functioning democracy.” And, she is not alone on this issue in the party. A recent poll revealed that over three quarters of Labour Party voters would back proportional representation.<sup>20</sup> But Corbyn, the leader of the Party, while calling for reform of the electoral system in Britain, has not yet explicitly endorsed proportional representation.

If proportional representation is adopted in the UK, it will likely “enable minority voices to be heard, and give them a seat at the table.” This would be welcomed by the African descended minorities living in that country.<sup>21</sup> However, it is unclear which version of proportional representation would actually result in effective political representation for the African descended minorities there.

<sup>17</sup> Ibid.

<sup>18</sup> Martin Smith, “The case for proportional representation in the UK just became clearer,” *The Conversation* (8 May 2015), <http://theconversation.com/the-case-for-proportional-representation-in-the-uk-just-became-clearer-41544>

<sup>19</sup> Ibid.

<sup>20</sup> Jon Stone, “Labour eyes proportional representation as Party’s elections minister backs voting shake-up,” *Independent* (4 May 2017),

<sup>21</sup> 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>

## The Case for PR in Canada

During the last Canadian federal election campaign Justin Trudeau promised electoral reform. He said: "We can have an electoral system that does a better job of reflecting the concerns, the voices of Canadians from coast to coast to coast, and give us a better level of governance."<sup>22</sup> But after the Liberal Party won its majority using the FPTP system, the PM had second thoughts about the need for electoral reform. He expressed three reservations.

First, there was a lack of 'consensus' within his Party and among the academics and politicians who presented their arguments for electoral reform to the special all-party committee struck to conduct hearings across the country. Seemingly, with postcards mailed to 14 million households promoting an online survey on the issue, the PM indicated that there was just no consensus on what type of electoral system Canadians wanted. Second, the PM came to the conclusion that moving to a system of proportional representation would simply make it easier for 'extremist' parties or fringe elements (e.g. white supremacists, or white nationalists), and regional parties to win seats in the House of Commons. Third, Trudeau ruled out the possibility of holding a referendum on the issue, because he felt that doing so would be unnecessarily 'divisive.'<sup>23</sup> The PM concluded that the more he thought about it the more he realized that proportional representation "was exactly the wrong system for a big, regionally and culturally diverse country" like Canada.<sup>24</sup>

Regardless of how the Canadian PM feels on this subject, it is evident that there is a 'representation deficit' in the Canadian political and electoral system. Certain structural barriers need to be removed if Canada is going to achieve effective representation for all of its constituency groups, including African descended minorities.

And, as Gwendolyn Moncrieff-Gould put it:

*The representation deficit of racial minorities must then come from our electoral structures, including the assignment of seats to provinces and territories, the drawing of federal riding boundaries, parties' candidate selection methods, and the First-Past-the-Post and single member plurality systems.<sup>25</sup>*

Andrew Coyne, makes the convincing argument that adopting a proportional representation electoral system would not turn Canada into "chaos, instability, and financial ruin." One of the positive outcomes of a PR system is that mainstream parties would have no choice but to negotiate with fringe parties, since they would most likely not be able to command a majority on their own. But other observers like Lorne Gunter, an Alberta conservative columnist, has made the case that proportional representation "breaks the local bond between constituents and MPs."<sup>26</sup> However, the empirical evidence does not bear this claim out. One just has to take a look at the following countries, all of whom have adopted proportional representation: Austria, Belgium, Denmark, Finland, Germany, Iceland, Ireland, Luxembourg, The Netherlands, Norway, Sweden and Switzerland.

The voting system is at the heart of representative democracy. It would appear that our twenty-first century democracy is being hobbled by a rather dysfunctional twelfth century voting system that was scrapped long ago by major democracies. Canada, like the US and the UK, is hanging on to an outdated and outmoded electoral model: FPTP. Eighty-one countries across the globe have voting systems with an element of proportional representation embedded in them. Something is definitely askew when in four provincial elections since 1996, the party that came second in the popular vote actually formed a majority government.

<sup>22</sup> Aaron Wherry, "Trudeau's promise of electoral reform: From 'we can do better' to accusations of betrayal," CBC News (5 February 2017), <http://www.cbc.ca/news/politics/wherry-trudeau-electoral-reform-promise-betrayal-1.3962386>

<sup>23</sup> Ibid, and Aaron Wherry, "Liberal fears of Proportional Representation and a referendum killed Trudeau's reform promise," CBC News (3 February 2017), <http://www.cbc.ca/news/politics/trudeau-reform-promise-referendum-1.3963533>

<sup>24</sup> Ibid

<sup>25</sup> Gwendolyn Moncrieff-Gould, "Racial Minorities and the Representational Deficit: Barriers in the Federal Canadian Electoral system," *Canadian Study of Parliament Group* (June 2015), [http://cspg.gc.ca/pdf/StudentEssay2015\\_MoncrieffGould-e.pdf](http://cspg.gc.ca/pdf/StudentEssay2015_MoncrieffGould-e.pdf)

<sup>26</sup> See Andrew Coyne, "No, Proportional representation would not turn Canada into a dystopia hell hole," National Post (18 August 2016), <http://nationalpost.com/opinion/andrew-coyne-no-proportional-representation-would-not-turn-canada-into-a-dystopian-hell-hole/wcm/8fc0d3b7-1c0c-4337-abd6-c410ce2996ff>

The demand for a reform of Canada's electoral system is not over. A virtual petition, similar to the one in the UK referred to earlier, calling on the Government to consider electoral reform, garnered over 130,000 signatures after Prime Minister Justin Trudeau reneged on his promise to consider reforming Canada's electoral system in time for the next federal general election in 2019.<sup>27</sup>

## Towards Effective Representation for African Descended People in Nova Scotia

The electoral system in the Province of Nova Scotia is, like the rest of Canada's, a FPTP, winner-take-all, system. And, like the rest of Canada, there are concerns that the existing electoral system "no longer responds to twenty-first century Canadian democratic values."<sup>28</sup> Because of those concerns, the Law Commission of Canada has conducted extensive research and held multifaceted public consultations in order to gather the insights and opinions of a broad cross section of Canadians on electoral system reform. The Law Commission concluded that Canada should consider adding an element of proportionality to the Canadian electoral system.<sup>29</sup>

In proportional representation systems, Parliaments or Legislatures better reflect the composition of the electorate.<sup>30</sup> However, there are different types of proportional representation systems, as demonstrated in previous sections of this paper. And there is no guarantee that a shift from the winner-take-all, single member districts to any one of the proportional representation systems will necessarily improve the effectiveness of representation for African descended peoples in the province of Nova Scotia.

Although Canada is a democratic country, there are flaws in both the procedural and substantive elements of its democracy. Procedural democracy has not always given African Nova Scotians effective representation at the political level. Voting is not the only form of political participation. It may not even be the most impactful form of political participation. There are several ways in which

ethnic minority groups can be better represented in the political realm. Political Parties can encourage the nomination of candidates from those minority groups, particularly if a balanced ticket increases their chances of electoral success. Introducing proportional representation (PR), in some cases, might facilitate the representation of individuals from under-represented groups, including from ethnic minority communities. A government could, under certain circumstances, set aside a certain number of seats in the legislature for ethnic minorities who have been traditionally under-represented in politics.

Political participation also involves the freedom to speak out; to assemble; to associate; to take part in public affairs; to volunteer for political causes and campaigns; to contribute monetary donations to a political party or candidate; to lobby the government in power; to be able to complain via letters to the editor or by writing opinion editorials in newspapers, magazines or social media blogs; to register as a political candidate; to be elected; and to hold political office at all levels of government.

If the African Nova Scotian community is to enjoy effective political representation, it will need to find a way to assert itself on to the political agenda of the province. Members of the black community in Nova Scotia need to elect more black MLAs; they need to be present at the cabinet table to be effective. They need to take more seriously the issue of electoral participation. But to accomplish these things, the Government will have to be proactive in providing support to the black community, realizing that there are several structural obstacles placed in the way of visible minority groups that are trying to become politically more active. Some of those obstacles include: the paucity of financial resources; a lower level of education; a lack of access to information; family responsibilities; white male domination of political processes; lack of opportunities to gain political experience; paucity of networks necessary for political access or electoral success; lack of understanding of how political parties operate; lack of understanding of how political party constituencies operate; and a lack of understanding of how to deal with the media.

The Nova Scotia government should put resources into the development of workshops across the province designed to help youth and leaders in the African Nova Scotian community build capacity quickly in those areas that would make them effective representatives in the political arena. It could also help create an environment in which those young people and leaders can build networks outside of their “in-group” and cement relationships that will help them sustain a successful political career.

At the same time, if one views the provincial government as a neutral arbiter, one can encourage African Nova Scotians to join civil society organizations, networks, trade unions, NGOs and the media. Lobbying for members of the African/Caribbean diaspora is not always easy. In most cases the members of that community do not represent a strong enough political constituency that can compel the leaders of political parties to put them in positions of influence within those parties. So the leaders of the African/Caribbean community should take it upon themselves to develop the necessary skills and capacity for effective lobbying of their MLAs and Government.

## Conclusion

It is clear that the First-Past-the-Post, winner-take-all electoral system which Canada inherited from the British about 200 years ago, is outdated. There needs to be reform of the electoral system in Canada and in the Province of Nova Scotia. However, there is no guarantee that the embrace of a modified FPTP, or any of the variants of proportional representation systems will necessarily improve the effectiveness of political representation for African Descended Nova Scotians. Political influence can be attained not only at the ballot box and within the legislature, it can also be nurtured in a subsidiarity arrangement at the grass roots within the communities of the African descended population. But, given the years of discrimination and marginalization which African descended people have had to endure, it would seem that the Nova Scotian government has an ethical and moral responsibility to provide the resources to assist these communities in building the necessary capacity to become more effective in representing themselves.

<sup>27</sup> Ryan Maloney, More Than 130,000 Canadians Sign Petition Demanding Liberals Keep Electoral Reform Promise,” HuffPost 03 March 2017], [http://www.huffingtonpost.ca/2017/03/03/liberals-electoral-reform-petition-616-ndp\\_n\\_15136336.html](http://www.huffingtonpost.ca/2017/03/03/liberals-electoral-reform-petition-616-ndp_n_15136336.html)

<sup>28</sup> The Law Commission of Canada, “Voting counts: Electoral Reform for Canada,” (2004)

<sup>29</sup> *Ibid.*, p. 172.

<sup>30</sup> See Arend Lijphart, *Patterns of Democracy: Government Forms and Performance in Thirty-Six Countries* (New Haven: Yale University Press, 1999).

## Appendix 4 – Discussion Paper (Background)

### 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 Acadians<sup>1</sup> 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://facebook.com/ceeraans) and [twitter.com/ceeraans](https://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.

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<sup>1</sup> 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>.

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,<sup>2</sup> 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*<sup>3</sup>, 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<sup>4</sup>.

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".<sup>5</sup>

<sup>2</sup> Carbert, L. & Black, N. (2013). *Doing the work of representation*, Nova Scotia style in Mind the gaps: Canadian perspectives on gender and politics. Eds R. Lexier & T. Small, [18-33].

<sup>3</sup> *Saskatchewan v Carter* [1991] 2 SCR 158.

<sup>4</sup> Effective Political Representation in Nova Scotia: The 1992 Report of the Provincial Electoral Boundaries Commission.

<sup>5</sup> *Ibid.* p. 33

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<sup>6</sup>. 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.”<sup>7</sup> 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.”<sup>8</sup> 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.”<sup>9</sup> 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.

<sup>6</sup> Just Boundaries: Recommendations for Effective Representation for the People of Nova Scotia, 2002 Commission Report, Aug. 2002, Table Two p. 28.

<sup>7</sup> 1992 Report p. 37.

<sup>8</sup> Final Report of the 2012 Provincial Electoral Boundaries Commission, p. 51

<sup>9</sup> Reference re the Final Report of the Electoral Boundaries Commission, 2017 NSCA 10, Para 136.

## 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*<sup>10</sup>, 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.<sup>11</sup>

New Brunswick accorded francophones a degree of self-governance in health by establishing a francophone managed health authority, Réseau de santé vitalité<sup>12</sup>, 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).

<sup>10</sup> Lund Recommendations on the Effective Participation of National Minorities in Public Life (1999). Available at <http://www.osce.org/hcnm/32240?download=true>

<sup>11</sup> Education Act (NS) s.42A.

<sup>12</sup> <http://www.vitalitenb.ca>

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.<sup>13</sup> 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.<sup>14</sup> 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.

<sup>13</sup> *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>.

<sup>14</sup> <https://acadien.novascotia.ca/en/reports>.

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. Nevertheless, 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.”<sup>15</sup> 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

<sup>15</sup> ACE, The Electoral Knowledge Network, “Electoral Systems,” <http://aceproject.org/ace-en/topics/es/onePage>.

district, to elect their preferred candidates.”<sup>16</sup> 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.<sup>17</sup> The Law Commission of Canada concluded that Canada should consider adding an element of proportionality to the system.<sup>18</sup> 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.”<sup>19</sup> 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.<sup>20</sup>

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,<sup>21</sup> 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.”<sup>22</sup> 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?

<sup>16</sup> Kim Soffe, “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](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)

<sup>17</sup> 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).

<sup>18</sup> *Ibid.*, p. 172.

<sup>19</sup> 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>

<sup>20</sup> 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>

<sup>21</sup> Dr. Andrew Knight, “The Political Representation of African Descended People - the UK, the US and Canada”, prepared for the Commission.

<sup>22</sup> *Ibid.*

## Appendix 5 – Discussion Paper for African Nova Scotians

### Synthesis on Electoral Representation of African Nova Scotians

#### The Commission on Effective Electoral Representation of Acadian and African Nova Scotians (CEERAANS)

The Government of Nova Scotia established a Commission on Effective Electoral Representation of Acadian and African Nova Scotians (CEERAANS) to prepare a report which will outline recommendations to inform the Province on how to best achieve effective representation for all Acadians and African Nova Scotians, including any future electoral boundary review. The CEERAANS is not an Electoral Boundary Commission. The scope of its research, consultation and recommendation will consider all options available to improve the effective representation of these groups and contribute to better government for the populace as a whole.

The goal of this synthesis is to highlight examples of effective political representation at home and abroad that will support the evolution of “made in Nova Scotia” options for improved representation for African Nova Scotians in the future.

#### History of African Nova Scotians

The transatlantic slave trade, was one of the greatest crimes against humanity committed by European colonial powers. It uprooted Africans and divided their families. Centuries of enslavement were followed by a subsequent long history of marginalization, racial segregation, anti-miscegenation laws, and political exclusion. Descendants of African slaves now live in North America (Canada and the United States), the Caribbean, the UK, different parts of Europe, the Middle East and across the globe.

In his book, *How the Blacks Created Canada*, Fil Fraser notes that Nova Scotia became the home of the largest black population in Canada.

Initially “perceived as a threat to the White community,” Nova Scotian Blacks “suffered more severe discrimination than other [ethnic minority] communities spread across the country.”<sup>1</sup>

As late as 1962 over half of all African Canadians were living in Nova Scotia. Today, the population numbers 20,790. African Nova Scotians make up the largest racially visible group in Nova Scotia. They represent 44% of the racially visible population which constitutes 2.3% of the total. We learned that 80.7% of African Nova Scotians were born in the province, while 6.7% were born elsewhere in Canada. In addition, 77.2% of the African Nova Scotian population are Canadians of three or more generation. Also, 10% of African Nova Scotians today are new Canadians, coming primarily from Africa, the Caribbean, and the United States.

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<sup>1</sup> Fil a 50 year period. Fraser, *How the Blacks Created Canada* (Edmonton: Dragon Hill Publishing Ltd., 2009), p.100.

## Response to Segregation and Racism—The Legacy of Resistance and Resilience

The history of African Nova Scotians includes segregation, discrimination, marginalization and exclusion. Despite the abolition of slavery by the Upper Canada Colonial Parliament in 1793, racism remained a fact of life for African Nova Scotians, sometimes blatant and sometimes subtle.

Throughout the decades, a number of civil society organizations created by African Nova Scotians have been established to advance their interests in the Province. Against the backdrop of the lived reality of systemic and “every day” racism, their persistence and determination has led to a number of successes such as a significant increase in the number of teachers, lawyers, doctors and other health professionals in the last decade. The establishment of the Black Business Initiative and its continued work has supported entrepreneurship, innovation and a number of successful businesses. African Nova Scotia leadership has also led to significant recognition of racial injustice in Nova Scotia culminating in The Africville Apology for the eviction of the African-Canadian population and eventual destruction of Africville;<sup>2</sup> the Viola Desmond pardon; and the Home for Coloured Children Apology in 2014.<sup>3</sup>

## History of Voting Rights for African Nova Scotians

During the enslavement period, from the early 1600s until its abolition on August 1st 1834, Black persons could not vote as they were not considered to be “people” and therefore did not possess the rights or freedoms enjoyed by full citizens, including protections under the law and involvement in the democratic process.

In 1758, Nova Scotia called an election, which would lead to the formation of the first legislative assembly in Canadian history. Although African Nova Scotians lived in Nova Scotia well before 1758, there were not permitted to vote as they were identified as enslaved peoples brought to Nova Scotia.

Until 1920 in Nova Scotia, eligible voters were required to own property or have a taxable net worth. This excluded poor people, the working class and racialized minorities including People of African Descent.<sup>4</sup>

Black persons in Canada secured some rights and freedoms as their social status changed from enslaved persons to British subjects during the period 1793 to 1834. As British subjects, they were technically entitled to all of the rights, freedoms and privileges that status carried. However, this was not the reality. Black Canadians faced racism and their civil rights and civil liberties were limited. The rights and freedoms of Black women were further restricted by virtue of their sex.

In 1948, the Universal Declaration of Human Rights was adopted by the United Nations, although Canada showed some reluctance, it signed the Declaration. The declaration indicated that ‘Race’ was no longer allowed as a reason to deny the right to vote.

## The Political Representation of People of African Descent – the UK, the US and Canada

One of the factors affecting representation in the Legislature is our electoral system. Canada, the US and the UK share a similar single member plurality (SMP) electoral model. It is a “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 the constituency.

<sup>2</sup> In the 1960s Africville was taken over by the city of Halifax. The black population, a close-knit community that existed there for about 150 years, was evicted and their homes were taken over and bulldozed in order that a bridge could be built across the harbour. Note that the UN’s Special Rapporteur on Racism addressed this situation in his report of 2003.

<sup>3</sup> In this orphanage, black children suffered physical, psychological and sexual abuse by member of the staff over

<sup>4</sup> People of African Descent – For purposes of this paper and in recognition of the United Nations International Decade for People of African Descent, we will use the term People of African Descent for people of African ancestry living in Nova Scotia, including longstanding communities and newcomers to the province.

FPTP is simple and tends to produce stable majority governments. Like a hockey team that scores consistently over the whole season has higher standings than one that wins only a few games by wide-margins, the FPTP system tends to favour large parties that aggregate interests over small, single-issue parties (as has been the case in Canadian elections at the federal and provincial levels).

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

Racial minorities in the US were given the right to vote, thanks largely to the Civil Rights Movement of the 1960s and the *Voting Rights Act* of 1965. But within that ‘winner-take-all’ voting system, minorities and the poor are often denied the equally fundamental right to effective representation. This problem is compounded by the racial gerrymandering practices that occur in some states, “of spreading minorities across voting districts, leaving them too few in number in any given district to elect their preferred candidates.” These manoeuvres disadvantage the Democratic Party in those areas, since African Americans are generally thought to favour that Party.

Proportional representation (PR) is a family of electoral systems in which legislative seats more closely match votes cast than in FPTP PR can be designed to remedy some electoral injustices that minority groups face. There are different types of PR systems; but what they have in common is a design feature that makes government more representative. For this reason, some people support proportional representation (PR).<sup>5</sup> On the other hand it is argued that support for PR is “based on a misunderstanding of the role of an election”. Critics say the purpose of an election is to pick a government and give it the power to govern. While PR tends to produce weak

governments, and demonstrate the political divisions in a society.<sup>6</sup> In a paper prepared for our Commission Dr. Andy Knight,<sup>7</sup> while not opposed to PR, cautions that “it is unclear which PR version would actually result in effective political representation for People of African Descent populations there.”<sup>8</sup>

## The Nova Scotia Example

Six African Nova Scotians have been elected in the history of the province – five provincially and one federally. This was a significant achievement having been nominated, running successful campaigns and winning their seats. Further, half of the individuals elected provincially, were chosen to serve as Cabinet Ministers.

While it is not evident that those individuals were voted in to specifically represent the views and aspirations of a large group of African Nova Scotians, they did have the opportunity to influence and initiate policy decisions. It is noteworthy that only two of the elected provincial MLAs represented a protected riding. Interestingly, the concentration of African Nova Scotians within a “protected” or “exceptional” riding in Nova Scotia does not guarantee election of an African Nova Scotian MLA. The Preston Seat established in 1992, retained in 2002, and dissolved in 2012 was held by African Nova Scotians from 1993 until July 1999 but not since.

People of African Descent living in Nova Scotia are affected to varying degrees by factors affecting political representation. These can include; low voter turnout, tendency not to vote as a bloc or give uniform support for or against one party, voters not located strategically in marginal constituencies perceived as swing votes. Such factors are exacerbated by the fact that African Nova Scotians total less than three percent of the population distributed across the province. So that, in most ridings, they are not seen by political parties as affecting outcomes

<sup>5</sup> 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).

<sup>6</sup> 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>

<sup>7</sup> Dr. Andrew Knight, “The Political Representation of African Descended People - the UK, the US and Canada”, prepared for the Commission.

<sup>8</sup> Dr. Andrew Knight, “The Political Representation of African Descended People - the UK, the US and Canada”, prepared for the Commission.

As a Founding People, African Nova Scotian should enjoy effective political representation. With that they would be able to assert their issues on the political agenda in a number of ways, for example by electing more African Nova Scotian MLAs and enabling them to be present at the cabinet table. They would be able to find means in addition to voting; such as; political participation, taking part in public affairs, volunteering for political causes and campaigns, contributing to a party or candidate, lobbying, commenting and criticizing through media, running as candidates and holding political office. To facilitate this, the Government can be proactive in providing support by targeting structural obstacles like the paucity of financial resources, too little civic education; a lack of access to information; White male domination of political processes; lack of opportunities to gain political experience, a paucity of networks necessary for political access or electoral success; and an “inside” understanding of operations of political parties.

People of African Descent living in Nova Scotia would also be able to build their capacity by joining civil society organizations, networks, trade unions, NGOs and by establishing a media presence. Political influence can be attained not only at the ballot box and within the Provincial Legislature; it can also be nurtured at the grass roots within the communities of People of African Descent.

## Appendix 6 – History of Voting in Nova Scotia

In 1758, Nova Scotia elected the first representative government in what was to become Canada. While an elected House of Assembly was a significant step forward, it was composed of representatives elected by a limited number of individuals with specific characteristics. Voting rights developed from a select number of non-Catholic land owners in 1758, to universal suffrage in 1920 and lowered voting ages in the 1970s.

Below is a short time line showing key events in the evolution of the franchise in Nova Scotia.

### **May 20, 1758** **Regulations for First Election**

Governor-in-Council Proclamation (May 20, 1758)

Protestant electors, 21 years of age or older, who own a freehold of any value to vote in the constituency where the land is held can vote. At this time, Jews and Roman Catholics were implicitly excluded.

### **August 22, 1759** **40 Shillings Freehold Franchise Established**

Extracts of the Resolution of Council for the Regulating of Elections of Members in General Assembly (August 22, 1759)

The 1758 regulations are amended by His Majesty's Council, requiring eligible voters to be possessed of in their own right of freehold estate within the province, property having a value of 40 shillings. This measure brought eligibility in line with English practice.

Although African Nova Scotians lived in Nova Scotia well before 1758, enslaved African Nova Scotians were not permitted to vote.

### **December 21, 1759** **Quakers Can Make an Affirmation Instead of Oath**

An Act for Permitting Persons of the Profession of the People Called Quakers, to Make an Affirmation instead of taking an Oath (1758 2nd Session, c. 2, p. 48)

Quakers are permitted to make a solemn affirmation, rather than swear an Oath. Quakers refused to swear an oath because they believed all who possessed the spirit of Christ would speak the truth on all occasions in love for Him and in obedience to His command. The legislative change followed the British Parliament and other American colonies.

### **1783** **Roman Catholics Permitted to Acquire and Hold Lands**

An Act for the Relieving His Majesty's Subjects Professing the Popish Religion from Certain Penalties... (1783, c. 9, p. 235)

Roman Catholics are granted the ability to acquire and hold land without restrictions but only if they take oaths highly offensive to them, including the Oath of Allegiance to King George III and oaths renouncing the jurisdiction of the Pope and those who support the Pope.

**April 1, 1789**

### **Franchise Granted to Roman Catholics and Jews**

An Act for the Better Regulation of Elections (1789, c. 1, p. 273)

Legislation passed by the House only requires voters to take the Oath of Allegiance, thereby abolishing the Declaration against Transubstantiation and extending the franchise to Roman Catholics and Jews. Voter eligibility is also expanded to those with an income of 40 shillings or more in real estate; those owning a dwelling with land, regardless of value; those owning at least 100 acres of land, whether farmed or not; or those who occupy Crown land by virtue of an occupancy permit. Freeholders still must meet the 1759 criteria. These changes favour urban landowners, fishermen and Loyalists.

**1793**

### **First Known Instance of Women Voters**

Six women vote in the Windsor Township election, as they met the legal property requirements. The matter was brought before the House, but it avoids the question of whether women could vote. Women vote again in 1806 in Amherst Township.

Black persons in Canada secured some rights and freedoms as their social status changed from enslaved persons to British subjects during the period 1793 to 1834. As British subjects, they were technically entitled to all the rights, freedoms and privileges that status carried. However, this was not the reality, they faced racism and their civil rights and civil liberties were limited. The rights and freedoms of Black women were further restricted by virtue of their sex.

**1797**

### **Changes to Land Requirements**

An Act in Amendment to an Act ... An Act for the Better Regulation of Elections (1797, c. 3, p. 386)

Voters must either have an income of 40 shillings or more per year in freehold estate, own a dwelling house, or own 100 acres of land or more, with at least five acres under cultivation.

**1820-21**

### **Franchise Extended to Cape Breton**

An Act to Extend the Laws and Ordinances of the Province of Nova-Scotia to the Island of Cape-Breton (1820-21, c. 5, p. 101)

As a result of the re-annexation of Cape Breton to Nova Scotia in 1820, the House of Assembly passed an act extending the laws of the Province to the island, including the franchise. This act is problematic as most Cape Breton residents are either tenants or occupants on Crown lands or those of private speculators. To avoid this conflict and allow Cape Bretoners to vote, leases and licenses of occupation in lieu of Crown grants are equated with freehold or leasehold tenure.

**1826**

### **Roman Catholics Permitted to Acquire and Hold Lands Without Taking the Offensive Oaths**

An Act for the Relief of Roman Catholics (1826, c. 18, p. 263)

The requirement for the former oath that required a Declaration against Transubstantiation, or the authority of the Pope in order to hold property, is removed. Roman Catholics can now hold office and vote.

**1830****Complete Emancipation of Roman Catholics**

An Act for the Relief of His Majesty's Roman Catholic Subjects in this Province (1830, c. 1, p. 73)

Roman Catholics obtain by law what the House had granted by resolution in 1823 – the full right of the franchise. The passing of this legislation was ordered by the Colonial Secretary after the British House of Commons passed the Catholic Emancipation Act in 1830.

**1839****Changes to Land Requirements**

An Act for Regulating the Election of Members to Serve in General Assembly (1839, c. 35, p. 47)

Freeholders owning property generating an annual income of 40 shillings, property owners who meet the same conditions as freeholders, mortgagors, co-owners and tenants if they owned an interest in real property that earned them at least 40 shillings annually are permitted to vote.

**1847****Introduction of Simultaneous Polling**

An Act to Improve the Law Relating to the Election of Representatives to Serve in the General Assembly (1847, c. 1, p. 1)

Provides for simultaneous polling, with polls open from eight o'clock in the morning to five o'clock in the afternoon, so electors can vote in a single day. This action in effect removed the "open houses" where candidates provided food, lodging, and rum for electors. It is the system of polling still used today.

**1851****Male Tax Payer Franchise**

An Act to Extend the Elective Franchise (1851, c. 2, p. 17)

All males of 21 years who had been assessed for and paid the poor and county tax rates in the year preceding the election can vote. In constituencies without tax collection, only freeholders with property valued at 40 shillings per year could vote. Women are excluded; they could not vote even if they met the legal requirements regarding taxes or property.

**1854****Manhood Suffrage Enacted**

An Act Concerning the Elective Franchise (1854, c. 6, p. 12)

All male British subjects, aged 21 years or older, who have lived in the colony for five years or more, including recent immigrants, are permitted to vote. "Indians" and those receiving financial assistance under any poor law or as a poor person from any public grant of government money are excluded. Nova Scotia was the first colony in British North America to introduce manhood suffrage.

**1863****Property Requirement Reinstated**

An Act to Regulate the Election of Members to Serve in the General Assembly (1863, c. 28, p. 49)

British subjects at least 21 years old who own property assessed at \$150 or more, or personal or real property assessed at \$300 or more can vote. As a result, universal male suffrage is eliminated. The clause excluding Indians is removed, but paupers are still not allowed vote. Teachers and schoolmasters are allowed to vote.

**1870****Secret Ballot Established**

An Act to Establish Vote by Ballot at Elections  
(1870, c. 24, p. 23)

Nova Scotia is the second province to establish the secret ballot: "The Governor in Council shall cause a sufficient number of ballot boxes to be furnished with locks and keys, to be made, each with a convenient aperture for depositing the ballots therein, and to secure the ballots from loss or illegal interference ..."

**April 26, 1918****Franchise Extended to Female  
Property Owners**

Nova Scotia Franchise Act (1918, c. 2, p. 2)

The Act explicitly includes women, but they can only vote if they have property of certain values.

Until 1920 in Nova Scotia, eligible voters were required to own property or have a taxable net worth. This excluded poor people, the working class and racialized minorities including African Nova Scotians.

**1920****Universal Suffrage**

Act to Amend Chapter 2, Acts of 1918  
(1920, c. 49, p. 65)

All property and income-based requirements are eliminated - universal suffrage takes effect.

**1948**

The Universal Declaration of Human Rights was adopted by the United Nations, although Canada showed some reluctance, it signed the Declaration. The declaration indicated that 'Race' was no longer allowed as a reason to deny the right to vote.

**1970****Voting Age Reduced**

An Act to amend Chapter 83 of the Revised Statutes, 1967, the Elections Act  
(1970, c. 41, p. 190)

The age of eligible voters is reduced from twenty-one to nineteen.

**1973****Voting Age Reduced**

An Act to amend Chapter 83 of the Revised Statutes, 1967, the Elections Act  
(1973, c. 29, p. 235)

The voting age is reduced from nineteen to eighteen.

## Appendix 7 – Submissions and Interviews

The Commission received 27 written submissions from the following groups and individuals:

Centre communautaire culturel La Picasse  
Claire Comeau and Patrice Boulianne  
Conseil acadien de Par-en-Bas (CAPEB)  
Comité communautaire de Chéticamp-LeMoine (CCCL)  
Cyrille LeBlanc  
Équipe alphabétisation Nouvelle-Écosse  
Fédération acadienne de la Nouvelle-Écosse (FANE)  
Fédération des parents acadiens de la Nouvelle-Écosse  
Griffyn Chezenko  
Iona Stoddard  
Jean LeBlanc  
John Sollows  
John Stoddard  
Karen Mattatall  
Kim Masland  
Municipalité d'Argyle / Municipality of Argyle  
Municipalité de Clare / Municipality of Clare  
Nathan Blades  
Nova Scotia School Boards Association  
Pat Nickerson  
Philippe Haché  
Réseau Santé – Nouvelle-Écosse  
Roy A. O'Donnell  
Société Saint-Pierre  
Sterling Belliveau  
Tina Roberts-Jeffers  
Université Sainte-Anne

We also invited former and current MLAs for the exceptional ridings of the Argyle, Clare, Preston and Richmond, as well as other African Nova Scotian MLAs, and some of them were available to speak with the Commission. There were:

Wayne Adams  
Yvonne Atwell  
Gordon Earle  
Guy LeBlanc  
Neil LeBlanc  
Allister Surette  
Alana Paon  
Percy Paris  
Gordon Wilson

In order to remain impartial, the ministers of Acadian Affairs and Francophonie, and African Nova Scotian Affairs were not included in the discussion.

We also interviewed Michelle Williams, Director, Indigenous Blacks and Mi'kmaq Initiative at the Schulich School of Law at Dalhousie University in Halifax, and Jennifer Smith, Professor Emeritus in Political Science at Dalhousie University.

## Appendix 8 – Budget and Expenditures

<b>Commission on Effective Electoral Representation of Acadian and African Nova Scotians</b>			
<b>Expenditures as of November 1, 2017</b>			
The Commission set its budget independently. Only professional services was capped.			
	<b>Estimate</b>	<b>Actual</b>	
<b>Professional Services**</b>			
Douglas Keefe	115,000	106,381.29	*
Sharon Davis-Murdoch	70,000	41,400.00	
Dr. Kenneth Deveau	70,000	55,950.00	
<b>External Contracted Research</b>	25,000	21,800.00	
<b>Communication Consulting Services</b>	10,000	8,002.50	*
<b>Simultaneous Translation</b>	10,000	4,382.80	
<b>Document Translation</b>	16,000	5,432.76	*
<b>General Operating Expenses</b>	2,000	890.33	*
<b>Audio Visual Services</b>	12,000	10,060.00	
<b>Telecommunications</b>	5,000	789.84	*
<b>Travel Expenses</b>	37,500	33,186.83	*
<b>Advertising</b>	1,000	149.96	
<b>Meeting Expenses</b>	5,000	3,427.31	
<b>TOTAL</b>	<b>378,500</b>	<b>291,853.62</b>	
* Final invoices yet to be received			
** Government approval received to a maximum of \$320,000.00			

## Appendix 9 – Nova Scotia Population, Change by County, 1991-2016

Table 8

County	Census Population						Population Growth %		
	1991	1996	2001	2006	2011	2016	2011-2016 (5 yrs.)	2006-2016 (10 yrs.)	1991-2016 (25 yrs.)
Annapolis	23,641	22,324	21,773	21,438	20,756	20,591	-0.7%	-3.9%	-12.9%
Antigonish	19,226	19,554	19,578	18,836	19,589	19,301	-1.4%	2.4%	0.3%
Cape Breton	120,098	117,849	109,330	105,928	101,619	98,722	-2.8%	-6.8%	-17.8%
Colchester	47,683	49,262	49,307	50,023	50,968	50,585	-0.7%	1.1%	6.0%
Cumberland	34,284	22,804	32,605	32,046	31,353	30,005	-4.3%	-6.3%	-12.4%
Digby	21,250	20,500	19,548	18,992	18,036	17,323	-3.9%	-8.7%	-18.4%
Guysborough	11,724	10,917	9,827	9,058	8,143	7,625	-6.3%	-15.8%	-34.9%
Halifax	330,846	342,966	359,83	372,858	390,328	403,390	3.3%	8.1%	21.9%
Hants	37,843	39,483	40,513	41,182	42,304	42,558	0.6%	3.3%	12.4%
Inverness	21,620	20,918	19,937	19,036	17,947	17,235	-3.9%	-9.4%	-20.2%
Kings	56,317	59,193	58,866	60,035	60,589	60,600	0.0%	0.9%	7.6%
Lunenburg	47,634	47,561	47,591	47,150	47,313	47,126	-0.4%	0.0%	-1.0%
Pictou	49,651	48,718	46,965	46,513	45,643	43,748	-4.1%	-5.9%	-11.8%
Queens	12,923	12,427	11,723	11,212	10,960	10,351	-5.5%	-7.6%	-19.9%
Richmond	11,260	11,022	10,225	9,740	9,293	8,964	-3.5%	-7.9%	-20.3%
Shelburne	17,343	17,002	16,231	15,544	14,496	13,966	-3.6%	-10.1%	-19.4%
Victoria	8,708	8,482	7,962	7,594	7,115	7,089	-0.3%	-6.6%	-18.5%
Yarmouth	27,891	27,310	26,843	26,277	25,275	24,419	-3.3%	-7.0%	-12.4%
Nova Scotia	899,942	909,282	908,007	913,462	921,727	923,598	0.2%	1.1%	2.6%

## Appendix 10 – 2016 Population in 2012 and 2002 Ridings

Table 9

	Constituencies as per 2012	Population count, all ages (2016 Census)	French mother tongue, all ages (2016 Census)	Population by visible minority status: black (2011 NHS)		Constituencies as per 2002	Population count, all ages (2016 Census)	French mother tongue, all ages (2016 Census)	Population by visible minority status: black (2011 NHS)
1	Annapolis	20 433	422	120	1	Annapolis	17 592	366	56
2	Antigonish	17 384	605	122	2	Antigonish	19 239	690	146
3	Argyle-Barrington	15 296	3 723	-	3	Argyle	7 884	3 585	-
4	Bedford	27 870	1 018	261	4	Bedford - Birch Cove	32 743	1 191	333
5	Cape Breton Centre	14 958	173	1	5	Cape Breton Centre	13 452	156	-
6	Cape Breton-Richmond	13 094	2 219	-	6	Cape Breton North	15 726	80	-
7	Chester-St. Margaret's	18 378	341	-	7	Cape Breton Nova	12 403	146	470
8	Clare-Digby	17 315	5 490	495	8	Cape Breton South	19 749	348	90
9	Clayton Park West	22 199	644	325	9	Cape Breton West	18 428	218	40
10	Colchester-Musquodoboit Valley	17 496	182	45	10	Chester-St. Margaret's	20 557	396	1
11	Colchester North	18 158	233	25	11	Clare	8 019	5 094	45
12	Cole Harbour-Eastern Passage	19 146	874	156	12	Colchester-Musquodoboit Valley	17 507	182	46
13	Cole Harbour-Portland Valley	22 003	816	664	13	Colchester North	18 135	233	25
14	Cumberland North	16 406	249	315	14	Cole Harbour	19 462	742	689
15	Cumberland South	13 567	161	30	15	Cole Harbour-Eastern Passage	17 730	832	143
16	Dartmouth East	17 713	836	614	16	Cumberland North	17 936	267	315

17	Dartmouth North	19 967	606	1 080	17	Cumberland South	12 041	143	30
18	Preston-Dartmouth	13 789	441	2 698	18	Dartmouth East	18 877	889	1 165
19	Dartmouth South	20 854	636	217	19	Dartmouth North	19 971	606	1 080
20	Guysborough-Eastern Shore-Tracadie	12 317	271	338	20	Dartmouth South-Portland Valley	26 063	818	298
21	Eastern Shore	15 221	384	70	21	Digby - Annapolis	12 286	455	513
22	Fairview-Clayton Park	23 573	570	1 044	22	Eastern Shore	15 624	400	71
23	Glace Bay	14 711	55	-	23	Glace Bay	14 711	55	-
24	Halifax Armdale	15 189	428	217	24	Guysborough - Sheet Harbour	10 463	186	314
25	Halifax Atlantic	18 914	398	598	25	Halifax Atlantic	22 389	480	637
26	Halifax Chebucto	19 580	612	100	26	Halifax Chebucto	18 667	561	455
27	Halifax Citadel-Sable Island	18 667	532	10	27	Halifax Citadel - Sable Island	20 906	599	10
28	Halifax Needham	19 041	625	1 789	28	Halifax Clayton Park	29 266	770	721
29	Hammonds Plains-Lucasville	17 386	512	371	29	Halifax Fairview	20 436	556	468
30	Hants East	23 566	370	30	30	Halifax Needham	20 193	656	1 720
31	Hants West	19 038	270	205	31	Hammonds Plains-Upper Sackville	28 335	872	570
32	Inverness	13 999	2 134	-	32	Hants East	23 616	370	30
33	Kings North	19 868	291	170	33	Hants West	18 979	270	205
34	Kings South	21 022	316	278	34	Inverness	17 252	2 276	-
35	Kings West	19 684	743	67	35	Kings North	19 869	291	170
36	Lunenburg	16 915	229	-	36	Kings South	21 021	316	278
37	Lunenburg West	19 588	305	-	37	Kings West	19 676	743	67
38	Northside-Westmount	19 465	205	-	38	Lunenburg	16 919	229	-
39	Pictou Centre	15 794	181	322	39	Lunenburg West	18 252	278	-
40	Pictou East	14 525	100	91	40	Pictou Centre	15 686	179	313
41	Pictou West	13 441	194	2	41	Pictou East	14 602	101	100
42	Queens-Shelburne	17 009	123	350	42	Pictou West	13 471	194	2
43	Sackville-Beaver Bank	17 768	521	201	43	Preston	9 579	256	2 043

44	Sackville-Cobequid	18 730	548	355	44	Queens	11 620	107	35
45	Sydney-Whitney Pier	21 832	282	469	45	Richmond	8 953	2 064	-
46	Sydney River-Mira-Louisbourg	18 060	245	130	46	Sackville-Cobequid	18 709	548	355
47	Timberlea-Prospect	20 229	541	331	47	Shelburne	13 983	176	305
48	Truro-Bible Hill-Millbrook-Salmon River	20 097	267	390	48	Timberlea-Prospect	22 740	615	331
49	Victoria-The Lakes	15 906	117	-	49	Truro-Bible Hill	20 105	267	390
50	Waverley-Fall River-Beaver Bank	18 970	549	39	50	Victoria - The Lakes	11 351	88	-
51	Yarmouth	16 502	1 416	560	51	Waverley-Fall River-Beaver Bank	22 951	648	51
					52	Yarmouth	16 507	1 422	560
	TOTAL	922 630	34 005	15 695		TOTAL	906 122	32 585	15 125
	Total count from 2016 Census	923 595	33780	20 790		Total count from 2016 Census	923 595	33780	20 790
	Population not allocated	965	(225)	5 095		Population not allocated	17 473	1 195	5 665
	Share of population not allocated	0,104%	-0,666%	24,507%		Share of population not allocated	1,892%	3,539%	27,249%

Sources: Nova Scotia Department of Finances, Economics and Statistics Division

## Appendix 11 – Bibliography

- ACE, The Electoral Knowledge Network (2017). *Electoral Systems*. Retrieved from <http://aceproject.org/ace-en/topics/es/onePage>.
- Archer, K. (1993). *Conflict and Confusion in Drawing Constituency Boundaries: The Case of Alberta*. *Canadian Public Policy*, XIX:2:177-193.
- Aucoin, P. (1993). *The Politics of Electoral Reform*. *Canadian Parliamentary Review*, Vol. 16, No. 1. Retrieved from <http://www.revparl.ca/english/issue.asp?param=144&art=955>.
- Banducci, S., Donovan, T. and Karp, J. (2004). *Minority Representation, Empowerment, and Participation*. *The Journal of Politics*, Vol 66, No. 2, pp. 534-556.
- Bird, K. (2003). *The Political Representation of Women and Ethnic Minorities in Established Democracies: A Framework for Comparative Research*. Hamilton: McMaster University.
- Black Learners Advisory Committee (1994). *BLAC Report on Education: Redressing Inequity—Empowering Black Learners*. Retrieved from <https://acs.ednet.ns.ca/sites/default/files/BLAC%20Report%20on%20Education%20Vol%201-3.pdf>.
- Bourhis, R. (2001). *Acculturation, language maintenance and language loss*. In Jetske Klatter-Folmer and Piet Van Avermaet (Eds.), *Language maintenance and language loss*, pp. 5-37. Tilburg, The Netherlands: Tilburg University Press.
- Carbert, L. and Black N. (2013). *Doing the Work of Representation, Nova Scotia Style* In *Mind the gaps: Canadian perspectives on gender & politics*, pp 18-33. R. Lexier & T. Small (Eds.). Black Point, Nova Scotia: Fernwood Press.
- Cardinal, L., Léger, R. and Normand, M. (2017). *The Effective Electoral Representation of Acadian and African Nova Scotian Minorities*. Prepared for the Commission on Effective Electoral Representation of Acadian and African Nova Scotians. Francophonie and Public Policies, University of Ottawa.
- Carstocea, A., Kuklys, M. and Malloy, T. (2015). *ECMI Handbook: Participatory Mechanisms for National Minorities*. Flenbury, Germany: European Centre for Minority Issues. Retrieved from [http://ecmi-epp.org/wp-content/uploads/2016/01/ECMI\\_Handbook\\_12-2015.pdf](http://ecmi-epp.org/wp-content/uploads/2016/01/ECMI_Handbook_12-2015.pdf).
- Cartwright, S. (2016). *Proportional representation can offer democracy to all, not just to the majority*, Open Democracy UK (17 August 2016). Retrieved from <https://www.opendemocracy.net/uk/sophie-cartwright/proportional-representation-can-offer-democracy-to-all-not-just-to-majority>.
- Conseil de développement économique de la Nouvelle-Écosse (2013). *Profils communautaires 2012-2013*. Retrieved from <http://www.cdene.ns.ca/fr/ressources/publications>.

- Corbett, M. J. (2007). *Learning to Leave: the Irony of Schooling in a Coastal Community*. Black Point, Nova Scotia: Fernwood Publishing.
- Courtney, J., Pelletier, R. and Smith, J. (2002). *The Concept of "Community of Interest" in Determining Electoral District Boundaries*. *Electoral Insight*, pp 8-24. Retrieved from <http://www.elections.ca/content.aspx?section=res&dir=eim/issue6&document=p3&lang=e>.
- Crouch, H. (2017). *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). Retrieved from <https://www.thesun.co.uk/news/3751809/proportional-representation-voting-system-uk>.
- Cuthbertson, B. (2008). *Short History of Elections and Voting in Nova Scotia 1758-2006*. *Democracy 250 essays*. Retrieved from <http://0-nsleg-edeposit.gov.ns.ca.legcat.gov.ns.ca/deposit/b10625410.pdf>.
- Department of Justice Court Services (2016). *Provincial Judicial Appointments: Guidelines to Ensure Appointments Based on Merit*. Retrieved from [http://www.novascotia.ca/just/court\\_services/\\_docs/guidelines\\_provincial\\_judicial\\_appts\\_september\\_2016.pdf](http://www.novascotia.ca/just/court_services/_docs/guidelines_provincial_judicial_appts_september_2016.pdf).
- Dodds, C. & Nova Scotia Electoral Boundaries Commission (2002). *Just Boundaries: Recommendations for Effective Representation for the People of Nova Scotia. The Final Report of the Nova Scotia Provincial Electoral Boundaries Commission*. Retrieved from <http://0-nsleg-edeposit.gov.ns.ca.legcat.gov.ns.ca/deposit/b10097223.pdf>.
- Elections Canada (2007). *A History of the Vote in Canada*. Retrieved from <http://www.elections.ca/content.aspx?section=res&dir=his&document=index&lang=e>.
- Elections Canada (2013). *Enhancing the Values of Redistribution, Chapter 2 – Making Representation More Effective*. Retrieved from [www.elections.ca](http://www.elections.ca).
- Elections Canada (2011). *The Representation Formula*. Retrieved from <http://elections.ca/content.aspx?section=res&dir=cir/red/form&document=index&lang=e>.
- Elections New Zealand (2017). *Maori and the Vote*. Retrieved from <http://www.elections.org.nz/m%C4%81ori-and-vote>.
- Elections New Zealand (2017). *2017 General Election – Official Result*. Retrieved from [http://www.electionresults.govt.nz/electionresults\\_2017/](http://www.electionresults.govt.nz/electionresults_2017/).
- Elections Nova Scotia (2017). *Resources, Electoral Maps*. Retrieved from <http://electionsnovascotia.ca/electoral-maps>.
- Electoral Boundaries Commission of Prince Edward Island (2017). *May 5th, 2017 Report of the Electoral Boundaries Commission of Prince Edward Island*. Retrieved from <http://s3.documentcloud.org/documents/3711001/Report-of-the-Electoral-Boundaries-Commission-of.pdf>.
- Enidlee Consultants Inc. (2009). *Reality Check: A Review of key program areas in the BLAC Report for their effectiveness in enhancing the educational opportunities and achievement of African Nova Scotian learners*. Retrieved from <https://www.ednet.ns.ca/docs/realitycheckfinalreportforweb.pdf>.
- Faragher, J.M. (2006). *Great and Noble Scheme: The Tragic Story of the Expulsion of the French Acadians*. New York: Norton Publishing.

- Federation of Canadian Municipalities (2017). *Women in Local Government, Diverse Voices for Change*. Retrieved from <https://fcm.ca/home/programs/women-in-local-government/diverse-voices-for-change.htm>.
- Fraser, F. (2005). *How the Blacks Created Canada*. Edmonton: Dragon Hill Publishing Ltd.
- Gobry, P.-E. (2014) *Want To Know The Language Of The Future? The Data Suggests It Could Be...French*. Forbes. <https://www.forbes.com/sites/pascalemanuelgobry/2014/03/21/want-to-know-the-language-of-the-future-the-data-suggests-it-could-be-french/#233bdaaf6d58>.
- Government of Canada. *Constitution Act, 1982, Part 1, Canadian Charter of Rights and Freedoms*. Retrieved from <http://laws-lois.justice.gc.ca/eng/Const/page-15.html>.
- Government of Nova Scotia (2015). *Behavioural Competency Dictionary for the Government of Nova Scotia*.
- Government of Nova Scotia (2015). *Civil Service Act*. Retrieved from <http://nslegislature.ca/legc/statutes/civil%20service.pdf>.
- Government of Nova Scotia (2015). *Education Act*. Retrieved from <http://www.nslegislature.ca/legc/statutes/education.pdf>.
- Government of Nova Scotia (2016). *Elections Act*. Retrieved from <http://nslegislature.ca/legc/statutes/elections.pdf>.
- Government of Nova Scotia (2011). *French-language Services Act*. Retrieved from <http://nslegislature.ca/legc/statutes/frenchla.htm>.
- Government of Nova Scotia (2006). *French-language Services Regulations*. Retrieved from <https://www.novascotia.ca/just/regulations/regs/flsregs.html>.
- Government of Nova Scotia (2016). *House of Assembly Act*. Retrieved from <http://nslegislature.ca/legc/statutes/house%20of%20assembly.pdf>.
- Government of Nova Scotia (2017). *House of Assembly Management Commission Regulations 43A (1)*. Retrieved from <https://www.novascotia.ca/just/regulations/regs/hamgmtcom.htm>.
- Government of Nova Scotia (2016). *Municipal Government Act*. C. 18, 1998. Retrieved from <http://nslegislature.ca/legc/statutes/municipal%20government.pdf#page=22>.
- Government of United Kingdom (2017). *Parliamentary Voting System and Constituencies Act 2011*. Retrieved from <https://www.legislation.gov.uk/ukpga/2011/1/contents>.
- Griffiths, N.E.S. (2004). *From Migrant to Acadian: A North American Border People, 1604-1755*. Montreal: McGill University Press.
- Gun, A. (2017). *Black parliamentarians meeting in N.S. in 2018*. The Chronicle Herald (23 August 2017). Retrieved from <http://thechronicleherald.ca/novascotia/1497192-black-parliamentarians-meeting-in-n.s.-in-2018>.
- Johnson, D. (1994). *Canadian Electoral Boundaries and the Courts: Practices, Principles and Problems*. McGill Law Journal, Vol. 39, pp 224-235.
- Keppie, C. (2013). *Meaning Systems of Two Identity Concepts: Acadie vs Acadien*. American Review of Canadian Studies, Vol. 43, No. 3, 315-333.

- Knight, A. (2017). *The Political Representation of African Descended People - the UK, the US and Canada*, prepared for the Commission on Effective Electoral Representation of Acadian and African Nova Scotians.
- Kymlicka, W. (1998). *Finding our way: Rethinking ethnocultural relations in Canada*. Toronto: Oxford University Press.
- Landes, R. & Nova Scotia Provincial Electoral Boundaries Commission (1992). *Effective Political Representation in Nova Scotia: the 1992 report of the Provincial Electoral Boundaries Commission*.
- Landry, R. (2009). *Autonomie culturelle et vitalité des communautés de langue officielle en situation minoritaire*. *Revue du Common Law en Français*. No. 11, p. 19-43.
- Landry, R., Allard, R. & Deveau, K. (2010). *Schooling and Cultural Autonomy: a Canada-wide study in Francophone minority schools*. Ottawa: New Canadian Perspectives.
- Law Commission of Canada (2004). *Voting Counts: Electoral Reform for Canada*. Retrieved from <http://www.publications.gc.ca/collections/Collection/J31-61-2004E.pdf>.
- Lortie, P. (1991). *The Royal Commission on Electoral Reform and Party Financing*. Retrieved from <http://epe.lac-bac.gc.ca/100/200/301/pco-bcp/commissions-ef/lortie1991-eng/lortie1991-eng.htm>
- MacNeil, T. & Nova Scotia Electoral Boundaries Commission (2012). *Interim Report – May 31, 2012*. Retrieved from <http://0-nsleg-edeposit.gov.ns.ca.legcat.gov.ns.ca/deposit/b10649311.pdf>
- MacNeil, T. & Nova Scotia Electoral Boundaries Commission (2012). *Revised Interim Report – July 20, 2012*. Retrieved from <http://0-nsleg-edeposit.gov.ns.ca.legcat.gov.ns.ca/deposit/b10651111.pdf>
- MacNeil, T. & Nova Scotia Electoral Boundaries Commission (2012). *Toward Fair and Effective Representation, September 24, 2012*. Retrieved from <http://0-nsleg-edeposit.gov.ns.ca.legcat.gov.ns.ca/deposit/b10653107.pdf>
- Nova Scotia Provincial Electoral Boundaries Commission (2012). *Public consultations with the Provincial Electoral Boundaries Commission*. Retrieved from [http://0-nsleg-edeposit.gov.ns.ca.legcat.gov.ns.ca/deposit/b10665626\\_13.pdf](http://0-nsleg-edeposit.gov.ns.ca.legcat.gov.ns.ca/deposit/b10665626_13.pdf);  
[http://0-nsleg-edeposit.gov.ns.ca.legcat.gov.ns.ca/deposit/b10665626\\_12.pdf](http://0-nsleg-edeposit.gov.ns.ca.legcat.gov.ns.ca/deposit/b10665626_12.pdf);  
[http://0-nsleg-edeposit.gov.ns.ca.legcat.gov.ns.ca/deposit/b10665626\\_10.pdf](http://0-nsleg-edeposit.gov.ns.ca.legcat.gov.ns.ca/deposit/b10665626_10.pdf);  
[http://0-nsleg-edeposit.gov.ns.ca.legcat.gov.ns.ca/deposit/b10665626\\_9.pdf](http://0-nsleg-edeposit.gov.ns.ca.legcat.gov.ns.ca/deposit/b10665626_9.pdf);  
[http://0-nsleg-edeposit.gov.ns.ca.legcat.gov.ns.ca/deposit/b10665626\\_8.pdf](http://0-nsleg-edeposit.gov.ns.ca.legcat.gov.ns.ca/deposit/b10665626_8.pdf);  
[http://0-nsleg-edeposit.gov.ns.ca.legcat.gov.ns.ca/deposit/b10665626\\_4.pdf](http://0-nsleg-edeposit.gov.ns.ca.legcat.gov.ns.ca/deposit/b10665626_4.pdf);  
[http://0-nsleg-edeposit.gov.ns.ca.legcat.gov.ns.ca/deposit/b10665626\\_3.pdf](http://0-nsleg-edeposit.gov.ns.ca.legcat.gov.ns.ca/deposit/b10665626_3.pdf);  
[http://0-nsleg-edeposit.gov.ns.ca.legcat.gov.ns.ca/deposit/b10665626\\_2.pdf](http://0-nsleg-edeposit.gov.ns.ca.legcat.gov.ns.ca/deposit/b10665626_2.pdf);  
[http://0-nsleg-edeposit.gov.ns.ca.legcat.gov.ns.ca/deposit/b10665626\\_1.pdf](http://0-nsleg-edeposit.gov.ns.ca.legcat.gov.ns.ca/deposit/b10665626_1.pdf)
- Medeiros, M. & Forest, B. *Unrepresented No More. Noncontiguous ridings could enhance Aboriginals' voice in our political institutions*. *Inroads*, Vol. 34, No.90, pp. 118-125.
- Nova Scotia Advisory Council on the Status of Women (2017). *Women in Leadership*. Retrieved from <https://women.gov.ns.ca/leadership>
- Nova Scotia Commission on Building our New Economy (2014). *Now or Never: An Urgent Call to Action for Nova Scotians*.

- Nova Scotia Court of Appeal (2016). *Factum of the Intervenor Fédération acadienne de la Nouvelle-Écosse*.
- Nova Scotia Court of Appeal. *Reference re. the Final Report of the Electoral Boundaries Commission, 2017 NSCA 10*. Retrieved from [http://www.courts.ns.ca/Decisions\\_Of\\_Courts/documents/2017nsca10.pdf](http://www.courts.ns.ca/Decisions_Of_Courts/documents/2017nsca10.pdf)
- Nova Scotia House of Assembly. *Debates and Proceedings*. 90/92-124 at p. 81. Retrieved from <http://0-nsleg-edeposit.gov.ns.ca.legcat.gov.ns.ca/deposit/HansardDeposit/55-02/19920428.pdf>
- Nova Scotia House of Assembly (2011). *Report of the Select Committee on Establishing an Electoral Boundaries Commission, December 30, 2011*. Retrieved from <http://nslegislature.ca/pdfs/committees/el/FinalReport.pdf>
- Nova Scotia Public Service Commission (2017). *Raising the Bar: A Strategy to Build Diversity and Inclusion in The Public Service 2014-2018*. Retrieved from <http://www.novascotia.ca/psc/pdf/employeecentre/diverseworkforce/raising%20the%20bar.pdf>
- Office of Acadian Affairs and Francophonie, Nova Scotia Department of Communities, Culture and Heritage (2017). *Response to Reports from the Acadian and Francophone Communities*. Retrieved from <https://acadien.novascotia.ca/en/reports>
- Office of African Nova Scotian Affairs, Nova Scotia Department of Community, Culture and Heritage (2017). *African Nova Scotian Community*. Retrieved from <https://ansa.novascotia.ca/community>
- Office of the Commissioner for Federal Judicial Affairs Canada (2017). *Overview of Federal Judicial Appointments*. Retrieved from <http://www.fja.gc.ca/appointments-nominations/index-eng.html>
- Organization for Security and Co-operation in Europe (OSCE) High Commissioner on National Minorities (1999). *Lund Recommendations on the Effective Participation of National Minorities in Public Life*. Retrieved from <http://www.osce.org/hcnm/32240?download=true>
- Owen, B. & Lardeyret, G. *Don't waste your best asset*. ACE, The Electoral Knowledge Network. Retrieved from <http://aceproject.org/ero-en/regions/europe/GB/united-kingdom-dont-waste-your-best-asset/view>
- Pal, M. & Choudhry, S. (2014). *Still Not Equal? Visible Minority Vote Dilution in Canada*. *Canadian Political Science Review* Vol. 8, No. 1, pp. 85-101.
- Province of Alberta (2016). *Electoral Boundaries Commission Act: Revised Statutes of Alberta 2000, Chapter E-3*. Retrieved from <http://www.qp.alberta.ca/documents/Acts/E03.pdf>
- Réseau de santé Vitalité (2017). *Francophone leader serving its communities*. Retrieved from <http://www.vitalitenb.ca/en>
- Ross, S. & Deveau, A. (1995). *The Acadians of Nova Scotia*. Halifax: Nimbus.
- Smith, J. & Turnbull, L. (2008). *The Nova Scotia House of Assembly: On the Cusp of Change*. *Canadian Parliamentary Review*, Vol. 31, No. 2. Retrieved from <http://www.revparl.ca/english/issue.asp?param=189&art=1286>.
- Soffen, K. (2016). *How Racial Gerrymandering Deprives Black People of Political Power*. *The Washington Post* (9 June 2016), Retrieved from [https://www.washingtonpost.com/news/work/wp/2016/06/09/how-a-widespread-practice-to-politically-empower-african-americans-might-actually-harm-them/?utm\\_term=.153b0056ae1b](https://www.washingtonpost.com/news/work/wp/2016/06/09/how-a-widespread-practice-to-politically-empower-african-americans-might-actually-harm-them/?utm_term=.153b0056ae1b)

- Statistics Canada (2017). *2016 Census of Population*. Retrieved from <http://www12.statcan.gc.ca>.
- Statistics Canada (2011). *2011 Census of Population*. Retrieved from <http://www12.statcan.gc.ca/census-recensement/2011/rhd/index-eng.cfm>
- Statistics Canada (2011). *National Household Survey Profile 2011*. Retrieved from <http://www12.statcan.ca/nhs-enm/2011/dp-pd/prof/index.cfm?Lang=E>
- Statistics Canada (2006). *2006 Census of Population*. Retrieved from <http://www12.statcan.gc.ca/census-recensement/2006/index-eng.cfm>
- Statistics Canada (2001). *2001 Census of Population*. Retrieved from <http://www12.statcan.gc.ca/english/census01/products/standard/prprofile/Index.cfm>
- Statistics Canada (1996). *1996 Census of Population*. Retrieved from <http://www12.statcan.gc.ca/english/census01/info/census96.cfm>
- Tajfel, H. (1881). *Human groups and social categories: Studies in social psychology*. Cambridge: Cambridge University Press.
- The Courts of Nova Scotia (2010). *The Civil Procedure Rules of Nova Scotia*. Retrieved from [http://www.courts.ns.ca/Civil\\_Procedure\\_Rules/cpr\\_home.htm](http://www.courts.ns.ca/Civil_Procedure_Rules/cpr_home.htm)
- The Courts of Nova Scotia. *Les règles de procédure civile de la Nouvelle-Écosse*. Retrieved from [http://www.courts.ns.ca/Civil\\_Procedure\\_Rules/cpr\\_in\\_french.htm](http://www.courts.ns.ca/Civil_Procedure_Rules/cpr_in_french.htm)
- The Courts of Nova Scotia (2017). *Nova Scotia Judicial Mentorship Initiative for African Nova Scotian and Indigenous Lawyers*. Retrieved from [http://www.courts.ns.ca/Bar\\_Information/documents/MenteeEnrollmentFormcommuniquFinal20170403.pdf](http://www.courts.ns.ca/Bar_Information/documents/MenteeEnrollmentFormcommuniquFinal20170403.pdf)
- Université Sainte-Anne. *Plan stratégique 2013-2018, Mission*. Retrieved from <https://www.usainteanne.ca/plan-strategique>
- Xanthaki, A. & O'Sullivan, D. (2009). *Indigenous Participation in Elective Bodies: The Maori of New Zealand*. *International Journal on Minority and Group Rights*. Vol. 16. No. 2, pp 181-207.

### Case Law Cited

- Doucet-Boudreau v Nova Scotia (Minister of Education)* [2003] SCC 62, [online], <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2096/index.do>
- Mahe v Alberta*, [1990] 1 RCS 342, [online], <https://scc-csc.lexum.com/scc-csc/scc-csc/fr/item/580/index.do?r=AAAAAQFTWFow6kB>
- Reference re Secession of Quebec*, [1998] 2 SCR, 217, para 49, [online], <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1643/index.do>
- The Attorney General for Saskatchewan v Roger Carter*, QC [1991] 2 SCR 158.

