

Article

Electoral Parity or Protecting Minorities? Path Dependency and Consociational Districting in Nova Scotia

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Abstract

This case study, informed by historical institutionalism, explores how path dependency has been a significant factor in the institutionalization of a form of consociational representation in Nova Scotia, accomplished through the creation and maintenance of protected ridings for two historical minorities: Acadians and African Nova Scotians. The adoption of a 'consociational districting' approach by electoral boundary commissions in Nova Scotia ran counter to the dominant trend in electoral redistribution and apportionment exercises toward reducing the extent of population variance between electoral districts. However, when Canada's Supreme Court created 'legal space' for this approach, institutional entrepreneurs in Nova Scotia were able to initiate changes that were consistent with provincial history, demography, and political culture, entrenching a consociationalist ethic that legitimized the accommodation of cultural group identity. When there was a concerted government attempt in 2012 to reject this unorthodox practice, its constitutional validity was upheld by the courts and the protected ridings subsequently restored. In effect, history and institutions matter in the politics of redistricting, giving Canadian provinces significant leeway in pursuing their own distinctive approach, especially as it concerns the representation of minorities.

Résumé

Inspirée par l'institutionnalisme historique, cette étude de l'établissement et du maintien de deux circonscriptions protégées pour deux minorités historiques - les Acadiens et les Néo-Écossais d'origine africaine - montre comment la dépendance au sentier a été un facteur significatif dans l'institutionnalisation d'une forme de représentation consociative en Nouvelle-Écosse. L'adoption d'une approche de "district consociatif" par les commissions de délimitation des circonscriptions électorales dans la province est allée à l'encontre de la tendance dominante des exercices de redistribution et de répartition électorales visant à réduire les disparités entre le nombre d'électeurs pour chacune des circonscriptions électorales. Toutefois, lorsque la Cour suprême du Canada a créé un "espace juridique" pour cette approche de district consociatif, les "entrepreneurs institutionnels" en Nouvelle-Écosse ont pu adopter des changements qui étaient en symbiose avec l'histoire, la démographie et la culture politique de la province, enchâssant ainsi une éthique consociative qui légitimait la prise en compte de l'identité des groupes culturels. Lorsqu'en 2012, le gouvernement a tenté de modifier cette pratique inhabituelle, sa validité constitutionnelle a été confirmée par les tribunaux et les circonscriptions protégées ont été par la suite restaurées. En fait, l'histoire et les institutions peuvent faire une différence dans l'instauration d'une politique de redécoupage électoral, ce qui donne aux provinces canadiennes une grande marge de manœuvre dans la poursuite de leur propre approche spécifique, en particulier en ce qui a trait à la représentation des minorités.

Keywords: redistricting, electoral boundaries, minority representation, consociationalism, historical institutionalism, path dependency, Acadians, African Nova Scotians, Canada, Nova Scotia.

Mots-clés: redécoupage des circonscriptions, limites des circonscriptions électorales, représentation des minorités, consociationnalisme, institutionnalisme historique, dépendance au sentier, Acadiens, Néo-Écossais d'origine africaine, Canada, Nouvelle-Écosse

Introduction

The periodic revision of electoral boundaries by independent electoral boundary commissions (EBCs) has been a key component of the federal electoral process in Canada since the 1960s, and in every province since the 1990s. As described by John Courtney, electoral boundary commissions and the redistricting process has become an ‘institutional building block’ vital to the construction and operation of legislatures (2001: 237). But while electoral jurisprudence has provided legal guidelines for legislatures and commissions, these guidelines have remained ambiguous and open to interpretation, and in a decentralized federation such as Canada, this has given provinces leeway to apply these guidelines in a fashion unique to their provincial context. In effect, these institutional building blocks have been adapted to unique provincial contexts. This has been made possible because Canadian courts have opened up legal ‘space’ for the exercise of discretion by legislatures and boundary commission mapmakers – where and when they are disposed to do so – that can be legitimately occupied to protect or promote the political representation of minority communities. Over time and with repeated redistributions, minority electoral districts can become a *de facto*, and to some extent *de jure*, consociational feature of the political system. This is precisely the evolved situation in the province of Nova Scotia.

Nova Scotia stands apart from other Canadian provinces in both the process and outcome of its redistribution exercises, beginning with its first one in 1992. In particular, it has been the only province to fully embrace the practice of ‘consociational districting’ as a means to ensure the effective political representation of two historical minorities in the province: French-speaking Acadians (less than 4% of the provincial population) and African Canadians (less than 3%).¹ It has done this by protecting four minority seats under the ‘exceptional circumstances’ dispensation for any riding exceeding the +/-25 per cent outer limit on deviation from absolute voter parity, a standard enshrined in federal legislation and subsequently adopted by seven of ten provinces, including Nova Scotia. This generous use of the exceptional circumstance dispensation runs counter to the trend in redistribution exercises elsewhere that reduce the extent of population variance between electoral districts. Nor have territorially-concentrated minority groups elsewhere seized on the Supreme Court’s 1991 Carter decision as grounds for the construction of special electoral districts, as in Nova Scotia (Courtney, 2004: 63).

This article contributes to the study of electoral districting and minority group representation in Canada, Nova Scotia politics, and path dependency theory, through an analysis of EBCs in Nova Scotia and relevant electoral boundaries jurisprudence. The concept of ‘protected ridings’ for historical minorities in Nova Scotia – more specifically, Acadians and African Nova Scotians – was introduced by the first provincial EBC in 1992. This approach, referred to here as ‘consociational districting’, ran counter to the trend in electoral redistribution and apportionment exercises toward reducing the extent of population variance between electoral districts. Though rejected by the provincial government twenty years after its introduction, the legality and validity of consociational districting was restored following a successful court challenge by the Acadian federation of Nova Scotia (FANE). An analysis of this case study informed by the historical variant of the new institutionalism explores how path dependency has been a significant factor in the *de facto* constitutionalization of consociational representation for the aforementioned minorities. It

shows that history and institutions matter in the politics of redistricting, especially insofar as it concerns minority representation.

Historical institutionalism, path dependency, and consociational districting

Over the last few decades, the breadth of political science widened when the state was “brought back in” (Skocpol, 1985) to help explain and understand political phenomena and change. Theorized further and often coined as new institutionalism, this line of political analysis highlights that political and social outcomes are shaped by norms and “rules of the game,” otherwise known (and embodied in some organizational form) as political institutions (Lecours, 2000; Thelen and Steinmo, 1992; see Erk, 2008; Allen, 2009; Mahoney and Thelen, 2010). We underscore, however, that new institutionalist literature is rich and nuanced; broadly it contains at least three strands and also considers a *multi-directional* causal arrow in explaining political dynamics, with many of its proponents emphasizing that institutions both affect *and* reflect identities and society (Lecours, 2000: 502; March and Olsen, 1984). The historical variant of new institutionalism stresses the salience of path dependence in institutional development. From this standpoint, institutional rules, practices, forms, and policy legacies – once established – shape and structure human behavior, agency, and relationship patterns between actors (Lecours, 2000, 2005; Thelen and Steinmo, 1992). Institutions and their associated processes become embedded and are resistant to change. This explains why earlier choices and decisions – for instance about institutional design and policy frameworks – are more important than later ones. Once a jurisdiction has adopted and asserted a specific institutional track, reversal costs can be high. Alternative decision points will arise, but entrenched institutional arrangements and their associated political dynamics will obstruct and make costly (in bureaucratic and political terms) the attempts to reverse earlier choices that created established institutional pathways (Lecours, 2005: 9 citing Levi in Pierson, 2000: 252; Peters et al., 2005: 1287). This is the essence of the concept of path dependence.

Of course, resistance to change does not mean it never occurs. Historical institutionalism recognizes that change can and does occur often at a time of system ‘crisis’ or exogenous shock (Harty, 2005: 60). Episodes of institutional change such as this are characterized within historical institutionalism as a ‘critical juncture’ (Collier and Collier, 1991; Thelen, 1999; Capoccia and Keleman, 2007), or alternatively as an instance of ‘punctuated equilibrium’ (Krasner, 1984; Thelen and Steinmo, 1992; Steinmo, 2008) or a ‘formative moment’ (Rothstein, 1992). An occurrence of this sort is due to a confluence of factors in time that provide a ‘window of opportunity’ for institutional change. This creates an opening for political actors who favour new ideas or approaches and have both the ability and the will to initiate it (Steinmo, 2008: 170).² In other words, at least some key political actors need to disagree with prevailing institutional dynamics in order to initiate an episode of institutional change.³ These political actors are characterized in some new institutionalism literature as “institutional entrepreneurs” (Streeck and Yamamura, 2003: 44) who may be successful in redefining norms and rules in settings of “institutional ambiguity” that leave institutions open to interpretation and contestation (Campbell, 2010: 105).

Finally, the stabilizing effect of path dependency, once change has been instituted and new institutions and their associated ‘pathways’ are sustained through time, needs to be

emphasized. We also would reiterate the suggestion from Peters et al. that “change in a historical institutionalist perspective requires a careful analysis not only of the ideas that drive the change, but also the larger social, economic and political context in which these ideas are situated” (2005: 1297). Through this historical institutionalist lens, we suggest that the embedding and persistence of a ‘consociational ethic’ in electoral redistricting processes in Nova Scotia has been subject to the effects of path dependency within a distinctive provincial context, both affecting and reflecting a particular tradition of cultural values, political practices, and societal identities.

Consociational districting and the courts

In a 2018 article in the *Canadian Journal of Political Science*, Aaron John Spitzer argues that the courts have granted francophone minority communities in Canada a “sort of” consociational form of protection in the districting process (462). He bases his argument on the wording and outcome of several court decisions, beginning with the Supreme Court’s *Carter* decision (1991) and most recently the Nova Scotia Court of Appeals decision in *Reference re the Final Report of the Electoral Boundaries Commission* (2017). In Spitzer’s view, the principles by which representation is apportioned in Canada is complicated in the first instance by federalism, “where representation attaches not only to individuals but also to territorial polities”, but also by the country’s multinational character, “where rights-bearing polities are not (or not solely) territorially defined, but are discrete ethnic, cultural, linguistic or religious peoples” (2018: 448). Whereas the former can lead to non-equipopulous apportionment between territorial units within a federation, the latter can find expression through polity-based representation in a consociational dimension. This enhances the legitimacy of democratic institutions by accommodating national groups who have grounds to assert a moral and legal claim to various forms of ethno-national power-sharing arrangements.

Overweighting of francophones in Canadian political institutions is an established practice and tradition in Canada, along with legislative and constitutional guarantees for official language minority communities. In fact, Canada has a long history of what David Thomas calls “constitutional abeyances” and the toleration of ambiguity about such central constitutional questions as the status and recognition of Quebec as something other than a province (Thomas, 1997). For instance, Quebec has its own representation within the Francophonie and, since 2006, a seat beside Canada at UNESCO. Nor are asymmetrical or consociational-type arrangements restricted to Quebec’s place within Canada. Provinces have granted various forms of autonomy for minority communities in social and cultural policy fields. In Ontario, Catholics have a separate, publicly-funded school system, which the courts have upheld as a legitimate expression of the ‘historic settlement’ between religious groups as enshrined in sec. 93 of the Constitution Act 1867 (Dickinson and Dolmage, 1996). In Nova Scotia, there are autonomous Education Authorities for Acadians and for the Mi’kmaq people.⁴

While arrangements such as these may be an affront to classical liberalism which privileges formal individual equality, or symmetrical forms of territorial federalism (where each provincial or state unit has the same status and powers), Spitzer argues that Francophone Minority Community (FMC) claimants, like Acadians, “might be owed internal self-determination based on constitutional guarantees” (459), including rights of

representation. He acknowledges, however, that the courts have not adopted this particular line of reasoning in decisions upholding legal challenges to electoral maps that submerge francophone minorities, as in New Brunswick and Nova Scotia (450-51). Rather, they have sidestepped ruling on such consociational representation claims, relying instead on ‘effective representation’ and ‘community of interest’ concerns to provide legal space for exemptions from the egalitarian principle of voter parity. Spitzer argues this judicial reasoning conflates constitutionally distinct, first-order polity-based rights with second-order egalitarian concerns, a lack of jurisprudential clarity “that may ultimately erode the legitimacy of governance in multinational states like Canada” (464).

Spitzer worries that a potentially significant feature of multinational governance in Canada – consociational apportionment – has been set aside in electoral jurisprudence in favour of something of less political and constitutional significance: affirmative gerrymandering. Indeed, these worries may be justified, as we will see, by the recent history of protected minority ridings in Nova Scotia. On the other hand, the ultimate resolution of the status of these ridings may suggest otherwise. While many consociational practices in Canada do not take the form of explicit constitutional rights, they can and have been ‘legally enabled’ by the courts. Where such practices assume the status of political conventions embedded within the political culture and traditions of a jurisdiction, and buttressed by institutions that exert their own path dependency effects, the line between ‘affirmative gerrymandering’ and ‘consociational apportionment’ can become blurred to practical insignificance. This preference for evolved practice over entrenched constitutionality is itself a time-honoured tradition within Canadian federalism (Albert, 2016).

Electoral districting in Nova Scotia: a history

For most of its history, Nova Scotia’s electoral districts were primarily influenced by municipal and county boundaries and the importance of religious divisions, along with the usual periodic partisan re-jigging by the legislature. These arrangements persisted for 150 years, from the 1830s to the 1980s. Malapportionment – inequality in the number of voters between electoral districts – does not appear to have been a major concern, as illustrated by the fact that, prior to the report of the province’s first independent electoral boundaries commission in 1992, Nova Scotia had the distinction of having the most malapportioned electoral districts in Canada (Courtney, 2001: 240).

For much of the province’s history, concern about religious balance in the legislature took the form of dual member ridings, which were common throughout Nova Scotia from the pre-Confederation period until the mid-20th century. Two electoral districts – Inverness and Yarmouth – were dual member ridings as late as 1981 (ENS, “Past Election Results”). Acadians were able to gain political representation and influence through this mechanism. Thus, the defection of the government’s Acadian members from Yarmouth on a question of Catholic rights led to its defeat in the election of 1855, while in 1859, “the Acadian vote enabled the Conservatives to win all six seats in Yarmouth and Digby counties” (Beck 1985, 149). Between 1867 and 1937, in the dual riding of Digby (which included the Acadian district of Clare), one of the two representatives was always from the Acadian community, while the sole Member of the House of Assembly (MHA) between 1941 and 1949 was an Acadian. In the latter election, Clare made its debut as a separate riding, guaranteeing the election of an Acadian representative for the next 65 years running, until its abolition in the

2012 redistribution. In the adjacent dual riding of Yarmouth (which included the Acadian district of Argyle), one of the elected members between 1867 and 1978 was often (though not always) an Acadian; the creation of Argyle as a separate electoral district in 1981 led to the near-certain election of an Acadian representative thereafter (ENS, "Past Election Results").

The legal context for the process of electoral redistricting, and in general for ensuring fair and democratic elections, changed with the constitutional entrenchment of the Canadian Charter of Rights and Freedoms in 1982. Section 3 of the Charter reads as follows: "Every citizen of Canada has the right to vote in an election of the members of the House of Commons or of a legislative assembly and to be qualified for membership therein." In case law since the Charter's inception, the courts have interpreted the full meaning and import of this right for Canadian citizens by ruling on such issues as acceptable restrictions on the right to vote (for example, age of eligibility). However, the most pertinent ruling for the boundary adjustment process was the *Carter* decision, handed down by the Supreme Court in 1991. At issue in *Carter*, or *Reference re Provincial Electoral Boundaries (Sask.)*, was the question of variance in the size of voter populations between constituencies, and whether the sec. 3 Charter right of some citizens had been infringed by proposed changes to Saskatchewan electoral boundaries which treated urban, rural and northern ridings differently. In its ruling, the Court held that the purpose of the right to vote enshrined in the Charter is not equality of voting power *per se* but the right to "effective representation":

The right to vote therefore comprises many factors, of which equity is but one. The section does not guarantee equality of voting power. Relative parity of voting power is a prime condition of effective representation. Deviations from absolute voter parity, however, may be justified on the grounds of practical impossibility or the provision of more effective representation. **Factors like geography, community history, community interests and minority representation may need to be taken into account to ensure that our legislative assemblies effectively represent the diversity of our social mosaic.** Beyond this, dilution of one citizen's vote as compared with another's should not be countenanced (emphasis added; excerpted from pages 8-17 of the Supreme Court's *Carter* decision, re *Provincial Electoral Boundaries (Sask.)*, [1991] 2 S.C.R. 158).

In *Carter*, while the Supreme Court found that a violation of Section 3 had not been established, more important was the meaning given to it: a citizen right not to *equal*, but to *effective* representation, with due consideration given to several factors, including community interests and minority representation. "There's no doubt that *Carter* did contribute to a shift in the debate over territorially defined representational building blocks, moving it in a direction not previously a part of constituency redistributions in Canada" (Courtney, 2001: 203). However, as noted by Courtney, "Ambiguities abound in the [*Carter*] decision. Language and terms as imprecise as 'effective representation', 'fair representation conducive to good government' and 'relative parity of voting power' are open to varying, possibly even contradictory interpretations ... *Carter* offers no firm guidance for reconciling voter equality with other principles ... such as cultural or group identity" (2001: 198-99). Rather, this difficult task was left to legislatures and EBCs. While this *ambiguity* in institutional purpose was not in itself a sufficient condition for institutional change, it did enhance the possibility of change initiated by 'institutional entrepreneurs'.

In retrospect, *Carter* was a game-changer for the electoral boundary adjustment process in Canada. In the wake of the decision, Nova Scotia faced the possibility of a judicial ruling that would strike down electoral boundaries that did not conform to sec. 3 of the Charter. There was concern about excessive deviance in relative voter parity due in part to past practices of legislative gerrymandering. Indeed, as previously noted, no other province featured a greater degree of malapportionment in its electoral districts (Courtney, 2001: 240).

While the Carter decision changed the legal context for the process of reviewing and adjusting electoral boundaries, the political context at both the national and provincial level helps to explain the form and character of the Nova Scotia response. The national scene was engrossed in urgent negotiations and proposals to reform the Canadian constitution in order to stave off the surging movement toward secession in Quebec. Prominent on the agenda was the status of Quebec in Canada, as well as treaty and aboriginal rights for Indigenous Peoples, which prompted debates across the country about the need to recognize and accommodate minorities whose history and identity generated claims to 'distinct society' or 'nation' status within Canada (see for example, McRoberts and Monahan, 1993; Cook, 1994).⁵

At the provincial level, popular sentiment in the early 1990s had shifted strongly toward the need to reform governance practices. The Premier during this period (1991-93) was Donald Cameron, who assumed the premiership pledging to move the province away from the old style, traditional politics that had characterized his predecessor's time in office. John Buchanan's 12 years as premier had been rife with patronage, corruption, personal favouritism, elite accommodation and fiscal profligacy. The scandals that roiled the province's politics included revelations of the 1988 Inquiry into the wrongful conviction and 11-year incarceration of Donald Marshall, a young Mi'kmaq from Membertou First Nation, which exposed systemic racism within the police and judiciary, and dramatic testimony by senior civil servants about blatant patronage practices. Then in the summer of 1991, a race riot in Halifax prompted a round of discussions between community leaders and elected officials on how to address the grievances of the province's Black community.⁶ Cameron quickly set about acting on his promise to reform and modernize governance practices (Clancy et al., 2000: 24, 33). Given this context, it should not be surprising that Cameron's reformist agenda should include an overhaul of the electoral process, including the manner in which constituency boundaries were determined; not surprising either that Acadian, Mi'kmaq, and African Nova Scotians were singled out as groups deserving of special consideration by the province's first electoral boundaries commission (Courtney, 2001: 190). Cameron was seeking "to establish his bona fides as a reformer and a progressive by applying Carter's principles to his province's unique social setting" (Courtney, 2001: 202).

It was this confluence of factors that shaped the historical moment or critical juncture that produced an all-party agreement in the legislature to establish Nova Scotia's first independent Electoral Boundaries Commission. It comprised a membership that was larger and more demographically varied "than usual for Canada, including Acadian and Black representatives to ensure minority representation would be a primary focus of its deliberations" (Courtney, 2001: 102-03). Courtney argues that no province was impacted by the *Carter* decision as much as Nova Scotia; it provided both the language for the establishment of an all-party Select Committee, as well as the Terms of Reference for the Commission (2001: 174, 185). "The balanced composition of the commission, the absence of a legislated range of average constituency population, and the acceptance of the proposition

that protected constituencies should be constructed, all combined to ensure that the redistribution undertaken in Nova Scotia in the 1990s was unlike any other in Canadian history" (Courtney 2001, 104).⁷

The Terms of Reference for the commission dictated a 52-seat legislature with an additional member to represent the Mi'kmaq people of the province. The latter was to be a *designated* seat, set aside exclusively for the Mi'kmaq in a manner to be determined after "a broad and thorough consultation with all native groups" (EBC, 1992: 13). There were no designated seats for Acadians or African Nova Scotians; rather, electoral districts were to be maintained or created that might differ substantially from the concept of relative parity of voter power, "in order to encourage but not guarantee minority group representatives in the House of Assembly" (EBC, 1992: 28). Accordingly, the electoral map drawn by the commission included four *protected* ridings designed to encourage the election of three Acadians and an African Nova Scotian. Three of these were already existing districts where Acadians were in the majority or constituted a relatively high proportion of the population (Clare, Argyle and Richmond). The fourth district was the new constituency of Preston, where there was a concentration of Black voters (though not a majority). All four were smaller-than-average districts – between .50 and .65 the average district population of 17,500 – and were "justified in terms that the commission was certain would meet *Carter's* goal of ensuring that a legislature 'represent the diversity of the social mosaic'" (Courtney, 2001: 191; EBC, 1992: 35).⁸

Though the House of Assembly Act was amended by the insertion of section 6(1) that provides for a designated Mi'kmaq seat in the legislature, the result of the consultations undertaken was "a widespread sentiment that more time was needed to discuss and resolve issues and achieve consensus" (EBC, 1992: 146). Among the reasons given by Mi'kmaq community leaders was the idea that the Mi'kmaq should not be involved with or in any way implicated in the government of the province since it might compromise their sovereignty and the primacy of their relationship with the federal government. Others placed the quest for Mi'kmaq self-determination and recognition of the treaties as their first priority (EBC, 1992: 136-7). The Commission Report simply noted that, "At the request of the Mi'kmaq community, no recommendation as to how a native seat should be constituted is being made at this time" (EBC, 1992: 33).

With a designated Mi'kmaq seat off the table, it was Acadians and African Nova Scotians who received special consideration in the 1992 redistribution. Both communities regarded themselves (along with the Anglo-Celtic majority and the Mi'kmaq people) as one of the "four charter peoples" of the province (Courtney, 1991: 225), historic minorities that were distinctive to the province, with fairly well-defined territorial 'homelands' that had been continuously occupied for hundreds of years. Their sense of identity was a function of their long evolution as ethno-linguistic or racial minorities within an Anglo-Celtic majority, but also, just as importantly, arose from their distinctive cultures nurtured over centuries of relative isolation as coherent communities (due to remote rural locale and social exclusion). In short, they constituted historical minorities that were distinctively Nova Scotian *and* deeply rooted in specific territorial 'homelands'.

While descendants of the early residents of these minority communities had dispersed throughout the province, this did not diminish the importance of constituency representatives from the protected ridings. Rather, the demographic reality gave them a dual role both within and outside the legislature: they represented a particular geographic

constituency, but also acted as representatives for the whole of the extended cultural community they represented. Acadians across the province depended on them to do what they could to preserve the distinctive Acadian language, culture and tradition. Similarly, a strong African Nova Scotian voter presence within the boundaries of the protected constituency of Preston gave its elected representative a special role to play on behalf of that cultural community.⁹ They provided what Melissa Williams has called “voice” and “trust” in the representational process for marginalized groups, “especially those who can draw on a long memory of systemic discrimination” (Williams, 1998 as cited in Courtney, 2001: 121).

A decade after the path-breaking 1992 redistribution, the Terms of Reference for the province’s second EBC differed in two key respects. While a 52-seat legislature was once again mandated, there was no mention of an additional designated seat for a Mi’kmaq representative, as there had been in 1992. Secondly, a maximum variance of 25 per cent (+/-) from the average number of electors per constituency was set, except for extraordinary circumstances, including the desire to promote minority representation of the Acadian and African Nova Scotian communities. Once again, the Commission protected – due to their ‘exceptional circumstances’ – the same four small ridings which fell between .50 and .60 of the average constituency size of 17,462 (containing on average 13,328 electors). Notably, the Final Report of the 2002 commission also contained an expression of doubt about continuing in the future with the ‘protected ridings’ approach, “based on considerable public comment” it had received. In this connection, it recommended that the next Commission re-evaluate the method and means of encouraging effective representation for specified minority communities (Dodds, 2002: 36-37).¹⁰

The contested 2012 redistribution

The 2012 Electoral Boundaries Commission found itself embroiled in political controversy when its Interim Report to the government was invalidated (declared null and void) by the Attorney General in the Dexter NDP government. The Terms of Reference for the commission differed in three key aspects from previous commissions. They stipulated an assembly of “not more than” 52 seats, signaling to the Commission that it could consider a smaller number of ridings. They also released the Commission of any constraint on a new electoral map imposed by the long tradition of observing the integrity of county or municipal boundaries. Most significant was the inclusion of section 2d, stipulating that there should be *no exceptions* to the maximum permitted variance in constituency population of +/-25 per cent. This triggered the dissent of the Select Committee’s opposition members, since it would effectively exclude the possibility of maintaining the four protected ridings (MacNeil, 2012a). Taken together, these changes seem to suggest that the government was clearing away obstacles – such as observance of traditional boundaries and protecting small minority districts – that might prevent the Electoral Boundaries Commission from recommending a smaller legislature (though there was no explicit statement of this intent).

In its deliberations, the 2012 EBC recognized that there are a number of legal, constitutional, and political factors relevant to the question of protected constituencies. French is one of Canada’s official languages, given effect by the Official Languages Act (1969), amongst other laws and programs. Further, constitutional protection for minority language rights is entrenched in Sections 16-23 of the Charter of Rights and Freedoms. Provincially, the French Language Services Act and the creation of the Acadian school board are measures

taken to preserve and promote the linguistic rights of French-speaking Nova Scotians. The protection offered to the three Acadian constituencies was an additional measure taken to recognize and protect the Acadian communities from whence the vast majority of Nova Scotia's French-speaking population derives. As well, representatives of the Acadian community argued that more than two decades of special protection had established a political convention and moral covenant between the province and the minority populations in the affected constituencies.¹¹

After hearing extensive testimony and strong demonstrations of public support in the affected Acadian ridings during the public hearings process, the Commission recommended that there continue to be an exemption for the four protected ridings from the maximum variance rule provided to the Commission in its Terms of Reference. Its Interim Report recommended that the electoral boundaries of these districts remain unaltered, basing its decision on the constitutional right of the minorities in question to effective representation in the legislature. The recommendation was not unanimous; one Commission member so strongly disagreed that she resigned in protest.¹²

Confronted with the Commission's non-compliance with the Terms of Reference that the government insisted were legally binding, the EBC was directed by the provincial Attorney General to prepare a new report, one that eliminated the four special ridings (MacNeil, 2012b: 66). Premier Darryl Dexter also lashed out at the Commission for not complying with its Terms of Reference (Tutton and Doucette 2012). After discussion of its options, the Commission reluctantly agreed to revise its report, such that all ridings were fully compliant with the Terms of Reference. This change effectively abolished the protected ridings. The Commission's Acadian member, reflecting the negative public reaction in the affected minority communities, dissented from the Final Report, stating his conscientious objection to the elimination of the protected ridings.¹³

With the removal of protection for the Acadian ridings, their 'host regions' would lose three electoral districts while Halifax would gain two. This reduced the size of the legislature to 51 seats, with an average district size of 13,952 electors (slightly higher than 2002). Other recommendations included consultation with minority communities on alternative forms of representation and the need for study of electoral system reform. A final recommendation was that there should be a draft of proposed changes to electoral boundaries *before* the first round of public hearings, as a means of stimulating low levels of public response and participation in the process (MacNeil, 2012c).

Reference re the Final Report of the Electoral Boundaries Commission

In 2014, the Fédération acadienne de la Nouvelle Écosse (FANE), the organization representing the province's Acadian population, began legal action to have the 2012 redistribution exercise overturned. Within months, the province's new Liberal government under Premier Stephen MacNeil, following negotiations with FANE, referred the case to the Nova Scotia Court of Appeal (NSCA), asking for its opinion on legality of the 2012 electoral boundaries. The case, heard by the court in September 2016, was unprecedented. The province submitted a two-step question to the Court. Did the actions of the Nova Scotia government toward the 2012 Electoral Boundaries Commission violate Section 3 of the Charter of Rights (the right to effective representation)? If the Court answered 'yes' to this question, was the 'impugned legislation' that implemented the new electoral boundaries

'saved' by Section 1 of the Charter (the limits clause)? In its response, the Court answered YES to first question and NO to the second. In effect, the Court of Appeal had placed in question the legality of provincial elections conducted on the basis of what now appeared to be legally invalidated electoral boundaries (Nova Scotia Court of Appeal, 2017).

In handing down its opinion, the NSCA argued that the Attorney General's intervention had thwarted the 2012 Electoral Boundaries Commission in the performance of its constitutional mandate as required by sec. 3 of the Charter, resulting in a Final Report that was not the *authentic view* of the Commission. In effect, the Court ruled that the government must allow an Independent Commission to carry out its work in an unimpeded fashion, to submit its recommendations in a Final Report, and to have the latter introduced unaltered into the House of Assembly in the form of a bill. The opinion raised two serious issues. First, the Court objected to the manner in which the government intervened in the workings of the Commission: the boundary review *process*. Simply put, the Attorney General had undercut the independence of the Commission, thereby contravening Section 5 of the House of Assembly Act (the legislation establishing Electoral Boundaries Commissions and the boundary review process). Secondly, by preventing the Commission from conveying its "authentic view" of an electoral boundary map that would best achieve the balance between voter parity and other considerations, the Commission was blocked from fulfilling its constitutional requirement under sec. 3 of the Charter. In effect, the right of the minorities in question to effective representation had been unjustifiably limited or denied.¹⁴ Clearly, the Court was registering its misgivings about both the process and the substantive outcome of the boundary review, which was the reduction of the minority community's political influence to the point of ineffectiveness.

The Keefe Commission

In response to this NSCA opinion, the Nova Scotia government appointed the *Commission on Effective Electoral Representation of Acadian and African Nova Scotians*, chaired by former Deputy Minister of Justice Doug Keefe, to provide recommendations on how best to achieve effective representation for Acadian and African Nova Scotians in a manner consistent with the principles enunciated in the Carter decision. It was directed to seek the advice and support of these minority communities on this issue, and to consider various options including the concept of *designated* (as opposed to protected) seats for these communities similar to the provision for a Mi'kmaq seat in the legislature (as previously discussed).

The Keefe Commission first dismissed serious consideration of electoral system reform as a solution. While Keefe recognized "the tendency of our electoral system to submerge minority voters," he concluded that adoption of some version of proportional representation with a minimum threshold requirement would not guarantee the effective representation of Acadians and African Nova Scotians, unless this also included some form of quota, reserved or designated seats for these communities. Indeed, it was the idea of designated seats that generated the most intense Commission discussion and analysis. Its ultimate decision *not* to recommend designated seats, a decision based on conceptual and practical grounds, was, by its own admission, its most difficult one (Keefe, 2018: 5).

With designated seats eliminated as an option, two general strategies shaped the Commission's approach: 1) improve the chances of electing Acadians and African Nova Scotians under the simple plurality, single member district electoral system and 2)

strengthen other means of representing these minorities through reforms to government organization and practices. The first strategy yielded a number of key recommendations. First, EBCs should be permitted to create additional ridings (beyond the 51-seat status quo) to increase flexibility in crafting boundaries that meet the principle of effective representation. Second, the standard variance limit from voter parity of 25 per cent (+/-) should be maintained. Third, there should be discretion to recommend “exceptional ridings” that exceeded this variance limit. Fourth, the possibility of *non-contiguous* ridings, that connect small minority communities, should be admitted. Finally, the Keefe Commission suggested there may be an opportunity to improve representation for Acadians and African Nova Scotians beyond the four protected ridings (2018: 8-9).

The Keefe Report also reflected on the more general problem of rural representation. In a section of its report entitled “The Gathering Storm”, Keefe noted that the steadily growing population gap between urban and rural areas of the province was likely to produce ever-larger and more unwieldy rural constituencies (2018: 79). To highlight the representational implications of maintaining the status quo in terms of the size of the legislature, the Commission recommended that the next EBC prepare two electoral maps: one that reflected the status quo and a second map with a higher number of total constituencies. This would provide the basis for a broader discussion about what size legislature was required to meet the principle of effective representation in rural areas of the province. As the Keefe Report plainly stated: “The more ridings there are, the more flexibility commissions will have to craft boundaries in accordance with the principles of effective representation” (2018: 7). Producing electoral maps for each option would clarify the representational consequences of each, while moving the debate away from simplistic tropes about smaller government and “saying no to more politicians”.¹⁵

The 2018-19 Electoral Boundary Commission

Acknowledging that it would accept and follow the NSCA judgement and the recommendations of the Keefe Report, in January 2018, the McNeil government assured publicly that it would introduce new legislation aimed at achieving effective representation for Acadians and African Nova Scotians. FANE also weighed in publicly, registering its approval of the Keefe recommendations and expressing the hope that protected ridings would be re-established. FANE added that it would push “for a new, exceptional riding in the Chéticamp area of Cape Breton, which has a large Acadian population” (MacDonald, 2018). The province quickly enacted legislation (Bill 99) which provided amendments to the House of Assembly Act, establishing a special boundaries commission to recommend changes congruent with the principles enunciated in the Supreme Court’s *Carter* decision and with the opinion of the NSCA in *Reference re the Final Report of the Electoral Boundaries Commission*.

The select committee’s composition signalled the government’s desire to address the fallout from 2012. The committee included a long-serving Acadian member of the legislature from the recrafted protected riding of Argyle,¹⁶ the non-Acadian MHA for the riding of Clare-Digby (which contained the Acadian district of Clare), and an African Nova Scotian member of the assembly. In terms of regional representation, the rest of the committee membership tilted towards Halifax, although the committee Chair represented a riding in the Cape Breton region (NS Legislature Bill 99, 2018).

The amended House of Assembly Act stipulated that EBCs are to be “broadly representative” of the province’s population and include at least one Acadian and African Nova Scotian (Dodds, 2018: 82). Most significant about the regionally diverse, nine-member EBC was that minority representation was the most extensive to date (NS Legislature Select Committee Report, 2018).¹⁷ The eight commissioners (in addition to Dr. Colin Dodds, who served as Chair) included two African Nova Scotian women (with strong community ties to Preston) and two Acadians, one of whom was Paul Gaudet, the lone dissenter from the 2012 Commission. The second Acadian commissioner was from Chéticamp, a geographically isolated community located in northern Cape Breton.¹⁸ Addressing effective representation for this community would become a major bone of contention among Commission members, leading four of nine to register their dissent in the final report when Chéticamp was denied the exceptional status enjoyed by the province’s other Acadian communities.¹⁹

The Terms of Reference closely reflected the recommendations in the Keefe Report. They maintained the 25 per cent limit for allowable variance from voter parity, but restored discretion to the Commission to create *exceptional electoral districts* that exceeded this limit. As well, for the first time, the Terms of Reference explicitly allowed for the creation of non-contiguous constituencies. Finally, a preliminary report had to be submitted to the government with electoral boundaries for 51 ridings (the status quo), and *at least one other number* of electoral districts. After a second round of hearings, a final report was to recommend only one option in terms of total number of ridings (Dodds, 2018: 5; Select Committee Report, 2018).

At the Commission’s first meeting, a background report on the history of Electoral Boundary Commissions in the province was presented by 2012 EBC commissioner Dr. James Bickerton.²⁰ It concluded that there was “no reasonable option but to prepare boundary changes that, at minimum, restored some version of the four protected constituencies” (Bickerton, 2018: 12; Dodds, 2018: 12), and the report outlined the various options for doing this. The various approaches considered by the EBC included continuing the protected ridings concept (referred to as “exceptional” electoral districts), variations on the concept of ‘at large’ administrative districts for Acadians and African Nova Scotians, and utilizing the idea of non-contiguous ridings (Dodds, 2018: 13-27; 2019: 87-96). The Bickerton Report also floated the alternative of a return to the dual member tradition for the Inverness constituency, “with the stipulation that one of the two elected representatives be a French-speaking Acadian” as a way to improve representation for Chéticamp area Acadians (2018: 12-13).²¹

In its Interim Report, the EBC produced a number of boundary scenarios reflecting these options, along with a 51-seat status quo option that mirrored the controverted 2012 electoral map. The report noted that any support for non-contiguous ridings, both among the commissioners and the public, was lukewarm at best. While both sets of public hearings saw some concerns raised regarding “special” treatment for minorities, along with the usual (though not many) calls for fewer MLAs and “smaller government”, strong public support was again demonstrated for the restoration of affected exceptional districts (see Dodds 2019: 70-81).

The EBC presented its final report in April 2019 recommending an electoral map containing 55 districts, representing an average district size of 13,312 electors (Dodds 2019, 30). This included restoring the three previously protected Acadian districts (which ranged from .48 to .56 average district size) and the riding of Preston, which was redrawn to “include

as many African Nova Scotians living in the area as possible” (Dodds, 2019: 32). While this newly configured Preston riding did not exceed the 25 per cent variance limit, therefore technically eliminating its “exceptional” status, the Commission reiterated its symbolic, cultural, and historical importance, recommending retention of its exceptional status in future redistributions (Dodds, 2019: 67, 90). In response to public input and Commission deliberations about the increasingly unwieldy size and non-traditional boundaries imposed on some rural constituencies, the EBC also recommended three additional ‘exceptional’ ridings based on geographic considerations and a definition of community of interest associated with traditional political boundaries (Dodds, 2019: 31-33).²²

While the Commission’s return to the *status quo ante* in terms of protected ridings was met with the approval of 60% of Nova Scotians (Peddle 2019), its deliberations were not without internal tension and conflict, as mentioned above, over designating Chéticamp as a fourth Acadian district (Dodds, 2019: 2). It ultimately was decided (by a narrow 5-4 margin) to reject this option, with the four dissenting commissioners opining that the EBC “did not get it right” (Dodds, 2019: 46).²³ Despite this protestation, the majority of the Commission felt that creating a riding containing less than three thousand voters (compared to a riding average of thirteen thousand) was “going too far” in terms of deviation from voter parity (Canadian Press Staff, 2019). The final outcome speaks to the balance that EBCs must strike between communities of interest, effective representation of minorities, and voter parity (Dodds, 2019: 16).²⁴ In pointing toward electoral system reform, the 2018-19 EBC (like the preceding Commission) recognized that consociational districting within a single member simple plurality system is a potentially fragile electoral compromise for securing the effective representation of minorities. As time goes on, will a consociational *ethic* supporting accommodative institutional measures continue to be enough to sustain protected ridings? It appears that the 2018-19 EBC was able to design a workable compromise by choosing to expand the legislature, thus allowing the growing urban area of the province to gain seats, even with the restoration of four protected ridings.

Conclusion: history and institutions matter

On the face of it, two small minorities (each under 4% of total provincial population) should not garner the degree of special political consideration that has been the case for Nova Scotia’s Acadian and African Nova Scotian communities. We suggest the explanation lies largely in provincial history (especially its evolved demography), provincial political culture, and the structuring ‘path dependency’ effects of legal and political institutions. Together these have embedded a particular set of values that embody a bias toward what Ken Carty has called a ‘full range’ approach to redistribution, one that is able to accommodate cultural group identity in the redistricting process (1992: 153). While on its own this does not itself connote a consociational form of democracy in the formal-legal sense, it does imply a consociationalist ethic at work in the redistricting process.

This approach has deep roots in provincial history. The first Acadians representing smaller-than-average provincial districts entered the Nova Scotia legislature in the pre-Confederation period. But it was the political context for the creation of the province’s first independent boundaries commission, during a critical conjuncture, that is most pertinent to present-day outcomes. With constitutional negotiations at the national level reaching an apex in 1991-92, and a new premier in Nova Scotia determined to modernize political

institutions and governance practices badly in need of reform, a window of opportunity was opened for a gesture toward historic minority communities that could reasonably claim status as 'charter groups' in the province's social mosaic. This opportunity only arose, however, because of a Supreme Court ruling that tapped into Canada's pluralistic political culture and anti-majoritarian electoral tradition in order to reject, "formal and individualistic equality in favour of a more sociological and group-based approach which legitimized preferential treatment of the disadvantaged in the interests of equality" (Roach, 1992: 204).

In this connection, Kent Roach proved prescient when he mused that while the Courts, "may be unwilling to create boundaries to facilitate minority representation themselves, they may find a way to remand the issue back to boundary commissions and legislatures with some guidance as to how they could comply" (1992: 211). Given the constraining features of the single member, simple plurality electoral system, this would only be effective under specific circumstances. It could "only protect minorities that are politically and geographically cohesive and large enough to influence election results. This will be easier to achieve in less-populous provinces with smaller constituency sizes" (Roach, 1992: 213). Nova Scotia's four protected districts met these conditions; they represented a near-perfect overlap of the place-based 'community of interest' and the sociological imperative of 'effective representation' of a minority cultural group that, for historical reasons, was deemed to have particular significance for the province's social mosaic.

This Nova Scotia version of 'consociational districting' was both 'green-lighted' and sustained by legal and political institutions. We can trace this development to the coincidence of a conducive legal framework and a reform-oriented political regime that set about creating an electoral boundary commission with an unusually diverse composition and a mandate to make an exceptional accommodation for two historic minority communities. Electoral jurisprudence that encouraged departures from definitions of political equality that gave preference to voter parity over other considerations proved essential for the establishment – and later the revival (after a period of banishment) – of consociational districting. It seems likely that the electoral boundaries themselves, as institutional building blocks, reinforced a shared sense of community interest and identity, especially as they overlapped other political or administrative boundaries, and because they had remained in place for an extended period. Electoral boundary commissions, district-linked political associations, and various civil society organizations (media, religious, linguistic, heritage, and so forth) combined to provide a supportive and legitimizing institutional setting. This institutional matrix, in place over multiple rounds of redistricting, contributed to a path dependency effect that revealed itself in the social, legal and political response to the abolition of protected ridings in 2012 through the enforcement of legal guidelines banning the degree of malapportionment in electoral boundaries that consociational districting required.

While the Nova Scotia experience illustrates the possibility of consociational districting within the legal framework provided by electoral jurisprudence in Canada, it also suggests its inherent political limits. Most importantly, the institutional, social, and political setting must be conducive to this innovative approach. The 2018-19 EBC recommended restoration of the four protected ridings for Acadians and African Nova Scotians. However, this was as far as the Commission was willing to go; it did not improve upon the effective representation of historic minorities, as counselled by the Keefe Commission. In the final analysis, it was unwilling to depart from traditional districting principles such as single-member ridings that

were geographically contiguous and compact, rejecting both a non-contiguous Acadian district as well as a new, much smaller minority district designed to capture a geographically and culturally isolated community. This suggests limits to how far consociational districting can go before voter parity concerns become an overriding consideration. As for the idea of a number of designated ‘at large’ minority seats, this was deemed both inappropriate and unworkable (a conclusion also reached by the Keefe Commission), due mainly to negative public response and concerns about the complicating and controversial representational issues that inevitably would arise.

In all likelihood, another redistribution will take place shortly after the next Nova Scotia election, based on the results of the 2021 census. Path dependency will be a major factor in determining the Terms of Reference for the next EBC, the composition of the commission, and the prospect of maintaining protection for Nova Scotia’s four minority ridings. Beyond exceptions for geographically expansive northern ridings with significant Indigenous populations, other provinces have shown little inclination to experiment with Nova Scotia’s form of consociational districting. Despite favourable electoral jurisprudence supportive of innovation in redistricting to enhance minority representation, the absence of ‘late adopters’ after almost 30 years suggests this pathbreaking approach to drawing electoral boundaries will continue to remain distinctive within the Canadian federation.

Endnotes

¹ According to 2016 census figures, Nova Scotia residents with French as their mother tongue make up 3.2% of the population. Black Nova Scotians constitute 2.4% of the total population.

² The historical institutionalist approach highlights the role of *ideas* as they may be utilized by powerful political actors to effect change (Harty 2005; Steinmo 2008, 170; Hall 1989; Hall and Taylor 1996, 938). Within the new institutional framework, ideas are depicted ‘in terms of norms and values whose importance are a function of the material institutions from which they emanate’ (Lecours 2005: 7) and would therefore seem crucial in explaining institutional formation, affectation, and change (Harty 2005). It should be noted that in combining ideas with agency and structure at critical junctures or ‘formative moments’ to explain institutional change, historical institutionalism is susceptible to criticism. For instance, it may not account for, or is dismissive of, the possibility of different types of incremental change (Mahoney and Thelen 2010; Van der Heijden 2013; Van der Heijden and Kuhlmann 2016).

³ Conflict between political actors over institutional rules, design, or processes does not only occur during formative moments; it also “occurs during path-dependent periods,” when “path dependency is sustained by a dominant political coalition successfully fending off all attempts by minorities to alter the political course” (Peters et al. 2005: 1278).

⁴ The Acadian School Board (csap.ca) and, since 2014, the Mi’kmaw Kinamatnewey (kinu.ca).

⁵ Official bilingualism and minority language education rights had already acknowledged the co-equal status of French-speaking Canadians, while treaty and aboriginal rights were entrenched in section 35 of the Constitution. The various proposals culminating in the 1992 Charlottetown Accord would have gone much further in terms of constitutional recognition and accommodation of Quebec and Aboriginal difference.

⁶ Cameron would refuse to sign the nomination papers of a white contestant for his party's candidature in the newly-created riding of Preston, in order to ensure that they would run a Black candidate instead (Clancy et al., 2000: 33).

⁷ The province's Aboriginal leadership was unwilling to accept the proposed creation of a single designated Aboriginal seat at that time (Landes, 1992: 33), nor has it subsequently.

⁸ While the Commission used the leeway provided by *Carter* and followed the urging of the Terms of Reference to ensure minority representation in the House of Assembly, it otherwise sought to aim for something approaching parity (+/- 15%) for other electoral districts, something it achieved for 46 of the 48 remaining districts (Smith and Landes, 1998: 20).

⁹ This speaks to the fact that historic minority cultures indigenous to Nova Scotia – Mi'kmaq, Acadian, or African Nova Scotian – depend, for their continued vitality, on the traditional communities that have provided the physical, social and cultural context for their formation and development.

¹⁰ Otherwise, the adjustments recommended by the 2002 Commission reflected the ongoing shift of population away from rural areas of the province toward the main urban region of Halifax.

¹¹ For the Commission's detailed arguments on deciding to maintain the protected constituencies, see MacNeil, 2012a: Appendix G, 59-61.

¹² In her letter of resignation, Dr. Jill Grant argued that, "The majority of members of the Commission determined that they did not view the Terms of Reference provided by the government as mandatory. I disagree with this interpretation and decision. While the Commission has the independence to conduct its work at arm's length from government, the scope of the Commission's independence is necessarily defined and constrained by the TOR which the Legislature provided to guide the process" (MacNeil, 2012a: 62).

¹³ Mr. Paul Gaudet, stated his disagreement with boundary recommendations that would spell the end of the protected Acadian ridings. His dissent recognizes that the task given to the Commission by the conflicting and irreconcilable Terms of Reference (2c and 2d) that required the Commission to protect minority representation while respecting the Select Committee directive on minimum riding size, was ultimately an impossible one. The letter of dissent also contains an eloquent plea for the Acadian people: that their uphill struggle for the survival of their culture and identity not be made even more difficult by losing their distinctive voice in the House of Assembly. As viewed by Gaudet, the Acadian constituencies – proud geographical and political symbols of Acadian historical and cultural presence in Nova Scotia – were nothing less than "vital cornerstones of resilience over adversity" (MacNeil, 2012c: 9-13).

¹⁴ "The Attorney General's intervention prevented the Commission from performing the balancing exercise required by s. 3 of the Charter to assess effective representation for the electors in Clare, Argyle and Richmond ... Consequently, the enactment of those boundaries violated s. 3 of the Charter" (Nova Scotia Court of Appeal, 2017). <https://decisions.courts.ns.ca/nsc/nsca/en/230165/1/document.do> (June 11, 2019).

¹⁵ To quote directly from the Commission's Report: "We recommend the boundaries commission be authorized to produce two or more maps, one at the current 51 seats and another at a higher number, to inform a discussion about whether 51 seats will adequately provide effective representation for Nova Scotians in the future. The more ridings there are, the more flexibility boundaries commissions will have to craft boundaries in accordance with the principles of effective representation" (2018: 7).

¹⁶ This MLA, Chris d'Entremont, was on the previous select committee and Hansard records reveal the value that the select committee placed on the institutional memory he brought to the table, especially with regard to EBC composition and selection (e.g. opinions on number of members and minority representation) (Nova Scotia Select Committee Report, 2018).

¹⁷ One MLA from the select committee highlighted the importance of descriptive representation, expressing that "just like all of us, for me, having gender and diverse individuals on the commission is of prime importance" (Nova Scotia Select Committee Report, 2018).

¹⁸ These appointees included education and labour advocate Carlotta Weymouth as well as lawyer and African Nova Scotian community land titling advocate Angela Simmonds. Simmonds was chosen by fellow members to be the 2018 EBC Vice Chair.

¹⁹ Also appointed to the 2018 Commission were two other academics with research backgrounds in Nova Scotia politics, culture, and political behaviour; a lawyer and former returning officer previously involved with First Nations outreach for Elections Nova Scotia; and a senior manager with Nova Scotia Community College actively involved with regional and indigenous development.

²⁰ The introduction of the 2018-19 EBC's interim report notes that the interim report's proposals were based on the Terms of Reference, input from the public, and the commissioned report prepared by Bickerton.

²¹ According to the 2019 Letter of Dissent, two commissioners supported the dual-member constituency option as a preferred way to address effective representation for Chéticamp and its environs, before moving back to the exceptional district option after it continued to receive strong support during the public hearings.

²² Specifically, Term of Reference #2 states that "Deviation from electoral parity is justified because of geography" while #3 notes that deviation "may be justified because of historical, cultural, or linguistic settlement patterns and because of political boundaries. Term of Reference #5 stipulates that "There may be one or more exceptional electoral districts where, in exceptional circumstances, the estimated number of electors in the electoral district is more than 25 per cent above or below the estimated average number of electors per electoral district (Dodds, 2018: 5).

²³ The dissenters referenced the Carter judgement in rationalizing and justifying their stance and offered that, "as soon as we begin balancing countervailing factors we believe necessary to enhance representation against the prime consideration of voter parity, the "primacy of prime" is weakened, if not neutralized" (Dodds 2019: 49).

²⁴ In this regard, recommendations in the EBC Final Report included improving Mi'kmaq consultation (both prior to and during EBC boundary review process), encouraging political parties to promote minority candidacy, asking future EBCs to maintain exceptional status for Preston, and encouraging the government to adopt Keefe Report recommendations that would provide further opportunity to enhance effective representation for minorities.

References

- Albert, Richard. 2016. "The Conventions of Constitutional Amendment in Canada." *Osgoode Hall Law Journal* 53 (2): 399-441.
- Allen, C. 2009. "Review of Erk, Jan. 2008. Explaining Federalism: State, Society, and Congruence in Australia, Belgium, Canada, Germany and Switzerland." *Publius* 39 (3): 580-582. Retrieved from www.jstor.org/stable/40272224.
- Beck, J.M. 1985. *Politics of Nova Scotia*. Tantallon: Four East Publications.
- Bickerton, J. P. 2018. "The Right to Fair and Effective Representation: Electoral Boundaries Commissions in Nova Scotia" (Halifax). (Report submitted to the 2018-19 Nova Scotia Electoral Boundaries Commission.)
https://nselectoralboundaries.ca/sites/default/files/bickerton_report_final_english.pdf (June 11, 2019).
- Campbell, John L. 2010. "Institutional Reproduction and Change." In Morgan, Glenn, John L. Campbell, Colin Crouch, Ove Kaj Pedersen, and Richard Whitley (Eds.), *The Oxford Handbook of Comparative Institutional Analysis* (pp. 87-115). Oxford, UK: Oxford University Press. doi: 10.1093/oxfordhb/9780199233762.003.0005.

- Canadian Press Staff. 2019. "N.S. Report Calls for Improved Representation for Black, Acadian Voters." *Global News*. April 15, 2018. <https://atlantic.ctvnews.ca/n-s-report-calls-for-improved-representation-for-black-acadian-voters-1.4379873> (June 11, 2019).
- Capoccia, Giovanni, and R. Daniel Kelemen. 2007. "The Study of Critical Junctures: Theory, Narrative, and Counterfactuals in Historical Institutionalism." *World Politics* 59 (3): 341-369. doi: 10.1017/S0043887100020852.
- Carty, R.K. 1992. "Commentary." In J.C. Courtney, P. MacKinnon, and D.E. Smith (Eds.), *Drawing Boundaries: Legislatures, Courts, and Electoral Values* (pp. 152-155). Saskatoon: Fifth House Publishers.
- Clancy, P., J. Bickerton, R. Haddow, and I. Stewart. 2000. *The Savage Years: The Perils of Reinventing Government in Nova Scotia*. Halifax: Formac Publishing.
- Collier, R. B., and D. Collier. 1991. *Shaping the Political Arena: Critical Junctures, the Labor Movement and Regime Dynamics in Latin America*. Princeton: Princeton University Press.
- Conseil Scholaire Acadien Provincial. <http://csap.ca>.
- Cook, C., (Ed). 1994. *Constitutional Predicament: Canada After the Referendum of 1992*. Montreal: McGill-Queen's University Press.
- Courtney, J.C. 2001. *Commissioned Ridings: Designing Canada's Electoral Districts*. Montreal: McGill-Queen's University Press.
- Courtney, J.C. 2004. *Elections*. Vancouver: UBC Press.
- Courtney, J.C., P. MacKinnon, and D.E. Smith. 1992. *Drawing Boundaries: Legislatures, Courts, and Electoral Values*. Saskatoon: Fifth House Publishers.
- Dickinson, G.M., and W.R. Dolmage. 1996. "Education, Religion, and the Courts in Ontario." *Canadian Journal of Education* 21 (4): 363-383.
- Dodds, C., and 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*. <http://0-nslg-edeposit.gov.ns.ca.legcat.gov.ns.ca/deposit/b10097223.pdf>. (June 11, 2019).
- Dodds, C., and Nova Scotia Electoral Boundaries Commission. 2018. *Striking a Balance Between Effective Representation and Voter Parity, Electoral Boundaries Commission Interim Report*. https://nselectoralboundaries.ca/sites/default/files/electoral_boundaries_eng_2018_screen_revised_nov26.pdf (June 11, 2019).
- Dodds, C., and Nova Scotia Electoral Boundaries Commission. 2019. *Balancing Effective Representation with Voter Parity. Electoral Boundaries Commission Final Report*. https://nselectoralboundaries.ca/sites/default/files/electoral_boundaries_2019_english_web.pdf (June 11, 2019).
- Elections Nova Scotia (ENS). 2017. *Resources, Electoral Maps*. <http://electionsnovascotia.ca/electoral-maps>. (June 11, 2019).
- Elections Nova Scotia (ENS). *Past Election Results*. <https://electionsnovascotia.ca/election-data/past-results> (December 4, 2019).
- Erk, Jan. 2008. *Explaining Federalism: State, Society, and Congruence in Australia, Belgium, Canada, Germany and Switzerland*. London and New York: Routledge Press.
- Government of Canada. *Constitution Act, 1982, Part 1, Canadian Charter of Rights and Freedoms*. <http://laws-lois.justice.gc.ca/eng/Const/page-15.html>. (June 11, 2019).

- Hall, Peter, and Rose Mary C.R. Taylor. 1996. "Political Science and the Three New Institutionalisms." *Political Studies* 4 (5): 936-57.
- Harty, S. 2005. "Theorizing Institutional Change." In, André Lecours (Ed.), *New Institutionalism: Theory and Analysis* (pp. 51-79). Toronto: University of Toronto Press.
- Keefe, D., and The Commission on Effective Electoral Representation of Acadian and African Nova Scotians. 2018. *Representation: Toward More Effective Representation for Acadian and African Nova Scotians: Report and Recommendations*.
<https://novascotia.ca/representation/Representation-Toward-More-Effective-Representation-For-Acadian-and-African-Nova-Scotians-Report-and-Recommendation.pdf> (June 11, 2019).
- Krasner, Stephen D. 1984. "Approaches to the State: Alternative Conceptions and Historical Dynamics." *Comparative Politics* 16(2): 223-46.
- Landes, R., and Nova Scotia Provincial Electoral Boundaries Commission. 1992. *Effective Political Representation in Nova Scotia: The 1992 Report of the Provincial Electoral Boundaries Commission*. Halifax.
- Lecours, André. 2000. "Theorizing Cultural Identities : Historical Institutionalism as a Challenge to Culturalists." *Canadian Journal of Political Science* 21(4): 499-522.
- Lecours, André (Ed.). 2005. *New Institutionalism: Theory and Analysis*. Toronto: University of Toronto Press.
- MacDonald, Michael. 2018. "Nova Scotia Says It Will Boost Role of Acadian, Black Voters." *Globe and Mail* (Toronto), January 11.
<https://www.theglobeandmail.com/news/national/nova-scotia-says-it-will-boost-role-of-acadian-black-voters/article37572575/> (June 11, 2019).
- MacNeil, T., and Nova Scotia Electoral Boundaries Commission. 2012a. *Interim Report – May 31, 2012*. Retrieved from <http://0-nsleg-edeposit.gov.ns.ca.legcat.gov.ns.ca/deposit/b10649311.pdf> (June 11, 2019).
- MacNeil, T., and Nova Scotia Electoral Boundaries Commission. 2012b. *Revised Interim Report – July 20, 2012*. Retrieved from <http://0-nsleg-edeposit.gov.ns.ca.legcat.gov.ns.ca/deposit/b10651111.pdf> (June 11, 2019)
- MacNeil, T., and Nova Scotia Electoral Boundaries Commission 2012c. *Toward Fair and Effective Representation, September 24, 2012*. <http://0-nsleg-edeposit.gov.ns.ca.legcat.gov.ns.ca/deposit/b10653107.pdf> (June 11, 2019).
- McRoberts, K., and P. Monahan (Eds). 1993. *The Charlottetown Accord, the Referendum, and the Future of Canada*. Toronto: University of Toronto Press.
- Mahoney, J., and Thelen, K. 2010. "A Theory of Gradual Institutional Change." In J. Mahoney and K. Thelen (Eds), *Explaining Institutional Change: Ambiguity, Agency, and Power* (pp. 1-37). New York: Cambridge University Press.
- March, J. G., and J. P. Olsen. 1984. "The New Institutionalism: Organizational Factors in Political Life." *American Political Science Review* 78(3): 738-49.
- Mi'kmaw Kina'matnewey (MK). <http://kina.ca>
- Nova Scotia Court of Appeal. 2017. *Reference re. the Final Report of the Electoral Boundaries Commission, 2017 NSCA 10*.
<https://decisions.courts.ns.ca/nsc/nsca/en/230165/1/document.do> (June 11, 2019).
- Nova Scotia House of Assembly. 2018. *Bill 99: An Act to Amend Chapter 1 (1992 Supplement) of the Revised Statutes, 1989, the House of Assembly Act.* 1st Session, 63rd General Assembly, 2018.

-
- <https://nslegislature.ca/sites/default/files/legc/PDFs/annual%20statutes/2018%20Spring/c011.pdf> (June 11, 2019).
- Nova Scotia Legislature. *Constituency Histories*. "Electoral History for Clare".
<https://nslegislature.ca/sites/pdfs/about/ConstituencyHistories/clare.pdf>
- Nova Scotia Select Committee on Establishing Electoral Boundaries Commission. 2018. *Report of the Select Committee on Establishing an Electoral Boundaries Commission*.
https://nslegislature.ca/sites/default/files/pdfs/committees/reports/el_2018_final_en.pdf (June 11, 2019).
- Nova Scotia Select Committee on Establishing an Electoral Boundaries Commission, Hansard Transcript. 2018. "Organizational Meeting."
<https://nslegislature.ca/legislative-business/committees/select/select-committee-establishing-electoral-boundaries-commission-2018/archive/select-committee-establishing-electoral-boundaries-commission-2018/el2018may09> (June 11, 2019).
- Peddle, S. 2019. "Poll: 60% support for reinstating Nova Scotia's minority ridings." *Chronicle Herald* (Halifax), April 17.
<https://www.thechronicleherald.ca/news/local/poll-60-support-for-reinstating-nova-scotias-minority-ridings-303073/>. (May 22, 2020).
- Peters, B. Guy, Jon Pierre, and Desmond S. King. 2005. "The Politics of Path Dependency: Political Conflict in Historical Institutionalism." *The Journal of Politics* 67 (4):1275-1300. <https://www.jstor.org/stable/10.1111/j.1468-2508.2005.00360.x>
- Roach, K. 1992. "Chartering the Electoral Map into the Future." In, J.C. Courtney, P. MacKinnon, and D.E. Smith (Eds.), *Drawing Boundaries: Legislatures, Courts, and Electoral Values* (pp. 200-219)Saskatoon: Fifth House Publishers.
- Rothstein, Bo. 1992. "Explaining Swedish Corporatism: The Formative Moment." *Scandinavian Political Studies* 15(3):173-191.
- Skocpol, T. 1985. "Bringing the State Back In: Strategies of Analysis in Current Research." In P. Evans, D. Rueschemeyer, and T. Skocpol (Eds.), *Bringing the State Back In* (pp. 3-38). Cambridge: Cambridge University Press. doi:10.1017/CBO9780511628283.002.
- Smith, Jennifer, and Ronald Landes. 1998. "Entitlement versus Variance Models in the Determination of Canadian Electoral Boundaries." *International Journal of Canadian Studies* 17 (Spring):19-36.
- Spitzer, A. J. 2018. "Reconciling Shared Rule: Liberal Theory, Electoral-Districting Law and 'National Group' Representation in Canada." *Canadian Journal of Political Science* 51: 447-66.
- Streek, Wolfgang, and Kozo Yamamura. 2003. "Introduction: Convergence of Diversity? Stability and Change in German and Japanese Capitalism." In *The End of Diversity? Prospects for German and Japanese Capitalism* (pp. 1-50). Ithaca, NY: Cornell University Press.
- Steinmo, Sven. 2008. "What is Historical Institutionalism?" In Donatella della Porta and Michael Keating (Eds), *Approaches and Methodologies in the Social Sciences: A Pluralist Perspective* (pp. 118-138). Cambridge: Cambridge University Press.
- Supreme Court of Canada. *The Attorney General for Saskatchewan v Roger Carter*, QC [1991] 2 SCR 158.
- Thelen, Kathleen. 1999. "Historical Institutionalism in Comparative Politics." *Annual Review of Political Science* 2: 369-404.

-
- Thelen, K., and S. Steinmo. 1992. "Historical Institutionalism in Comparative Politics." In S. Steinmo, K. Thelen, and F. Longstreth (Eds.), *Structuring Politics: Historical Institutionalism in Comparative Analysis* (pp. 1-33). Cambridge: Cambridge University Press
- Thomas, David. 1997. *Whistling Past the Graveyard: Constitutional Abeyances, Quebec and the Future of Canada*. Toronto: Oxford University Press.
- Tutton, M., and K. Doucette. 2012. "Nova Scotia Premier Says Electoral Boundaries Commission Violated Mandate: Premier Lashes Out at Electoral Commission." *The Canadian Press*, June 5. <https://atlantic.ctvnews.ca/dexter-says-electoral-boundaries-commission-violated-mandate-1.835408>. Accessed May 22, 2020.
- Van der Heijden, Jeroen. 2013. "Institutional Layering: A Review of the Use of the Concept. Working Paper." Australian National University, Regulatory Institutions Network (RegNet) University of Amsterdam, Amsterdam Law School. (Later Published in *Politics*, Volume 31, Issue 1, 9-18. Retrieved Nov. 26, 2019 from: https://www.researchgate.net/publication/229979311_Institutional_Layering_A_Review_of_the_Use_of_the_Concept
- Van der Heijden, Jeroen, and Johanna Kuhlmann. 2016. "Studying Incremental Institutional Change: A Systematic and Critical Meta-Review of the Literature from 2005 to 2015." *Policy Studies Journal* 45: 535-554. doi: 10.1111/psj.12191.
- Williams, M. 1998. *Voice, Trust and Memory: Marginalized Groups and the Failings of Liberal Representation*. Princeton: Princeton University Press.