

A detailed map of British Columbia, Canada, showing its electoral boundaries. The map is overlaid with a semi-transparent blue rectangle containing the title and date. The map itself is light blue and white, with black lines delineating the various electoral districts. Some districts are labeled with three-letter codes: BKN, PRM, CBC, NRI, POR, WES, CMV, APR, PAQ, CBF, KAN, SHU, KAS, VSH, WKU, KLC, KJL, PEN, BDS, CKB, MRP, CQS, ABB, NAN, SAN, and JDF. The Pacific Ocean is visible along the western coast.

Electoral Boundary Reform:

White Paper on Amending the British Columbia *Electoral Boundaries Commission Act*

November 2013



Ministry of
Justice

Justice Services Branch
Civil Policy and Legislation Office

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I. Introduction

The purpose of this White Paper is to provide British Columbians with advance notice of government's intention to propose amendments to the provincial *Electoral Boundaries Commission Act* (the Act) during the spring 2014 legislative session. Government welcomes commentary and feedback from interested groups and individuals on the proposed changes.

Summary of the Proposed Changes

The proposed amendments to the legislation are intended to ensure that existing levels of representation in the Legislative Assembly from northern and rural areas of the province are maintained and that no reductions in the number of districts in those areas will occur during the next electoral boundary revision process.

If enacted, the changes would amend the principles that independent Electoral Boundaries Commissions (EBCs) must consider when they determine the areas and sizes of electoral districts that they recommend to the Legislative Assembly. These principles, contained in section 9 of the Act, have not substantially changed since 1989, and recent EBCs have found it increasingly difficult to address population growth in urban areas of the province without recommending reductions in the number of northern and rural districts.

Currently, the Act requires EBCs to consider the following when determining proposed electoral boundaries:

- ▶ that the principle of representation by population be achieved, recognizing the imperatives imposed by geographical and demographic realities, the legacy of the province's history and the need to balance the community interests of the people of British Columbia;
- ▶ to achieve that principle, the commission is permitted to deviate from a common statistical provincial electoral quota by no more than 25 per cent, plus or minus;
- ▶ the commission is permitted to exceed the 25 per cent deviation principle where it considers that very special circumstances exist;
- ▶ the commission must take into account geographic and demographic considerations, including the sparsity, density or rate of growth of the population of any part of British Columbia and the accessibility, size or physical configuration of any part of British Columbia, as well as the availability of means of communication and transportation between various parts of British Columbia.

The proposed amendments would retain the overall principle of representation by population, along with the general deviation rule of plus/minus 25 per cent and the ability to exceed 25 per cent in very special circumstances. However, the amendments would also define three regions of the province and require that EBCs not reduce the number of electoral districts in those regions: the North, Cariboo-Thompson and Columbia-Kootenay. These are the regions with the sparsest population and as a result have a high number of geographically large electoral districts. The boundaries of existing electoral districts within those three regions could be changed, and the EBC would still be required to apply the principle of representation by population to the greatest extent possible.

The proposed amendments would not change the total number of electoral districts in British Columbia, which would remain at 85. The recommendations made by the EBC would continue to be subject to approval by the Legislative Assembly.

A Note on Terminology:

There are a few different ways that electoral districts are commonly referred to in Canada: as ridings (particularly in regard to the House of Commons), constituencies and electoral districts. This paper uses “electoral district” throughout to match the terminology in the governing legislation.

II. The Context For Electoral Boundary Revision In Canada

As a former colony of the United Kingdom, British Columbia inherited the U.K.'s parliamentary system of government. This system includes a voting model called Single Member Plurality, or SMP. Under this model, voters in geographically-defined electoral districts elect members to represent them in the Legislative Assembly.

Members of the Legislative Assembly (MLAs) have two main roles or functions:

- ▶ As *legislator*, an MLA debates and votes on proposed bills and motions and represents his or her constituents' concerns in the House;
- ▶ As *ombudsperson*, an MLA addresses constituents' issues respecting the provincial government, and provides advice and guidance respecting government agencies and programs.

The size and configuration of electoral districts affect both of these functions.

The **legislator role** is affected because it is the majority of MLAs elected to the House who determine which party governs and what laws are enacted. It is important that each MLA represent roughly similar numbers of eligible voters so that a majority of MLAs actually represent a majority of the population. The population of an electoral district is therefore a key part of the principle of representation by population.

The **ombudsperson role** is affected because the more constituents an MLA has, the greater the number of individual issues that the MLA's office will need to respond to. The demographics of the district also matter a great deal: a large district with a number of distant communities requires the MLA to travel to those communities to meet with constituents. Smaller communities are less likely to have a large number of government offices to serve residents, and the role of the MLA can be greater in such communities. Generally speaking, urban MLAs have more constituents to serve but do so within a smaller, easily accessible area, while MLAs from rural areas have fewer constituents but must travel, sometimes extensively, to meet with them.

Electoral Boundaries and the Right to Vote

The right to vote is set out in Section 3 of the *Canadian Charter of Rights and Freedoms* (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.

The meaning of the right to vote in Canada has been the subject of a number of court cases. Two that directly concern electoral boundary distribution are *Dixon v. Attorney General of British Columbia* [1989] 35 B.C.L.R. (2d) 273, a decision of the B.C. Supreme Court that ruled B.C.'s electoral map to be unconstitutional; and the "Saskatchewan Reference," *Reference re: Provincial Electoral Boundaries Commission* [1991] 2 S.C.R. 158 by the Supreme Court of Canada, which upheld a boundary redistribution in that province.

Dixon was the first case in which a Canadian court considered how electoral boundary distribution affects the right to vote. The case was launched in 1986 and eventually heard in 1989, its timelines overlapping with the work of the Fisher Commission appointed in 1988. The court considered a challenge to British Columbia's electoral map that alleged that the map violated the right to vote. At that time, there were 52 electoral districts that elected 69 MLAs: most districts elected a single MLA but some elected two. The legislation also created different categories for electoral districts: metropolitan, suburban, urban-rural, interior-coastal and remote. Each category was assigned a population quota that was expressed as a fraction of the average population for Vancouver. The result was wide variations in population among districts and a general over-weighting of rural votes compared to urban votes.

The court in *Dixon* found, firstly, that electoral boundary distribution was subject to Charter scrutiny as it affected the right to vote. The court also explored the meaning of the right to vote in the context of electoral boundary configuration. After finding that representation by population is fundamental to the exercise of the voting franchise, the court also found that the Charter does not require absolute equality of voting power. Instead, throughout Canada's democratic history there has been recognition that considering other factors is necessary to ensure fair representation. The court further found that there is no evidence that the framers of the Charter of Rights and Freedoms in 1982 intended to alter that historical context by introducing a right that was new or different. In summary, "[W]hile the principle of representation by population may be said to lie at the heart of electoral apportionment in Canada, it has from the beginning been tempered by other factors" including geography and community interests.¹

¹ *Dixon*, p. 24

Deviations from population equality between electoral districts, then, were found to be permissible. However, in determining boundaries:

- ▶ the dominant consideration must be population, in particular, relative equality among voters; and
- ▶ deviations should be allowed only if they can be justified as contributing to the better government of the people as a whole, such as geographic considerations and regional interests meriting representation.

In sum, the court found that although some of the districts' population variations could be justified according to the above test, overall the electoral map did not. Some variations were unjustifiably great, and some lacked clear rationales at all. The map violated the right to vote and could not be justified under the saving provision of s. 1 of the Charter.² Accordingly, the provincial electoral map was declared unconstitutional.

The court suspended its judgment to provide time for the legislature to remedy the problem. Ordinarily, that would take considerable time and require legislative change and the appointment of a new EBC. However, in the interim the Fisher Commission had issued a report recommending both a new legislative model to guide the creation of electoral districts and an electoral map employing that model (see "Recent Electoral Boundaries Commissions" for details). With that report available for implementation, the legislature, in 1989, enacted a new *Electoral Boundaries Commission Act* that created the main statutory principles that exist today (see "The Statutory Principles for Determining Boundaries").

The *Saskatchewan Reference* was decided by the Supreme Court of Canada in 1991 and remains the leading case on electoral boundaries and the right to vote in Canada. The court upheld changes to Saskatchewan's electoral map that were based on a statutory requirement for that province's EBC to recommend specific numbers of urban, rural and northern districts.

In answering the question, the court (as in *Dixon*) examined in detail the meaning of the right to vote in the context of electoral boundary redistribution. The court found that, fundamentally, the right to vote in Canada is a right to "effective representation":

[T]he purpose of the right to vote enshrined in s. 3 of the Charter is not equality of voting power per se, but the right to "effective representation".... Representation comprehends the idea of having a voice in the deliberations of government as well as the idea of the right to bring one's grievances and concerns to the attention of one's government representative.³

² Section 1 reads: The Canadian Charter of Rights and Freedoms guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.

³ *Saskatchewan Reference*, para 49.

Consistent with the *Dixon* decision, the Supreme Court went on to find that the first condition of effective representation is relative parity of voting power, meaning that a citizen's right to vote should not be "unduly diluted" compared to another's. If that were to occur, both voting power and access to the elected representative is reduced for one citizen compared to another, resulting in uneven and unfair representation.

However, the court also recognized that absolute voter parity is impossible to achieve in practice:

It is impossible to draw boundary lines that guarantee exactly the same number of voters in each district. Voters die, voters move. Even with the aid of frequent censuses, voter parity is impossible.⁴

The court also found that, in some cases, achieving relative voter parity may be undesirable because it could in fact detract from effective representation, and factors such as geography, community interests and minority representation may need to be taken into account to ensure that legislatures effectively represent the society that elects them.

As a result, deviations from voter parity can be justified, as long as they better serve the goal of effective representation. The court endorsed the earlier finding in *Dixon* that:

[O]nly those deviations should be admitted which can be 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.⁵

The Challenge of Electoral Boundary Reform

Like most western countries, Canada continues to become more urbanized: an increasing proportion of the population lives in cities and suburbs rather than in small communities in rural areas.

British Columbia and Ontario are the most urbanized provinces in Canada, with approximately 86 per cent of the population living in urban areas and 14 per cent in rural areas.⁶ B.C.'s population is concentrated in the Lower Mainland, southern Vancouver Island, and Okanagan regions of the province: the four census metropolitan areas of Vancouver, Victoria, Abbotsford-Mission and Kelowna make up 70 per cent of the province's total population.⁷ Large geographical areas like the Kootenays, Cariboo-Thompson, northern Vancouver Island, and northern British Columbia contain an increasingly smaller proportion of the overall provincial population.

⁴ Ibid, para 53

⁵ Ibid, para 55

⁶ Source: Statistics Canada, 2011 Census of Population

⁷ Source: Statistics Canada, Annual population estimates by census metropolitan areas

Recent population projections estimate relatively higher population growth in the north-east portion of the province compared to other northern and rural regions, but the overall trend points towards continued high growth in the Lower Mainland, Okanagan and Vancouver Island.⁸

Providing for effective representation of citizens in rural areas while observing the principle of representation by population becomes more difficult in such circumstances. Adding to the challenge is British Columbia's unique geography, which includes numerous mountain ranges, long expanses of coastline, and many coastal islands—all of which have created unique, localized communities of interest based on the province's history and patterns of settlement.

Other jurisdictions in Canada also face the challenge of electoral boundary distribution. All provinces have independent boundary commissions and permit those commissions to deviate from strict population equality among electoral districts, as follows:

Table 1: Rules for Population Deviation Across Canada

Province/Territory/Federal	General Rule for Permitted Population Deviation (+/-)
Canada (House of Commons)	
British Columbia	
Alberta	
Manitoba (northern districts) ⁹	25%
Ontario	
Quebec	
Nova Scotia	
Prince Edward Island	
Manitoba (southern districts) ¹⁰	10%
Newfoundland and Labrador	
Saskatchewan	5%
New Brunswick	
Yukon	
Northwest Territories	Not stated in legislation
Nunavut	

As the table indicates, the majority of Canadian jurisdictions permit electoral districts to vary by up to 25 per cent above or below the average population per district.

In addition, most jurisdictions in Canada permit boundary commissions to exceed the deviation rule in certain circumstances, though specific statutory instructions differ. For example, Saskatchewan provides for two northern districts with populations that may deviate by up to

⁸ Source: BC Stats, "People 2013: B.C. Sub-provincial Population Projections", Released Sept. 12, 2013

⁹ "Northern district" is defined as any district wholly or partially situated north of the 53rd parallel.

¹⁰ "Southern district" is defined as any district wholly situated south of the 53rd parallel.

50 per cent below the provincial average. Ontario in 2005 provided that 11 northern districts are to retain their existing boundaries; the other provincial districts match those created for Ontario's federal ridings and may be changed following the federal boundary redistribution process.

Alberta's legislation permits up to four districts to deviate by up to 50 per cent if at least three of five conditions apply. These conditions are:

- overall geographic size of more than 20,000 square kilometres;
- distance from the capital of more than 150 kilometres;
- largest town having a population of no more than 8,000 people;
- presence of Indian reserve or Métis settlement; and
- having a boundary that is also an Alberta provincial boundary.

British Columbia's legislation has permitted a deviation of plus/minus 25 per cent since 1989. It has also permitted EBCs to propose districts that exceed that deviation when the EBC determines that "very special circumstances" exist to justify doing so. [See "The Statutory Principles for Determining Boundaries" for more details about B.C.'s legislation.]

Table 2 sets out the population deviation rules for all the jurisdictions in Canada, as well as the permitted exceptions to those rules and the current number of districts to which the exception has been applied.

As the table indicates, Ontario, British Columbia and Quebec have the most "exceptional" districts, i.e., those that lie outside the general deviation rule. This is perhaps not surprising, given the overall greater number of districts in the larger provinces and the varied geography and demography that exist in these provinces as well.

Indeed, the geography of British Columbia's electoral districts exhibit great contrasts: the smallest district in the province is Vancouver-False Creek (7km²), while the biggest is Stikine (196,000km²). There are 36 districts smaller than 100km² and 15 districts greater than 20,000km².

Table 2: Population Deviation Rules and Exceptions in Canada

Jurisdiction	Population deviation rule (plus/minus)	Permitted exceptions to deviation rule	Current Number of exceptional districts
Canada (Commons)	25%	‣ In “extraordinary circumstances” – no upper limit	2
B.C.	25%	‣ In “very special circumstances” – no upper limit	10
Alberta	25%	‣ Up to 50% when at least three of five criteria are met (max. 4 districts)	2
Saskatchewan	5%	‣ Up to 50% for northern districts	2
Manitoba	10% for southern districts ¹¹ 25% for northern districts ¹²	‣ None	n/a
Ontario	25%	‣ Northern districts not subject to redistribution	11
Quebec	25%	‣ For “exceptional reasons” – no upper limit ‣ Iles-de-la-Madeleine not subject to redistribution	7
New Brunswick	5%	‣ Up to 25% in “exceptional circumstances”	0
Nova Scotia	25% ¹³	‣ None	n/a
Prince Edward Island	25%	‣ None	n/a
Newfoundland and Labrador	10%	‣ Up to 25% for “special geographic considerations” ‣ Labrador guaranteed four districts	4
Yukon	Not in statute ¹⁴	‣ n/a	n/a
Northwest Territories	Not in statute	‣ n/a	n/a
Nunavut	Not in statute	‣ n/a	1 district at -52%

¹¹ I.e., districts wholly south of 53rd parallel

¹² I.e., districts wholly or partially north of the 53rd parallel

¹³ Nova Scotia does not provide statutory guidance respecting population deviations, but the Legislative Assembly does through terms of reference established by a legislative committee.

¹⁴ The commissions in Yukon, Northwest Territories and Nunavut each adopted a general deviation rule of 25%

From the perspective of service by an MLA, arguably as important as total geographic size and population is demography, i.e., the pattern of settlement in an electoral district. In this regard, there is also a considerable range in British Columbia. For example, the district of North Coast has the third-largest area of any district (143,922km²) and the second-smallest population (23,135 in 2008). It also includes large areas of the mainland as well as Haida Gwaii, and features few kilometres of paved roads—many small communities are accessible only by water or float plane. It is a clear example of a district that is difficult for a single MLA to represent and that EBCs have found justifies a finding that “very special circumstances” exist to warrant retaining it despite its low overall population.

Similarly, in the Columbia-Kootenay region, while the districts are not generally as large as in the North, they are effectively bounded by mountain ranges on all sides, which has shaped the settlement patterns in the region and raises obvious transportation issues for MLAs who represent the area.

III. The Electoral Boundary Revision Process In British Columbia

The *Electoral Boundaries Commission Act* sets out the process in British Columbia for reviewing the number, names and boundaries of electoral districts in British Columbia. These are the districts that are used in provincial elections to elect MLAs. The complete Act is attached as Appendix B to this paper.

What is an Electoral Boundaries Commission?

The Act requires that an independent EBC be appointed within one year after every second provincial general election. Because British Columbia has fixed election dates, unless there is an unscheduled election, an EBC is appointed every eight years.

EBCs are made up of three members:

- a judge or retired judge of the B.C. Supreme Court or Court of Appeal;
- the provincial chief electoral officer, who is an independent statutory officer of the Legislative Assembly; and
- a person nominated by the Speaker of the Legislative Assembly after consulting with the premier and the Leader of the Official Opposition. This person must not be a Member of the Legislative Assembly or an employee of the provincial government.

The function of the EBC is to make proposals to the Legislative Assembly as to the area, boundaries and names of the electoral districts in British Columbia should be. An EBC has 12 months to produce a first report. It then has a further six months to produce a final report, which may amend the proposals made in the first report.

EBCs usually begin their work by commissioning up-to-date population estimates and projections based on the most recent census data. The Act provides that the EBC may hold public hearings while preparing its first report, and in practice commissions do so. In addition, EBCs are required by the Act to hold public hearings between producing their first report and completing their final report. After conducting this in-depth review, in some cases EBCs will recommend only minor modifications to existing districts, sometimes major modifications, and sometimes they will recommend the creation of completely new districts by amalgamating or dividing existing districts.

Once the final report has been received, the Legislative Assembly may, by a resolution, adopt the EBC's proposals with or without amendments. If the assembly does so, government must introduce a bill during the same legislative session to establish the new boundaries. The bill that is brought forward amends the *Electoral Districts Act*, which is the legislation that formally sets out the number, names and areas of the province's electoral districts.

The Statutory Principles for Determining Boundaries

Section 9 of the Act ("Determining boundaries") sets out the principles that govern EBCs when formulating their proposals:

Determining boundaries

- 9** (1) In determining the area to be included in and in fixing the boundaries of proposed electoral districts, the commission must be governed by the following principles:
- (a) that the principle of representation by population be achieved, recognizing the imperatives imposed by geographical and demographic realities, the legacy of our history and the need to balance the community interests of the people of British Columbia;
 - (b) to achieve that principle, the commission be permitted to deviate from a common statistical Provincial electoral quota by no more than 25%, plus or minus;
 - (c) the commission be permitted to exceed the 25% deviation principle where it considers that very special circumstances exist.
- (2) For the purpose of making proposals under section 3 (2), the commission must take into account the following:
- (a) geographic and demographic considerations, including the sparsity, density or rate of growth of the population of any part of British Columbia and the accessibility, size or physical configuration of any part of British Columbia;
 - (b) the availability of means of communication and transportation between various parts of British Columbia.

The principles contained in sub-section (1) were part of the newly-created *Electoral Boundaries Commission Act* in 1989 and have not changed since then. The directions contained in sub-section (2) were introduced into the Act by amendments passed in 1996. They provide further elaboration on the kinds of geographic and demographic factors stated in sub-section (1)(a) and introduce the requirement for EBCs to consider communication and transportation issues as part of their deliberations.

The Act permits EBCs to deviate from absolute equality by up to 25 per cent above or below the average population per district. However, as per the court decisions described above, this does not mean that an EBC could recommend a deviation within this range without a sufficient reason. As stated by the Cohen Commission: “[a]ny deviation must be justified, and our view is that the closer we get to the maximum deviation, the more persuasive the justification should be. Having said that, we should not arbitrarily limit ourselves to some lesser deviation.”¹⁵

An EBC may propose districts that exceed the 25 per cent deviation rule if it finds that “very special circumstances” exist that would justify doing so. The phrase “very special circumstances” is not defined further in the Act, and each EBC has interpreted it in its own way. The phrase is not substantially different from similar direction provided in some other Canadian jurisdictions, which use phrases such as “extraordinary circumstances”¹⁶, “exceptional reasons”¹⁷ and “special geographical considerations”¹⁸ as noted in Table 2 above.

¹⁵ Cohen Commission, Preliminary Report, p. 39

¹⁶ Canada (House of Commons), New Brunswick

¹⁷ Quebec

¹⁸ Newfoundland and Labrador

IV. Recent Electoral Boundaries Commissions In British Columbia

As noted, B.C.'s legislation respecting the electoral boundary redistribution process has been in existence since 1989. Before that time, there was no statute governing the redistribution process specifically; instead, periodic redistributions occurred as commissions of inquiry were appointed under public inquiry legislation.

For a more in-depth summary of past electoral boundary commissions in British Columbia, see pages 22-31 of the preliminary report of the Cohen Commission, available on the Elections BC website at the following URL: <http://www.elections.bc.ca/docs/rpt/BCEBC-Prelim/Part%203-HistoryOfElectoralBoundaries.pdf>

Prior to 1987

The first largely independent commission was appointed in 1966. Since its entry into Confederation, British Columbia had a mixture of single-member and dual-member electoral districts.¹⁹ The 1966 commission, chaired by Henry Angus, recommended retaining the same total number of electoral districts (52) and abolishing all dual-member districts. It also recommended shifting districts from northern and rural areas to the Lower Mainland due to increases in population in the latter. The legislature ultimately decided to retain a number of dual-member districts; it also declined to eliminate several rural districts while adding to Vancouver's number, with the result that the total number of MLAs increased to 55.

The 1975 Norris Commission decided to permit deviations up to plus or minus 40 per cent, with one exception made for a proposed new district of Atlin-Northland. The commission recommended increasing the number of MLAs from 55 to 62, with the majority of the new districts coming from the Fraser Valley. The legislature did not implement any of the commission's recommendations.

The Eckardt Commission in 1978 was given a much broader mandate beyond electoral boundary redistribution—it was to make recommendations respecting alternative methods of voting, voter eligibility requirements and electoral finance, among others. In regard to electoral districts, Judge Eckardt recommended retaining dual-member districts (though he proposed fewer of them), with an increase from 55 to 57 MLAs overall. The proposed electoral map had wide population deviations, from minus 88 per cent for Atlin to plus 85 per cent for Richmond. The legislature adopted the Eckardt Commission's recommendations.

¹⁹ In 1871, British Columbia's Legislative Assembly elected 25 MLAs from 12 districts.

Appointed four years after its predecessor, the Warren Commission, chaired by sole commissioner Derrill Warren, decided not to adjust existing boundaries (with one exception), and instead developed a formula based on population and geographical area for calculating how many MLAs an electoral district should have. Mr. Warren recommended that Surrey increase from two to three MLAs, and that a number of districts (North Peace River, Cariboo, Kamloops, Okanagan South, Delta and Richmond) become dual-member districts. Overall, the recommendation would have increased the size of the Legislative Assembly by seven districts; however, the assembly did not adopt the commission's recommendations.

The assembly did, however, act on a related recommendation of the Warren Commission, which was to establish a permanent Electoral Boundaries Commission to address a perceived lack of independence of government-appointed commissions under the *Public Inquiries Act*. Based on this recommendation, the legislature enacted amendments to the provincial *Constitution Act*, creating a permanent three-person electoral commission consisting of the chief electoral officer, the clerk of the Legislative Assembly and a judge of the Provincial Court.

The legislation limited the scope of the commission's work to recommending whether one-member districts should become two-member districts, and whether any two-member districts should be split into three new one-member districts—there was no authority for the commission to change the boundaries of electoral districts generally. The Act set out a mathematical formula for determining a "base" population for electoral districts and weighted that base by creating metropolitan, suburban, urban-rural, interior-coastal and remote electoral districts. Each category was assigned a population quota that was expressed as a fraction of the average population for Vancouver.

In June 1984, the McAdam Commission became the first commission appointed under the new legislation. It recommended that 11 one-member districts become two-member districts, and that Surrey be divided into three single-member districts. The Legislative Assembly implemented the recommendations, which increased the total number of MLAs from 57 to 69. It was the results of this commission, and the legislation underlying it, that were the subject of the challenge brought in B.C. Supreme Court in the *Dixon* case described above.

Fisher Commission (1987-1988)

Just a few years later, in April 1987, Judge Thomas K. Fisher was appointed under the *Inquiry Act*, with a mandate that differed from what the *Constitution Act* framework provided for. Initially, Judge Fisher was directed to eliminate dual-member districts in the province, which at that time numbered 17. The mandate was subsequently expanded to include recommending what the total number of single-member districts in the province should be and to propose their boundaries.

Judge Fisher eventually recommended increasing the total number of MLAs from 69 to 75, with each district returning one MLA. The changes included six new districts in the Lower Mainland and on Vancouver Island to address population growth in those areas. Although his

terms of reference did not specify it, he adopted a population deviation rule of plus/minus 25 per cent, which was consistent with several other Canadian jurisdictions. Judge Fisher's report was eventually adopted by the Legislative Assembly in July 1989, following review by a special committee of the Legislative Assembly and the B.C. Supreme Court's ruling in *Dixon* that declared the existing electoral map unconstitutional.

Judge Fisher also recommended making changes to the legislation governing the boundary redistribution process, and it is these recommendations that resulted in the creation of the *Electoral Boundaries Commission Act*, including the principal statutory directions to EBCs that were endorsed by the B.C. Supreme Court in *Dixon*.

Wood Commission (1998-1999)

Judge Josiah Wood chaired the first EBC appointed under the new statute in 1999. It included commissioners Robert Patterson, the province's chief electoral officer, and Rev. Katherine Hough. The EBC was to propose electoral boundaries for between 75 and 81 electoral districts. The EBC proposed an increase of four districts, in Surrey (two), Burnaby-Coquitlam and Abbotsford-Chilliwack.

In undertaking its work, the EBC developed a set of nine goals beyond those contained in the statute. These goals included preserving regional representation as much as possible; trying to minimize changes to existing boundaries; keeping population deviations between districts within a region to a similar range; and considering the impact of redistribution on First Nations.

The EBC's recommendations were adopted by the Legislative Assembly without change.

Cohen Commission (2005-2008)

The most recent EBC was the Cohen Commission, chaired by Mr. Justice Bruce I. Cohen of the B.C. Supreme Court and including chief electoral officer Harry Neufeld and Stewart Ladyman. It was appointed in late 2005 and delivered its final report on February 14, 2008.

This commission was unique in that it was charged with recommending electoral boundaries for both the existing Single Member Plurality (SM) voting system and BC-STV, the Single Transferable Vote system that had been recommended by the Citizens' Assembly on Electoral Reform, in advance of a province-wide referendum on whether to adopt that system. The commission was authorized to recommend between 79 and 85 electoral districts under SMP.

The commission's preliminary report, released August 15, 2007, proposed 81 electoral districts, an overall increase of two districts in the province. The commission found that population changes mandated adding districts in five regions of the province (Okanagan, Fraser Valley, Surrey, Burnaby-Tri-Cities and Vancouver) and reducing them in three (North, Cariboo-Thompson and Columbia-Kootenay). The North region would have been reduced from eight districts to seven; the Cariboo-Thompson from five districts to four; and the Columbia-Kootenay from four to three.

The proposal to reduce districts in those three regions sparked a debate over rural representation. In October, the government introduced a bill that would have amended the instructions to the EBC.²⁰ In particular, the bill would have required the EBC to retain the existing number of districts in the North, Cariboo-Thompson and Columbia-Kootenay regions. The instructions to EBCs were contained in section 4 of the bill:

Direction to the current Electoral Boundaries Commission

4 [...]

(2) The purpose of this section is to provide direction to the commission in order to recognize that, for the better governance of the people of British Columbia,

- (a) effective representation in the Legislative Assembly requires that, for the areas of the Province that are most sparsely populated or geographically isolated, or both, there be no fewer Members of the Legislative Assembly than currently represent those areas, and
- (b) for the remainder of the Province, increasing the number of electoral districts will allow the commission to achieve better compliance with the principle of representation by population established by section 9 of the Act.

(3) The commission must, by January 31, 2008, submit a report to the Speaker of the Legislative Assembly respecting its revised proposals regarding electoral districts for our current electoral system, in accordance with the following:

- (a) the number of proposed electoral districts is to be 87;
 - (b) each of the regions identified in the preliminary report as The North, Cariboo-Thompson and Columbia-Kootenay must not have the number of their electoral districts reduced from the number of electoral districts that currently exist for the region;
 - (c) for the purposes of complying with paragraph (b), the commission may exceed the 25% deviation principle established by section 9 (1) (b) of the Act;
 - (d) the boundaries of the regions identified in the preliminary report, including the regions referred to in paragraph (b), may be adjusted taking into account the purposes described in subsection (2);
 - (e) subject to this subsection, the commission is to prepare its revised proposals in accordance with section 9 of the Act.
- [...]

²⁰ Bill 39: Electoral Boundaries Commission Amendment Act, 2007.

The bill did not pass the House during the fall 2007 session and therefore the statutory direction to the EBC was not changed.

In its final report, the EBC presented its recommended electoral map, which retained the existing four districts in the Columbia-Kootenay region but still proposed one fewer district in both the North and Cariboo-Thompson regions. Overall, the EBC proposed 83 electoral districts for the province. However, the EBC also included in an appendix a set of alternative boundaries for the North and Cariboo-Thompson that retained the existing number of districts. The EBC was careful to note that the appended version was not its recommended version, but that it included them based on the intended legislative action of government so that the Legislative Assembly had a set of clearly-defined alternate boundaries at hand if it wished to retain the existing number of districts.

The alternate version created an electoral map with 85 districts and no reductions in any region. This is the version that was approved by the Legislative Assembly and adopted through amendments to the *Electoral Districts Act* in May 2008, and it remains the electoral map today. Under this map, based on 2008 population estimates, a total of 10 districts out of 85 were more than 25 per cent below the population average, all of them in the North, Cariboo-Thompson and Columbia-Kootenay regions. No district was more than 25 per cent above the average.

The debate that occurred following the release of the EBC's preliminary report brought the issue of rural representation to the fore. As the Cohen Commission noted, "British Columbia's relentless move toward even greater urbanization has convinced us that the issue of rural representation will not go away—it will only become more pronounced."²¹ The commission urged the legislature to address the issue before the appointment of the next EBC.

Electoral Districts and Population Changes in British Columbia

As indicated by the foregoing history, British Columbia's electoral boundary redistribution process has changed over time. The timing, membership and governing rules and principles of EBCs have varied considerably until the creation of the *Electoral Boundaries Commission Act* in 1989. However, a few issues seem to persist:

- ▶ population growth over the last 50 years or so has been consistently higher in the Lower Mainland, southern Vancouver Island, and Okanagan regions than in other areas of the province;
- ▶ expansion of the Legislative Assembly has regularly occurred to address population growth;
- ▶ preserving effective representation in rural areas has been a challenge.

²¹ Cohen Commission, *Amendments to the Preliminary Report*, transmittal letter

The following two tables provide some context for representation levels in British Columbia. Table 3 shows how the number of electoral districts has increased over time compared to population. Even though the number of electoral districts has increased over the years, this expansion has not kept pace with population growth. The result is that the number of constituents an MLA represents, on average, has increased. Over the same time period, however, there have also been considerable advances in transportation and communications technology, which have made it easier in some ways for MLAs to communicate effectively with those whom they represent.

Table 3: B.C. Population per MLA since 1951

Year	B.C. Population ²²	Number of MLAs	Average Population per MLA
1951	1,165,200	48	24,275
1956	1,398,500	52	26,894
1961	1,629,100	52	31,329
1966	1,873,700	55	34,067
1971	2,184,600	55	39,720
1976	2,466,608	55	44,847
1981	2,744,467	57	48,189
1986	2,883,367	69	41,788
1991	3,282,061	75	43,761
1996	3,724,500	75	49,660
2001	3,907,738	79	49,465
2006	4,113,487	79	52,069
2013	4,581,978	85	53,905

²² Source: For years 1951-2006, Cohen Commission preliminary report, p. 59.

Table 4 compares British Columbia's population per MLA to other provinces, territories and the federal House of Commons. British Columbia ranks third among provinces and fourth overall in terms of average population per MLA. The table shows that without exception among the provinces, the larger the jurisdiction, the greater the average number of people served by each MLA.

Table 4: Average Population per Representative in Canada

Jurisdiction	Population²³	Number of districts	Average Population per Elected Representative
Ontario	13,537,994	107 ²⁴	126,523
Canada (Commons)	35,158,304	308 ²⁵	114,150
Quebec	8,155,334	125	65,243
British Columbia	4,581,978	85	53,905
Alberta	4,025,074	87	46,265
Manitoba	1,265,015	57	22,193
Saskatchewan	1,108,303	58 ²⁶	19,108
Nova Scotia	940,789	51	18,447
New Brunswick	756,050	55 ²⁷	13,747
Newfoundland and Labrador	526,702	48	10,973
Prince Edward Island	145,237	27	5,379
Northwest Territories	43,537	19	2,291
Yukon	36,700	19	1,932
Nunavut	35,591	21	1,653

²³ Source: Statistics Canada – The Daily, September 26, 2013. Estimates as of July 1, 2013

²⁴ Will increase to 121 if proposed federal districts are also adopted provincially

²⁵ Scheduled to increase to 338 following current redistribution process

²⁶ Scheduled to increase to 61 in 2015

²⁷ Scheduled to decrease to 49 in 2014

V. Proposed Changes To The Legislation

Given the experience of recent EBCs, and in particular the Cohen Commission and related debates about northern and rural representation in the Legislative Assembly, government has determined that it must take action to provide clear instructions to EBCs so that northern and rural representation is not reduced.

Government intends to introduce amendments to section 9 of the Act that are similar to the amendments introduced in Bill 39 (2007). The proposed amendments are contained in Appendix A. They would seek to achieve effective representation by providing for the following:

- ▶ The EBC will continue to be governed by the principle of representation by population, recognizing the imperatives imposed by geographic and demographic realities, the legacy of our history, and the need to balance the community interests of the people of British Columbia. This principle will apply to determining boundaries for all electoral districts.
- ▶ The plus/minus 25 per cent deviation principle will continue to be the norm in determining boundaries for all electoral districts, to be exceeded only when an EBC finds that “very special circumstances” exist to justify doing so. However, this principle will be subject to further directions respecting electoral districts in three defined regions of the province.
- ▶ For the areas of the province that are the most sparsely populated or geographically remote, there should be no fewer MLAs than currently represent those areas. Therefore:
 - ▶ The regions defined during the last boundary commission process as the North, Cariboo-Thompson and Columbia-Kootenay regions must not have the number of electoral districts reduced from the current number.²⁸
 - ▶ To that end, in determining boundaries an EBC may exceed the 25 per cent deviation principle established in section 9(1)(b) of the Act for those regions. It would not be required to find that “very special circumstances” apply.
 - ▶ Electoral district boundaries, including those that are contiguous with regional boundaries of the North, Cariboo-Thompson and Columbia-Kootenay regions may be adjusted, taking into account the requirement to maintain the current number of electoral districts in those regions.

The purpose of the amendments is to provide certainty respecting the numbers of districts in the areas of the province that include predominantly very large and sparsely populated electoral districts. Based on the experience of recent EBCs, under the current legislation it is

²⁸ That is, eight districts in the North, five in the Cariboo-Thompson and four in the Columbia-Kootenay.

likely that people in these regions would have their electoral districts reduced, meaning they would be electing fewer MLAs from larger districts. The result would be a loss of representation in the Legislative Assembly and reduced contact and connection with their elected representatives.

However, rather than fix absolutely the boundaries of individual districts in the three regions, the amendments will permit EBCs to adjust the boundaries of districts in the North, Cariboo-Thompson and Columbia-Kootenay in order to accommodate population changes within the regions. So, for example, an EBC would be required to propose boundaries for eight electoral districts in the North region, but it could shift the boundaries of those eight districts in order to balance population within the region to best effect.

An EBC could also propose changes to an electoral district boundary in the three regions that is also a regional boundary, if such a change assisted in achieving more effective representation. However, such changes could not be made to such an extent that they would effectively reduce the number of districts or level of representation in that region.

Government believes that these changes are necessary to ensure effective representation for rural and northern residents of British Columbia, and that, if enacted, they will contribute to the better governance of the province as a whole.

The proposed amendments would not increase the overall number of electoral districts from the current 85. It is recognized that population growth has occurred in various regions of the province since the last commission process. However, government believes that the provincial population can be adequately represented with the current number of electoral districts.

VI. Appendices

Appendix A: Proposed Amendments to the Act

The proposed amendments to section 9 are additions to the current section, and are in blue below.

Proposed Section 9:

Determining boundaries

9 (0.1) In this section:

“Cariboo-Thompson Region” means a region consisting of the following electoral districts specified in the Electoral Districts Act:

- (a) Cariboo North;
- (b) Cariboo-Chilcotin;
- (c) Fraser-Nicola;
- (d) Kamloops-North Thompson;
- (e) Kamloops-South Thompson;

“Columbia-Kootenay Region” means a region consisting of the following electoral districts specified in the Electoral Districts Act:

- (a) Columbia River-Revelstoke;
- (b) Kootenay East;
- (c) Kootenay West;
- (d) Nelson-Creston;

“North Region” means a region consisting of the following electoral districts specified in the Electoral Districts Act:

- (a) Nechako Lakes;
- (b) North Coast;
- (c) Peace River North;
- (d) Peace River South;
- (e) Prince George-Mackenzie;
- (f) Prince George-Valemount;
- (g) Skeena;
- (h) Stikine.

(1) Subject to subsection (1.1), in determining the area to be included in and in fixing the boundaries of proposed electoral districts, the commission must be governed by the following principles:

- (a) that the principle of representation by population be achieved, recognizing the imperatives imposed by geographical and demographic realities, the legacy of our history and the need to balance the community interests of the people of British Columbia;
- (b) to achieve that principle, the commission be permitted to deviate from a common statistical Provincial electoral quota by no more than 25%, plus or minus;
- (c) the commission be permitted to exceed the 25% deviation principle where it considers that very special circumstances exist.

(1.1) With respect to the Cariboo-Thompson Region, the Columbia-Kootenay Region and the North Region, the commission must be governed by the following additional principles:

- (a) for the purpose of effective representation in the Legislative Assembly, each of these regions must not have the number of their electoral districts reduced from the number of electoral districts that currently exist for the region;
- (b) for the purposes of complying with paragraph (a) of this subsection, the commission may exceed the 25% deviation principle established by subsection (1) (b).

(2) For the purpose of making proposals under section 3 (2), the commission must take into account the following:

- (a) geographic and demographic considerations, including the sparsity, density or rate of growth of the population of any part of British Columbia and the accessibility, size or physical configuration of any part of British Columbia;
- (b) the availability of means of communication and transportation between various parts of British Columbia.

(3) For certainty, for the purpose of making proposals under section 3 (2), the commission may propose

- (a) changing the names of electoral districts in the Cariboo-Thompson Region, the Columbia-Kootenay Region and the North Region, and
- (b) adjusting or changing boundaries of electoral districts in the Cariboo-Thompson Region, the Columbia-Kootenay Region and the North Region, including, subject to the purpose set out in subsection (1.1) (a), boundaries of electoral districts that are regional boundaries.

Appendix B

ELECTORAL BOUNDARIES COMMISSION ACT

[RSBC 1996] CHAPTER 107

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Definition

- 1 In this Act, "**commission**" means the Electoral Boundaries Commission appointed under section 2.

Electoral Boundaries Commission

- 2 (1) The Lieutenant Governor in Council must, as required by this Act, appoint an Electoral Boundaries Commission consisting of
 - (a) a judge or a retired judge of the Supreme Court or the Court of Appeal who is nominated by the Lieutenant Governor in Council,

(b) a person who is not a member of the Legislative Assembly or an employee of the government and who is nominated by the Speaker of the Legislative Assembly, after consultation with the Premier and the Leader of the Official Opposition, and

(c) the chief electoral officer appointed under the *Election Act*.

(2) The Lieutenant Governor in Council must appoint one member of the commission as chair.

(3) If one member of the commission is unable for any reason to complete the member's duties, 2 members of the commission may continue to exercise powers and perform duties as the commission under this Act, and

(a) the vacancy does not invalidate any action taken, and

(b) the provisions of this Act concerning the commission continue to apply.

(4) If a member of the commission is unable for any reason to complete the member's duties, the Lieutenant Governor in Council may, subject to the limitations and conditions set out in subsection (1), appoint a person to complete the member's duties, and that person may rely on all decisions made and information received by any member of the commission.

Function of commission

3 (1) The function of the commission is to make proposals to the Legislative Assembly as to the area, boundaries and names of the electoral districts of British Columbia.

(2) If the commission in carrying out its functions under subsection (1) considers that the number of electoral districts in British Columbia should be increased, it may make proposals to the Legislative Assembly to increase the number of electoral districts up to a maximum of 85.

Remuneration

4 (1) The commission member who is a retired judge appointed under section 2 (1) (a) and the commission member who is appointed under section 2 (1) (b) may be paid remuneration for his or her services on the commission in an amount prescribed by the Lieutenant Governor in Council.

(2) The commission members, while absent from their ordinary place of residence and in the course of their duties as commission members, must be paid their reasonable travelling and living expenses at the rates the Lieutenant Governor in Council may prescribe.

Time of appointment of commission

5 (1) The next commission must be appointed no later than November 30, 2005.

(2) A new commission must be appointed no later than one year after the general voting day for every second general election following the appointment under subsection (1).

Power to compel persons to give evidence and order disclosure

6 (1) For the purposes of this Act, the commission may make an order requiring a person to do either or both of the following:

(a) attend, in person or by electronic means, before the commission to answer questions on oath or affirmation, or in any other manner;

(b) produce for the commission a record or thing in the person's possession or control.

(2) The commission may apply to the Supreme Court for an order

(a) directing a person to comply with an order made under subsection (1), or

(b) directing any directors and officers of a person to cause the person to comply with an order made under subsection (1).

Maintenance of order at hearings

6.1 (1) At an oral hearing, the commission may make orders or give directions that it considers necessary for the maintenance of order at the hearing, and, if any person disobeys or fails to comply with any order or direction, the commission may call on the assistance of any peace officer to enforce the order or direction.

(2) A peace officer called on under subsection (1) may take any action that is necessary to enforce the order or direction and may use such force as is reasonably required for that purpose.

(3) Without limiting subsection (1), the commission, by order, may

(a) impose restrictions on a person's continued participation in or attendance at a hearing, and

(b) exclude a person from further participation in or attendance at a hearing until the commission orders otherwise.

Contempt proceeding for uncooperative person

6.2 (1) The failure or refusal of a person subject to an order under section 6 to do any of the following makes the person, on application to the Supreme Court by the commission, liable to be committed for contempt as if in breach of an order or judgment of the Supreme Court:

(a) attend before the commission;

(b) take an oath or make an affirmation;

(c) answer questions;

(d) produce records or things in the person's possession or control.

(2) The failure or refusal of a person subject to an order or direction under section 6.1 to comply with the order or direction makes the person, on application to the Supreme Court by the commission, liable to be committed for contempt as if in breach of an order or judgment of the Supreme Court.

(3) Subsections (1) and (2) do not limit the conduct for which a finding of contempt may be made by the Supreme Court.

Immunity protection

6.3 (1) Subject to subsection (2), no legal proceeding for damages lies or may be commenced or maintained against the commission, a member of the commission or a person acting on behalf of or under the direction of the commission or a member of the commission, because of anything done or omitted

(a) in the performance or intended performance of any duty under this Act, or

(b) in the exercise or intended exercise of any power under this Act.

(2) Subsection (1) does not apply to a person referred to in that subsection in relation to anything done or omitted by that person in bad faith.

Employees

7 The commission may

(a) employ or retain technical and other advisors and employees that it considers necessary, including a person to act as secretary to the commission, and

(b) subject to the approval of the Lieutenant Governor in Council, determine

(i) their conditions of employment, and

(ii) the remuneration and reimbursement for expenses to which they are entitled.

Appropriation

8 Money required to meet the remuneration and expenses of commission members and of the persons referred to in section 7 may be paid out of the consolidated revenue fund.

Determining boundaries

9 (1) In determining the area to be included in and in fixing the boundaries of proposed electoral districts, the commission must be governed by the following principles:

(a) that the principle of representation by population be achieved, recognizing the imperatives imposed by geographical and demographic realities, the legacy of our history and the need to balance the community interests of the people of British Columbia;

(b) to achieve that principle, the commission be permitted to deviate from a common statistical Provincial electoral quota by no more than 25%, plus or minus;

(c) the commission be permitted to exceed the 25% deviation principle where it considers that very special circumstances exist.

(2) For the purpose of making proposals under section 3 (2), the commission must take into account the following:

(a) geographic and demographic considerations, including the sparsity, density or rate of growth of the population of any part of British Columbia and the accessibility, size or physical configuration of any part of British Columbia;

(b) the availability of means of communication and transportation between various parts of British Columbia.

Report to Speaker

10 (1) The commission, after considering any representations made to it, and within 12 months of the date on which the commission is appointed, must submit to the Speaker of the Legislative Assembly a report, which must delineate the number, which must not be less than 79 nor more than 85, and the names, areas and boundaries of the proposed electoral districts.

(2) On receipt of the report under subsection (1), the Speaker must promptly cause it to be made public and to be published in the Gazette.

(3) If the office of Speaker is vacant, the report must be submitted to the Clerk of the Legislative Assembly who must comply with subsection (2).

Hearings

11 (1) The commission

(a) may before its report is submitted to the Speaker or to the Clerk under section 10, and

(b) must after its report has been made public

hold hearings at the places and times it considers appropriate to enable representations to be made by any person as to the area and boundaries of any proposed electoral district.

(2) The commission must give reasonable public notice of the time and place and purpose of any public hearings to be held by it.

Amendment of report

12 (1) The commission may, after considering any further representations made to it, and within 6 months of the date it submits a report under section 10, submit to the Speaker any amendments to the report it considers advisable.

- (2) The commission must give reasonable public notice of the time and place of any public hearings to be held by it.
- (3) After the commission has heard from all other persons, it must give all current members of the Legislative Assembly an opportunity to make submissions to it.
- (4) The amendments must be made public and published in the same manner as the report under section 10.
- (5) If the office of Speaker is vacant, the amended report must be submitted to the Clerk of the Legislative Assembly, who must comply with subsection (4).

Report to Legislative Assembly

- 13 (1) The report of the commission, together with any amendments to it, must,
- (a) if the Legislative Assembly is in session when the report is submitted, be promptly laid before the Assembly, or
 - (b) if the Legislative Assembly is not then in session, be laid before the Assembly within 7 days after the commencement of the next ensuing session.
- (2) If the report and amendments are completed when the Legislative Assembly is not in session, they must be delivered to the Clerk of the Legislative Assembly.

New electoral districts to be introduced by Bill

- 14 If the Legislative Assembly, by resolution, approves or approves with alterations the proposals of the commission, the government must, at the same session, introduce a Bill to establish new electoral districts in accordance with the resolution.

Power to establish electoral districts by regulation

- 15 (1) If the Legislative Assembly is not in session, the Lieutenant Governor in Council may, by regulation, establish the names and the areas and boundaries of the electoral districts from which the members of the Legislative Assembly are elected.
- (2) The Lieutenant Governor in Council must not enact a regulation under subsection (1) unless the Select Standing Committee of the Legislative Assembly on Labour, Justice and Intergovernmental Relations has made a unanimous report to the Legislative Assembly recommending the names and specifying the areas and boundaries of the electoral districts.
 - (3) A report under subsection (2) must set out, with precision and clarity, the recommended names, areas and boundaries of the proposed electoral districts and the regulation under subsection (1) must be prepared and enacted accordingly.
 - (4) A regulation under subsection (1) that does not comply with subsection (2) has no effect.

- (5) To assist the committee in preparing its report, the chief electoral officer and any public officers required by the chief electoral officer must, on the request of the chair of the committee, assist the committee in the manner requested by the chair.
- (6) A report under subsection (2) is deemed to be made to the Legislative Assembly if it is submitted to the Clerk of the Assembly.
- (7) The government must, at the next ensuing session of the Legislative Assembly after the enactment of a regulation under subsection (1), introduce a Bill to establish the boundaries of the electoral districts, but only in accordance with the regulation under subsection (1).
- (8) The Lieutenant Governor in Council must not, before the Bill referred to in subsection (7) is enacted, amend or repeal a regulation under subsection (1), and any regulation that purports to do so has no effect.
- (9) The electoral boundaries established under or in accordance with this section remain in effect until they are adjusted or changed under the other provisions of this Act.
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Ministry of
Justice