

BRITISH COLUMBIA

Electoral Boundaries Commission

AMENDMENTS TO THE
PRELIMINARY REPORT

February 14, 2008

COVER PHOTO LISTING

Top row – left to right

Kinney Lake, Mount Robson Provincial Park, B.C.
Richmond, B.C.
Coastal B.C.
Parliament Buildings, Victoria, B.C.

Second row – left to right

Coastal B.C.
Coquihalla Highway, B.C.
Unknown neighbourhood
Saanich Inlet, Vancouver Island, B.C.

Third row – left to right

Mount Assiniboine Lodge, B.C.
Stanley Park, Vancouver, B.C.
Dawson Creek, B.C.
Along the Fraser River, B.C.

Bottom row – left to right

Vaseux Lake, B.C.
Vancouver, B.C.
Nelson, B.C.
Unknown B.C. valley

Vaseux Lake photo: Gunter Marx Stock Photos

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British Columbia
Electoral Boundaries Commission

February 14, 2008

The Honourable Bill Barisoff
Speaker of the Legislative Assembly of British Columbia
Room 207
Parliament Buildings
Victoria, British Columbia
V8V 1X4

Honourable Speaker:

Amendments to the Preliminary Report

We are pleased to submit our *Amendments to the Preliminary Report*, as required by section 12 of the *Electoral Boundaries Commission Act*, R.S.B.C. 1996, c. 107.

Since submitting to you our *Preliminary Report* on August 15, 2007, and in accordance with our mandate under the Act, which is grounded on the principle of representation by population, we propose that:

- the number of electoral districts in the region we have defined as the Columbia-Kootenay be increased to four;
- the number of electoral districts in the region we have defined as the North remain at seven;
- the number of electoral districts in the region we have defined as the Cariboo-Thompson remain at four;
- the number of electoral districts in the Okanagan, Fraser Valley, Surrey, Burnaby/Tri-Cities, and Vancouver regions remain as proposed in the *Preliminary Report*; and
- the number of electoral districts in the Vancouver Island and South Coast region be increased to 15.

This will result in a net increase of four electoral districts, for a total of 83 single member plurality electoral districts.

The number of proposed BC-STV electoral districts remains at 20, with the district magnitude of the Columbia-Kootenay district increasing from three to four, and the district magnitude of the Capital Region district increasing from six to seven.

In this letter we would like to take the opportunity to comment on the issue of the number of electoral districts in rural British Columbia. However before doing so, we want to acknowledge the many people who offered thoughtful suggestions for amendments to specific boundary proposals contained in our *Preliminary Report*. We have incorporated about 50 such amendments, the most significant of which are summarized in “Part 1 – Report Overview.” We believe that these amendments enabled us to develop districts that are better configured and give greater recognition to the statutory criteria of geographical and demographic realities, the legacy of our history, community interests and the availability of means of communication and transportation.

With respect to protecting rural representation in the Legislative Assembly, it is our view, formulated after a careful consideration of this challenging issue for more than two years, that limited options exist to address it.

To put our comments into context, we go back to our predecessor commission’s June 3, 1999, report, which sounded a caution:

However, we feel constrained to note that, in the absence of some statutory solution similar to that in place in Saskatchewan, by which the electoral representation of rural British Columbia can be guaranteed at its present level, the next commission may well find it impossible, under the current legislative framework, to avoid recommending a reduction in the number of electoral districts in the rural areas of the province (page 62).

It turns out that the Wood Commission did not overstate the challenge. In the past decade, while British Columbia’s population has increased by 10.4 percent, the North’s population has declined – from 7.4 percent of the provincial total to 6.2 percent. The government believed that giving our commission the capacity to propose an increase in the number of electoral districts would address this concern. The September 12, 2005, Speech from the Throne stated:

The government will introduce an amendment that it hopes will protect northern representation in the legislature. The amendment will allow the commission to provide for up to 85 members under the current electoral system.

Attorney General Wally Oppal expressed a similar sentiment when he introduced the *Electoral Boundaries Commission Amendment Act, 2005* (Bill 14) on October 24, 2005:

With the intent of protecting northern representation in the legislature, Bill 14 also gives the commission the necessary flexibility to recommend electoral boundaries up to 85 electoral districts under our current system or up to 85 members under the single transferable vote model.

Unfortunately, we concluded as set out in our *Preliminary Report*, that increasing the number of electoral districts from 79 to the maximum of 85 would only marginally ameliorate the negative deviations in the North. Based on the current 79 electoral districts, all eight districts in the North have deviations in excess of minus 25 percent. Adding six electoral districts in other regions would bring only one of those eight within the minus 25 percent statutory limit.

In our *Preliminary Report*, we proposed that the number of electoral districts in each of the North, the Cariboo-Thompson and the Columbia-Kootenay regions be reduced by one and that the number of electoral districts in the Okanagan, Fraser Valley, Surrey, Burnaby/Tri-Cities and Vancouver regions each be increased by one, for a total of 81 single member plurality electoral districts.

On September 13, 2007, Premier Campbell issued a news release stating that the government intended to introduce legislation that would give our commission the legal tools required to protect rural representation. We would be required to ensure that no region lost any existing seats. To strike a balance between protecting rural representation and increasing representation in growing areas, we would be required to propose an additional eight electoral districts, for a total of 87 districts.

In the Premier's letter to you that accompanied his news release, he stated:

Members of both parties currently represented in the legislature have already publicly indicated that the loss of regional voices in the three regions at issue is unacceptable to them. Without substantive changes to better protect rural representation and improve representation by population, the final report will almost certainly be doomed to defeat in the legislature.

Bill 39, the *Electoral Boundaries Commission Amendment Act, 2007*, was introduced on October 24, 2007. It would have directed us not to reduce the number of electoral districts in the three rural regions and to propose exactly eight additional districts, for a total of 87 electoral districts. However, the bill had not passed when the Legislative Assembly adjourned on November 29, 2007. Consequently, we were left with our original mandate and our final reporting date, which required delivery of our amended report to you by February 15, 2008.

During January 2008 we held six public hearings, and a final hearing with MLAs as required by the legislation. Many (but by no means all) oral presentations and written submissions continued to urge us not to reduce the number of electoral districts in the North, the Cariboo-Thompson and the Columbia-Kootenay.

In light of the oral presentations and written submissions we have received, we have given further consideration to the issue of rural representation, in the context of the legal and constitutional mandate that governs our work. Three possible alternatives, other than the proposals contained in this report, are set out below:

- **The current 79 electoral districts.** As we stated in our *Preliminary Report* (page 65), applying 2006 census data to the current 79 single member plurality electoral districts reveals that 17 of those 79 districts now have deviations greater than plus or minus 25 percent. Rebalancing the districts within the regions would still result in 10 districts outside the plus or minus 25 percent limit. Based on our understanding of the legislation and jurisprudence, our assessment was that we could not justify those deviations within the current statutory or constitutional mandate.
- **85 electoral districts.** We developed some scenarios for retaining the current level of representation (see Appendix P, Part IV) in all regions of the province and adding six electoral districts in the Okanagan, Fraser Valley, Surrey, Burnaby/Tri-Cities, Vancouver, and Vancouver Island and South Coast regions, for a total of 85 districts. As we discuss in this report, we declined to propose this approach for two reasons. First, it would have resulted in ten electoral districts having deviations in excess of minus 25 percent, when we were satisfied that only four of them possessed the “very special circumstances” necessary to justify such deviations. Second, increasing the number of electoral districts to 85 would have resulted in the provincial electoral quotient dropping to 48,394, resulting in higher positive deviations in urban regions, many of which we could not justify. In the *1991 Alberta Reference* case, discussed at page 380 of our *Preliminary Report*, the Alberta Court of Appeal addressed this consequence succinctly: “No argument for effective representation of one group legitimizes under-representation of another group.”
- **An increase in the number of electoral districts in urban regions.** Had it been enacted, Bill 39 would have required us to retain the current level of representation in all regions of the province and to propose an additional

eight districts in urban regions, for a total of exactly 87 electoral districts. As more electoral districts are added in urban regions, the concern about under-representation identified in the preceding paragraph is reduced. However, it is not clear how many urban electoral districts would have to be added to comply with constitutional requirements. We had concerns about whether the eight additional electoral districts mandated by Bill 39 would have been enough, because even with 87 electoral districts, the positive deviations in many urban electoral districts were higher than we felt were justified. We recognize there is no bright line separating proposals that will withstand judicial scrutiny from those that will not. Detailed reconfiguration of electoral districts across the entire province would be required, adding one new electoral district at a time, taking into account all the statutory criteria set out in section 9 of the legislation as well as the overriding obligation to ensure effective representation. At some point, those undertaking this type of reconfiguration would, in exercising their discretion, conclude that a certain number of electoral districts would be consistent with the constitutional framework within which boundary setting must be carried out.

Throughout our public consultation and public hearing processes, many people told us that the only way to effectively preserve rural representation would be by revising the *Electoral Boundaries Commission Act*. Some suggested that rural representation be statutorily protected, as the Wood Commission proposed and as several other Canadian jurisdictions (e.g. Alberta and Saskatchewan) have done. Others felt that the representation by population model is no longer viable and ought to be replaced by a regime that recognizes values such as economic contribution and the need to protect the relative strength of regional voices in the Legislative Assembly. Still others suggested that more robust constituency resources (e.g. more constituency offices and staff in rural districts, greater use of new communications technology and more generous travel allowances for rural MLAs) might improve the ability of rural constituents and their MLAs to communicate with each other.

These suggestions are outside our mandate. Having said that, British Columbia's relentless move toward even greater urbanization has convinced us that the issue of rural representation will not go away – it will only become more pronounced.

Although our understanding of our statutory and constitutional mandate precluded us from adopting the suggestions urged upon us, we support the need to have the Legislative Assembly examine this issue before the appointment of the next commission.

With delivery of this report our task is completed and the Legislative Assembly must now decide, pursuant to s. 14 of the Act, whether it will approve our proposals and, if it does, whether it will approve them with or without alterations.

Yours very truly,

A handwritten signature in black ink, appearing to read "Bruce Cohen".

The Hon. Mr. Justice Bruce I. Cohen
Commission Chair

A handwritten signature in black ink, appearing to read "Stewart Ladyman".

Stewart Ladyman
Commissioner

A handwritten signature in black ink, appearing to read "Harry Neufeld".

Harry Neufeld
Chief Electoral Officer for British Columbia
Commissioner

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Part 1 – Report Overview

Part 1 – Report Overview

In our *Preliminary Report*, we proposed a total of 81 electoral districts, with a provincial quotient of 50,784. We proposed that the number of electoral districts in each of the North, the Cariboo-Thompson and the Columbia-Kootenay regions be reduced by one and that the number of electoral districts in fast growing urban regions be increased by five, for a net increase of two electoral districts.

In this report, we propose a total of 83 electoral districts, with a provincial quotient of 49,560. We continue to propose a reduction of one electoral district in each of the North and the Cariboo-Thompson regions, but propose that the number of electoral districts in the Columbia-Kootenay region stay the same and that six electoral districts be added in urban regions.

In this report, we amend some of the specific electoral district proposals made in our *Preliminary Report*:

The North:

- Prince George is now divided between two electoral districts within the outer perimeter of the Fraser–Fort George Regional District;
- the Peace River now serves as the boundary between the two Peace electoral districts; and
- Atlin, Lower Post, Alice Arm and Kitsault are now included in our proposed Skeena-Stikine electoral district.

Cariboo-Thompson:

- a minor boundary amendment has been made to the proposed Kamloops–North Thompson electoral district.

Okanagan:

- the boundary between our proposed Westside-Kelowna and Penticton electoral districts now follows the new Westside municipal boundary.

Columbia-Kootenay – we propose four electoral districts:

- Kootenay West, including Rossland, Trail, Castlegar, Nakusp and New Denver;
- Nelson-Creston, including Nelson, Kaslo, Salmo and Creston;

- Kootenay East, including Cranbrook and the Elk Valley communities; and
- Columbia River–Revelstoke, including Kimberley, Invermere, Radium Hot Springs, Golden and Revelstoke.

Fraser Valley:

- Abbotsford now has two electoral districts wholly within the municipality and shares a third with Mission;
- Chilliwack now has one electoral district wholly within the municipality and shares a second with Hope; and
- the combined area of the City of Langley and the Township of Langley now constitutes two electoral districts.

Tri-Cities area:

- the boundary between our proposed Port Moody–Coquitlam and Coquitlam–Maillardville electoral district has been adjusted to keep all of the Austin Heights neighbourhood within one electoral district.

Surrey:

- the Tynehead community is now included within our proposed Surrey-Tynehead electoral district (which we had previously called Surrey-Guildford); and
- our proposed Surrey–Green Timbers electoral district now includes Green Timbers Park.

Richmond and Delta:

- a change to one boundary moderates the deviations of the three Richmond-based electoral districts.

Burnaby and New Westminster:

- the boundary between our proposed Burnaby-Edmonds and Burnaby-Lougheed electoral districts

now runs along 4th Street instead of 6th Street, between Edmonds Street and 10th Avenue;

- our proposed Burnaby-Brentwood electoral district is now named Burnaby North; and
- Burnaby-Willingdon is now named Burnaby–Deer Lake and its southern boundary now extends farther east along Imperial Street and Mayfield Street to 4th Street.

Vancouver:

- our proposed Vancouver–West End electoral district now includes the area between Thurlow and Burrard streets and the area south of Davie Street; and
- our proposed Vancouver–False Creek electoral district now includes the area bounded by Burrard, Georgia and Jervis streets and Vancouver Harbour.

North Shore:

- Park Royal Towers have been included in West Vancouver–Capilano.

Vancouver Island and South Coast:

- there are now seven electoral districts corresponding exactly to the outer perimeter of the Capital Regional District;
- because we no longer propose a Cowichan-Goldstream electoral district straddling the Malahat, consequential amendments have been made to the four Mid-Island districts; and
- Denman and Hornby islands and adjacent Vancouver Island communities are now included in our proposed Comox Valley electoral district.

We continue to propose that there be 20 BC-STV electoral districts. We have made several amendments:

- In the Columbia-Kootenay, we have increased the district magnitude from three to four;
- in the Fraser Valley, there is now one five-member Fraser Valley East BC-STV electoral district and one four-member Fraser Valley West BC-STV electoral district; and
- in our proposed Capital Region BC-STV district, we have increased the district magnitude from six to seven.

Part 2 – Introduction



Part 2 – Introduction

A. What has happened since we presented our Preliminary Report?

This section follows on from the description of the commission’s consultation with the public found on page 16 of the *Preliminary Report*.

1. Initial public hearings and submissions

Following delivery of our *Preliminary Report* to the Speaker of the Legislative Assembly on August 15, 2007, we held the first five of our scheduled 27 public hearings (in Prince George, Burns Lake, Vancouver, North Vancouver and Abbotsford) between September 5 and 11, 2007.

Approximately 350 people attended those hearings, with 67 making presentations. In addition to the oral presentations we received at the hearings, we received 63 submissions in writing between August 15 and September 12, 2007.

2. Government intention to change our mandate

On September 13, 2007, the Premier announced the government’s intention to introduce legislation at the fall sitting of the legislature changing the commission’s mandate. The legislation would require us to keep the current number of electoral districts in three of the most rural, remote and sparsely populated regions of the province (see press release in Appendix P). In addition, we would be required to add eight new electoral districts in more densely populated areas, rather than five as we had proposed.

Because the intended changes to our mandate would require us to amend our boundary proposals for most electoral districts across the province, we concluded that it would not be productive to continue with public hearings about the proposals in our *Preliminary Report*. As a result, we cancelled our remaining 22 scheduled hearings and waited for enactment of the legislation.

3. Bill 39

On October 24, 2007, the government introduced Bill 39, a bill to amend the *Electoral Boundaries Commission Act* (see Appendix P). With this bill, the government intended to preserve the existing number of electoral districts in the North, the Cariboo-Thompson and the Columbia-Kootenay regions and to increase the total number of electoral districts from 79 to 87. Bill 39 would have required us to provide revised boundary proposals to the Speaker by January 31, 2008, hold further public hearings thereafter, and deliver any amendments to the Speaker by April 15, 2008.

However, on November 29, 2007, the fall legislative session was adjourned without passage of Bill 39. This meant our mandate remained unchanged and we were required to meet our original statutory deadline to deliver any amendments to our *Preliminary Report* to the Speaker by February 15, 2008.

4. Resumed public hearings and submissions

With so little time left before the deadline, we were limited to a shorter schedule of public hearings. To provide maximum opportunity for people to give us their views, we held a province-wide public hearing by teleconference on January 14, 2008. Between January 14 and 23, we conducted five public hearings, in New Westminster, Castlegar, Kelowna, Quesnel and Nanaimo. We also held, as required by the legislation, a final hearing for current Members of the Legislative Assembly, on January 24, 2008, in Victoria.

More than 160 people attended these public hearings, with 77 people making presentations. Between September 13,

2007, and January 24, 2008, we also received 383 submissions in writing, by email and by voice mail on our toll-free number.

We were greatly impressed by the oral presentations and by the written submissions. Attendance at our public hearings (in inverse proportion to the size of the communities) affirmed the importance of our work to people’s daily lives and reminded us all of our firmly embedded democratic traditions.

If our *Preliminary Report* drew boundaries with broad strokes, this second round of public consultation gave us a wealth of detailed information about regional history and community interests known only to local residents. Moving a boundary several blocks over or changing an electoral district’s name may appear trivial, but such changes breathe life into our statutory mandate of “geographical and demographic realities, the legacy of our history and the need to balance the community interests of the people of British Columbia.”

We cannot overstate our gratitude to those who sent us written submissions and to those who attended our public hearings, many travelling long distances in the dead of winter to do so. Without exception, those who spoke at our public hearings were thoughtful, articulate and respectful. We were privileged to be a part of this fundamental democratic process.

5. Amendments to our Preliminary Report

In our *Preliminary Report* (footnote 70, page 356), we said we intended to include “any amendments to the report” in a final report – a single comprehensive document – so that readers would not have to refer back to the *Preliminary Report* to fully understand our work. However, given the limited time available, we have decided to issue amendments as a separate document. This report contains only those amendments.

Section 13 of the *Electoral Boundaries Commission Act* requires that the *Amendments to the Preliminary Report*

together with the *Preliminary Report* must be promptly laid before the Legislative Assembly.

This report will be delivered to the Speaker on February 14, 2008, and will be made public the same day. It will be published in a format similar to our *Preliminary Report*, for distribution in March 2008.

B. The legal principles governing us

As set out in Part 4 of our *Preliminary Report*, our statutory mandate requires us to achieve the principle of representation by population when proposing the names, areas and boundaries of electoral districts. Our interpretation of the mandate (page 44) led us to conclude that no region of the province is automatically entitled to “very special circumstances” status for some or all of its electoral districts. Nor did we presume that each region of the province should be guaranteed its current level of representation. We noted that the legislature did not make these considerations part of our mandate. We stated that we were governed by the overriding constitutional and legal requirement to strive for relative parity of voting power among electoral districts and to deviate from parity only to the extent necessary to ensure effective representation.

In our *Preliminary Report* (page 61), we indicated our sensitivity to the decline in influence that residents of rural areas of the province face from relentless urbanization, as expressed during our public consultations. We also acknowledged the views of those who feel that the North’s natural resources are the engine that drives the provincial economy. We concluded that, real as these issues are, we should not treat these rural challenges and contributions as overriding considerations when deciding about deviating from parity of population among electoral districts.

In our *Preliminary Report* (pages 82–84), we addressed the anticipated controversy surrounding our decision to reduce

the number of electoral districts in some regions. We fully recognized that such a set of proposals would not be well received by those in the province who urged us to retain the current number of electoral districts in those regions. We also addressed the notion of linking additional seats to the preservation of the current number of electoral districts. Even adding six electoral districts to the growth areas of the province would only marginally ameliorate the substantial negative deviations found in the North’s current electoral districts.

As anticipated, our proposals to reduce the number of electoral districts in the North, Cariboo-Thompson and Columbia-Kootenay regions touched off a negative reaction. The proposals to reduce the number of electoral districts in these three regions were seen by many as unacceptable and many people urged us to restore them. The issue was fully aired by those who attended our first public hearing in Prince George and was thereafter expressed by many others in public hearings and submissions to the commission.

C. Our reconsideration of these principles

In light of the reaction to our proposals to reduce the number of electoral districts in three rural regions of the province, we seriously reconsidered our analysis and proposals.

The starting point for our proposals is the legislation that sets out our mandate and the Supreme Court of Canada’s interpretation of the right to vote contained in section 3 of the *Charter of Rights and Freedoms*.

The *Electoral Boundaries Commission Act* states unequivocally that the guiding principle governing our commission is representation by population. However, recognizing the imperatives imposed by geographical and demographic realities, the legacy of our history, and the need to balance the community interests of the people of British Columbia, we may deviate from population parity by no more than plus or minus

25 percent. A higher deviation is acceptable only in “very special circumstances.”

In considering whether to propose an increase in the number of electoral districts, we must take into account:

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

In the *Saskatchewan Reference* case, discussed in our *Preliminary Report* (pages 36–38), the Supreme Court of Canada ruled 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’.”

Since publication of our *Preliminary Report*, we have given a great deal of careful thought to the legislative and constitutional principles that guide us, taking into consideration the articulate, and at times passionate, submissions made to us during our public hearings and in writing. People urged us to ensure that no region of the province lose representation and, if necessary, to apply a more flexible interpretation to the phrase “very special circumstances.” Some people felt that rural areas of the province have, by definition, very special circumstances.

We cannot interpret our mandate that way. Our statutory and constitutional mandate is grounded in the fundamental principle of representation by population. To begin our boundary setting exercise with the presumption that each region of the province should be guaranteed its current level of representation, regardless of population changes is, in our respectful view, inconsistent with this mandate.

While we have an ongoing obligation to deviate from population parity in order to ensure effective representation, in our view that analysis must take place on a district-by-district basis. No region of the province has automatic entitlement to “very special circumstances” status for some or all of its electoral districts.

Similarly, we must attach a meaning to the expression “very special circumstances” that is consistent with the grammatical and ordinary sense of those words and is harmonious with the scheme and object of the legislation. We remain of the view that “very special” means “exceptional” or “extraordinary.”

Many oral presentations and written submissions acknowledged that the proposals contained in our *Preliminary Report* were reasonable (given the restrictions inherent in the statutory language), but that the legislation needs to be changed in order to protect rural representation. It is well outside our mandate to comment on the adequacy of the legislation under which we operate. What we can say, and hopefully readers of our reports will accept, is that we gave thoughtful consideration to our statutory and constitutional mandate and that our proposals reflect our best efforts at meeting our goal of ensuring that all British Columbians receive effective representation.

D. The number of electoral districts in rural British Columbia

During the period of time that Bill 39 was being considered by the legislature we prepared draft boundaries for eight electoral districts in the North, five in the Cariboo-Thompson and four in Columbia-Kootenay. The bill did not pass, so given our mandate we concluded that, with the exception of Columbia-Kootenay, we should not propose these boundaries. However, we have included, in Appendix P, regional maps of the boundaries for eight electoral districts in the North and five in the Cariboo-Thompson and the

reasoning for them. In the event that the legislature accepts our proposals in the other 10 regions, but decides to proceed with alterations to restore the number of electoral districts in these two regions, the maps contained in Appendix P may provide assistance to the legislature when drawing the boundaries for these two regions.

