

Commissariat aux
services en français
de l'Ontario



Office of the
French Language Services
Commissioner of Ontario

800, rue Bay, bureau 402
Toronto (Ontario) M5S 3A9

☎ 1 866 246-5262 / 416 847-1515
☎ 416 847-1520
ATS 416 640-0093
@ flsc-csf@csfontario.ca
🖨 csfontario.ca

800 Bay Street, Suite 402
Toronto (Ontario) M5S 3A9

☎ 1 866 246-5262 / 416 847-1515
☎ 416 847-1520
TTY 416 640-0093
@ flsc-csf@flscontario.ca
🖨 flscontario.ca

Written Submission to the Far North Electoral Boundaries Commission

Office of the French Language Services Commissioner

July 13, 2017





800, rue Bay, bureau 402
Toronto (Ontario) M5S 3A9

☎ 1 866 246-5262 / 416 847-1515
☎ 416 847-1520
ATS 416 640-0093
@ flsc-csf@csfontario.ca
💻 csfontario.ca

800 Bay Street, Suite 402
Toronto (Ontario) M5S 3A9

☎ 1 866 246-5262 / 416 847-1515
☎ 416 847-1520
TTY 416 640-0093
@ flsc-csf@flscontario.ca
💻 flscontario.ca

1. Context

The Legislative Assembly of Ontario passed the *Representation Act, 2015*¹ on December 3, 2015. Section 4 (1) of this statute created the Far North Electoral Boundaries Commission (“Commission”).

The Commission must study the creation of a minimum of one and a maximum of two new provincial electoral districts (“PEDs”) in the geographic areas occupied by the current PEDs Kenora-Rainy River and Timmins-James Bay and provide recommendations.² When it provides recommendations, the Commission must take into account different factors, including communities of interest in the areas, representation of Indigenous communities and any other factor the Commission judges to be relevant.³ A member of the Executive Council must table a bill in the Legislative Assembly containing the Commission’s recommendations before October 30, 2017.⁴

The chair of the Commission, the Honorable Joyce Pelletier, Ontario Court of Justice judge since 2005, sees the Commission’s mandate as follows:

“The Commission will consider, among other statutory requirements, many factors for effective representation, including the density of populations, representation of

¹ *Representation Act, 2015*, SO 2015, c. 31, Sched 1 (“*Representation Act*”), amended by *An Act to amend certain Acts with respect to provincial elections, 2016*, SO 2016, c 33.

² *Representation Act*, s 4 (5).

³ *Representation Act*, s 4 (8).

⁴ *Representation Act*, s (12).





800, rue Bay, bureau 402
Toronto (Ontario) M5S 3A9

☎ 1 866 246-5262 / 416 847-1515
☎ 416 847-1520
ATS 416 640-0093
@ flsc-csf@csfontario.ca
🖨 csfontario.ca

800 Bay Street, Suite 402
Toronto (Ontario) M5S 3A9

☎ 1 866 246-5262 / 416 847-1515
☎ 416 847-1520
TTY 416 640-0093
@ flsc-csf@flscontario.ca
🖨 flscontario.ca

Indigenous people, community interests, accessibility as well as existing municipal boundaries and geographical features.”⁵

It's evident from its composition, mandate and activities that the Commission respects and breathes life into the objectives of the Truth and Reconciliation Commission.⁶ In fact, the Commission confirms “enhanced political representation for Indigenous peoples in Ontario's political system is a necessary component of the broader movement toward reconciliation.”⁷

In its Preliminary Report, published online on July 1, 2017, the Commission puts forward provisory recommendations partly stemming from consultations of local communities between May and July. It recommends the creation of two new PEDs that will enhance effective representation of Indigenous communities, but also Francophone communities in the new PEDs of Timmins and Mushkegowuk.⁸ The Office of the French Language Commission (“OFLSC”) supports these recommendations.

2. Effective Representation: Finding Balance between Parity and Representation of Minority Groups

The Commission's mandate of redistricting is closely related to the citizens' right to vote as protected by section 3 of the Charter of Rights and Freedoms.

⁵ Government of Ontario, Press Release, *Improving Representation in Ontario's North*,

<https://news.ontario.ca/mag/en/2017/05/improving-representation-in-ontarios-north.html>.

⁶ Truth and Reconciliation Commission of Canada, *The Truth and Reconciliation Commission's Final Report*, 2015.

⁷ Far North Electoral Boundaries Commission, Preliminary Report, July 2017 (“Preliminary Report”), p 18.

⁸ Preliminary Report, p 46.





800, rue Bay, bureau 402
Toronto (Ontario) M5S 3A9

☎ 1 866 246-5262 / 416 847-1515
☎ 416 847-1520
ATS 416 640-0093
@ flsc-csf@flsfontario.ca
💻 csfontario.ca

800 Bay Street, Suite 402
Toronto (Ontario) M5S 3A9

☎ 1 866 246-5262 / 416 847-1515
☎ 416 847-1520
TTY 416 640-0093
@ flsc-csf@flsfontario.ca
💻 flsfontario.ca

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.⁹

Its mandate also takes root in the unwritten constitutional principle of democracy. In the Supreme Court of Canada decision *Reference re Secession of Quebec*¹⁰, the court highlighted that democracy “is fundamentally connected to substantive goals, most importantly, the promotion of self-government. Democracy accommodates cultural and group identities.”¹¹ In this decision concerning Quebec and the authority to secede from Canada, the court referred to the Carter decision when discussing the principle of democracy. In Carter, Justice McLaughlin, as she was then, stated that

the 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". Ours is a representative democracy. Each citizen is entitled to be represented in government. 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.¹²

Effective representation is first based on parity,¹³ but also other characteristics, such as geography, the community's history and interests, and minority groups.¹⁴ These two considerations are essential

⁹ The Constitution Act, 1982, Schedule B to the Canada Act 1982 (UK), 1982, c 11 (“Charter”).

¹⁰ *Reference re Secession of Quebec*, [1998] 2 SCR 217.

¹¹ *Reference re Secession of Quebec*, [1998] 2 SCR 217 at p 254; *Reference re Prov Electoral Boundaries (Sask)*, [1991] 2 SCR 158 at p 188 (“Carter”).

¹² *Carter*, at p 183.

¹³ In this case, experts refer to relative parity, not absolute parity, since it is impossible to guarantee every PED has the exact number of electors. This is based on the natural increase and decline of the population, such as deaths and moving, but also on consideration of other factors that must be taken into account in effective representation, such as political representation of minority groups. The generally accepted variance is 25% more or less than the average number of electors in each PED.

¹⁴ *Carter*, at p 184.





800, rue Bay, bureau 402
Toronto (Ontario) M5S 3A9

☎ 1 866 246-5262 / 416 847-1515
☎ 416 847-1520
ATS 416 640-0093
@ flsc-csf@csfontario.ca
📠 csfontario.ca

800 Bay Street, Suite 402
Toronto (Ontario) M5S 3A9

☎ 1 866 246-5262 / 416 847-1515
☎ 416 847-1520
TTY 416 640-0093
@ flsc-csf@flscontario.ca
📠 flscontario.ca

when redistricting, but the primary goal is parity. In other words, electoral commissions must assess if considering the impact of redistricting on the political representation of minority groups justifies a variance in parity.

The Nova Scotia Court of Appeal recently decided a reference concerning the intersection of redistricting, effective representation and minority groups – in this case, Acadians.¹⁵ In 2010, the provincial government established a commission to study redistricting and provide recommendations. In its preliminary report, the commission recommended maintaining three PEDs, Clare, Argyle and Richmond, that had considerably lower population, but which had a high number of Acadians.¹⁶

The government stated that the recommendation to maintain these three PEDs was “null and void” since it violated the commission’s terms of reference. It ordered the commission to draft a second preliminary report and a final report that did not recommend maintaining Clare, Argyle and Richmond – the commission complied. To close the debate, the government subsequently referred two questions to the Court of Appeal: was eliminating the three Acadian PEDs a violation of section of the Charter.¹⁷

The Court of Appeal decided that it was a violation of section 3. It stated that, like in *Carter*, governments or electoral commission mandated to redistricting must ensure parity, but also find a balance between parity and in this case political representation of minority groups.

¹⁵ *Reference re the Final Report of the Electoral Boundaries Commission*, 2017 NSCA 10.

¹⁶ These three PEDs were initially created in 1992 and maintained in 2002 by commissions that decided to promote political representation of the Acadian minority.

¹⁷ It also asked the Court that and if yes, was the decision saved by the application of section 1.





800, rue Bay, bureau 402
Toronto (Ontario) M5S 3A9

☎ 1 866 246-5262 / 416 847-1515
☎ 416 847-1520
ATS 416 640-0093
@ flsc-csf@flscontario.ca
📧 csfontario.ca

800 Bay Street, Suite 402
Toronto (Ontario) M5S 3A9

☎ 1 866 246-5262 / 416 847-1515
☎ 416 847-1520
TTY 416 640-0093
@ flsc-csf@flscontario.ca
📧 flscontario.ca

3. The Commission Considered the Impact of its Recommendations on Effective Representation of Francophone Communities in the Far North

The Commission's recommendations on redistricting must firstly aim for parity, and then consider other important factors such as enhancing political representation of Indigenous and Francophone communities in the Far North's PEDs.

The francophone population of Timmins-James Bay is 32,145, or close to 47%.¹⁸ In Kenora-Rainy River, its 1,631, or 2.25%.¹⁹ The Preliminary report identifies ten communities where Francophones represent more than 30% of the total population.²⁰ In sum, in certain areas and certain communities, especially in Timmins-James Bay, Francophones represent an important segment of the population, a factor that the Commission must take into account when assessing effective representation.

The Commission recommends the creation of two additional PEDs in the current geographic areas of Kenora-Rainy River and Timmins-James Bay. In the latter, the Commission split Timmins from the rest of the PED, which will be named Mushkegowuk. It will have a population 29,867, with 61% of it being Francophone.²¹ The Timmins PED will have 41,788 electors, with 39% being Francophone.²²

The population of these two new PEDs in the Timmins-James Bay area fall below 25% the provincial parity level: the average population of PEDs is 110,234, but Mushkegowuk is 73% below that number and Timmins 45%. However, pursuant to *Carter*, these variances are allowed and part

¹⁸ Preliminary Report, p 25.

¹⁹ Preliminary Report, p 25.

²⁰ The Commission also notes that the communities of Mattice-Val Côté (89%) and Hearst (87%) have very high Francophone populations.

²¹ Preliminary Report, p 42.

²² Preliminary Report, p 42.





800, rue Bay, bureau 402
Toronto (Ontario) M5S 3A9

☎ 1 866 246-5262 / 416 847-1515
☎ 416 847-1520
ATS 416 640-0093
@ flsc-csf@csfontario.ca
📧 csfontario.ca

800 Bay Street, Suite 402
Toronto (Ontario) M5S 3A9

☎ 1 866 246-5262 / 416 847-1515
☎ 416 847-1520
TTY 416 640-0093
@ flsc-csf@flscontario.ca
📧 flscontario.ca

of the Commission's discretion when assessing the proper balance between parity and consideration of political representation of minority groups.

In sum, when analyzing the Commission's recommendations concerning the creation of two additional PEDs, it is evident that it took careful note of requirements contained in section 3 of the *Charter* and the SCC's decision in *Carter*. While the customary variance of 25% is not respected, the obligation of strict parity was outweighed by the importance of political representation of Indigenous and Francophone communities.

4. Conclusion and Recommendations

The Commission held twenty consultations in a dozen communities in two affected PEDs, most of which has high Francophone and Indigenous representation. The preliminary report considers the impact of redistricting on Francophone communities and recommends creating new PEDs with a view to enhance their political representation.

The OFLSC recommends that

- **The Commission maintain its recommendations concerning redistricting and the creation of the new PEDs of Kenora-Rainy River, Timmins, Mushkegowuk and Kiiwetinong as described in the Preliminary report; and**
- **The Legislative Assembly adopts the bill with the Commission's recommendations concerning redistricting and the creation of the new PEDs of Kenora-Rainy River, Timmins, Mushkegowuk and Kiiwetinong as described in the Preliminary report.**

