The Cat and Mouse Politics of Redistribution: Fair and Effective Representation in British Columbia*

NORMAN J. RUFF

1. Introduction: Representation, Process, and Egalitarianism

This paper examines the most recent process of electoral redistribution in British Columbia in the context of previous attempts at reform of the province's electoral districts and the redefinition of what constitutes "fair and effective representation" for this province. Prior to 1984, the redistribution of seats in British Columbia was sporadic, ad hoc, and rarely non-partisan. Prior to 1978 it can be described at best as a "silent" gerrymander. In 1984 provision was made for regular reviews of the electoral map under a zoned electoral quota system which attempted to reduce the redistribution of seats to a technical formula while at the same time maintaining pre-existing electoral boundaries and a mix of single- and dual-member districts. In 1986, the provincial premier signalled his intention to abolish the dual member districts and appointed a royal commission (Fisher Commission on Electoral Boundaries, 1987-88) to define new boundaries for single member electoral districts. This commission obtained an extension of its mandate after a province-wide first round of public hearings to tackle a redefinition of the entire electoral map. The outcome of this initiative remained uncertain for two years, and the course of the accompanying debate reveals a rethinking of more than the geography of provincial elections as the commission and other participants in the process grappled with the principles of territorial representation and government-citizen relationships. This debate was informed, in part, not only by Fisher's own inquiry into electoral boundaries and his accompanying re-assessment of the work and resources of the elected representatives but also by the restructuring of government and the province's new regional structures for governmental planning.

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New approaches in both of the "egalitarian" and "process" dimensions of representation have become the subject of debate in British Columbia that go beyond long familiar internal wranglings over "gerrymandering" and malapportionment. This paper illustrates how pre-1989 redistributions have laid emphasis on what they saw as the legitimate claims of process — i.e., the practical problems in the conduct of political representation — through an assertion of geographic and regional claims above those of population equality (one person-one vote/one vote-one value). The penetration of egalitarian standards from other Canadian government practices and the anticipation of new Charter of Rights and Freedoms based parameters for equality in district populations have added new dimensions to the debate and have proved decisive in the shaping of new electoral districts. A new provincial electoral map has emerged from a Byzantine series of interactions among the premier, his cabinet colleagues, government back-benchers, legislative committees, the royal commission, and the courts. Because of the prolonged course of this current electoral redistribution, the judiciary came to play an even more significant role than could have been anticipated when the British Columbia Civil Liberties Association first began its questioning of electoral inequalities in 1986. As a further result the outcome may in turn set new standards for redistribution criteria and process not only in British Columbia but throughout Canada. In 1985, Ken Carty predicted that should the Canadian courts follow the United States' lead "then most, if not all of the existing electoral maps could be found unconstitutional."[1] The British Columbia electoral map became the leader in this category.

John Courtney has described the apparent progress made by Canadian electoral boundary commissions in "adjudicating conflicting representational demands" and grappling with the "vexing question of territory and its relationship to population size."[2] His observation that the tension between population and area is "now more widely touted as the country's leading representation concern than it was previously" applies to both national and provincial jurisdictions.[3] The determination of such things as

[1] R. K. Carty, "The Electoral Boundary Revolution in Canada," *American Review of Canadian Studies* XV: 3 (Autumn 1985): 286. See also Harvey Pasis, "The Courts and Redistribution in Canada," *Canadian Parliamentary Review* 10 (1987), 8-9, and James M. Cameron and Glen Norcliff, "The Canadian Constitution and the Political Muskeg of One Person, One Vote," *The Operational Geographer* 8 (1985): 30-34.

[2] John C. Courtney, "Parliament and Representation: The Unfinished Agenda of Electoral Redistribution," *Canadian Journal of Political Science* XXI:4 (December 1988): 681-82.

[3] Ibid., 682.

population quota deviation tolerance levels may become central to the debate but they still leave the unquantifiable aspects of what constitutes "fair and effective representation" open to dispute. The fundamental issue here is not the mere size of an electoral district but a much larger contemporary redefinition of the role of the representative in mediating between the state and the citizen. In his opening discussion of the law and politics of reapportionment in the United States, Robert G. Dixon Jr. observed that

> apportionment and districting practices, which determine the legislature's political complexion and operation, are products of the level of representation theory of society and of tactical ability to implement that theory.[4]

Dixon lamented the "overlay" of "equal numbers" that dominated the United States Supreme Court approach to legislative apportionment as it discouraged a "long-needed fresh dialogue on the nature of representation in a dynamic democratic order."[5] At present, British Columbia and perhaps Canada are at the point either of repeating all of the mistakes of that American experience in the face of a reluctance to break with traditional patterns, or of forging a redefinition not only of their districts but also of their understanding of representative government.

2. *Malapportionment and Gerrymandering, British Columbia Style*

Few electoral maps are ever a complete break from their predecessors. Some boundaries and some electoral districts typically remain the same from one redistribution of seats to another. The 1986 electoral map of British Columbia was thus not only a product of the last major redistribution of seats and redefinition of boundaries but was haunted by some elements of its antecedents. Most of the gross inequalities in the distribution of electoral districts shown in schedule A can be attributed to this process of accumulation as well as more contemporary map-making.

The history of electoral map manipulations by governing parties in British Columbia is not better but probably is little worse than that of any other government. The original electoral boundaries established for the provincial government in 1871 followed those of the mining divisions but became the object of partisan and regional manipulation even prior to the adoption of formal (i.e., federal) party labels for provincial electoral pur-

[4] Robert G. Dixon, *Democratic Representation: Reapportionment in Law and Politics* (New York: Oxford University Press, 1968), 4.

[5] Ibid., 272.

TABLE 1

British Columbia: Number of Electoral Districts and MLAs by Election Year and Statutory Redefinitions of Electoral Districts

Election Year	*No. of Districts*	*MLAs*
1871	12	25
1875	12	25
1878	12	25
1878	(SBC c.19)	
1882	13	25
1885	(SBC c.3)	
1886	13	27
1890	(SBC c.7)	
1890	18	33
1894	(SBC c.26)	
1894	25	33
1898	(SBC c.38)	
1898	29	38
1900	29	38
1902	(SBC c.13 & 58)	
1903	34	42
1907	34	42
1909	34	42
1912	34	42
1915	(Morrison-Macdonald SBC c.14)	
1916	39	47
1920	39	47
1923	(SBC c.6)	
1924	40	48
1928	40	48
1932	(SBC c.8)	
1933	39	47
1934	(SBC c.15)	
1937	40	48
1938	(SBC c.8)	
1941	41	48
1945	41	48
1949	41	48
1952	41	48
1953	41	48
1953-55	(special committee)	
1955	(SBC c.11)	
1956	42	52
1960	42	52
1963	42	52
1966	(Angus report – SBC c.11)	
1966	48	55
1969	48	55
1972	48	55
1975	(Norris report)	
1978	(Eckardt report – SBC c.14)	
1979	50	57
1982	(Warren report)	
1983	50	57
1985	(McAdam report – SBC c.3) *	
1986	52	69
1988-89	(Fisher report & special select committees)	

* Independent Commission established to conduct regular review of electoral districts under *Constitution Amendment Act*, SBC 1984, c. 12.

SOURCE: Elections British Columbia, *Electoral History of British Columbia, 1871-1986* (Victoria: 1988).

poses in 1903.[6] As is shown in table 1, there had been fourteen major redistributions of seats and redefinition of electoral boundaries since 1871.[7]

The first independent review of electoral districts was conducted in 1914 under Premier McBride at a time when he was faced with only a two-member socialist legislative opposition. The two supreme court justices Aulay Morrison and W. A. Macdonald who formed the commission disagreed in their specific recommendations, but their comments provide a clear common expression of the process-related criteria which were to form the basis of all future electoral maps for the province. By 1911 over a quarter of the population was living in Vancouver, and the fear of urban dominance was already pervasive. The commissioners noted that the

> system displays variety and (if we lose sight of the exceptional conditions prevailing in British Columbia) we may say anomalies. There is no fixed unit of representation, nor have we selected any fixed basis. Under the conditions existing in this Province we find it difficult if not inadvisable to do so. Owing to the formative stage of our development and the great diversity both climatic and topographical to be found throughout the vast territory which in many parts is as yet so sparsely settled the drift of population is problematic, rendering it practically impossible to establish a fixed basis of distribution and justifies us in resorting to the rough and ready method already adopted by which theoretic objections may be reasonably met.[8]

The outbreak of war and its disruption of anticipated regional growth weighed on their minds. They dismissed objections to the five-member Vancouver seat as based only on "theoretical" objections as it is quite impossible to arrive in any concrete case at the advantage or disadvantage thus created."[9] They proposed that Victoria retain its four members elected at large and representation for the city of Vancouver be increased by one to six members at large. They noted that the "bodies of electors at present range from 230 to 32,747" and that the current legislature had an "exaggerated majority" but this could not "be accounted for on the grounds of the method of application of the present system." There were, apart from

[6] The minority Semlin government was, for example, defeated in 1900 in an attempt at a redistribution of seats. See: Margaret A. Ormsby, *British Columbia: a History* (Toronto: Macmillan, 1958), 321.

[7] This excludes some boundary adjustments in 1872, 1875, 1886, 1891, 1916, and 1934. See Elections British Columbia, *Electoral History of British Columbia 1871-1986* (Victoria: 1988), 521-24. Mining division boundaries long continued to be utilized in the constitutional metes-and-bounds descriptions of the electoral districts.

[8] British Columbia, *Report of the Honourable Mr Justice Morrison and the Honourable Mr Justice Macdonald*, Electoral Redistribution Commissioners, Vancouver: 4 January 1915, 2.

[9] Ibid., 3.

Vancouver and Victoria, "certain exceptional conditions" particularly for Atlin and the six "Boundary Constituencies."[10] They rejected proposals to deprive these districts and several on Vancouver Island of a member in order to give a "proper measure of representation" to the north and the district contiguous to Vancouver.[11] In framing their recommendations, Justice Morrison paraphrased a submission which suggested that while the population was not well balanced,

> our large cities would be more prosperous if their population were producers in other parts of the Province: that conditions will improve and when they do the population will be more evenly distributed; that an abnormal population should not bring a commensurate increase of representation, and that those portions of the province where population is now sparse should be considered with due regard to the possibilities of the future.[12]

Process, the representation of regional economic interests, and the prospects of future growth took precedence over egalitarianism. Justice Morrison's report proposed an increase from forty-two to forty-seven members in the legislature. In his dissent, Justice Macdonald indicated that he shared the almost unanimous opinion expressed at their public hearings against any increase in the membership of the legislative assembly but that there were serious obstacles to this, and his proposal also entailed an increase to forty-five members. His explanation is somewhat tortuous but captures the spirit that has governed virtually every redistribution of electoral districts in British Columbia. The province's substantial increase in the population had been "shown more especially at the Coast" and "over two fifths of the voting strength of the Province is within an area composed of the City of Vancouver and within 20 miles thereof."[13] In addressing this, Macdonald explained that given

> such a vast extent of territory coupled with a diversity of resources and industries, population should not be a governing factor in representation, still it should not be ignored and is entitled to full consideration. At the same time, I felt that in dealing especially with the interior of the Province any principle adopted for redistribution in other provinces of Canada was inapplicable. The natural waterways of the province create valleys which form communities by themselves, and they may, by a range of mountains intervening, be practically shut off from all communication with a community not far distant. This situation has been well recognized by the boundaries indicated by "The Constitution Act" and I am of the opinion that such recognition should, where possible

[10] Rossland, Ymir, Grand Forks, Greenwood, Kaslo, and Slocan.

[11] Morrison and Macdonald report, 5.

[12] Ibid.

[13] Ibid., W. A. Macdonald, Vancouver: 5 January 1915, 1.

continue. The community of interest thus conserved far outweighs any apparent disparity in the voting strength of an electoral district.

Present and prospective growth required consideration even if "not evidenced to any great extent by the voters' lists." Though he found it unpleasant, districts such as those in the Kootenays with small and declining populations were, however, subject to adjustments. If their claims for retention of their representation were acceded to, it would require losing sight of any restrictions on the number of members or ignoring the just claims of districts with population increases. In 1915 the legislature was increased in size to forty-seven members, and the resultant extensive redistribution of districts provided McBride with an excuse for aborting his 1915 general election call.

The next major redefinition of British Columbia's electoral boundaries was initiated after the 1921 dominion census under the government of "Honest" John Oliver and was graphically described by his biographer, James Morton. His imagery has a ring of authenticity to it and is worth quoting at a little length for its insights into the 1923 redistribution process.

> So he [Oliver] set to work with voter's lists, maps, and brushes and paint. The latter were John's own selected tools. He took a big map of the province, divested himself of coat and waistcoat and went at it. He spread maps on the floor and remoulded them to his heart's desire. With one color he marked the boundaries of districts that should stand as they were, with another he depicted those that should be enlarged, and with another those that should be reduced according to fluctuations in the numbers of votes as carefully worked out from the lists. By the time he got through his map looked like a ragged Joseph's coat, but it suited his purpose and he was proud of his handicraft.
>
> In a mountainous country like British Columbia you cannot allocate districts by meridians and township lines as in other provinces. An irregular mountain range must serve as a dividing line. John knew his province, and took into consideration the watersheds, the settled valleys, and the uninhabited areas. He worked honestly with the object of giving just representation and at the same time reducing the membership to save expense.
>
> The last objective developed prickles to sting him. The taxpayers are always more willing to add to the general cost of government than lose some local advantage; or at least what they consider an advantage, since it is very questionable whether a district represented by four members is in the long run any better off than if it were represented by two.[14]

Morton went on to describe how Premier Oliver tried to bring the representation of Victoria (a four-member seat) and Vancouver (a six-member seat with three times the population of Victoria) into line by merging the

[14] James Morton, *Honest John Oliver* (London: Dent, 1933), 174.

two neighbouring districts of Oak Bay and Esquimalt into the Victoria riding. This was interpreted as an attempt to gerrymander the Esquimalt member, Harry Pooley, out of his seat, and in the face of caucus pressure and an approaching election, the district of Esquimalt was retained and the size of the legislature increased by one seat rather than reduced.[15]

The 1928-33 Conservative Tolmie government ignored the more Draconian proposals of the Kidd commission for a significantly smaller legislature[16] but reduced the number of seats and members by one prior to its electoral débâcle of 1933. Three districts were combined: Alberni and Nanaimo, Columbia and Revelstoke, and Nelson and Creston; and Vancouver was redivided up into three dual-member and one triple-member ridings. The new Liberal government under Premier Pattullo redivided Columbia and Revelstoke in 1934, and its adjustments to the electoral map in 1938 (notably splitting off Oak Bay from Victoria and reducing the latter to three members) fixed the province's electoral geography for five elections over the next seventeen years. In this interval the population of the province grew by over 70 per cent.[17] The map remained undisturbed by coalition government politicians. Their highly successful joint electoral arrangements diminished Liberal and Conservative concerns with electoral geography, and the increasing imbalances in the size of riding electorates made this interval one of a silent regional if not direct partisan gerrymandering against the CCF socialist opposition.

3. *Ad Hoc Redistribution 1938-79*

There had been some vestige of openness introduced to British Columbia's redistribution process in 1938, when the redefinition of electoral boundaries was for the first time referred to a special committee of the legislative assembly. This special eleven-member committee of the legislature on "Redefining of Provincial Constituencies"[18] issued a report one month after its appointment, and the matter was tabled for the next session. Within its first six months of office, the Social Credit government of W. A. C. Bennett initiated a similar committee to make recommendations as to "the desirability of increasing the number of members to be elected

[15] Ibid., 174-75.

[16] British Columbia, *Report of Committee to Investigate the Finances of British Columbia*, Victoria: King's Printer, 1932, 17. The report recommended adoption of the fourteen federal constituencies for B.C. with dual provincial members.

[17] 817,861 in 1941 to 1,398,464 in 1956.

[18] British Columbia, Legislative Assembly, *Journals*, 31 October 1938, 6, and 30 November 1938, 82.

to the Legislature and as to the distribution of the members amongst the electoral districts of the Province."[19] The preamble to the terms of reference made mention of the impact of population increases and the perception "that the representation of the people in this Legislature may not now be on an equitable basis." The precarious position of the government made this action somewhat premature, but the committee was re-established after the 1953 general election and in each session of that parliament until a report was finally delivered in March 1955.[20] At the outset, the committee had divided itself into three regional sub-committees and appeared ready to accept a shift to all single-member districts. In 1954, however, partisan divisions were reported as becoming more prevalent within the committee as a whole, and government members rejected any abolition of the multiple-member ridings.[21] The committee's final report proved to be a limited response to the enormous population increases and movements occurring within British Columbia and reflected the caution of a committee dominated by rookie rural government members. Furthermore, what had been conceived as an "independent" all-party, ten-member special committee was given an additional government member in February 1955 to secure party control.[22] Three lower mainland districts were made dual member (Burnaby, Delta, and North Vancouver) and the Peace River district divided into North and South. The committee concluded that "after considerable and exhaustive study the committee does not feel favourably disposed to altering the historical boundaries of any other electoral districts in the province" and added that because of the "continuing and possibly accelerated nature" of the "population conditions" in the province, there should be continuing study to the whole problem of redistribution. On the tabling of the report, the Liberal and CCF members resigned in protest from the special committee.[23] Population growth in the lower mainland was being given only a token response, and the creation of two Peace River ridings introduced anticipated population growth as a criterion not only, as previously, for retention of a riding small in population, but now for the expansion of such a riding. The change mirrored Premier W. A. C. Bennett's personal vision for the north and the notion of "the vast industrial expansion which is opening up hitherto sparsely popu-

[19] British Columbia, Legislative Assembly, *Journals*, 9 February 1953, 16-17.

[20] British Columbia, Legislative Assembly, *Journals*, 9 March 1955, 142-43.

[21] *Victoria Colonist*, 9 April 1954, 11.

[22] Ibid., 1 February 1955, 20.

[23] Ibid., 143-44.

lated areas of the Province."[24] It also added a seat to the government majority while containing representation of urban CCF voters. The Constitution Act Amendment Act, 1955 which implemented these revisions received royal assent on 15 March 1955 and coincidentally also provided for a new living allowance for MLAs.

The United States reapportionment revolution of the early 1960s and the introduction of an independent electoral redistribution process in Ottawa after 1964, with 25 per cent tolerances in constituency size, appeared to lend added weight to the pressures that had emanated within the province. These had come from the Vancouver press and city council and the CCF-New Democratic official opposition for over thirteen years. In 1965, Premier W. A. C. Bennett floated the idea of adopting twenty-three new federal constituencies to provincial purposes by the simple expedient of making them dual-member ridings — with one of his predictable adjustments for the Peace River, which would be represented through two dual-member ridings.[25] By August, he had changed his mind as to the advisability of totally relinquishing control of his electoral map. He appointed a three-member royal commission to redefine electoral districts. It comprised H. F. Angus, retired political scientist and chairman of the B.C. Public Utilities Commission, and two provincial government officials: the Chief Electoral Officer and the Deputy Registrar of Voters. Their terms of reference established two major sets of criteria to guide the redistribution of seats. In order to secure "proper and effective representation of the people in all parts of the Province in the Legislative Assembly," they were to

1. take into account where feasible historical and regional claims for representation;
2. make their recommendations on the basis
(a) that no electoral district comprise fewer than 7,500 registered voters having regard to present population and apparent population trends to the year 1975, and . . .[26]

They were instructed to provide for not less than forty-eight nor more than fifty-two MLAs and to give consideration to multiple-member ridings in metropolitan Victoria and Vancouver. They held a series of thirty-four public hearings from 7 September 1965 to 6 December 1965 and reported to the Lieutenant Governor on 21 January 1966.

[24] From the special committee terms of reference. See also the account in David M. Greer, "Redistribution of Seats in the British Columbia Legislature, 1952-1978," *BC Studies* 28 (Summer 1978): 24-30.

[25] *Victoria Times*, 26 March 1965, 1-2.

[26] Order-in-council 2233, 5 August 1965, in British Columbia, Commission of Inquiry into Redefinition of Electoral Districts, *Report* (Angus report), January 1966.

The Angus report recommended the addition of seven ridings to the twenty-four lower mainland (three to outside of greater Vancouver and four to metropolitan Vancouver) and metropolitan Victoria. This would redress some but not all of their under-representation. They had "five members fewer than they would be entitled to have if representation were strictly in proportion to numbers of registered voters."[27] Henry Angus and the Chief Electoral Officer went beyond the terms of reference to propose the adoption of all single-member districts and divided Victoria, a three-member seat, into two ridings. Greater Victoria was to be one of the regions that would have to "share the burden" of making good "the allocation of members to outlying districts." The commission noted that the other regions would have five members "more than their proportionate share" and that two of these were in the north, one in the Kootenays, one in the Okanagan, and one in other regions. The reduction of seats in the north, Kootenays, Okanagan, and greater Victoria and the considerable boundary changes within the regions[28] made their recommendations still more controversial, particularly among the Social Credit government back-benchers.

The Angus report was tabled in the legislative assembly on 29 January 1966 within eight days of its transmission to cabinet. In an unusual public display of independence, eight Social Credit MLAs voiced objections to the proposed loss of northern and rural representation, and the premier moved to quell what was becoming a mini-caucus revolt by indicating that a redistribution bill vote would be taken as a government confidence vote.[29] On 15 February a government redistribution bill was introduced in the House with some major departures from the Angus report. Premier Bennett had extended his own room for manoeuvre by proposing an increase in members to fifty-four, two more than he allowed the commission, and maintained seven seats for the north. Atlin and North Peace River were retained, and the use of multi-member seats was extended rather than discontinued. To remove Atlin, W. A. C. Bennett now argued, would be to destroy the "representation of the original settlers, the native Indians."[30] Back-bench unrest continued and at second reading came to focus in a debate on the reduction of seats in the Kootenays. The five continuing

[27] Ibid., 25.

[28] Including an extension of North Peace River into a Northland riding encompassing portions of Fort George, Omineca, and Atlin along the Alaska Highway, the loss of Skeena and extension of Prince Rupert, the combining of Fernie and Cranbrook into a Kootenay riding, the absorption of Revelstoke and Kaslo-Slocan into a Columbia River district, creation of a Shuswap riding in the Okanagan, and the loss of Lillooet.

[29] *Vancouver Sun*, 4 February 1966, 13 and 9 February 1966, 13.

[30] *Victoria Times*, 16 February 1966, 2.

dissenters included the members for Columbia and Revelstoke, who had a direct interest in the outcome. Together with the member for Lillooet they voted against the bill.[31] In one of his well-timed "second looks," the premier bowed to the unrest in the committee stage and amended the bill to divide the new Columbia River district into two by creating a Revelstoke-Slocan riding. Third reading was given with some notable absences but no dissenting government back-bench votes. Less than five months later the new boundaries were in place when the writs were issued for a 12 September provincial general election.

The Angus commission might have been the vehicle for British Columbia's first modern non-partisan and independent redistribution of seats and redefinition of electoral districts. Its review revealed a realistic outlook on the problems of representative government within the province and sensitivity to the competing claims of population equality and historic communities of interest. It appears to have taken a hard look for a balance between egalitarian and process aspects of representation. The loss of some rural and northern representation, however, proved a formidable political obstacle to their implementation even by a relatively secure majority Social Credit government enjoying its fifth consecutive term in office. The report registered such fears of dominance by the lower mainland and Vancouver and reported that

> the extraordinary belief seemed to exist that the people of the Lower Mainland were economic parasites, producing little wealth themselves, and intent on exploiting the people who live in "under-developed" areas.

It found great importance attached to the "advocacy of local interests" and "such phrases as 'servicing the district' or 'having the ear of government' were of frequent occurrence." The demand for representation by population was seen as an "artificial campaign by Vancouver newspapers."[32]

The dominant concern was to have "vigorous spokesmen for well defined interests" — i.e., in under-represented areas, those of municipalities; in over-represented areas, regions or acreage. "When it was pointed out that the Commission's assignment was to provide for the proper representation of people and not of municipalities or acres there was on occasion shocked surprise."[33] The importance of physical obstacles impressed the commission, and it was convinced that "the problem of Electoral Districts in British Columbia" was unique. Neither "the so called democratic principle of

[31] British Columbia, *Journals*, 8 March 1966, 111-12.

[32] Angus report, 16.

[33] Ibid.

representation by population" nor urban and rural representation formulas could be "safely applied in British Columbia outside the Lower Mainland."[34] The emphasis on uniqueness in the over-represented regions was however seen to have "bad consequences" in over-emphasizing "the 'Ombudsman' character of an M.L.A." and concealing "the importance of fair distribution of political power." Political life was endangered by each district thinking only of itself or its region. The commission asserted that

> it must be constantly borne in mind that the basic principle in a modern democracy is that every voter should have an equal share of political power and that, therefore he should have a vote equal in value to every other vote.[35]

In calculating a provincial standard it added, however, that "of course, no one expects mathematical precision in such matters." Although it felt that only lip service was being paid to the democratic principle of equal votes, the commission persisted in

> presuming that every voter wants as much political power as possible and is not willing to forgo his fair share of power unless there are valid reasons for the sacrifice.

Historical and regional claims for convenient boundaries, for boundaries conforming to natural barriers to communication, for boundaries that did not divide municipalities, for districts which would not be difficult or expensive to service, for special considerations in underdeveloped areas, and for numerically larger urban districts were all urged on the commission. "Within limits each type of claim is valid," the report argued, but "the proper limits are much narrower than those that have usually been claimed."[36] Within each region, the commission's guiding principle was that "every numerically small district must substantiate its claim to be a separate district. Its existence imposes a burden on numerically larger districts."[37]

The Social Credit caucus showed itself unready to accept these new limits. Terence Qualter aptly observed in his account of the 1966 experience that

> One is left with the conclusion that the British Columbia Government would like to have the provincial boundaries defined by an independent commission, because this is a very democratic thing to do, but at the same time it was not

[34] Ibid., 18.

[35] Ibid., 19.

[36] Ibid., 22.

[37] Ibid., 24.

prepared to risk the possible political consequences of actually accepting the recommendation of such a commission.[38]

The 1966 electoral boundaries remained in place for the following four elections. The 1972-75 New Democratic government of Dave Barrett attempted to replicate the Angus-style commission approach to redistribution by appointing another royal commission composed of retired Justice T. G. Norris, F. Bowers, a university linguistics professor, and L. J. Wallace, a former long-serving Deputy Provincial Secretary. Its terms of reference paraphrased those of the Angus commission with their instruction to take into account "where feasible and necessary, historical and regional claims for representation."[39] The commission was given a four-month time limit in which to prepare its report. On 30 October it received a one-week extension only to be faced with a dissolution of the legislature on 3 November for a 11 December 1975 general election. It was therefore recommended that its report dated 7 November be withheld until tabled at the next session of the Legislative Assembly.[40] The commission was allowed to recommend between fifty-five and sixty-two members. It opted for five new seats in the Fraser Valley, one each for the Kamloops area, greater Vancouver and Vancouver Island. The number of northern and Okanagan seats remained the same, and the Kootenays were reduced by one. The report prided itself in reducing the Dauer-Kelsay index to the same level as that obtained in the Angus report (43.12 compared to 43.2 in Angus and 37.78 in the 1972 general election).[41] Representation by population was not a priority, as was shown in its acceptance of a plus or minus 40 per cent deviation from a mean of 40,000 per member. Setting aside the special case of Atlin-Northland, the recommended seats ranged from plus 39.98 to minus 29.3 per cent. This extreme level of tolerance and addition of seven seats might have made the report more politically acceptable to incumbents than that of the Angus commission. The heightened level of political tension induced by the opposition to the NDP government, however, would have ensured a protracted debate. Nothing came of the report beyond its service as a reference source for the next redistribution.[42] The

[38] T. H. Qualter, *The Election Process in Canada* (Toronto: McGraw Hill, 1970), 109.

[39] Order-in-council 2420, 21 July 1975, in British Columbia, Commission of Inquiry into Redefinition of Electoral Districts, *Report, 1975* (Norris report), iii.

[40] Order-in-council, 6 November 1975, in Norris report, vi.

[41] Ibid., 11. The index calculates the theoretical minimum proportion of voters required to elect a majority in a legislature assuming two-party competition.

[42] British Columbia, Royal Commission on Electoral Reform, *Interim Report* (Eckardt report), June 1978, 10.

December 1975 defeat of the New Democratic government extended the length of time before the next general election. This, together with the availability of new 1976 census data, served to justify a burial of Justice Norris's report.

4. The Eckardt Controversy

At the end of its first term, the new Social Credit government of Bill Bennett addressed the question of redistribution for itself by appointing a one-man commission, former county court judge L. S. Eckardt, to secure a redefinition of electoral districts and review a wide range of subjects including methods of voting, eligibility of voters, party expenditures, and financing covered by the Provincial Elections Act. The redistribution set in train by the Eckardt commission proceeded with remarkable dispatch. The commissioner was appointed on 12 January 1978 and, at the request of the premier, Judge Eckardt was asked to submit an interim report on the electoral districts before 30 June 1978.[43] After forty-four public hearings, the interim report dated 17 June was submitted to the Lieutenant Governor and tabled in the legislature on 20 June. The following day, Bill 38 was introduced to implement the report's recommendations. Debate on second reading began on the 26th, third reading was given on the 28th, and on 29 June the bill received royal assent. The Eckardt boundaries defined the electoral map for the 10 May 1979 provincial general election and the two subsequent elections to date.

The Eckardt commission was from the outset one of the most controversial redistributions in the history of the province. Judge Eckardt's former unsuccessful bid for a seat as a Social Credit candidate immediately served to undermine the perception of his independence as a one-man commission. His recommendations increased the legislature by two members and in the re-allocation of seats reduced representation in metro Vancouver and the Kootenay region by one; increased Vancouver Island and the northern region by one; and added two members to the Fraser Valley. Two existing seats — Revelstoke-Slocan and Vancouver-Burrard — were abolished. It was noticed that both were held by the New Democratic opposition. The shape of some of the ridings and, in particular, the lack of compactness in the riding of Vancouver-Little Mountain also attracted controversy. Two years later this was further fuelled by a reported contact between the commissioner and the Provincial Secretary, who represented that particular riding. It was alleged that this accounted for a

[43] Eckardt Report, 9.

last minute appendage to the riding of an area which lent itself to the label of "Gracie's Finger." A subsequent investigation by the Attorney General's ministry, tabled 6 August 1980,[44] found no evidence of wrongdoing, but the affair had already played its part in the undermining of a sense of the commission's legitimacy.

Notwithstanding its partisan difficulties, the theoretical approach taken by the Eckardt commission to representative government elaborates further on that of its predecessors. Its terms of reference began with a paraphrase of the Angus commission:

> To secure, by whatever redefinition of electoral districts is required, proper and effective representation of the people in all parts of the Province in the Legislative Assembly and in formulating the recommendations to be contained in the report the Commissioner take into account where feasible historical and regional claims for representation.[45]

The 1978 interpretation of the requirements of "proper and effective representation," however, proved to be far more attuned to the kind of process considerations that drove the political outcome of 1966 than to the principles originally enunciated by the 1966 commission. The decisions made by Judge Eckardt under these terms can be seen to reflect three fundamental decisions. First, he argued that

> the impulse to add seats should be avoided and considered only in areas that are in dire need of additional representation. . . . To achieve more effective representation, redistributing existing boundaries appears more desirable than creating additional seats.[46]

He therefore proposed the addition of only two seats and placed himself in the position of having to make some difficult decisions in redistributing those existing boundaries. (Additional seats may not have saved Burrard and Revelstoke-Slocan, but their loss may not have been so absolute). Secondly, in response to concern for a balance between representation by population and such considerations as recognition of the province's geographical uniqueness and distances of districts from Victoria, the commission expanded on the criteria to be applied within its terms of reference. It detailed eight factors to be considered in making boundary changes:

1. Population
2. Geographical limitations

[44] Inquiry of the Ministry of the Attorney General into the Interim Report of the Royal Commission on Electoral Reform, 1978 (Vogel report), 5 Aug. 1980.

[45] Order-in-council 82, 12 January 1978, in Eckardt report.

[46] Eckardt report, 11.

3. Communications and transportation
4. Distance from government agencies
5. Social, economic and cultural ties
6. Regional and historical claims
7. Resource management and watershed patterns
8. Future population and economic growth.[47]

The report noted that "no single factor can be relied upon exclusively in redefining electoral districts," but in its quotations from those concerned with access to their MLA, the ability of the MLA to service an area and the availability of government agencies in the lower mainland and urban areas, it displayed a far greater affinity for such process concerns than the Angus commission's concept of representation. The commission noted the extreme objections to representation by population by northerners and their urging of "greatest emphasis on natural resources and their development due to their importance to the economy of the Province." The link between this view and a theory of representation was not elaborated upon. We are not, however, far from Premier W. A. C. Bennett's rough and ready articulation of a northern vision of future economic development as a defence for what virtually any population-related criteria would deem as over-representation. Thirdly, the 1978 commission reported that it was "inclined to support the single member concept" but would not recommend this without having the opportunity for an in-depth study.[48] It displayed less courage in this respect than Angus. As a result, the report added a member to the Surrey district, and applying a provincial average of 44,000 per member to deem the urban areas of Victoria as well as Vancouver over-represented, adjusted the boundaries of Victoria. Retention of the dual-member component in the electoral system certainly added an extra highlight to the loss of two members in Vancouver through the consequential extraction of a dual-member district. The 1978 electoral map addressed some of the problems of suburban growth but, as is shown in the 1979 regional distributions in table 2, considerable inequalities remained as a result of the Eckardt boundaries. Dennis Rumley's review of the 1978 commission concluded that "it is clear that 'proper and effective representation of the people' has been selectively applied."[49]

[47] Ibid., 13.

[48] Ibid., 14.

[49] Dennis Rumley, "Geography and Electoral Representation in British Columbia," in R. Le Heron, M. Roche, and M. Sheperd, eds., *Geography and Society in a Global Context* (New Zealand Geography Society, Massey University, 1987), 167.

TABLE 2

The 1984 Constitution Amendment Act Zones

District Zones	*Percentage of Population, 1984**	*Percentage of Seats*	
		1979	*1986*
Mainland:			
Metropolitan	14.83	17.54	14.49
Suburban	26.32	21.05	21.74
Urban-rural	13.28	10.53	14.49
Interior-coastal	27.33	31.58	30.43
Remote	0.23	1.75	1.45
Island:			
Metropolitan	4.42	5.26	4.35
Urban-rural	10.74	8.77	10.14
Interior-coastal	2.85	3.51	2.90
TOTAL SEATS		57	69

* Estimates from: British Columbia, *First Report of the British Columbia Electoral Commission*, (McAdam Report), September, 1984, Table A.

5. *Malapportionment by Formula 1984-*

All subsequent exercises in the redistribution of seats and redefinition of electoral districts in the province can be understood, at least in part, as a response to the Eckardt controversy. The first began on 23 June 1982, when Derril Warren, former leader of the B.C. Conservative party, was appointed as a one-man commission to inquire into electoral representation. The precedent set by Eckardt clearly left some uneasiness with another ad hoc one-person redistribution. With the single exception of a correction to the appendage in Vancouver-Little Mountain, Warren made no alterations in the electoral boundaries and, despite the opposition he encountered to multiple-member districts, recommended an increase in such districts with no boundary changes. This was to be as an interim measure pending adoption of a permanent independent electoral commission which would remove "all distrust about the redistribution procedure." To increase a sense of objectivity and independence in framing his new allocation of members, Warren utilized a mathematical formula to "accommodate, on a logical and consistent basis, the factors of geography and

population."[50] His terms of reference enabled him to recommend between fifty-seven and seventy-one members. The commissioner reported that "the *model* tells us that seven additional members would be required to meet the parameters set forth in the mathematical analysis."[51]

Under the population component, five ridings qualified for an additional member (Surrey, Richmond, Okanagan South, Kamloops, and Delta), while Atlin did not qualify for any seat. Columbia River and South Peace also appear to have not qualified under the formula, but this was not noted in the report. The area component was said to ensure that the "only ridings to qualify will be those sufficiently large in size so as to seriously impair the performance of their elected representative." It produced additional members for the Cariboo, North Peace, and Atlin. Atlin, for example, was entitled on the basis of population to 0.23 per cent of the 57 seats — i.e., 0.1311 members, which rounded to zero. Since its area of 56,569 square miles was above a 34,000-square-mile base it, however, still qualified for a member. The Cariboo qualified for a seat on both factors.[52]

In his examination of the existing electoral districts, Warren had come to the disturbing conclusion that "if there exists some logic or consistency, we could not discover it."[53] Warren attempted to provide some technical formula that would legitimize his own electoral map. That formula would have made British Columbia the first jurisdiction to explicitly provide for the principle of "representation by square miles." The commissioner expressed the view that

> the geographical diversity of British Columbia requires careful consideration of the vastness of rural and remote area and not just a census head-count of effective and equitable representation is to be achieved.[54]

This process orientation towards the conduct of political representation was implicit in his terms of reference. While they referred to a population criterion for the first time since 1955, they did so alongside a number of other explicit dimensions. The commissioner was instructed to

> 1. consider all matters which may provide equitable and effective representation in the Legislative Assembly, based upon, but not limited to, Population Counts 1981 Census of Canada, the geography of the province, and the

[50] British Columbia, Public Inquiry under the Inquiry Act into Electoral Representation in the Province of British Columbia, *Report of the Commissioner* (Warren report) (Victoria: September, 1982).

[51] Ibid., 31.

[52] Ibid., 29-30.

[53] Ibid., 12.

[54] Ibid., 22.

distribution of population into communities which include urban, rural and remote. . . .

AND FURTHER THAT in formulating the recommendations contained in the report the Commissioner may

1. consider additional representation for existing electoral districts based upon, but not limited to, population, geographic and historical factors;

2. consider the subdivision of any multiple member electoral district that warrants representation by more than two members;

3. make such further recommendations as he may deem appropriate, based upon, but not limited to population, geographic and historic factors.[55]

This wording was to take on an added significance after the report was tabled, but in its preparation, Warren chose to use it to refer to the sense that representation of urban areas was concerned with problems related to people while those in rural areas were far broader and more economic. Rural members were perceived to have greater difficulty communicating with a sparsely populated geographic area and had "little or no access to a powerful media" and less access to specialized facilities and resources. "Equitable representation" denoted a "comparative fairness" in which "to the extent that a Province of such diversity can allow it, the people of each region are given a voice of comparable strength in The Legislative Assembly."[56] "Effective representation" denoted "the concept of access by the constituent to the Member and the Member to the constituent." This process required personal contact. The commissioner rejected "the idea that technological aids (telephone, television, radio, telex, jet aircraft, and other mechanical devices) can replace the personal intimacy so necessary between the elected and the electorate."[57] Although the commission had attempted to determine the demands placed upon an MLA, he failed to detail the kind of personal intimacy he had in mind here.

The initial reception of the Bill Bennett government to the Report at first seemed a replay of Eckardt-style dispatch. Bill 80, Constitution Act, 1982, which would have fully implemented Warren's recommendations, was immediately introduced in the House. However, the bill was allowed to die on the order paper. The Social Credit government was retreating before some of its inconsistencies. In 1984, a new Constitution Amendment Act, Bill 16, was introduced and passed which placed redistribution solely in the hands of the proposed Electoral Commission consisting of the Chief

[55] Order-in-council 1171, 23 January 1982, in ibid., ii-iii.

[56] Warren report, 24.

[57] Ibid., 25.

SCHEDULE A

British Columbia: Population of 1986 Electoral Districts

Electoral District	*Population Per MLA*	*Population as Percentage of Provincial Average*
Atlin	5,511	13.16
Columbia River	23,144	55.27
Prince Rupert	23,721	56.65
South Peace River	27,284	65.16
North Peace River	29,529	70.52
Omineca	29,623	70.74
Alberni	30,341	72.46
Rossland-Trail	30,910	73.82
Cariboo*	31,253	74.64
Boundary-Similkameen*	32,181	76.85
Yale-Lillooet	33,834	80.80
Central Fraser Valley*	34,126	81.50
Nanaimo*	34,661	82.78
Dewdney*	34,706	82.88
Langley*	35,229	84.13
Nelson-Creston	36,960	88.27
Kootenay	37,123	88.66
Kamloops*	37,380	89.27
Mackenzie	38,206	91.24
Saanich and the Islands*	38,818	92.70
Vancouver-Point Grey*	39,124	93.43
Prince George North	39,710	94.83
Delta*	39,894	95.27
New Westminster	39,973	95.46
Victoria*	40,988	97.89
Okanagan South*	41,388	98.84
Vancouver-Little Mountain*	42,543	101.60
Burnaby-Edmonds	42,730	102.05
Skeena	43,436	103.73
Cowichan Malahat	44,132	105.39
Oak Bay-Gordon Head	44,656	106.65

SCHEDULE A (*continued*)

British Columbia: Population of 1986 Electoral Districts

Electoral District	*Population Per MLA*	*Population as Percentage of Provincial Average*
Vancouver South*	44,769	106.92
Vancouver Centre*	45,123	107.76
Burnaby-Willingdon	45,784	109.34
Vancouver East*	46,438	110.90
Maillardville-Coquitlam	47,302	112.97
North Island	48,095	114.86
Chilliwack	49,281	117.69
Shuswap-Revelstoke	49,942	119.27
Prince George South	49,954	119.30
Okanagan North	50,753	121.21
North Vancouver-Capilano	51,776	123.65
North Vancouver-Seymour	53,502	127.77
Richmond*	54,246	129.55
West Vancouver-Howe Sound	54,943	131.21
Burnaby North	56,647	135.28
Comox	58,951	140.79
Surrey-Guildford-Whalley	61,075	145.86
Esquimalt-Port Renfrew	61,316	146.43
Surrey-White Rock-Cloverdale	66,785	159.49
Coquitlam-Moody	68,203	162.88
Surrey-Newton	68,347	163.22
Average per MLA	41,873	(Electoral quota)

* Dual Member Riding.

SOURCE: Calculated from B.C. Central Statistics Bureau compilation — 1986 June Census, Statistics Canada. Total Population, June 1986: 2,889,207.

Electoral Officer, the Clerk of the Legislative Assembly and a provincial court judge appointed by the chief judge of that court. No immediate specific apportionment of seats or definition of electoral districts were proposed in the new bill, but the deliberations of the new Electoral Commission were circumscribed by a complex formula with weighted population

quotas for eight mainland and island zones. Ken Carty has observed that it all had a "whiff of the nineteenth century about it."[58] Coincidentally these zones resembled the categories in Warren's terms of reference and comprise a system of weighting not unfamiliar to Australians. The British Columbia formula was, however, even more complex than the controversial system introduced by a Queensland Labor government in 1949 and reshaped by Queensland's 1957-89 Country/National party led state governments.[59]

The first redistribution under this new constitutional provision was conducted under the chairmanship of Judge McAdam in 1984.[60] The application of the formula added more dual-member ridings and split Surrey into three single-member districts. The regional effects are shown in table 2 above. The result addressed some inequalities, but some still remained. While areas of population growth were to receive some periodic redress—to a degree dependent on their zone—the formula ensured that no riding could disappear for want of population. The extreme range in the sizes of electoral districts continued (see Schedule A). The main unquestionable advance achieved in the new process was the establishment of an independent regular review every six years or after two general elections.[61] The system, however, only provided for the addition of new dual-member districts and their subdivision when they are 60 per cent above their zonal quota. The 1979 boundaries only change as dual-member districts divide into three singles. A rough estimate of the potential impact of this formula on future electoral maps is shown in table 3. If it is assumed that district population trends remain much as they were over the 1981-86 censuses and the Constitution Act formula remained free of any "fine tuning," then the total number of districts could have expanded to eighty-one in 1990 and reached eighty-six by 2002. The number of members could have automatically grown to seventy-four by 1990 and eighty by 2002 but with no change in the representation for the five Vancouver metropolitan districts or for the single remote district of Atlin.

[58] R. K. Carty, "The Electoral Boundary Revolution in Canada," 281.

[59] See: Colin A. Hughes, *The Government of Queensland* (St. Lucia: University of Queensland Press, 1980), chap. 3; Dean Jaensch, "The 'Bjelke-mander'," in Allan Patience, ed., *The Bjelke-Petersen Premiership 1968-1983: Issues in Public Policy* (Melbourne: Longman Chesire, 1985), chap. 14; and Peter Coaldrake, *Working the System: Government in Queensland* (St. Lucia: University of Queensland Press, 1989), chap. 2.

[60] British Columbia, *First Report of the British Columbia Electoral Commission* (September 1984).

[61] British Columbia, Constitutional Amendment Act, 1984, s. 19.

TABLE 3

Potential Impact of the 1984 Formula

District Zones	*1979*	*Estimated Increase in MLAs from Six-Year Reviews* *1986*	*1990*	*1996*	*2002*
Mainland: Metropolitan	10	—	—	—	—
Suburban	12	+3	+3	+1	—
Urban-rural	6	+4	+4	—	—
Interior-coastal	18	+3	+3	—	—
Remote	1	—	—	—	—
Island: Total	10	+2	+2	+2	+2
TOTAL: MLAs	57	69	81	84	86
TOTAL Districts:	50	52	74	76	80

* Assuming same district population growth rates as 1981-86 and applying the zone formula under section 19.3 and schedules 2 and 3 of the Constitution Amendment Act, 1984.

6. *Single-Member Redistribution and the Right to Vote*

One year after the allocation of seats by the McAdam commission, a new egalitarian element was introduced into the evolution of the principles underlying the province's structure of representative government. In 1986, the B.C. Civil Liberties Association launched a challenge against the inequalities in the provincial electoral map on the ground that it was inconsistent with the Canadian Charter of Rights and Freedoms and therefore of no force and effect under section 52(1) of the Constitution Act, 1982. It was argued that "one person one equal vote" was guaranteed by five sections of the Charter:

Section 2b. Fundamental Freedoms: Freedom of Expression
Section 3. Democratic Rights: Voting
Section 6. Mobility Rights
Section 7. Legal Rights: Liberty
Section 15. Equality Rights

The association's petition sought an order setting a time limit for the legislature to conduct a redistribution or, if it defaulted, a further order for a

redistribution of seats by the courts. The first stage in this petition, *Dixon and Attorney-General of British Columbia*, turned on whether section 19 and schedule 1 (defining the electoral districts) of the Constitution Act of British Columbia were subject to the Charter — i.e., whether there was a justiciable issue. In October 1986, Chief Justice McEachern of the British Columbia Supreme Court ruled that it was. He argued that British Columbia's own provincial Constitution Act was not part of the Constitution of Canada as narrowly defined by section 52(2) of the Canadian Constitution Act, 1982, and, in what he labelled a two-dimensional approach, held that if the B.C. Constitution Act was in fact part of the Constitution of Canada, it did not follow that the Act was immune from "Charter scrutiny." The

> exercise of legislative jurisdiction given by the Constitution to a legislature, particularly when it results in a law such as the present *Constitution Act* of British Columbia, is subject to the Charter, *inter alia*, because of Charter s. 32(1)(b) and the *Constitution Act, 1982*, s. 52(1) (unless excluded by the *non obstante* clause — s. 33).[62]

The ruling was made six days after the 1986 provincial election which returned the Vander Zalm Social Credit government. During the campaign, the premier had introduced a new element into the contemporary debate by committing the government to the removal of the 17 dual-member districts. In April 1987, county court judge Thomas Fisher was appointed as a one-man commission to recommend their replacement by new single-member electoral districts. He was instructed:

> In recommending the establishment of new electoral districts to replace those that now return 2 members, the commissioner shall, where he considers it desirable, also recommend adjustments to the boundaries of contiguous electoral districts and shall generally have regard to the following:
>
> (a) the principle of the electoral quota that is to say, the quotient obtained by dividing the population of the Province, as ascertained by the most recent population figures ..., by the total number of members of the Legislative Assembly;
>
> (b) historical and regional claims for representation;
>
> (c) special geographic considerations including the sparsity or density of population of various regions, the accessibility to such regions or the size or shape thereof;
>
> (d) special community interests of the inhabitants of particular regions; and
>
> (e) the need for a balance of community interests.[63]

[62] *Re Dixon and Attorney-General of British Columbia*, 28 October 1986, 31 *D.L.R.* (4th), 558-59.

[63] Order-in-council 690, 8 April 1987, in British Columbia, Royal Commission on Electoral Boundaries, *Preliminary Report of Proposed Boundaries for British Columbia Electoral Districts* (Victoria, May 1988), 22.

The factors to be considered were precise and follow on the criteria developed by the Eckardt commission as well as in other jurisdictions. New prominence was given to population equalities in the reference to the "principle of the electoral quota," but this would have only a limited application, as the commissioner was confined to consideration of the dual-member ridings and "contiguous districts."

Given the larger issues raised by the inequalities in the overall provincial map, these terms of reference appeared too confining. They could have well lent themselves to charges of gerrymandering, as portions of adjoining ridings might be added to parts of former dual-member districts. Partisan charges were initially made that the commissioner had previously acted as a lawyer for the premier and that his independence was therefore to be questioned. This harsh accusation was subsequently unreservedly withdrawn, but the opening gambit gave an appearance of a not too promising juncture in the evolution of "fair and effective representation" for the province. In the first set of hearings held by Judge Fisher, it was pointed out that his terms of reference were capable of a wider interpretation. The term "contiguous" was capable of being construed very broadly and in fact, through a domino effect, might be taken to encompass all electoral districts — i.e., the commissioner could proceed far beyond consideration of the seventeen dual ridings.[64] Furthermore, the commission had still greater room for manoeuvre due to the absence of any reference to an actual number of seats to be used in the calculation of the quota.

The procedures for this commission allowed for far greater public input in the formulation of the proposed boundaries by requiring Judge Fisher to hold two sets of hearings, one for the preparation of a preliminary report and a further round after its publication and before submission of a final report to the Lieutenant Governor in Council. At the conclusion of the first hearing in August 1987, the commissioner requested an amendment to his terms of reference so as to remove the "uncertainty in my mandate" and allow consideration of all electoral districts "to ensure proper representation for British Columbians." The Provincial Secretary responded with a new order-in-council to clarify and expand the mandate, which was now stated as:

(i) the appropriate number of electoral districts each returning one member for the Legislative Assembly.

[64] See: Norman J. Ruff and William M. Ross, "People and Election Districts," Submission to the British Columbia Royal Commission on Electoral Boundaries, Victoria, 8 July 1987, 5-7.

(ii) the establishment, including boundaries, of electoral districts.[65]

Since the number of districts was now left entirely to the commission, the size of its electoral quota was also uncertain. The new round of public hearings, scheduled for 18 January to 15 April 1988 before preparation of the preliminary report, was therefore preceded by two days of hearings in November 1987 to obtain advice on the work of the MLA and the appropriate number to be used for the quota. In December a preliminary ruling issued by the commissioner gave notice that the submissions should assume seventy-five members in the legislature. In his interim report, released 27 May 1988, the commissioner argued that "the only way to deal with the problem of under-representation of the urban areas without exacerbating the problems experienced in the northern and remote areas is to increase the size of the legislature. Accordingly, I recommend that membership in the legislative assembly be increased to seventy-five."[66] The commissioner regarded this as the "minmum increase required." He also placed a limit of plus or minus 25 per cent on departures from strict population equality. Both decisions were reaffirmed in his final December 1988 report.[67] Judge Fisher argued for a 25 per cent tolerance as a Canadian standard and reference to smaller deviations under United States Supreme Court decisions were discounted as they varied by state and were inappropriate to a unicameral system.

The interim report showed a closer affinity with the concepts of representative and responsible government articulated by the 1966 commission than did those of Judge Eckardt. It was recognized that the MLAs played an important process function in communicating the views of the people to government and facilitating access to government departments and agencies, but the report emphasized the "legislator" role and its egalitarian implications. It warned that under party government,

> if there are great discrepancies in the numbers of people represented by members of the legislature who are making these decisions, the legitimacy of our system might be undermined.[68]

In his interim report the commissioner did not utilize the full 50 per cent range between districts. He went as low as 23 per cent below the electoral

[65] See schedules B and C, ibid., 24-26.

[66] Ibid., 5.

[67] British Columbia, The Honourable Judge Thomas Fisher, Commissioner, *Report of the Royal Commission on Electoral Boundaries for British Columbia, 1988* (Fisher report), 4-5.

[68] Fisher interim report, 5.

quota in the case of North Peace River and the new North Coast-Stikine combination to replace Atlin but designed only two as high as 16 per cent above (Burnaby-Willingdon and Kensington-Riley Park, in Vancouver). His final report used the range more fully with four ridings (Bulkley Valley-Stikine, North Coast, Okanagan-Boundary, and Peace River North more than 23 per cent below, and added two more at over 16 per cent above (Comox Valley and Vancouver-Hastings) — while pushing Vancouver Kensington over 17 per cent above the quota. Under the McAdam-Eckardt electoral map, 1986 district populations had ranged from 5,511 (Atlin) and 23,144 (Columbia River) up to 68,347 (Surrey-Newton) and 68,203 (Coquitlam-Moody). Fisher's final map produced a range from 29,444 (North Coast) to 45,216 (Vancouver-Kensington). These statistics reflect a considerable reduction of population inequalities as well as a sensitivity to regional concerns. As I have argued elsewhere, together with my colleague Bill Ross, the lower mainland received two seats fewer and the north two seats more than their due under regional population criteria.[69]

Attention to the specific boundaries and shapes of the Fisher ridings lies outside the scope of this paper. Because of the emphasis on the reduction of population inequalities, this aspect of the two reports has probably attracted relatively less public attention than otherwise might have been the case. Certainly within the urban areas of the province, where such tests are appropriate the report would not fare well under several tests for compactness.[70] An equitable distribution of the number of voters does not in itself guarantee the absence of boundary manipulations. Seventy seats with equal populations but with certain boundaries can suppress the representation of opposition parties as effectively as any uneven distribution of electors. By the end of this extended redistribution experience, in which there were over four sets of public hearings in thirty-five communities, 824 written submissions and 541 oral presentations, Judge Fisher enjoyed a degree of legitimacy and respect unequalled by any other commissioner. Given the acceptance, the next opportunity for the redefinition of seats should be more a matter of fine tuning under new permanent independent procedures.

[69] Norman Ruff and William Ross, "Reflections and Refinements: An Appraisal of the Preliminary Report of the Royal Commission on Electoral Boundaries" (fifth submission to the Fisher Commission), Victoria; 9 August 1988, 2-3.

[70] See William Crumplin, "Electoral Redistribution: The Case of the Preliminary Report of the Fisher Commission for British Columbia, Canada" (Unpublished M.A. thesis, Geography, University of Victoria, 1989).

7. *Cat and Mouse Politics and the Charter, 1988-89*

The 1987-89 debate over redistribution was about more than electoral geography and representation. It also became a contest within the province's political institutions. In addition to the commission, acting within a mandate originally established by the premier, the courts continued to be major participants in framing the course of the debate, as did the legislative assembly itself. To placate an increasingly restless back-bench and assert the role of the legislature, it was decided to submit the interim Fisher report to a special committee of that legislature which was instructed to prepare a unanimous report on the Fisher proposals.[71] The Fisher commission extended its deadlines for submissions in order to accommodate this Special Committee on Electoral Boundaries but received no formal response other than some further information from individual MLAs. Although the final Fisher report was received by the cabinet shortly before Christmas 1988, the 1989 Speech from the Throne made no reference to redistribution. The report was not made available to the public until after it was tabled in the legislature, 29 March 1989. An earlier attempt to secure a last-minute rejection of the preliminary report by the government members of the special committee was scuttled by the unanimity rule, and the committee's chairman, Jim Rabbitt, filed a final report without any recommendations.[72] On being tabled, the Fisher report was referred to the Select Standing Committee on Labour, Justice and Intergovernmental Relations, where it joined a queue of other legislative matters — the Builders Lien Act and the salaries of provincial court judges — before the committee. On 25 April, the select committee, chaired by Larry Chalmers, held an organizational meeting to establish a sub-committee on agenda and procedures. Its terms of reference required it to "report to the House as soon as possible, or following any adjournment, or the next following session, as the case may be."

The official New Democratic Party opposition indicated their willingness to accept the Fisher report, but several government back-benchers expressed their objections to any proposal to increase the number of seats in the legislature.[73] In the spring of 1989, the Premier no longer seemed as

[71] British Columbia, Legislative Assembly, *Votes and Proceedings*, no. 87, 22 June 1988.

[72] See Norman J. Ruff and William M. Ross, "Towards a More Equitable Distribution of Seats in British Columbia," *Canadian Parliamentary Review* 12:1 (Spring 1989): 21-23; *Times-Colonist*, 16 March 1989, A; and British Columbia, *Debates of the Legislative Assembly*, 3rd. Session, 34th Parliament (29 March 1989).

[73] See, for example, exchange between M. Sihota and R. Fraser in British Columbia,

sure of his initiative as in 1986. On an open-line discussion, 12 April 1989, he distanced himself from any automatic embrace of the Fisher report. Asked whether the elimination of dual-member ridings would take place before the next general election, the Premier replied, "that is going to be tough . . . the unanimity thing makes it tough too." Mr. Vander Zalm recalled that it was he who made the commitment to work towards their elimination and commended Judge Fisher for a very thorough job but noted that he was very unhappy with the proposed increase in the size of the legislature.

I'm gonna have to give on that question of going and increasing the size of the Legislature again. That really bothers me. I have trouble with that. I don't have trouble with changing the boundaries or changing the ridings. There is also a problem in that the Judge decided that people in the North where it is less populated could see their ridings increased in size and that presents a problem. Some of these people will be living 500 kilometres from their M.L.A. . . . M.L.A.s will have such a large area to represent they'll never get to see the whole of their constituency or riding. So there are problems with it. But I don't know what will happen now. Hopefully the Committee will come back and they'll all compromise a little bit and somehow arrive at unanimity. But there is no guarantee of that in the Legislature. . . .[74]

While the provincial government played a cat-and-mouse game with the Fisher commission, what has been termed the "judicialization of society"[75] has added a new egalitarian element to the redefinition of the principles of representative government within British Columbia. The British Columbia Civil Liberties Association 1986 petition against the existing boundaries had the potential of being entirely superseded by the work of the Fisher commission. In practice it only went into temporary abeyance and was to take on a still greater significance in the redistribution process. On 28 March 1988, Chief Justice McEachern answered the question as to when the case should be sent for trial by arguing that

Judge Fisher should be allowed to complete his work before judgement is given in this action so that the legislature, when it considers his report, will have both the benefit of both Judge Fisher's recommendations and the judgement of this Court.[76]

Debates of the Legislative Assembly, 12:11, 3rd Session, 34th Parliament (26 April 1989), 6384.

[74] "Voice of the Province" — Open line discussion with John Pifer, Rogers CableVision, 12 April 1989.

[75] Professor Shetreet, quoted in *Re Dixon and the Attorney General of British Columbia*, 31 D.L.R. (4th), 548.

[76] *Re Dixon and the Attorney General of British Columbia.*

After reviewing the likely timetables for the commission and legislature, he set the trial date for between 15 October and 15 November 1988. The trial was actually heard, 9 and 10 January 1989, by the new Chief Justice McLachlin, and her judgement was released 18 April 1989, just after her elevation to the Supreme Court of Canada. Her language was harsh for the existing electoral boundaries, which she found suggested a "gross violation of the fundamental concept of representation by population which is the foundation of our political system."

Chief Justice McLachlin considered six issues. First, she confirmed former Chief Justice McEachern's ruling that section 32(1)(b) of the Charter, which applies the Charter to the provincial legislatures and governments, governed the case and quoted him approvingly:

> Although the constitutional tree may be immune from Charter scrutiny, the fruit of the constitutional tree is not. If the fruit of the constitutional tree does not conform to the Charter, including s.1, then it must to such extent be struck down.[77]

Secondly, she considered the current electoral distribution as enhancing the power of the rural voter and noted that if, as in Australia, a deviation of plus or minus 10 per cent were taken as an acceptable limit, then 65 per cent of the ridings would offend that limit. Thirty-two per cent failed the Canadian federal standard of 25 per cent. Thirdly, she focussed attention on the meaning of section 3 of the Charter — the Right to Vote. She saw her task as defining "the standard or reference of what, if anything, a vote should be worth" and argued that

> viewed in its textual context, the right to vote and participate in the democratic election of one's government is one of the most fundamental of the Charter rights. For without the right to vote in free and fair elections all other rights would be in jeopardy. The Charter reflects this. Section 3 cannot be overridden under s.3(31); it is, in this sense, a preferred right.[78]

She went on to review at length the right to vote in a historic context and found that in Canada:

1. The "notion of equality is inherent in the Canadian concept of voting rights."
2. Absolute equality of voting power — i.e. "absolute — or as near as practicable to absolute — equality of electors within electoral districts" was not required.

[77] *Re Dixon and the Attorney General of British Columbia*, Vancouver Registry, A860246, 18 April 1989, 4.

[78] Ibid., 13.

3. "Relative equality of voting power" could be seen as the "dominant principle underlying our system of representational democracy" with some degree of permissible deviation.

The amount of that deviation was to be determined by the legislature acting in accordance with the principles inherent in the right to vote. In establishing some guiding principles she asserted that equality of voting power was paramount and that "the dominant consideration in drawing boundaries must be population." It was "appropriate to set limits beyond which it cannot be eroded by giving preference to other factors and considerations."[79]

She argued on the same egalitarian grounds as the Fisher commission that, in considering the legislative role of elected representatives, the majority of elected representatives should represent the majority of the citizens entitled to vote. In the Ombudsman role there should also be "relative electoral parity" to ensure equal burdens on members. As a second proposition she added that "deviations from the ideal of equal representation" may be admitted only on the basis of some other valid factors. These generally would be deviations justified on the grounds of their contribution to "better government of the populace as a whole," due weight to regional issues and geographic factors, as well as such geographic considerations as the servicing of a riding and the representation of regional interests. All of these are of course only too familiar to electoral boundary commissioners, but despite references to an Australian 10 per cent divergence and a Canadian 25 per cent standard, the Chief Justice refrained from a direct unequivocal statement as to what the precise outside limits for such permissible deviations should be. Whatever the appropriate numerical standard, it is nevertheless clear that the existing provincial electoral boundaries did not meet her tests, and she concluded that the "degree of discrepancy actually tolerated seems far out of proportion to the problems posed." The boundaries were found to violate the right to vote guarantee of the Charter and the "legislation on which they are based is invalid, unless justified under s. 1 of the Charter."[80]

The fourth question of the application of other Charter sections referred to by the petitioner (s. 2b — freedom of expression, s. 7 — the right to liberty, and s. 15 — equality rights) was an unnecessary one given her section 3 decision.[81] Her fifth question related to the practical problems of implementing a standard of reference of what a vote should be worth and

[79] Ibid., 29 and 30.

[80] Ibid., 35.

[81] Ibid., 36.

fell within section 1 of the Charter — i.e., what constitutes "such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society." In this, Chief Justice McLachlin was prepared to grant considerable leeway to the legislature and the cabinet

> to enact what might appear to them to be reasonable measures to ensure that valid geographic and regional considerations are taken into account in establishing electoral boundaries in the interests of better government.[82]

She argued that the optimal scheme ought not be required and in "such matters, the Court should refer to the Legislature." Since adjustments for non-population factors were not capable of precise mathematical definition it "is for the legislatures to make decisions on these matters, and not for the courts to substitute their views." The courts ought not to interfere

> unless it appears that reasonable persons applying the appropriate principle — equal voting power subject only to such limits as required for good government — could have set the electoral boundaries as they exist.[83]

The question was whether the means adopted "to attain these ends are proportionate to the goal."[84] Given the importance of equality of voting power, it could not be "lightly undermined." In this case the infringement "appeared too considerable" and the "grossly disproportionate" riding populations could not be justified or excused on any grounds. Section 1 of the Charter could therefore not save s. 19 and schedule 1 of the British Columbia Constitution Act.

These findings left a sixth issue of what remedies, if any, were appropriate. The Attorney General had conceded that the question was justiciable but contended that the court should not enter into questions of social and institutional policy which could bring the court into the intricacies of a redistribution exercise and "policy choices with no clear solution." This would be "abhorrent to commonly accepted notions of judicial restraint and likely beyond the court's power."[85] The crown counsel, E. R. A. Edwards, was clearly treading in the footsteps of the dissenting United States Supreme Court Justices Frankfurter and Harlan in the case *Baker* v. *Carr* at the heart of the so called "apportionment revolution," while the counsel for the petitioner, Robert D. Holmes, followed the majority opinion of Justice Brennan and Douglas. In addressing the issue, the British Columbia Chief Justice was breaking entirely new ground and determining whether the

[82] Ibid., 39.
[83] Ibid., 39-40.
[84] Ibid., 38.
[85] Ibid., 44.

Baker v. *Carr* activist approach would cross the border. She concluded, in light of Canadian, together with United States, English, and Australian decisions,[86] that "the Court can and should intervene." She conceded that electoral districting is "first and foremost the task of Legislature" and was a "task best undertaken by our elected representatives." Nevertheless, the court still had

> the ultimate responsibility of weighing the product of the exercise of the Legislature's discretion against the rights and freedoms enshrined in the Charter.[87]

She considered it more than a question of the separation of powers and authority of the legislature to act. If legislative efforts are measured against the standard of a "certain degree of proportionate representation" and "fall short" they must be declared unconstitutional.

> I conclude that it is the Court's duty to rule on the validity of the enactments establishing Canada's electoral boundaries subject to the availability of a remedy.[88]

She acknowledged that the remedial power of the courts may not be unlimited but noted that the courts had awarded a number of different remedies under the section 24 enforcement provisions of the Charter. The range of potential remedies open to the court included a declaration that a law was inconsistent with the Charter and therefore of no force or effect. In this instance, if the law was set aside, "the electoral districts vanish" and, as it would be impossible to conduct an election, the citizens would be disenfranchised.[89] The Chief Justice made her way out of this conundrum by asserting that

> the Court must proceed on the premise that, just as the Court does what it must do under the Constitution so will the Legislature. . . . It may thus be assumed that the Legislature will promptly enter on the question of what remedial steps should be taken to remedy the deficiencies in the existing legislation.[90]

She recognized that this could not happen overnight and drew on the Supreme Court of Canada's 1985 decision on Manitoba language rights[91]

[86] *Operation Dismantle* v. *the Queen*, (1985) 1 S.C.R. 441 (1985) 18 D.L.R. (4th) 481; *Attorney-General of the Commonwealth (ex rel. McKinlay)* v. *The Commonwealth of Australia* (1975) 135 C.L.R.1; and *R.* v. *Boundary Commission for England, ex parte Foot and others*, (1983) 1 All E.R. 1099.

[87] Ibid., 51.

[88] Ibid., 53.

[89] Ibid., 56.

[90] Ibid., 57-59.

[91] *Reference re Manitoba Language Rights*, (1985) 1 S.C.R. 721 (1985) 4 W.W.R. 385.

to argue that it was open to the court to suggest a temporary period where the legislation would remain valid and during which the legislature would comply with the Charter. During the time period "reasonably required" to remedy the legislation, it would "stay provisionally in place to avoid the constitutional crisis which would occur should a precipitate election be required."[92] The decision was the legislature's, but she suggested that the final report of the Fisher commission appeared reasonable and the electoral districts appeared justified, "even though the permitted deviations may be greater than have been accepted in some other jurisdictions." If a similar scheme within the time specified by the court was adopted by the legislature, "the Court's involvement will be at an end." In the event this did not occur, she simply observed that the courts are under an obligation to "fashion effective remedies in order to give true substance to these rights."[93] Robert Dixon Jr. held that the "ultimate rationale to be given for *Baker* v. *Carr* and its numerous progeny is that when political avenues for redressing political problems become dead-end streets, some judicial intervention in the politics of the people may be essential in order to *have* any effective politics."[94] Chief Justice McLachlin's 1989 decision in *Dixon and the Attorney General of British Columbia* is part of that progeny.

The Attorney General decided not to appeal the McLachlin ruling, and arguments were made before Justice Meredith by the British Columbia Civil Liberties Association and the Attorney General on 12 May 1989 as to what time period might be "reasonably required." Some of the momentum behind her decision, however, appeared lost in a subsequent June ruling by Justice Meredith that declined John Dixon's petition for the B.C. Supreme Court to set a date to bring the existing electoral map to an end. Justice Meredith was of the opinion that the chief justice's reasons for finding section 19 of the provincial Constitution Act contrary to the Canadian Charter of Rights and Freedoms neither "should [n]or can require" him to make an order to terminate the stay in applying her order. In a brief six-page judgement he held that to establish a deadline would result in "an annulment of the Legislative Assembly itself" and would be to "effectively legislate." Since this went beyond the remedial powers of the court he concluded that "I think it must be left to the Legislature to do what is right in its own time."[95]

[92] McLachlin, Ibid., 62.

[93] Ibid.

[94] Dixon, ibid., 8.

[95] *Re Dixon and the Attorney General of British Columbia*, Vancouver Registry, A860246, 2 June 1989, 6.

This approach inevitably shifted attention back to the proceedings of the Select Standing Committee on Labour, Justice and Intergovernmental Relations, which was still working its way through its own agenda. At the end of May, the select committee did commence a review of the administrative aspects of redistribution, but it was not until the spring session of the legislature neared its end in mid-July that it was allowed to move to an acceptance of the Fisher boundaries. On 6 July, the select committee resumed debate on an earlier motion by the New Democratic committee members to adopt the Fisher report and approved a government-sponsored amendment for the committee to report to the House by 14 July 1989 with recommendations for an increase in the size of the legislature to seventy-five single-member ridings, the establishment of an independent Electoral Boundaries Commission and adoption of the Fisher commission's electoral map.[96] Although this signified approval of the Fisher report, the committee's own consideration of submissions from individual MLAs also led it to ask Judge Fisher to review proposed boundary changes for their impact on community interests in Saanich and the Islands and Cowichan-Malahat.[97] The select committee's report paved the way for introduction of the hastily prepared Bill 87, The Electoral Boundaries Commission Act, which provided for adoption of the Fisher boundaries by 31 January 1990. As recommended by the select committee, future redistributions would be conducted following every second general election by a three-member commission appointed by the Lieutenant Governor in Council and composed of a judge or retired judge of the Supreme Court or Court of Appeal nominated by the cabinet, the Chief Electoral Officer and a nominee (not a MLA or government employee) of the Speaker after consultation with the premier and leader of the opposition. The criteria to determine electoral boundaries were defined under section 9 to include the principle of representation by population, "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 the Province." Deviations from an electoral quota were to be no more than 25 per cent, plus or minus, but, in an assertion of political discretion, the new legislation permits the Electoral Boundaries Commission to exceed these limits where "very special circumstances exist." This gives the new commission a latitude beyond Judge Fisher's own self-imposed limits and

[96] British Columbia, Legislative Assembly, Select Standing Committee on Labour, Justice and Intergovernmental Relations, *First Report: Report of the Royal Commission on Electoral Boundaries for British Columbia, December 1988*, 14 July 1989.

[97] See proposals discussed in ibid.; *Report of Proceedings*, 11 July 1989.

may carry some potential for future conflict with the McLachlin ruling.

For the immediate redefinition of electoral districts, if the legislative assembly was not in session, section 15 empowered the provincial cabinet to establish the names and the areas and boundaries of the new seventy-five electoral districts by regulation. Exercise of this power was subject to receipt of a unanimous report from the Select Standing Committee on Labour, Justice and Intergovernmental Relations due 15 January. The regulation could only be in accordance with the select committee's report and would be followed by legislation at the next ensuing session of the legislature. The procedure was a cumbersome one and appears to be more of a calculated response to the chief justice's activism than the subsequent decision by Justice Meredith. Nevertheless, in the absence of any precipitous election call, it ensured a 1990 redefinition of electoral districts. In anticipation of a general election shortly after redistribution, the New Democrats completed a constituency party re-organization based on the seventy-five proposed districts by the end of February 1989. The governing Social Credit Party set itself a February 1990 deadline. During the summer, Judge Fisher had considered the matters referred to him by the select committee but found that in the absence of any new information or obvious oversight there was no justification for alterations in his recommended boundaries. The select committee's second redistribution report on 31 October thus recommended implementation of his electoral map modified only by changes in eight district names. This at last set in train the formal preparation of full legal metes-and-bounds descriptions of the new electoral boundaries and maps and the penultimate stage in this protracted process — cabinet approval of the regulation to establish the new names and boundaries — on 24 January 1990.[98]

The labyrinthine 1986-89 redistribution debate has been unlike any other in the province's chequered history of electoral redistribution. The elimination of the dual-member electoral districts and redistribution of seats became part of a larger test of the political will of a premier to give direction to a restless caucus. It may be that he was prepared to end the game of cat and mouse only in order to escape a continuing battle in the courts and perhaps debilitating consequences at the polls. With the help of the Fisher report the resultant 1989 Electoral Boundaries Commission Act is, however, a major advance. No matter how cumbersome, it propels British Columbia towards the kind of Canadian standards of fair and effective representation envisaged by the chief justice.

[98] Order-in-council 156. The regulation was to become effective on dissolution of the 34th Parliament and was replaced by the *Electoral Districts Act*, S.B.C., c. 39, 1990.