

Part 5 – “Effective Representation”
and “Very Special Circumstances”



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A. Our Understanding of “Effective Representation”

What do we mean when we say that constituents are entitled to effective representation? If changes are made to an electoral district’s boundaries, at what point do the constituents living in that district cease to receive effective representation? These are crucial questions to address before we embark on our boundary-setting task.

Our analysis begins with the Supreme Court of Canada’s decision in the *Saskatchewan Reference* case, where Justice McLachlin stated: “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.’”³⁶ In the Court’s view

this entailed two things – relative parity of voting power, and “countervailing factors,” such as geography, community history, community interests and minority representation. The list is not closed; these are just examples of considerations that may justify departure from voter parity in the pursuit of more effective

representation. The Supreme Court recognized that constituents look to their MLA for two purposes, to promote their interests through the legislative process, and to provide assistance in their dealings with the provincial bureaucracy – the “ombudsman” role.

³⁶ *Ref. re Electoral Boundaries Commission Act (Sask.)* (1991), 81 D.L.R. (4th) 16 (S.C.C.), on p. 35.

B.C. is among the group of jurisdictions that gives their electoral boundaries commissions the greatest latitude, adopting a plus or minus 25 percent deviation limit.

For an MLA to provide both functions effectively, the MLA must have enough time and resources to meet or communicate with constituents, understand their concerns, represent their interests in the legislative process and advocate on their behalf with the provincial bureaucracy. But how do we measure “enough time and resources”? During our public consultation, we were told that many factors should be considered, including:

- the number of constituents;
- the geography of the electoral district;
- the number of kilometres of paved roads;
- a constituent’s accessibility to the MLA and the MLA’s accessibility to constituents during the various seasons;
- commuting time to and from Victoria;
- the number of provincial issues confronting constituents;
- the availability of provincial government services in the constituency;

- the number of municipalities, regional districts, school districts, health districts and First Nations included within an electoral district; and,
- the various “community interests” found within an electoral district, including ethnic, religious and cultural groups, and the number of languages spoken by constituents.

Most of these are consistent with our statutory mandate. We ultimately concluded that our paramount guide in this area must be the statutory criteria set out in section 9(1)(a) of the *Electoral Boundaries Commission Act* – geographical and demographic considerations, the legacy of our history, and the need to balance the community interests of the people of B.C.

B. Our Approach to “Very Special Circumstances”

Section 9(1)(c) of the *Electoral Boundaries Commission Act* states

that the commission is permitted: “to exceed the 25 percent deviation principle where it considers that very special circumstances exist.” The *Act* does not define “very special circumstances,” and our research has not disclosed any other Canadian legislation in which that exact expression is used. However, our review of electoral boundaries legislation reveals that almost all other Canadian jurisdictions permit deviations greater than the normal permissible limits, sometimes using expressions such as “extraordinary circumstances” (Canada, New Brunswick, Nova Scotia³⁷), “exceptional reasons” (Quebec) and “special geographical considerations” (Newfoundland and Labrador).³⁸

The *Canadian Oxford Dictionary*³⁹ defines “special” as “particularly good, exceptional, out of the ordinary,” so “very special” must be even more exceptional. It defines “exceptional” as “forming an exception, unusual,” and defines “extraordinary” as “unusual, remarkable, out of the regular course

³⁷ There is no legislation governing the electoral boundaries commission in Nova Scotia. However, in 2001 the Select Committee on Establishing an Electoral Boundaries Commission established the Terms of Reference for the 2002 commission. The commission was not permitted to deviate by greater or lesser than 25 percent from the average number of electors per constituency, except in “extraordinary circumstances,” which were stated to be the desire to promote minority representation by Nova Scotia’s Acadian and Black communities.

³⁸ Three other jurisdictions that permit deviations greater than the normal permissible limits do not use this type of expression. In Alberta, up to four electoral districts may have deviations up to minus 50 percent, if they meet at least three statutory criteria. In Saskatchewan, there must be two electoral districts north of a “dividing line” set out in the legislation. In Manitoba, any electoral district north of the 53rd parallel may have a deviation up to plus or minus 25 percent.

³⁹ *The Canadian Oxford Dictionary*, 2nd ed., Katherine Barber, ed., Oxford University Press Canada, 2004.

or order, exceeding what is usual in amount, degree, extent or size.” In our view, the meaning of these three expressions – very special, exceptional and extraordinary – is so close that they can be used interchangeably.

We reviewed the frequency with which Canadian electoral boundaries commissions have recommended electoral districts that were beyond their normal range of permitted deviation in their most recent redistribution (see Table 1 on p. 45).

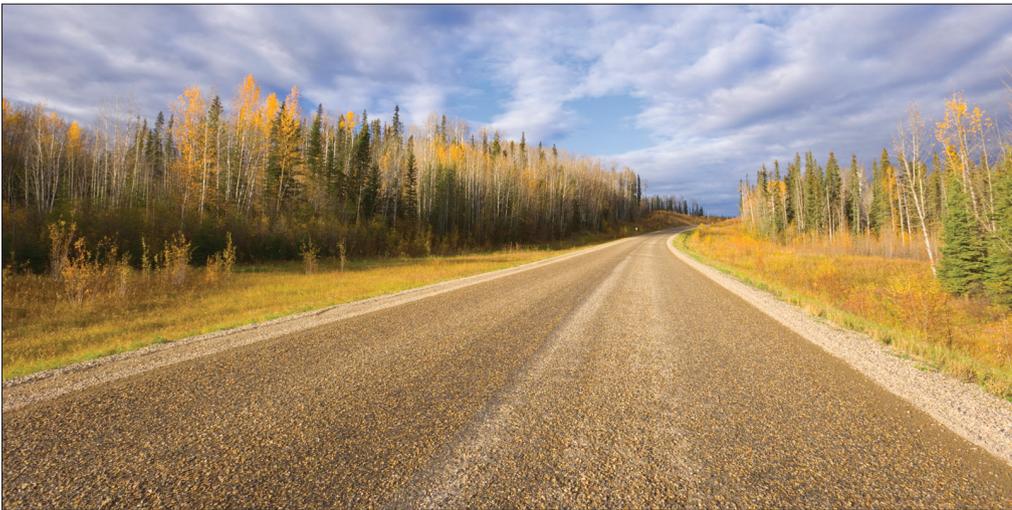
From this analysis, it is clear that all Canadian jurisdictions have created electoral districts with populations outside the normal negative deviation limits.

B.C. is among the group of jurisdictions that gives their electoral boundaries commissions the greatest latitude, adopting a plus or minus 25 percent deviation limit (see Table 2 on p. 46).⁴⁰

Notwithstanding the challenges posed by our province’s unique geography, demography and transportation circumstances, we believe that we should exceed that limit and resort to the “very special circumstances” legislative provision only in truly exceptional or extraordinary circumstances. We think that to do otherwise would debase the meaning of “very special.”

As we will discuss later (see Part 7 – Regional Groupings), the legislation instructs us to design electoral bound-

aries on a district-by-district basis. While commissions have historically found it useful to group individual districts into regional groupings for some purposes, at the end of the day a decision about whether “very special circumstances” exist must be done at the individual district, not at regional level. Our interpretation of our mandate leads us to conclude that no region of the province has an automatic entitlement to “very special circumstances” status for some or all of its electoral districts. Neither do we believe that it would be appropriate for us to begin our boundary setting task with a presumption that each region of the province should be guaranteed its current level of representation. The Legislative Assembly could have made that our mandate – but it did not. Rather, we are 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.



⁴⁰ The jurisdictions that do not set a statutory limit are Nova Scotia, Yukon, Northwest Territories and Nunavut.

TABLE 1: FREQUENCY OF “EXCEPTIONAL” DEVIATIONS ACROSS CANADA

Jurisdiction	Year of redistribution	Permitted deviation	Assembly size	“Exceptional” seats	“Exceptional” deviation	“Exceptional” districts as percent
Canada	2003	+/-25%	308	2	-43%, -62%	0.6
British Columbia	1999	+/-25%	79	6	-27% to -34%	7.6
Alberta	1999	+/-25%	83	1	-32%	1.2
Saskatchewan	2002	+/-5%	58	2	+12%, -22%	3.4
Manitoba	1999	+/-10%	57	2	-19%, -21%	3.5
Ontario ⁴¹	2005	+/-25%	103	10	-25.3% to -34%	9.7
Quebec	2001	+/-25%	125	6	-29% to -76%	4.8
New Brunswick	2006	+/-10%	55	1	-20%	1.8
Nova Scotia	2002	+/-25%	52	4	-39% to -49%	7.7
P.E.I.	2006	+/-25%	27	1	-28%	3.7
Newfoundland and Labrador	2006	+/-10%	48	4	-13% to -71%	6.3
Yukon ⁴²	2002	+/-25%	18	4	+32% to -82%	22.2
Northwest Territories ⁴³	2006	+/-25%	19	4	-26% to -58%	21.1
Nunavut ⁴⁴	2006	+/-25%	23	3	+53% to -40%	13.0

⁴¹ In Ontario, a provincial electoral boundaries commission does not determine its electoral districts. Currently, Ontario adopts the 103 federal electoral districts for its provincial Legislative Assembly. Beginning with the 2007 general election, that number will be increased to 107 – there will be 11 electoral districts in northern Ontario corresponding to the federal electoral districts created in the 1996 redistribution, and 96 electoral districts in southern Ontario corresponding to the federal electoral districts created in the 2004 redistribution.

⁴² Although the *Elections Act* is silent as to a maximum permissible deviation, the 2001–2002 Yukon Electoral Boundaries Commission decided to apply the plus or minus 25 percent deviation guideline because of the 1991 commission’s precedent and because it has been referred to as the Canadian standard.

⁴³ Although the *Electoral Boundaries Commission Act* is silent as to a maximum permissible deviation, the NWT Commission adopted plus or minus 25 percent because it was the standard accepted by most Canadian jurisdictions. In addition, when the previous Legislature approved the current arrangement in 1999, it had as one of its goals that no electoral district should have a population outside that limit.

⁴⁴ The *Nunavut Elections Act* is silent as to a maximum permissible deviation. Although the 2006 commission did not set a limit, the 1997 commission adopted plus or minus 25 percent because it was the standard accepted by most Canadian jurisdictions.

TABLE 2: DEVIATION LIMITS ACROSS CANADA

Permitted Deviation	Jurisdiction
+/-5%	Saskatchewan (for all districts south of a “dividing line” set out in the legislation)
+/-10%	Manitoba (for all districts south of the 53rd parallel) New Brunswick Newfoundland and Labrador
+/-25%	Canada British Columbia Alberta Ontario (by adoption of federal electoral districts) Quebec Prince Edward Island