

Democratic Renewal on Prince Edward Island

Canada's smallest province is well-known for its high voter turnout. This tradition of strong engagement in the democratic process makes it a particularly interesting site for introspection about forms of democratic renewal. In this article, the author, who serves as chair of the Special Committee on Democratic Renewal, provides the context and outlines the history leading to PEI's most recent examination of its electoral system, which culminated in a plebiscite held from October 29 to November 7, 2016.

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Jordan Brown, MLA

The Government of Prince Edward Island recently indicated in its 2015 Speech from The Throne that it was committed to “initiate and support a thorough and comprehensive examination of ways in which to strengthen our electoral system, our representation, and the role and function of the Legislative Assembly.” Government also prepared and disseminated the *White Paper on Democratic Renewal* (the “White Paper”), in the most recent sitting of the Legislature. As the title would imply, the White Paper is a discussion paper surrounding democratic reform on Prince Edward Island, relating, in particular, to our voting method; the number and distribution of seats in our Legislative Assembly; and, opportunities to enhance election laws and representation in the Legislative Assembly.

On July 9, 2015, the Legislative Assembly unanimously resolved that a five person Special Committee of the Legislative Assembly be created to guide public engagement and make recommendations in response to the White Paper on Democratic Renewal. It is my privilege to have been named Chair of that Special Committee. In that capacity, let me provide some context to the task at hand, particularly as it pertains to the manner in which we vote, and to delineate some of the issues and challenges faced by the Committee.



Jordan Brown

Jordan Brown was elected to the Prince Edward Island Legislature in the May 4, 2015 provincial general election, as the representative for District 13, Charlottetown - Brighton. He serves as chair of the Special Committee on Democratic Renewal, vice-chair of the Standing Committee on Public Accounts, and a member of the Standing Committee on Education and Economic Development.

Context

By virtue of a general election culminating on May 4, 2015, when 82.22 per cent of eligible voters cast a ballot, 27 Members of Prince Edward Island's Legislative Assembly were elected via a first past the post system, to represent, and govern, the 146,000 constituents that comprise Canada's smallest province.

Liberal MLAs formed a majority government, with 18 seats; the Progressive Conservatives (PCs) were elected in eight ridings; and, for the first time in the Island's history, a Green MLA, party leader, Dr. Peter Bevan-Baker, was elected, and his party given Official Party status. This result was based on a popular vote breakdown of 40.8 per cent for the Liberals, 37.4 per cent for the PCs, 11 per cent for the New Democratic Party (NDP), and 10.8 per cent for the Green Party, respectively. Of 27 MLAs, only five are female and one is Acadian (a historically identifiable culture on P.E.I.). There are not any visible or cultural minorities represented amongst the elected members (despite there being a relatively large contingent of Aboriginal Islanders, and relatively recent Immigrants). Further, three of the recently elected MLAs are in their mid-30s, with the balance ranging in age from their mid-40s to early 70s.

The fact that 82.22 per cent of the electorate voted in 2015 is a testament to the high importance Islanders place in our provincial democracy. In part, I believe this is due to a general willingness to constantly examine our democratic processes – and take action when it is deemed beneficial.

Although the 2015 election resulted in a strong parliamentary opposition and arguably the most balanced legislature the province has seen in some time, pundits, politicians, and others felt there was a need to consider other, more representative, methods of electing the Island's representatives. Of the 27 members elected, most did not receive a majority of votes cast in their district. Moreover, at least three ridings were decided by a margin of one per cent or less (mine having been one of them, with a difference of only 22 votes between the PC candidate and myself, following a recount). And, one district was ultimately decided by a coin toss, following a tie and after a recount. With all of the major parties making democratic reform a platform issue, it is no surprise that the election result fueled further calls to consider democratic reform anew.

Recent History of Democratic Reform on P.E.I.

I would be remiss not to mention that this is not the first time electoral reform has been considered on Prince Edward Island. In fact, in November of 2005 a plebiscite was held asking Islanders: "Should Prince Edward Island change to the Mixed Member Proportional System as presented by the Commission on PEI's Electoral Future?" Roughly one third of eligible voters voted in the plebiscite. Of those that voted 36.4 per cent voted "Yes" in favor of the proposed Mixed Member Proportional System, and 63.6 per cent voted "No".

There have been three subsequent general elections. In 2007 the governing Progressive Conservative party was ousted by a Liberal government then led by Robert Ghiz. The Liberals won 23 of the 27 seats, with the remaining four going to the PCs. The Liberals took 52.9 per cent of the popular vote, and the PCs 41.4 per cent, with the Greens taking approximately 3 per cent and the NDP approximately 2 per cent.

In 2011 the governing Liberals lost one seat to the PCs, taking 51.4 per cent and 40.2 per cent of the vote, respectively. The Greens and NDP each increased their share of the popular vote by approximately one per cent. Perhaps the most notable statistic to Islanders was that voter turnout fell to 76.4 per cent, which was the lowest voter turnout since Elections PEI began recording voter turnout in 1966.

Five of the last seven elections on Prince Edward Island have resulted in similarly lopsided breakdowns. Of these, two have resulted in a single member opposition.

Anecdotally, a number of voters, particularly in the youth demographic, have indicated they perceive a lack of suitable choices and feel that their vote doesn't matter. For these reasons and others, democratic reform has once again become an issue of relative importance to Islanders. It would be trite to say things have changed since the 2005 plebiscite. However, it wouldn't likely come as a surprise to note that many Islanders have questioned whether there is any real prospect of a renewed attempt at democratic reform resulting in a different outcome than did the 2005 effort.

Pre-Plebiscite History of Democratic Reform on P.E.I.

Prince Edward Island's history of electoral reform by many standards is extensive and hard fought. Formal governance on the Island dates back to 1769 when the Island was declared a colony of British North America. By the mid-1770s the Island's legislature consisted of a Governor, appointed Executive and Legislative Councils and a popularly elected House of Representatives, later known as the House of Assembly. Initially only Protestant males were allowed to vote; Catholics won the franchise in 1830. In 1851, after a decade-long fight by a group known as the reformers, responsible government was bestowed upon the Island. Government was to be accountable to the elected House of Assembly. In 1862 the Legislative Council became an elected body, though only those with at least £100 in freehold or leasehold property were permitted a vote.

Since joining Canada, as a Province, in 1873, a number of democratic and institutional reforms have occurred. Among the reforms:

- A secret ballot was introduced in 1877, repealed in 1879, and permanently reinstated in 1913;
- The two houses of the Legislature were merged into a 30-member unicameral Legislative Assembly in 1893. Each district elected a Councilor, using a property requirement for male electors, and an Assemblyman by universal male suffrage. The dual-member riding system was unique and the property distinction between Councilor and Assemblyman introduced a perception of "two-classes" of MLAs even though their powers as MLA were equal;
- The franchise was extended to some women in 1922 and to Aboriginal Islanders in 1963;
- The property requirement for Councilor electors was eliminated in 1964;
- The size of the Legislature was increased to 32 when two seats were added in the Charlottetown area prior to the 1966 election; and,
- The voting age was reduced to 18 years prior to the 1970 election.

Aside from splitting the riding of Charlottetown into two separate ridings in the 1960s, there was little alteration to the electoral districts themselves since the 1873 reforms and disparity in the number of electors per district grew. In 1974, an Electoral Boundaries Committee and Sub Committee of the Legislative Assembly were established. Recommendations

flowing from the committee process, including a redistribution of electoral ridings, failed to be adopted.

In 1991, island resident Donald MacKinnon took matters into his own hands by filing an application in the Province's Supreme Court seeking a declaration that certain sections of the *Elections Act* should be repealed. His application argued they were contrary to section 3 of the *Canadian Charter of Rights and Freedoms*, which guarantees every Canadian Citizen the right to vote. The sections were alleged to permit a variance in the number of electors per district resulting in disproportionate representation, which the Electoral Boundaries Committee had previously recommended be addressed.

MacKinnon's application was based on the Supreme Court of British Columbia's decision in *Dixon v. British Columbia (Attorney General)*, (1989) 59 D.L.R. 4th 247., wherein Chief Justice Beverly McLachlin stated:

The historical development of voting rights in Canada and the view taken of such rights in other democracies leads inexorably to the conclusion that relative equality of voting power is fundamental to the right to vote enshrined in section 3 of the *Charter*. In fact, it may be seen as the dominant principle underlining our system of representational democracy.

At the same time, absolute equality of voting power has never been required in Canada. It has been recognized since Confederation that some degree of deviation is permissible where other considerations so require.

She went on to say that it would be up to the legislature to determine the extent of the allowable deviation, within the confines of the principles inherent in the *Charter*.

MacKinnon's application was ultimately successful, prompting the institution of a further Electoral Boundaries Commission, in 1994. The Commission recommended that the Island be represented by 27 single-member districts. After much debate, and amendment to the boundaries of the 27 districts, the recommendation was enacted. This prompted a further court challenge by many of the Island's incorporated municipalities, who felt that the new system allowed for disproportionately large representation of the Island's rural constituents. Following appeal the application was denied hearing by the Supreme Court of Canada.

During the process of its work, the Electoral Boundaries Commission received submissions on mixed-member proportional representation (MMPR). The Commission went on to address them in its 1994 report; the authors indicated, in essence, that the possibility required a great deal of further study before it could be addressed intelligently, particularly as the system had not been widely adopted.

The next time the Electoral Boundaries Commission was engaged in 2000, the global landscape had changed. New Zealand very publicly adopted a form of MMPR in 1994 and Scotland and Wales adopted Additional Members' Systems when they achieved sovereignty in the late 90s. The Commission went on to recommend that the possibility of an MMPR system be studied in further detail.

This recommendation led to the institution of the 2003 Electoral Reform Commission. Led by former Chief Justice of the Province Norman Carruthers, the Commission's report was delivered after seven public meetings and a number of submissions from the public and experts. It recommended that a further commission be established to engage and educate the public with respect to the potential options, and to refine a question for a referendum. Justice Carruthers proposed an MMPR system, based on one used in New Zealand. It would include 21 members elected by district, and 10 further members elected from lists to balance the result according to the proportional vote.

The 2005 Commission on PEI's Electoral Future, which was comprised of eight nominated members of the public, set out on a broad campaign of engagement, holding 12 public meetings across the Island, and participating in as many as 20 more. The

Commission also undertook an extensive promotion and advertising campaign. Although the plebiscite resulted in a "No" vote, the Commission felt that the public had been much more engaged and educated on the topic than when it began its work.

Recognizing the previous efforts of citizens, litigants, committees and commissions with respect to democratic reform, and the result of the most recent plebiscite, our committee must appreciate that it has a number of important tasks: to educate its members and Islanders about the various possibilities; to engage and solicit input from Islanders; and, to be open-minded and prepared to listen to what Islanders are saying to us. Did Islanders vote "No" in 2005 because they did not want change or because they did not favor the particular option presented?

That said, there is great comfort drawn from high voter turnouts on the Island. Taken in isolation from other factors, the willingness of Islanders to participate is an indication of a highly engaged population. In part, this may be due to their willingness to constantly re-examine their electoral system.

The current examination of our electoral system is another phase in that democratic tradition. Once again, it is likely that our current exercise will provoke a lively and constructive debate over the Island's democratic evolution. Recognizing that we are not starting from a blank slate, it is also my hope, and I believe the hope of our committee, that the progression through this process will be sufficiently educational, open, and engaging to allow for the preparation of a plebiscite question which may simultaneously gauge the appetite for and set the course of future democratic reform on Prince Edward Island.