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The Minority Report on Electoral Districts: Will the Law Protect Alberta from UCP Gerrymandering?

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In a representative democracy, an elected representative is chosen by voters in their assigned electoral district. It goes without saying that the integrity of the process used to determine electoral districts is essential to a functional representative democracy. Any whiff of partisan influence on the process will poison the legitimacy of electoral outcomes, raising the spectre that electoral districts were drawn to ensure a particular result on voting day. This is known as "gerrymandering". Political commentators (see here and here and here) have described the minority report issued by the two UCP-appointed members of the 2025-2026 Alberta Electoral Boundaries Commission as classic gerrymandering. We are not quite there yet because it remains to be seen whether the minority report will be implemented by the UCP government. This post describes the content of the Electoral Boundaries Commission report submitted to the Speaker of the Legislative Assembly on March 23, 2026 (the "Report") and explores what legal guardrails exist to prevent gerrymandering from infecting Alberta's democracy.

Electoral Boundaries Commission and Setting Electoral Districts

The path to setting electoral districts in Alberta begins with an electoral boundaries commission appointed pursuant to section 2 of the *Electoral Boundaries Commission Act*, RSA 2000, c E-3 (the "Act") to review existing electoral districts and propose changes to areas and boundaries which are ultimately set by the Legislature. The function and purpose of the review is to ensure that the electoral districts constitute "effective representation", taking into account prescribed considerations set out in section 14 of the Act. These considerations include population numbers, community interests, culture, municipal borders, geography, and the need for clarity, consistency, and coherence in chosen boundaries.

Population changes (including overall numbers and density) are the most significant consideration in a review, and section 15(1) of the Act reflects this by setting a rule that the population of a proposed electoral district must not be more than 25% above nor more than 25% below the average population of all the proposed electoral districts. The intention of this rule is to ensure relative (but not exact) voting parity across electoral districts, as people move to and from and within Alberta over the years. Section 15(2) provides a limited exception to this rule, allowing up to four electoral districts to have a population between 25% to 50% below the average, if the commission is satisfied that prescribed criteria are met. This exception exists to accommodate large geographic areas within Alberta with low population numbers.

The considerations and requirements set out in sections 14 and 15 of the Act are consistent with the jurisprudence on what constitutes "effective representation" in setting electoral districts. The leading judicial decision is *Reference re Prov. Electoral Boundaries (Sask.)*, [1991] 2 SCR 158. The case originated as a reference to the Saskatchewan Court of Appeal, seeking the court's opinion on whether proposed electoral districts were in compliance with section 3 of the *Charter* which provides every citizen of Canada with the right to vote. The specific issue decided by the Supreme Court was the extent to which the *Charter* allows for some variation in population numbers across electoral districts and the distribution of districts across urban and rural areas, such variances meaning that not every vote counts the same when electoral districts have different numbers of eligible voters. The Court ruled that the "right to vote" is a right to "effective representation" and not a right to a formal equality of votes. The Court explained its reasoning as follows:

> 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.
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> …
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> Notwithstanding the fact that the value of a citizen's vote should not be unduly diluted, it is a practical fact that effective representation often cannot be achieved without taking into account countervailing factors.
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> First, absolute parity is impossible. It is impossible to draw boundary lines which guarantee exactly the same number of voters in each district. Voters die, voters move. Even with the aid of frequent censuses, voter parity is impossible.
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> Secondly, such relative parity as may be possible of achievement may prove undesirable because it has the effect of detracting from the primary goal of effective representation. Factors like geography, community history, community interests and minority representation may need to be taken into account to ensure that our legislative assemblies effectively represent the diversity of our social mosaic. These are but examples of considerations which may justify departure from absolute voter parity in the pursuit of more effective representation; the list is not closed.
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> It emerges therefore that deviations from absolute voter parity may be justified on the grounds of practical impossibility or the provision of more effective representation. Beyond this, dilution of one citizen's vote as compared with another's should not be countenanced. … (at 183-184)

Section 2 of the Act provides that the Commission consists of five appointees, none of whom can be sitting MLAs: the Chairperson is appointed by the Lieutenant Governor in Council on the advice

of the premier; two persons appointed by the Speaker of the Assembly on the nomination of the opposition leader; and two persons appointed by the Speaker on the nomination of the premier. The five persons on the 2025-2026 Commission are listed on page 7 of the Report, including the chairperson Justice Dallas K. Miller who currently sits as a supernumerary justice on the Court of King's Bench. Unlike Alberta, some provinces have fully independent electoral boundary commissions. For example, in Manitoba the commission members are legislated in *The Electoral Divisions Act*, CCSM c E40, as the Chief Justice, the presidents of postsecondary institutions, and the Chief Electoral Officer.

Sections 7 and 8 of the Act require the Commission to provide the Speaker with an interim and a final report. The final report must be filed no later than 5 months after the interim report is filed with the Speaker. These sections also require the Commission to take submissions from the public on areas and boundaries of electoral districts in two stages. The first stage of public hearings takes place before the Commission files its interim report. The second stage of hearings takes place after the interim report is published. The final report is tabled in the Legislature (section 10). In cases where the Commission fails to reach a unanimous proposal on electoral districts, the proposal made by a majority of Commission members is the report of the Commission (section 9).

In summary, the key takeaways on the law governing the setting of electoral districts in Alberta are:

- The Electoral Boundaries Commission is not fully independent from the Executive. The premier and cabinet appoint a majority of Commission members;

- The Commission does not set the number of electoral districts. Pursuant to section 13 of the Act, the Legislature determines the number of districts which the Commission is to propose (this was changed from 87 to 89 in 2024 – see section 3 of the *Justice Statutes Amendment Act, 2024*, SA 2024, c 17);

- The Commission does not actually establish the electoral districts. The Legislature establishes electoral districts under the under the *Electoral Divisions Act*, SA 2017, c E-4.3. The Legislature presumably does this based on a report of the Commission, but there is no statutory requirement for this correlation;

- The Commission implements a public process to inform its work, and it proposes electoral districts in a transparent manner to achieve effective representation based on legislated considerations;

- "Effective representation" means relative parity in the number of eligible voters across electoral districts. Average population per district is used as an objective proxy for eligible voters. Where the Commission proposes an electoral district with a population number that deviates significantly from the average, the deviation must be justified or comply with legislated exclusions.

Judicial consideration in Canada of electoral district changes have come in the form of applications for judicial review and references from the Executive for a judicial opinion. Generally speaking,

Canadian courts will defer to a legislature in terms of the process followed to review and change electoral districts, so long as the outcome meets the "effective representation" requirement. Interestingly, electoral district changes were a significant issue in Alberta in the early 1990s, with not one but two references sent by the Executive to the Alberta Court of Appeal (see *Reference re: Order in Council O.C. 91/91 in Respect of the Electoral Boundaries Commission Act*, 1991 ABCA 317 (CanLII) and *Reference re: Order in Council 215/93 Respecting the Electoral Divisions Statutes Amendment Act*, 1994 ABCA 342 (CanLII)). The Court of Appeal declined to make declarations on the *Charter* compliance of electoral district determinations in these 1990s references, but did strongly suggest rigid requirements (such as a requirement that municipal boundaries be determinative of electoral districts) would be problematic and emphasized the importance of transparency and justification for chosen electoral district boundaries.

The Alberta Electoral Boundaries Commission Final Report

The 2026 Report (being the report of the majority of the 2025-2026 Commission members) consists of 285 pages. The minority report is attached as Appendix E (adding another 76 pages). The contents of the Report include the following:

- description of the Commission's public engagement process and submissions received (at pages 13 – 14, 34 – 42)
- discussion of the applicable law and 'effective representation' (at pages 15 – 24)
- list of 10 findings on 'effective representation' in Alberta (at page 26)
- methodology for calculating the average population number per electoral district at 54,929 persons (at pages 27 – 31)
- justification for the proposed electoral district boundaries (at pages 43 – 57, 61)
- recommendations for law reform (at pages 58 – 60)
- response to the minority report (at pages 62 – 64)
- addendum written by the Chair (at pages 66 – 67)
- maps of proposed electoral districts (Appendix A, pages 69 – 86)
- description of proposed changes by electoral district (Appendix B, pages 87 – 266)
- discussion of proposed urban-rural hybrid electoral districts (Appendix C, pages 267 – 272)
- history of Alberta electoral boundaries commissions (Appendix D, pages 273 – 284)

I leave an examination of the findings of the Report on substantive proposals for electoral districts to others, except to say that I think the proposals made by the majority of the Commission members meet the legal test of "effective representation" and provide a well-justified explanation for significant deviations in population numbers across proposed electoral districts.

My focus here is on the assertion made by the majority of Commission members that the minority report is unlawful. This assertion is truly astounding for it speaks volumes on what must have been near-complete dysfunction within the Commission after the interim report was filed with the Speaker.

The words of the majority speak for themselves:

> In October 2025, the Commission submitted a unanimous report to the Speaker of the Legislature. From then until late January 2026, when all public hearings and written submissions had been received, the Commission focused on fine-tuning and amending our interim report. Our goal was to do the best we could to create a map of 89 electoral divisions that was in line with the Act, was constitutional based on the tools available to us, and provided "effective representation" for Albertans. In late January, the minority departed substantially from that goal.
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> The use of the term "Commission" in the minority report is inapplicable, and it should be read as referring to the minority of the Commission. Further, to claim to use the underlying principles, philosophy, and jurisprudence from the interim report and the majority report is clearly not warranted, considering what they propose.
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> We are of the view that the minority's proposed maps violate the principle of procedural fairness, unreasonably apply the statutory considerations, and likely violate s. 3 of the Charter. Each of these concerns is outlined in more detail below. (at 62)

The Report observes the minority report makes radical changes to many electoral districts that have no basis in any submissions received by the Commission and accuses the minority report of employing hybrid districts to add rural representation at the expense of urban voters. The Report provides several examples to support its concerns with the minority report (at 62). The Report observes that the minority report uses "sparsely detailed maps" and "highly unusual boundaries" with no apparent rationale for many of its proposed districts (at 63). Specific to Calgary, the Report observes that the minority report proposes electoral districts in NE Calgary with higher than average population numbers and electoral districts in south Calgary with lower than average numbers, and departs from using population numbers as justification for a striking discrepancy among electoral districts within the same city:

> Building on the problems outlined above, we note that the minority report seems to be motivated by other considerations. To put it starkly, 15 electoral divisions mostly in central and northeast Calgary are approximately 11% above the average provincial population. By contrast, 14 electoral divisions mostly in the south and west of Calgary have an average variance of just 2% above the provincial average. What might be the minority's true motivation for this? Our friends south of the border may have a term for this type of redistricting. (at 63-64, emphasis added)

Of course, the phrase "this type of redistricting" is a veiled reference to gerrymandering – partisan influence in the setting of electoral districts for political gain.

Conclusion

The stage is set for UCP gerrymandering. The majority of Commission members, in the strongest words available to them, have advised the Legislature to prevent this from happening by disregarding the minority report: "The majority objects in the strongest terms to this unconstitutional minority report and wishes to warn the Legislature against its adoption." (at 64) If the Legislature heeds this advice, the law will have played an important role by setting a

transparent process that facilitated the imposition of political accountability to protect the integrity of the electoral system in Alberta from an attempt at gerrymandering. In many places, the Report itself reads like a judgment of law on the unconstitutional minority report.

If the Legislature chooses to adopt the minority report, the law will be called upon to have a much larger and more significant role in protecting Alberta from another attack on a democratic institution by the UCP government. These are indeed the final words of the majority in the Report itself: "Accepting the minority report would certainly invite a court to write the next chapter. Some in the Legislature may view that as an acceptable risk. However, they will not like how the story ends." (at 65)

But how will this matter get before a court? Recall that in the 1990s, the Alberta Court of Appeal received the matter by reference from the Executive. That path seems incredibly unlikely this time, given the premier's view that superior court justices in Alberta are undemocratic. And anyways, the reference power has become just another crass political tool under this UCP government. The UCP government uses it regularly to check federal jurisdiction, but never does likewise to check its own jurisdiction. Unlike governments in other provinces who do ask their court of appeal to opine on the constitutionality of their own proposed legislation. For example, see *Reference re Environmental Management Act (British Columbia)*, 2019 BCCA 181 (CanLII).

So, it is very likely that this matter will only get before the court via an application for judicial review of the proposed electoral boundaries in the minority report. This will provide the Attorney General with an opportunity to construct many roadblocks for an applicant to get past: standing, justiciability, abuse of process, to name a few. Of note, the UCP government will not be able to invoke its seemingly favourite roadblock on legal accountability of its legislation - section 33 of the *Charter* - because section 3 of the *Charter* is not subject to the notwithstanding clause. The passage of time has shown that the drafters of the *Charter* were wise to ensure that the most fundamental of democratic rights in Canada – the right to free and fair elections – would be protected from override by authoritarian impulses.

The need for judicial review on electoral districts may also be a trap set by those within the UCP government who seem eager to attack the independence of the justice system in Alberta: Showcase how federally-appointed judges get in the way of Alberta "democracy" by placing them in a position where they must rule on electoral boundaries.

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