

The Directional Path of Electoral Reform in New Brunswick
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It was not long ago that scholars and general public alike looked with askance at electoral politics in New Brunswick. Whether it was district gerrymandering, election-day treating, or party-made ballots, New Brunswick was viewed as a backwater of politics in Canada. To a certain extent, such views are still voiced despite the magnitude of reform endeavours especially since the early 1990s. This paper aims to portray the current situation by highlighting the reform proposals of the Commission on Legislative Democracy in 2004, the amendment of the Elections Act in 2005, the redistribution of the electoral boundaries in 2006, and the results of the 2006 election.

While the province's representational regime is not without imperfections, it has certainly changed from its jaded image of the past. As to what brought about this reform initiative, the reasons were not unlike those found in other jurisdictions that have been contemplating similar reforms. More particularly, however, the general election of 1987 had a jolting impact when the Liberal party led by Frank McKenna scored a shut-out victory by winning all fifty-eight seats with 60% of the popular vote. This unusual and most traumatic event served to direct attention to both the gross disparities in district sizes and the distorted impact of the plurality formula. The situation resulted in a major redistribution in 1993-95 that paved the way for the more recent developments during the first decade of the twenty-first century.

This paper seeks only to describe the path of electoral reform during the past four years in the province of New Brunswick. First, the following section will set a backdrop by briefly outlining both the way things used to be and describing the McKenna reform measures adopted during the mid-1990s. The second section will then review the recent spat of reform proposals, the latest redistribution of electoral boundaries, and the relative state of constituency equality at the time of the 2006 general election.

Historical Setting of Electoral Politics in New Brunswick

It has long been commonplace (for example see Qualter 1970) to distinguish analytically the components of the election process: the eligibility rules in respect to both voters and candidates; the administrative machinery for running elections; the size and demarcation criteria of districts; the electoral formula for determining winners; and the regulation of election finances. As one of the country's oldest political entities, New Brunswick has had more than two hundred year's experience with elections, first as a

British colony (1784-1867) and then as a Canadian province (since 1867).¹ During this period of time, New Brunswick was never a leader in electoral reform, but more of a follower adopting new practices and structural arrangements only after they had been proven elsewhere. Even in the case of the secret ballot, although the province was the only jurisdiction to enter Confederation with this form of voting already in place, the province's secret ballot method did not include an essential element: an official, standardized ballot. Instead, until 1967, New Brunswick relied upon the contenders for elected office to supply their own ballots, which allowed for corrupt voting practices to occur. (Garner 1963, 17-35; Garner 1969, 54-73; and Thorburn 1961, 40-42)

Accounts of New Brunswick's political history have often focused on the more colourful aspects of a few selected elections such as riots, scandals, controversial elections, election treating, and other more blatant forms of electoral corruption (Doyle 1976; and Fitzpatrick 1972, 116-33). These accounts have been deficient in two ways. This literature has been especially weak in explaining the original intellectual foundations of the province's election rules, and how and why these rules have changed over the years. Secondly, almost all of these colourful accounts have come from earlier years (pre-1960s) and, as Ernest Forbes (1989, 7-12) and Robert Young (1986, 133-56) have separately argued, the perpetuation of selective and partial images from the past to depict the contemporary political setting of the Maritime Provinces (including New Brunswick) is fraught with problems.

The purpose of this paper is not to probe the province's political history, but to concentrate on recent reforms. It is sufficient to state, therefore, that by the latter part of the twentieth century, New Brunswick possessed most of the same electoral rules and mechanisms as found in the rest of the country. For instance, the eligibility rules to be a voter and to be a candidate are universal adult suffrage for Canadian citizens eighteen years of age or older. Since the 1967 general election, ballots have been standardized, printed, and handled by the state through the office of the Chief Electoral Officer – no longer produced by the individual parties which had been the practice since the introduction of the secret ballot in 1855. The Chief Electoral Officer is an independent officer of the Legislative Assembly, and is responsible for impartial running of elections. In 1974, the multi-member district system, which had been in place since the first election in 1785, was replaced by a system of single-member districts. As Hugh Mellon (1991, 137-69) has observed, a modern law regulating election finances and providing annual allowances to political parties was adopted in 1978; as well, there is a Supervisor of Political Financing who oversees these regulations. The plurality formula is still used to determine winning candidates, and has always been used in the province. Thus, as stated above, the main structural features of the electoral process in New Brunswick by the late 1980s were not greatly dissimilar from what is found in the other provinces (as well as at the federal level).

Of course, given the myriad of election rules, this is not to say that everything is exactly the same. As Donald Blake (2006, 115-44) has recently indicated, provinces do

¹ For accounts of the state of government and politics in New Brunswick, and the province's political history, see: Thorburn 1961; Camp 1970; Garland 1979; Tulloch 1985; Dyck 1996; and Mellon 2001).

vary on specific rules and regulations although they do share a lot of general features. The one area where New Brunswick lagged behind most of the country was in respect to electoral boundary redistribution. By the late 1980s, the province was still awaiting the “electoral boundary revolution” (Carty 1985, 273-87; and Hyson 1995, 285-99).

Actually, redistribution had historically been a rare event in the province. Counties (as well as the city of Saint John) were traditionally used as electoral districts, with each having two or more Members of the Legislative Assembly (MLAs) in rough approximation to population size and diversity of communities within the county. As the province’s population increased after 1785, new counties – and thus new districts – were occasionally (not periodically) established, with the executive exercising discretion as to when and where to create the counties and how many MLAs to assign to each county. In 1973-74, Premier Hatfield called upon a commission to assist in converting the mostly multi-member districts into only single-member districts. Each multi-member district was divided so that the county would still have the same number of MLAs – for example, if a county had five multimember MLAs, then it was divided into five single-member districts which could vary by +/-25% from the quotient for that county. Thus, from the get-go, using the province-wide population, there was great disparity in the sizes of the single-member districts.

Mention has already been made of the jolt that the 1987 general election had in the province. At that time, focus was most immediately upon the scale of the victory and the distortive impact of the plurality electoral formula. No longer did Canadian political science educators have to instruct their students by using possibilities or drawing upon theoretical and comparative literature (Rae 1971). Rather, they had a Canadian example: the Liberal party of New Brunswick won 100% of the seats with 60% of the provincial vote, with 40% of the electorate having nothing to show for their vote. (Hyson 1988; and Hyson 1990).

Eventually, attention also focused on the gross disparities in constituency sizes. Admittedly, as intimated earlier, there had always been disparities since these single-member constituencies had been created in 1974. After thirteen years of shifting population, however, these disparities were even greater.

By the time of the 1987 general election, however, a new factor had entered the picture. The equality provision (section 15) of the Charter of Rights and Freedoms had come into effect in 1985, and seemed to have implications for the section 3 provision in respect to the right to vote. Coupled together, did these provisions mean voter parity, and that constituencies should be the same in size (or at least reasonably close in size)? There were a few court cases in other provinces and there was the 1991 Carter decision of the Supreme Court of Canada (Johnson 1994; and Courtney 2004, 61-63), and the issue piqued the minds of some scholars (Courtney, MacKinnon, and Smith 1992). But the government of New Brunswick decided to hold a major redistribution by an independent commission.

Details of this redistribution have been presented elsewhere by this author (1995, 285-99; 1998; and 2000, 174-97), so it is only necessary to note a few highlights of this event. Appointed in March 1991, the New Brunswick Boundaries Commission held two extensive rounds of public hearings across the province during the next two years, and

submitted its second and final report in December 1993. This commission was co-chaired by two judges with five other commissioners with links to the four existing political parties; interestingly, despite a very large Liberal majority in the legislature (following the 1991 general election), the Liberal-connected commissioners on the commission were a minority. Under the leadership of the two co-chairs, this commission produced a non-partisan report that radically redrew the province's boundaries that eliminated the gross disparities in constituency sizes. Although the legally permitted variation from the provincial quotient was +/-25%, the Commission actually used +/-20% as its working figure. Fifty-four of the new constituencies were drawn accordingly; the one other constituency – Fundy Isles – was specified by the Legislative Assembly to be an exception because of its isolated location and the transportation difficulties for the MLA to represent the three islands. The Commission only had the legal power to make recommendations to the Legislative Assembly but, given the professionalism and impartiality of the commissioners, all of the recommendations of the final electoral map were accepted save for a very few minor changes.

The Gini index is often used in the study of constituency redistribution to measure the cumulative dispersion of all constituencies from perfect equality, where values range from 0 for perfect equality to 1 for perfect inequality. As a result of the 1991-93 redistribution, the Gini index was reduced from 0.213 for the 1991 general election, which was the last election prior to the redistribution, to 0.079 for the 1995 general election, which was the first to use the new constituency boundaries; actually, if the legislated exception of Fundy Isles was excluded, the figure would have been 0.065. (Appendix A; and Hyson 2000, 192). By the mid-1990s, therefore, New Brunswick had moved from having one of the highest levels of inequality to having one of the lowest.

The commissioners were greatly influenced by the notion of “effective representation” emphasized in the majority opinion of the Supreme Court of Canada in the Carter decision (Hyson 2000, 184). While not voter parity, effective representation did have the impact of requiring the New Brunswick commissioners to justify variation from parity that, in turn, allowed New Brunswick to move from a situation of gross disparities to a most egalitarian set of single-member districts.

New Brunswick Electoral Reforms of 2003-06

As the foregoing historical discussion demonstrated, New Brunswick underwent a series of major changes during the latter part of the twentieth century. But nothing could have predicted the pace and scale of electoral reform that has unfolded during the three-year period between 2003 and 2006 (see Appendix B).

Initially, after winning its second, consecutive election majority, the Progressive Conservative government of Bernard Lord appointed the Commission on Legislative Democracy in December 2003. Two immediate observations have to be made in regard to this commission. First, it had a very broad mandate. Not only was it assigned the task to report on reforming the election process, but it also covered numerous other items under the rubric of “legislative democracy”, including reform of the legislature, intra-party politics, civics education, referendums, and correcting the democratic deficit. Second, although given a relatively short time-span within which to report (one year), the

Commission was very elaborate, consulting academics, community leaders, and general public, and producing a very thorough and detailed final report. The scale of consultation and thoroughness had not been seen with earlier commissions.

The 1974 commission, after helping to establish the single-member constituencies, had also made a very short second report listing a number of recommendations but had done little research and had offered no explanations for its recommendations. In any case, these recommendations never received any serious consideration because the legislature was dissolved shortly after the second report was made and eventually a general election was held using the new single-member districts. As for the 1991-93 commission, its mandate was more specifically focused to the matter of drawing a new electoral map, and both its preliminary and final reports were remarkably brief with no discussion of related electoral reform issues.

Actually, while the 2003-04 commission was much more thorough in coverage and more detailed in content, these features were perhaps self-defeating. By trying to cover so many topics, the final report would have meant a fundamental make-over of the whole political regime, possibly with some constitutional implications. The report comes across more as a grand design that promoted a variety of currently popular “hot” academic ideas to remake democratic government.

On the other hand, by covering so many analytically distinct topics, the politicians were able to pick and choose the reform proposals that they considered to be the most feasible on the short-term at least. This, in fact, is what did happen.

Given the focus of this paper, concentration will be primarily on the 2003-04 commission’s electoral reform agenda. It would be too peripheral for us to wander into other areas – legislative reform, civics education, democratic deficit, etc.

One of the more interesting features of the 2003-04 commission was that it clearly established a set of values that guided its research and recommendations: fairness; equality; representative; open; effective; accountable; inclusive; and choice. (*Final Report and Recommendations*, 7-9) Accordingly, the 2003-04 commission proceeded to recommend the passage of a “Representation and Electoral Boundaries Act” so that there would be required by law – no longer at the executive’s discretion – a periodic redistribution every ten years, after the release of the decennial census results, to be conducted by an independent commission. The latter would be composed of people who were non-partisans; it would follow a rigid time schedule and consult the general public; and its recommended electoral map would have to be accepted as final by the Legislative Assembly. Perhaps the most radical and controversial recommendation, however, was the related proposal that the province should adopt a “mixed-member proportional representation” (or MMP) system: 36 single-member constituencies elected by the plurality formula and 20 regional seats to be filled by the proportional representation (PR) list system. For the 20 PR seats, the province would be divided into four regions of equal population size and each region would have five representatives chosen on the basis of party vote in that region. Voters would thus cast two separate ballots on election day – one for a candidate in their single-member constituency, and one for their favourite party. To be counted and awarded PR seats, a party would have to meet the “threshold” of receiving at least 5% of the provincial vote.

Perhaps sensing that the MMP proposal would be controversial, the 2003-04 commission also recommended that the proposal be placed before the public via a referendum, and, if approved, the MMP system should first be used in the general election of 2011. By the way, this last point in regard to 2011 is in itself interesting because the commission also recommended fixed elections every four years – the third Monday in October, starting October 15, 2007. Likewise, in respect to the notion of holding a referendum, the commission also made a major recommendation to enact a referendum law to cover the holding of future referendums; much of this proposal seemed to be based on the lessons learned from New Brunswick's 1991 referendum on VLT gambling. (Hyson 2001-02, 19-26)

The next logical step, at this juncture, would be to describe the government's response to the recommendations. But, as can be seen in Appendix B, the government's formal response did not come until June 20, 2006. It appears that, on the eve of the 2006, the Lord government was clearing the slate of past agenda items, with a desire to establish its position for the upcoming election. Though the official response was late in coming, the government did proceed with little fanfare to deal with a most significant matter: the proposal to pass a "Representation and Electoral Boundaries Act". The legislation was passed in June 2005, and then the government proceeded in the summer of 2005 to implement the law by appointing a commission. (Appendix B)

As required by the statute, the Electoral Boundaries and Representation Commission was assigned the task of conducting the redistribution using data from the previous decennial census. (The 1991-93 commission had used the number of voters to demarcate the districts.) Chaired by two justices, the other five commissioners were also non-partisans; all seven commissioners were officially appointed by the Lieutenant-Governor-in-Council, based on the unanimous recommendation of the Legislative Administrative Committee (composed of MLAs from all three parties) of the Legislative Assembly. Not only was the 2005-06 commission non-partisan in its composition, but it had the final say on the district boundaries for the next general election. New Brunswick had finally, in terms of the legal structure and powers of its boundaries commission, become part of the electoral boundaries revolution.

Two matters of similar, if not greater, interest were the commission's mandate and its procedure for conducting the redistribution. According to its enabling statute, the 2005-06 commission was assigned a time schedule by which to analyze the current size of districts and the last census data; to hold public hearings (eventually twelve) around the province in order to receive public input; to submit a preliminary report containing a propose set of districts to the Legislative Assembly (and general public); to hold another round of public hearings (seven, this time) to gauge public reaction to the preliminary report; and then to submit its final report with the proposed new districts and their names.

This raises the question: what were the commission's demarcation criteria? Since the Electoral Boundaries and Representation Act of 2005 required the continuation of the same number of districts – 55 in total – the commission first divided that number into the province's population in order to derive a quotient (of 13,263). This quotient was then used by the commissioners to redraw the boundaries; furthermore, the enabling statute specified that deviations from the quotient could be up to +/-10%. Demarcation criteria,

as specified by the statute, includes: communities of interest; effective representation of the two linguistic communities; municipal and administrative boundaries; rate of population growth; effective representation of rural areas; geographical accessibility, size, and shape; and any other considerations that the Commission considers appropriate. There is, however, a statutory provision that allows for a small or under-populated district to exceed -10% for “extraordinary circumstances”. It should be noted that this statistical and map-drawing exercise was greatly assisted by staff from the office of the Chief Electoral Officer.

Much of the foregoing information about the 2005-06 redistribution commission comes from the opening pages of the commission’s final report (Electoral Boundaries and Representation Commission 2006, 1-7). The bulk of the report, however, consists of a detailed account of how the commissioners reached their decision for each new district along with descriptions of the district’s boundaries. All of these new districts, except for Tantramar, were within the allowable deviation of +/-10%. Tantramar was deemed to be a case of extraordinary circumstance (Electoral Boundaries and Representation Commission 2006, 19): it is a largely Anglophone district next to the Nova Scotia border that is bounded by the Bay of Fundy on one side and the Northumberland Strait on another side, with the closest New Brunswick areas being mainly francophone.

Since the mapping staff of the office of the Chief Electoral Officer (or “Elections NB” as it is now commonly called) had assisted the Electoral Boundaries and Representation Commission, the Chief Electoral Officer was able to prepare for the next general election. (Office of the Chief Electoral Officer 2007, iii) As evident in Appendix A, the 2006 general election had the most egalitarian sets of electoral constituencies in New Brunswick’s electoral history; as measured by the Gini index, the measurement was 0.056 and, if we excluded the Tantramar constituency, the figure was 0.053. This is one more piece of evidence of the modernization of New Brunswick’s election process. By the way, out of interest as a passing thought, it is fascinating to reflect back to the much ignored second report of the 1974 commission that had initially suggested +/-10% deviation limits.

So, as can be seen, the major reform to emerge during the past three years has been in regard to electoral redistribution, extending from the spur to reform initiated by the 1991-93 commission, to the research-oriented report of the Commission on Legislative Democracy, to the extensive work of the 2005-06 commission, with the results seen at the time of the 2006 general election. But let us backtrack and reconsider some of the other electoral reform proposals. As noted earlier, the Commission did make many recommendations on electoral reform, and on numerous other matters such as tackling the democratic deficit. Mention was also made of the government’s formal response (Executive Council 2006) just prior to calling the general election of September 18, 2006.

One immediate observation was: why did not the government wait another month to call a general election, so as to follow the spirit of the Commission of Legislative Democracy’s suggestion for fixed elections every four years on the third Monday of October? In the absence of legislation for fixed elections, Premier Lord could certainly have demonstrated commitment to the idea in practice by waiting one month; instead, in

his official response, there was only a promise to implement the idea in the future. Second, the Commission on Legislative Democracy (CLD) had also made the proposal to adopt a Mixed Member Proportional (MMP) system, and that the idea be put to the public for approval through a referendum. The MMP proposal constitutes fundamental and radical change, and it is understandable that any government would be hesitant to proceed. However, the CLD's proposal that there be a statute on referendum to regulate the holding of any future referendum – on MMP or on any other matter – was rather technical in nature and based on practice in other Canadian jurisdictions. In his very late response to the LDC recommendations, Premier Lord only promised a commitment to passing a Referendum Act, and made a specific commitment to holding a referendum on the MMP proposal on May 12, 2008.

With Lord's defeat at the time of the 2006 election and his resignation from the Legislative Assembly, his electoral and other reform promises are off the agenda. Indeed, the agenda for reform does not appear to be a priority item of the Shawn Graham Liberal government. Still, given the fact that the Progressive Conservative party actually won more votes (47.1%) than the Liberal party (46.8%), with the latter winning more seats (29 Liberals and 26 Progressive Conservatives), may yet revive concern with the distortive impact of the single-member, plurality system and the CLD's MMP proposal.

Yet, if past practice is a predictor of the future, the province of New Brunswick will not lead the path to any form of mixed-member proportional representation. (Milner 1999 and 2004As in the case with redistribution, New Brunswick will probably wait until other jurisdictions have tested the water before taking its own plunge.

Appendix A: Gini Indices for Selected General Elections

1991 General Election (last held prior to 1991-93 redistribution) –	0.213
1995 General election (first held after the 1991-93 redistribution)	
- all 55 districts -	0.079
- all except the Fundy Isles district –	0.065
2006 General election (first held after the 2005-06 redistribution)	
- all 55 districts -	0.056
- all except the Tantramar district –	0.053

Note 1: At the time of the 1991-93 redistribution, the Legislative Assembly directed the members of the boundaries commission to make an exception for Fundy Isles, because of the isolated location of the three islands and the transportation difficulties that faced the MLA in representing the area. At the time of the 2005-06 redistribution, the commissioners found it necessary, under its demarcation criteria, to treat the Tantramar district as an exception.

Note 2: I wish to acknowledge and thank Dr. Rod Hill, University of New Brunswick (Saint John campus), for his invaluable assistance in calculating the Gini indices.

Appendix B: New Brunswick Electoral Reform Agenda, 2003-06

Commission on Legislative Democracy – appointed, December 19, 2003

Commission on Legislative Democracy – reported, December 31, 2004

Electoral Boundaries and Representation Act

– approved by the Legislative Assembly, June 30, 2005

Electoral Boundaries and Representation Commission – appointed July/August 2005

Electoral Boundaries and Representation Act – preliminary report, November 21, 2005

Electoral Boundaries and Representation Act – final report, February 20, 2006

Government's Response to the Commission on Legislative Democracy's report

– June 20, 2006

General Election – September 18, 2006

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