

**Establishing Effective Representation and a Protected District for Anglophones in Brome-
Missisquoi**

by

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Dedication

To my sweet, loving Grandparents whose impact on my life is greater than they realize.

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Abstract

Anglophones of Brome-Missisquoi once had a strong regional identity. The community presently is on the decline, which perpetuates the loss of representation in Quebec's political institutions. Inspired by the concept of "consociational districting", the purpose of this thesis is to establish how Anglophones in Brome-Missisquoi can be effectively represented in Quebec politics. Following the theory of path dependency; the cases of *Saskatchewan v Carter* (1991), *Raïche v. Canada* (2004) and the Acadian Nova Scotia electoral boundary case (2012) establish the legal jurisprudence for Anglo-Quebecers to acquire institutional protection as guaranteed in Section 3 of the Canadian *Charter* and through the provisions to protect communities of interest in both federal and provincial electoral commission laws. Solutions to guarantee the effective representation of Anglophones, include; establishing a protected electoral district for Anglophones in Brome-Missisquoi, increasing the seat capacity in Quebec's National Assembly and appointing more diverse members to Quebec's Commission.

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Chapter One

Introduction

Located in the heart of Quebec's Eastern Townships, Brome-Missisquoi is a provincial riding that is home to residents who are among Canada's only English-language minority. Early settlement of the Townships was primarily from English groups; the loyalists (1700s), Irish, Scottish, and people of British origin (1800s) (Rudin, 1985, 43-52). Loyalists took comfort with being British subjects, by settling along the Missisquoi River in the counties of Bolton, Potton, and Sutton (Wilkin, 2019). By 1844, Anglo-Americans composed eighteen percent of the Township's population (Little, 1989, 13). The county of Brome was home to 180 English and Welsh-born citizens, 145 Irish and 64 Scottish-born residents while the county of Missisquoi had 616 Irish-born, 329 from England and Wales and 193 Scottish-born residents (Little, 1989, 14). The lure of the Townships was the potential for resource extraction. The region's early settlers benefited from exports of wheat, iron, potash and potato whiskey and the ability to trade and transport their goods to the city of Montreal (Little, 1989, 7-8; Ville de Lac-Brome, 2020).

Life in the Townships was not completely harmonious, nor were relations between the English and the French flawless. Quebec's Legislative Assembly contemplated having French Canadians settle the region of the Townships but hesitated out of concerns development would "encourage economic development in the region where the chief beneficiaries would be the province's land-holding merchant-official clique" (Little, 1989, 8). The concern of the provincial legislature was promoting the development of a more "Anglicized" province (Little, 1989, 8).

Even with linguistic differences, Anglophones benefitted from a system of "consociational elite accommodation" following Confederation (Stevenson, 1999, 16). Anglophones once held two or three seats in the provincial cabinet, with ministers being primarily from rural ridings such as Brome and Missisquoi (Stevenson, 1999, 37-38). This form

of representational accommodation was short-lived. Tensions between the French majority group intensified and Anglophones, once considered a strong majority, felt the power dynamics change over the proceeding decades.

Navigating through provincial politics has been a challenge for Quebec's English minority, particularly over the past decades. Anglophones hold sentiments as "strangers in their own house" and as people who are not really *a part* of the nation (Floch & Pocock, 2012, 132-133). Political divisions are among the problems perpetuating the loss of representation for the historic Anglophone community. Quebec's Anglophone communities—which are spread out across the province—have been on the decline cumulatively throughout the province. Anglophones in the Eastern Townships have faced the most significant decline of all Anglophone communities in the province (Rudin, 1985, 188). The decline began in the 1860s, when the Anglophone community experienced a thirteen percent decline in its population (Rudin, 1985, 188). In the early twentieth century, the community faced another significant decline by twenty-two percent (Rudin, 1985, 188).

As Anglophone numbers declined, so did, their ability to influence political life. Quebec's English-speaking minority went from being a strong minority to having weak institutional support (Department of Canadian Heritage, 2011, 1; Klimp, n.d., 9). This democratic deficit represents how Anglophones are under-representation in provincial politics. The source of this democratic deficit is not only embedded in Quebec politics, but represents deeper institutional and systemic issues.

The theory of consociational democracy indicates that Anglophones' place in Quebec society is more nuanced. A consociational democracy is one that has an egalitarian society, which is based on a stable and representative government in a nation with deeply divided groups (Stevenson, 1999, 10). The initial debate among Canadian political scientists was whether consociational democracy was applicable to Canada. Kenneth McRae, for instance, argued that Canada was not a consociational democracy, because the majoritarian Anglophone population was "disinclined" to provide the French minority with elite accommodation (Stevenson, 1999, 12). However, McRae's book was published in 1974, predating the adoption of the *Canadian*

Charter of Rights and Freedoms (1982) and the referendums on Quebec Sovereignty (Stevenson, 1999, 12). Canada has since established policies on official bilingualism and engaged in a form of collaborative federalism, especially with its relations with Quebec (Simeon et al., 2014, 80). More to the point, consociational democracy applies to provinces with a linguistic duality. Seeing that Quebec's French-speaking population and Anglophone minority in Brome-Missisquoi are representative of different linguistic groups, the theory of consociational democracy applies.

Anglophones have called the Eastern Townships their home since the 18th century, making the community members of the Quebec polity (Stevenson, 2004, 332; Wilkin, 2019). Considering that Anglophones continue to reside in Brome-Missisquoi; then protection of the community's interest is essential. A prevailing myth is that Anglophones in Quebec have rights by virtue of being among the largest language group in Canada. This myth has not been explicitly debunked in academia, which means that Anglophone representation is often overlooked. Anglophone representation is even overlooked by the government that has, in recent decades, avoided making any further consociational commitments. The actions of the Quebec government and their institutions alike—represents the actions of a majoritarian government.

With the decline of the Anglophone community and the loss of representational guarantees in political institutions, Anglophones have had to adapt to Quebec's French "majoritarian democracy" (Stevenson, 1991, 16). Bickerton and Graham's article suggests that electoral boundary commissions are paving the way for the adoption of a new form of consociational democracy; with consociational districting (2020, 45). While Stevenson takes a more general institutional approach to understanding how Anglophones have adapted to the political circumstances of Quebec, I apply Bickerton and Graham's concept of consociational districting to make an argument for the protection of Anglophones in Brome-Missisquoi.

The idea behind Canada's single-member-plurality electoral system was to divide the Canadian electorate into ridings whereby "a group of persons who are connected because they share a certain identity (such as a cultural identity) or certain interests (such as economic interests)" (Elections Canada, 2020, *Enhancing the values of representation*). Canadian elections

(both federal and provincial) are defined by geographical units that capture collective identities, which includes language minorities.

English-speaking Quebecers are not to be exempted from political representation—despite having their common language in their national favour. According to Carole Aippersbach; “minority language protections ensure that all of these aspects of Canadian identity will be preserved” (2011, 32). Official language minority protection stems from federal law as in the *Official Languages Act* (Official Languages Act, 1985). The establishment of the *Canadian Charter of Rights and Freedoms* in 1982 was a judicial tool that has helped to clarify and secure language minority rights.

Language minorities are often discussed in the context of French minorities, whereas my research focuses on the exceptional circumstances of Anglophones in Quebec. Anglophones have an exceptional geographical predicament; being an Anglophone minority residing in a majority Francophone province in a dominantly Anglophone nation (Klimp, n.d., 5). This unique paradox exists since Canada is composed primarily of Anglophone majority provinces—with Quebec being the exception as Canada’s sole Francophone province. Anglophones in Quebec are the only English language minority group in Canada, which makes protecting Canada’s only Anglophone community especially relevant.

Realigning electoral districts is a periodic process that occurs following the release of the Canadian census (Elections Canada, 2007, 112). Electoral boundary commissions have the ability to protect minority communities that are otherwise vulnerable within a majority. Deviating from the provincial quotient is a mechanism for community groups to receive exceptional representation in electoral realignments (Elections Canada, 2020, *Enhancing the values of redistribution*).

Why it is imperative for electoral commissions to capture community voices, especially at the provincial level is because provinces have a unicameral legislature and no seats are reserved for minority groups (Thomas et al., 2013, 276). Upper (provincial) chambers akin to the Canadian Senate, have seats reserved for minority communities (Parliament of Canada, n.d.).

Quebec's Legislative Council, which was the provincial equivalent to the senate, had seats reserved for Anglophones in the ridings of Brome and Missisquoi (Stevenson, 1999, 35). These seats guaranteed community representation, until the Legislative Council was abolished in 1969 (Stevenson, 1999, 35). Since the guarantees of regional representation were eliminated with the abolition of Legislative Council, the onus is on Quebec's Electoral Boundary Commission to ensure that Anglophone minority communities have a voice in Quebec's unicameral legislature. These representational guarantees are especially relevant for Anglophones in Brome-Missisquoi, who have played a role in the province's early history and have since lost their historical guarantees.

Federal laws are applicable to provincial commissions when it specifically concerns minority communities and their rights within the Canadian *Charter*, such as the right to vote (Supreme Court of Canada, 1991, *Supreme Court Judgements*). Since Court rulings apply to provincial electoral districts, then principles of minority community protection can also be interpreted with Quebec's electoral districts.

While electoral boundary commissions are required to draw boundaries as close to the provincial quotient as possible (making all districts with the relatively same number of voters), sometimes communities of interest are not effectively represented (Mintz et al., 2017, 245). Today, Anglophones of the Brome-Missisquoi provincial riding are not significantly represented; composing nearly fifteen percent of the population (Le Directeur Général des Élections Québec, 2017, 13).

Seeing that Anglophones are one of Canada's official languages and as an official language minority in the province of Quebec; Supreme Court interpretations would state that Anglophones are constitutionally protected and that includes their right to be effectively represented in Quebec's National Assembly. The purpose of my thesis is to establish that Anglophones in Brome-Missisquoi can secure their rights electorally, as they qualify for the same constitutional and historical guarantees as ruled in former cases of electoral boundary law.

My central argument is supported by the fact that Anglophones have lost their historical significance as reflective with their declined representation in political institutions. My approach to consociationalism and the protection of Anglophones through protected districts is inspired by James Bickerton and Glenn Graham's *Electoral Parity or Protecting Minorities? Path Dependency and Consociational Districting in Nova Scotia*. Bickerton and Graham argue that consociational representation of Nova Scotia's Acadian and African Nova Scotians has taken shape through the creation of protected electoral districts (2020, 32). A theme from Bickerton and Graham's article is that Canada's Supreme Court created a venue for minority communities to acquire political representation through "consociational districting", yet no other regionally concentrated group has taken the *Saskatchewan v Carter* decision to acquire protected electoral districts (2020, 32-33). Bickerton and Graham's approach also conforms to the theory of path dependency, because Canadian Courts have followed through with protecting minority districts in every case since the adoption of the *Canadian Charter of Rights and Freedoms*. I use Bickerton and Graham's approach to path dependency and consociational representation as a conceptual framework for my central argument, since they establish an argument for how language minorities can be guaranteed representation in provinces with language majorities. Since Anglophones in Brome-Missisquoi must adapt to the French majoritarian narrative of the province, I argue that this can be accomplished through the adoption of a protected electoral district.

The following chapter (chapter two) explains how electoral boundary commissions operate (federally and provincially). Electoral boundary commissions operate under rules such as senatorial and grandfather clause, which helps the commission perform electoral realignments. I explain what communities of interest are and how they are incorporated in electoral districts. Furthermore, I discuss the groundbreaking case in the *Charter* era—*Saskatchewan v Carter* (1991)—and its relevance in clarifying the interpretation of the right to vote in Canada. The relevance of the *Carter* case establishes the jurisprudence for minority community protection and ultimately, the jurisprudence for Anglophones in Brome-Missisquoi. I explore the criticism of Michael Pal, which highlights the complexities of the electoral boundary process and the potential of making communities less rather than more representative.

My third chapter centers on the case of *Raïche v. Canada* (2004). *Raïche* is a significant case. Not only does the case build off the case of *Saskatchewan v Carter*, but the case was the first to interpret language in community representation. *Raïche* was also the first case that involved the underrepresentation of language minority communities in a majority language province. This chapter highlights Canada's uniqueness as a nation with a linguistic duality, which furthers the argument for consociational representation of Brome-Missisquoi's Anglophones as a minority language community.

My fourth chapter explores the most recent case in electoral boundary law—the 2012 Acadian Nova Scotia boundary case. This chapter confirms that Canadian courts have followed a pattern in rulings related to electoral boundary law—which conforms to the theory of path dependency. The concept of consociationalism and consociational representation is explored more in depth, with Nova Scotia being the first province to fully commit to consociational districting (Bickerton & Graham, 2020, 33). Nova Scotia's protected districts are a model for Quebec's Electoral Boundary Commission to adopt the same form of institutional protection for its Anglophone minority.

My fifth chapter discusses the demographic profile of Quebec's English-speaking minority. The discussion revolves around the English community's exceptional place in Quebec with an overview of their history, identity and place in Quebec. I narrow down this overview by assessing the history of Anglophones in the riding of Brome-Missisquoi. This historical description is imperative to establish why the Anglophones of Brome-Missisquoi differ from other Anglophone communities in the province. Premier Francois Legault's statement that only historic Anglophones are to have access to services in English validates that the community has rights in Quebec (Hinkson & Pindera, 2019). Quebec's history with having a relatively stable consociational democracy in the years following Confederation enabled Anglophones of Brome-Missisquoi a degree of self-determination, which was evident with English representatives sitting on behalf of Brome and Missisquoi in Quebec's Legislative Assembly and Council (Stevenson, 1999, 34-35). The community's population decline means that it has less representation in provincial politics (Statistics Canada, 2019, *Census profile: Brome-Missisquoi 1991-2016*). Most significant is the fact that Quebec has not empowered the community with the ability to self-

determination nor has it restored any of the institutional guarantees Anglophones of the region once had.

Chapter six builds the case for the electoral representation of Anglophones in Brome-Missisquoi. I develop the argument that the Anglophone community is vulnerable with the decline in institutional support, which is also apparent throughout the electoral boundary alignment process. I establish the basis for Anglophones to secure their rights based on historical guarantees. The acknowledgement of Anglophones historical status provides the community with legitimacy to be effectively represented throughout the electoral boundary realignment process. Secondly, the community's demographic decline and subsequently their representative decline are grounds to make a legal argument that Anglophones are not effectively represented. Quebec's Electoral Boundary Commission uses a similar definition of communities of interest in describing "natural communities", which, by custom, would mean that Canadian courts could hold Quebec to the same rulings established in *Carter*, *Raïche*, and the Nova Scotia electoral boundary case (Gouvernement du Québec, 2020, Sec.15). Based on an assessment of Quebec's approach to boundary realignments; Quebec is following the same path towards judicial scrutiny in its failure to promote relative voter parity. Using the *Carter*, *Raïche*, and Nova Scotia Acadian electoral boundary case, I remark similarities between the cases with the electoral circumstances of Anglophones in Brome-Missisquoi. Table 1 provides a summative overview of the legal jurisprudence established by cases in electoral boundary law.

Table 1 Summative overview of legal jurisprudence established in electoral boundary cases			
Category	<i>Saskatchewan v Carter</i> (1991)	<i>Raïche v. Canada</i> (2004)	Acadian Electoral Boundary case (2012)
Court	Supreme Court of Canada	Federal Court of Canada	Nova Scotia Court of Appeal
Dispute	Validity of Saskatchewan representation order and whether disparities between urban and rural ridings violated Sec.3 of <i>Charter</i>	The transfer of Allardville, Bathurst, and Saumarez to Miramichi and Acadian representation under new representation order	The merge and dissolution of Acadian protected districts
Court's ruling	Saskatchewan Electoral Boundary Commission in its right to realign rural communities to make more representative, therefore Sec. 3 not violated	New Brunswick Electoral Boundary Commission violated Sec. 41 of <i>Official Languages Act</i> in not fulfilling its obligation to protect the Acadian community	Interference from Attorney General impeded the discretion of the N.S. Electoral Boundary Commission and violated Sec.3 of <i>Charter</i>
Significance of interpretation	-One person ≠ one vote -Canada's social mosaic means that Sec.3= the right to effective representation -Districts to reflect communities of interest	-Aligning districts at the expense and dilution of a community's vote is not the optimal outcome in addressing electoral variance -Community's sense of belonging, social and political circumstances of riding need to be considered in realignments	-The elimination of protected districts violates the principles of effective representation -Costs are high when reverting from entrenched institutional arrangements
Principles of cases and similarities with Anglophones in Brome-Missisquoi	-Anglophones have the right to be effectively represented in Quebec as a "natural community" -Brome-Missisquoi district to reflect vote of rural inhabitants with demographical and sociological considerations such as the Anglophone community	-Alignment of Brome-Missisquoi should consider the impact of Anglophone community -Anglophone vote diluted (from representing over 45% in some municipalities to 15% collectively in riding)	-Brome and Missisquoi once districts representative of Anglophones in both Legislative Assembly and Council; loss of protected districts over years also represents loss of consociational representation -Anglophones historical status confirms they have rights in Quebec

Furthermore, I explore the electoral results of the riding, which suggests that Anglophones do not have the ability to elect candidates that reflect their interests in Quebec's National Assembly. The lack of community empowerment signifies how Anglophones have little self-determination. Quebec's Electoral Boundary Commission is the embodiment of its French majoritarian government. While Quebec's Electoral Boundary is non-partisan, its actions suggest it has little ambition to protect what remains of its Anglophone minority communities. The lack of Anglophone consultation and recognition in the electoral boundary review process demonstrates that Anglophones are invisible and neglected from representation. The rulings from former cases in electoral boundary disputes allow for the same rights claims to be made for Anglophones. With no attempts to restore its "consociational democracy" in Quebec, Anglophones must seek their rights where they are guaranteed: with the courts.

Chapter seven is my final chapter, which offers concluding remarks and insights from this research. I offer three recommendations: to establish protected ridings; to expand the seat capacity in Quebec's National Assembly and to advance for a more diverse and representative commission. Establishing a smaller riding redrawn around the municipalities with the highest concentration of Anglophones improves the collective impact of the Anglophone vote and ultimately, their right to self-determination. Furthermore, expanding the seat in Quebec's provincial legislature fulfills the *Carter* ruling on the right to vote and promotes the representation of Canada's "social mosaic" (Supreme Court of Canada, 1991, *Reference re Prov.*, 8). Finally, the recommendation to appoint more diverse members to the commission would help the commission to avoid potential blind spots on communities of interest. These solutions can promote Anglophones' special status and bring Quebec towards a more stable consociational democracy.

Chapter Two

The Establishment of Canada's Electoral Boundary Commissions and the Right to Vote in *Saskatchewan v Carter* (1991)

According to the theory of path dependency, current institutional norms are a reproduction of prior actions and events, which becomes the model for future actions (Halperin & Heath, 2017, 458). Bickerton and Graham insinuate that Canada's legal and institutional norms have paved the way for Acadians to have protected electoral districts (2020, 32-34). The idea of guaranteeing the representation of Acadians with protected electoral districts came from the case of *Saskatchewan v Carter* (1991). The *Carter* case was the landmark case that established the legal norms of electoral boundary law. These norms were incorporated in subsequent cases in electoral boundary disputes, which ultimately paves the way for the legal argument to be made for Anglophones in Brome-Missisquoi.

Before establishing how the *Carter* case established the legal jurisprudence for future cases, a discussion of the electoral boundary realignment process is imperative. The purpose of this chapter is threefold; first, to describe the electoral boundary review process, which includes the mandate of federal and provincial electoral boundary commissions. This description provides an overview of the process, including rules and norms that determine the seat allocation per province. Secondly, I discuss the first case to pioneer the doctrine of "effective representation". The *Carter* case interpreted the right to vote in the Canadian context, which goes beyond the Western democratic doctrine of "one person, one vote" (Roach, 1991, 19). Third, I introduce the criticism of Michael Pal whose critique of how the electoral boundary process operates in Canada brings an alternative perspective to what was intended to be a fair and democratic process.

The Establishment of Canada's Electoral Boundary Commissions

Canada has no singular identity, for it is a nation that prides itself with its multicultural identity. To accommodate for Canada's diverse population, Canadian Parliament has an appointed upper chamber, which functions as a "sober second thought" and as a counterbalance to Canada's elected chamber that is the House of Commons (Mintz et al., 2017, 410).

Conversely, Canada's elected chamber is organized by geography. In the United Kingdom, representatives were summoned by the Monarch to represent a town or shire in the House of Commons (Stewart, 1991, 117). Inspired by the UK's Westminster parliamentary system, the purpose with Canada's single-member plurality electoral system (SMP) is to enable members of a constituency (also known as electoral riding or district) to elect a candidate who will represent their political interests in provincial and federal institutions (Elections Canada., 2007, xi). The premise of electoral ridings was to capture a "unity of interest" (Stewart, 1991, 117). The idea that members of the House of Commons and of provincial legislatures was that members could represent the voices of their constituents. Single-member plurality seemed like an effective way to accommodate Canada's cultural mosaic.

The unforeseen problem with organizing the electorate based on constituencies is that it can capture electors' collective voice, but it may also diminish the impact of community groups. This predicament was an afterthought. Canada established its electoral system at the time of Confederation, but the creation of electoral boundary commissions did not come until the 1960's and at the provincial level during the 1990's and early 2000's (Courtney, 2001, 94; Elections Canada, 2007, 112).

As Canada's population increased in the years following Confederation, electoral boundaries needed to be redrawn to reflect population changes. The *Constitution Act* (1867) Section 51 as well as the *Electoral Boundaries Readjustment Act* (1985) require that constituencies, otherwise known as electoral "seats", be revised after each ten year census (Elections Canada., 2007, 111; *Electoral Boundaries Readjustment Act*, 1985, 3(1); Government of Canada, 2020, Constitution Acts, 51). Prior to the establishment of electoral commissions, electoral boundaries were devised by provincial legislatures and politicians; as purposed to

maintain and promote voter equity while avoiding alignments that deprived voters of fair representation (Supreme Court of Canada, 1991, *Reference re Prov.*).

The first provincial electoral commission was established in Manitoba in 1955, making headway as “the first Canadian jurisdiction to establish a system whereby periodic, independent, arms-length redistribution of electoral districts would be guaranteed” (Courtney, 2001, 36-37). Canada followed suit with the establishment of independent and nonpartisan electoral commissions in 1964 (Elections Canada, 2007,112). The mandate of Canada’s ten federal electoral commissions in accordance with the *Electoral Boundaries Readjustment Act* is to report and publish a proposal of electoral districts based on the most recent decennial census (*Electoral Boundaries Readjustment Act*, 1985, 3(1)). Section 15(1) of the *Electoral Boundaries Readjustment Act* (1985) states that electoral commissions should draw boundaries as close to the provincial quotient as possible, with consideration for communities of interest (Elections Canada, 2020, *Enhancing the values of redistribution*).

The federal provincial quotient is a formula that determines the seat allocation per province in the House of Commons. This provincial quotient is calculated in a few steps. First, the electoral quotient calculates the seat allocation per province with three seats being taken out of the calculation to reserve for the Territories (Elections Canada, 2020, *The Representation formula*). The present quotient is set at 111,166 and is adjusted with the rate of growth of provincial populations (Elections Canada, 2020, *The Representation formula*). The provincial population is divided by the provincial quotient to determine the initial seat entitlement for the province (Elections Canada, 2020, *The Representation formula*). To better illustrate what this calculation would look like, consider the seat allocation for the province of Saskatchewan. Based on the 2013 representation order, Saskatchewan had a population of about 1,057,884. Saskatchewan’s population when divided by the provincial quotient (111,166), produced an allocation of 10 seats with the addition of the grandfather clause (4), makes for 14 seats for Saskatchewan in the House of Commons (Elections Canada, 2020, *House of Commons seat allocation by province*).

Special clauses (the senatorial and the grandfather clause) are added to the provincial quotient calculation. Both the senatorial and grandfather clause play a role in how electoral commissions determine the allocation of seats per province. The senatorial clause states that seats in the House of Commons should not be less than the seats in the Canadian Senate (Elections Canada, 2020, *The Representation formula*). The province of Prince Edward Island for instance, has four seats in the Senate, with a seat allocation of two, which means that Prince Edward Island would get four seats in the House of Commons (Elections Canada, 2020, *House of Commons seat allocation by province*; Senate of Canada, n.d., *Senators*). Conversely, the grandfather clause states that provinces are entitled to no less than the seats they had in 1985 (Elections Canada, 2020, *The Representation formula*). The provincial quotient is based on population, but while some of the province's population rises, others decline. The establishment of the senatorial and grandfather clause ensures that representation in the House of Commons is relatively consistent across the provinces. Both clauses have an influence on how commissions are to draw electoral boundaries, but this influence is based on numerical representation rather than on the representation of regional identities.

The *Electoral Boundaries Readjustment Act* sets out the mandate for federal electoral commissions, however, each province has its own electoral commission operating under provincial jurisdiction. Quebec's provincial Electoral Boundary Commission follows the regulations stipulated under the Quebec *Elections Act*. Section 14 of the Quebec Elections Act states that Quebec's provincial Commission shall produce no less than 122 and no more than 125 seats in designing Quebec's electoral map (Gouvernement du Québec, 2020, *Election Act*, Sec.14). Quebec's electoral boundaries are not to deviate by more than twenty-five percent from the provincial quotient, which is the average number of constituents per electoral district (Gouvernement du Québec, 2020, *Election Act*, Sec.16).

The debate centered around electoral boundary commissions is whether they are to draw districts respecting the provincial quotient even if it means diminishing the impact of communities of interest or consider the provincial quotient as a guideline, but not an absolute rule, in order to accommodate the community of interest (MacNeil et al., 2012, 6-7; Poffenroth, 2005, 55). John Courtney raises this question in his book, *Commissioned Ridings*. Are

constituencies intended to be structured primarily to fulfill an electoral purpose or to fulfill a representational purpose? (Courtney, 2001, 75). Based on the mandate set out in the *Electoral Boundaries Readjustment Act*; the answer is both electoral and representative purposes (*Electoral Boundaries Readjustment Act*, 1985, 3(1)).

As populations have changed since Confederation, electoral boundary commissions were required to revise districts to be representative of diverse population groups. Consider also that Canada's population is not equally dispersed across the nation. According to Statistics Canada, four in five Canadians (approximately eighty-one percent), live in urban regions—meaning that nearly one in five Canadians are dispersed outside of Canada's main urban hubs (2008, *Provinces and regions*). According to Mintz et al.; “given the vastness of Canada; the uneven dispersal of the population; the different economic activities in different regions; and the diverse characteristics, cultures, and identities of people that have settled in different areas, it not surprising that regional and provincial differences have always been an important feature of Canadian politics” (2017, 36). While respecting the provincial quotient, it is up to the commissions to acknowledge communities of interest and determine the best way for them to be represented in the electoral map.

The best manner to ensure political representatives reflect the interests of their voter base is by devising electoral boundaries around diverse and specific segments of Canada's population. In other words, translating natural communities into artificially designed electoral districts (Stewart, 1991, 118). Community factors such as municipal governments, sociological characteristics, geographical landscapes, linguistic communities and history are used to draw electoral boundaries with “communities of interest” (Elections Canada, 2020, *Enhancing the values of redistribution*). The concept of community of interest is a facet increasingly discussed in electoral boundary law. The right to vote is often thought of in terms of the direct action of casting a ballot, however, the right to vote encompasses a broader range of activities, including the preliminary stage of establishing where and what ridings voters cast their ballots. The pivotal process of electoral realignments guarantees that communities of interest are grouped as a collective rather than assimilated into larger voting blocks.

Electoral commissions are praised for their independent discretion, which was considered a progression towards more fair representation. The context in which “fair representation” is defined is dependent on the onlooker; meaning that it is subjective at best. Commissions are met with criticism with regards to their mandate, which is considered rigid and unreliable on their own interpretation. Often, the electoral boundary review process goes with much consultation and without contestation. However, this does not mean that the electoral boundary review process is flawless.

Provincial electoral districts are subject to judicial interpretation, specifically *Charter* interpretation, even if electoral boundary commissions operate at the provincial level (Supreme Court of Canada, 1991, *Reference re Prov.*). This is because provincial legislatures were not required to ensure that the electoral commission fulfills its mandate “freely without guidelines imposed by the legislature” (Supreme Court of Canada, 1991, *Reference re Prov.*). Therefore, while provincial commissions operate provincially, they are still subject to federal law.

Alignments that are challenged are done so through a *Charter* challenge; in accordance with federal law. The adoption of the *Canadian Charter of Rights and Freedoms* (1982) enabled electoral deviations to receive judicial scrutiny (Supreme Court of Canada, 1991, *Reference re Prov.*). In other words, the adoption of the *Charter* would give court justices a framework to interpret Canadian rights with regards to electoral districting (Roach, 1991, 3-4). This era would become known as the “Charter era” (Elections Canada, 2007, 93). Katherine Swinton describes Canada’s Constitutional evolution; “for Canada’s first one-hundred and fifteen years, there were two pillars to the constitution: parliamentary democracy and federalism. The constitutional amendments of 1982 added a third: citizen’s rights” (1992, 17). The *Charter* was relevant with incorporating citizens’ rights in electoral boundary law. The first case of electoral boundary realignments clarified the meaning of the right to vote under Section 3 of the *Canadian Charter* (Supreme Court of Canada, 1991, *Supreme Court Judgements*). This right reinforced the protection of communities of interest (Supreme Court of Canada, 1991, *Supreme Court Judgements*). This legal revelation was established in *Reference Re Provincial Electoral Boundaries* also known as *Saskatchewan v Carter* (1991).

The Right to vote and *Saskatchewan v Carter* (1991)

The *Carter* case was initiated by a coalition of Saskatoon and Regina voters called the Society for the Advancement of Voter Equality (SAVE), who questioned the validity of the boundaries proposed by the Saskatchewan Electoral Boundary Commission (Elections Canada, 2007, 113). *Saskatchewan v Carter* (1991) was a case brought forward to the Saskatchewan Court of Appeal, which concluded that the proposed changes to the 1989 represented order had violated Section 3 of the *Canadian Charter of Rights and Freedoms* (1982) (Supreme Court of Canada, 1991, *Reference re Prov.*). The Saskatchewan Court of Appeal interpreted Section 3 in terms of absolute voter parity and that Section 1—reasonable limits—would justify deviation for community factors (Supreme Court of Canada, 1991, *Supreme Court Judgements*). In this interpretation, the Court of Appeal found that the disparities between the urban and rural ridings made voters less equal and that reasonable limits did not apply (Supreme Court of Canada, 1991, *Reference re Prov.*). The problem with the Saskatchewan Court of Appeal’s interpretation was that it was based on numerical representation rather than on the quality of voting, so to speak. However, Saskatchewan’s Court of Appeal was not the final word. With the *Charter* interpretation, the case was appealed by Canada’s Supreme Court.

The Supreme Court wanted to answer the following questions. First, whether the variance of population in constituents violated *Charter* rights (Supreme Court of Canada, 1991, *Reference re Prov.*). The second question the Supreme Court addressed was the particulars of the rural, urban and Northern district realignments. The Supreme Court was to discern whether such realignments violated the *Canadian Charter* and on what grounds the *Charter* was violated (Supreme Court of Canada, 1991, *Reference re Prov.*).

The initiation of the *Carter* case was prompted by a misconception that Canada had a similar political system to that of its American neighbour. The idea of “one person, one vote” is common in most Western democracies, but is only viable if the population is relatively monolithic. Canada embraces multiculturalism, which means that Canadians are not one in the same. Akin the cultural mosaic analogy, academics are quick to dispel the myth that Canada is

like its neighbour in many ways, including its political system (Mintz et al., 2017, 137; Roach, 1991, 18-19). This myth was dispelled by Canada's Supreme Court. Supreme Court Justice Beverly McLaughlin rejected the American premise of "one person, one vote" as Section 3 is interpreted as the right effective representation (Roach, 1991, 19). The Supreme Court acknowledged that Canada's history differed from its American neighbour (Supreme Court of Canada, 1991, *Supreme Court Judgements*). To this conclusion, Justice McLaughlin asserted; "we would, in my view, do our Constitution a disservice to simply allow the American debate to define the issue for us, all the while ignoring the truly fundamental structural differences between the two constitutions" (Roach, 1991, 19). The "one person, one vote" premise is based on ideals that each vote is worth equal weight. Academics such as Alan Stewart have reiterated the Court's decision by recognizing that Canada's current political system does not support individualism because Canadian elections are defined by geography (1991, 118). Stewart argues that individuals would have to be unconstrained geographically to have an impact on voting and would theoretically have to band together to influence electoral results (1991, 118). Accordingly, Kent Roach discussed how following a strict regimen of voter equality would disregard minority communities who are otherwise vulnerable in the collective electorate (1991, 17). Therefore, aligning districts around specific communities is important to respect the principles of effective representation.

Aligning districts based on population and municipal boundaries has been a common practice in the early years with Canada being a nation (Bickerton & Graham, 2020, 36). It is with reason "galloping hyphenation"—a term discussed by John Courtney in *Commissioned Ridings*—became a common term in late twentieth century electoral boundary discourse (2001, 89). The names of electoral districts are inspired by regional characteristics and galloping hyphenation alludes to the practice of renaming and combining the names of electoral ridings into one (Courtney, 2001, 89). The province of Saskatchewan was a province familiar with the concept of "galloping hyphenation", particularly at the end of the twentieth century (Courtney, 2001, 89). Ridings in Regina were districts that experienced significant changes between the 1997 and the 2013 representation order. The federal riding of Wascana became Regina-Wascana in 2013 while the district of Palliser was abolished and the riding of Regina-Lewvan was created

in its place (Elections Canada, 2020; *Maps of Saskatchewan*; Elections Canada, 2020; *Maps of Saskatchewan: Historical data*).

Saskatchewan's Electoral Boundary Commission engaged in galloping hyphenation when it responded to the decline of rural inhabitants by combining nearly fifty percent of federal electoral districts into larger districts (Courtney, 2001, 89). Based on the 1986 Canadian census, the Saskatchewan Electoral Boundary Commission followed a strict quota in producing electoral boundaries (Supreme Court of Canada, 1991, *Reference re Prov.*). Saskatchewan's Electoral Commission decided to maintain the urban ridings, “to coincide with existing municipal boundaries” while realigning rural ridings (Supreme Court of Canada, 1991, *Reference re Prov.*). This approach resulted with producing an electoral map where Saskatchewan's rural ridings had an excess of fifteen percent variance from the provincial quotient when compared to urban ridings (Supreme Court of Canada, 1991, *Reference re Prov.*). In other words, the 1989 representation order consisted of urban ridings that were underrepresented compared to rural ridings (Supreme Court of Canada, 1991, *Reference re Prov.*). To provide context, the same phenomenon would occur with the riding of Brome-Missisquoi, as Brome and Missisquoi were separate ridings up until they were merged in 1972 (Commission de la représentation électorale du Québec, n.d., *Brome-Missisquoi*). Canada's Supreme Court would rule that such merges could make rural ridings less representative of the communities around which the boundaries were initially drawn; especially if there is a community of interest. Drawing boundaries is a tedious task, because drawing all boundaries equally does not guarantee that all voters are equally represented.

In the context of voting in Canada, the Supreme Court had acknowledged Canada's distinction as a nation with a linguistic duality and cultural plurality. To this end, the Supreme Court ruled that absolute voter parity—as in, all voters are recognized as equal—is not possible (Roach, 1991, 19; Supreme Court of Canada, 1991, *Reference re Prov.*). To arrive at this conclusion, the Supreme Court interpreted the exception to the provincial quotient. The Supreme Court acknowledged that; “relative parity of voting power is a prime condition of effective representation. Deviations from absolute voter parity, however, may be justified on the grounds of practical impossibility or the provision of more effective representation” (Supreme Court of

Canada, 1991, *Supreme Court Judgements*). The Supreme Court of Canada concluded that section 3 of the *Canadian Charter of Rights and Freedoms* is interpreted as equality of voting, but also in the Canadian context, as the right to effective representation (Bickerton & Graham, 2020, 37).

In the case of Saskatchewan, the Supreme Court of Canada found that the Saskatchewan Electoral Boundary Commission was within its jurisdiction to deviate from the provincial quotient by up to twenty-five percent when it designed its southern ridings to accommodate community factors (Johnson, 1994, 227). The Supreme Court also found that more constituencies were created to reflect the rise in Saskatchewan's urban population (Supreme Court of Canada, 1991, *Reference re Prov.*). The Court (1991) concluded that:

In general, the variations between boundaries in the southern part of the province appeared to be justifiable on the basis of factors such as geography, community interests and population growth patterns...the Northern boundaries were appropriate, given the sparse population and the difficulty of communication in the area. (Supreme Court of Canada, 1991, *Reference re Prov.*).

The Supreme Court cited that such “deviations from absolute voter parity” are justified in considering other factors that attribute to effective representation (Supreme Court of Canada, 1991, *Reference re Prov.*; Elections Canada, 2020, *Enhancing the values of redistribution*). Respect for community factors while bringing all districts as close to the provincial quotient as possible ensures that provincial legislatures reflect Canada's diverse and rurally dispersed populations (Supreme Court of Canada, 1991, *Reference re Prov.*).

Saskatchewan v Carter clarified what the right to vote entailed in Canada, specifically under Section 3 of the *Charter*. While not explicitly stated, the Court reiterated that Section 3 guarantees effective representation. According to the Supreme Court of Canada; “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” (1991, *Reference re Prov.*).

Future electoral boundary commissions would make the mistake of aligning districts closer to the provincial quotient. What Canada’s Supreme Court has verified is that numerical criteria are not strict or absolute rules in conducting electoral alignments. Elections Canada also acknowledges that absolute voter parity is not entirely possible, because voters may move to another district, province and voters pass away (Elections Canada, 2020, *Enhancing the values of redistribution*). Since Canada is composed of communities of interest—and these communities have the right to effective representation—deviating from the provincial quotient is a means of achieving effective representation (Supreme Court of Canada, 1991, *Reference re Prov.*).

Balancing community factors along with bringing electoral districts as close to the provincial quotient as possible may seem straightforward, but it is a difficult challenge for electoral commissions. Having independent discretion makes the boundary realignment process more accountable, since commissions have a responsibility to ensure communities are represented in electoral maps. When an electoral commission aligns districts in disfavor of communities of interest, such maneuvers cannot be viewed without suspicion. The mandate of electoral boundary commissions is clearly stated in either the *EBRA* or in provincial commission acts; which brings courts and communities themselves to wonder what brings commissions to decide to prioritize absolute over relative voter parity.

Electoral boundary commissions are independent, but this does not guarantee that political influence stays far from the realignment process. While Quebec’s provincial Electoral Boundary Commission is non-partisan, its members embody the majoritarian French polity; therefore, eliminating a French bias from an independent process is difficult. These biases cannot be completely removed and are likely present in every commission. Commissions can be held accountable by the communities themselves, but also by the courts and the *Charter*.

The Supreme Court addressed the matter of political influence in *Saskatchewan v Carter*. The Supreme Court concluded that the Saskatchewan Provincial Legislature had no authority to intervene in the electoral boundary alignment process (Supreme Court of Canada, 1991, *Supreme Court Judgements*). Considering that Saskatchewan’s Provincial Legislature was needed to

justify the decision of the Saskatchewan Electoral Commission; the independent discretion of the Commission was compromised (Supreme Court of Canada, 1991, *Supreme Court Judgments*). According to the Supreme Court, such decisions regarding the balance of population and community factors should be at the discretion of the Electoral Commission and the Electoral Commission alone (Supreme Court of Canada, 1991, *Supreme Court Judgments*). Commissions are intended to be independent to determine electoral equality among constituencies, which ultimately provides a clear sense of accountability to voters (Supreme Court of Canada, 1991, *Supreme Court Judgments*).

Critiques of Independent Commissions (Michael Pal, 2015)

While this sense of independence is remarked as a move away from partisan influence, having the freedom to determine electoral boundaries can also be interpreted as a disadvantage. Electoral boundary determination is a concern raised by Michael Pal. In Pal's conviction, the ten provincial electoral commissions have divergent approaches to what is intended to be a common task (2015, 231). When electoral commissions have diverging views on what defines equality of representation for each province, this ultimately undermines the "fairness of the electoral map" (Pal, 2105, 231). Pal argues that commissions have weak discretion since they follow a standard set of rules set up by higher authority such as the *Electoral Boundaries Readjustment Act* (EBRA) (2015, 238). Pal makes the claim that the rules outlined in the *Electoral Boundaries Readjustment Act* permit greater leeway for electoral commissions to determine what they see as "effective representation" (Pal, 2015, 239). This is particularly the case when electoral commissions are required to make judgments when designing boundaries as close to the provincial quotient as possible while also considering community factors (Pal, 2013, 239).

Pal argues that commissions create minority influence districts, which are districts "where a significant enough percentage of the electorate is made up of minorities to shape electoral results" (2015, 262). Minority influence districts are created when commissions engage in "affirmative gerrymandering" (Pal, 2015, 262). Affirmative gerrymandering is used to make minority groups into majority communities. Pal uses the example of the Nova Scotia and the New Brunswick Electoral Commissions. In the 1990's, the Nova Scotia Electoral Boundary

Commission deviated significantly from the provincial quotient in order to accommodate the African and Acadian Nova Scotian populations (Pal, 2015, 263). Whereas the Nova Scotia Electoral Commission prioritized minority communities; the 2004 New Brunswick Electoral Boundary Commission found that there was an insufficient concentration of Mi'kmaq and Maliseet to unite the minority communities under a single district (Pal, 2015, 263). These divergent decisions are what Pal uses to support his claim that there is too much leeway for commissions to interpret the *EBRA* at their own discretion. In Pal's conviction; "commissions sometimes prioritize representation by population over community of interest, while others reverse that hierarchy of decision-making criteria" (2015, 240).

Whereas Michael Pal places the burden of the blame on electoral commissions, John Courtney gives them the benefit of the doubt. John Courtney remarks that while the division of electoral ridings has become gradually more equal, it is population inequalities that have become accentuated (Thomas et al., 2013, 276). This population disparity is most widely observed between urban ridings in the most populated provinces versus rural ridings in the least populated ridings (Thomas et al., 2013, 276). In other words, these population disparities are observed inter-provinces, but this does not necessarily mean that disparities cannot be observed within provinces.

Pal's article does raise skepticism on the purpose of independent commissions. Disparities between populations are probable when considering the entire Canadian electorate; however, it is not the job of electoral commissions to consider producing an electoral map that is relatively representative of other provinces' electoral maps. The provincial quotient already serves such a purpose. The provincial quotient guarantees that each province has a relatively equal proportion of seats based on the provinces' individual population (Elections Canada, 2020, *The Representation formula*). With provincial electoral boundary commissions, the argument that electoral boundary commissions perpetuate existing population disparities is especially irrelevant. The purpose of electoral commissions is to address electoral disparities between voters *within* the province, not in the nation entirely.

If Canada is the cultural mosaic that it is renowned to be, then how can all voters of differing backgrounds, be accommodated and protected in Canada's single-member plurality electoral system? The answer is found with what occurs *before* elections are to take place. If elections are said to provide individuals with a voice in electing representatives, then it could be said that the very actions of electoral commissions support the functions of provincial legislatures and ultimately, of parliamentary democracy in Canada. According to John Courtney, electoral boundary commissions are the; "institutional building blocks constructed to ensure that a preliminary, but necessary, stage of the representation process, units will be designed from which members can then be elected and become part of an institution" (2001, 237).

One of the prevailing questions in electoral boundary law is; which factor should be prioritized? The provincial quotient or the community of interest? *Saskatchewan v Carter* (1991) was relevant in answering the basic question; what is the right to vote in Canada? In Canada, the right to vote and by extension—the right to be effectively represented—is enshrined in the *Canadian Charter of Right and Freedoms* (1982) under Section 3 (Supreme Court of Canada, 1991, *Reference re Prov.*). Section 3 of the *Canadian Charter* reads; "every citizen 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" (Canadian Charter, 1982, Sec 3). This is less obvious with how the right to vote is defined within the *Charter*, thus making judicial interpretation relevant in this 1991 electoral boundary case.

Since *Carter*, minority communities can challenge alignments as an infringement of Section 3 of the *Canadian Charter*. The preceding chapters discuss how the *Raïche v. Canada* and the Acadian Nova Scotia Electoral Boundary cases have incorporated the right to vote with linguistic minority communities. These cases build the legal jurisprudence for Anglophones to acquire representation in political institutions via-a-vis Section 3 of the *Charter*.

Chapter Three

The introduction of Language in Electoral Boundary Law: The case of *Raïche v. Canada* (2004)

Saskatchewan v Carter (1991) established that relative voter parity is the ultimate objective of electoral boundary commissions (Supreme Court of Canada, 1991, *Supreme Court Judgements*). The *Carter* ruling recognized the commission's obligation to consider communities of interest in drawing electoral districts; however, language was never a topic of the Supreme Court's ruling. The next question for electoral boundary jurisprudence is how language is incorporated with the drawing of electoral maps? This question would be answered with *Raïche v. Canada* (2004). Specifically, two of the three questions addressed in the *Raïche* case clarified the place of language minorities in electoral districts: that is, through protected electoral districts.

Canada is a nation with a linguistic duality. Approximately 75.4% of Canada's population is English and 22.8% of the population is French (as the first official language spoken) (Office of the Commissioner of Official Languages, 2019, *Fast facts*). This language duality is respected as both English and French are the official languages spoken in Canadian institutions (Elections Canada, 2020). With Canada's language duality, it is no question that it would become an important topic in the discussion of effective representation. Language and representation are pertinent to electoral representation, especially *where* residents of a language group reside. No matter where language groups reside in Canada and whether they are majorities or language minorities, they are constitutionally recognized—providing them with guarantees for representation in elections. Citizens of Canada that are self-identified English and French are often descendants of early settlers who have historical protection under the *Constitution Act* (1867) and subsequently in the *Official Languages Act* (1969) and the *Charter of Rights and Freedoms* (1982) (Office of the Commissioner of Official Languages, 2018, *Understanding your language rights*).

As Canada's sole officially bilingual province, New Brunswick is home to two linguistic communities; Anglophones and the French Acadians. New Brunswick is Canada's sole official bilingual province, recognized under Section 16(2) of the Canadian *Charter*, with Section 16.1(2) reading that the Legislature of New Brunswick should "preserve and promote the status and rights" of both the English and French language communities (*Canadian Charter*, 1982, sec.16.1 (2) & 16(2)). New Brunswick's language duality means that it has a Constitutional obligation to protect and promote the vitality of its language communities. Similarly, as an institution of parliament, New Brunswick's Electoral Boundary Commission needs to promote the representation for both community groups. The mandate of the New Brunswick's Federal Electoral Commission is similar to those of other federal commissions, which is stated in the *Electoral Boundaries Readjustment Act* Sec.15(1)(b)(i) (*EBRA*, 1985, Sec.15(1)(b)(i)). Sec.15(1)(b)(i) of the *Electoral Boundaries Readjustment Act* states that the commission should consider "the community of interest or community of identity in or the historical pattern of an electoral district in the province" (*EBRA*, 1985, Sec.15(1)(b)(i)).

The 2002 New Brunswick Electoral Commission's role was to assess New Brunswick's federal electoral boundaries following the release of the 2001 Canadian census. In its procedural assessment of established electoral boundaries, the Commission discovered that there was a wide disparity of districts—with some exceeding the provincial quotient set at 72,950 (the number of electors per electoral district) (Moreau-Vena, 2002, 3). Based on the provincial quotient, the Commission assessed that the electoral district of Acadie-Bathurst had an excess of fourteen percent variance from the provincial quotient (Poffenroth, 2005, 55). This electoral discrepancy was more pronounced to the Commission when they assessed the electoral district of Miramichi, which had a variance of negative twenty-three percent (Poffenroth, 2005, 56). To address this discrepancy and since Acadie-Bathurst and Miramichi were neighbouring ridings, the New Brunswick Electoral Commission's report recommended that the region of Allardville, and a portion of the parishes of Bathurst and Saumarez be transferred to the federal district of Miramichi (Poffenroth, 2005, 56). The proposed realignment would place the riding of Miramichi closer to the provincial quotient and balance the excess variance in the electoral riding of Acadie-Bathurst (Poffenroth, 2005, 55). The realignments were intended to make the New Brunswick electoral districts more closely aligned with the provincial quotient. In doing so, the

New Brunswick Commission failed to consider the extent that this realignment would impact Acadians in Allardville, Bathurst and Saumarez. The primary concern with the realignment was that it hindered the impact of the Acadians in Acadie-Bathurst (Federal Court, 2004, 33; Poffenroth, 2005, 56).

Raïche v. Canada (2004) called on the Federal Court Trial Division to clarify three questions. First, whether the realignment infringed on Section 3 of the *Canadian Charter of Rights and Freedoms*; second, whether the realignment infringed on Section 15 of the *Electoral Boundaries Readjustment Act*; and third, whether the realignment infringed on Part VII of the *Official Languages Act* (Poffenroth, 2005, 57). These questions ultimately deal with effective representation, a concept that was previously ruled on in *Saskatchewan v Carter* (1991). Based on judicial precedent with the rulings in *Carter*, it was determined that the realignments had not infringed on Section 3 of the *Canadian Charter* (Poffenroth, 2005, 57). The Court concurred that the population variance of minus twenty-one percent was excessive and therefore the variance needed to be addressed (Poffenroth, 2005, 57). The Court reasoned that some municipalities would need to be transferred to the electoral district of Miramichi to offset the electoral variance—akin to what the New Brunswick Electoral Boundary Commission was executing with transferring the municipalities of Allardville, Bathurst and Saumarez to the electoral district of Miramichi (Poffenroth, 2005, 57). The Court did not want to intervene on the discretion of the Commission unless legally, it was required to do so. The Court found no reason to reject the Commission’s report, because the Commission was addressing the electoral variance (Federal Court, 2004, 48).

While this was the initial ruling of the Court, there are multiple tiers to this case. While there is nothing erroneous with realigning districts in accordance with the provincial quotient, it was the fact that New Brunswick’s Electoral Boundary Commission transferred Acadian majority regions that made the realignments subject to judicial scrutiny.

Before the 2002 realignments, the municipalities of Allardville, Bathurst and Saumarez belonged to the riding of Acadie-Bathurst, which ensured the vitality of the region’s Acadian minority (Poffenroth, 2005, 56). Based on the closest census for that year (in 2001) the

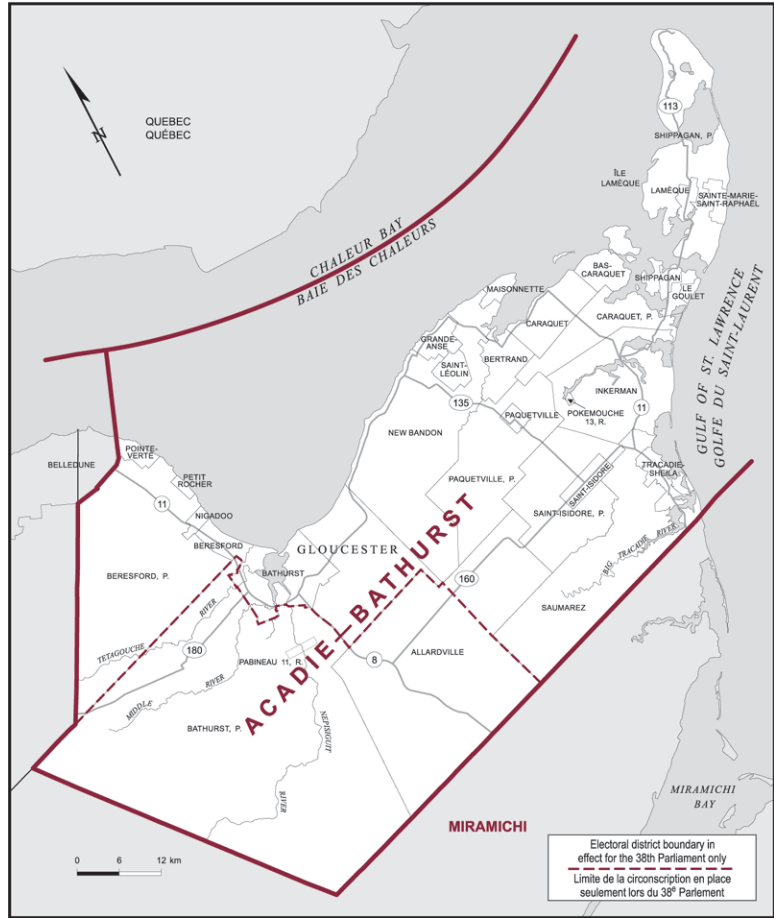
municipality of Saumarez and the region of Allardville had the greatest proportion of French (first learned and understood) population. An estimated ninety-four percent of Allardville's population was French, compared to ninety-eight percent in Saumarez and forty-eight percent in the parish of Bathurst (Statistics Canada, 2019, *Allardville, Bathurst, Saumarez [2001]*). The riding itself is predominantly Francophone. According to the 2016 Canadian census, most residents in the riding of Acadie-Bathurst are French-speaking (61,350), compared to English speakers (13,835) (Elections Canada, 2016, *Electoral district: Acadie-Bathurst*). What these statistics verify is that the concentration of Acadians is significant; meaning that Acadians can make a difference in the electoral results of the riding. Since Acadians are well represented in the riding of Acadie-Bathurst, the next question is whether the Commission could justify the same level of representation for Acadians when transferring them to the riding of Miramichi.

What is clear is that the New Brunswick Electoral Boundary Commission aligned its districts so that they would be closer to the provincial quotient. It would not be valid to state that the electoral alignments would favour the Acadian community. The decline of Acadian representation is evident when looking at statistics. Consider statistics of the municipalities of Acadieville, Northumberland County as well as the city of Miramichi itself, which are within the central proximity of the electoral riding of Miramichi (New Brunswick Commission, n.d., *Miramichi-Existing boundaries*). In 2001, eighty-eight percent of the population of Acadieville were French (mother tongue) while Northumberland County had a total of 13,535 out of 50,155 residents (twenty-seven percent) who were French (Statistics Canada, 2019, *Acadieville, Northumberland County [2001]*). Based on the most recent Canadian census conducted in 2016, the proportion of French (mother tongue speakers) has stayed relatively the same (at eighty-seven percent) in Acadieville while declining by five percent in Northumberland County (Statistics Canada, 2019, *Acadieville, Northumberland County [2016]*). In 2001, the concentration of Francophones in the city of Miramichi was considerably moderate, representing about nine percent of the city of Miramichi's population alone (1,600 French only speakers out of a population of 18,508) (Statistics Canada, 2019, *Miramichi [2001]*). Today, Miramichi's Francophone population has stayed relatively the same, with eight percent of the population being French (Statistics Canada, 2019, *Miramichi [2016]*).

While these regions had a presence of Acadian minorities—particularly in Acadieville, which had a larger concentration of Francophones—it is more effective to refine Acadian regions in a district rather than combine them into a larger one, which can dilute the Acadian vote. John Courtney discussed communities of interest and constituency size. According to Courtney; “if dividing it among two or three constituencies would in some sense harm the interests of that community, then so, the theory goes, it could justifiably be kept intact and made part of a particular riding” (Courtney, 2002, 10). It is true that there is a presence of Acadians in Miramichi, however, alignments can be made to improve the Acadian vote without having to diminish Acadian representation in Acadie-Bathurst.

The riding of Acadie-Bathurst was drawn with the purpose of maintaining the Acadian community of interest. In the present federal electoral map based on the 2013 representation order, the municipalities of Allardville, Bathurst and Saumarez in the southern portion of the riding of Acadie-Bathurst constitute a significant voting block for the Acadian population (Elections Canada, n.d., *Acadie-Bathurst*). In recognition of the Acadian minority, the riding had been reinstated to what it was previously, before the *Raïche* case in 2004 (see Figure 1 and 2). (Elections Canada, n.d., *Acadie-Bathurst*; Elections Canada, n.d., *Acadie-Bathurst: Historical Data*).

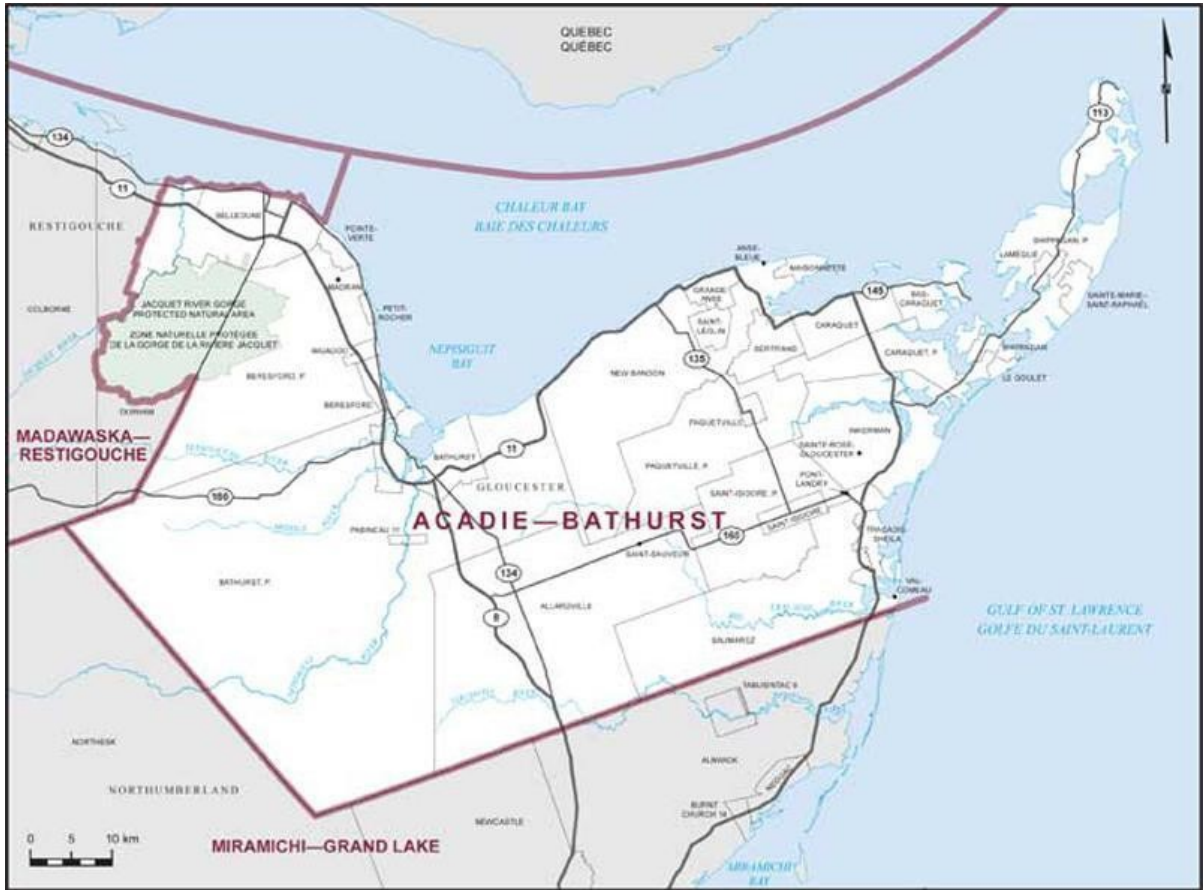
Figure 1 Acadie-Bathurst electoral district based on the 2004 representation order (dotted lines reveal the reinstatement of the communities of Allardville, Bathurst and Saumarez).



Elections Canada. (n.d.). *Acadie-Bathurst: Historical data.*

<https://www.elections.ca/res/cir/maps/mapprov.asp?map=13001&lang=e>.

Figure 2 Acadie-Bathurst electoral district based on the 2013 representation order.



Elections Canada. (n.d.). *Acadie-Bathurst*.

<https://www.elections.ca/res/cir/maps2/images/atlas/13001.pdf>.

With the proposed alignments, the combined electorate of Miramichi would have been approximately 72,312, with twenty-one percent being Acadian electors (Statistics Canada, 2019, *Allardville [2001], Bathurst [2001], Miramichi-Grand Lake [2016], Saumarez [2001]*).

Combining two electoral districts with a significant presence of a French minority does not necessarily empower their political voice but can dilute the impact of their vote in a larger electoral district, which was the case with the Miramichi electoral district. While the statistics indicate the dilution of the Acadian vote, the question was whether the Federal Court would arrive at the same conclusion.

As the first judicial case to follow *Saskatchewan v Carter* (1991), an important question to be addressed by the Federal Court was whether the additions of Allardville, Bathurst, and Saumarez to Miramichi were justified and importantly, permitted given that these Acadian majority municipalities were combined with the riding of Miramichi, which contained an Acadian minority group (Statistics Canada, 2019, *Miramichi [2001]*). Having an equal number of electors is a shortsighted objective of achieving voter parity in Canada. It is clear in this case that ideals of absolute voter parity took priority over ideals of relative voter parity. The assumption that adding Francophone majority municipalities to another electoral district with some Francophone minorities would be acceptable runs counter to what the Supreme Court ruled in *Carter*. This line of logic was followed by the Court. According to the Federal Court;

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 (2004, 29).

The question of whether New Brunswick's Electoral Boundary Commission violated Section 3 was, but one, question that the Canadian Federal Court was required to answer. The Federal Court also had to consider if the realignments violated Section 15 of the *Electoral Boundaries Readjustment Act* and Part VII of the *Official Languages Act* (Federal Court, 2004, 25-26). According to the Federal Court; "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" (Federal Court, 2004, 29). In this context, countervailing factors include evidence presented through the public consultation process as well as consideration of the extent to which a community of interest is affected by proposed realignments. If a realignment makes a community more vulnerable, then the realignment does not produce the most optimal outcome for community representation.

The Court assessed whether the electoral boundary realignments were an optimal outcome for Acadian communities by analyzing public sentiments expressed during the consultation process. The New Brunswick Electoral Boundary Commission “held public consultations and received submissions and comments from the communities regarding the proposed changes” (Poffenroth, 2005, 56). Associates such as mayors and the Member of Parliament for Acadie-Bathurst filed affidavits and a petition with over 2,000 signatures was brought to the Commission (Federal Court, 2004, 46). Residents publicly spoke against the proposed realignments. Many spoke of “strong linguistic, historic, social and administrative ties that exist in Acadie-Bathurst, and the relative absence of ties between the communities in the former electoral district of Acadie-Bathurst and those in Miramichi” (Federal Court, 2004, 33). Residents Carmel Raiche and Ian Oliver of Allardville and South Tetagouche both stated that their ties to the municipality of Bathurst were far greater than in Miramichi (Federal Court, 2004, 33). These ties are related to access to services, shopping and school attendance; all of which are done largely in Bathurst (Federal Court, 2004, 33). Concerns over community connectivity were heard and recognized by the Commission. After much consultation and consideration, the Commission concluded that the variance of minus twenty-one was too large to ignore (Federal Court, 2004, 42). The Court found that the variance in electoral districts was large enough to address—however, it came at the expense of protecting Acadian communities (Federal Court, 2004, 42; Poffenroth, 2005, 57).

Official complaints were also submitted to the Commissioner of Official Languages (Federal Court, 2004, 18). The complaints received by the Commissioner were deemed admissible, because the Commissioner needed to determine the extent to which Section 41 of the *Official Languages Act* applies to the *Raïche* case and whether its interpretation would make the proposed realignments null and void (Federal Court, 2004, 18). Ultimately, the Commissioner would determine whether Acadians had a justified legal claim against the proposed alignments.

Section 41 of the Official Languages Act states the federal government and institutions of parliament alike—are to commit to promoting and protecting the vitality of both French and English language minority communities (*OLA*, 1985, Sec.41; Office of the Commissioner of

Official Languages, 2020, *Raïche v. Canada*). Based on this Section, the Commissioner of Official Languages offered this remark in regards to the New Brunswick Electoral Boundary Commission; “the Commission’s report has not persuaded me that it fully examined the impact of its recommendations on the development and vitality of the official language minority community in the electoral district of Acadie-Bathurst, and I cannot conclude from it that the Commission has discharged its responsibilities in that respect under section 41 of the Official Languages Act” (Federal Court, 2004, 19). The Commissioner’s interpretation was accepted as evidence in Federal Court. As a result, the Court found that the New Brunswick Electoral Commission erred in forming the proposed electoral districts, by not only disregarding the evidence at public hearings, but also by not adequately following the principles of minority language protection outlined in the *Official Languages Act* and hence, its obligation to protect the vitality of the Acadian minority (Elections Canada, 2007, 114). The Court’s interpretation clarified that while the New Brunswick Electoral Boundary Commission had offered a solution to the electoral discrepancies, it was not the best outcome with considering the negative impact it would have on the Acadian communities of Allardville, Bathurst and Saumarez.

In the aftermath of *Raïche v. Canada*, a special Commission was tasked with reviewing the electoral boundaries of Acadie-Bathurst (Office of the Commissioner of Official Languages, 2020, *Raïche v. Canada*). The Commission advised that the municipalities of Allardville and Bathurst be reverted back to the electoral district of Acadie-Bathurst (Office of the Commissioner of Official Languages, 2020, *Raïche v. Canada*). In response to this decision, the federal government introduced Bill C-36, which proposed reverting the alignments produced by New Brunswick’s federal Electoral Boundary Commission (Office of the Commissioner of Official Languages, 2020, *Raïche v. Canada*). This intervention was legal, given that the federal government had to resolve the New Brunswick Electoral Boundary Commission’s errors (Elections Canada, 2007, 114). The federal government’s intervention was ultimately purposed to protect New Brunswick’s Acadian minority. The act also ensured that Acadian voices continue to be represented in the House of Commons.

With Canada being founded by two language groups, special status is entitled to historically founding groups. This historical recognition is acknowledged in the *Official*

Languages Act (1985) (*Official Languages Act*, 1985, Sec.2(b)). With this historical recognition, electoral commissions are required to consider these communities, especially minority communities, when devising the electoral map (Elections Canada, 2020).

Effective representation is the primary goal to be achieved by electoral commissions. Electors with different qualities need to be adequately represented, rather than assimilated in a larger population. Community factors were not the primary incentive with the electoral realignments in 2002. There have been complaints over lack of services provided in French in Miramichi—which implies that Acadian electors added to the riding would also experience similar sentiments (Federal Court, 2004, 79). The New Brunswick Electoral Boundary Commission’s decision to overlook these concerns demonstrates the Commission’s objective to align districts based on the provincial quotient (Federal Court, 2004, 78; Poffenroth, 2005, 57). Most important, was the fact that the Commission failed to consider a community voice that they were supposed to protect.

What the *Raïche* case contributes to my thesis is the idea that community representation includes language minorities. Anglophones might be a minority in Brome-Missisquoi, but their presence means that some form of recognition is needed to validate their place in Quebec elections. Without recognition or community protected, Anglophones run the risk of being ignored as a community of interest. The fact that the Anglophone community is seldom mentioned in the Quebec Electoral Boundary Commission report seems to suggest that this may already be the case (Commission de la représentation électorale du Québec, 2017, *The Quebec Electoral Map 2017*).

There are no guarantees that electoral commissions will act in the interest of minority communities. *Raïche v. Canada* exemplifies how the altering districts with minority communities is contentious, but more importantly, acknowledged as an error in a commission’s actions (Poffenroth, 2005, 59). The Court followed the same logic as the Justices in *Saskatchewan v Carter*. According to a Federal Court Justice; “I adhere to the proposition asserted in *Dixon, supra*, at p. 414, that only those deviations should be admitted which can be justified on the ground that they contribute to better government of the populace as a whole,

giving due weight to regional issues within the populace and geographic factors within the territory governed” (Federal Court, 2004, 29). The *Canadian Charter* and the *Saskatchewan v Carter* case provide the legal tools that hold electoral commissions accountable for their realignments. Subsequently, these tools would and will be used in a proceeding electoral boundary case.

Chapter Four

The Acadian Nova Scotia Electoral Boundary Case (2012)

Nova Scotia has a history of political gerrymandering. The 1978 Liberal government and the 1981 Conservative government made Nova Scotia's electoral map disproportionate, with a discrepancy of upwards of four hundred percent in variation between urban and rural ridings (Nova Scotia Court of Appeal, 2017, 22). At the rate that its provincial governments were producing its boundaries, Nova Scotia faced the same judicial proceedings as the Saskatchewan Electoral Boundary Commission. The division of electoral boundaries is a political activity and one that the province of Nova Scotia committed to make non-partisan (Nova Scotia Court of Appeal, 2017, 29). A quote by Nova Scotia's Court of Appeal captures the evolution of electoral boundary divisions in Nova Scotia; "after *Carter*, it was clear that electoral boundaries were no longer the exclusive domain of the legislatures or the playground of majority governments" (Nova Scotia Court of Appeal, 2017, 22). Nova Scotia's provincial and non-partisan Electoral Boundary Commission was created in 1991 with the *House of Assembly Act c.210* (Bickerton & Graham, 2020, 33; Nova Scotia Court of Appeal, 2017, 23-24).

The movement towards non-partisan commissions came during a period when Canada was experiencing significant change. The Quebec referendum of 1995 and a movement to recognize distinct status in Canada transcended to the provincial level, into institutional commitments honouring distinct communities (Bickerton & Graham, 2019, 8). James Bickerton and Glenn Graham state that Nova Scotia was the only province "to fully embrace the practice of consociational districting as a means to ensure the effective representation of two historical minorities in the province: French-speaking Acadians and African Nova Scotians" (2020, 33).

Consociationalism or consociational democracy was a term coined by Arend Lijphart in the 1960s (Stevenson, 1999, 7). Lijphart used consociational democracy to describe Western

European political systems as; “government by elite cartel designed to turn a democracy with a fragmented political culture into a stable democracy” (Stevenson, 1999, 8). Canadian scholars have, sometimes unsuccessfully, tried to apply the theory of consociational democracy in Canada. What works with Bickerton and Graham’s application of consociational redistricting is that the majority English-speaking Nova Scotia polity accommodates the Acadian minority by entitling them with the right to self-determination, or in the case of electoral districts, to vote effectively (2020, 32). Electoral empowerment is a method of ensuring that all the members of a polity take part in higher-level decision making.

The actions taken by the Nova Scotia government; reflect how they have committed to a form of consociational democracy. In 1991, the Nova Scotia Electoral Commission recommended the establishment of four protected communities of Argyle, Clare, Preston and Richmond that incorporate Acadian and African Nova Scotians voices into the Nova Scotia legislature (MacNeil et al., 2012, 3; Nova Scotia Court of Appeal, 2017, 5). Nova Scotia’s House of Assembly Act 5 decreed that the mandate of the provincial Electoral Boundary Commission is to draw electoral boundaries based on the most recently published census while controlling for community factors (Nova Scotia Court of Appeal, 2017, 7-8). The idea behind electoral empowerment is that it enables Acadians who have their own *modus vivendi*, to vote in the candidate that represents their interests in Nova Scotia’s provincial legislature (Stevenson, 1999, 34). Ultimately, this fulfills the principles of what the consociational democracy theory would describe as elite accommodation within a “stable democratic order” (Stevenson, 1999, 8). Following through the 1991 commitments were what subsequent Electoral Boundary Commissions did in the years 1992 and 2002 (Nova Scotia Court of Appeal, 2017, 48). By convention, the protected ridings remained honoured in the Electoral Boundary Commissions’ reports—signifying Nova Scotia’s commitment to protect its historical communities.

After nineteen years of the tradition of protecting Acadian ridings, the 2012 Nova Scotia Electoral Boundary Commission realigned Nova Scotia’s electoral map; merging the Acadian ridings into larger ridings (MacNeil et al., 2012, 31). The intent was to produce fifty-two seats in the Legislature while bringing all districts closer to the provincial quotient (MacNeil, 2012, 3). When the Electoral Boundaries Commission decided to combine the protected ridings into

neighbouring ridings, nine public consultations were held whereby “156 presenters and over 3,000 attendees” offered their response to the Commission’s boundary report (Nova Scotia Court of Appeal, 2017, 54). Most of this feedback was critical of the decision; as the new realignments jeopardized the vitality of the Acadian communities. A quote from the Acadian community captures the concern of the Acadians;

As Acadians we are in danger of losing our identity. It is a daily struggle for each and every one of us to be fully Acadian. The French Acadian language, a beautiful and gentle language with a direct link to the *langue de Moliere*, is in peril. Expulsion, assimilation, and now the threat of losing our voice in the Nova Scotia House of Assembly leads me to believe that the slow and painful extinction of the Acadian people is in the works. (MacNeil et al., 2012, 11).

The loss of protected seats also represented the loss of Acadian community voices. The elimination of protected seats also meant a loss of the province’s commitments to honour the legacy of Acadians and the respect for the community’s contribution to Nova Scotia culture.

Acadians have had a presence in the province of Nova Scotia since the 1600’s (Government of Nova Scotia, 2020, Acadian timeline). Acadians eventually became known as “people of the province” by establishing a *modus vivendi* with both Mi’kmaq and English-Europeans (Commission on Effective Electoral Representation, n.d., 34; Daigle, 1995, 2). As people of the province, legitimized by the majority Anglophone province—they were also made more vulnerable with their deportation (1775-176) (Government of Nova Scotia, 2020, Acadian timeline). To maintain Acadian representation in Nova Scotia, Acadians were granted special status.

Acadian Nova Scotians have historical protection under the *Official Languages Act* (1969) Section 41, as well as having official language minority rights in the *Canadian Charter of Rights and Freedoms* (1982) (Commission on Effective Electoral Representation, n.d., 23, 26 & 90; *Official Languages Act, 1985*). Acadians also have protection provincially with the *French-language Services Act of Nova Scotia* and through protected electoral districts (Commission on

Effective Electoral Representation, n.d., 23, 26 & 90). Designating electoral districts for Acadian communities empower their political voice, when and after the Acadians did not really have a voice historically (Bickerton & Graham, 2019, 8).

The 2012 Nova Scotia Electoral Boundary Commission referred to terms of reference when it was assigned to produce the representation order. Among the criteria was 2(c)(ii), which stated; “deviations from parity of voting power may be justified in consideration of community history and interests” (MacNeil et al., 2012, 6). The mandate of the 2012 Nova Scotia Electoral Boundary Commission was to re-evaluate and redraw electoral boundaries, if population circumstances based on the 2011 census required the Commission to do so. The commission’s task was to design no more than fifty-two provincial electoral districts to be represented by seats in the House of Assembly (MacNeil et al., 2012, 3). When the commission divided the Nova Scotia provincial quotient (711,588) into fifty-two districts, it produced an average of about 13,684 electors per district (MacNeil et al., 2012, 3). The commission considered this average with a grain of salt, considering the twenty-five percent exception of variance in order to accommodate the Acadian communities in the districts of Argyle, Clare, and Richmond (MacNeil et al., 2012, 3). The 2012 Nova Scotia Electoral Boundary Commission provided the following assertion in regards to Nova Scotia Acadians; “these deeply rooted communities of interest and identity are an important part of Nova Scotia’s heritage as well as its current political reality, and they should be recognized to the greatest extent possible in the boundary redrawing process” (MacNeil et al., 2012, 15). Intervening on the Commission’s discretion was the Attorney General, Ross Landry, who had alternative views on political representation.

While feedback is conventional for the electoral boundary realignment process, the intervention of the Attorney General was not. This was especially true since Landry was not speaking on behalf of the community in question but advancing a method of realigning districts that disfavored the community. Landry’s vision was more in alignment with ideals of absolute voter parity. In Landry’s letter issued on June 14th, 2012, he rejected the initial draft of proposed boundaries (MacNeil et al, 2012, 7). According to Landry, the commission had not adequately followed the terms of reference, which were, in Landry’s opinion, legally binding and critical in the establishment of electoral boundaries (MacNeil et al., 2012, 7). Section 2(d) of the Terms of

Reference states; “notwithstanding 2(c) (community factors including linguistic and cultural diversity), no constituency may deviate by a variance greater or less than twenty-five percent from the average number of electors per constituency” (MacNeil et al., 2012, 6). According to Landry’s letter response:

I am not able to accept the interim report as drafted, as it does not follow the requirements set out in the terms of reference of the final report of the Select Committee. I have been advised by the Chief Legislative Council of the House of Assembly that the terms of reference are legally binding upon the Commission, and that the interim report is therefore null and void (2012, 1).

Landry's recommendations, which included producing no more than fifty-two seats in the provincial legislature, meant combining Acadian protected districts into larger electoral ridings. Ultimately, the “three protected ridings disappeared” (Nova Scotia Court of Appeal, 2017, 14). On advice of the Attorney General, Ross Landry, the Commission redrafted its proposal, which merged the Acadian ridings into larger, neighbouring ridings (Nova Scotia Court of Appeal, 2017, 53). Retracting on the commitment to protect these ridings would mean undoing what the Nova Scotia government—with all political parties’ agreement—has committed to making a more consociational and representative process (Nova Scotia Court of Appeal, 2017, 22; Bickerton & Graham, 2020, 33). According to Bickerton and Graham; “taken together, these changes seem to suggest that the government was clearing away obstacles—such as observance of traditional boundaries and protecting small minority districts—that might prevent the Electoral Boundaries Commission from recommending a smaller legislature” (2020, 40).

Landry’s letter implied that the trade-off with protecting the minority communities was making all electoral districts within the twenty-five percent variance, which in Landry’s conviction, was a sound form of representation (Landry, 2012,1). Based on electoral boundary law, this tradeoff is in reverse with the exception being to align so as to protect communities of interest, rather than bringing all districts closer to the provincial quotient (Nova Scotia Court of Appeal, 2017, 36). The move away from the historically protected communities also portrays a loss of “consociational” fulfillment (Bickerton & Graham, 2019, 4). One point raised at one of

the Electoral Boundary Commission's public consultations supports this latter statement. Since "more than two decades of special protection of these minorities had established a convention that should continue, and that a moral if not legal covenant had been made between the province of Nova Scotia and the minority populations in the affected constituencies" (Bickerton, n.d, 6). By convention, the province has acknowledged the presence of minority communities and diverting could only mean performing a disservice to the communities in question. The convention to recognize protected communities as a composite of the 2012 Nova Scotia electoral map is also invested in the fact that Acadians continue to be a minority group today. Acadians lost their self-determination when they lost their protected districts. The 2012 electoral boundary realignments were thus contested; bringing the 2012 Nova Scotia Electoral Boundary Commission to Court.

Before the Nova Scotia Court of Appeal came to its conclusion, it had to address two questions of legality. First, whether the abolition of the three Acadian protected ridings violated Section 3 of the Canadian *Charter* and secondly, whether said violation was "justified under Section 1 of the Canadian *Charter*" (Nova Scotia Court of Appeal, 2017, 1). This legal assessment practically follows suit to what was determined in the *Saskatchewan v Carter* (1991) case.

Reiterating the case of *Saskatchewan v Carter*, the Supreme Court of Canada states that the right to vote is interpreted in a manner that supports Canada's cultural mosaic (Supreme Court of Canada, 1991, *Supreme Court Judgements*). This interpretation provides the legal framework for protecting linguistic minorities, even at the provincial level. As reaffirmed by the Supreme Court; "the definition of provincial voting constituencies is subject to the *Charter* and is not a matter of constitutional convention relating to the provincial constitution which is impervious to judicial review" (Supreme Court of Canada, 1991, *Supreme Court Judgements*). Since the dilution of the Acadian vote was a forefront issue, Nova Scotia's Court of Appeal used *Carter* as a basis for discussing the concept of relative voter parity.

With relative voter parity, community dynamics take priority over numerical representation in order to account for the "diversity of our social mosaic" (Nova Scotia Court of

Appeal, 2017, 66.54). According to the Nova Scotia Court of Appeal; “I adhere to the proposition asserted in *Dixon, supra*, at p. 414, that “only those deviations should be admitted which can be justified on the ground that they contribute to better government of the populace as a whole, **giving due weight** to regional issues within the populace and geographic factors within the territory governed” (2017, 66.55; Supreme Court of Canada, 1991, *Supreme Court Judgements*). The Court’s reasoning clarified that the 2012 representation order was unrepresentative and an inaccurate portrait of the Nova Scotia electorate. This underrepresentation is evident when looking visually at graphs and at statistics.

Acadians, while a minority in the province of Nova Scotia, represent a majority in the regions of Clare, Argyle, in Southwestern Cape Breton and in the regions of Isle Madame and Chéticamp (Government of Nova Scotia, 2020, Our Community). The most significant electoral alignments can be seen with the ridings of Clare and Richmond. Known as Clare-Digby after 2012, the electoral district expanded to incorporate the county of Digby, increasing the district's size adding an additional 6,824 electors to the electoral district (see Figure 3). (MacNeil et al., 2012, 32, 26 & 36). The electoral map from the 2012 representation to the 2019 representation order can be compared in Figure 3 and Figure 4 (Elections Nova Scotia, 2018, *2012 Provincial electoral districts*; Elections Nova Scotia, 2018, *2019 Provincial electoral districts*).

Figure 3 Clare electoral district realigned to Digby-Clare in 2012



Elections Nova Scotia. (2018). *2012 Provincial electoral districts [PDF]*.
https://electionsnovascotia.ca/sites/default/files/ED2012ofNS_20160421.pdf.

Figure 4 Electoral district of Clare reinstated in 2019



Elections Nova Scotia. (2018). *2019 Provincial electoral districts [PDF]*.
https://electionsnovascotia.ca/sites/default/files/2019RecBnd_ED_Province.pdf.

What is most pronounced with this electoral alignment is the population demographics. Prior to its realignment, the electoral district of Clare consisted of sixty-six percent of French mother tongue speakers (Commission on Effective Electoral Representation, n.d., 38). With the county of Clare consolidated into the electoral district of Clare-Digby, the French mother tongue population is reduced to a little over thirty-two percent (Commission on Effective Electoral Representation, n.d., 38). The difference of thirty-four percent is a significant decline in representation—the equivalent to reducing Acadians’ voting capabilities by half.

Given the wider range of territory, it is expected that the demographics would increase, while simultaneously we witness a decline in the representation of Francophones. The proportion

of people with French as a mother tongue was a little over twenty-four percent of the population while the realignment to Cape Breton-Richmond saw the French decline to about eighteen percent (Commission on Effective Electoral Representation, n.d., 38). This decrease is minor, but nonetheless represents that the proportion of the Francophone vote has diminished and for the riding of Richmond, the French electors were already vulnerable. To put these Acadian communities into perspective and why protecting these ridings was significant; the proportion of French as a mother tongue in the entire city of Halifax is just over three percent (Commission on Effective Electoral Representation, n.d., 38). Since the rural communities have a higher concentration of French voters, the protected ridings were established accordingly—that is, before the Acadian population was assimilated into the wider Anglophone population.

The actions followed by the 2019 Electoral Boundary Commission confirm that the protected Acadian ridings were essential to the electoral map as they were restored (Elections Nova Scotia, 2018, *2019 Electoral boundary commission recommendations*). In order to reinstate the ridings, the 2019 Electoral Boundaries Commission recommended increasing the Nova Scotia Legislature's seat capacity to 55 (Elections Nova Scotia, 2018, *2019 Electoral boundary commission recommendations*). The maneuver was tactful, but nonetheless, re-established a nearly thirty-year tradition that was lost with the 2012 representation order.

The new proposed seats of Argyle, Clare and Richmond, had 6,451, 6,778 and 7,458 electors respectively (Dodds et al., 2019, 26-27). Electors in the Acadian districts were 6,000 electors less compared to the average voter count per riding (Dodds et al., 2019, 27). The protected ridings, while smaller in size, were purposeful in capturing what remains of the Acadian community. Between 2006 and 2011, the county of Clare experienced a six percent population change (from 8,319 to 8,813) (Statistics Canada, 2019, *Focus on geography series*). The municipality of Argyle also experienced a decline in its population of roughly five percent (from 8,656 in 2006 to 8,252 in 2011) while the county of Richmond witnessed a decline of nearly five percent (from 9,740 inhabitants in 2006 to 9,293 in 2011) (Statistics Canada, 2016, *Argyle, Richmond*).

This move makes the Nova Scotia House of Assembly more representative, given that there would be more seats to reflect minority communities. These ridings have nearly half less electors than the larger districts, however, devising more electoral districts is necessary to capture the voice of the Acadian group (Dodds et al., 2019, 27). According to the Nova Scotia Court of Appeal; “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” (2017, 66.50). In other words, refining electoral districts to capture smaller communities of interest makes the Nova Scotia Legislature more representative.

The commitment to honour the protected ridings was recognized by Nova Scotia’s Court of Appeal. The Nova Scotia Court of the Appeal ruled in favour of reinstating the Acadian districts. The Court rationalized; “nothing in the *House of Assembly Act* said that the Government had the authority to void an interim report” (Nova Scotia Court of Appeal, 2017, 12). The Nova Scotia Court of Appeal concluded, among other legal opinions, that the revised 2012 boundary proposal was not an “authentic view” of the electoral commission (Nova Scotia Court of Appeal, 2017, 13). The opinion of the Attorney General rendered the commission without discretion authority, as highlighted in the commission’s report; “...we found ourselves without any discretionary authority” (MacNeil et al., 2012, 7). The commission reiterated Section 5 of the House of Assembly Act and how nowhere is there a mention of ministerial ruling that could arbitrarily weigh larger than the commission’s recommendations (MacNeil et al., 2012, 10). Section 5(4) specifically reads; “the commission shall prepare, for approval by the House, a report recommending the boundaries and name for the electoral districts comprising the House” (MacNeil et al., 2012, 10). The purpose with establishing an independent and nonpartisan commission is to establish a clear sense of accountability. This is jeopardized when the commission is not left to carry out its mandate freely without interference. Case and point that intervening in the process of electoral districting hinders the democratic process.

Bickerton and Graham’s article uncovers deeper meaning to the 2012 Electoral Boundary Commission’s decision to deviate from the protected ridings. According to Bickerton and Graham, the costs of reverting from the traditional path of “entrenched institutional arrangements” are extraordinary (2020, 34). Based on the theory of path dependency, the Nova

Scotia Electoral Boundary Commission violated the legal convention of promoting effective representation. The tradeoff with enlarging all electoral districts in order to become closer to the provincial quotient meant loosening the boundaries around which the Acadian communities had been protected under for nearly twenty years (MacNeil et al., 2012, 7). Acadians lost the representation they were guaranteed in 1991 and the ability to have an impact in provincial elections. This was the conclusion of the Nova Scotia Court of Appeal. To help the Court arrive at this conclusion, the Court followed case precedent; looking at the meaning of “effective presentation” in former cases such as *Saskatchewan v Carter* (Nova Scotia Court of Appeal, 2017, 16-19).

Time and again, Canadian electoral boundary cases have verified that electoral alignments conducted based on numerical representation risk infringing Section 3 of the Canadian *Charter*, and ultimately, the vitality of linguistic minority communities. *Raïche* was not the only case where electoral alignments conflicted with the right for linguistic minorities to acquire effective representation. Acadians in Nova Scotia faced a similar constitutional challenge in 2012. As the 2012 electoral alignments robbed Acadians of their political voice, the same legal rationale can be interpreted for Anglophones in the provincial riding of Brome-Missisquoi.

Chapter 5

Profile of Anglophones in Quebec's Eastern Townships

Why Canada's sole English minority merits distinct status

Extending on James Bickerton and Glenn Graham's interpretation of how consociational democracy applies to provinces with linguistic dualities—I analyze the roles in reverse where French majoritarian governments dictate policies that might affect the vitality and existence of its Anglophone minority. The purpose of this chapter is to describe the unique situation of Anglophones in Brome-Missisquoi in order to build the case that they merit special protection through designated electoral boundaries.

A manner of understanding Quebec Anglophones' unique situation is by exploring the history of how Anglophones arrived and have continued to reside in Quebec. I begin with a broad overview of the territorial occupation of Anglophone and Francophone groups in the early colonies and how political tensions and territorial dispositions have placed pockets of language groups where they are today. I narrow down this historical overview by discussing Anglophones exclusively in the Eastern Townships. Quebec Premier Francois Legault recognizes "historic Anglophones" as the exceptional group to receive English-speaking services— therefore, retracing Anglophones' history builds the case to establish protected ridings where they continue to reside today (Hinkson & Pindera, 2019).

The exclusive focus on Anglophones of Brome-Missisquoi is not only based on their institutional vulnerability, but their common identity, which makes the representation of their common interests relevant. On technicality, the concept of consociational democracy would not be applicable to Anglophones as a collective. The theory states the relationship between two groups, but each with their own culture homogeneity (Stevenson, 1999, 11). Anglophones in Quebec are not homogeneous, rather, they have distinct cultural identities. Anglophones are said

to be diverse and multicultural (Jedwab & Maynard, 2012, 281). This is true when assessing distinct Anglophones communities, particularly in Montreal where there is a presence of a Jewish, Greek and Filipino community—to name a few (Hanes, 2017).

What differentiates Anglophones in the Eastern Townships compared to Anglophones in Montreal is sourced from history, but also from collective, regional identities, which are reinforced by economic and political circumstances. Anglophones in Brome-Missisquoi and the Eastern Townships more generally, are homogeneous. Visible minorities make up a small fraction (1.3%) of the population, which means that the Anglophone community is relatively culturally homogenous (Le Directeur Générale des Élections Québec, 2017, 32). Interlaced with this point is my explanation for why Anglophones in Brome-Missisquoi are more vulnerable compared to Anglophones in Montreal. Those who had stayed live with the reality of being a minority, with lesser numbers to gain legitimacy and representation in political institutions. The ultimate objective of this chapter is to establish how the Anglophones in Brome-Missisquoi are a community of interest to be protected.

History of Anglophones in Quebec

Canada is a nation of many nations, therefore when it comes to discussing Canada's history, it is relevant to acknowledge that the territory was inhabited by First Nations long before European settlers came to North America. The arrival of Europeans in the seventeenth century led to the disposition of First Nations from their lands as a result of colonization (Mintz et al., 2017, 25). The territory became the homes of descendants of English people from the British Isles and French from France. The two languages formed dual-linguistic colonies, and this would be the circumstances for centuries.

Language dualities are defined by the Standing Senate Committee on Official Languages as; “the presence of two linguistic majorities, English-speaking Canadians and French-speaking Canadians, cohabitating in a country with Anglophone and Francophone minority communities spread across the country” (Cormier, 2018, iv). While this definition paints a harmonious picture; Anglophones and Francophones often fought for spatial recognition. Territorial divisions were

not so unanimously conceded; most were acquired through accessions following battles. Tension between the two linguistic groups were evident with the Seven Years War and subsequently the Battle of the Plains of Abraham (1759) whereby the British captured Quebec City, much to the demise of the French (Mintz et al., 2017, 25). Following the Conquest of New France in 1763, French ceded much of its territory to Great Britain, leaving Quebec as their remaining territory (Rudin, 1985, 45).

Some academics argue that some political resentment exists to this day because of the outcome of the Conquest of New France. According to Brunet, Fégault, and Séguin; “Quebecers had never entirely recovered from the [English] Conquest ” (Maclure, 2004, 35). The Conquest represented a disaster in French Canadian history, and the resentment was legitimate considering these ceded territories left French linguistic communities vulnerable politically and economically (Maclure, 2004, 35). Minority community groups—such as the Acadians in Eastern Canada and French in the Dominion of Canada relied on their collective identities and regional concentration to gain representation. With French as the majority of occupants in the province, this made Anglophones the de facto minority. Paired with political resentment for the English, this leaves Anglo-Quebecers in a difficult situation with gaining rights recognition—and this political struggle has to do with the fact that they belong to the language group that once conquered the French’s territory.

Studies on identities in Canada indicate a divide between the French and English, which also transcends to divisions in the political realm. A survey conducted by the Association of Canadian Studies and the Quebec Community Groups Network found that Anglophones and Francophones generally hold positive perceptions of each other, but they disagree most on language legislation (Bruemmer, 2018, Anglophones and Francophones have distorted views). Approximately eighty-nine percent of Francophones expressed positive opinions about Bill 101 whereas only thirty-one percent of Anglophones felt similarly (Bruemmer, 2018, Anglophones and Francophones have distorted views).

Attitudinal differences between Anglophone and Francophone groups are likely rooted in self-identity and sense of belonging. A General Social Value survey conducted by Statistics

Canada found that the majority of English mother tongue speakers had a greater attachment to the Canadian identity (ninety-four percent) when compared to Francophones in Quebec (seventy-one percent) (Department of Canadian Heritage, 2011, 5). These subjective understandings mean that Anglophones will also see their identity and place in Quebec society more uniquely. Grouping all voters of Brome-Missisquoi assumes that all voters of the riding have shared interests, when clearly that is not entirely the case between two language groups. Anglophones' perception on issues such as language, is not shared with Francophones, which makes it more important to guarantee that Anglophones can voice concerns on the issues that face the community exclusively. These perspectives are not simply representative of differing political issues, they reflect deeply entrenched cultural identities, which developed from history.

Before Anglophone and Francophone settlers, the Townships were occupied by the Abenaki First Nation, who called the Appalachian county and territory of mountains their home (Wilkin, 2019). The first Anglophones came during the American Revolution (1775-1783), when, after losing the war and their sense of security in the American colonies, fled the brinks of war and settled in the Townships (Stevenson, 2004, 332; Wilkin, 2019). Initially, Canadian settlers set a prohibition coined termed "cordon sanitaire" against the Loyalists settlers to avoid conflict with the Americans (Rudin, 2004, 52). Once the prohibition was lifted in 1792, the Eastern Townships and Quebec alike became home to English Europeans, primarily from England, Scotland and Ireland (Stevenson, 2004, 332; Wilkin, 2019). The town of Brome-Lake began to be settled in 1794, with seigneuries reserved on behalf of the Crown and the clergy (Ville de Lac-Brome, 2020). Loyalists were given land on behalf of the Crown "in recognition of their loyalty" during the American Revolution (Ville de Lac-Brome, 2020). Many new Townshippers settled along the Missisquoi River, in the communities of Sutton, Potton and Bolton (Wilkin, 2019).

The majority of Anglophones came during the mid-19th century, primarily from the American colonies (however, they were not exclusively loyalists) and the British Isles (Office of the Commissioner of Official Languages, 2008, 2; Ville de Lac-Brome, 2020). Anglophones saw the area as an opportunity. The rural landscapes presented an opportunity to start a new livelihood, with the prospects for farming and entering the forestry industry (Office of the

Commissioner of Official Languages, 2008, 2). At the peak of their settlement, the greatest share of Anglophones resided in the Townships, with a population that exceeded that of Montreal's. About 90,000 Anglophones resided in the Townships compared to 65,000 that resided in the city of Montreal (Klimp, n.d., 7). In 1861, the Eastern Townships was home to fifty-eight percent of Anglophones (Klimp, n.d., 7). By Confederation, it was estimated that Anglophones constituted roughly twenty-two percent of Quebec's total population (Stevenson, 2004, 331). The Anglophone population also exceeded that of Francophones in some regions. In a census conducted in 1840, the municipality of Lac-Brome recorded a mere two-hundred and twelve French residents (Ville de Lac-Brome, 2020).

Demographically, the Anglophone population was well positioned in Quebec. English merchants had control over financial and commercial affairs, especially during the period following the Conquest, when the British gained control over the colony (Stevenson, 2004, 332). Anglophones thrived in Quebec cities. Sherbrooke became a prosperous hub for English merchants (Rudin, 1985, 79). Symbolizing this wealth was the establishment of the Eastern Townships Bank in 1859 as well as the development of Sherbrooke's primary employer, the Paton Manufacturing Company (Rudin, 1985, 79-80). Many of the Townships merchants such as Alexander Galt and R.W. Heneker had ties to British elites in Montreal, but this connection would gradually dwindle to acquaintances (Rudin, 1985, 80). The city of Montreal, with its railroad expanding Westwards into Upper Canada; its connections to other cities established relations greater than within the province, thus disparaging the wealth and success in Quebec's early settlements (Rudin, 1985, 80).

Many Anglophones, who once called the Townships their home, saw Montreal as a place of emerging opportunities. The homestead for farming and forestry began to be perceived more and more as "the same old, same old" standards of rural life, while Montreal was growing and becoming the urban center for industries and wealth (Rudin, 1985, 80). Suddenly, life in the Townships was no longer the most desired. Many Anglophones left the region beginning as early as the 1870s (Klimp, n.d., 13). Studies such as those conducted by Kishchuk and Brault, found that employment and educational opportunities are the primary reasons for why English-speakers leave the Eastern Townships (2005, 31). The same reasons are applicable to the early period,

when the population of Anglophones peaked around the late 1860s to early 1870s (Office of the Commissioner of Official Languages, 2008, 2). Francophones replaced Anglophones as the most common official language migrating to the region (Office of the Commissioner of Official Languages, 2008, 2). According to the Canadian census between the years 1996 and 2001, Anglophones in the Eastern Townships experienced a 6.4% decline in population, compared to an increase in the French population by 2.3% percent between the same period (Klimp, n.d., 12). By 1931, Francophones constituted eighty-two percent of the population in the Eastern Townships (Klimp, n.d., 8). Presently, Anglophones constitute about fifteen percent of the population in Brome-Missisquoi (Le Directeur Général des Élections Québec, 2017, 13). Coupled with political insecurities that would emerge with the sovereignty movement in the late twentieth century, the Anglophone population has been unable to regenerate itself while the French population continues to rise.

Anglophones of Brome-Missisquoi have a shared history, being primarily of British descent (Klimp, n.d., 7). Reiterating the historical recognition is the fact that Élections Québec recognizes Anglophones as having played a role in the riding's history (Élections Québec, 2020, *Portrait socio-économique de 2016-Brome-Missisquoi*). The name of Quebec's electoral districts—akin to the rest of Canada—inherits the British tradition of naming districts after local communities (Courtney, 2001, 88). The name “Brome” also borrows from English tradition—which is said to be named after a village in Suffolk, United Kingdom or after Charles Cornwallis who was the second Earl of Brome (Élections Québec, 2020, *Portrait socio-économique de 2016-Brome-Missisquoi*). The Missisquoi region is believed to be named after the Abenaki word for “where there is gun-flint” or “fat women” (Élections Québec, 2020, *Portrait socio-économique de 2016-Brome-Missisquoi*). Brome-Missisquoi acquired its name when both ridings merged.

The Eastern Townships is a place of history and its residents are ancestors of one of the first European groups to settle the nation. The Townships were “one of the few regions in Quebec where the first Europeans settlers were not French speakers” (Klimp, n.d., 7). This is not to say that communities deserve protection for those who were “first come first served”. I am merely making the point to respect for generations of English Europeans that continue to occupy

and call Quebec their home. As the Anglophone population is no longer as pronounced as it once was, circumstances have changed and these changing circumstances require divergent strategies to be employed by local governments (Klimp, n.d., 9). Such strategies include ensuring that Anglophones continue to be the voices of the region, expressing concern and issues that are exclusive to the population. After all, a liberal democracy is one that considers input from all its population. Quebec being Canada's only Francophone province does not make it an exception to this fact.

The Exceptional Circumstances of Anglophones in Brome-Missisquoi

There are two important things to discuss going forward with my argument for effective representation. First, is that residents of the Brome-Missisquoi riding are not, "one in the same" compared to their urban counterparts in Montreal or in other predominantly Anglophone regions in Quebec; and secondly, historic Anglo-Quebecers of Brome-Missisquoi are vulnerable due to their declining population and their lack of representation in public sector and provincial institutions.

In order to establish why Anglophone electors are to be accommodated within the Brome-Missisquoi boundary divisions, requires a discussion of what makes the English-speaking population exceptional. This requires dispelling the myth that Anglophones in Brome-Missisquoi are comparable to Anglophones in Montreal. When people consider Anglophones of Quebec, they consider Anglophones as a collective. William Floch's research, for instance, focuses on the reasons why Anglophones left the province of Quebec between 1971 and 2001 and compares the socioeconomic status of Anglophones who remained and those who left (2005, 45-47). The Department of Canadian Heritage extends on this research by discussing the ongoing challenges Anglophones face in Quebec society (2011, 2-12). While it is useful to look at Anglophones as a collective as an official language minority, analyzing individual communities helps to understand the issues faced exclusively by the community. Issues such as political representation, are experienced differently for every community. Discussing what makes Anglophones of Brome-Missisquoi unique as an Anglophone minority in Quebec will further support my argument for the community to be effectively represented.

All Anglophones in Quebec face the language paradox of being an English minority in a majority Francophone province in a predominantly Anglophone nation as well as issues of representation in the political sphere. However, each riding has their own set of issues. Due to their geographical location, Anglophones in Brome-Missisquoi will face issues related to their ways of living, including local industries and economic and social circumstances—all of which are related to what's present in their immediate environment. Life for rural Anglophones is marked with the lack of employment opportunities, issues with youth retention, an aging population and being the least bilingual of Anglophones in Quebec; all of which contributes to making accessibility to health services and representation a problem (Klimp, n.d., 15-16).

Anglophones in Brome-Missisquoi are more vulnerable because of their declining population, which reflects less representation in institutions. The Anglophone minority was the fastest declining linguistic group in Canada between the years 1986 and 2001; but the Anglophones in the Eastern Townships are declining at a much faster rate than Anglophones in Montreal (Klimp, n.d., 10). These factors make realities for Anglophones in Brome-Missisquoi different from the realities of those residing in urban ridings. These issues paired with the rural vulnerability of the population makes it increasingly difficult for Anglophones to acquire representation in institutions; giving more reason to protect Anglophones as a “community of interest” in Brome-Missisquoi.

In Canada, distinct groups receive recognition from their collectiveness, but more so, they gain legitimacy and representation in political institutions with their spatial proximity (Pichette & Gosselin, 2013, 18). In other words, the more regionally concentrated a group, the greater the likelihood they will acquire representation in political institutions—much like in the Canadian Senate and the Quebec National Assembly. It would be a lot more difficult to acquire representation if a population is more regionally dispersed—and this is the case for rural Anglophones whose population is more geographically dispersed in the Southern part of the province and in the rural suburbs of Quebec City. There is an opportunity to secure the representation of Anglophones who occupy some rural regions in greater density than others. This is the case for Anglophones in Brome-Missisquoi who represent about fifteen percent of the

municipality's population (Le Directeur Général des Élections Québec, 2017, 13). In Quebec, eighty percent of English as a first official language spoken reside in the Montreal region while the remaining population resides in the areas of Outaouais (six percent), Estrie and the Southern regions (five percent) and Quebec City and the surrounding area (1.7%) (Department of Canadian Heritage, 2011, 3). Anglophones of Montreal are more regionally concentrated, which makes it easier not only for them to access resources, but to reiterate their presence in Quebec society. The Department of Canadian Heritage recognizes that Anglophones outside Montreal are less likely to secure institutional support. Anglophones of the Eastern Townships are more rurally dispersed, yet in some areas, more regionally concentrated to acquire a collective identity (Department of Canadian Heritage, 2011, 3). More to the point, Anglophones in Brome-Missisquoi are less likely to have the institutional support they need to promote the community's vitality (Department of Canadian Heritage, 2011, 12).

This brings me to a pivotal matter to address in this chapter, which is to answer the question of why and how Anglophones are politically vulnerable? My logical deduction for why Anglophones are politically vulnerable is based on what the Standing Committee on Official Languages uses as measurements to determine the Anglophone community's vulnerability: its population size (Paradis et al., 2018, 2).

Anglophones once held a favourable position as a minority in the province of Quebec (Stevenson, 2004, 334). While the French-speaking population was considered the majority, even historically, the Anglophones had the language in their favour. With the ability to converse in the universal business language, Anglophones had connections with other business elites in surrounding colonies. However, the Anglophones position as a strong minority was short-lived. As the centuries went on, more and more French people migrated to Quebec (Klimp, n.d., 9). Francophones recognized the English-speaking minority's advantage in the province and resented their advantageous position (Stevenson, 2004, 334). Provoking the French was the increase in Allophones immigrating to the province during the twentieth century (Klimp, n.d., 8). The "pluralism" of Quebec's population perpetuated a phenomenon called "creeping bilingualism"—a term insinuating the rise of bilingualism in a predominantly monoglottist nation (Montgomery, 2017). Authors such as Bernard, would suggest that bilingualism "leads to

the fading of the maternal identity, language and culture” (Freynet & Clément, 2015, 56). Creeping bilingualism reinforced institutional mechanisms that strengthened the French language agenda in Quebec while restricting access to English-language education (Stevenson, 2004, 330). Bill 101 was the prime example of legislation that secured Francophone dominance in employment sectors by closing the inequality gap they once held with their Anglophone counterparts (Floch & Pocock, 2012, 130). While making French Quebecers “les maîtres chez nous”, this did nothing to legitimate the presence of its linguistic minority, who had to struggle to acquire some form of recognition and status from the provincial government.

The movement of the mid-twentieth century saw the rise of a political one; the Quebec sovereignty movement (Stevenson, 2004, 325-326). Referendums on Quebec’s sovereignty association did not sit well with Anglophones. Already their position was inferior—being powerless to stop the movement to sovereignty—but separating from Canada would remove the federal protection and recognition as an official language minority. Many Anglophones were concerned with the political uncertainty. The thought of not being a part of Canada was not only unsettling, but a concern for the Anglophones’ way of life and living in Quebec (Stevenson, 2004, 330). As business and opportunities shifted out of province, so did, educated Anglophones looking for jobs that matched their qualifications (Paradis et al., 2018, 3).

While Anglophone numbers have been declining since the late nineteenth century, the political movement of the mid-twentieth century is what fueled the exodus pattern (Klimp, n.d., 13). The English exodus was a period where the largest portion of Quebec’s Anglophones moved out-of-province. During the mid to late-twentieth century, an estimated 300,000 Anglophones left the province (Gosselin, 2015, 52). Some government reports claim that number was greater, with numbers closer to 500,000 (Paradis et al., 2018, 2). The greatest proportion of Anglophones that left was between the years 1976 and 1981, which saw (mother tongue) Anglophones decline from being nearly thirteen percent to eleven percent of Quebec’s population (Stevenson, 2004, 330). Between 1971 and 2001, Quebec’s Anglophone population went from representing thirteen percent of the population to just over eight percent (Richardson, 2012, 69). Between 1996 and 2000, an estimated 8,000 Anglophones left the Eastern Townships (Department of Canadian Heritage, 2011, 13).

These population statistics will have a slight variation given that studies conducted on the English-speaking population analyze different counties, and municipalities whether collectively or exclusively. Undoubtedly, these statistics highlight the extent to which Anglophone community groups have declined over the last decades. Many Anglophones left out of concern of being increasingly vulnerable as a declining minority. Quebec Anglophones used to compensate for the loss of members by the cumulation of Allophones whose preference for language spoken was most often English (Klimp, n.d., 15). This soon changed when the Rene Levesque provincial government introduced Bill 101; positioning Francophones at an advantage in business and the professions while also protecting the vitality of the French language by mandating French as the compulsory language of instruction for immigrants (Floch & Pocock, 2012, 130; Stevenson, 2004, 330). As their numbers declined, so did the capacity for Anglophones to influence political life in Quebec (Klimp, n.d., 12).

I don't deny that Francophones' concern for their language vitality was justified, considering their place in a dominantly Anglophone nation, but it is the extent to which the French language is enforced that has placed its Anglophone minority in a difficult situation. The government's failure to accommodate the English minority has left the community with sentiments of being unwelcome in la belle province. William Floch and Joanne Pocock's review of literature demonstrates the apathy felt by language minorities as members permitted *in* the nation, but not so much of being *a part* of the nation (2012, 132-133). One variable that attributes to a group's collective identity is relative deprivation—which is a phenomenon whereby “discontent arises when group members engage in social comparison and perceive their group to be receiving less than what they feel they deserve, and negatively affects their collective esteem” (Bougie et al., 2011, 727). Unfortunately, both Anglophones and Francophone Quebecois have experienced this. For Francophone within the union of Canada and for Anglophones residing in Quebec.

Quebec's legislative agenda during the late twentieth century was an expression of Quebec's place and identity in an increasingly globalized world (Gosselin, 2015, 49). Political insecurity was what encouraged many Anglophones to leave during the latter half of the

twentieth century as well as discouraged people from migrating to the province altogether (Stevenson, 2004, 330). Hundreds of thousands of Anglophones left the province of Quebec to seek a sense of belonging within predominantly Anglophone provinces—acquiring a collective sense of being a part of the Canadian polity (Paradis et al., 2018, 2). The exodus paired with the lack of retention of Anglophones left a deficit with Anglophone community retention. The decline of Quebec’s Anglophones was not only evident with statistics, but also the decline in English representation in institutions. For instance, in 1979 the *Montreal Star* newspaper stopped publishing and more recently in 2007, the Community Association of Saguenay—Lac-St-Jean, an English language organization, closed its doors indefinitely (Jedwab & Maynard, 2012, 279; John Walker Productions, 2016, Post Quiet Revolution timeline). This decline in representation both numerically and institutionally, means that English-speaking Quebecers have less resources available to them as well as less representation in Quebec society altogether.

Why do English-speaking Quebecers deserve special status? For one, they are a historically founding group not only of Canada, but also of Quebec. Historical accounts accredit the presence of the Anglophone community since the mid-eighteenth century (Stevenson, 2004, 332; Wilkin, 2019). The fact that Anglophones continue to occupy and share the territory with the majority French-speaking population signifies that a level of cooperation between the communities can secure the path to consociational representation.

While the French are the majority in Quebec, the French were obviously not the only founding language and certainly not the founding language of the English-speaking communities in Quebec (Gosselin, 2015, 56). This distinction is important because the Anglophone community’s identity differs from the surrounding Francophone province. The difference in identity is based on Anglophones’ self-perception and the community’s history. According to Bougie et al.; “shared representations of history are central to the creation and maintenance of a group's identity” (2011, 726). Therefore, a group’s history plays a role in their “definitions and evaluations of their collective identities” (Bougie et al., 2011, 727). As stated by Pichette and Gosselin recalling Anglo-Quebecer history “helps the English-speaking community of Quebec bolster its sense of belonging and define its community space” (2013, 17). While Anglophones don’t necessarily feel like a part of the Quebec nation, they have a sense of belonging in their

individual communities. Anglophones in the Eastern Townships more generally, have a sense of community and belonging. English-speaking residents have a greater sense of belonging when they reside in regions with a higher concentration of English-speakers (Chaput et al., 2011, 11-12).

Many Anglophone community members left after the late nineteenth century and the Sovereignty Movement, but for those who stayed; they continue to contribute to the Anglophone regional identity. The ability to influence political affairs comes with numerical representation. That is to say that the Anglophone community's population is the primary determinant in the provincial government's decision to provide services in English (Paradis et al., 2018, 2). With the decline of Quebec's Anglophone population comes fewer opportunities for Anglophones to raise their political voice and influence policy. Despite the community's decline, it does not diminish the importance of the Anglophone community. A community's self-identity is affirmation of the community's legitimacy as a community of interest. As any community would see themselves as important, but more important is that as a language minority, their status guarantees their eligibility for services and ergo, representation.

When political actors judge whether to offer a community representation or services based on their population numbers, it is difficult to do so without being partisan. The rule of thumb followed by electoral commissions as non-partisan bodies is to deviate from the provincial quotient to protect communities of interest (Elections Canada, 2020, *Enhancing the values of redistribution*). While minority community numbers have been low, electoral commissions have followed through with protecting the communities in the past, as evident with the cases of the Acadians in New Brunswick and in Nova Scotia (Dodds et al., 2019, 8-9; New Brunswick Electoral Boundaries and Representation Commission, 2013, 4). Community protection in the form of protected electoral boundary districts guarantees that minority communities are not assimilated into wider populations—even when their numbers are low or on the decline. The idea behind protected districts is to empower the community vote, otherwise commissions run the risk of perpetuating the problem of the community's vulnerability.

Since electoral boundary commissions were established as independent bodies; this was intended to remove the partisan and the often French-speaking agendas of Quebec provincial governments (Elections Canada, 2007, 112; Stevenson, 2004, 335-337). Governments are sporadic, considering they are elected every four years and whose agendas are political—often a party that advances the French agenda. A recent example was the adoption of Bill 14 under Pauline Marois' PQ government in 2012, which intended to strengthen the use of French in public affairs such as administration and business and made it increasingly difficult to pursue English-language studies at primary and secondary levels of education (Gosselin, 2015, 55). According to Cheryl Gosselin, “ideologically, Bill 14 thereby intended to further the construction of Quebec as an exclusionary (ethnic) space for French only, effectively serving to reinforce the identity borders between the majority and its linguistic minority” (2015, 55). Therefore, provincial governments cannot guarantee English minority protection.

Institutions such as electoral commissions, have a specified mandate; a single purpose that governs the body's actions (Elections Canada, 2007, 112). Electoral commissions are more predictable, which is why there is greater confidence in guaranteeing English minority representation. By ensuring their collective organization in an electoral district, Anglophones of Brome-Missisquoi can have a direct impact on voting for a representative who embodies the community's interests.

Chapter Six

Establishing effective representation of Quebec's Anglophone minority

Electoral boundary cases have followed case precedent; with Justices reviewing past cases to deduct a judicial ruling. This fulfills the theory of path dependency and the approach taken by James Bickerton and Glenn Graham in their paper discussing consociationalism and the Acadian minority in Nova Scotia (2020). In their paper, Bickerton and Graham discuss how the majority English group in Nova Scotia institutionally accommodates the Acadian minority through protected districts, which reaffirms the Acadians place in Nova Scotia society (2020, 32; Stevenson, 1999, 8). Anglophones in Brome-Missisquoi have struggled for the same institutional recognition, as evident with how its provincial government and its institutions have conducted themselves.

Using Bickerton and Graham's path dependency approach, the intent of this chapter is to establish how Anglophones in Brome-Missisquoi can acquire the same judicial protection as guaranteed to the Acadians in New Brunswick and Nova Scotia. If legal jurisprudence prevailed in former cases, then Anglophones of Brome-Missisquoi can receive the same protections as an official language minority and a community of interest.

Quebec, as a majority Francophone province, frequently engages in majoritarian-style politics by establishing provincial policies that favour the French language. Bill 101 was the most prominent example, which reduced Anglophones to second-class citizens (Jedwab & Maynard, 2012, 285). Applying the theory of consociational democracy, it is logical to state that Anglophones have lost recognition as the official language minority, which is evident with their decline in representation in political institutions. The lack of inclination to accommodate Anglophones as a community of interest corroborates the theory that Quebec's nationalist approach does not support consociational governance, which has subsequently harmed the Anglophone community (Stevenson, 1999, 13-14).

In the period following Confederation, Quebec was considered a “consociational democracy”. The extent to which Quebec was considered a consociational democracy was based on the representation of Anglophones in Quebec’s institutions. According to Garth Stevenson, there were twelve Anglophones electoral districts, which were established constitutionally and included the districts of Brome and Missisquoi (1999, 35). Anglophones also held Cabinet positions, which represents how Anglophones were part of higher-level decision making (Stevenson, 1999, 37-38). Over the decades, leading into the twentieth century, English representation in Quebec’s institutions declined. As well, the migration of Francophones to the ridings made the protected districts irrelevant and less representative of the region’s Anglophones (Stevenson, 1999, 36). Anglophones lost their cooperative relationship they once held with the French-speaking majority. Seeing that Anglophones are a historic community, institutional support needs to be offered to compensate for the loss of the community’s representation. After all, Anglophones still continue to maintain a presence in Brome-Missisquoi today.

It is important to note that Quebec’s circumstances are exceptional—being Canada’s sole Francophone province. Approximately 7,914,498 (22.8 %) Francophones reside in Canada with the greatest density residing in Quebec (Office of the Commissioner of Official Languages, 2019). Quebec has taken strides to promote the French language with the introduction to the *Quebec Charter of the French Language* (1977) and a Quebec-centered party operating at the federal level. The tone established by the province, is that of consociational protection—and is a tone that has an influence on governing institutions. Quebec’s French-language enforcement are actions of majoritarian governments, which leaves little space for the Anglophones minority to assert their presence in Quebec politics.

According to Jebwab and Maynard; “linguistic minorities need to safeguard their institutional support while interacting with the state administration and mainstream society. Federal and provincial support of minority institutions depends on majority group endorsement of such institutional support” (2012, 284). As the de facto minority, Anglophones have an even greater challenge acquiring representation in the province. The precarious situation of English-speaking Quebecers has been described by the Senate Committee for Modernizing the Official

Languages Act; “In Quebec’s political climate, it can sometimes be hard to have their existence recognized by the Francophone majority” (Cormier, 2018, 7). Similarly, Jedwab and Maynard state that; “the main problem of the English-speaking community is one of disempowerment: in this case that feeling is either individually or collectively, English-speaking Quebecers have little influence on Quebec society” (Jedwab & Maynard, 2012, 285). Feelings of disempowerment come from having little ability to influence political life. Anglophones of Brome-Missisquoi face this exact predicament, but what legitimizes their claim for representation is their historical status.

The historical status argument

As the official language minority, Anglophones can only have status and representation if the majority language group recognizes that they are entitled to said rights. Quebec’s present Coalition Avenir Québec (CAQ) government has confirmed that rights are entitled to Anglophones in Brome-Missisquoi. Premier Francois Legault stated that only “historic Anglophones”—that is, those whose parents have attended English-language schools, as the only group allowed to receive services in English (Hinkson & Pindera, 2019). According to Premier Legault; “if your parents went to English school, you have rights in Quebec, and we will respect those rights; historic English minorities will always be able to receive all the services in their own language” (Hinkson & Pindera, 2019). The fact that the Legault government recognizes “historic Anglophones” provides the backing for Anglophones to make a rights claim based on their historical lineage.

The historical argument goes beyond public acknowledgements; and it legitimizes the claim for Anglophones to secure their rights as a historical group. Canadian Courts refer to historical significance as a reason for protecting communities of interest. Specifically, Courts have referred to section 15(1)(b) (i) in the *Electoral Boundaries Readjustment Act* (1985), which states that electoral boundary commissions are to respect “historical patterns” in an electoral district (Electoral Boundaries Readjustment Act, 1985, Sec.15(b)(i)). Subsequent interpretations of Section 15 of the *Electoral Boundaries Readjustment Act* by Canadian Courts reiterate that aligning to protect a community of interest with a shared history ensures that there is attention

paid to “regional issues” (Nova Scotia Court of Appeal, 2017, 54-55). Historical representation is an argument that can also be made at the provincial level, seeing that the Commission de la représentation électorale du Québec recognizes history and shared interests as components to effective representation (n.d., *La représentation effective*). Since Quebec’s electoral institutions recognize history as part of effective representation; there is the potential for courts to rule in favour of protecting Anglophones as a historic minority group.

The argument for protecting Anglophones as a community of interest is further supported with the Senatorial seat arrangement. Section 22 of the *Constitution Act* (1867) stated that seats in the Senate were to be based on regional divisions, specifically, with a clause that states Senators must be a resident of the region they represent (Gouvernement du Québec, 2019, Quebec’s place within the Senate). The objective with the “real property requirement”, was to ensure that Quebec’s English-speaking minority, which were “grouped territorially in various ridings”—were guaranteed representation in the Canadian Senate (Gouvernement du Québec, 2019, Quebec’s place within the Senate). The real property requirement relates to what the Commission on Effective Electoral Representation calls “descriptive representation”. Descriptive representation is a representative who shares a common trait with the community they are representing, which includes race and culture (Commission on Effective Electoral Representation, n.d., 5). Being a resident of the community means that the Senator shares common traits with their neighbours and likely identifies with the Anglophone community.

Canada’s Supreme Court recognized the importance of English representation in *Reference re Senate Reform* (2014) (Parliament of Canada, 2017, 1.2). The Supreme Court stated; “Historically, this was intended to ensure that Quebec’s Anglophone minorities would be represented in the Senate, by making it mandatory to appoint Senators specifically for divisions in which the majority of the population was Anglophone...Section 23(6) is linked to the implementation of this special arrangement” (Parliament of Canada, 2017, 1.2.2). The Senate representation is evidence that Anglophone protected districts are based on historical and Constitutional guarantees.

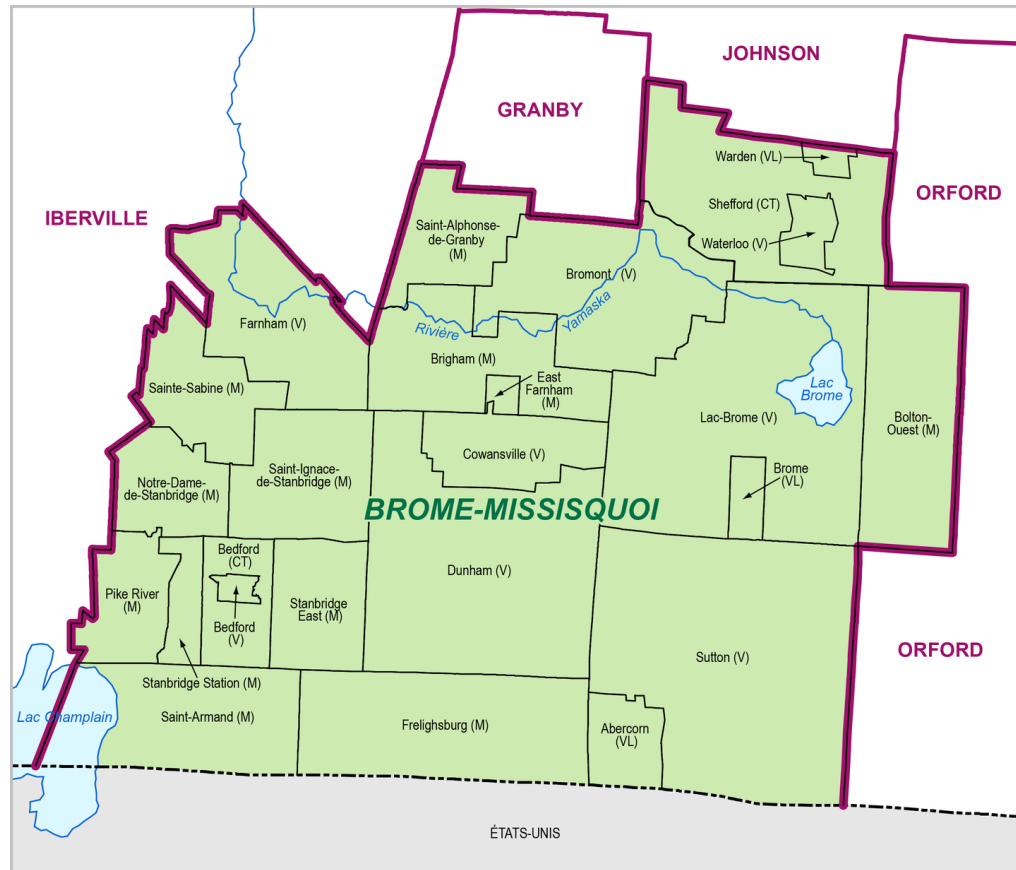
Quebec's exceptional place in Canada as the only Francophone province has made Anglophones as the exception as Canada's only English language minority. The idea behind Quebec's senatorial arrangement is also exceptional, because it is one of the only institutional protections for Quebec's Anglophone minority. The purpose was to enable Quebec's English-speaking population to be represented by a community voice, rather than by the majority French-speaking population.

The provincial district of Brome-Missisquoi: Anglophone representation and boundary realignments

James Bickerton and Glenn Graham have argued that no other regionally concentrated group in Canada has taken the 1991 Supreme Court decision (*Carter*) to acquire protected electoral districts (2020, 33). Alas, the central argument of my thesis is that Anglophones of Brome-Missisquoi can retain a degree of self-determination with a protected electoral district.

The riding of Brome-Missisquoi was created in 1972 (Commission de la représentation électorale du Québec, n.d.). Since then, the boundaries of the electoral riding have been changed three times. Brome-Missisquoi was first realigned in 1980, with the addition of a portion of the Shefford riding (adding two electors) (Commission de la représentation électorale du Québec, n.d., *Brome-Missisquoi*). The riding was realigned for a second time in 2011, when it was combined with a part of the electoral division of Iberville (adding 5,860 electors) and most recent in 2011 with the addition of part of the electoral district of Shefford (adding 8,133 electors) (Commission de la représentation électorale du Québec, n.d., *Brome-Missisquoi*). The present map of Brome-Missisquoi can be seen in Figure 5 below.

Figure 5 Present electoral map of Brome-Missisquoi



Élections Québec. (2020). *Conscription: Brome-Missisquoi* [Electoral District: Brome-Missisquoi]. <https://www.electionsquebec.qc.ca/provinciales/fr/info-circ.php?sectionVote=&noPoll=&selectCirc=204>.

Presently, Anglophones compose about fifteen percent of the electorate in Brome-Missisquoi (Le Directeur Général des Élections Québec, 2017, 13). This compares to eighty-one percent that are French-speakers (French as a mother tongue) (Élections Québec, 2020, *Portrait socio-économique de 2016-Brome-Missisquoi*). Based on the statistics, Anglophones represent not even a quarter of the riding's population (Élections Québec, 2020, *Portrait socio-économique de 2016-Brome-Missisquoi*). The municipalities in the riding that have the highest concentration of Anglophones are Bolton-Ouest, Brome, Lac-Brome, and Stanbridge East; which has over

forty-five percent of Anglophones in their municipalities (Statistics Canada, 2019, *Census profile 2016: Bolton-Ouest, Brome, Lac-Brome & Stanbridge East*). From composing at least half of the occupants in municipalities to being fifteen percent of the riding, means that there is a decline in representation (Le Directeur Générale des Élections Québec, 2017, 13; Statistics Canada, 2019, *Census profile 2016: Bolton-Ouest, Brome, Lac-Brome & Stanbridge East*). Rather than making the Anglophone vote more electorally representative, the additions with parts of Iberville and Shefford have brought greater Francophone representation. Anglophones comprise 2.5% of the population in the city of Iberville (part of the city of Saint-Jean-sur-Richelieu) and 6.4% of the municipality of Shefford (Statistics Canada, 2019, *Shefford 2016*; Statistics Canada, 2019, *St-Jean 2016*).

The riding altogether, has a presence of Anglophones; however, their collective impact is not significant in order to influence electoral results. Montreal has the highest percentage of Anglophones with eighty percent of the total population, which compares to under six percent in Outaouais, under two percent in the south region of Quebec City and a little over five percent (Department of Canadian Heritage, 2011, 3). While Montreal is said to have strong institutional support, rural communities have weaker institutional support (Department of Canadian Heritage, 2011, 13). This includes the Eastern Townships, which collectively lost 8,000 Anglophones between 1996 and 2000 (Department of Canadian Heritage, 2011, 13). The demographic decline of Anglophones perpetuates the loss of community representation in Brome-Missisquoi (Department of Canadian Heritage, 2011, 12). The loss of community members is “further compounded by the disproportionately low representation in the Quebec National Assembly and the public administration as a whole” (Department of Canadian Heritage, 2011, 12).

The burden of the problem with Anglophone representation is not Anglophones leaving the region; despite urban and provincial migratory factors. The problem is that the community’s vote has not been empowered by the very institutions that are supposed to ensure that Anglophones make a difference in elections. The Courts have continued to confirm that “special status” is the utmost priority to retain the representation of minority communities. One could argue based on the actions of Quebec’s Electoral Boundary Commission that realignments performed on the riding of Brome-Missisquoi are based on absolute parity—in the sense that it

has brought the riding closer to the provincial quotient (Commission de la représentation électorale du Québec, 2017, p.64).

Quebec’s provincial Electoral Boundary Commission and the right to effective representation

The decline in representation of Anglophones in Brome-Missisquoi suggests that Quebec’s Electoral Boundary Commission has not fulfilled its obligation to protect Anglophones as a community of interest. Realignment is made to empower a community’s vote, rather than dilute it in the majority population. Realigning electoral districts in a manner that addresses a community’s demographic decline is within the Quebec Electoral Commission’s mandate, since Anglophones are classified as a community of interest. According to definitions used by the Supreme Court, communities of interest include; “any special community or diversity of interests of the inhabitants of various regions” and “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” (Supreme Court of Canada, 1991, *Reference re Prov.*). Provinces, by convention, established the same regulations for their provincial electoral boundary commissions, which means the same rule of variance applies.

According to la *Commission de la représentation électorale du Québec*, natural communities with a shared history and common interest are exceptional considerations for the electoral commission to deviate from the provincial quotient (n.d., *La représentation effective*). According to Section 14 of the *Québec Election Act*; “Québec shall be divided into electoral divisions delimited in such a way as to ensure that the principle of effective representation of electors is respected” (Gouvernement du Québec, 2020, Sec.14). Subsequently, the Election Act established the characteristics of “natural communities” (Gouvernement du Québec, 2020, Sec.15). According to Section 15 of the Election Act;

An electoral division represents a natural community established on the basis of demographical, geographical and sociological considerations, such as the population

density, the relative growth rate of the population, the accessibility, area and shape of the region, the natural local boundaries and the territories of local municipalities (Gouvernement du Québec, 2020, Sec.15).

While nowhere in this definition does the Quebec government specifically cite or acknowledge Quebec’s Anglophone minority—Anglophone minority communities still apply under the definition of “natural communities”. Natural communities as such, are protected through the principle of effective representation. Section 3 of the Canadian *Charter* includes the right to effective representation; a right that was clarified in *Saskatchewan v Carter* (Supreme Court of Canada, 1991, *Reference re Prov.*). The Supreme Court’s ruling established that federal electoral boundary commissions would operate with the rule of thumb of employing the twenty-five percent variance to accommodate communities of interest (*Electoral Boundaries Readjustment Act*, 1985, Sec.15).

The electoral district chart in the 2017 Quebec Electoral Boundary Commission report, demonstrates that Brome-Missisquoi’s constituency size (in terms of electors) was larger than the provincial average. Quebec’s approach to realigning districts is conducted by dividing the total number of electors in Quebec by the number of electoral divisions (Commission de la représentation électorale du Québec, 2017, 11). Quebec reported 6,048,383 electors as of November 30, 2014 (Commission de la représentation électorale du Québec, 2017,13). This would mean devising the 6,048,383 electors into Quebec’s one-hundred and twenty-five provincial electoral districts (Commission de la représentation électorale du Québec, 2017, 13).

Accordingly, Brome-Missisquoi has 58,078 electors while the provincial average is 48,992 (Commission de la représentation électorale du Québec, 2017, 64). Brome-Missisquoi’s constituency size exceeded the average by 9,086 electors—bringing more voters rather than refining the district to translate the Anglophone vote. This discrepancy implies that Quebec’s Electoral Boundary Commission realigned its districts closer to the provincial quotient.

What suggests that the realignments of Brome-Missisquoi in 2001 and 2011 were not made in the Anglophone community’s favour is the fact that Anglophones were not cited as a

reason for the realignments (Commission de la représentation électorale du Québec, n.d. *Brome-Missisquoi*). In fact, the Anglophone community in Brome-Missisquoi is not cited at all in the 2017 Quebec Electoral Boundary Commission's report (Commission de la représentation électorale du Québec, 2017). This is uncommon in electoral boundary commission reports; considering that other provincial commission reports cite linguistic minorities with the goal of ensuring that they are effectively represented in provincial legislatures. In New Brunswick and Nova Scotia's electoral boundary reports, both commissions had acknowledged the protection of their linguistic minorities through protected electoral boundaries (MacNeil, 2012, 18; New Brunswick Electoral Boundaries and Representation Commission, 2013, 5-6). Whereas the Acadians in Nova Scotia and New Brunswick have protected ridings, nothing in the Quebec Electoral Boundary Commission's report seems to advocate or advance the idea of a protected riding (Commission de la représentation électorale du Québec, 2017, *The Quebec electoral map 2017*). Courts have established a consecutive pattern of prioritizing the right to effective representation, which means there is a possibility courts would arrive at a similar conclusion with the right for Anglophones to be effectively represented.

The Federal Court had ruled that New Brunswick's Electoral Boundary Commission erred in its alignments by making its Acadian minority more vulnerable in a larger electoral district. Given the vulnerability of Anglophones in Brome-Missisquoi, courts might also reason that Quebec's Electoral Boundary Commission had failed to interpret the Anglophones' community decline as evidence to align districts in their favour (Federal Court, 2004, *Raïche v. Canada*). The Federal Court reiterated that electoral boundary commissions are to realign districts to reflect population changes and this includes the population changes of minority communities (Federal court, 2004, 4). The Court rationalized community empowerment in its assertion;

For example, if you have a minority that is two or three percent in an electoral district, it is a little hard on that minority, they do not have a lot of power. But if you have a minority of 30% or 35% in a bilingual electoral district, and that can be increased by another two or three percent, that minority is going to feel more and more comfortable, it

will feel better and better, and it will acquire more and more power (Federal Court, 2004, 67).

Alignments made towards the provincial quotient, diminished the districts' proportion of Acadians significantly. In 2004 when New Brunswick's federal Electoral Boundary Commission combined Allardville, Bathurst and Saumarez to Miramichi; Acadians went from representing seventy-nine percent of the electoral district of Acadie-Bathurst to twenty-one percent in the district of Miramichi (Elections Canada, 2016, *Electoral district: Acadie-Bathurst*; Statistics Canada, 2019, *Allardville, Bathurst, Miramichi-Grand Lake, Saumarez*). Similarly, the Acadian protected riding of Clare in Nova Scotia had sixty-six percent of Acadian electors (Commission on Effective Electoral Representation, n.d., 38). The realignments performed in 2012 reduced their representation to a little over thirty-four percent in the combined riding of Digby-Clare (Commission on Effective Electoral Representation, n.d., 38). When Nova Scotia's 2012 Electoral Boundary Commission side-stepped from maintaining the protected ridings, the Nova Scotia Court of Appeal intervened. The Court reasoned that the Acadians compose an exceptional group in the province and "retain a special status in the electoral redistribution process" (Nova Scotia Court of Appeal, 2017, 49(3)).

Aligning boundaries around the Anglophones in Brome-Missisquoi would be a challenge, considering that the community represents fifteen percent of the electoral district (Le Directeur Général des Élections Québec, 2017, 13). With the decline of the population, electoral realignments should have addressed this decline as soon as it was observed with statistics. The fact that these statistics were never interpreted as evidence to establish protected districts suggests that the Commission has erred in its responsibility to protect and promote the vitality of minority community voices (Federal Court, 2004, *Raiche v. Canada*).

The variance rule, if applied to the Anglophones in Brome-Missisquoi, will likely take the form of producing a smaller district, refined around the region's most concentrated Anglophone clusters. The purpose with establishing smaller protected districts is to make the regional concentration of Anglophones more significant than they are presently. The theory of path dependency would suggest that because electoral commissions have made similar

maneuvers of producing smaller districts; then Anglophone representation can be achieved with a smaller district. Nova Scotia Acadians, for instance, were initially a part of a larger riding (Bickerton & Graham, 2020, 36). When the Nova Scotia independent Electoral Boundary Commission was established in 1991, the commission refined districts to empower the Acadian vote (Bickerton & Graham, 2020, 33; Nova Scotia Court of Appeal, 2017, 24). The idea behind community empowerment is to “nurture” cultures that have been around for centuries that have been “relatively isolated as a coherent community” (Bickerton & Graham, 2020, 39).

With the legal interpretation of communities of interest provided in former cases of electoral boundary disputes, Quebec’s Electoral Boundary Commission might face the same interpretation offered by Canada’s Supreme Court. The Supreme Court has reasoned that effective representation is the primary objective of boundary realignments (Supreme Court of Canada, 1991, *Supreme Court Judgements*). According to the Supreme Court of Canada;

Deviations from absolute voter parity, however, may be justified on the grounds of practical impossibility or the provision of more 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. Beyond this, dilution of one citizen's vote as compared with another's should not be countenanced (Supreme Court of Canada, 1991, *Supreme Court Judgments*).

Effective representation encompasses communities of interest and is the criteria used when deviating from absolute voter parity (Courtney, 2001, 204; Elections Canada, 2020, *Enhancing the values of redistribution*). Courts have recognized that effective representation is not guaranteed by aligning districts to achieve absolute voter parity. Effective representation is (and must be) achieved when electoral boundary commissions deviate from the provincial quotient (Supreme Court of Canada, 1991, *Supreme Court Judgements*).

Based on previous judicial interpretations, one can conclude that Quebec’s Electoral Boundary Commission had not honoured its commitment to protect natural communities. This

conclusion is based on the fact that the variance of plus or minus twenty-five percent had not been employed in the manner that served to protect Anglophones of Brome-Missisquoi. Presently, Anglophones are in a situation where they have weak institutional support (Department of Canadian Heritage, 2011, 1). The possibility for the community to recover and revive its population electorally is nearly impossible; however, this does not mean that Anglophones have become a lost cause. There are mechanisms which guide electoral commissions with protecting vulnerable communities. When such mechanisms are employed—such as the variance to the provincial quotient—they can provide a community with a degree of self-determination through electoral empowerment.

The former section establishes that Anglophones in Quebec have special status as a linguistic minority, but such recognition appears to be lost in the boundary review process. Reducing minority community coherence undermines their ability to have a voice; this occurs when electoral commissions group the communities into a larger polity—that is, the majority language group. Given that the Courts both in *Raïche* and the Acadian case in Nova Scotia recognized that the votes of Acadians had drastically diminished—Anglophones fifteen percent representation in Brome-Missisquoi would also be considered low, if not, especially low.

The lack of recognition of Quebec's Anglophone minority even in Quebec's non-partisan commission, speaks to the challenge Anglo-Quebecers face with acquiring representation in political institutions. In the latest commission report, Brome-Missisquoi had not been altered in 2017; which implies that there is no intent on part of the Electoral Commission to change or better the circumstances of the Anglophone minority in the riding (Commission de la représentation électorale du Québec, 2017, 18). Anglophones have lost institutional support, particularly over the last decades, which means their ability to make an impact in provincial elections is diminishing (Floch, 2005, 46). An analysis of electoral results in Brome-Missisquoi suggests that the diminished impact might be the case.

Electoral Results of Brome-Missisquoi

In 1973, the subsequent election following the creation of the riding of Brome-Missisquoi, the Parti Libéral Québec (PLQ) candidate received sixty-two percent of the vote (see Table 2) (Élections Québec, 2020, 1973 General election results). This overwhelming result compares to the nearly fourteen percent of votes received by the Parti Québécois (PQ) candidate in the riding (Élections Québec, 2020, 1973 General election results).

Table 2 Results from Quebec’s 1973 General Election for the Riding of Brome-Missisquoi

Brome-Missisquoi

Candidates and political affiliation	Valid votes	Percentage of valid ballots (%)	Majority
dit Glen Brown, Glendon (P.L.Q.)	12,999	62.02	9,687
Binette, Georges (P.C.)	3,312	15.80	
Doucet, Paul (P.Q.)	2,860	13.65	
Choinière, Jean-Guy (U.N.)	1,587	7.57	
Paquette, Richard (IND.)	202	0.96	
Number of valid ballots: 20,960 (98.62%) Number of rejected ballots: 294 (1.38%) Total voter turnout: 21,254 Registered electors: 27,153 Voter turnout: 78.27%			

Élections Québec. (2020). 1973 General election: Official results by electoral division.

Brome-Missisquoi. <https://www.electionsquebec.qc.ca/english/provincial/election-results/general-elections.php?e=54&c=70&s=1#s>.

The fact that the PLQ candidate won by an excessive margin of votes indicates that the Anglophones vote may have had greater influence in the results of the riding. For reference, the

PLQ is considered the natural governing party for Quebec's Anglophones and it is a provincial party that recognizes the Anglophones as one of the cultural groups in their party platform (Parti Libéral du Québec, 2020, *Promoting our cultural heritage*). The PLQ has won consecutively in elections since 1981 (Élections Québec, 2020, 1981 General election results). Pierre Paradis was the incumbent member representing the riding of Brome-Missisquoi leading up to his political culmination in 2018 (Fletcher 2018). Paradis, whose family has ties to the English-speaking community, has been elected eleven times, maintaining his seat in the Assemblée Nationale from 1981 to 2018 (Élections Québec, 2020, General election results 1973-2018; Paradis et al., 2018). While Paradis secured the riding in every provincial generation election since 1973, the margins by which he secured the riding became smaller (Élections Québec, 2020, 1981-2014 General election results). In the 2003 and 2007 general elections, following the addition of Iberville, Paradis won by thirty-one percent and seven percent leads respectively (Élections Québec, 2020, 2003-2007 General election results). The latter election produced close electoral results given the rise of sovereignty sentiments with the Pauline Marois leadership (Hamilton, 2012).

Proving that Francophones have greater influence in the riding of Brome-Missisquoi is a challenge. Statistical numbers indicate that the French have greater influence because they compose most of the riding (Le Directeur Général des Élections Québec, 2017, 13). The results of the polling subdivisions seem to corroborate the fact that Anglophones had nothing to do with the CAQ victory in the riding in 2018. In the municipalities with above forty-five percent of Anglophones, Ingrid Marini was the preferred candidate while the opposite was true with French majority municipalities (Statistics Canada, 2019, *Bolton-Ouest, Lac-Brome*). Marini won 1,077 votes in Lac-Brome and 211 in Bolton-Ouest compared to Isabelle Charest who received 592 and 56 votes respectively (Élections Québec, 2020, *Official results by polling subdivisions*). In Shefford, where there are a majority French voters, Charest won with 1,422 while Marini received 394 votes (Élections Québec, 2020, *Official results by polling subdivisions*). The disadvantage to having less Anglophone influence means the community loses the ability to elect candidates that can advocate for the interests. The most recent Quebec general election in 2018 exemplifies a loss for Anglophones, specifically with regards to substantial representation.

With Pierre Paradis' resignation from political life, the seat for Brome-Missisquoi became open to new candidates. The running PLQ candidate for the 2018 election was Ingrid Marini. Marini's resume offered a promise for Anglophone representation, having been a Director for the Townshippers' Association, which is an English language organization in the Eastern Townships (McCully, 2018). In the 2018 provincial election, Marini would lose to a former Olympian Isabelle Charest. Charest, representing the Coalition Avenir Québec (CAQ), won the majority of the vote with a twenty percent lead (Élections Québec, 2020, 2018 General Election). Voter turnout in the riding was just over seventy percent, which means that the majority of electors had voted on election day (Élections Québec, 2020, 2018 General election). Assuming this high turnout was also reflective of Anglophone turnout, Anglophones did not make much of an impact in Brome-Missisquoi.

Marini embodied substantive representation since her experience working for the Townshippers Association exemplifies her advocacy and interest in Quebec's Anglophone minority. This relates to what the Commission on Effective Electoral Representation of Acadians and African Nova Scotians calls substantive representation, which is when an electoral representative "champions your values and views" (n.d., 5). Marini had experience serving on the Board of Directors of the Townshippers' Association and as the candidate for the PLQ—her candidacy embodied the principle of substantive representation (Commission on Effective Electoral Representation, n.d., 5; McCully, 2018).

The idea of empowering a community of interest to elect the candidate of their choice was a justification made for protected ridings in the *Raïche* case. The Federal Court reasoned that enabling the communities to represent in larger numbers gives them the confidence in voting for the candidate of their choice and of the electoral process altogether (2004, 67).

This is not to say that all Anglophones wouldn't support the CAQ—surely, some do. The likelihood that Anglophones would vote for a CAQ candidate is unlikely given public opinion and where the party stands on Anglophones. According to a Leger poll, forty percent of Anglophones strongly disagree with the statement; "the concerns of English-speaking Quebecers are well understood by the Coalition Avenir Québec" (Leger Marketing et al., 2019, 3). The

same poll conducted by Legal Marketing and other Quebec-based groups such as the Quebec Community Groups Network, found that nearly seventy percent of Anglophones do not trust the CAQ government whereas only about five percent of Anglophones have the greatest trust in the CAQ government to address their issues (2019, 4). The majority of Anglophones polled who did not trust the CAQ government to address their issues believed that the CAQ undermines their community (twenty percent) and that they are separatists in disguise (about eight percent) (Leger Marketing et al., 2019, 5). Similarly, polls conducted in 2012 (when the PQ held government), found that eighty-four percent of Anglophones believed the PQ would “limit the English language” if it held a majority while only twelve percent trusted the PQ in general (CBC News, 2013).

Public sentiment polls reveal that Anglophones do not have much confidence in parties that advance the French agenda. Reinforcing Anglophones distrust for these provincial parties is the fact that there was no mention of Quebec’s Anglophone minority in the party’s 2018 platform (CAQ, 2018, 5). The lack of acknowledgement means Anglophones would not have substantive representation with CAQ candidates (Commission on Effective Electoral Representation, n.d. 5). If formal recognition by parties is not sufficient in demonstrating how Anglophones feel they are unrepresented by the CAQ, the actions of the CAQ representative for Brome-Missisquoi seems to further corroborate this theory.

The local MNA elected to the riding of Brome-Missisquoi, Isabelle Charest, had rubbed the Anglophone community the wrong way when she visited the French side of a shared high school, but neglected to visit the English students (Klink, 2020). High school teacher Gail Klink had expressed these words to Isabelle Charest in her failure to visit the English students:

On the one hand, bravo for your desire to connect with students. On the other, the fact that you did not do the same for students of Massey-vanier High School, separated from Ecole Secondaire Massey-vanier by a corridor, speaks volumes about the English-speaking community’s invisibility—or perhaps insignificance—to you and your government (Klink, 2020).

The MNA's actions suggests that she has little understanding of the community's vulnerability and her actions did little to make the Anglophone community feel accommodated. It is not the fact that residents of Brome-Missisquoi elected a CAQ MNA that Anglophone minority interests are not represented; it's the fact that political institutions have failed to provide a voice for the community. Or in other words, for Anglophones to be able to elect representatives who either share "descriptive characteristics"—having shared characteristics such as language or race—or substantive characteristics (Commission on Effective Electoral Representation, n.d. 5). If an MNA does not champion the views of Anglophones, then they are not a representative likely to be elected on behalf of Anglophones in Brome-Missisquoi.

A poll found that eighty-three percent of Anglophones felt that the CAQ government "was doing a worse job of protecting the rights of Anglophones in Quebec compared to two years ago" (Bruemmer, 2019). Reinforcing this belief was the action performed by the government—with the abolition of English school boards (Bruemmer, 2019). Political apathy, frustration and lack of confidence with Quebec's political system are consequences the Supreme Court recognizes when commissions dilute a community's voice (Supreme Court of Canada, 1991, *Supreme Court Judgements*). The Supreme Court of Canada produced this assessment:

The right to vote is fundamental to a democracy. If the right to vote is to be of true significance to the individual voter, each person's vote should, subject only to reasonable variations for geographic and community interests, be as nearly as possible equal to the vote of any other voter residing in any other constituency. Any significant diminution of the right to relative equality of voting power can only lead to voter frustration and to a lack of confidence in the electoral process (1991, *Supreme Court Judgements*).

The sentiments expressed by Anglophones demonstrates that they are experiencing frustration with their political representatives. Further evidence would suggest that Quebec's Electoral Boundary Commission is not providing Anglophones with the ability to influence electoral results.

The Quebec Electoral Boundary Commission's Approach to Electoral Districting and Majoritarian Style Governance

The assessment of Brome-Missisquoi's Anglophone community representation as well as electoral results was important to establish the hard facts to this case. The bulk of this argument relates to path dependency and the judicial interpretation of key cases that will inspire similar judicial rulings for Anglophones in Brome-Missisquoi.

To incorporate Bickerton and Graham's theory of consociational districting to Quebec's Electoral Boundary Commission is the next step. Since the late twentieth century, Quebec has been classified as a "majoritarian democracy" (Stevenson, 1999, 16). The argument of this next section is that Quebec's Electoral Boundary Commission embodies the majoritarian agenda of the majority French population. These principles are not only evident with all three members of Quebec's Commission being Francophone, but also by the actions pursued by the Commission (Commission de la représentation électorale du Québec, n.d., *Membres*).

Analyzing the latest Quebec Electoral Commission report produced in 2017, many deviations from the provincial quotient suggests that alignments were based on numerical representation, rather than on fulfilling the objective of effective representation (Commission de la représentation électorale du Québec, 2017). As the majority language is French and thus, the majority of the Quebec electorate is French, deviating from the provincial quotient would need to occur in order to grant the Anglophone minority their right to self-determination. The Quebec Electoral Boundary Commission considers a minus twenty-five variance for accommodating communities of interest, but rather than giving Anglophone a greater voice, the Commission gave that voice to rural communities (Commission de la représentation électorale du Québec, n.d., *La représentation effective*).

Quebec's Electoral Boundary Commission recognizes the Îles-de-la-Madeleine and Ungava districts with special protection under the *Québec Elections Act* and are permitted to have excessive deviation from the provincial quotient (Commission de la représentation électorale du Québec, 2017, 22, 28; Gouvernement du Québec, 2020, Sec.17). For the 2017

representation order, the riding of Îles-de-la-Madeleine had 10,660 voters with a variance of minus seventy-eight percent while the riding of Ungava had 27,501 electors with a variance of nearly forty-four percent (Commission de la représentation électorale du Québec, 2017, 65-68). The ridings were considered exceptional as “sparsely populated areas whose populations are geographically widely scattered” (Commission de la représentation électorale du Québec, 2017, 22). Legally, Quebec’s Electoral Boundary Commission was within its jurisdiction to respect the districts’ special status. The rulings of *Carter* confirm that electoral commissions are permitted to address disparities between urban and rural ridings (Supreme Court of Canada, 1991, *Reference re Prov.*).

The 2017 Electoral Boundary Commission was also committed to grant an additional riding in the rural region of Laurentians and the Lanaudière. In order to accommodate the region with an additional riding while respecting the one-hundred and twenty-five seat capacity, the Commission would have to combine existing ridings. The Commission decided that the ridings of Mont-Royal and Outremont would be merged. This decision faced criticism, because it diluted the representation of various community groups in the riding, including Anglophones (Hanes, 2017). Allison Hanes expressed her discontent in the *Montreal Gazette*;

The ridings under review also happen to be among the most diverse in Quebec. The guiding principles of determining electoral districts are supposed to be effective representation, equality of electors, natural communities. But the CRE’s decisions ignore the sanctity of these “natural communities” and their weight in the electoral process by slicing and dicing D’Arcy McGee, Chomedey, Mont-Royal and Outremont. Perhaps this lack of sensitivity for the concerns of minorities wouldn’t be as apparent if the membership of the three-member CRE itself were more diverse (2017).

There are two main issues with these rural realignments. First, Montreal’s population rose at a similar rate as the regions of Laurentians and the Lanaudière. Specifically, Montreal witnessed just over three percent increase while the Laurentians and Lanaduiere experienced a little over four percent increase in population (Hanes, 2017). The justification for selecting a diverse, Montreal ridings was not made clear, especially since other ridings on the decline could have

been a more suitable option for a merge (Hanes, 2017). Seeing that this proposed realignment also impacted the Anglophone community groups in Outremont and Mont-Royal, one could argue that the Commission has disregarded special consideration for Anglophone communities in Quebec. Anglophones are a different linguistic group within Quebec and are also situated within the rural riding of Brome-Missisquoi. Without a specified reason, rural inhabitants in the Laurentians and the Lanaudière, for instance, have greater consideration as a natural community. One could argue that these are the actions of an institution that supports French communities—but not the actions of an impartial Electoral Commission.

Brome-Missisquoi is also a rural riding but isn't awarded special protection. Given that the total electors of Brome-Missisquoi exceeds the average elector per district 9,086 electors and the Francophone population is on the rise, wouldn't it be logical to realign Brome-Missisquoi? (Commission de la représentation électorale de Québec, 2017, 64; Statistics Canada, 2019, B-M 1991-2016). Quebec's *Elections Act*, states that an electoral division is the embodiment of a natural community, which is based on “demographic and social considerations” and is based on the growth of the population in question (Gouvernement du Québec, 2020, *Elections Act*, Sec.15). It would appear that the Commission has not acknowledged Anglophones as a natural community, since it has enlarged Brome-Missisquoi rather than refining the district around the minority community. Anglophones of Brome-Missisquoi are at the most disadvantaged; being in a rural region where they are geographically dispersed across the riding and being Quebec's declining minority. The rulings in *Saskatchewan v Carter* confirmed that depriving the right to effective representation will also deprive the right of minority communities to be effectively represented (Roach, 1991, 17). With the lack of regional concentration and community retention, the Anglophone community in the Eastern Townships has weak institutional support (Department of Canadian Heritage, 2011, 13).

From what the Quebec Commission's report demonstrates, special status is granted to remote and less populated communities, yet, the same definition of “natural communities” is not employed to protect Anglophones in Brome-Missisquoi. This discrepancy is problematic but also implies that the French majoritarian government and its institutions alike—have made Anglophones a blind spot in electoral realignments. For Electoral Boundary Commissions, it is

easier to visualize electoral discrepancies—as in, the number of electors per district based on the provincial quotient, but it is more difficult to acquire information on the “representative experiences of electors who live in constituencies of different sizes” (Thomas et al., 2013, 288). All this to say it is easy to legitimize aligning districts to achieve voter parity, but this process simply makes Francophone voters more equal, rather than achieving relative voter parity.

Commissions rely on statistical data to determine the fairness of the electoral map. According to a spokesperson for the Commission de la représentation électorale du Québec, the Electoral Commission does not only look solely at statistics, but also at the “eligibility of the voters” in a constituency (Hanes, 2017). What the Commission deems as the “eligibility of voters” is subjective and does not guarantee that the Quebec Electoral Commission considers other factors related to the right to vote. Aligning districts to achieve voter parity is still important, but it doesn’t make representation effective, especially in Canada.

Observational and experimental research by Thomas et al. found that the larger the constituency size, the less likely constituents are to contact their MP (Thomas et al., 2013, 288). Do these findings exhibit a democratic deficit? For minority communities consolidated into a larger electoral district; this means that the communities will be less inclined to contact their local representatives. With no contact, communities have no means of expressing the issues exclusive to their community. Thomas et al.’s research findings exemplify that it is not the size of the constituency that is important. What matters with constituencies is voters’ ability to feel included in the electoral system. To feel like a part of the polity is a *Charter* right established in *Carter*:

respect for the inherent dignity of the human person, commitment to social justice and equality, accommodation of a wide variety of beliefs, respect for cultural and group identity, and faith in social and political institutions which enhance the participation of individuals and groups in society (Supreme Court of Canada, 2020, *Supreme Court Judgements*).

When political institutions are ignorant to minority communities—the communities’ ability to have a political voice in the electoral realignment process altogether is deprived. The *Raïche v. Canada* (2004) and the Acadian electoral boundary case in Nova Scotia (2012) both exemplify how independent electoral boundary commissions have made the mistake of undermining minority votes. The Commissioner of Official Languages who oversaw the *Raïche v. Canada* case recognized that New Brunswick’s Electoral Commission had not examined the full impact of its proposed realignments on the Acadian minority in Acadie-Bathurst (Federal Court, 2004, 19). The Quebec Electoral Boundary Commission’s disregard for the representative experiences of Anglophones represents how insignificant the community is to the French-majority.

Building off Anglophones perceived insignificance, is the fact that the voices of Anglophones themselves, are absent. The absence of Anglophone voices is not exclusive to the 2017 Quebec Electoral Boundary Commission report. Anglophone voices are also absent in the federal electoral boundary review process. Based on an archived summary of the 2002 conference for electoral commissioners, Anglophones are not involved in the Quebec boundary review process (Office of the Commissioner of Official Languages, 2011, 50). According to the Office of the Commissioner of Official Languages; “As for the Quebec commission, it did not refer in any way to the Anglophone community in its redistribution proposal. However, we did not find any interventions to indicate dissatisfaction from this community at the public hearings” (Office of the Commissioner of Official Languages, 2011, 50). The lack of participation is a problem not to be dismissed by the Commissioner as “there was no indication of dissatisfaction from the community” (Office of the Commissioner of Official Languages, 2011, 50). The problem is that the Anglophone minority is not involved *at all* with the electoral realignment process. This quotation reveals that the Quebec electoral boundary process is flawed federally, but this is also likely the case provincially, as Anglophones has less confidence in the province’s ability to provide the community with services (Department of Canadian Heritage, 2011, 12). More to the point, the lack of Anglophone consultation is evidence that Anglophones are neglected from the process altogether.

When voices are not available at the consultation phase, Quebec's Electoral Boundary Commission needs to consider the general barriers Anglophones face in provincial politics. Understanding these barriers is necessary, because English-speaking community voices have called on the provincial government on numerous occasions to legitimize and recognize the Anglophones' presence. Geoffrey Chambers, President of the Quebec Community Groups Network (QCGN), wrote an opinion piece asking for the CAQ government to stop perceiving Anglo-Quebecers as a problem and to start legitimizing their presence as a part of Quebec society (Chambers, 2020). Sentiments reveal a democratic deficit for Anglophone representation. A poll conducted by the Missisquoi Institute poll found that equal rights was the top priority for Anglophones polled (Stevenson, 2004, 331). With statistics and the community's calls for rights recognition; this would serve as evidence that there is a decline in the Anglophone population and electoral representation simultaneously (Statistics Canada, 2019, *B-M 1991-2016*).

Quebec's Electoral Boundary Commission is behind on the path to consociational representation—considering that other provinces have already taken strides to define their linguistic minority communities and incorporate these communities in their electoral map. Until this has occurred with Anglophones; they will continue to be unrepresented in Quebec politics. This underrepresentation violates the Canadian *Charter's* right to effective representation enshrined in Section 3; violates the guarantee clause that promotes effective representation in Section 15 of the *Electoral Boundaries Readjustment Act* (1985); and Part VII of the *Official Languages Act* (1985) whereby institutions are to promote a minority community's development (*Electoral Boundaries Readjustment Act*, 1985, Sec.15; *Official Languages Act*, 1985, Sec.15; Supreme Court of Canada, 1991, *Supreme Court Judgements*). The province of Quebec is not exempted from these federal practices and has even incorporated said practices into its provincial laws as evident with Section 15 of the *Elections Act* (Gouvernement du Québec, 2020, Election Act, Sec.15).

Carter, Raïche and the Acadian electoral boundary case in Nova Scotia were useful in applying the legal jurisprudence for Anglo-Quebecers. Legal arguments established for protected ridings for Acadians in New Brunswick and Nova Scotia have paved the way for Anglophone

Quebecers to acquire the same “internal self-determination based on Constitutional guarantees” (Bickerton & Graham, 2020, 35).

Establishing protected ridings for residents in the Brome-Missisquoi riding will secure their place in the Francophone polity. As Pichette and Gosselin state; “institutional vitality can be an expression of a strong collective identity...” (2013, 14). After all, being invisible to the French-speaking population runs the risk of being neglected from political representation altogether. As studies on political apathy have indicated; this may already be the case (Floch & Pocock, 2012, 132-133). With no guaranteed protected ridings for Anglophones, they will continue to be unrepresented in Quebec’s electoral map and in the province of Quebec altogether.

Chapter 7

Conclusion

The theory of consociational democracy has been applied successfully to Canada. Consociational democracy is applicable to Canada particularly at the provincial level where Canada's linguistic duality is more pronounced—where one language is the majority and the other, a minority.

The discussion of language minorities in Canada often revolves around French language minorities, but Anglophones hardly get the attention they deserve as a linguistic minority. Quebec's Anglophone minority is the unique exception—being the Anglophone minority in a majority Francophone province and French Quebec being a minority province in Quebec (Klimp, n.d., 5). Many would be quick to try to apply consociational democracy to French Quebecers and the rest of Canada; however, Quebec's nationalist approach makes it a “majoritarian” group and its Anglophone minority, the group that requires accommodation (Stevenson, 1999, 13).

Anglophones of the Eastern Townships once had high regional concentration and the community once had a healthy degree of representation in Quebec's political institutions—from the Legislative Council to being ministers in the provincial cabinet (Rudin, 1985, 34; Stevenson, 1999, 35). This was considered a period where Quebec was a consociational democracy. When the Anglophone community's population began to decline; the representation in politics also declined.

Since the decline of representation and of consociational democracy in Quebec altogether, Anglophones of Brome-Missisquoi have had to find an alternative way to secure their rights. James Bickerton and Glenn Graham's article reveals that a new form of consociational democracy is conducted through the “periodic revision of electoral boundaries” (Bickerton & Graham, 2020, 33). Bickerton and Graham's article on path dependency and consociational

representation makes a significant argument for constitutional guarantees for language minorities through protected electoral districts. With reason, Bickerton and Graham’s argument was used as the conceptual framework for my argument for the political representation of Anglophones in Brome-Missisquoi.

The theory of path dependency is constructed with the first chapters on *Saskatchewan v Carter* (1991) and *Raïche v. Canada* (2004). Chapters two and three establish the legal jurisprudence for Anglophones in Brome-Missisquoi. I base this argument on many factors, including their official status as a linguistic minority in Quebec (under the *Canadian Constitution*, 1982 and the *Official Languages Act*, 1969) and therefore the obligation on part of all governments—including the province of Quebec—to protect this minority status by offering institutional support and representation (Department of Canadian Heritage, 2011, 10). While Quebec’s *Elections Act* recognizes “natural communities” as exceptional communities to deviate from the provincial quotient, there is no mention of Anglophones minorities in Brome-Missisquoi in Quebec’s Electoral Boundary Commission report (Commission de la représentation électorale du Québec, 2017; Gouvernement du Québec, 2020, *Election Act*, Sec.15). The lack of acknowledgement of the Anglophone community speaks to the challenge Anglophones face with acquiring representation, but also suggests that Quebec’s Electoral Boundary Commission could face similar judicial challenges in the foreseeable future.

The fourth chapter gets into the depth of consociational representation by incorporating Bickerton and Graham’s case study of the Acadian Nova Scotia Electoral Boundary dispute in 2012. It is this chapter that makes it clear how the theories of path dependency and consociational representation become intertwined with the concept of “consociational districting” (Bickerton & Graham, 2020, 32). The fact that the 2012 Nova Scotia Electoral Boundary Commission was brought to Nova Scotia’s Court of Appeal after realigning districts that had been protected for nearly twenty years—confirms that *Carter* was the legal interpretation needed to establish the legal jurisprudence for minority community protection (MacNeil et al., 2012, 7).

Chapter five establishes why Anglophones in Brome-Missisquoi are unique and merits distinct recognition. Based on the theory of consociational democracy, Anglophones in Quebec would not technically be considered a homogeneous group with shared values and culture—given that Quebec’s Anglophone community is composed of diverse groups of various origin (Jedwab & Maynard, 2012, 281; Stevenson, 1999, 17). Therefore, the theory of consociational democracy would be difficult to apply to Anglophones in Quebec as a collective. The focus of my thesis has been on the Anglophones in Brome-Missisquoi exclusively. The community relative cultural homogeneity as people primarily of British descent, makes the theory of consociational democracy applicable to Anglophones in Brome-Missisquoi (Élections Québec, 2020, *Portrait socio-économique de 2016-Brome-Missisquoi*; Rudin, 1985, 43-52). The argument for political representation of Anglophones is further supported with the fact that Anglophones in Quebec are a historically founding group. The decline is due to the English exodus of the mid-twentieth century and continues with the community’s struggle to retain its youth population—which has made the community politically vulnerable (Richardson, 2012). Seeing that Anglophones are on the decline, it is reasonable to guarantee political representation for what remains of the historical community.

Chapter six builds the case for the electoral representation of Anglophones in Brome-Missisquoi based on the ideals and objectives of consociational democracy. As Quebec’s official language minority, the majoritarian French group and its institutions alike, have an obligation to promote an egalitarian society (Stevenson, 1999, 10). The idea of egalitarian society (and consociational democracy altogether) can be applied practically with a protected electoral district. The Supreme Court’s interpretation of the right to vote as the right to “effective representation” has been incorporated in electoral boundary disputes, which has paved the way for Anglophones to pursue a similar constitutional challenge (Supreme Court of Canada, 1991, *Reference re Prov.*). The theory of path dependency comes into play with considering the former cases that build the legal jurisprudence for Anglophones. Using elements of the former cases and applying it to the case of Anglophones in Brome-Missisquoi, one could state that the Anglophone community also has the right to effective representation, which has been lost with the population’s decline and lack of institutional support from Quebec’s Electoral Boundary Commission. The premise of this chapter is that Quebec will better fulfil the principles of

consociational democracy if it provides Anglophones in Brome-Missisquoi with institutional self-determination.

Recommendations

Former cases in electoral boundary law have informed my research on the effective representation of Anglophones in Brome-Missisquoi. To alleviate this democratic deficit, as done in former cases of electoral boundary law, three actions can be executed.

First, the Quebec Electoral Boundary Commission can reduce the size or divide Brome-Missisquoi to accommodate Anglophones where they are most regionally concentrated. The district's population size is 58,078, which is well above the provincial quotient at 48,992 (Commission de la représentation électorale du Québec, 2017, 64). Seeing that the Commission has made exceptions for Îles-de-la-Madeleine and Ungava; each with 10,660 and 27,501 respectively, the Commission can offer the same exceptional circumstances for Anglophones who are not only rural habitants, but also a community of interest (Commission de la représentation électorale du Québec, 2017, 67-68). The municipalities with the highest concentration of Anglophones—Bolton-Ouest, Brome, Lac-Brome, and Stanbridge East—can be incorporated into their own electoral district (Statistics Canada, 2019, *Census profile: Bolton-Ouest, Brome, Lac-Brome & Stanbridge East [2016]*). Based on the representation of Anglophones in each municipality, a proposed Anglophone protected riding would include the following municipalities; Abercorn, Bedford (canton and ville), Bolton-Ouest, Brigham, Brome, Cowansville, Dunham, East Farnham, Frelighsburg, Lac-Brome, Pike River, Saint-Armand, Shefford, Stanbridge East, Stanbridge Station, Warden and Waterloo (see Figure 6 and Figure 7).

Figure 6 Anglophone representation under the current electoral boundaries

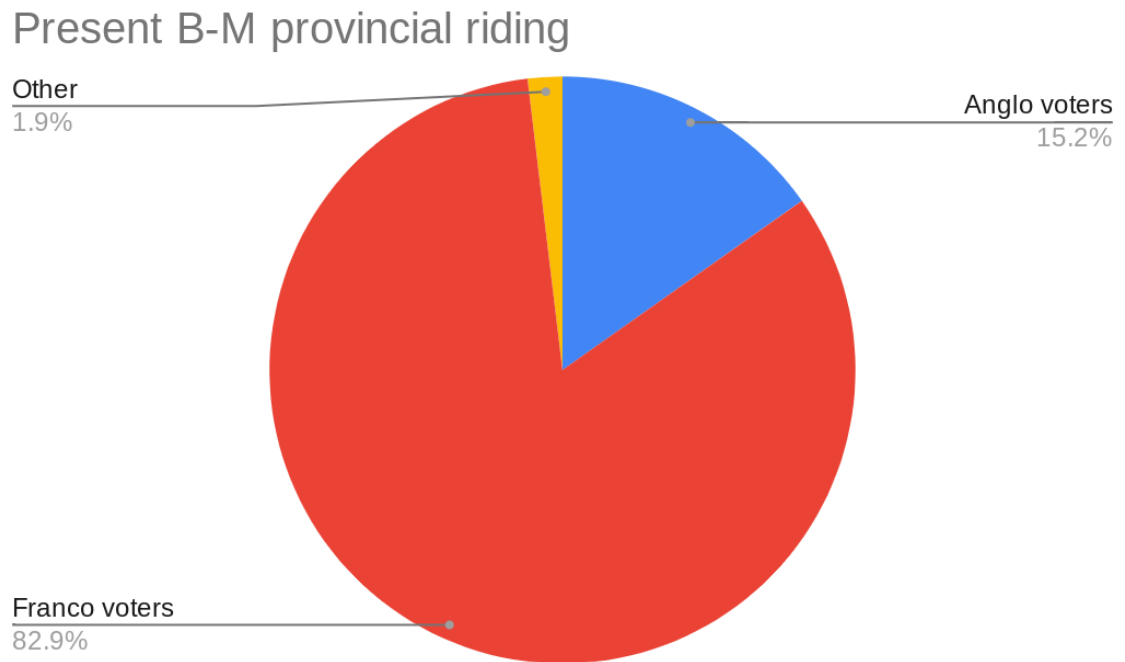


Chart produced in Excel spreadsheet based on data from Élections Québec.

Le Directeur Général des Élections Québec [Director General of Elections Quebec].

(2017). *Dossier socio-économique conscription électorale du Québec: Brome-Missisquoi*. <https://www.electionsquebec.qc.ca/documents/pdf/dossier-socio-economique/2017/204.pdf>.

Figure 7 Anglophone representation under proposed electoral boundaries

Anglophones in B-M (under proposed boundaries)

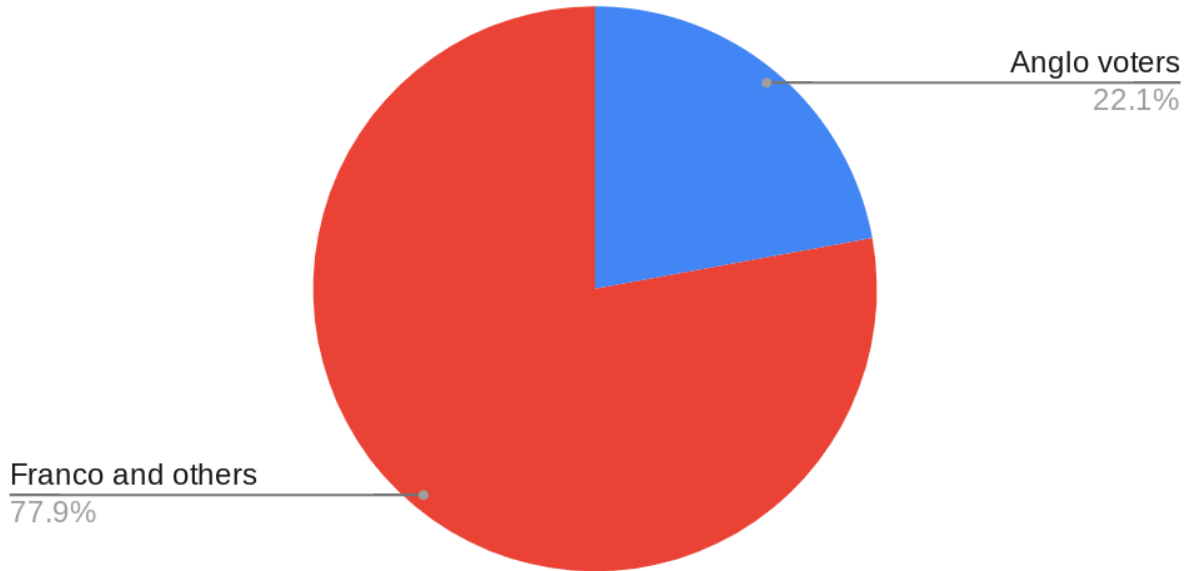


Chart produced in Excel spreadsheet based on data from Statistics Canada.

Statistics Canada, *Census profile: Abercorn, Bedford (canton and ville), Bolton-Ouest, Brigham, Brome, Cowansville, Dunham, East Farnham, Frelighsburg, Lac-Brome, Pike River, Saint-Armand, Shefford, Stanbridge East, Stanbridge Station, Warden and Waterloo [2016]*.

With this electoral district, Anglophone would compose twenty-two percent of the electorate (based on 2016 census data) (Statistics Canada, *Census profile: Abercorn, Bedford (canton and ville), Bolton-Ouest, Brigham, Brome, Cowansville, Dunham, East Farnham, Frelighsburg, Lac-Brome, Pike River, Saint-Armand, Shefford, Stanbridge East, Stanbridge Station, Warden and Waterloo [2016]*). The total electorate of this new district would be 46,841, which is well within the twenty-five percent variance from the provincial quotient (Commission de la représentation électorale du Québec, 2017, 64). The difference between the current riding and the riding I have proposed is about seven percent; nonetheless, it places Anglophones in a better situation demographically, which means Anglophones can have more of an impact in provincial elections.

By empowering the Anglophone vote, the Francophone majority would be giving Anglophones the right to elect the candidate of their choice, and ultimately, their right to self-determination.

Secondly and perhaps interrelated with my previous recommendation, is the recommendation to increase the seat capacity in Quebec's National Assembly. The allocation of electoral seats in Quebec is based on the population of the province collectively; dividing the Quebec electorate so as to acquire a relatively equal amount of electors per district (Commission de la représentation électorale du Québec, 2017, *The Quebec Electoral Map 2017: Final Report*, 13). Seeing how nothing in Quebec's Electoral Boundary Commission reports states they cannot add an additional seat and given that the Commission has made exceptions for adding more seats to rural ridings in the Laurentians and Lanaduiere regions, an additional seat for Anglophones of Brome-Missisquoi would be appropriate (Commission de la représentation électorale du Québec, 2017, *The Quebec electoral map 2017: Final report*; Hanes, 2017). Having an Anglophone protected seat would make more room for community voices to be present in Quebec's Legislative Assembly without having to jeopardize already protected and vulnerable communities.

Increasing the seat capacity was a maneuver previously conducted by electoral commissions. Nova Scotia's provincial Electoral Boundary Commission, for instance, created additional seats to accommodate Nova Scotia's changing population while controlling for the three protected Acadian ridings (Elections Nova Scotia, 2018, *2019 Electoral boundaries commission recommendations*). The purpose of creating additional seats is to guarantee protection of communities of interest that are otherwise vulnerable with a population and electoral district division formula. Adding more electoral districts makes provinces more democratic, since it fulfills the principle of effective representation established in *Carter*. In other words, ensuring that the province's "legislative assemblies effectively represent the diversity of our social mosaic" (Supreme Court of Canada, 1991, *Supreme Court Judgements*).

Lastly, I borrow the recommendation offered by Allison Hanes from the *Gazette*—which is to make the members of Quebec's Electoral Boundary Commission more diverse and representative (2017). Commissions are typically composed of three members; and this is the

case both federally and provincially (Commission de la représentation électorale du Québec, n.d., *Membres*; *Electoral Boundaries Readjustment Act*, 1985, Sec.4). Members of Quebec’s Electoral Boundary Commission are primary French (Commission de la représentation électorale du Québec, n.d., *Membres*). While there is not a problem with the Commission members being French, it is the fact that the tenure of the commissioners is long. One of the commission members has served as early as 2005, and another since 2011 (Commission de la représentation électorale du Québec, n.d., *Membres*). If legislative assemblies are to reflect Canada’s cultural mosaic, how can they guarantee representation when the very people ensuring that legislative assemblies are filled with people of differing identities are not representative of differing identities themselves?

It is expected that members of Quebec’s provincial Electoral Boundary Commission would be representative of the majority French polity; however, Quebec’s population is not entirely French, meaning that the commissioners would have to account for communities of differing identities. Having a member that is non-Francophone and a member of a community that is considered a “natural community” would benefit the Commission with providing an alternative voice. Having the voice of a minority community could bring attention to details that otherwise may go unnoticed by the other Commission members. After all, nothing is more empowering to community representation than having a commissioner with lived experiences as a minority.

It is not only relevant for Quebec’s Electoral Boundary Commission to represent the entire Quebec electorate, but also to represent the interests of Anglophones as a minority community. This mandate is supported with the fact that the Quebec Commission is “independent and non-partisan”. The theory of consociational democracy states that the minority representation is dependent on the majority group’s inclination to accommodate the community to accommodate the group (Jedwab & Maynard, 2012, 284). English-speaking Quebecers cannot rely on provincial governments or even the electoral commission for that matter—to protect their interests. English-speaking Quebecers can find the rights to their representation where they are written and interpreted: with the Canadian courts.

At the current rate, Anglophones are losing their special status. Not only is this evident with the decline of their population, but also with the fact that their “special status” has not been interpreted or respected in the manner decreed by law. As I will reiterate, Quebec’s Electoral Boundary Commission is behind on the path to consociational representation; but it is only a matter of time before the Commission faces judicial scrutiny by the courts.

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