BC CLA BRITISH COLUMBIA CIVIL LIBERTIES ASSOCIATION

August 29, 2012

Mr. Justice John E. Hall
Federal Electoral Boundaries Commission for British Columbia
1095 West Pender Street, Suite 301
Vancouver, BC
V6E 2M6

VIA FAX: 1-855-747-7237

Dear Mr. Justice Hall:

Please accept the attached submissions of the B.C. Civil Liberties Association to the Federal Electoral Boundaries Commission for British Columbia.

Yours truly,

Lindsay M. Lyster
President

British Columbia Civil Liberties Association
900 Helmcken Street 2nd floor
Vancouver, BC, Canada V6Z 1B3

Tel 604.687.2919
Fax 604.687.3045
Toll-free 866.731.7507

info@bccla.org
www.bccla.org

BRITISH COLUMBIA CIVIL LIBERTIES ASSOCIATION

Submissions of the B.C. Civil Liberties Association

To the 2012 Federal Electoral Boundaries Commission for British Columbia

Introduction

1. The British Columbia Civil Liberties Association (the "BCCLA") is a non-profit, non-partisan group incorporated in 1963 under the *B.C. Society Act* and has as its objects the promotion, defence, sustainment and extension of civil liberties and human rights.

2. The BCCLA welcomes the opportunity to provide these submissions to the 2012 Federal Electoral Boundaries Commission for British Columbia concerning the proposed new electoral district boundaries for federal elections in British Columbia.

Overview – Equality is the Primary Principle

3. We start with references to certain fundamental aspects of our law:

   a) Section 3 of the *Charter* provides that "Every citizen of Canada has the right to vote in an election of members of the House of Commons or of a legislative assembly and to be qualified for membership therein."

   b) Section 15 of the *Charter* provides that "Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability."

   c) The Canadian Bill of Rights in section 1(b) recognizes and confirms "the right of the individual to equality before the law and the protection of the law."

4. Our overview on the process in relation to redistribution for B.C. in 2012 is that the proposals advanced by the Commission are sound ones and ought to be respected. They provide for a close approximation to voter parity.

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5. While the proposed Skeena-Bulkley Valley riding is more than 14% less than the provincial average population, we expect that the justification for that is likely based upon the large geographical area involved, the difficulties for an MP to get around to all of the populated areas of the riding and the need to keep community and regional boundaries and "compactness" of ridings in mind when drawing lines. The rest of the ridings are drawn so as to achieve voter equality with less than 10% divergence from the average.

6. Our position is that, to the extent possible, relative voter parity ought to be the primary consideration and that the Commission has, overall, done a fair job in adhering to that.

7. To that end, we urge the Commission not to diverge from the proposed boundaries in its final recommendations if to do so would create significant disparities in population among the ridings that result. While other considerations, such a transportation links, community and regional boundaries, distance and the like, are allowed some play in the process, the fact remains that the primary consideration in a democracy must be equality. Giving any particular group or area additional weight is essentially an anti-democratic move. Adopting any suggested change to the proposals because of history or because they do not seem "popular" must be resisted.

8. The U.S. Supreme Court in the 1960's led the way in stressing the importance of voter equality in *Reynolds v. Sims* (1964), 12 L.Ed. (2d) 506. Its words bear mention:

> But neither history alone, nor economic or other sorts of group interests, are permissible factors in attempting to justify disparities from population-based representation. Citizens, not history or economic interests, cast votes. Considerations of area alone provide an insufficient justification for deviations from the equal-population principle. Again, people, not land or trees or pastures, vote. Modern developments and improvements in transportation and communications make rather hollow, in the mid-1960's, most claims that deviations from population-based representation can validly be based solely on geographical considerations. Arguments for allowing such deviations in order to insure effective representation for sparsely settled areas and to prevent legislative districts from becoming so large that the availability of access of citizens to their representatives is impaired are today, for the most part, unconvincing.

9. "People, not land or trees or pastures, vote." To hold otherwise, would be a retrograde step. And if the notion is advanced that it is not the land or trees or pastures in rural areas that need additional weight or representation, but rather the people in rural areas, the BCCLA respectfully disagrees. People are people. They do not gain an additional status in a democracy allowing for greater say in how democratic institutions ought to be run due simply to where they live. To argue otherwise confounds things.

10. Similarly, the notion that rural areas deserve more representation because they are harder for an elected representative to serve are without merit.

11. First, there are other ways of addressing such concerns without detracting from the equality principle. Rural elected representatives can be (and are) given additional travel allowances, allowances for multiple constituency offices, staffing and so on.

12. Second, the notion that the "ombudsman" role of elected officials is more onerous on rural representatives does not bear scrutiny. Elected officials in urban and suburban ridings who face multiple linguistic and ethnic communities, disparate income groups, disparate claimants on government assistance programs, all face significant challenges to their ability to serve their constituents as well. Adding to their burden a disproportionately large population to serve would only compound the difficulties. It would also discriminate against those who lived in urban areas in terms of the service their elected officials can provide.

The BCCLA's Involvement with Electoral Districting Legal Challenges – the Dixon v. AGBC Litigation

13. The BCCLA has a long history of defending the principle of voter equality, commonly referred to by the phrase "rep by pop". In the 1980's after the *Charter of Rights and Freedoms* came into force, the BCCLA reviewed the situation then existing with provincial electoral districts in British Columbia. Those boundaries displayed no proper regard for the principle of voter equality.

14. The BCCLA, through its then President John Dixon, commenced legal proceedings by way of a Petition filed with the Supreme Court of British Columbia, contesting the constitutional validity of the provincial laws that prescribed such electoral districts for provincial elections.

15. Chief Justice McEachern was then the Chief Justice of the Supreme Court of British Columbia. He case-managed the proceedings until his appointment to the position of Chief Justice of British Columbia and his elevation to the Court of Appeal. Prior to that, he addressed a preliminary question brought by the provincial government: *Dixon v. AGBC (No. 1)* (1986), 7 BCLR (2d) 174 (S.C.). That question was whether the function of drawing electoral district lines was one that was immune from *Charter* review.

16. The provincial government contended that since electoral districts were defined in the *Constitution Act* of B.C., and since there was some reference to the constitutions of each of the provinces in the *Constitution Act, 1867* and the *Constitution Act, 1982* that established the constitution of Canada, the function of setting electoral districts was part of the constitutional law of Canada and British Columbia and the courts had no role to play in reviewing such laws. In essence, the argument was that *Charter* principles did not apply to how electoral district boundaries were set, or indeed to how the process of voting was set.

17. Chief Justice McEachern rejected the province's arguments. He commenced his Reasons by noting what the petition was about:

> [4] This petition questions the allocation of seats in the legislature of British Columbia on the basis of uneven electoral representation. In short, the petitioner says the legislature has created electoral districts and there are as many as 15 or 16 times more electors in some districts than others. The petitioner, whose standing was not questioned on this application, says "one person one equal vote" is guaranteed by various sections of the Charter, particularly ss. 2(*b*) — freedom of expression, 3 — voting, 6 — mobility, 7 — liberty, and 15 — equality. The petitioner, of course, relies upon s. 52(1) of the Constitution of Canada which provides that any law that is inconsistent with the provisions of the Constitution is, to the extent of the inconsistency, of no force or effect. Thus the petitioner says unequal electoral distribution is inconsistent with various Charter rights and therefore invalid.

18. He set out what the provincial government's response to that was:

> [9] The response of the Attorney General to this petition is simply that the Constitution Act of British Columbia, including s. 19 and Sched. 1, is a part of the Constitution of Canada which is the supreme law of Canada and that the provisions of the Charter do not govern other provisions of that supreme law.

19. After reviewing the legislative history of constitutional enactments and electoral districting laws, he noted that "technical" arguments detracting from the application of the *Charter* were to be avoided:

> [39] Further, I think technical arguments should not lightly be permitted to authorize escape from the scrutiny of the Charter. It is the latter and not the definition of the Constitution that should be given a generous construction. I agree with Howland C.J.O. and Robins J.A. (both dissenting) in *Re Education Act*, supra, at p. 40, where they say:
>
> > If any doubt exists as to whether an exception to the guaranteed fundamental rights and freedoms is authorized by the Charter, the doubt must be resolved in favour of the application of the Charter and not the extension of the exception. Much was said during the hearing about the Charter being a "living tree" whose growth ought not to be stunted by narrow technical interpretations. In our opinion, the consequences that flow from the construction the proponents of Bill 30 would have the Court place on the words "or under" run contrary to the spirit of that concept. To accept that in this post-Charter era of our constitutional development Bill 30 can escape scrutiny under the Charter on that narrow technical basis, in our view, is to give the clock's hands a backward turn.

20. Finally, he concluded thus:

> [52] But it also seems to me that the exercise of a 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 by Charter s. 52(1) (unless excluded by the non obstante clause — s. 33).
>
> [53] Applying the foregoing to this case, I conclude that the authority of the legislature to enact or amend the Constitution Act of British Columbia, particularly s. 19 and Sched. 1, is "constitutional" in the sense that no other body may interfere with such jurisdiction and no body can change that arrangement without a constitutional amendment. How the legislature exercises this authority, and the validity of such provisions in the sense of conforming to the Charter, is quite a different matter. It is the court's reluctant responsibility to examine the result of the exercise of such authority to ensure that it conforms with the Charter. Thus, 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.

21. The case then proceeded to a full hearing on the merits. By the time it came on for hearing, Chief Justice McEachern was on the Court of Appeal. The case was heard by then Chief Justice McLachlin, who had been appointed to serve as Chief Justice of the Supreme Court of British Columbia. She reserved judgment and, shortly before she was appointed to the Supreme Court of Canada, delivered her Reasons for Judgment: *Dixon v. AGBC (No. 2)* (1989), 35 BCLR (2d) 273 (S.C.). She found the challenged laws to be unconstitutional. They failed to meet the requirements of the Charter.

22. McLachlin, C.J.S.C., found the variation in numbers of voters among the provincial ridings to be extreme (p. 6):

> The result of the Commission's application of these standards is summarized in Appendix A to these Reasons. It supports the petitioner's contention that there are wide deviations from the norm (the average population per elected representative).
>
> At the extremes, the electoral district of Atlin is 86.8% below the equal population norm, while the district of Surrey-Newton is 63.2% above the norm, for a total variance of 149.7%. This is an extreme but not atypical example. Nine ridings are more than 25% below the norm, while ten are more than 25% above the norm; 20 ridings are more than 10% below the norm, while 25 are more than 10% above.

23. At p. 9 of her Reasons, she noted that, "The effect of the disparities in British Columbia is to enhance the power of the rural voter. Votes in urban areas tend to be worth considerably less than votes in rural areas outside the lower mainland."

24. The concerns about according one group in society (e.g., rural voters) more political weight than their numbers merit was obviously something that ran counter to *Charter* principles of equality and democratic governance. McLachlin, C.J.S.C., set out this comment in that regard:

> 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.33(1); it is, in this sense, a preferred right: Hoogbruin v. A.G.B.C. 1985 CanLII 335 (BC CA), (1986), 24 D.L.R. (4th) 718 (B.C.C.A.).

25. The provincial government argued that the right to vote set out in section 3 of the *Charter* was a limited concept. A pre-*Charter* text was referenced to suggest that historically the right to vote in Canada meant no more than this:

> The Attorney General, relying on Boyer, Political Rights: The Legal Framework of Elections in Canada (1981), at pp.81 et seq., concedes that the following core values or rights form part of the s.3 guarantee of the right to vote.
>
> 1. The right not to be denied the franchise on the grounds of race, sex, educational qualification or other unjustifiable criteria;
>
> 2. The right to be presented with a choice of candidates or parties;
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> 3. The right to a secret ballot;
>
> 4. The right to have one's vote counted;
>
> 5. The right to have one's vote count for the same as other valid votes cast in a district;
>
> 6. The right to sufficient information about public policies to permit an informed decision;
>
> 7. The right to be represented by a candidate with at least a plurality of votes in a district;
>
> 8. The right to vote in periodic elections; and
>
> 9. The right to cast one's vote in an electoral system which has not been "gerrymandered" -- that is, deliberately engineered so as to favour one political party over another.

26. All of those were important points, but McLachlin, C.J.S.C., rejected the government's contention that they exhausted the definition of the right to vote. At pp. 16-17, she was emphatic that the concept of equality was a necessary component, indeed a component that held priority, in the definition and understanding of the right to vote:

> I would add to this list a tenth precept. It cannot be denied that equality of voting power is fundamental to the Canadian concept of democracy. The claim of our forefathers to representation by populations -- "rep by pop" -- preceded Confederation and was confirmed by it.

> As I have earlier noted, the purpose of the s.3 guarantee of the right to vote must be to preserve to citizens their full rights as democratic citizens. The concept of representation by population is one of the most fundamental democratic guarantees. And the notion of equality of voting power is fundamental to representation by population. The essence of democracy is that the people rule. Anything less than direct, representative democracy risks attenuating the expression of the popular will and hence risks thwarting the purpose of democracy.

27. Of course, finding that fundamental aspect of the meaning to be given to the right to vote was not unusual. Lord Durham's Report on British North America in the early 1800's had called for recognition and respect of the principles of representation in accordance with population. The *Constitution Act, 1867,* itself provided for the allocation of seats in the House of Commons to meet standards of proportionate representation. Throughout Canadian history, whenever instances of political gerrymandering, whether by efforts to aggregate voters in odd-shaped ridings so as to achieve a political end or to give more voting weight to voters supportive of the government by crafty drawing of electoral district boundary lines, has been met with scandal and public opprobrium.

28. Chief Justice McLachlin's conclusion that "the notion of equality is inherent in the Canadian concept of voting rights" is thus unassailable.

29. In the argument before her, the BCCLA had urged a rule of strict voter equality and had referenced certain U.S. cases in support of that. McLachlin, C.J.S.C., found that absolute or strict equality was not required. But it is important to note that in making that allowance she nonetheless held that: "relative equality of voting power is fundamental to the right to vote enshrined in s.3 of the Charter. In fact, it may be seen as the dominant principle underlying our system of representational democracy."

30. Those words bear careful consideration. While some modest deviation from absolute or strict voter equality may be tolerated as a practical matter, the fact remains that the fundamental concern must be one of ensuring equality of voting power. Otherwise, pragmatism becomes a tool for justifying every-increasing inequality and erosion of fundamental principles. Eventually, what started off as a mere "pragmatic" response to the situation "on the ground", would become a principle that reverted to the deprivation of *Charter* guarantees and the loss of confidence by the public in basic democratic institutions and values.

31. She noted as well the evolutionary nature of our history. At p. 18, she remarked that "Parliament, born as a privileged body representing a select few, evolved gradually over the centuries to a body representing the citizenry as a whole." At p. 22, she added that we had a "tradition of evolutionary democracy, of increasing widening of representation through the centuries." Increasingly, the burden becomes heavier on anyone seeking to justify diverging from equality as a norm in electoral matters.

32. McLachlin, C.J.S.C., noted as well that some of the arguments proffered as justifying disproportionate representation for rural areas ignored that they were counter-balanced by similar concerns affecting urban areas. For example, the notion that an MP or MLA could not effectively serve his or her constituents in a rural area due to large geographical areas to cover was offset by concerns that urban MPs or MLAs faced when dealing with large populations including higher concentrations of the poor or marginalized groups, or significant concentrations of ethnic minorities and linguistic groups. She wrote this:

> Relative electoral parity is similarly essential to the elected representative's "ombudsman" function which requires the representative and his or her staff to deal with individual problems and complaints of constituents. It is not consistent with good government that one member be grossly overburdened with constituents, as compared with another member.

33. In the end, McLachlin, C.J.S.C., held that the federal model allowing for deviations of up to 25% were as much as the *Charter* reasonably would allow and she noted, with apparent approval, that the province had just received a report from a Commission headed by then County Court Judge Fisher that had recommended new boundaries for B.C. provincial elections that met those criteria.

34. The upshot of that litigation was thus that Canada had formal recognition given to the fact that the *Charter* guaranteed that each voter was entitled to an effective vote and that meant that there must be relative voter parity in how electoral district boundaries were drawn.

Lessons From The Saskatchewan Electoral Boundaries Reference – the Importance of Evidence

35. In the 1990's a similar challenge arose concerning electoral district boundaries in Saskatchewan. In *Reference re Prov. Electoral Boundaries (Sask.),* [1991] 2 SCR 158, McLachlin, J., then on the Supreme Court of Canada, upheld electoral district boundaries drawn by the government of then Premier Grant Devine. The background to the case is notable. The Devine government waited until late in its term to put in place new electoral district boundaries. It derived its strongest support from rural areas.

36. The previous legislation in place had allowed for a 15% deviation from the provincial average in terms of numbers of voters permitted in each riding. The lines drawn in 1981 using that approach were now outdated given urban growth and rural depopulation.

37. Drawing from the federal example and, perhaps, from the B.C. litigation, the Devine government put in place boundaries that allowed for up to 25%, with the possibility of further exceptions in extraordinary circumstances. The lines drawn favored rural areas.

38. The Devine government met with opposition to its proposals. There were public concerns expressed as to their validity and propriety. The upshot was that the government referred the validity of the boundaries to the Saskatchewan Court of Appeal. That court held the boundary legislation unconstitutional.

39. The timing of this was awkward all round. The Saskatchewan government was now in its 5th year since the previous election. There was no realistic prospect of getting new boundaries drawn so as to allow an election to be held on those. Without electoral district lines, the ability of the province to have an election before the time limited by the *Constitution Act, 1982* for legislatures sitting was running out.

40. Also, and perhaps most pertinently for a proper understanding of the case and its significance overall, was the fact that the only "plan" in evidence before the courts on the reference to the Court of Appeal and on appeal to the Supreme Court of Canada, was the one that the Devine government's commission had come up with. There was thus no evidence of any better way to draw the boundaries.

41. The Supreme Court of Canada held its hearing on the matter on an expedited basis. Its decision was given on an expedited basis as well. The court majority upheld what McLachlin, C.J.S.C., had written in the *Dixon* case in B.C. Electoral districting laws were subject to *Charter* scrutiny. As for voter parity, once again she said that absolute or strict parity was not a requirement, but that equality was still the primary concern:

> What are the conditions of effective representation? The first is relative parity of voting power. A system which dilutes one citizen's vote unduly as compared with another citizen's vote runs the risk of providing inadequate representation to the citizen whose vote is diluted. The legislative power of the citizen whose vote is diluted will be reduced, as may be access to and assistance from his or her representative. The result will be uneven and unfair representation.

42. It is important to note this additional point, though. McLachlin, J. (as she then was), highlights it at the end of her judgment:

> In summary, the evidence supplied by the province is sufficient to justify the existing electoral boundaries. In general, the discrepancies between urban and rural ridings is small, no more than one might expect given the greater difficulties associated with representing rural ridings. And discrepancies between particular ridings appear to be justified on the basis of factors such as geography, community interests and population growth patterns. It was not seriously suggested that the northern boundaries are inappropriate, given the sparse population and the difficulty of communication in the area. I conclude that a violation of s. 3 of the *Charter* has not been established.

43. Obviously, had there been evidence before the court of an alternative – of a competing plan for how to draw electoral district boundary lines – that resulted in a closer approximation of relative voter parity, the court majority's finding could not have been the same.

44. Cory, J., (with Lamer, C.J.C. and L'Heureux-Dube, J.), in dissent, would have upheld the Saskatchewan Court of Appeal's finding on unconstitutionality. He had to grapple with the fact that there was no competing plan as well. But he brought his focus on the process of drawing the boundaries, instead of just on the result. He noted this:

> In Saskatchewan, the basic requirement of reasonable equality was met when the 1981 constituency map was drawn. No reason has been provided as to why it was no longer possible to achieve the degree of equality reflected in that distribution. Moreover, no explanation has been given as to why the balancing of the relevant factors could not, as it was previously, be left to the Commission rather than being mandated by the legislature. The province has failed to justify the need to shackle the Commission with the mandatory rural-urban allocation and the confinement of urban boundaries to municipal limits. The effect of these mandatory conditions was to force the Commission to recommend a distribution which departs from the higher degree of equality achieved in 1981. In the absence of a reasonable explanation as to why this was necessary, the distribution in question is suspect and there is no basis upon which to conclude that the legislature's objective in imposing the mandatory conditions was pressing and substantial.

45. It is clear enough that had an alternative plan been provided to the court that kept closer to voter parity, the result would likely have been to find that the Devine government's plan was unconstitutional. One could not argue that the evidence in the case demonstrated that the primary consideration – voter parity – was being given due weight if the government-sponsored plan was more unequal and a clear basis for demonstrating a justification for such a divergence was not provided.

Alberta Revisits the Disparity Problem

46. In the 1990's, the Alberta government sought to entrench a disparity in favor of rural voters in its provincial electoral districting laws. Again, the courts there decided that in the absence of evidence of a better plan they would not invalidate the law, but at the same time made it clear that there was no constitutional imprimatur of acceptability for such discrimination.

47. In an early phase of litigation over the legislation, the courts refused to enjoin it being proclaimed into law. The government tried to argue that amounted to approval of what it had done. When the matter came on for a full hearing, the court clarified that was not correct. In *Reference re: Order in Council 215/93 Respecting the Electoral Divisions Statutes Amendment Act,* 1994 ABCA 342 at para. 46, the Alberta Court of Appeal said this:

> [45] It is one thing to say that the effective representation of a specific community requires an electoral division of a below-average population. That approach invites specific reasons, and specific facts. The constitution of Canada is sufficiently flexible to permit disparity to serve geographical and demographic reality.
>
> [46] It is quite another to say that any electoral division, for no specific reason, may be smaller than average. In the 1991 Reference, we affirmed the first, not the second. We affirm again that there is no permissible variation if there is no justification. And the onus to establish justification lies with those who suggest the variation.

48. The court complained that the Reference was proceeding without clear reasons and evidence from the government why the boundaries were being drawn as they were. It did note its strong suspicion that improper factors had come into play:

> [59] While we hesitate to make a firm statement in the absence of detailed reasons, we fear there may well have been regard for an irrelevant consideration. This serious concern proceeds from this basic idea: we do not think it a correct approach to the Charter to exclude unpopular alternatives simply because they are unpopular.
>
> [60] It is one thing to say that, on the facts and for a given community, a deviation becomes a practical necessity; it is quite another to say that existing deviations must remain because significant numbers of voters otherwise will be unhappy. The only fit response to that, in general, should be to remind voters, with Burke, that "the people never give up their liberties but under some delusion".
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> [61] While some deviations in Alberta are no doubt inevitable, we see evidence that the practical necessities raised by the principle of effective representation did not, alone, guide the hand of the legislators. On the contrary, what seems to have motivated this scheme at least in part was the acknowledgment that, whether or not some disparities were warranted, change would be made slowly so as not to offend unduly the political sensibilities of some electors.

49. Obviously, the fact that a given area has "always" had an MP or MLA all to itself is hardly a justification for continuing that if its number of voters has fallen in relation to the rest of the province. Indeed, when one goes back to the *Dixon* litigation, part of the rationale for the Atlin and Columbia River constituencies in the northwest and southeast corners of B.C. continuing to exist was that they had long been in existence. That proposition simply did not withstand examination, given that Atlin was only 1/15th the size in terms of voters as the largest riding and Columbia River, although a bit more populous, likewise had only a fraction of the number that existed in urban ridings.

50. The Alberta Court of Appeal added:

> [65] .... One reason [Mr. Bogle, a government representative] gives in his affidavit for this decision was that a further reduction "would have meant a sudden and substantial reduction in the level of representation." That is, we observe, exactly the concern of some electors. The concern, we feel constrained to add, of other electors, those in Metropolitan Alberta, was that their existing inadequate level of representation would remain reduced.
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> [66] With respect, this very natural concern of an elected official for the "comfort zone" of a vocal portion of the electorate is not a valid Charter consideration. The essence of a constitutionally-entrenched right is that it permits an individual to stand against even a majority of the people. Put another way, Canadians entrenched certain traditional rights for minorities in the Constitution because they do not trust themselves, in all times and circumstances, to respect those rights. The fact, then, that a significant number of Albertans do not like the results of an equal distribution of electoral divisions is no reason to flinch from insisting that they take the burden as well as the benefit of democracy as we know it.

51. The court noted that in its 1991 decision it had refused to overturn the electoral districts provided for as they represented a significant improvement towards the equality principle. The government argued that was as far as it had to go. The court's response was to reject that. They may have had in mind something similar to what Lord Thankerton observed about precedent: "the decisions of this House in progressively construing a statute must often be stepping-stones rather than halting places": *Birch Bros., Ltd. v. Brown*, [1931] AC 605.

52. The Alberta Court of Appeal reiterated the progressive and evolutionary nature of movement towards closer approximation of equality:

> [67] It may be thought that we took a different view in the 1991 Reference about the disaffection of non-urban electors. The Court there refused to make a declaration of invalidity because:
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> > The political prudence that encourages gradual but steady change from larger to smaller deviation should not be castigated. Indeed, even if the court were inclined to hold that the automatic deviation built into the 43/40 split offended the Charter, we no doubt would temper any relief granted in a way not unlike what this committee recommended.
>
> [68] We accepted that reasoning, but only as a reason for judicial restraint in the face of error, not as a valid consideration for a boundary-writer. We saw "gradual but steady" movement towards a Charter-supported approach. (Whether we thus invoked section 1 or the power to withhold a remedy is an issue we stepped past for that case, and will again for this.) We saw, in the 1989 scheme, a considerable closing of the gap. In coming to that conclusion, we relied on the power of an electoral commission to use the hybrid division. On that basis, we saw evidence of enough progress to warrant a refusal to act. But this was consideration of appropriate judicial restraint, not approval of regard for irrelevant considerations.

53. At para. 70 of its decision, the court emphasized the importance of the point:

> As we have said, the origin of the problem before the Legislature is the historic imbalance in the level of representation between agrarian and non-agrarian populations in Alberta. Each year this problem worsens, because each year urban populations increase and non-urban populations decrease. We call this a problem because it impacts significantly on the right to vote of urban Albertans. This cannot be permitted to continue if Alberta wishes to call itself a democracy.

54. The court advised the government, in response to the Reference questions, that it meant what it said about "gradual and steady" progress towards equality and that any divergence therefrom required clear, reasoned and compelling justification.

55. The court's words are apposite here. The work of this Commission must be to continue the progress towards equality among voters. It ought not be deterred in that effort by calls from some that suggest that following the requirements of the *Charter* is "unpopular" in some quarters. The Alberta Court of Appeal reasoned that such "unpopularity" was simply not a factor that properly could be considered when dealing with *Charter* rights, particularly when they touched upon the fundamental concerns of preserving democratic institutions and the confidence that the public overall ought to have in their integrity.

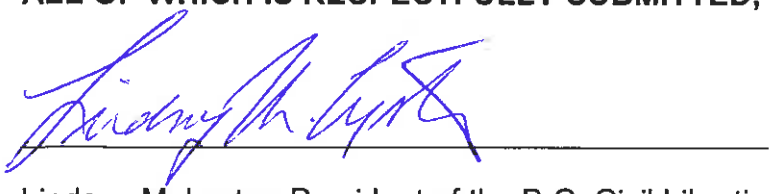
The Burden of Demonstrating that Changes to the Proposals Should be Made and that they Satisfy Constitutional Guarantees and Legal Standards is on the Person Suggesting Such Changes

56. The reason that we have gone over that point and the history of these legal challenges in such detail is that they underscore a point of importance for consideration by this Commission in relation to any suggestions made for changes to the proposed boundaries that would result in significant deviations from the voter parity rule. The proposition is this: the Rubicon has been crossed. The proposals put forward are a reasonable basis for drawing the electoral districts in B.C. They demonstrate "how it can be done" so as to comport with the requirements of the federal redistricting legislation and with the *Charter* equality and effective voting guarantees. To go backwards after having found that there is a way to draw lines so as to respect the other factors noted in the Electoral Boundaries Readjustment Act and achieve the degree of voter parity met with the lines proposed would be wrong.

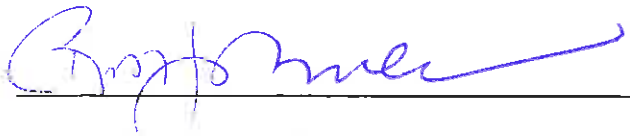
57. That is not to say that changes here and there that result in either substantially the same voter parity or perhaps even a closer approximation of voter parity among the ridings ought not be considered. But it does emphasize that the burden is on anyone proposing a change to show (a) why such a change is reasonably required, (b) what important purposes would be served by making it, and (c) how such changes achieve the primary goal of ensuring voter parity at least as well as the proposed boundaries do.

58. At present, we are not aware of what suggestions may be made concerning any changes to the Commission's proposals. We urge the Commission to keep in mind the submissions set out in this paper when evaluating any of those and to adhere to the *Charter*'s guarantee of voter equality.

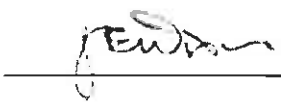
ALL OF WHICH IS RESPECTFULLY SUBMITTED,



Lindsay M. Lyster, President of the B.C. Civil Liberties Association



Robert D. Holmes, Q.C., Past President of the B.C. Civil Liberties Association



John Dixon, Past President of the B.C. Civil Liberties Association