

ELECTIONS SASKATCHEWAN
CHIEF ELECTORAL OFFICER'S ASSESSMENT

MODERNIZING SASKATCHEWAN'S CONSTITUENCY BOUNDARY LEGISLATION & PROCESSES

NOVEMBER 2021





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EXECUTIVE SUMMARY

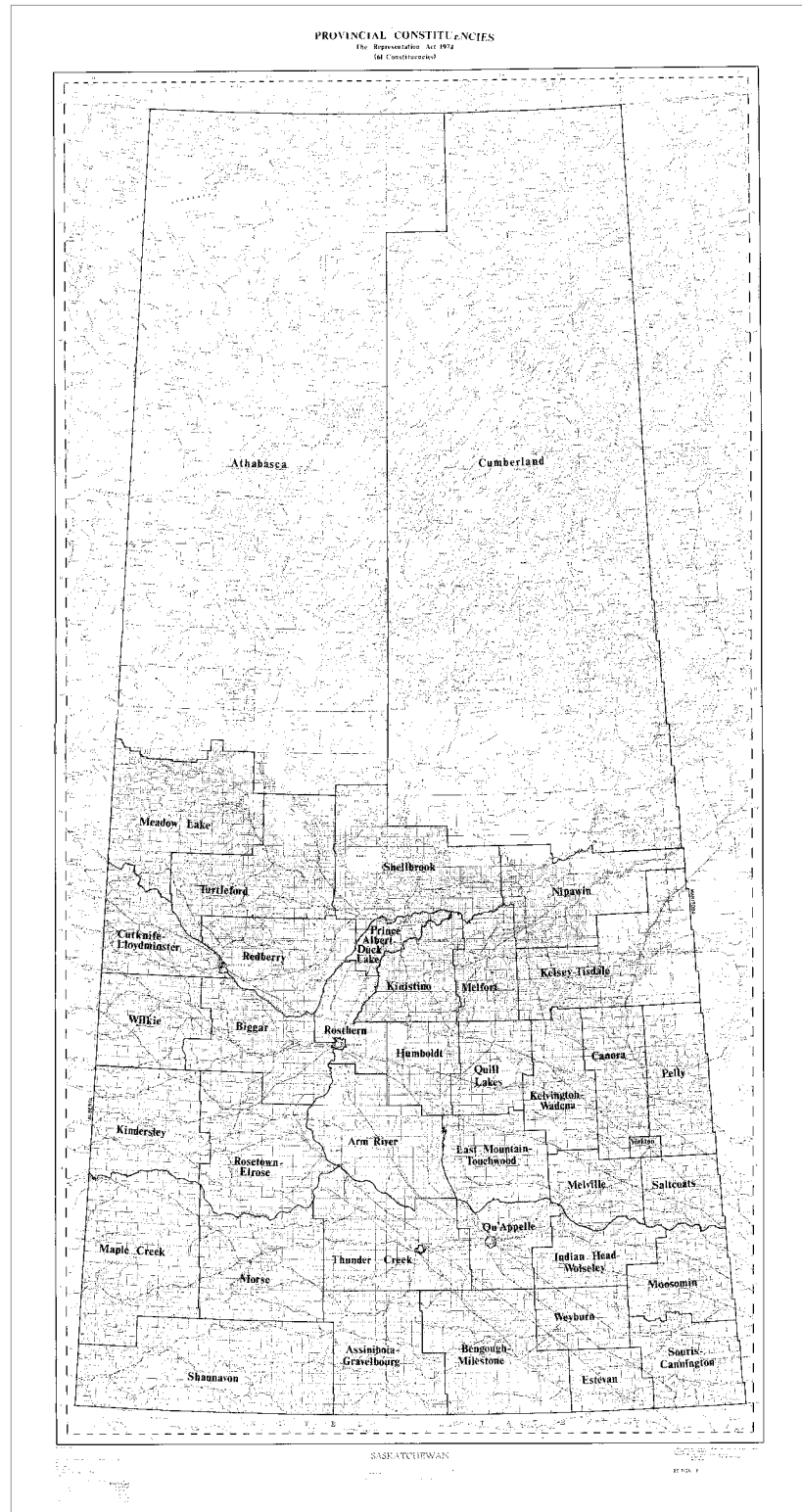


At the final meeting of Saskatchewan's most recent Constituency Boundaries Commission, the commission's chairperson advised commissioners that he had "encouraged the Chief Electoral Officer to write a report to make recommendations for changes to the next Saskatchewan Provincial Constituency Boundaries Commission in 2022."¹

Constituency boundaries commissions have been an important feature of the electoral process in Saskatchewan for the past 49 years. However, the boundary setting process has not been the subject of a comprehensive review since the province's first electoral boundaries commission was established in 1972.

This assessment report focuses on the issues raised by the chair of the 2012 commission and recommends legislative changes to address them. The recommendations reflect internationally accepted principles and norms that are associated with a modern and effective electoral boundary setting process. This report provides an overview of the province's history and experience in setting constituency boundaries, with an emphasis on the period after the province established its first independent electoral boundaries commission.

On a global scale, the introduction of independent electoral boundary commissions dates back to the beginning of the 20th Century. The evolution of commissioned boundaries for equitable constituency representation has undergone steady progress in democracies around the globe, and this assessment examines established best practices. The experience in other jurisdictions serves to provide examples for improving and modernizing the approach used in Saskatchewan and for addressing some of the shortcomings found in our current boundary-review-and-adjustment model.



¹ Minutes of the Meeting of the 2012 Constituency Boundaries Commission, 9:00 a.m. Tuesday, October 2, 2012. Regina: Elections Saskatchewan.

This assessment makes 10 recommendations to amend and improve the current legal framework of provincial electoral boundary delimitation:

1. Integrate the schedule for electoral boundary commissions with the schedule for general elections	6. Confirm the entire population of provincial citizens is to be considered
2. Appoint independent, impartial commissions	7. Set reasonable population variances for southern constituencies
3. Provide an appropriate completion timeline for each constituency boundary commission	8. Correct population imbalances between the northern constituencies
4. Designate Elections Saskatchewan as the boundaries commission secretariat	9. Adjust rules for establishing constituency boundaries
5. Enable commissions to set their own rules and procedures	10. Enable commissions to use modern boundary descriptions

The Constituency Boundaries Act, 1993 currently requires the next provincial boundaries commission to be established in 2022. It is recommended that the next commission still be appointed at that time, but that subsequent constituency boundary commissions be appointed six months after every second provincial general election.

This report discusses the problems associated with having commissions established every 10 years, while general elections are now legally scheduled to occur every four years. Boundaries need to be reviewed according to a schedule that relates directly to electoral cycles — this is necessary to ensure representation fairness by regularly making adjustments that reflect demographic changes. If an election is called every four years, but boundary commissions are only established every ten years, it becomes inevitable that some constituency boundary sets will need to be applied for up to three elections.

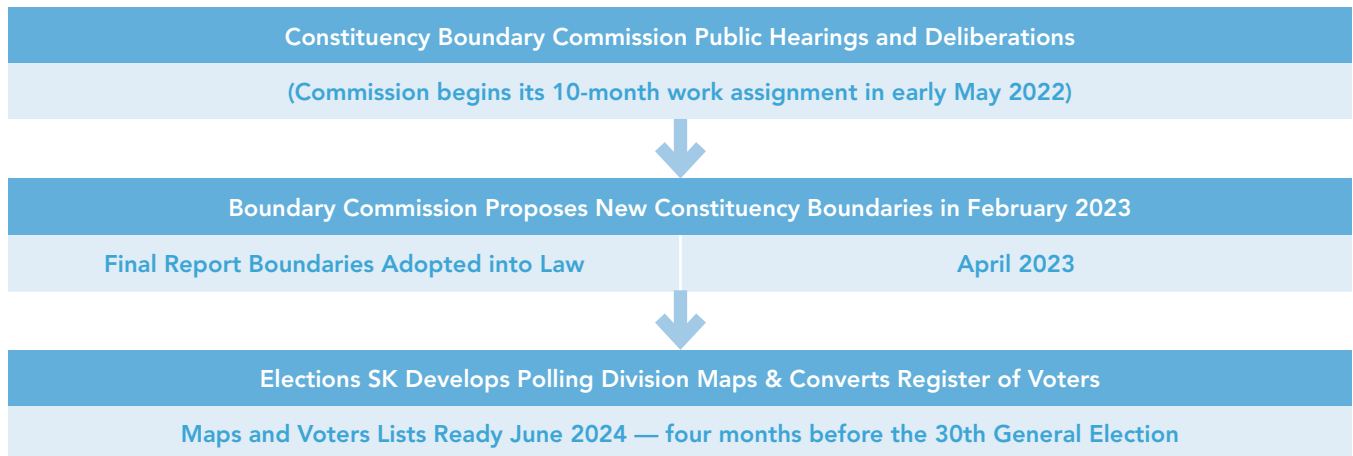
If the legislation is revised as recommended in this report, after 2023 a new constituency boundaries commission would be appointed within six months after every second general election. Under the timetable recommended in this report the boundaries commission appointed in 2022 would establish the provincial electoral

boundaries used in general elections legislatively scheduled for October 2024 and October 2028; the subsequent commission would be appointed in April 2029 to define the boundaries of constituencies whose citizens would elect Members of the Legislative Assembly in the 2032 and 2036 provincial elections. In April of 2037 a new boundaries commission would be established to define the electoral boundaries to be used in the subsequent two elections.





Following their appointment, each new commission would need to produce an interim report, conduct public hearings and submit a final report on recommended adjustments to constituency boundaries across the province, all within ten months. The legal adoption of the commission's recommendations would then set into motion the many map production and data conversion activities that Elections Saskatchewan must undertake to operationally implement changes to constituency boundaries. The recommended timing for the next round of these interrelated processes is as follows:



The implications of implementing constituency boundary changes, which flow directly from the final reports of constituency boundaries commissions, are administratively complex and time-consuming. These are described at section four of this report. It is important that legislators understand that there will be a timing conflict between a boundary commission's deliberations and future provincial general elections if current commission timing arrangements are not addressed with legislative changes.

The extent to which recommendations contained in this assessment are adopted will directly affect the approach and timetable Elections Saskatchewan must use to implement new sets of constituency boundaries. Details around commission timing and technical support have a significant impact on both the time and budgetary resources required to modify provincial electoral boundaries. If the recommendations contained in this report are legislatively adopted, constituency boundaries recommended by future commissions (post-2022) will permit political parties to have access to detailed maps and voters list data reflecting new electoral geography well in advance of the first of two elections that would be administered with those new boundaries.

The recommendations proposed in this report, the suggested schedule for implementation, and the procedural changes contemplated are all oriented toward adjusting the constituency boundary-setting process in ways that will provide the citizens of Saskatchewan with regular, fair and cost-efficient electoral boundary revisions which are necessary to ensure equitable and effective representation in their Legislative Assembly.

Michael D. Boda, D. Phil., Ph.D.
Chief Electoral Officer
Province of Saskatchewan

Regina, Saskatchewan
November, 2021

ABOUT ELECTIONS **SASKATCHEWAN**



The many component parts involved in planning, organizing and implementing elections in Saskatchewan are overseen by what is described as an election management body (EMB).

Internationally, an EMB is defined as an independent, non-partisan institution that is responsible for impartial election administration within a jurisdiction governed as a democracy. In Canada, each province, territory, and the national jurisdiction has an EMB that impartially administers elections, upholds the democratic electoral rights guaranteed within the Canadian constitution, and conducts electoral events in accordance with applicable electoral legislation.

Elections Saskatchewan fulfills this mandate for the province, serving as the secretariat to the statutory Office of the Chief Electoral Officer. Elections Saskatchewan has a leadership team based in Regina and dispersed across the province's 61 constituencies that each elect a Member of the Legislative Assembly.

In the months leading to a general election, Saskatchewan's electoral service grows steadily and during the election period includes approximately 11,000 temporary workers from all walks of life, each serving provincial voters in administering an event that is fundamental to sustaining Saskatchewan's democratic traditions.

VALUES

When creating the institution's strategic plan, Elections Saskatchewan's head office and field leadership team reflected on the values that are espoused by practitioners of election administration across Canada and around the world. In doing so, five core values were identified:

- Professionalism
- Impartiality
- Innovation
- Service
- Accountability

These values remain at the foundation of every activity conducted by the institution, guiding the actions and decisions of all staff members. They are values widely shared by election administrators and are defining elements of a modern election management body.

STAKEHOLDERS

Elections Saskatchewan has a tremendously broad and diverse base of stakeholders who it affects and by whom it is affected. These include:

- Voters and prospective voters;
- Registered political parties (including chief official agents, political party staff and volunteers);
- Candidates for election (including their business managers);
- Elected Members of the Legislative Assembly of Saskatchewan;
- Members of the Legislature's Board of Internal Economy;
- Constituency associations of registered political parties;
- Unregistered political parties, external organizations and advocacy groups;
- Media representatives, reporters, columnists, bloggers and contributors;
- Other Canadian Chief Electoral Officers and their institutions;
- Urban and rural municipality election officials;
- External data providers;
- Service organizations, vendors and contractors;
- Academic researchers and political analysts;
- Other independent officers of the Legislative Assembly; and
- Electoral boundary commissions.

Addressing the needs and concerns of these stakeholders is critical to the success of Saskatchewan's election management body and central to the institution's focus on service.

Elections Saskatchewan's intent is to continually consult with its stakeholders to assess how well the institution is meeting their needs. Elections Saskatchewan will continue consulting with its stakeholders to assess how well it is meeting their needs. It aims to identify clear opportunities for improvement and modernization of services.

Finding fiscally responsible, effective, and transparent methods for obtaining meaningful stakeholder input is necessary to define current and emerging needs that Elections Saskatchewan is expected to meet.



RESPONSIBILITIES

The Head Office Leadership Team

The Chief Electoral Officer (CEO) is an independent officer of the Saskatchewan Legislative Assembly. As head of Elections Saskatchewan, the CEO ensures the fair and equitable conduct of operational, administrative, and financial practices related to the electoral process. The CEO is assisted in these legislated responsibilities by a head office leadership team.

Elections Saskatchewan's primary responsibility is to maintain an appropriate state of provincial election readiness. To that end, Elections Saskatchewan must appoint and train requisite numbers of constituency returning officers and election officers to ensure electoral preparedness throughout each government's mandate, and to be fully ready for by-elections and scheduled general elections.

The Election Act, 1996 (the Election Act) also places a duty on the CEO to assist registered political parties, candidates, chief official agents, and business managers to ensure the Election Act's financial transparency and disclosure goals are met. Elections Saskatchewan publishes guides for party chief official agents and candidate business managers to help them fulfill their administrative and financial reporting responsibilities, compile the necessary support documentation, and ensure their annual financial disclosures are filed in accordance with the Election Act and The Political Contributions Tax Credit Act, 2001 (Saskatchewan).

Where applicable, Elections Saskatchewan is responsible for assessing and reimbursing election expenses which are paid from the province's General Revenue Fund. Elections Saskatchewan has established a financial review system to certify public reimbursement of election expenses through the examination and review of registered political parties' and candidates' expense returns and required disclosure documentation. To promote transparency, expense return details are tabled in the Legislative Assembly and posted on Elections Saskatchewan's website.

Elections Saskatchewan is also responsible for investigating offences under the Election Act. While the Election Act is regulatory rather than criminal, the role of Elections Saskatchewan is to inspect, investigate, and inquire about

instances where contravention of the Election Act is suspected or alleged, as deemed necessary by the CEO. Since this responsibility is a matter of considerable discretion and is often initiated by complaints filed by interested parties, it is incumbent upon Elections Saskatchewan to consider whether any specific situation has contravened the overall purpose, policy rationale, and/or legislative intent of the province's electoral legislation.

To ensure political stakeholders and the public are aware of important aspects of its role and mandate, Elections Saskatchewan maintains an outreach program that responds to public enquiries and liaises with registered political parties, candidates, and their chief official agents and business managers.

The CEO reports annually to the Legislative Assembly, via submission of a written report that is tabled by the Speaker, on matters related to administering the Election Act. In addition to such annual reporting, the CEO also prepares reports to be tabled in the Legislative Assembly on all elections administered by his office. The Chief Electoral Officer's Report on a Provincial General Election is published in four separate volumes: 1) Statement of Votes, 2) Administrative Review, 3) Statement of Expenditures, and 4) Legislative Change Recommendations. Administrative and financial reporting for constituency by-elections are encapsulated in individual by-election reports.

The environment within which Elections Saskatchewan is accountable is unique and complex due to the potential timing uncertainty of the provincial electoral cycle, the decentralized nature of election administration, its requirement for an extremely large temporary workforce, and the interaction among registered political parties, candidates, media and the electorate. The integrated management of this highly decentralized process rests with Elections Saskatchewan and depends heavily on its impartial and effective administration of the process integrity controls contained in the Election Act.



The Field Leadership Team

While central electoral administration is the responsibility of Elections Saskatchewan's head office leadership team, the regional and constituency-level conduct of electoral events is the responsibility of the field leadership team.

Supervisory returning officers (SROs), each representing a different geographic zone of the province that comprises five to seven constituencies, are responsible for supporting returning officers within those constituencies in performing their duties. SROs act as a liaison between the head office and the constituency returning officers and provide oversight to ensure electoral events are administered and conducted at a consistently high standard across the province in accordance with direction from Elections Saskatchewan's executive leadership.

Representing Elections Saskatchewan at the local level, each constituency has a returning officer who is assisted by an election clerk. These two individuals are entrusted with upholding the neutrality of the province's decentralized electoral process within their constituency, and are responsible for the administration, conduct, and reporting of electoral proceedings for general elections, by-elections, referendums, and plebiscites.

An important part of achieving and maintaining election readiness is having constituency returning officers and election clerks appointed and in position within each of the province's 61 constituencies. The CEO appoints all provincial returning officers and election clerks. Notices of all returning officer appointments (or cancellations) are published in The Saskatchewan Gazette. Returning officer and election clerk vacancies are filled through independent merit-based competitions.

INTRODUCTION

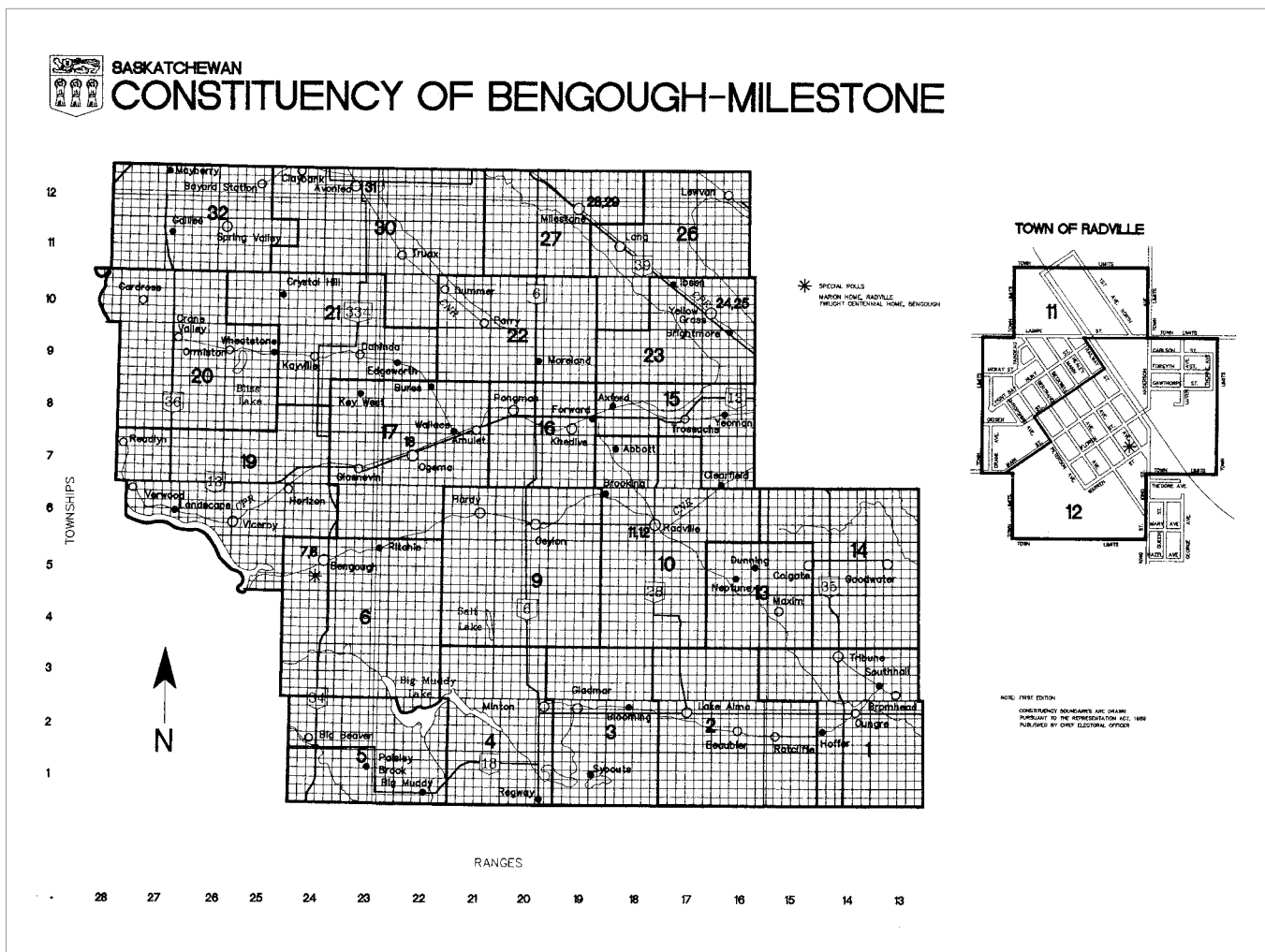
1.1 BACKGROUND

For the first 67 years of Saskatchewan's history, provincial electoral boundaries were set by the Legislative Assembly – this was a purely political exercise, and it was a subject of considerable public criticism.

The first independent commission to delimit provincial electoral boundaries in Saskatchewan was established shortly after passage of *The Constituency Boundaries Commission Act, 1972* (hereinafter referenced as the '1972 Act').

Since 1972, the legislation has been amended to accommodate changes to the:

- membership of the commission;
- number of constituencies to be established;
- population to be considered; and
- permitted variances from the constituency population quotient.



In 1990, *The Electoral Boundaries Commission Act* ('1987 Act') was challenged before the Saskatchewan Court of Appeal.² The Appeal Court ruled that the constituencies established pursuant to the 1987 Act were invalid.³ In 1991 the Appeal Court decision was referred by the provincial government to the Supreme Court of Canada. The Supreme Court overturned the Saskatchewan court's decision and confirmed that the boundaries set by the 1988 commission were acceptable, as they provided effective representation under the *Canadian Charter of Rights and Freedoms*.⁴

Beyond this legal challenge to the parameters set for drawing boundaries, the legislative framework used with regard to the creation of constituency boundaries commissions, their mandate, and the prescribed processes they must follow has not been the subject of any critical assessment since the first Saskatchewan boundary commission was established in 1972.

The discussion that follows offers a brief review of the mandating legislation and prescribed practices of boundary commissions in Saskatchewan. This is followed by a series of non-partisan recommendations for change — recommendations based on established international principles and best practices — that legislators are asked to consider in order to improve and modernize the province's current constituency boundary delimitation process.

1.2 MANDATE

At the final meeting of the 2012 Saskatchewan constituency boundaries commission, held on October 2, 2012, the commission's chairperson, Justice Neil Gabrielson outlined improvements he believed needed to be considered for the provincial constituency boundary redistribution process. They included:

- Modifying the timing of the constituency reviews in light of the timing of subsequent scheduled elections;
- Changing legislation on the timing of the "three-month clock" for producing an interim report;
- Reviewing the census information that is to be used;
- Improving the procedures for collecting required demographic data; and
- Reviewing the public submissions process with a view toward better use of technology.

In suggesting these considerations, the chair "encouraged the Chief Electoral Officer (CEO) to write a report to make recommendations for changes for the next Saskatchewan Provincial Constituency Boundaries Commission in 2022."⁵ The Justice's recommendation for a review was well-aligned with the mandate provided to the then-newly appointed CEO, Dr. Michael Boda, who had already committed to identifying ways in which Saskatchewan's electoral legislative framework and administrative operations could be aligned with electoral best practice.⁶

The division of the province into geographic constituencies, each with defined boundaries, and the subsequent division of each into dozens of polling divisions that establish logical groupings of voters to be assigned to polling locations, is foundational to the design of election administration in Saskatchewan, across Canada and throughout Commonwealth nations. A non-partisan Returning Officer is appointed by the Chief Electoral Officer to head the administration of the vote in each constituency and they, in turn, appoint locally resident election officers to conduct

² "Because of the criticisms raised against the Saskatchewan distribution legislation, the provincial government, in 1990, referred questions to the Saskatchewan Court of Appeal respecting the constitutionality of the mandate of the Boundaries Commission and of the distribution of seats recommended by the Commission." *Canadian Electoral Boundaries and the Courts: Practices, Principles and Problems*, by David Johnson in the McGill Law Journal, (1994) 39 McGill L.J. 224, p. 229.

³ Judgement of the Saskatchewan Court of Appeal (1991), 78 D.L.R. (4th) 449; [1991] 3 W.W.R. 593; 90 Sask R 174, (<https://www.canlii.org/en/sk/skca/doc/1991/1991canlii8030/1991canlii8030.pdf>).

⁴ Judgment of the Supreme Court of Canada, Reference re Prov. Electoral Boundaries (Sask.), [1991] 2 S.C.R. 158, (<http://scc-csc.lexum.com/scc-csc/scc-csc/en/item/766/index.do>).

⁵ Minutes of the Meeting of the 2012 Constituency Boundaries Commission, 9:00 a.m. Tuesday, October 2, 2012. Regina: Elections Saskatchewan.

⁶ Michael D. Boda, Election Administration in Saskatchewan: 'A Path for Renewal', Estimates for Fiscal Year 2013-2014, (p. 1), January 2013. Regina: Elections Saskatchewan.



voting operations at a polling station established per polling division. The division of work effort in election administration is based almost exclusively on the definition of electoral boundaries, at both the constituency and polling division levels.

The requirement for non-partisan election administration has become a given in modern democracies. The expectation that constituency boundaries will be created and periodically adjusted without partisan influence is an extension of established democratic norms in Canada and in democracies around the world. While legislators might usefully undertake a review of the legal framework for delimiting constituency boundaries, perceptions that partisan interests would colour such an assessment might prove problematic. For this reason, it is appropriate that the Chief Electoral Officer for the province, chosen through the unanimous agreement of an all-party Committee of the Legislative Assembly and sworn to uphold electoral laws in a non-partisan manner, provide this assessment of the legal framework of constituency boundary delimitation for the province.

1.3 DELIMITATION PRINCIPLES

The principles underlying the mandate of an electoral boundaries commission are consistent with values that underpin Elections Saskatchewan⁷ and other public organizations mandated to support democratic electoral structures and processes.

Key among these values are:

- Independence
- Openness
- Integrity
- Non-partisanship
- Transparency
- Effective representation

The expectation that constituency boundaries will be created and periodically adjusted without partisan influence is an extension of established democratic norms in Canada and in democracies around the world.

The ACE Electoral Knowledge Network, in its “Guiding Principles of Boundary Delimitation,”⁸ endorses each of these values as principles and adds:

- Representativeness,
- Equality of voting strength, and
- Non-discrimination.

Saskatchewan political scientist John Courtney adds that electoral boundary commissioners must not have a personal stake in the outcome of the process and must be free to act without restraint in the application of their mandating legislation.⁹

Constituency boundaries commissions should be both publicly perceived and legally mandated to act as independent and impartial entities. Their appointment process should reflect each of the principles listed above.

The content of this assessment report, and the reasoning behind each of the recommendations it contains, has been guided by the above-listed values and principles.

⁷ Elections Saskatchewan's publicly articulated values are professionalism, impartiality, innovation, service and accountability. *A Strategic Plan for Elections Saskatchewan – 2017-2022*, p. 13, December 2017. Regina: Elections Saskatchewan.

⁸ ACE is the collaborative initiative of nine democratic support organizations: International IDEA, IFES, UNDESA, EISA, Elections Canada, the Federal Electoral Institute of Mexico (IFE), the Carter Center, UNDP and the UNEAD. The ACE Project started with the creation of a reference encyclopedia on electoral administration, with boundary delimitation being one of its 26 foundation topic areas. See: (<http://aceproject.org/ace-en/topics/bd/onePage>).

⁹ John C. Courtney, *Commissioned Ridings: Designing Canada's Electoral Districts*, (pp. 112-116), McGill-Queen's University Press, 2001.

HISTORY AND BACKGROUND TO BOUNDARY DELIMITATION IN SASKATCHEWAN

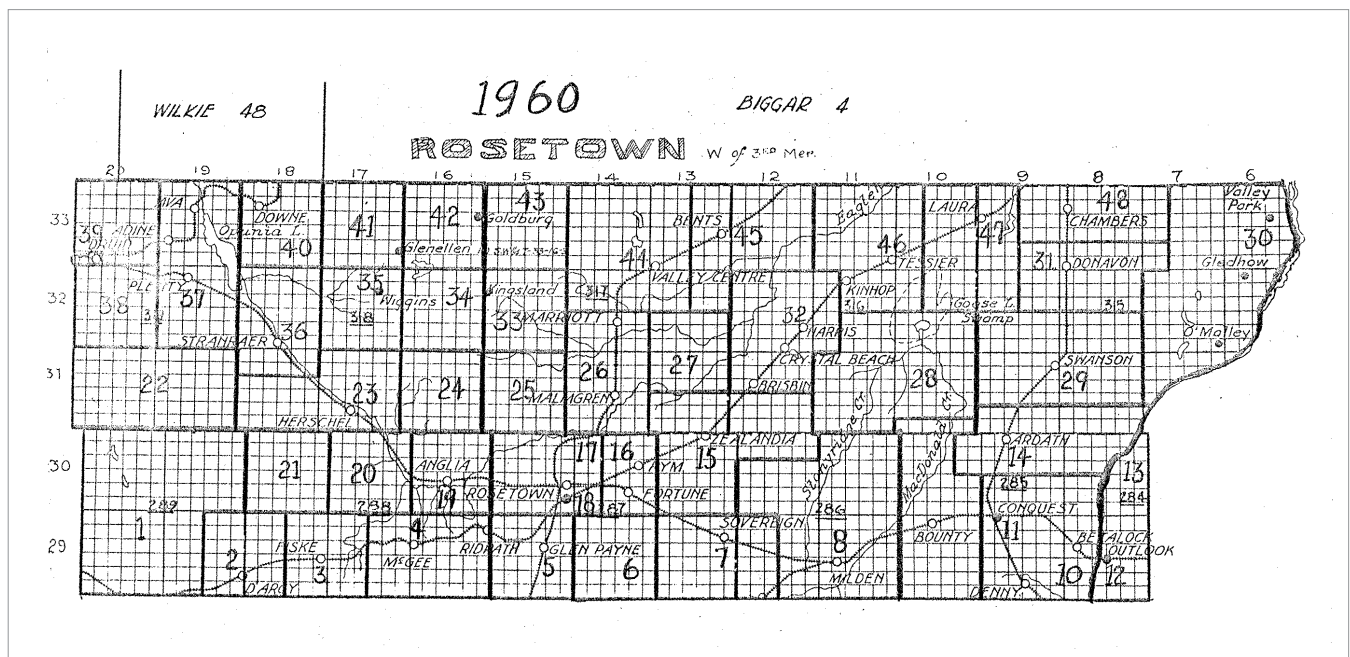
The delimitation of constituencies has evolved since the first set of 25 electoral divisions were prescribed for the province.¹⁰

For the purposes of this assessment, four evolutionary periods are identified:

1. Legislative Delimitation
2. Commission Delimitation
3. Judicial Intervention (SCC Reference Case)
4. Commission Delimitation Post-1993

2.1 LEGISLATIVE DELIMITATION

The *Saskatchewan Act* (1905) established the Province of Saskatchewan and included a provision specifying that 25 members were to be elected to its Legislative Assembly. The Schedule to the Act included a 'metes and bounds' legal description of the boundaries for the original 25 electoral divisions. The Act permitted the Legislature to amend the number of members of the Legislature and the boundaries of electoral divisions.¹¹ This model, whereby the Legislature (controlled by the governing party) determined the number of members and configuration of constituency boundaries, defined the province's boundary delimitation practice prior to 1972.



¹⁰ The terms divisions, constituencies, electoral districts and ridings are used interchangeably throughout Canada and refer to the geographic areas which legislators represent, and from which they are elected by the citizens living within that boundary-defined area. Saskatchewan's electoral statutes refers to these electoral representation units as constituencies, while most other Canadian jurisdictions' legislation refers to them as electoral districts.

¹¹ The *Saskatchewan Act*, (s. 13) Department of Justice, Canada, (<http://www.justice.gc.ca/eng/rp-pr/csj-sjc/constitution/lawreg-loireg/p1t132.html>), 1905.

Hansard records of 1968¹² and 1972¹³ confirm that Saskatchewan's constituency boundaries were established exclusively by the governing parties who held power during the first 67 years of the province's history. A partisan-based approach to setting boundaries was common throughout Canada at both the federal and provincial levels prior to the establishment of independent boundary commissions.¹⁴ Prior to 1972, accusations of gerrymandering¹⁵ were common and historical records show that population differences between constituencies varied dramatically, up to 400 per cent in some instances.

Hansard records of 1968 and 1972 confirm that Saskatchewan's constituency boundaries were established exclusively by the governing parties who held power during the first 67 years of the province's history.



A Boston Globe cartoon from March 1812 which helped to popularize the term "gerrymander." See footnote 15 for more information.

For the first 67 years of the province's history, electoral boundary redistributions and their timing were seemingly at the whim of the government of the day with a process clearly biased toward maximizing the governing party's electoral successes. One MLA noted:

*"A Bill was brought in, moved, no time for debate. The House was then prorogued within two days sitting. That's the longest. No public commission, no public hearings, except politicians, that's right, politicians on the staff who were deciding on the constituency boundaries."*¹⁶

This was the environment that preceded the establishment of the province's first independent, impartial boundaries commission in 1972. Even before Confederation, suggestions had been made about placing the drawing of electoral boundaries in the hands of an impartial body and keeping the process outside of the control of Members of the Legislature.¹⁷

¹² Parliamentary Debates, Legislative Assembly of Saskatchewan, February 27, 1968, (p. 356), (<http://docs.legassembly.sk.ca/legdocs/Legislative%20Assembly/Hansard/16L1S/680227Debates.pdf>).

¹³ Parliamentary Debates, Legislative Assembly of Saskatchewan, April 6, 1972, (p. 1517), (<http://docs.legassembly.sk.ca/legdocs/Legislative%20Assembly/Hansard/17L2S/720406Hansard.pdf>).

¹⁴ Courtney, John C., *Commissioned Ridings Designing Canada's Electoral Districts*, (p. 37), McGill-Queen's University Press, 2001.

¹⁵ Gerrymandering refers to manipulation of electoral constituency boundaries to favour one party or group over another. The name evolved from the shape of a new voting district drawn when Governor Elbridge Gerry of Massachusetts was in office, which was likened in shape to a salamander and widely expected to favour Governor Gerry's party. On March 26, 1812, the Boston Gazette published a cartoon version of the map titled 'The Gerry-mander' and that word has since formed a part of international political language.

¹⁶ Parliamentary Debates, Legislative Assembly of Saskatchewan, April 6, 1972, (p. 1520), (<http://docs.legassembly.sk.ca/legdocs/Legislative%20Assembly/Hansard/17L2S/720406Hansard.pdf>).

¹⁷ Ward, Norman, 1967. "A Century of Constituencies," *Canadian Public Administration* 10(1): 105–221, p. 211



2.2 COMMISSION DELIMITATION

On April 21, 1972, the Legislative Assembly formally established Saskatchewan's first commission for establishing electoral boundaries with the passage of *The Constituency Boundaries Commission Act, 1972* ('1972 Act').

The 1972 Act was introduced as providing the province with "a truly Independent Boundaries Commission."¹⁸ The 1972 Act provided for a three-person commission — a judge appointed by the Chief Justice; the Clerk of the Legislature; and a resident appointed by the Speaker following consultation with the President of the Executive Council (premier) and the Leader of the Opposition. Members of the Legislature, House of Commons and Senate were all ineligible to serve as commissioners.

The 1972 Act provided that the population to be considered would be the province's decennial census count prepared by Statistics Canada. The establishment of a commission would be linked to the receipt of the census results by the Clerk of the Executive Council and was scheduled to occur every 10 years.

The 1972 Act introduced the concept of a dividing line that established and separated two geographically large, sparsely populated northern constituencies from the rest of the province. The Act specified a maximum number of southern constituencies and a minimum number of northern constituencies. The population of each southern constituency was to be within $\pm 15\%$ of a calculated population quotient and the population within the northern constituencies were to be within 15% of each other.

In 1979, the Legislature amended the 1972 Act and passed *The Constituency Boundaries Commission Act* ('1979 Act'). The amended legislation kept the same process for the appointment of the commission members but introduced other significant changes. The population to be considered would not be the population census but the voters list count from the most recent general election. Another key change was the timing for establishing commissions. It would no

longer be tied to the decennial census but to occur every eight years with appointments to be made before January 31 in each appointment year.¹⁹

New boundary-setting legislation, *The Electoral Boundaries Commission Act* ('1987 Act'), was assented to on November 6, 1987. The commission was now composed of two justices appointed by the Chief Justice with the Chief Electoral Officer serving as the third commissioner.

The 1987 Act also introduced a new legal concept of "rural constituencies" and "urban constituencies" and specified the number of each type (35 and 29 respectively) that were to be proposed by the commission, while maintaining the two existing northern constituencies. The Act further specified the precise number of urban constituencies that the commission was to establish within each of the major urban centres in the province, as follows:

Urban Centre	No. of Constituencies
Battleford – North Battleford	1
Moose Jaw	2
Prince Albert	2
Regina	11
Saskatoon	11
Swift Current	1
Yorkton	1
Total	29

The timing of the commission and future commissions was linked to every second subsequent general election. The permitted variances for the southern constituencies were increased to $\pm 25\%$ and to $\pm 50\%$ for the northern constituencies.²⁰

¹⁸ Parliamentary Debates, Legislative Assembly of Saskatchewan, April 5, 1972, (p. 1474), (<http://docs.legassembly.sk.ca/legdocs/Legislative%20Assembly/Hansard/17L2S/720405Hansard.pdf>)

¹⁹ *The Constituency Boundaries Commission Act*, (s. 2, s. 3), 1979, Government of Saskatchewan, Regina, SK.

²⁰ *The Electoral Boundaries Commission Act*, (s. 2, s. 3, s. 14, s. 15, s. 20), 1987, Government of Saskatchewan, Regina, SK.

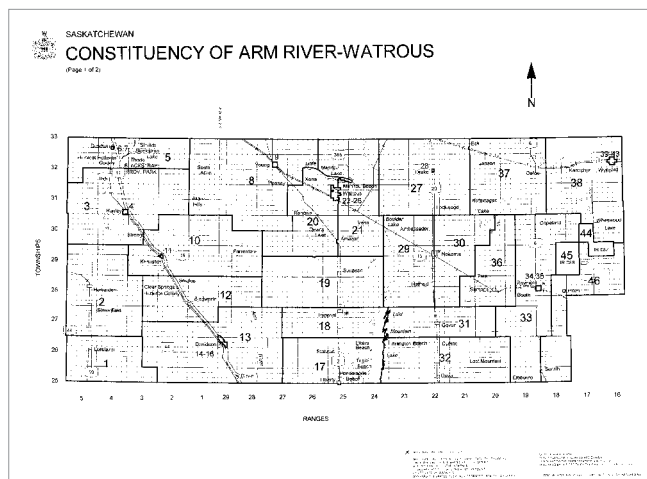
2.3 JUDICIAL INTERVENTION

In the spring of 1991, the electoral boundary setting process in Saskatchewan confronted a serious dilemma. The Saskatchewan Court of Appeal had determined that the 1987 Act was inconsistent with the Charter of Rights and Freedoms and declared the constituency boundaries adopted in *The Representation Act, 1989* invalid.²¹ Further, the province was constitutionally obligated to have a general election in the autumn of 1991 and it now required updated constituency boundaries to hold that election.²²

The Saskatchewan government reacted rapidly and passed new legislation in response to the possibility that the boundaries defined in *The Representation Act, 1989* would be legally upheld as being unconstitutional, following an appeal to the Supreme Court of Canada. On April 16, 1991, *The Electoral Boundaries Commission Act, 1991* ('1991 Act') received Royal Assent.

The 1991 Act significantly changed the appointment process by identifying the commissioners by name directly in the legislation. A review of Hansard (April 15, 1991) indicates that the Attorney General consulted with the Chief Justice and informed the opposition leaders by letter regarding the planned commission appointments. The Hansard records do not indicate if the opposition leaders were invited to comment or provide any input advice; however, it is clear that they were informed in advance. Dr. John Archer (President Emeritus, University of Regina) was named as chair. He had served as the secretary to the previous provincial boundaries commission and was therefore considered knowledgeable and experienced in the constituency boundary setting process. Justice E. C. Malone, the second commissioner, had recently served on a federal electoral boundaries commission. Justice R. L. Barclay, the third commissioner, had been involved in other commissions and was therefore familiar with commission processes.²³

The 1991 Act removed all reference to urban and rural constituencies and to the distribution of a specified number



of constituencies in the urban centres that had been featured in the 1989 Act. Additional changes included:

- omitting all provisions for the timing of the establishment of boundary commissions;
- eliminating the variances for the southern constituencies and requiring these constituencies, as nearly as possible, be equal in population to the quotient — a similar provision was provided for the northern constituencies;
- removing the reference to a time limit for the completion of the commission's report;
- obliging only the preparation of a single commission report; and
- enabling the commission to set its own rules and procedures including whether it would hold public hearings.²⁴

Understanding that time was of the essence to resolve the boundary crisis, the commission completed and submitted its report in less than three months following its appointment.²⁵

However, the boundary recommendations of the 1991 commission were ultimately ignored as the Supreme Court of Canada reversed the finding of the Saskatchewan Court of Appeal, thereby confirming the legitimacy of the boundaries adopted in *The Representation Act, 1989*.²⁶

²¹ Judgment of the Supreme Court of Canada, Reference re Prov. Electoral Boundaries (Sask.), [1991] 2 S.C.R. 158, (pp. 158-159), (<http://scc-csc.lexum.com/scc-csc/scc-csc/en/item/766/index.do>).

²² Please note that related information is contained in section 2.6 below under the heading Saskatchewan Reference Case.

²³ Parliamentary Debates, Legislative Assembly of Saskatchewan, April 15, 1991, pp. 30 – 55, (<http://docs.legassembly.sk.ca/legdocs/Legislative%20Assembly/Hansard/21L4S/910415e.PDF>).

²⁴ *The Electoral Boundaries Commission Act, 1991*, (sections 3(2), 9, 11, 16, 17), Government of Saskatchewan, Regina, SK.

²⁵ It is not clear on which exact date the commission filed its final report, but the Hansard minutes of June 17, 1991 (<http://docs.legassembly.sk.ca/legdocs/Legislative%20Assembly/Hansard/21L4S/910617.PDF>) state that their report would be submitted "either late today or tomorrow", indicating that their work was carried out in a period of just over two months.

²⁶ See related information in the discussion of the *Saskatchewan Reference Case* in section 2.6.



2.4 COMMISSION DELIMITATION POST-1993

The *Constituency Boundaries Act, 1993* ('1993 Act') introduced substantial changes to the appointment process, while restoring some of the provisions found in previous boundary commission statutes that had been removed by the 1991 Act.

The Lieutenant Governor in Council (i.e., Cabinet) was made responsible for the appointment of commissioners. The Chief Justice would continue to nominate a judge to serve as the chair of the commission; however, Cabinet would appoint two residents of the province following consultation with the leaders of the opposition and any "recognized Member of the Legislative Assembly" (i.e. any independent MLA).

This direct involvement of the Cabinet and political parties in the appointment process served to significantly undermine the principles of independence and impartiality in the appointment of commissioners and virtually guaranteed that two of the three boundary commissioners would be partisans, albeit representing interests from opposing sides of the House.

The 1993 Act set the variance for constituencies south of the dividing line at $\pm 5\%$. The dividing line that separated the northern constituencies from the southern constituencies was prescribed in a Schedule to the Act. Further, the boundaries for the two northern constituencies were set to remain as the boundaries established in *The Representation Act, 1989*²⁷ and not subject to review by any subsequent boundaries commission.

The 1993 Act also reduced by half the amount of time each commission would have to carry out its mandate, now allowing only six months. The concept of an extension of up to three months was provided in the event the six-month period proved inadequate, but any such request could either be accepted or denied by Cabinet.

Although the 1993 Act maintained the provision that a boundaries commission enjoyed the powers of commissioners pursuant to *The Public Inquiries Act* and could thereby set its own rules and procedures for the

conduct of commission affairs, the legislation went on to prescribe exacting directions with respect to the conduct of its public hearings.

The population to be considered by the commission was the decennial census data for Saskatchewan. The 1993 Act provided for constituency boundary commissions to be established every tenth year following the release of 1991 census counts.

One of the key features of the 1993 commission's mandate was the reduction of southern constituencies from 64 to 56. The provision of the small, permitted population variance along with the reduced number of constituencies would have a significant impact on the work of subsequent commissions.

The 1993 legislation enabled the commission to seek the support and assistance of Elections Saskatchewan

SASKATCHEWAN

THE CONSTITUENCY BOUNDARIES ACT, 1993

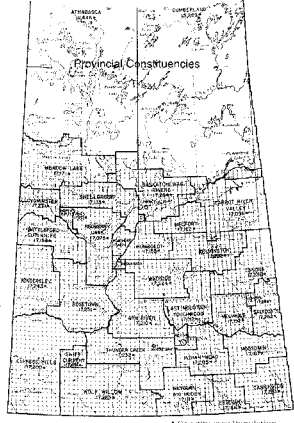
Notice of Hearings for the Proposed Constituencies for the Province of Saskatchewan and Notice that a Copy of the Interim Report of the Constituency Boundaries Commission has been Filed with the Clerk of the Executive Council on November 22, 1993.

PREAMBLE
The Constituency Boundaries Commission was established by *The Constituency Boundaries Act, 1993* consisting of:
The Honourable Mr. Justice R.C. Malott, Chairperson;
Dean Don de Visser, and
Mr. Nancy Reid.

Section 12 of the Act directs the Commission to prepare an interim report containing the Commission's recommendations respecting constituency boundaries. In preparing these boundaries, the Commission is directed:

- to divide the area of Saskatchewan south of the dividing line described in the Act, into 56 constituencies;
- to prepare boundary descriptions for each proposed constituency; and
- to prepare a name for each proposed constituency.

The map published with this notice describes the Commission's proposals for the boundaries, names and populations of the 56 constituencies.



* Constituency Population

NOTICE OF HEARINGS

Section 20 of the Act directs that:

In performing its duties, pursuant to this Act, the commission shall, at or about those times and places the commission considers necessary to obtain adequate input in respect to the areas of Saskatchewan to be included in proposed constituencies and the boundaries of those constituencies.

The Commission has determined that attempts with respect to a hearing of representations by interested organizations and persons with respect to the proposed constituencies shall be held at the following places and times:

<p>SASKATCHEWAN, THURSDAY, JANUARY 9, 1994 10:00 a.m. City Council Chambers 222 - 3rd Avenue North</p> <p>PRINCE ALBERT, WEDNESDAY, JANUARY 5, 1994 10:00 a.m. City Council Chambers 1088 Central Avenue</p> <p>SOREL, THURSDAY, JANUARY 6, 1994 10:00 a.m. City Council Chambers 1291 - 10th Street</p>	<p>YERVIS, THURSDAY, JANUARY 11, 1994 10:00 a.m. City Council Chambers 57 - 5th Avenue North</p> <p>WESTFORD, WEDNESDAY, JANUARY 12, 1994 10:00 a.m. City Council Chambers 1402 - 4th Street</p> <p>WILFRED, THURSDAY, JANUARY 13, 1994 10:00 a.m. City Council Chambers 1402 - 4th Street</p> <p>WILFRED, THURSDAY, JANUARY 13, 1994 10:00 a.m. City Council Chambers 1402 - 4th Street</p>
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Only those organizations or persons may make a presentation at any of the foregoing meetings that have, 15 days prior to the date of the meeting sought to be addressed, given notice in writing to the Commission, stating the name and address of the person by whom such representation is to be made and indicating concisely the nature of the representation and the political, financial or other interest of the person making the presentation.

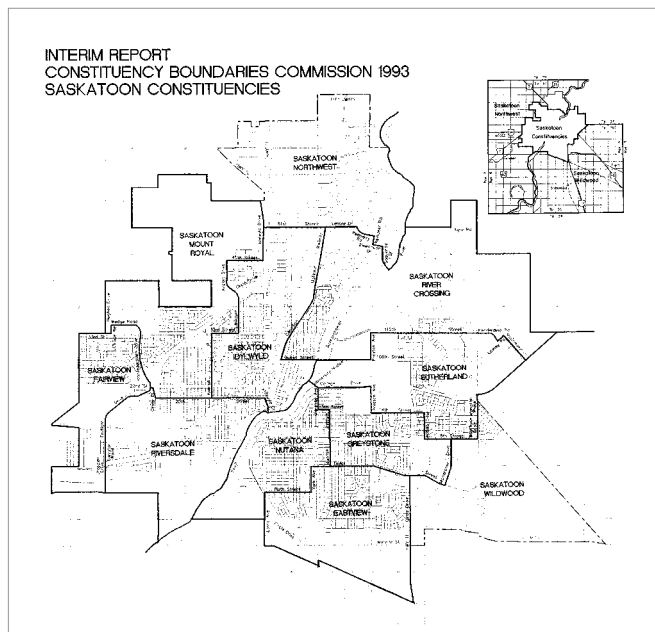
Such notice must be sent to:

Chairperson
Constituency Boundaries Commission
5th Floor, 2240 Alder Street,
Regina, Saskatchewan, S4P 4A6

Fax: 767-6311
Telephone: 767-6625

Copies of maps, legal descriptions of constituencies and other relevant matters may be obtained by contacting the above.

²⁷ The *Constituency Boundaries Act, 1993*, (s. 2(e), s. 14(4)), Government of Saskatchewan, Regina, SK.



by requiring the Chief Electoral Officer to comply with reasonable requests from the commission to provide information possessed by the CEO, and to provide any other assistance that the commission considered necessary in the fulfillment of its mandate.

The legislation that established the electoral boundaries commission in 2002 remained the 1993 Act, without amendment. The commission appointment process, variances, number of constituencies, time available and population to be considered were all maintained.

However, in 2012 the 1993 Act was amended in two significant ways. The population to be considered was changed from the census population to only that portion of the census population that was 18 years of age or older. As well, the number of southern constituencies was increased from 56 to 59.

Appendix A includes a table with details on the key provisions of legislation that specified the rules that pertained to the seven provincial constituency boundaries commissions that have been established in Saskatchewan and provides an overview of the changing parameters under the 1993 Act.

2.5 CHANGES IN MANDATE SINCE 1972

The mandate of the seven boundary commissions established since 1972 have periodically been altered in several key areas.

The number of constituencies to be proposed has typically been specified in the commission legislation and has varied from a high of 66 in 1987 to a low of 58 in 1993. The provisions of the 1972 and 1979 legislation provided flexibility to the commission by specifying a minimum number of northern constituencies and a maximum number of southern constituencies. Since 1987, commission legislation has been specific regarding the exact number of constituencies to be proposed, with that number having been modified via legislative amendments in advance of two of the four commissions established.

The allowable variances from the provincial population quotient have been adjusted, as have the constituencies to be included in the calculation for establishing the quotient. In the first two commissions, the allowed variance from the quotient was $\pm 15\%$ and the quotient was to be based on the population south of the northern dividing line. The populations for the two northern constituencies were to be within 15% of each other and this was to be achieved by changing the boundary between the two constituencies. In 1987, the legislation provided for a variance of $\pm 25\%$ for the southern constituencies and $\pm 50\%$ for the northern constituencies, using a provincial quotient based on calculating the average population for all 66 constituencies. The 1991 Act did not provide any variances from quotient, but directed the commission to propose constituencies that were, as nearly as possible, equal to a constituency population quotient based on dividing the provincial population into 66 constituencies. The 1993 Act provides for a variance of $\pm 5\%$ for the southern constituencies based on a quotient determined by dividing the population south of the dividing line by the number of southern constituencies to be specified. Boundaries for the two northern constituencies have remained exactly the same as when established in *The Representation Act, 1989*.

The population to be considered by each commission has been specified in legislation and has typically varied

2.6 SASKATCHEWAN REFERENCE CASE

As noted in section 2.2 above, *The Electoral Boundaries Commission Act* (1987) directed the commission to establish 2 northern constituencies, 29 urban constituencies and 35 rural constituencies. It also provided a maximum population variance of $\pm 25\%$ for the southern constituencies (urban and rural) and $\pm 50\%$ for the northern constituencies. The commission submitted its final report in 1988 and the proposed constituencies were adopted in *The Representation Act, 1989*. The legitimacy of the 1987 commission legislation was the subject of a legal challenge on the basis that the terms of section three of the *Charter of Rights and Freedoms* (which provides every citizen with the right to vote) were violated, and the case was initially heard by the Saskatchewan Court of Appeal.

The Saskatchewan Court found that the 1987 changes introduced to the electoral boundaries commission legislation infringed section three of the charter. The decision of the Saskatchewan Court of Appeal thereby invalidated the constituencies proclaimed in *The Representation Act, 1989*.

The Government of Saskatchewan appealed the case (by way of a reference from the Lieutenant Governor in Council) to the Supreme Court of Canada which, by a majority decision,²⁸ ruled in favour of the Province and enabled the reinstatement of the constituency boundaries that had been adopted in 1989.

The Supreme Court found that the variances for the southern constituencies and two northern constituencies were consistent with the broader concept of "effective representation." Justice McLachlin stated:

*"The concept of absolute voter parity does not accord with the development of the right to vote in the Canadian context and does not permit sufficient flexibility to meet the practical difficulties inherent in representative government in a country such as Canada. In the end, it is the broader concept of effective representation which best serves the interests of a free and democratic society."*²⁹

The court determined that the restrictive provisions of *The Electoral Boundaries Commission Act*, (1987 Act) did not prevent the commission from attaining the principle of effective representation.

However, following the initial hearing by the Saskatchewan Court of Appeal, and well before the Supreme Court of Canada had made its ruling, the Saskatchewan Legislative Assembly adopted *The Electoral Boundaries Commission Act, 1991*³⁰ and proceeded to establish a new commission assigned the urgent task of preparing new constituency boundaries for an election scheduled to be held that fall. After the Supreme Court's decision, which determined that *The Electoral Boundaries Commission Act* (1987) did not infringe on section three of the *Charter of Rights and Freedoms*, the recommendations of the 1991 commission were never carried forward into a new Representation Act. The provincial election of October 1991 was conducted based on constituency boundaries that had been recommended by the 1988 commission and subsequently adopted in *The Representation Act, 1989*.

The Supreme Court decision introduced the principle of "effective representation" for setting out constituency boundaries, which clearly differentiated the Canadian delimitation process from the overriding voting district parity principle³¹ used throughout the United States. It also confirmed that the sparsity of the population justified a variance from quotient by ± 25 per cent for much of the province and a variance of up to ± 50 per cent for greatly dispersed populations such as those north of the dividing line.

The validation of the existing constituency boundaries and the prior legal mandates of provincial boundary commissions led to the adoption of *The Constituency Boundaries Act, 1993*. The revised legislation was assented to on June 22, 1993 and continues to this day with the only amendments being those adopted in 2012.

²⁸ Judgment of the Supreme Court of Canada, Reference re Prov. Electoral Boundaries (Sask.), [1991] 2 S.C.R. 158, (<http://www.canlii.org/en/ca/scc/doc/1991/1991canlii61/1991canlii61.pdf>).

²⁹ Ibid., p. 189.

³⁰ *The Electoral Boundaries Commission Act, 1991*, Government of Saskatchewan, Regina, SK. The 1991 Act named the three commissioners: two justices and the former president of the University of Regina. The commission was required to prepare a single report and mandated to set its own rules and procedures, including whether or not to hold hearings. The commission was not required to complete its tasks within a specified time. The 1991 Act was silent on the timing for the establishment of future commissions.

³¹ The US Supreme Court case *Reynolds v. Sims*, 377 U.S. 533 (1964), established that States needed to redistrict so that State legislative districts contained roughly equal populations. The court stated: "The Equal Protection Clause requires substantially equal legislative representation for all citizens in a State regardless of where they reside."



2.7 THE 2012 COMMISSION

The 2012 commission was appointed by the Lieutenant Governor in Council on April 18, 2012 despite the fact the Legislature was still debating proposed changes to *The Constituency Boundaries Act, 1993* at the time.

Two critical 2012 amendments to the 1993 Act related to the number of southern constituencies to be proposed and the population base to be considered. The amended 1993 Act was assented to on May 16, 2012.

However, the 2012 commission's legislated deadline for the submission of a final report by October 18, 2012 remained intact, as this was six months following their appointment in April.

The electoral boundary commission legislation enabled the commission to either appoint its own personnel or request that the Chief Electoral Officer provide the support it required to complete its tasks.

Since the introduction of this feature in the 1993 Act, commissions have progressively increased the level of administrative and technical support they request from Elections Saskatchewan. This reflects the growing complexity of electoral boundary delimitation as well as the caliber of geomatics expertise available within the province's election management body. The 2012 commission received all its administrative support and technical services from Elections Saskatchewan. This approach provided the commission with access to the human resource skillsets it required, as well as current technology and information systems needed.

The 2012 amendments to *The Constituency Boundaries Act, 1993* provided that the population to be considered by the commission would be the 18 years-or-older subsection of the 2011 census population statistics for the province, and that 59 constituencies were to be proposed south of the northern dividing line.

Approximately one year after a national census is undertaken, Statistics Canada provides figures regarding the total population of persons who were resident within

Canada at the time the census was taken — the agency considers this to be its census reporting priority. These population statistics are provided for all provinces and territories and their major urban centres. Obtaining the 18 years-or-older statistical subsets for the province proved difficult for the 2012 commission to obtain in a timely way. These difficulties stemmed from certain policies Statistics Canada has adopted and the established post-census timetable they follow in publishing census population data subsets.

To support the many varied uses of population statistics, Statistics Canada provides the total population data in geographically nested polygons: census divisions, containing census sub-divisions, made up of dissemination areas and broken into dissemination blocks. Each of these successive polygons is a smaller subset of the other; that is, census sub-divisions are subsets of census divisions and so on. The smallest polygon of dissemination blocks in the 2011 census population for Saskatchewan varied from zero to 1,100 persons. On an emergency request basis, Statistics Canada required a full eight weeks to provide the 18+ population datasets that were urgently needed by the commission.

Additionally, Statistics Canada maintains a strict confidentiality policy of not providing demographic data for any of their geographic polygons that contain less than 40 people. Thus, in some instances, no population data whatsoever could be provided for certain dissemination blocks, or the even larger dissemination areas. This complete lack of population data coverage detail for some parts of the province required the commission's technical staff to calculate estimates of the distribution of the 18+ population for the dissemination blocks and areas where census counts were not provided by Statistics Canada.

In preparing the boundary proposals for the 59 southern constituencies, the 2012 commission faced several challenges. The current quotient variance of $\pm 5\%$ for the southern constituencies is the smallest permitted variance across the country and requires changing boundaries to accommodate relatively minor shifts in population. The decision to change the population from the total census

population to the 18 years-or-older subsets of the census contributed to further boundary adjustments being necessary. The third factor driving changes to boundaries was the amendment to the 1993 Act to increase the number of southern constituencies by three to 59 constituencies. However, the boundaries of the two northern constituencies were not to be considered, as they have been defined as 'static' boundaries since the 1993 Act was initially passed. This 'boundary freeze' has continued even though the overall combined population north of the dividing line increased by 37 per cent between 1992 and 2012, and the population differences between the two northern constituencies enlarged from 3,843 to 8,434 persons during the same timeframe.³²

The 1993 Act requires the commission to include boundary descriptions for each proposed constituency. The format for these descriptions has typically been 'metes and bounds,' a narrative legal description that traces the boundaries with a lengthy but precise written portrayal that follows the boundary line from end-to-end. The 2012 commission sought and received approval to instead use digital maps for its boundary descriptions, an approach that is now standard in many jurisdictions. As an example, New Zealand includes in its legislation that "the boundaries of the electoral districts fixed by the Commission shall be defined by the Commission by the use of such words, maps, and graphic means as are sufficient to define those boundaries accurately."³³

The 2012 constituency boundaries commission held a total of seven public hearings in provincial court buildings. In total, 45 people attended these seven hearings. Following each hearing, the commission held a debriefing session and provided direction to Elections Saskatchewan support staff regarding the suggestions made by presenters and contained in the written submissions received.

The six-month timeframe available for the commission to complete its tasks presented its greatest challenge. This time limit is the shortest period available to boundary commissions in Canada.³⁴ Exacerbating this short duration was the adoption of legislative amendments nearly a month after the commission had been appointed. Furthermore, the population data the 2012 commission was required to consider was not available at the time of its appointment and could not be formally requested from Statistics Canada until the amended Act had been proclaimed. The full 18+ population datasets arrived in late June, more than two months after the commission had been established. This left the commission with less than four weeks to complete its interim report, which it was legally required to publish within three months following their appointment.

Other issues resulting from the compressed timetable included the 2012 commission not being able to make a public website available until just prior to the deadline for submission of its interim report, thus minimizing the ability for the public to provide input regarding the boundary setting process. Due to extreme time constraints, the final printing proofs of the commission's interim report could not be reviewed by the commissioners themselves and needed to be edit-checked by support staff. The commission ultimately did complete its overall mandate within the legislatively allotted six-month timeframe, but this required many hours of overtime work by the members of its supporting technical staff and resulted in considerable stress for the commissioners.

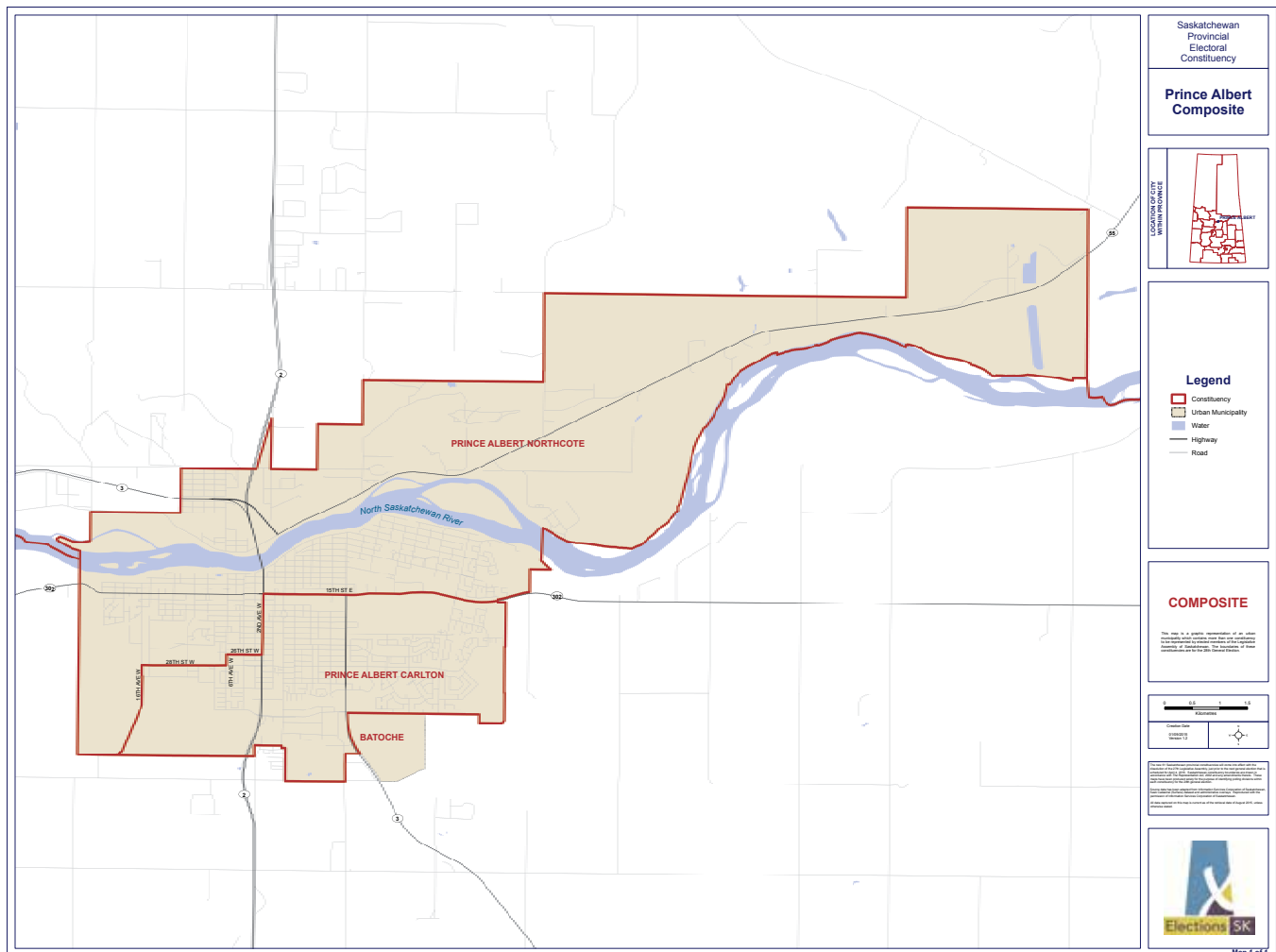
At its final meeting, the chair recommended that the CEO review the above-listed challenges and prepare a report of recommendations that could be implemented at the time of the next constituency boundaries commission, scheduled for appointment in 2022. The next section of this assessment report forms a direct response to that recommendation.

³² The 1991 census population of the two northern districts was reported as 26,735 persons in the 1993 boundaries commission report. Twenty years later the 2011 national census indicated Saskatchewan's northern population had increased by 37 per cent to 36,606 persons. The 2011 census count also indicated the Cumberland constituency having a population of 22,520, some 60 per cent greater than the 14,035-person population contained in the Athabasca constituency. Further detailed information on how the population equation has changed for the two constituencies "north of the dividing line" is contained in Appendix B of this report.

³³ Electoral Act 1993, S. 38, New Zealand Government, Wellington, NZ., 2015, (<http://www.legislation.govt.nz/act/public/1993/0087/latest/DLM307519.html>).

³⁴ See Appendix C for a comparison of allotted timeframes Canadian electoral boundary commissions are provided to fulfill their mandate. The provinces of Prince Edward Island and Newfoundland are the only ones that share Saskatchewan's six-month timetable.

The six-month timeframe available for the commission to complete its tasks presented its greatest challenge. This time limit is the shortest period available to boundary commissions in Canada



IMPROVING AND MODERNIZING SASKATCHEWAN'S DELIMITATION PROCESS

3.1 WHY CHANGE?

The current model for constituency boundary setting has been in place for 49 years and has not been the subject of an independent review or critical assessment during that period.

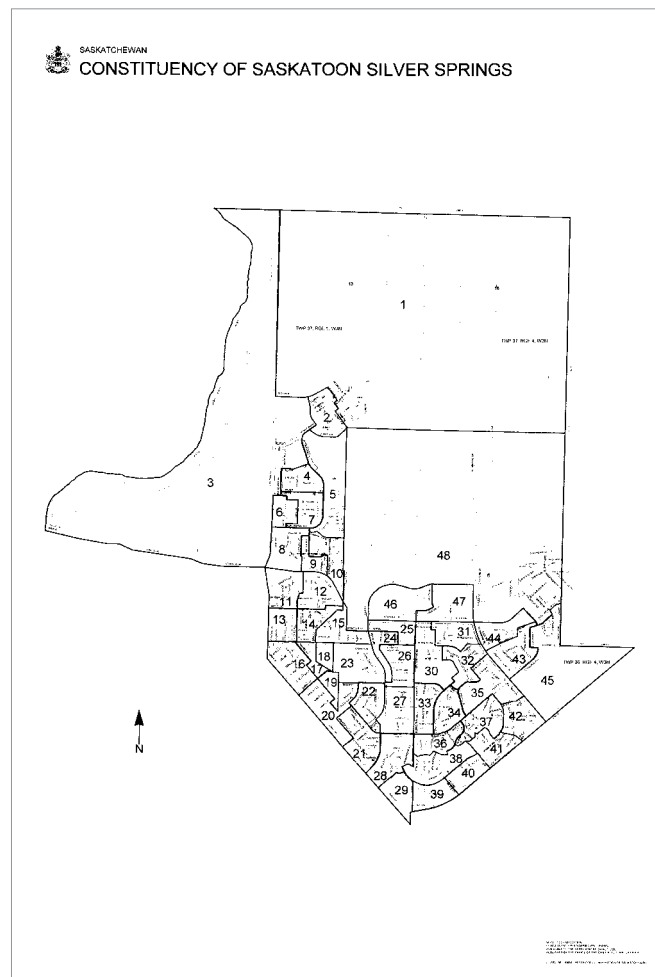
The late-breaking amendments to the 1993 Act, which changed the mandate of the 2012 commission after it had been appointed, proved especially challenging. Key among these was the change in the population to be considered and the constraints of working within what remained of a six-month timetable. The required population data was not readily available and required an urgent request to Statistics Canada, to which they were not able to fully respond due to policy issues regarding confidentiality. The abbreviated timeframe set for the commission to complete its work meant that consultation processes with the public were minimal.

The Chair of the 2012 commission requested the Chief Electoral Officer review all aspects of the commission's process and mandate, and produce a report recommending improvements to address the significant challenges future commissions will otherwise face. These are the population to be considered; the limited time available to a commission to fulfill its mandate; the requirement to publish an interim report within three months of appointment ("the three-month clock"); the need to be able to accept input from the public via means other than public hearings; and for the timing of future commissions needing to avoid conflicting with the timing of scheduled general elections.³⁵

Reviews of boundary setting processes are not uncommon in other jurisdictions. The UK undertook an extensive review of its parliamentary constituency boundary delimitation process in consideration of problems faced during their 2013 boundary redistribution. The terms of reference for that boundary adjustment outlined challenges quite similar to those faced by the 2012 commission in Saskatchewan.³⁶

In Australia, a Joint Standing Committee on Electoral Reform was established in 1983 and "charged with undertaking the most comprehensive review of *The Commonwealth Electoral Act 1918* since its original enactment."³⁷ The committee, now referenced as the Joint Standing Committee on Electoral Matters,³⁸ continues to play a significant role

The Chair of the 2012 commission requested the Chief Electoral Officer review all aspects of the commission's process and mandate, and produce a report recommending improvements to address the significant challenges future commissions will otherwise face.



³⁵ Minutes of the Meeting of the 2012 Constituency Boundaries Commission, 9:00 a.m. Tuesday, October 2, 2012. Regina: Elections Saskatchewan.

³⁶ House of Commons Political and Constitutional Reform Committee – What next on the redrawing of parliamentary constituency boundaries?, (pp. 50-51), House of Commons London: The Stationary Office, 2015, (<https://www.publications.parliament.uk/pa/cm201415/cmselect/cmpolcon/600/600.pdf>).

³⁷ McLean, I. E. and D. Butler, *Fixing the Boundaries: Defining and Redefining Single-Member Electoral Districts*, (p. 121), Dartmouth Pub., England, 1996.

³⁸ Recent reports of the Committee can be viewed at: https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Completed_Inquiries/em/index

in electoral policymaking. Additionally, it has defined the current independent and fully impartial model for setting the boundaries of electoral divisions in Australia, which many observers regard as the best example of an electoral boundary delimitation process currently in use.

Saskatchewan's existing boundary delimitation processes have not evolved and are now under stress — specific concerns articulated by the Chairperson of the most recent boundaries commission indicate growing problems. It is appropriate that legislators work to adjust the province's legal framework for electoral boundary setting while respecting overarching delimitation principles and internationally accepted best practices.

3.2 PRINCIPLES UNDERLYING DELIMITATION OF CONSTITUENCY BOUNDARIES

The details of electoral boundary delimitation practices vary between Canadian federal, provincial, and territorial jurisdictions, and between electoral democracies around the world. However, there are five widely accepted principles of electoral delimitation endorsed around the globe:

- Representativeness
- Equality of voting strength
- Independent, impartial boundary authority
- Transparency
- Non-discrimination³⁹

The Venice Commission, an advisory body to the Council of Europe on constitutional law matters, provides legal advice on electoral matters to its 47 members.⁴⁰ Regarding electoral boundary delimitation standards, it lists⁴¹ the principles of:

- Equal voting power;
- Reasonable population variance based on appropriate criteria;
- Regular reviews of boundaries; and
- Conduct of such reviews being done only by independent and impartial committees.

3.3 IMPROVING THE CONSTITUENCY BOUNDARY-SETTING PROCESS

Improving and modernizing Saskatchewan's constituency boundaries process requires refocusing the legislation based on the principles listed above and adopting best practices established by Canadian and international jurisdictions.

The following discussion lists specific shortcomings that need to be addressed within Saskatchewan's current approach to constituency boundary delimitation, as mandated by the 1993 Act.

3.3.1 TIMING OF THE CONSTITUENCY BOUNDARIES COMMISSIONS

– Current law anticipates the next constituency boundaries commission being established following the receipt, by the Clerk of the Executive Council,⁴² of provincial population information that will be published following the next national decennial census. That release of population statistics from the 2021 census is not expected to occur before early May 2022 — datasets showing the 18+ population in each census unit polygon are unlikely to be available before July 2022.

The timing, duration and mandate of the next commission will, of course, be subject to any amendments that modify *The Constituency Boundaries Act, 1993*. Key among the potential amendments will be this report's recommendations regarding the appointment date for each boundary commission (subsequent to the 2022 commission), the expanded timeframe available for the commission to fulfill its responsibilities, the flexibility the commission has with regard to obtaining public input, as well as the population base the commission is to consider when setting boundaries.

Because provincial general elections are now scheduled to occur on the last Monday of October every four years,⁴³ a "race against the clock" will be encountered on multiple fronts if the current boundary commission legislation is not changed.⁴⁴ The commission will

³⁹ The ACE Encyclopedia: Boundary Delimitation, www.aceproject.org, (p.11), 2012. Document available for download at (<http://aceproject.org/ace-en/pdf/bd/view>).

⁴⁰ For more information on the Venice Commission, visit: (http://www.venice.coe.int/WebForms/pages/?p=01_Presentation).

⁴¹ European Commission for Democracy through Law (Venice Commission), Code of Good Practice in Electoral Matters Guidelines and Explanatory Report, (pp. 6-7), 2002, Venice.

⁴² *The Constituency Boundaries Act, 1993*, (s. 4). If the Act is left unchanged, it will be a requirement for the Clerk of the Executive Council to obtain the "total population" figures from the Chief Statistician of Canada "as soon as is practicable after the publication of the census." Section 2(k) of the Act defines "total population" as "the total population of Saskatchewan that is 18 years of age or older." Section 4(2) of the Act requires the Lieutenant Governor in Council to appoint a boundaries commission within 30 days of receipt of the "total population" figures. This is likely to result in the next boundaries commission appointment being delayed until July 2022.

⁴³ *The Legislative Assembly Act, 2007*, (s. 8.1), Government of Saskatchewan, Regina, SK.



likely find themselves rushed to complete their public hearings and boundary review deliberations to meet the early-November 2022 deadline for tabling their final report on constituency boundary changes. The legislature will need to give priority to implementing the boundary report into law during the 2023 Spring session. Elections Saskatchewan will then begin the process of creating constituency maps, modifying polling division boundaries and revising the content of the voter registry based on the newly defined electoral geography. Revised maps and voters lists, reflecting the electoral geography to be used in an election, are critical campaign planning and preparation tools for registered political parties, and they will expect to have this information in hand a minimum of four months before the scheduled October 2024 general election.

While it may be possible to implement new boundaries in time for the scheduled 30th provincial general election using the current legal framework, the fact remains that currently scheduled electoral boundary redistributions and scheduled general elections are legislated to be out of synchronization by two years per decade. The subsequent boundary commission, which will need to be established in 2032 per the current requirements of the 1993 Act, will be in the midst of their deliberations when the scheduled general election of 2032 is underway.⁴⁵

Some Canadian jurisdictions, such as Alberta, British Columbia, New Brunswick, and Quebec have addressed this overall timing difficulty by linking the establishment of their electoral boundary commissions to follow each second general election. A similar provision was included in Saskatchewan when *The Electoral Boundaries Commission Act* (1987) was passed.⁴⁶ Linking the creation of constituency boundaries commissions following every second general election provides a four-year window to carry out the constituency boundary revisions and subsequent implementation activities that are discussed in Section 4.0 of this report.

Statistics Canada conducts a census every five years, and the needs of a boundaries commission may coincide well with a recently completed census in some years, but not as well in others. This may require the commission to have access to more current alternate population databases such as the permanent register of voters for Saskatchewan or statistics on the geographic distribution of citizens listed in the province's e-Health register. Additionally, Statistics Canada continuously collects and provides statistical data that can be used to create updated estimates of the population within their census geography between each formal population count performed at five-year intervals. These estimates are similarly available to be applied to the federal polling division polygons that Elections Canada has designed in collaboration with Statistics Canada. Using Geographic Information System (GIS) tools, Elections Saskatchewan could provide accurate population estimates (per federal polling division) to a boundaries commission in any timeframe necessary between census counts.

There is very clearly a conflict between the schedules associated with the current timing of electoral boundary commissions, the time required to implement new constituency boundaries, and the legislated timing of each general election as set out in *The Legislative Assembly Act, 2007*. If an election is called every four years, but boundary commissions are only established every ten years, it becomes inevitable that some constituency boundary sets will need to be applied for three elections. This situation needs to be proactively addressed with an appropriate legislative amendment.

Consideration needs to be given to providing an amended commission appointment schedule that becomes effective after 2023. Appointing a boundaries commission within six months following every second general election would provide adequate time for new constituency boundaries to be readied for full implementation and applied use at the subsequent two provincial elections.

⁴⁴ This same compressed schedule will be experienced by the Constituency Boundary Commissions appointed, under current legislation, at the time of the official release of population statistics following every second decennial census.

⁴⁵ Conflicting boundary-setting activities and provincial general elections will recur, under the current legislated commission appointment schedule and the statutory schedule for elections, at the beginning of every second decade.

⁴⁶ *The Electoral Boundaries Commission Act* (1987), s. 3(2), Government of Saskatchewan, Regina, SK.

3.3.2 INDEPENDENCE AND IMPARTIALITY – The current Saskatchewan electoral boundary delimitation model does not fully meet the principle of independence and impartiality. The first commission (1972) consisted of a judge appointed by the Chief Justice, a resident appointed by the Speaker of the Legislative Assembly and an officer of the legislature. Since the proclamation of the 1993 Act, the Lieutenant Governor in Council (Cabinet) appoints a judge nominated by the chief justice and then appoints two residents following consultation with the leaders of government and the opposition.

It would be preferable that the Chief Justice of the province appoint a retired judge or judge to act as the commission's chairperson. It would be appropriate that the Speaker of the Legislative Assembly appoint a trusted citizen, following consultation with the leaders of the government and opposition. And it would be congruous that the Chief Electoral Officer, who is chosen to act in a fully impartial manner in the administration of the province's electoral laws, be automatically assigned to act as one of three non-partisan electoral commissioners.

3.3.3 ADEQUATE TIME FOR REVIEW – The six months available for the boundaries commission to fulfill its mandate is the shortest timeframe used in Canada and clearly proved itself to be inadequate during 2012.

Since appointment to a boundary commission is a one-time event for most commissioners, a period for learning and understanding their new responsibilities needs to be factored into the timetable. The six-month time limitation also makes it difficult to properly consult with the province's citizens prior to making proposals for boundary changes, either before or after the preparation of an interim report. The 1993 and 2002 constituency boundaries commissions were unable to complete their work within the six-month period and requested extensions. The 2012 commission did complete its mandate within the legislatively allocated timeframe, but its consultations with the public were minimal as a result, and support staff were required to work extensive overtime to meet the statutorily scheduled deadlines.

By way of comparison, the federal electoral boundaries commission for Saskatchewan's 14 electoral districts is provided with 10 months to undertake public consultations and produce its final report and may request a two-month extension if required.⁴⁷

3.3.4 THE ROLE OF ELECTIONS SASKATCHEWAN –

The 2002 and 2012 boundary commissions received all their secretariat and technical services from Elections Saskatchewan. While previous commissions appear to have also received some level of support from Elections Saskatchewan, earlier commission reports are silent regarding the extent or type of services that were provided.

The work of modern boundaries commissions depends on significant use of Geographic Information System (GIS) technology which requires related computer expertise and specialized digital map data, software and computing hardware. Elections Saskatchewan is a logical resource for successive commissions to use in accessing this technology and the geomatics skill sets required to utilize it efficiently. The boundary modifications that result from the work of a commission have a direct impact on the election preparation activities of Elections Saskatchewan, which makes involvement with the development of changes to electoral geography the most overall efficient arrangement.

Following the completion of a commission's efforts, Elections Saskatchewan is the logical entity to ensure the continuity of the short-term work efforts made by each boundary commission. It is Elections Saskatchewan who is best positioned to preserve the knowledge, expertise and information resources that are developed in each boundary-setting process, to address any ongoing boundary placement concerns that may arise during electoral events, and to take responsibility for continuing efforts to modernize and improve the electoral boundary redistributions within the province. Given these circumstances, it is logical that Elections Saskatchewan should provide the secretariat, technical and other administrative support services required by each successive electoral constituency boundary commission.

⁴⁷ The Federal Electoral Boundaries Commission for the Province of Saskatchewan submitted their final report to Speaker of the House of Commons on June 28, 2013 after being granted multiple extensions. This commission was appointed on February 21, 2012 and submitted an interim report to the House of Commons on December 19, 2012. Full details are available on the '2012 Redistribution: Federal Electoral Districts' website: (<http://www.redecoupage-federal-redistribution.ca/content.asp?document=home&lang=e>).



This approach is not uncommon in other Canadian jurisdictions. The federal electoral boundaries commissions (separate per province) function under the legislated role Elections Canada has to provide them technical support and to gather data for their use from other Federal government departments such as Statistics Canada and the Department of Natural Resources. In 2014, Elections BC provided the secretariat and technical support for the British Columbia provincial boundaries commission and the 2015 final report of that commission includes a recommendation that this practice be incorporated into legislation.⁴⁸ Boundaries commissions in other provinces in Canada also receive secretariat support from their respective provincial election management body.

Under the current legislative provisions, Elections Saskatchewan does not have any way of knowing whether the next boundary commission will require its services or not. This precludes preparing administrative arrangements, configuring analysis tools or collecting data for the commission, as it remains the commission's post-appointment prerogative to decide where they will obtain their technical and administrative support.

3.3.5 POLICIES AND PROCEDURES – The powers and responsibilities of commissioners, although the same as those granted to commissioners of public inquiries, are subject to a variety of specific rules and procedures within *The Constituency Boundaries Act, 1993*. For example, the Act specifies that the manner in which hearings are to be organized by the commission:

Hearings

17(1) A commission may hold hearings at the times and places that it considers appropriate to conduct its business.

(2) A commission shall notify Saskatchewan residents of the time and place of each of its hearings by advertising in a newspaper having general circulation in that part of Saskatchewan where the hearing will be held at least 30 days before the hearing.

(3) A commission shall include the following in the

advertisement required pursuant to subsection (2):

- (a) a map or drawing in a form and with the detail satisfactory to the commission that shows:
 - (i) the constituencies proposed by the commission;
 - (ii) the name and population of each proposed constituency; and
- (b) a schedule in a form and with the detail satisfactory to the commission showing the boundaries of each proposed constituency.

Sections 19 and 20 of the Act require the commission to prepare an interim report within three months, and then advertise in newspapers across the province (30 days in advance) notice of the locations and dates of public hearings they have planned. If citizens wish to provide input to the commission regarding any of the boundaries proposed in their interim report, they are required to make a presentation at a commission hearing. However, the following conditions must be met to be permitted to make a presentation to the commission:

Requirements for presentations at hearings

18(1) Every person who wishes to make a presentation to the commission at a hearing pursuant to section 17 or 20 shall notify the secretary to the commission in writing of the following:

- (a) the name and address of the person making the presentation;
 - (b) a concise summary of the presentation;
 - (c) the political, financial or other interest of the person making the presentation.
- (2) A person who wishes to make a presentation shall provide the written notice required pursuant to subsection (1) at least 15 days before the date of the hearing.

Clearly these requirements reflect an era before websites, social media and electronic mail were in active use.

Electoral boundary commissions should be accorded the right to establish their own policies and procedures within broad guidelines, such as those that were provided to the 1991 commission.

⁴⁸ Elections British Columbia, *British Columbia Electoral Boundaries Commission Final Report*, (p. 140), (https://elections.bc.ca/docs/rpt/BC-EBC_Final_Report-Sept_24,_2015.pdf).

3.3.6 TOTAL POPULATION TO BE CONSIDERED – The change to the population to be considered by the 2012 commission — from the Saskatchewan portion of the Canadian population census to only that portion of the census count that included persons 18 years of age or older — was particularly challenging for the commission. Most Canadian boundary commissions use the full census count as the population to be considered in preparing electoral boundaries. Statistics Canada focuses on providing the census population data publicly and then responds to analysis of subsets of the census as special requests. The 2012 commission was more than two months into its six-month mandate before it had the detailed data it needed to properly begin the tasks of reviewing and setting boundaries.

The exclusion of some citizens from the population to be considered in the setting of electoral boundaries undermines their rights under section three of the *Charter of Rights and Freedoms*. The *Charter* provides that every citizen has democratic rights and the courts have stated that these underlying equality provisions apply to the boundary setting process. Justice McLachlin, in the Saskatchewan reference case, stated that the key democratic right enshrined in section three of the *Charter* is “effective and fair representation conducive to good government” and further states that “each citizen is entitled to be represented in government”⁴⁹ [emphasis contained in original judgement]. Justice McLachlin (in Dixon) stated 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”⁵⁰ [emphasis added].

Given that the requirement to use a subset of the total population undermines citizen rights to effective representation and is a deviation that has little to do with better government, this 2012 legislated policy change should be reconsidered. Constituency boundaries are established to ensure all citizens (whether they are of voting age or not) have effective representation. Requiring a subset of the census

population to be the basis for boundary setting clearly results in some citizens being factored out of the boundary-setting equation.

3.3.7 POPULATION VARIANCE BETWEEN CONSTITUENCIES – The variance of $\pm 5\%$ of the provincial quotient is the smallest permissible variance for all electoral boundary commissions in Canada. The low variance requires that the boundaries of most constituencies must be altered whenever delimitation reviews take place, even when there are relatively small changes of population. For example, the 2012 commission found it necessary to make changes to the boundaries of all 59 of the southern constituencies it was mandated to review.⁵¹

The UK study, referenced in section 3.1 of this report, found that implementing an identical $\pm 5\%$ variance rule was a major contributor to boundary changes and a source of numerous constituent complaints.⁵² The Venice Commission recommends a range of $\pm 10\%$ to $\pm 15\%$ as a reasonable and permissible departure from an electoral quotient.⁵³

3.3.8 REVIEW OF NORTHERN CONSTITUENCY BOUNDARIES – The boundaries for the two northern constituencies have remained exactly as they were when adopted in *The Representation Act, 1989*, as the 1993 Act does not allow them to be included in any review by any boundaries commission. The population of the two constituencies were quite similar when pre-1988 commissions were responsible for setting the boundary line between the two constituencies. However, today the population differences between the two constituencies have become significant, as can be seen in a table provided at Appendix B, and the overall population of the north has grown quite significantly since the northern boundary line was established in 1972.

The 2011 census count indicated the average population of Saskatchewan's two northern constituencies had risen to $[(14,035 + 22,520) \div 2]$

⁴⁹ Judgment of the Supreme Court of Canada, *Reference re Prov. Electoral Boundaries (Sask.)*, [1991] 2 S.C.R. 158, p. 183, (<https://www.canlii.org/en/ca/scc/doc/1991/1991canlii61/1991canlii61.pdf>).

⁵⁰ Judgement of the British Columbia Supreme Court, *Dixon v. B.C. (A.G.)* (1986), 7 B.C.L.R. (2d) 174

⁵¹ Elections Saskatchewan, *Area of New Constituencies*, Regina, SK., 2015.

⁵² *What next on the redrawing of parliamentary constituency boundaries?*, (p. 22), House of Commons London: The Stationery Office Limited, 2015.

⁵³ European Commission for Democracy through Law (Venice Commission), *Code of Good Practice in Electoral Matters: Guidelines and Explanatory Report*, (p. 7), 2002, Venice, ([http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2002\)023rev-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2002)023rev-e)).



=] 18,278, which exceeded the 16,895-person average⁵⁴ for the 59 southern constituencies by eight per cent. Because of the considerable challenges in providing effective representation for citizens who reside in sparsely populated pockets within large geographic areas, coupled with challenging transportation access due to the lack of an existing road infrastructure, appropriate consideration needs to be given for providing additional representation to citizens living in the northern half of the province. Providing the citizens of northern Saskatchewan with effective representation requires recognition of the “very special circumstances” that Canadian courts have ruled as providing justification for variances that exceed $\pm 25\%$. To make representation both equitable and effective, a minimum of three northern constituencies should be created at the next redistribution. Ignoring this issue will only create larger representation imbalances going forward.

3.3.9 USE OF SHARED POLYGONS – Modern boundary commissions usually set out the boundaries of constituencies by joining together contiguous census geography boundary units, technically referred to as ‘polygons.’ Using adjacent pieces of geography as building blocks, they keep compiling them until they reach the population quotient or achieve a figure that falls within the variance range (e.g. $\pm 10\%$) specified in legislation. Variances require giving due consideration to each of several criteria — such as communities of interest, historical ties and transportation links — which are usually enumerated in legislation.

Useful for developing constituency boundaries, Statistics Canada provides the total population data in geographically nested polygons: census divisions, census sub-divisions, dissemination areas and dissemination blocks. Each of these polygons is a smaller subset of the other, that is, census sub-divisions are subsets of census divisions. The smallest polygon is a dissemination block, which, within Saskatchewan, can vary with a recorded census population of 0 to 1,100 persons.

In New Brunswick and Prince Edward Island, their boundary commissions use polling division polygons to propose new electoral districts. Polling divisions are used by election management bodies for the conduct of elections and the maximum population of eligible voters to be included in each polling division is typically specified in provincial legislation. Polling divisions in Saskatchewan are usually prepared following the adoption of new constituency boundaries. By reversing the process, that is, using polling divisions to prepare constituency boundaries, polling divisions do not need to be extensively revised following the adoption of new constituency boundaries. The populations for polling divisions are significantly smaller than the 1,100 persons indicated in some of Statistics Canada’s polygons and having the option of adopting polling divisions as shared ‘building blocks’ for creating constituency boundaries would potentially make the work of commissions easier and more efficient to complete.

3.3.10 ORDERLY CLOSE OF COMMISSION

RESPONSIBILITIES – The current legislation is silent on the tenure of commissioners once the commission has completed its work and submitted its final report, and this is a general approach used across Canada. Once the commission has completed its work, it simply becomes “*functus*.”⁵⁵ Jurisdictions such as New Zealand and the United Kingdom include provisions in their legislation to bring the work of the commission to a more orderly close.

Consideration should also be given to legislatively providing the successive commissions with the option of including recommendations for legislative change to *The Electoral Boundaries Commission Act* as a section of their final report, or in a separate administrative report reflecting on their work and the legal framework that governed it.

⁵⁴ The total 2011 census population count for Saskatchewan was 1,033,380. Subtracting the population of the two northern constituencies (36,555) from this total and dividing the remainder (1,033,380 – 36,555 = 996,825) by the 59 southern constituencies provides an average — or ‘quotient’ — population calculation of 16,895 persons per southern constituency.

⁵⁵ That is, “expired,” “void,” or “no longer having effect.”

3.4 RECOMMENDATIONS FOR IMPROVEMENT

Based on the principles and values associated with a professional approach to electoral boundary delimitation in an established democracy, and to address the shortcomings that have been identified in the current arrangements for regular reviews of the provincial constituency boundaries in Saskatchewan, the Chief Electoral Officer makes the following 10 recommendations, each of which will require amendments to *The Constituency Boundaries Act, 1993*:

3.4.1 INTEGRATE THE SCHEDULE FOR ELECTORAL BOUNDARY COMMISSIONS WITH THE SCHEDULE FOR GENERAL ELECTIONS

It is recommended that the timing for the establishment of constituency boundary commissions should be six months following every second general election, effective following adoption of The Representation Act in 2023.

The change in the timing for the establishment of commissions is needed to better coincide with the provisions of *The Legislative Assembly Act, 2007* which now require that a general election be held every four years. A change that ties the establishment of constituency boundaries commissions to the general election schedule will ensure new constituency boundaries are implemented in a timely manner following every second election.

A new constituency boundaries commission should be appointed within six months following the return of writs of each second provincial general election that uses constituency boundaries set out in a *Representation Act*. Such commission timing will ensure that Elections Saskatchewan can reasonably implement the commission's boundaries and respond to the needs of stakeholders that each set of boundary changes creates. In addition, it will prevent some boundary sets being used for three general elections and others only used for one. Further, it will end the prospect of boundary commissions needing to be appointed in the same year as a provincial general election is legislatively scheduled.

Changing the timing of the establishment of provincial boundary commissions will require that population data other than the decennial census be used for boundary setting analysis. Because Statistics Canada undertakes a national census every five years, there will always be a population count to work from, but it may need to be supplemented with information from other data collections to provide the most accurate basis for setting boundaries. Either census geography polygons, updated with population estimates, or polling division polygons, configured with population data estimates, could be used for this purpose. Adequate lead time is required to assemble accurate population estimates for 'building block' components of geographic polygons that cover the entire province.

While each of the other nine recommendations contained in this report are considered important to include in the mandate and arrangements for the commission appointed in 2022, it is recognized that synchronizing commission appointments and general elections cannot occur until after the next boundaries commission has been appointed.

3.4.2 APPOINT INDEPENDENT, IMPARTIAL COMMISSIONS

The principles underlying an electoral boundaries commission are based on the values of independence, non-partisanship, openness, transparency and integrity.

It is recommended that the legislation be amended to provide for the appointment of independent and impartial commissioners for each constituency boundaries commission consisting of:

1. A Retired Judge/Judge (nominated by the Chief Justice of the Court of Queen's Bench),
2. A citizen of the province (respected by both government and opposition leaders; nominated by the Speaker of the Legislative Assembly), and
3. The Chief Electoral Officer for Saskatchewan.



The Chief Justice would be expected to carry out the needed consultation with the judiciary to nominate a retired or sitting judge to serve as the commissions' chairperson.

The Speaker would need to consult with the government and opposition leaders in the process of appointing a citizen of the province whose knowledge, character and integrity is trusted and respected on both sides of the Assembly.

The duty and authority of the Speaker and Chief Justice to each appoint a constituency boundaries commission member after appropriate consultation, and for the Chief Electoral Officer to be automatically appointed, should be included in legislation.

3.4.3 PROVIDE AN APPROPRIATE COMPLETION TIMELINE FOR EACH CONSTITUENCY BOUNDARIES COMMISSION

It is recommended that the time available for the boundaries commission to fulfill its mandate be extended to 10 months, with the possibility of a further extension of two months, subject to the approval of the Speaker.

The commission should submit and make public its interim report near the midpoint of its mandate and submit its final report to the Speaker at the end of the 10-month period unless an extension, not to exceed two months in total, has been approved.

The current legislation establishes commissions to carry out certain responsibilities within a specified period; however, it does not formally dissolve each commission. Once the commission has completed its work it should be formally 'decommissioned.'

It is recommended that the legislation be amended to provide for the dissolution of the commission following the adoption of the proposed constituency boundaries by the Legislative Assembly and passage of a new *Representation Act*.

3.4.4 DESIGNATE ELECTIONS SASKATCHEWAN AS THE BOUNDARIES COMMISSION SECRETARIAT

It is recommended that Elections Saskatchewan be legally designated as the Secretariat for each provincial constituency boundary commission with a clear mandate to provide the necessary technical and administrative support services to each commission and to regularly undertake assessments with a view toward continued modernization and improvement of the boundary delimitation process.

This role would enable Elections Saskatchewan to proactively plan for the requirements of each successive commission. This would ensure that the population data most useful to each commission in fulfilling its responsibilities could be pre-identified and prepared. Elections Saskatchewan already has a requirement to have technology and skilled technical resources that make use of geospatial data in maintaining the province's electoral geography. The addition of commission secretariat responsibilities will require building some modest additional capacity and resources to provide the ability to professionally support each commission's evaluation of changed population demographics and assist in the process of proposing boundaries that ensure effective representation.

The legislation should also be amended to transfer the responsibility for collecting census population data (provided by the Chief Statistician of Canada) from the Clerk of the Executive Council⁵⁶ to the Chief Electoral Officer. Census population data for Saskatchewan should be collected following each national census, which occur every five years, and estimates of current populations within census geography polygons (to the federal polling division level) should be prepared and made available whenever a provincial constituency boundaries commission is about to be established.

⁵⁶ The Constituency Boundaries Act, 1993, (ss. 4, 11), Government of Saskatchewan, Regina, SK.

3.4.5 ENABLE COMMISSIONS TO SET THEIR OWN RULES AND PROCEDURES

It is recommended that the commission have the mandate to set its own rules and procedures as provided in *The Constituency Boundaries Act, 1993*⁵⁷ without any prescription regarding public hearings and presentations.

The legislation should include the requirement that the commission consult with the citizens of the province in whatever manner it deems appropriate and to hold public consultation hearings using whatever methods it sees fit following submission and publication of its interim report.

The commission should be required to ensure the public is informed regarding the consultation processes and location and timing of hearings that it will conduct following the publication of its interim report; however, the commission should determine how this will best be done and consider the use of changing communication options as they become available.

The legislation should also include provisions for the orderly close of the commission's responsibilities. This might appropriately include submission of a separate final administrative report on the commission's work assignment and challenges experienced in its delivery. This report could be formally provided to the Chief Electoral Officer along with a formal transfer of the commission's documentation and research materials.

3.4.6 CONFIRM THE ENTIRE POPULATION IS TO BE CONSIDERED

It is recommended that the most recent Canada census count, which includes all persons resident in Saskatchewan, be the primary population data to be considered by the commission when developing constituency boundaries.

If the most recent available census data (a census is conducted every five years) is not considered sufficiently current, the commission should be enabled to use polygon-based population projections and estimates provided by Statistics Canada or Elections Canada; voter registration statistics from the permanent register of voters for Saskatchewan; or public health registration statistics from eHealth Saskatchewan. However, the decision as to which additional population base figures to consider at which time should remain exclusively with each commission. The commission should be required to ensure effective representation for all citizens of Saskatchewan.

3.4.7 SET REASONABLE POPULATION VARIANCES FOR SOUTHERN CONSTITUENCIES

It is recommended that the permitted variances for southern constituencies be set at $\pm 10\%$.

This variance level is consistent with best practices internationally and will provide for longer lasting constituency boundaries, particularly in the rural areas of the province.



3.4.8 CORRECT POPULATION IMBALANCES BETWEEN THE NORTHERN CONSTITUENCIES

It is recommended that the legislation be amended to enable the commission to establish boundaries that balance the population between the constituencies north of the dividing line within a variance of $\pm 15\%$.

The legislation should also include a provision that the commission be enabled to increase the number of northern constituencies beyond the number that currently exist, subject to their variances from the provincial quotient (calculated for the entire province) not being permitted to exceed -25%. A minimum of three northern constituencies should be established during the boundary redistribution scheduled for 2022, if population growth meets this requirement.

The legislation also should be modified to adjust the north-south dividing line to coincide with the southern portion of the Northern Administrative District of Saskatchewan. The Northern Administrative District of Saskatchewan is an established provincial boundary which is regulated by *The Northern Municipalities Act, 2010*. The coincident boundaries of Rural Municipalities to the south is incorporated under *The Municipalities Act*. The suggested boundary change would align the southern portions of the current constituencies of Cumberland and Athabasca with the southern boundary of the Northern Administrative District.

The adjustment will transfer a small, sparsely populated area from the current Meadow Lake and Saskatchewan Rivers constituencies to the current Athabasca constituency. Any such revision to the dividing line should be included as a schedule to future amendments of *The Constituency Boundaries Act, 1993*. The map in Appendix D graphically illustrates the change resulting from this adjustment.

3.4.9 ADJUST RULES FOR ESTABLISHING CONSTITUENCY BOUNDARIES

There are considerable potential benefits and efficiencies in using polling division polygons to establish constituency boundaries.

It is recommended that the commission be enabled to consider the use of polling division polygons as the basis for establishing constituency boundaries.

Such a change would require the removal of Returning Officer legal responsibility⁵⁸ for defining the boundaries of polling divisions within their constituency and transfer these formal responsibilities to the Chief Electoral Officer.

3.4.10 ENABLE COMMISSIONS TO USE MODERN BOUNDARY DESCRIPTIONS

The 2012 commission received approval to use maps, created by digital means, to describe its proposed constituency boundaries. Modified legislation should incorporate such an approach for all future provincial constituency boundary commissions.

It is recommended that the commission be permitted to use digital maps or other digital means that clearly define boundaries for constituencies.

⁵⁸ A consequential amendment would be required to modify section 19 of *The Election Act, 1996*.

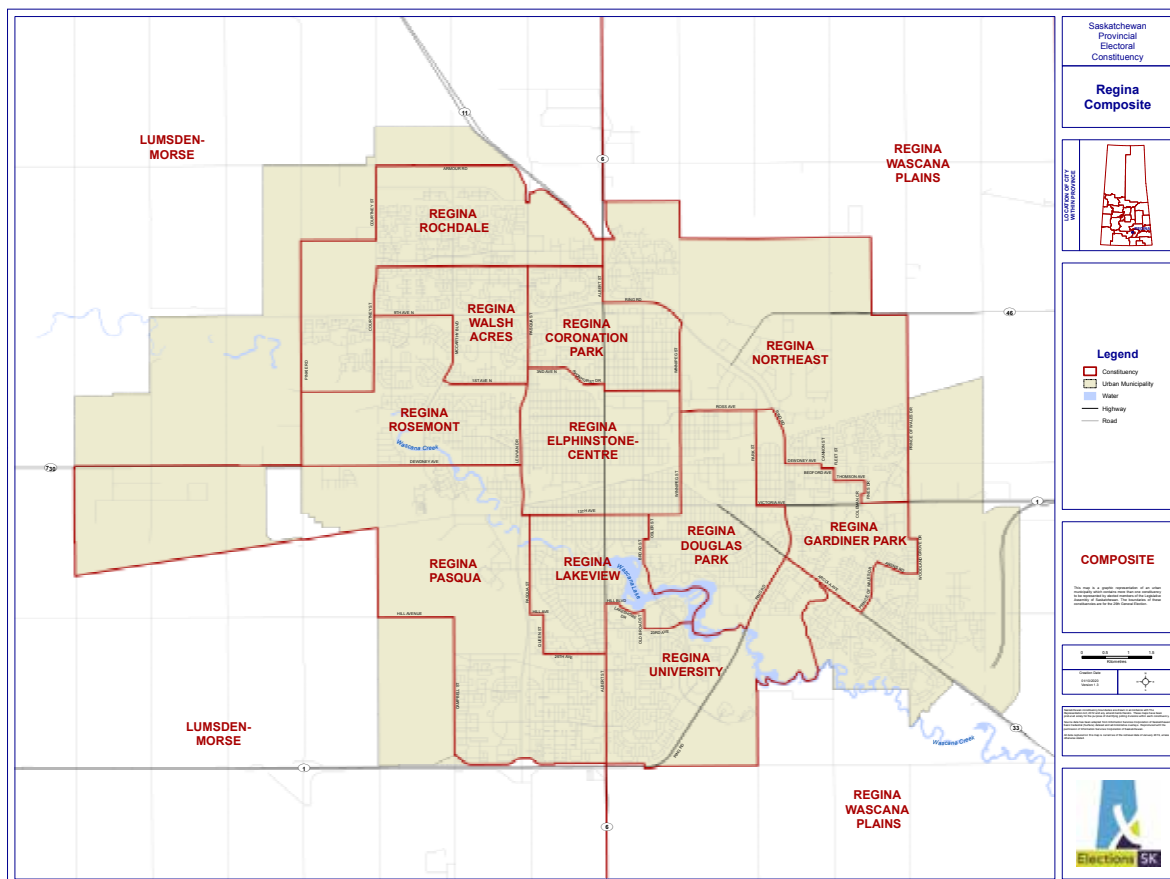
IMPLEMENTING BOUNDARY CHANGES

The recommendations proposed in this assessment will, if adopted, ensure that the setting of constituency boundaries in Saskatchewan are consistent with international standards and best practices. The changes proposed for legislative amendment will provide opportunities for greater public participation and involvement. They will provide a transparent process in the regular review and resetting of provincial constituency boundaries necessary to maintain equitable representation.

Regardless of whether all, some or none of the recommendations contained in this report are adopted, the implementation activities associated with provincial electoral boundary changes will remain largely the same. However, if all of the recommendations contained in this assessment report were to be adopted the implementation of periodic constituency boundary adjustments will become far more efficient and result in higher quality redistribution processes.

Once the constituencies proposed by an electoral boundary commission are adopted by the Legislative Assembly, and a revised Representation Act is passed that legally establishes those new constituencies for the next general election, Elections Saskatchewan must undertake a complex series of interrelated tasks to ensure the boundary changes are fully implemented in advance of that election.

If all of the recommendations contained in this assessment report were to be adopted the implementation of periodic constituency boundary adjustments will become far more efficient and result in higher quality redistribution processes.





4.1 PREPARATION OF NEW CONSTITUENCY MAPS

Many electoral stakeholders require constituency maps following electoral boundary changes and the responsibility falls to Elections Saskatchewan for their production and distribution. Key among the stakeholders wishing to have published maps will be registered political parties, field returning officers, elected legislators, and prospective candidates.

For many other interested members of the media and the public, the Elections Saskatchewan website will be the primary source of printable maps in both large (poster-size) and smaller (letter-size) formats. Elections Saskatchewan is responsible for the timely preparation of the needed electronic files required for printing.

4.2 CREATION (OR REVISION) OF POLLING DIVISION BOUNDARIES FOR EACH CONSTITUENCY

Following the preparation of constituency maps, Elections Saskatchewan technical staff is required to prepare the boundaries of polling divisions for each constituency. Each polling division in Saskatchewan currently consists of a legislated maximum of 300 eligible voters. A typical constituency in the 2012 redistribution had 12,000 voters and required a minimum of 40 polling divisions to be defined.

In rural communities and for the more remote portions of the province the geographic size of polling divisions would become very large if the maximum number of voters was approached; considerations regarding the establishment of a convenient voting place frequently dictates the creation of polling division boundaries with as few as 50 voters.

4.3 PREPARATION OF DETAILED CONSTITUENCY/POLLING DIVISION MAPS

Each polling division boundary needs to be depicted on a constituency map and, in some cases, individual polling division maps may need to be prepared for pre-election targeted door-to-door voter registration activities. Some of the stakeholders listed above will require maps showing the

polling division boundaries within a specific constituency while others with province-wide planning responsibilities will want detailed maps for all the constituencies.

The time required to fully prepare polling division boundaries and maps, for the 61 constituencies defined by the 2012 boundaries commission, was 18 months. This work was undertaken by a technical management team supplemented with six contracted technical staff. This included time required for a detailed review by the Returning Officer in each constituency as specified in provincial election legislation. The Elections Saskatchewan mapping management personnel, as well as some of the contracted technical staff they hire, would normally be expected to provide map preparation services to the commission and then remain involved in every step of the preparation of both large and small-scale constituency maps as well as maps required to clearly depict polling division boundaries.

Polling division maps provide the administrative building blocks used to set out the arrangements for election staffing, polling place assignments and supplies allocation. In addition, they are the framework within which political parties and candidates organize their campaign activities. For both returning officers and political parties, finalized polling division maps for an election are required a minimum of four months before the start of an election period.

4.4 CONVERSION OF DATA IN REGISTER OF VOTERS

Once the polling divisions are established, the 820,000+ voter records in the Permanent Register of Voters must be assigned ('redistributed') to the correct new constituency and polling division geography. Where civic addresses are associated with accurate x/y spatial coordinates, this process can be largely automated. However, for some portions of the province, manual intervention is needed to accurately associate rural and remote residence addresses to the correct constituency and polling division.

Registered political parties will require revised constituency and polling division voters lists a minimum of four months prior to the issuance of writs so they can proactively carry out their election preparation responsibilities.

CONCLUSION



This assessment of the provincial constituency boundaries review process was initiated by specific concerns expressed by the Chair of the 2012 Constituency Boundaries Commission:

- The timing of boundary commissions in light of the timing of scheduled elections
- The time available for a commission to conduct its work
- The population census data to be considered
- Improving procedures for collecting required demographic data
- Public submissions and better use of technology

The request to the Chief Electoral Officer (CEO) to prepare a report that would address these issues coincided with a commitment the CEO had made to assess all aspects of the framework of electoral laws within the province.⁵⁹ This report has reviewed the evolution of constituency boundaries commissions and related electoral boundary change processes in the province; best practices and policies that have developed in other jurisdictions; the interdependency of fixed election dates and fixed commission appointment dates; and the underlying principles supporting modern boundary delimitation practices and procedures.

Key among these principles is the establishment of an independent and impartial constituency boundaries commission in an independent and impartial process. The commission, once established, should be provided with a mandate to carry out its activities within a reasonable timeframe and the boundary recommendations it makes should be enacted without any changes introduced for partisan reasons. The recommendations in this review regarding the constituency boundary commissions and their activities would, if adopted, improve their ability to function independently and impartially.

The population to be considered in determining electoral boundaries proved extremely challenging for the 2012 commission, and the required use of a subset of the population census undermines the right of every citizen to effective representation. There may be times when the most recent census may not be the most appropriate or accurate population data available; however, such considerations should be left with each boundaries commission. The use of the full census population is a common practice for electoral boundary delimitation both within Canada and established democracies around the globe.⁶⁰

The arrangement of having a boundaries commission activated following each decennial census may have made rational sense before fixed date elections were enacted across Canada, but now the timing is problematic and leads to some boundary sets being defined for three elections and others for only one. The schedule for appointing a constituency boundary commission needs to be tied to the election cycle, with a commission appointed shortly after each second general election in the province.

The provision in the 1993 Act that permanently set the boundaries of two constituencies north of a dividing line has led to increasing malapportionment. Since 1993, commissions have been statutorily prevented from addressing the growing inequality between these two northern constituencies. These differences need to be addressed with the definition of a minimum of three northern constituencies at the next redistribution.

Additionally, northern constituencies should be legislatively permitted to have up to a -25% population variance from a provincial constituency population quotient and a $\pm 15\%$ from each other. The population quotient per constituency should be calculated by dividing the total population of the province by the total number of constituencies being defined. Wide population variances have been recognized in Canadian jurisprudence as being necessary for effective representation when establishing constituency boundaries that cover extremely large geographic areas with a sparse population base.

⁵⁹ Boda, Michael D., *Election Administration in Saskatchewan: 'A Path for Renewal', Estimates for Fiscal Year 2013-2014*, (p. 2), January 2013. Regina: Elections Saskatchewan.

⁶⁰ House of Commons, *What next on the redrawing of parliamentary constituency boundaries?*, (p. 34), London: The Stationery Office Limited, 2015.

The 1993 Act has set the variances for the southern constituencies at $\pm 5\%$, the smallest permissible variance among Canadian jurisdictions. A United Kingdom review⁶¹ and a Vienna Commission advisory⁶² both suggest that $\pm 10\%$ is an appropriate variance that provides for adjustments owing to population changes without forcing the boundaries of every constituency to be adjusted at each redistribution. This is especially true for Saskatchewan's rural constituencies where population growth has been relatively stable and well-established communities of interest exist.

The secretariat role of Elections Saskatchewan has been increasing with each successive boundary commission, and this reflects the increasing complexity of boundary delimitation and its dependence on the use of sophisticated geomatics tools. This assessment recommends that Elections Saskatchewan be legislatively designated as the ongoing secretariat for the work of each consecutive constituency boundaries commission. Such a designation will ensure that the expertise that evolves between commissions is preserved and that an independent non-partisan entity supports the ongoing development and modernization requirements of future boundary commissions.

The implementation of the recommended legislative improvements listed in this assessment report should be

The implementation of the recommended legislative improvements listed in this assessment report should be addressed before the establishment of the next constituency boundaries commission in the Spring of 2022.

addressed before the establishment of the next constituency boundaries commission in the Spring of 2022. This will permit Elections Saskatchewan to begin planning for the changes, such as arranging to obtain required population data, updating statistical information associated with polling divisions, and preparing its Geographic Information Systems to be configured and ready for use by the next constituency boundaries commission.

The recommendations provided in this assessment are not extensive and can readily be incorporated as amendments to *The Constituency Boundaries Act, 1993*. Such amendments will enhance the independence and impartiality of future commissions and will help ensure they can carry out their responsibilities efficiently, "freely and without unnecessary interference."⁶³

The 10 recommendations included in this assessment are:

1. Integrate the schedule for electoral boundary commissions with the schedule for general elections	6. Confirm the entire population of provincial citizens is to be considered
2. Appoint independent, impartial commissions	7. Set reasonable population variances for southern constituencies
3. Provide an appropriate completion timeline for each constituency boundary commission	8. Correct population imbalances between the northern constituencies
4. Designate Elections Saskatchewan as the boundaries commission secretariat	9. Adjust rules for establishing constituency boundaries
5. Enable commissions to set their own rules and procedures	10. Enable commissions to use modern boundary descriptions

⁶¹ Ibid., p. 22

⁶² European Commission for Democracy through Law (Venice Commission), *Code of Good Practice in Electoral Matters: Guidelines and Explanatory Report*, (p. 7), 2002, Venice.

⁶³ Judgement of the Supreme Court of Canada, Reference Case re Prov. Electoral Boundaries (Sask.), [1991] 2 S.C.R. 158, p. 162, (<http://scc-csc.lexum.com/scc-csc/scc-csc/en/item/766/index.do>). Context for the quoted passage: "Once an independent boundaries commission is established, it is incumbent on the legislature to ensure that the Commission is able to fulfill its mandate freely and without unnecessary interference. The right to vote is so fundamental that this interference is sufficient to constitute a breach of s. 3 of the Charter."

APPENDICES



APPENDIX A: ACTIVITIES OF SASKATCHEWAN CONSTITUENCY BOUNDARIES COMMISSIONS

Summary Table of the Activities of Saskatchewan Constituency Boundaries Commissions							
Year of final report	1973	1980	1988	1991	1993	2002	2012
Proposed constituencies	65	65	66	66	58	58	61
Final report constituencies	61	64	66	66	58	58	61
Population considered	census	voters list	voters list	voters list ⁶⁴	census	census	census 18+
Population	926,242	601,173	669,702	669,716	988,928	978,933	792,745
Population south of dividing line	907,040	589,434	649,408	649,422	962,193	946,904	770,480
Population north of dividing line	19,232	11,739	20,294	20,294	26,735	32,029	22,265
South quotient	15,373	9,507	10,147	10,147	17,182	16,909	13,059
South variance permitted	±15%	±15%	±25% ⁶⁵	As near to equal as possible	±5%	±5%	±5%
North constituencies	2	2	2	2	2	2	2
Moose Jaw	2	2	2	2	2	2	2
Prince Albert	2	2	2	2	2	2	2
Regina	9	10	11	12	11	11	12
Saskatoon	8	10	11	12	11	12	14
Rural Saskatchewan	38	38	38	36	30	29	29
Total South	59	62	64	64	56	56	59
Time in months (plus extension months available)	12 (2)	12 (4)	12 (4)		6 (3)	6 (3)	6 (3)
Public hearings	2	2	2	4	7	7	7

⁶⁴ The population calculation was based on the 1986 Provincial Enumeration except for the cities of Moose Jaw, Prince Albert, Regina and Saskatoon which were based on the 1988 Federal Enumeration.

⁶⁵ The maximum variance permitted for the constituencies north of the dividing line was ±50%.

APPENDIX B: POPULATION DIFFERENCES OF NORTHERN CONSTITUENCIES

Delimitation populations of northern constituencies						
Year	Population	Athabasca	Variance	Cumberland	Variance	Quotient*
1972**	census	9,734	-36.68	9,498	-38.21	15,373
1979	voters list	5,948	-37.44	5,791	-39.09	9,507
1988	voters list	6,309	-37.82	7,190	-29.14	10,147
1991	voters list	6,731	-33.67	6,768	-33.30	10,147
1993	census	11,446	-33.38	15,289	-11.02	17,182
2002	census	13,041	-22.88	18,898	+11.62	16,909
2012	census 18+	8,780	-32.77	13,485	+03.26	13,059
2020***	est. 18+	10,373	-24.87	16,804	+21.71	13,807

* Quotient figures indicated are those used by the relevant boundaries commission, except for the 2020.

** Population figures used are taken from the reports prepared by the relevant commission, except for 2020.

*** Estimated 18+ population as of October 26, 2020 in each of the two northern constituencies. The quotient is calculated, per current legislation, by dividing the estimated 18+ population south of these two northern constituencies by 59, which is the number of southern constituencies. (*Estimates provided by Statistics Canada in June 2020 study prepared for Elections Saskatchewan.*)



APPENDIX C: TIMELINE FOR PROVINCIAL AND FEDERAL BOUNDARIES COMMISSIONS

Comparison of Provincial and Federal Boundaries Commissions Timelines			
Jurisdictions	Time available	Extension	Constituencies
Saskatchewan - Province	6 months	3 months	61
Saskatchewan – Federal	10 months	2 months	14
Alberta	12 months		87
British Columbia	18 months		87
Manitoba	12 months*		57
New Brunswick	8 months		49
Newfoundland - Labrador	6 months		48
Nova Scotia	12 months*		51
Ontario**	3 months (4 constituencies)		124
Prince Edward Island	6 months		27
Quebec	12 months		125
Yukon	12 months		19
North West Territories	6 months		19
Nunavut	8 months		22
Canada***	10 months	2 months	338

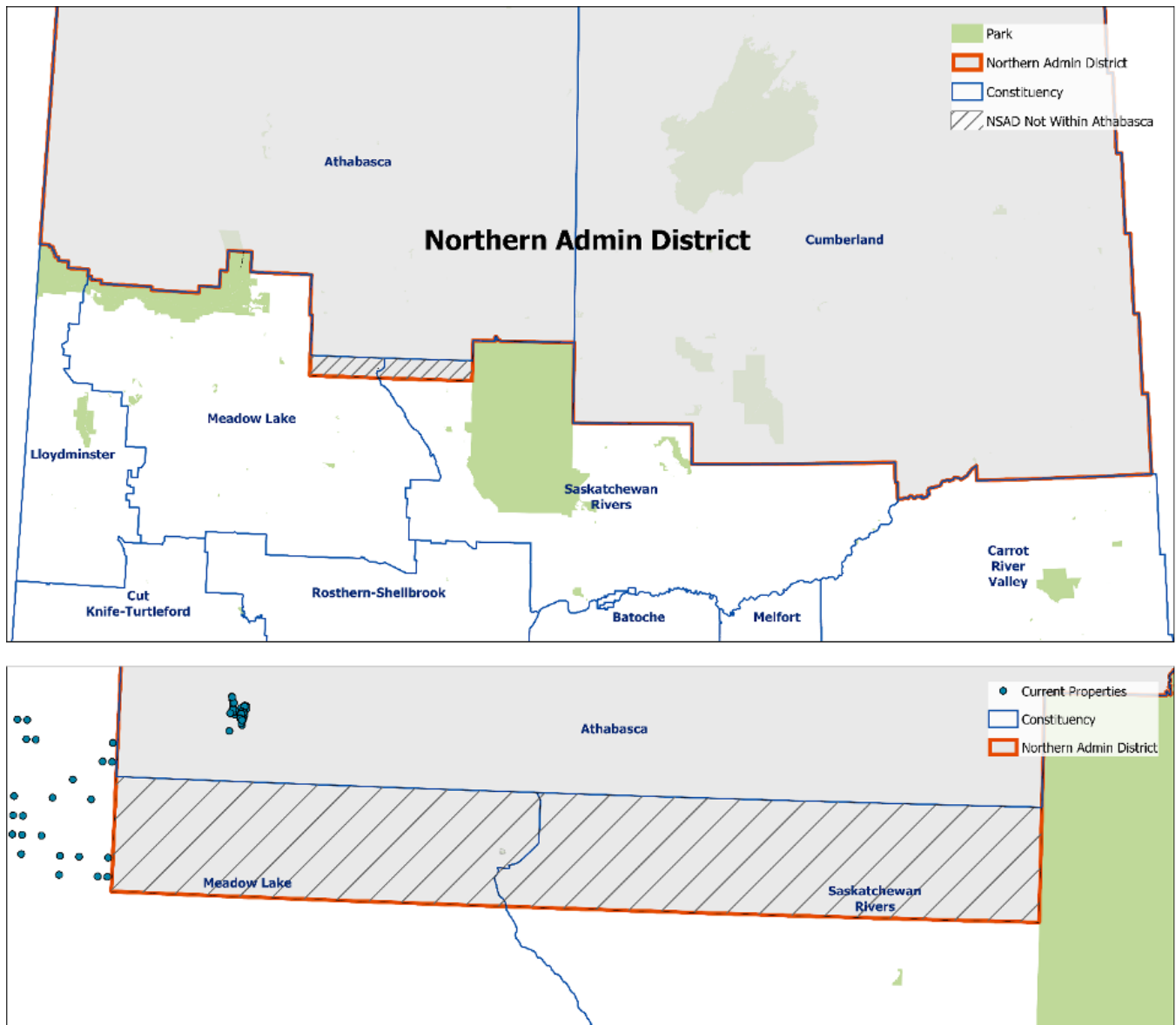
* No time limit specified, must start in time to finish by December 31; 12 months are usually provided.

** Ontario constituencies use federal electoral districts for their boundaries, except for certain northern constituencies whose boundaries are determined by a Far North Electoral Boundaries Commission. The first such commission was legally established in December 2016 with the passage of the *Election Statute Law Amendment Act, 2016*.

*** In federal redistributions, each province and territory have a separate commission that is to submit its report within 10 months, unless an extension of 2 months is granted.



APPENDIX D: RECOMMENDED DIVIDING LINE FOR NORTHERN CONSTITUENCIES



Source: Elections Saskatchewan, 2020.



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