PRELIMINARY REPORT
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Executive Summary
1. Executive Summary

The Far North Electoral Boundaries Commission ("FNEBC") has been established pursuant to provincial legislation to make recommendations to the Legislative Assembly of Ontario regarding the creation of at least one, and no more than two, new provincial electoral districts ("PEDs") from the geography of the current PEDs of Kenora—Rainy River and Timmins—James Bay. The FNEBC is also to make recommendations regarding the boundaries and names of these PEDs.

The FNEBC is releasing this “Preliminary Report” containing its preliminary recommendations as required by s. 4(9) of the Representation Act, 2015.

Pursuant to its mandate, the FNEBC conducted public information meetings with communities throughout these geographically vast PEDs in May and June of 2017. The FNEBC also met with the Indigenous political leadership of Grand Council Treaty 3 ("GCT3") and the Nishnawbe Aski Nation ("NAN") in the Treaty 9 area during their Spring Assemblies in Mitaanjigamiing First Nation and Timmins, respectively. In addition to participating in the Spring Assemblies, the FNEBC also operated an information booth during the Chiefs of Ontario Summer Assembly in Lac Seul First Nation. The FNEBC also met with Members of Provincial Parliament ("MPPs") from the region. The FNEBC has given close attention to all of the views expressed and explains how it dealt with them in this Preliminary Report.

The Ontario Legislature established the FNEBC pursuant to the Election Statute Law Amendment Act, 2016, which amended the Representation Act, 2015. Consistent with boundary commission best practices, the FNEBC is a non-partisan entity, established at arms-length from government, and is making its recommendations independently.1 Indicative of the FNEBC’s non-partisanship and independence, the Ontario government is statutorily obliged to introduce legislation to implement the FNEBC’s recommendations.

The overwhelming consensus of the FNEBC’s public information meetings was to create two additional PEDs, for a total of four, in the current territories of Kenora—Rainy River and Timmins—James Bay. In our view, it is appropriate to

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1 Terms of Reference of FNEBC.
do so, given the factors the FNEBC was statutorily obligated to consider in making its recommendations:

a) communities of interest;
b) representation of Indigenous people;
c) municipal and other administrative boundaries;
d) sparsity, density and the rate of population growth in the geographic areas;
e) geographical features;
f) the availability and accessibility of means of communication and transportation in the geographic areas;
g) representations by members of the Legislative Assembly who represent constituencies in Northern Ontario, and other interested persons; and
h) anything else that the Commission considers appropriate.

The FNEBC preliminarily recommends that the four new PEDs be named and encompass areas as follows:

1) **Kenora—Rainy River**: the southern portion of the current PED of Kenora—Rainy River, including Dryden, Fort Frances, Kenora, and Rainy River. The population will be 53,010, 13% of whom are Indigenous and 2% of whom are francophone.

2) **Kiiwetinong**: the northern, primarily Indigenous portion of the current PED of Kenora—Rainy River, and also including Marten Falls First Nation, but excluding Weenusk (Peawanuck) First Nation. The population will be 32,784, 60% of whom are Indigenous and 2% of whom are francophone.

3) **Mushkegowuk**: the northern portion of Timmins—James Bay, excluding the City of Timmins and Marten Falls First Nation, but including Weenusk (Peawanuck) First Nation. The population will be 29,687, 15% of whom are Indigenous and 61% of whom are francophone.

4) **Timmins**: the City of Timmins itself. The population will be 41,788, 3% of whom are Indigenous and 39% of whom are francophone.

Proposed legal descriptions will follow in the Final Report. A draft map is appended to this Preliminary Report as Appendix A.

As described in more detail in Section 8, the FNEBC believes this proposed division of the areas of Kenora—Rainy River and Timmins—James Bay into four PEDs balances the criteria the FNEBC was statutorily obligated to consider, while also respecting the constitutional principle of representation-by-population,
in the context of the geographically vast Far North where there are significant challenges for transportation, communication, and election administration. We believe our preliminary proposals will lead to the more effective representation of Ontarians living in the Far North.

Notably, the FNEBC repeatedly heard that representation of Indigenous people should be a factor of particular importance. This proposed division will result in a PED—Kiiwetinong—having a majority (60%) Indigenous population while a second—Mushkegowuk—will have the Indigenous and francophone populations comprising more than 75% of the PED’s population between them. Moreover, both PEDs will have Indigenous names. Simultaneously, as described further below, representation-by-population was duly considered and balanced with the goal of representation of Indigenous people.

Pursuant to ss. 4(9) and 4(10) of the *Representation Act, 2015*, the FNEBC will conduct a second round of public information meetings after the release of this Preliminary Report before releasing a final report (“Final Report”) containing its recommendations on or before August 1, 2017. The second round provides an opportunity for feedback which could lead to changes before the recommendations in the Final Report. The Commissioners are all open to revising their preliminary opinions based on what is learned through the second round of public information meetings.
Signatures of Commissioners
2. Signatures of Commissioners

I approve the contents of this report containing the preliminary recommendations of the Far North Electoral Boundaries Commission (FNEBC):

_______________________________
The Honourable Joyce Pelletier, Chair

_______________________________
Greg Essensa

_______________________________
Eric Fisher

_______________________________
Theresa Hall

_______________________________
Michael Pal
History of PEDs in Ontario
3. History of PEDs in Ontario

a. Pre-1995

Before 1954, electoral boundary readjustment and redistribution took place on an *ad hoc* basis with the provincial Legislature being charged with the primary responsibility for drafting electoral boundaries. In an effort to remove both the fact and appearance of partisan gerrymandering of boundaries, electoral redistribution was first passed to an all-party committee in 1954. Following this, three *ad hoc* commissions were appointed to both study and propose recommendations on electoral redistricting. The three Commissions’ operations took place between the years of 1962–1965, 1973–1975, and 1983–1986. Both the 1962 and 1973 Commissions were not bound by any particular formula or criteria, nor required to follow any principle of representation-by-population. The 1962 Commission, for example, had free reign to determine the extent that ridings should be of equal population size. The terms of reference of the 1983 Commission remained similar to those of the previous two commissions. However, it implemented the principle of representation by population to a greater degree than its predecessors, though it also guaranteed a minimum of fifteen seats for Northern Ontario.


In 1996, the Ontario government passed the *Fewer Politicians Act, 1996* and, in conjunction with it, enacted the *Representation Act, 1996*. This legislation had two major consequences. The first was reducing the number of PEDs in Ontario—from 130 to 103. The second was linking the boundaries of the PEDs with those of the Federal Electoral Districts (“FEDs”) defined for federal purposes.


In 2005, the Ontario government passed the *Representation Act, 2005*, dividing Ontario into 107 PEDs. This change became effective with the 2007 provincial election. Ninety-six southern PEDs became coextensive with those defined for federal purposes in 2003, based on the 2001 Census. Northern Ontario, however, had lost one federal seat (thus being reduced to a total of ten) as a result of the 2001 Census. The *Representation Act, 2005* preserved eleven PEDs for Northern Ontario by keeping the eleven northern PEDs the same as those defined for federal purposes in 1996, based on the 1991 Census (save for one minor boundary adjustment that does not concern the FNEBC). As a result, Ontario’s electoral boundary legislation no longer automatically linked to the federal readjustment process.

d. *Representation Act, 2015*: Preserving at least Eleven Northern Ontario PEDs

In 2015, the Ontario government passed the *Representation Act, 2015*, dividing Ontario into 122 PEDs. This change will become effective after the next dissolution of the provincial Legislature. There will be 111 southern PEDs following the boundaries defined for federal purposes in 2014, based on the 2011 Census. The eleven northern PEDs retained their names, and their boundaries were redefined.
Mandate of Far North Electoral Boundaries Commission (FNEBC)
4. Mandate of FNEBC

a. Statutory Composition

2016 amendments to the Representation Act, 2015 established the Far North Electoral Boundaries Commission (FNEBC), consisting of five commissioners appointed by the Lieutenant-Governor-in-Council. The FNEBC is, to the best of our knowledge, unique in the history of Canadian electoral boundary commissions for having a majority of Indigenous members and for explicitly requiring two representatives from Indigenous communities. The Commissioners are:

- The Honourable Joyce Pelletier of the Ontario Court of Justice (chambered in Thunder Bay), who is Chair of the FNEBC. She is of Ojibwe heritage from Fort William First Nation.
- Greg Essensa, Chief Electoral Officer of Ontario.
- Eric Fisher, former Chief and council member for Wabaseemoong (Whitedog) Independent Nations. He is of Ojibwe heritage from the Wabaseemoong First Nation.
- Theresa Hall, former justice-of-the-peace and former Chief of Attawapiskat First Nation. She is of Mushkegowuk heritage from the Attawapiskat First Nation.
- Michael Pal, Assistant Professor in the Faculty of Law (Common Law) at the University of Ottawa.

All commissioners other than Mr. Essensa were appointed by Order-in-Council.7

The Representation Act, 2005 mandated that the Commissioners be:

1. A current or former judge of a court in Ontario, acting as chair of the FNEBC
2. Ontario’s Chief Electoral Officer
3. A member of the faculty of a university in Ontario
4. Two community representatives who identify as Indigenous persons

Footnote:
7 Terms of Reference of FNEBC.
b. Support Staff

The Far North Electoral Boundaries Commission (FNEBC) has been statutorily authorized to hire staff to assist in its operations pursuant to s. 4(4) of the *Representation Act, 2015*. Given the FNEBC’s independence, it was Justice Pelletier’s decision to determine whether that assistance should be brought in through secondments from the Ministry of the Attorney General and/or Elections Ontario, or through external hires. A list of the FNEBC’s staff appears in Appendix B.

c. Statutory Mandate

Pursuant to s. 4(7) of the *Representation Act, 2015*, the FNEBC is to “consider and make recommendations with respect to the creation of at least one and no more than two additional electoral districts within the geographic areas [of] Kenora—Rainy River and Timmins—James Bay and with respect to the boundaries and names of all of the electoral districts in those geographic areas” [emphases added].

As discussed above and explained below, the FNEBC proposes the creation of two new PEDs, for a total of four PEDs in the area, named:

1. Kenora—Rainy River;
2. Kiwetinong;
3. Mushkegowuk; and
4. Timmins,

with the boundaries described below in Section 8 and illustrated in Appendix A.

In making these recommendations, the FNEBC has considered the relevant factors prescribed by the *Representation Act, 2015*, as well as the constitutional criteria derived from the right to vote in s. 3 of the *Canadian Charter of Rights and Freedoms* (the “Charter”). Section 4(8) of the *Representation Act, 2015* sets out the statutory criteria:

a) communities of interest;
b) representation of Indigenous people;
c) municipal and other administrative boundaries;
d) sparsity, density and the rate of population growth in the geographic areas;
e) geographical features;
f) the availability and accessibility of means of communication and transportation in the geographic areas;
g) representations by members of the Legislative Assembly who represent constituencies in Northern Ontario, and other interested persons; and
h) anything else that the Commission considers appropriate.

As discussed further below, the FNEBC must consider not only these statutory criteria, but also constitutional principles, including “voter parity”. “Voter parity” refers to the constitutional principle that individuals should have votes of roughly equal value, meaning that electoral districts should have approximately the same populations. Neither the Representation Act, 2015 nor the 2016 amendments thereto establishing the FNEBC prescribe the maximum variance from average population size for PEDs. The legislation linking Ontario’s PEDs to the federal redistribution process has indirectly resulted in the province adopting, for Southern Ontario PEDs, the federal government’s practice of permitting variances from voter parity, where justified, of plus or minus 25% from the average, save in exceptional circumstances.8

The Commission has considered the need to adopt recommendations consistent with the constitutional object of s. 3 of the Charter. The Supreme Court of Canada’s interpretation of this right is discussed below in Section 6.

d. Public Information Meetings of the FNEBC

As explained more fully in Section 7 of this Preliminary Report, pursuant to s. 4(9) of the Representation Act, 2015, the Far North Electoral Boundaries Commission (FNEBC) has held public information meetings in May and June of 2017, and held other meetings, including with Indigenous organizations in the area, municipalities, and Northern Ontario’s MPPs, as it has deemed appropriate. The FNEBC is accordingly releasing this Preliminary Report containing its preliminary recommendations as required by s. 4(9) of the Representation Act, 2015.

Pursuant to ss. 4(9) and 4(10) of the Representation Act, 2015, the FNEBC will now conduct further public information meetings before releasing a report containing its final recommendations on or before August 1, 2017.

Footnote
8 Johnson, supra note 2.
The FNEBC has, pursuant to s. 4(11) of the *Representation Act, 2015*, reached its recommendations by consensus.

### e. Terms of Reference of the Chair

Justice Pelletier’s mandate is broader than the other four commissioners, as she is responsible for administering the FNEBC, including through making all administrative and operational decisions. Specifically, she is required, among other things, to:

- Achieve the goals, objectives, and deliverables set out in the FNEBC’s statutory mandate and Terms of Reference;
- Approve the FNEBC’s expenditures, and ensure the FNEBC’s operational practices align with Ontario government directives if practicable; and
- Come to an agreement with the Chief Electoral Officer and/or the Ministry of the Attorney General on the provision of administrative and operational support to the FNEBC.

### f. Reconciliation

The 2015 Truth and Reconciliation Commission ("TRC") called attention to Canada’s long and destructive history of colonialism in relation to Indigenous peoples. Past federal and provincial government actions have left deep scars on the lives of many Indigenous people, Indigenous communities, and Canadian/Ontarian Society more broadly. Since the 1996 Report of the Royal Commission on Aboriginal Peoples, there have been calls for a national reconciliation framework in which First Nations, Inuit, and Métis people, as the original peoples of this country, have their Treaty, constitutional, human, and self-determination rights recognized and respected. Reconciliation has been defined as:

“An ongoing process of establishing and maintaining respectful relationships [which] involves repairing damaged trust by making apologies, providing individual and collective reparations and following through with concrete actions that demonstrate real societal change. [Reconciliation]”

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Footnotes:


also requires the revitalization of Indigenous law and legal traditions. It is important that all Canadians understand how traditional First Nations, Inuit, and Métis approaches to resolving conflict, repairing harm, and restoring relationships can inform the reconciliation process”.

The goal of reconciliation was reflected in the composition, operations, and mandate of the FNEBC. Three of the five Commissioners are Indigenous, including the Chair. To the best of our knowledge, this is the first electoral boundary commission in Ontario and Canadian history with a majority of Indigenous members. The composition of the FNEBC is designed to engender trust in its work and to provide a confirmation of its independence. The FNEBC operated with the goal of reconciliation in mind and as detailed in this Preliminary Report, met extensively with Indigenous communities, Chiefs, and Councils, GCT3, and NAN, in its decision-making. The statutory mandate explicitly required us to consider representation of Indigenous peoples (s. 4(8)(b)). In our view, enhanced political representation for Indigenous peoples in Ontario’s political system is a necessary component of the broader movement toward reconciliation.

It is important to acknowledge the diverse views within Indigenous communities with regard to participation in the provincial electoral system. Many Indigenous people we met with were strongly in favour of enhanced representation at Queen’s Park. Others, however, expressed ambivalence at involvement in provincial elections because they view the federal Crown as their treaty partner in the nation-to-nation relationship. Some also understood participation in provincial politics as eroding the relationship with the federal government and the move for self-government.

We understand and respect these different viewpoints. The FNEBC believes that taking concrete action to improve representation of Indigenous peoples in the Ontario Legislature is not only part of the FNEBC’s statutory mandate – it is also a vital step on the path toward reconciliation. We return to potential future ways to enhance representation of Indigenous peoples in Section 10.

Footnote:

11 Ibid at 11.
g. Northern Representation

As is clear from the statutory list of factors to be considered in s. 4(8) of the Representation Act, 2015, specifically ss. 4(8)(a), 4(8)(d), 4(8)(e), and 4(8)(f), the Legislature intended the extraordinary geographic size and unique northern nature of the current PEDs of Timmins—James Bay and Kenora—Rainy River to be of significant importance in the FNEBC’s meetings with the public and decision-making process. The statutory requirement to add at least one, and no more than two, PEDs to the area reflects a desire to ensure effective representation in the Far North, given its size and the challenges in travelling throughout the communities in the two existing PEDs. The Commission also heard solid support for effective representation of Indigenous communities, even in non-Indigenous municipalities, in spite of the difficulty this may represent for voter parity.

h. Complete Statutory Mandate of the FNEBC (s. 4 of the Representation Act, 2015)

The complete statutory mandate of the Far North Electoral Boundaries Commission (FNEBC)—s. 4 of the Representation Act, 2015—is attached to this Preliminary Report as Appendix C.
Descriptions of Kenora—Rainy River and Timmins—James Bay
5. Descriptions of Kenora—Rainy River and Timmins—James Bay

The PEDs of Kenora—Rainy River and Timmins—James Bay are geographically vast with smaller populations numbers than those in southern Ontario, but the people and communities in the PEDs are diverse.

a. Sources of Demographic Information

In determining the demographics of the Kenora—Rainy River and Timmins—James Bay PEDs, the Far North Electoral Boundaries Commission (FNEBC) relied on the most recent data on population available from Statistics Canada’s 2016 Census, as well as the population on reserves as provided by the Department of Indigenous and Northern Affairs (“INAC”).

Some of the more detailed population data from the 2016 Census, however, was not available at the time of our deliberations and we were obliged to rely on earlier sources. The Canada 2016 Census information on language will be available only after the Commission submits its report containing its final recommendations to the Attorney General on August 1, 2017. The 2016 Census data on the number of Indigenous persons living in the two PEDs was also unfortunately unavailable during the FNEBC’s operation. We therefore relied on the 2006 Census on this point for our interim recommendations.

The FNEBC recognizes these limitations and appreciates that the available information may not provide a complete picture of the communities in Ontario’s Far North. Fortunately, the data is also complemented by the FNEBC’s public information meetings.

b. Total Populations

As noted above, the PEDs of Kenora—Rainy River and Timmins—James Bay remain defined by the Representation Act, 2005, which did not change the boundaries of the eleven Northern Ontario PEDs from the Representation Act,

Footnote:
1996. The 2016 Statistics Canada Census, adjusted by the INAC on-reserve population as of April 2017, estimates that the total population of Kenora—Rainy River and Timmins—James Bay is 156,734. This is an increase from the 2011 Census total population of 149,387, meaning the growth rate is 4.9% as compared to the general growth rate for Ontario of 4.6% during this period.

The PED of Kenora—Rainy River has a population of 85,105, 23% of whom are Indigenous. According to the 2017 INAC on reserve data, there are 52 reserves with an estimated total population of 27,516 people living on-reserve in the PED. The Timmins—James Bay PED has a population of 71,629, 8% of whom are Indigenous. INAC’s on-reserve data reports that there are 9 reserves within the geographic area of Timmins—James Bay, with an estimated total population of 10,009 people living on-reserve.

The average population in each of Ontario’s 122 PEDs is 110,234. The average population in Ontario’s 11 northern PEDs, however, is 76,330, approximately 30% below the provincial average. As explained, this is in part due to the Representation Act, 2005 retaining the 11 Northern Ontario PEDs as per the Representation Act, 1996, which in turn was based on data from the 1991 Census. Kenora—Rainy River and Timmins—James Bay are the largest two PEDs in terms of geography but, as noted below, have the lowest population density with many remote communities.

Footnotes:
13 Johnson, supra note 2.
14 Statistics Canada “Census Profile, 2016 Census” adjusted by INAC with the 2017 on reserve information.
18 Supra note 16.
19 Ibid.
20 This was calculated by dividing the province’s total population of 13,448,494 by the upcoming 122 PEDs. This calculation is based on the upcoming legislated 122 PEDs, not the current 107 PEDs.
22 Johnson, supra note 2 at 6-7. This occurred with the exception of a minor change in the PED containing the Municipality of Algonquin Highland.
c. Treaties and First Nations Self-Governance

Three treaties cover the areas of the two PEDs: Treaty 9, signed in 1905-1906, with an adhesion added in 1929; Treaty 3, signed in 1873; and Treaty 5, signed in 1875.

Treaty 9, also known as the James Bay Treaty, covers almost two-thirds of Northern Ontario. Treaty 9 encompasses the entire PED of Timmins—James Bay, as well as the northern and central-eastern areas of the Kenora—Rainy River PED.23 The political territorial organization NAN, formerly known as the Grand Council Treaty No. 9, represents the 49 First Nation communities encompassed within the Treaty 9 territory as well as the communities within Ontario’s portion of Treaty 5, an area totalling 543,897 km².24 NAN describes its mission as achieving self-determination through advocating and representing the social, economic, and political aspirations of its First Nation communities.25

Totalling 142,000 km², Treaty 3 encompasses the geographic area west of Thunder Bay, from the international border with Minnesota in the south to north of Sioux Lookout, and as far west as the provincial border with Manitoba.26 GCT3 is the traditional government of the Anishinaabe Nation within Treaty 3 territory and works to represent the 28 First Nations communities covered by Treaty 3 territory. GCT3 describes itself as the political organization that seeks to protect, preserve, and enhance Treaty and Aboriginal rights of its First Nation communities.27

d. The Métis Population

The Métis people have their own unique way of life, with distinct culture, traditions, and understandings of nationhood. Throughout their history, the Métis people have actively asserted their rights and advocated for protection of the land.28 The rights of the Métis people were recently affirmed by the Supreme

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Footnote:
25 Ibid.
27 Ibid.
Court of Canada in Daniels v Canada (Indian Affairs and Northern Development) (known as the Daniels decision).\(^{29}\)

There are a number of Métis communities in Northern Ontario, with a total population of 6,270 Métis individuals living within the PEDs of Kenora—Rainy River and Timmins—James Bay. There are approximately 3,235 Métis living in Kenora—Rainy River and 3,035 Métis living in Timmins—James Bay.\(^{30}\)

According to a 2016 Ministry of Transportation Discussion Paper, a majority of Métis in Ontario’s north live in urban centres along the provincial highway network.\(^{31}\)

The 2011 Statistics Canada National Household Survey reports that there are some Métis people that live on First Nations reserves. These figures suffer from limitations similar to the data concerning the area more generally.

e. Indigenous Languages

Cree is the dominant Indigenous language group in Timmins—James Bay. Weenusk (Peawanuck), Attawapiskat, Kashechewan, and Fort Albany First Nations all speak the same dialect of Cree (known as Swampy Cree), as does the urban Indigenous population in the southern portion of the PED. A separate dialect of Cree (known as Moose Cree) is spoken in Moose Cree. Marten Falls First Nation is the only community in the PED whose dominant Indigenous language is not Cree, but rather Ojibwe.\(^{32}\)

In Kenora—Rainy River, there are three distinct Indigenous language groups: Ojibwe, Oji-Cree, and Cree. Ojibwe communities are situated in the south and southwestern portion of the PED within Treaty 3 Territory, extending as far north as Pikangikum First Nation. Oji-Cree-speaking communities are located to the east of Pikangikum First Nation, the northern communities of Kasabonika Lake First Nation and Kitchenuhmaykoosib Inninuwug First Nation, as well as the southern community of Lac Seul First Nation. Lac Seul First Nation residents are

Footnotes:


29 Daniels v Canada (Indian Affairs and Northern Development), 2016 SCC 12.

30 2011 National Household Survey, Statistics Canada. Data drawn from “Ethnic Origin”, which is a total population estimate. It is possible that a person may report more than one ethnic origin.


32 Meetings with Theresa Hall – Week of May 22, 2017.
known, however, to speak both Ojibwe and Oji-Cree. In the far north along Hudson Bay, Fort Severn First Nation is a Cree-speaking community.  

The FNEBC mapped out the dominant Indigenous languages groups in in the PEDs of Kenora—Rainy River and Timmins—James Bay through public information meetings and ongoing discussions with Commission members Eric Fisher and Theresa Hall. The FNEBC appreciates that there are many Indigenous communities that may have dialects distinct from the three dominant languages. As explained above, the most updated 2016 Statistics Canada data on Indigenous languages will be made available after the Commission submits its Final Report on August 1, 2017. While a patchwork of data assembled from multiple sources was used to ascertain and confirm the information provided, the Commission recognizes that this gap may lead to an incomplete understanding of the Indigenous languages in these two PEDs. Similarly, the access to government services in Indigenous languages varies immensely and the FNEBC does not have good data regarding their availability. Anecdotally, it appears that the availability of many government services in Indigenous languages is dependent on whether an individual who speaks an Indigenous language happens to have been hired to deliver the relevant service and happens to be working the date that the service is sought.

f. Francophone Population

There are several French-speaking communities in Northern Ontario, dating back to the arrival of French settlers in 1610.  

The 2006 Statistics Canada Census reports that the francophone population of Kenora—Rainy River is 1,631, or 2.25%. 7.5% of the township of Ignace’s population of 1,202 are francophone, making it the most francophone community in the PED.

The francophone population of Timmins—James Bay is significantly greater, totalling 32,145 people or 46.83% of the PED’s total population.

As identified in the below chart, there are five communities in Timmins—James Bay with a francophone population of over 80%. The francophone population is

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also very substantial in several other communities. By the standards of the PED, Timmins has a relatively low percentage of population that is francophone at 37.24%.

<table>
<thead>
<tr>
<th>Name</th>
<th>Total Population</th>
<th>Mother Tongue French</th>
<th>Percentages (%)</th>
</tr>
</thead>
<tbody>
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<td>Mattice-Val Côté</td>
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<td>610</td>
<td>89.05</td>
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<tr>
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<td>4360</td>
<td>86.94</td>
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<tr>
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<td>Moosonee</td>
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<td>1.75</td>
</tr>
</tbody>
</table>

Footnotes:
36 ibid.
There is limited available data on French-speaking non-Métis Indigenous peoples in Ontario’s Far North. The 2011 Census provides information regarding the French-speaking population for only two reserves:37

<table>
<thead>
<tr>
<th>Name of Reserve, and District</th>
<th>Total Population</th>
<th>Mother Tongue French</th>
<th>Percentages (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Couchiching 16A, Kenora – Rainy River</td>
<td>796</td>
<td>5</td>
<td>0.63</td>
</tr>
<tr>
<td>Constance Lake 92, Timmins – James Bay</td>
<td>670</td>
<td>5</td>
<td>0.75</td>
</tr>
</tbody>
</table>

It is unclear whether these individuals are Métis.

g. Geography

With a total area of 1,078,173.92 km², Ontario is Canada’s second largest province.38 Kenora—Rainy River and Timmins—James Bay contain more than 56% of the total land area (including rivers and lakes), with each PED encompassing 342,629 km² and 254,703 km² respectively. See Appendix D for a map of the current electoral districts.

The “Far North” of Ontario is vast. There is limited infrastructure and limited access to specialized services. The Far North boundary is defined by different groups and different peoples in different ways but is generally accepted to include the geographic area north of Thunder Bay District, stretching from Manitoba to James Bay and Quebec.39 The physical terrain is made up of extensive rivers, lakes, wetlands, natural resources, forests, and contains two distinct ecological regions: the dense boreal forest of the Canadian Shield, and

Footnotes:
37 Statistics Canada “Census Profile, 2011 Census”.
the bogs and fens of the Hudson Bay lowlands.⁴⁰ The Near North, which is the geographic area south of the Far North boundary, is more industrialized than the Far North. The Near North also has similar physical terrain and wildlife to the Far North. The Near North, however, has more access to and availability of key infrastructure and multimodal transportation systems.⁴¹

h. Transportation

The transportation infrastructure in Kenora—Rainy River and Timmins—James Bay varies greatly between the Far North and the Near North.

i. Far North

First Nations make up more than 90% of the population in the Far North, with most living in remote, fly-in communities.⁴² The communities rely on 29 remote airports to provide vital access to the rest of the province, as well as to transport people and goods.⁴³ Weather issues frequently affect airplane travel in the Far North, due to conditions such as fog, storms, floods, fires, etc.

During the winter months, fly-in communities, with support from provincial and federal governments, construct and maintain winter road systems. Combined, the winter roads total more than 3,150 km.⁴⁴ The winter roads link 30 First Nation communities and the municipality of Moosonee to the provincial highway or rail system for approximately 10 to 12 weeks per year.⁴⁵ The winter road network is crucial to transporting supplies and bulk cargo into the communities. The winter road access for the communities of Weenusk (Peawanuck) and Fort Severn First Nations is to Manitoba.

However, there are many problems facing the development and maintenance of winter roads including: poor signage, minimal cell phone coverage, and limited real-time information on road conditions. Additionally, climate change and fluctuating temperatures are shortening the winter road season and making the

Footnotes:

⁴⁰ Ibid.
⁴¹ MTO, supra note 31. Near North is approximately on the 51st parallel.
⁴² Ibid.
⁴³ Ibid.
⁴⁵ Ibid.
roads more vulnerable to intermittent closures. Combined, these factors make driving conditions more dangerous and less reliable. 46 While there are some all-season roads in Ontario’s Far North, currently the most northerly municipality that has access to an all-season public road is Pickle Lake. 47 As a result, most Far North communities continue to rely on winter road access. 48

The limited road infrastructure in Ontario’s Far North also intensifies the costs, uncertainty, and availability of northern traveling, food and other goods, and professional services, as well as impacting the ability to travel for medical purposes. 49 In addition, other factors including physical terrain, environmental conservation, differing perspectives and varying degrees of consensus among communities, and complications arising from multiple funding sources further exacerbate the difficulty of Far North communities to optimize existing and build new transportation infrastructure. 50 In addition, challenges exist with respect to sustained multi-year funding, which in turn makes long-term planning challenging.

ii. Near North

Most communities in Ontario’s Near North, including the cities of Kenora, Timmins, and Sioux Lookout have access to all-season road networks and bus services, as well as municipal airports. These networks are essential for industry and other economic activities, transporting goods, connecting people, and helping deliver socioeconomic and health benefits to the region. 51 With respect to all-season roads however, ongoing issues regarding ownership, maintenance responsibilities, and consistency in standards leads to inconsistent road access. 52

Footnote

46 Gov of Ont, supra note 39.
48 Ibid.
49 MTO, supra note 31.
50 Ibid.
51 Ibid.
52 Ibid. However, there are many difficulties in terms of frequency and convenience. According to the study, bus routes are not in tune with the needs of the communities. For example, there is a bus route from Sioux Lookout to Thunder Bay; however, residents noted there is greater travel demand and needs between Sioux Lookout and Dryden, though there is currently no service for this connection.
Legal Context: Constitution and Statute
6. Legal Context: Constitution and Statute

a. Section 3 of the Charter

Section 3 of the Charter guarantees every citizen of Canada the right to vote in an election of members of the House of Commons or of a legislative assembly, and the right to be a candidate for elected office.

The leading Supreme Court of Canada authority on electoral redistribution is Reference Re Provincial Electoral Boundaries (Sask.) (also known as “Carter”). Carter explained the meaning of s. 3 of the Charter in the context of electoral boundaries. Writing for the majority, then-Justice McLachlin held that the right to vote encompasses “not equality of voting power per se, but the right to 'effective representation’”. Relative parity of voting power is of prime importance, as a “system that dilutes one citizen’s vote unduly compared to another citizen runs the risk of providing inadequate representation to the citizen whose vote is diluted”. However, although effective representation necessitates voter parity to be a primary consideration, deviations from voter equality are permitted and provide the capacity to take into account factors critical to effective representation such as geography, community history, and minority representation. Implicit in this is the recognition that systemic/structural inequalities can warrant an equitable variation from a strict understanding of voter parity. The majority in Carter did not, however, provide a number as to what maximum level of deviation may be permitted. Departures from voter parity are acceptable only if justified by the need to provide effective representation. Non-exhaustive criteria including geography, community history and interests, minority representation, and cultural identity may be used to “justify departure from absolute voter parity [and] achieve more effective representation”. Electoral boundaries should also take into account “the diversity of our social mosaic”. Departures from voter parity must be justified by contributing to better government of the populace as a whole, with reasons being provided as to why effective representation would be enhanced by deviating from representation by

Footnotes:

54 Ibid at 183.
55 Ibid at 184-5.
56 Carter, supra note 53 at 184.
Commissions must justify any departure from voter parity in light of the factors highlighted by the Supreme Court as well as a commission’s enabling statute, which in this case is the Representation Act, 2015.

The Nova Scotia Court of Appeal, in Reference re the Final Report of the Electoral Boundaries Commission ("Nova Scotia Reference"), recently provided further interpretation of the role of electoral boundary commissions. The Court of Appeal explained that while there is no constitutional requirement that an independent boundaries commission be established, whatever body is tasked with crafting electoral boundaries is mandated to weigh the constitutional criteria of effective representation enshrined in s. 3 of the Charter. Such bodies therefore take their mandate from both their statutory terms of reference and the constitutional criteria of effective representation. In Nova Scotia Reference itself, the government refused to allow and/or accept any recommendations that deviated from a 25% voter parity requirement, irrespective of consideration of the value of minority (specifically, Acadian and Black) representation. This fettering of the Commission’s discretion meant that the Commission’s true views on what would facilitate effective representation were not considered. Section 3 of the Charter was therefore violated.

b. Representation by Population and Facilitating Minority Representation: A Balancing Act for the FNEBC

The Far North Electoral Boundaries Commission’s (FNEBC’s) mandate is accordingly blended from its statutory authority, as well as the criteria for effective representation in s. 3 of the Charter. Under its statutory authority, the FNEBC took into account the considerations outlined in s. 4(8).

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Footnotes

57 Ibid at 185.
58 Ibid.
60 Ibid at 49.
61 Ibid at 43.
62 Representation Act, 2015, SO 2015, c C31, s. 4(8).
Voter parity remains the primary criterion in the redistribution of electoral districts. As noted above, the average population of PEDs in Ontario is approximately 110,234 while the combined total population of both Kenora—Rainy River and Timmins—James Bay is only 156,734. As such, the two PEDs already have populations that exceed the generally allowable +/- 25% variance under federal legislation, which has been indirectly used to draw most PEDs in Ontario since 1995. However, the population density of these two PEDs is by far the smallest in the entire province, being 0.33 persons per square kilometre in Timmins—James Bay and 0.23 persons per square kilometre in Kenora—Rainy River. By comparison, the population density in the PED of Davenport is 8,798 persons per square kilometre – a more than 38,000 fold difference from Kenora—Rainy River.

The majority of the population of Kenora—Rainy River and Timmins—James Bay reside in the southern portion of each PED, making it even more difficult to provide effective representation to those living in the northern parts of the PEDs. The mandate of the FNEBC also requires us to add at least one, and no more than two, PEDs to this area. We interpreted our mandate as permitting larger than normal deviations from voter parity, in order to take into account the large geography of the region and the need to enhance Indigenous representation, while still respecting the need to have PEDs of roughly equal population. In fact the legislature has already accepted that representation in the north will of necessity be different when it decided to retain 11 Northern Ontario PEDs. The FNEBC is therefore more attentive to voter parity between Northern Ontario PEDs than that which distinguishes northern and southern PEDs. That said, the clearly mandated objective of seeking to achieve Indigenous representation will put further pressure on the general objective of voter parity. In our view, the more specific objective of Indigenous representation must be given more weight in light of the need to remedy past injustices and provide means for Indigenous communities to meaningfully participate in the governance of the province.

Such justification to part from a strict understanding of voter parity was similarly articulated by Nova Scotia’s Provincial Electoral Boundary Commission in 2012, wherein the Commission concluded that the “fair and nonpartisan drawing of constituency boundary lines, based around areas of minority group population concentration, was the best method for encouraging the effective representation
of [minority] groups in the Nova Scotia House of Assembly”. 63 This approach allows for “sufficient flexibility to meet the practical difficulties inherent in representative government in a country such as Canada”. 64

Footnote 63
Nova Scotia Reference, supra note 59 at 12.

64 Carter, supra note 53 at 189.
Public Information Meetings
7. Public Information Meetings

a. Description of Process

The Far North Electoral Boundaries Commission (FNEBC) officially began its work after the Chair was appointed on May 2, 2017. It is statutorily obliged to release its final report 90 days later—that is, August 1, 2017. The limited time frame in which it can work, coupled with the vast geographical region that Kenora—Rainy River and Timmins—James Bay encompass, posed many challenges.

The FNEBC endeavoured to meet with a mix of urban centres, including those with majority francophone populations, and First Nation communities. In order to reach as many people as possible within a limited time-frame, the FNEBC prioritized the densest populated centres which were also in close proximity to other smaller communities. Smaller communities were invited to attend the public information meetings in larger centres in order to have their voices heard.

The FNEBC conducted seventeen public information meetings in First Nations and municipalities in the first round of public information meetings. Though this was an ambitious task, it was important for the FNEBC to receive as much feedback from as many communities across the Far North as possible. The FNEBC also had a booth at the Summer Assembly of the Chiefs of Ontario, and attended the Spring Assemblies of NAN and GCT3.

Each public information meeting followed the same procedure. Community members who attended the public information meeting were able to sign up to make a deputation to the panel of commissioners. Each commissioner introduced themselves before the chair made a presentation regarding the mandate of the FNEBC. After the formal presentation, deputations from the public were made and a record of the feedback was maintained.

Appreciating the time-constraints and the vast geographical area of Ontario’s Far North, the Commission provided multiple avenues by which to maximize opportunities for public engagement, including:

- **Website**: The Commission developed and maintained a website at [http://www.fnebc-cdcegn.ca/](http://www.fnebc-cdcegn.ca/) The website was one of the online platforms that the public could use to retrieve information regarding public information meeting schedules, news releases, general contact...
information for public feedback, as well as maps on the current and proposed electoral boundaries. Information on the website was initially provided in English and French. Over 5,000 new users visited the website.

- **E-mail:** The Commission maintained a general e-mail address at info@fnebc-cdcegn.ca for the public to send questions or provide feedback.

- **Social Media:** The Commission also used Twitter and Facebook to raise awareness of the Commission’s activities and encourage public engagement. The Twitter accounts, @ONfnebc (English) and @ONcdcegn (French), were used to tweet updates to the Commission’s activities and schedule. The Commission’s English and French Facebook pages provided similar information. Facebook events were created and promoted in English and French for each public information meeting. A general awareness advertisement campaign also ran on Facebook, targeting users in the area to either like the page or visit the website for more information about public information meetings.

- **Media Interviews:** The Chair of the Commission took part in radio and on-spot news interviews with media outlets such as CBC News Sudbury and Sudbury’s French Newspaper, Le Voyageur, as well as Thunder Bay NewsWatch. Information was provided to the Dryden Observer and the Thunder Bay Chronicle Journal. The Sioux Lookout Observer also published a story including an interview with Justice Pelletier.

- **General Information Phone Line:** A general information phone line was made available. The phone number is 1-844-853-0958 and is intended for anyone to inquire or learn more about the Commission’s mandate, activities, and/or scheduling.

- **Regular Mail and Physical Office:** The Commission’s office at 981 Balmoral Street, Suite 101, Thunder Bay ON P7B 0A6 was open weekdays to allow members of the public to visit in-person and obtain or leave information.

- **Local Newspapers and Radio:** The Commission used the Ontario Public Service’s vendor of record for public notices to advertise upcoming community public information meetings in the local newspapers and on local radio stations. The advertisements were made available in each market in both English and French.
b. Terminology

Though the Far North Electoral Boundaries Commission (FNEBC) used the word “consultation” to describe many of its public information meetings, these were not “consultations” within the meaning of section 35 of the Constitution Act, 1982 as the FNEBC’s mandate does not affect any claimed or established right under that section of the Constitution Act, 1982.

c. Public Information Meetings

Week of May 29, 2017: Kenora, Dryden, Wabaseemoong and Wabauskang First Nations

Week of June 5, 2017: Timmins, Smooth Rock Falls, Kapuskasing, Constance Lake First Nation, Hearst

Week of June 12, 2017: Sioux Lookout, Lac Seul First Nation, Red Lake

Week of June 19, 2017: Eabametoong (Fort Hope), Fort Severn, Attawapiskat, Fort Albany and Moose Cree First Nations

Of the seventeen public meetings, five were First Nations in Kenora—Rainy River (Fort Severn, Eabametoong, Lac Seul, Wabaseemoong, Wabauskang), four were First Nations in Timmins—James Bay (Attawapiskat, Constance Lake, Fort Albany, and Moose Cree), four were municipalities in Kenora—Rainy River (Dryden, Kenora, Sioux Lookout, and Red Lake), and four were municipalities in Timmins—James Bay (Timmins, Smooth Rock Falls, Kapuskasing, and Hearst). This led to a total of nine public meetings with First Nations compared to eight with municipalities. There was a total of nine public meetings in Kenora—Rainy River compared to eight in Timmins—James Bay. Due to scheduling conflicts, the FNEBC was unable to meet with a number of tribal councils or with the Métis Nation of Ontario (MNO). The FNEBC intends to meet with these organizations and the MNO prior to issuing recommendations in the Final Report.

d. Meetings with GCT3 and NAN

The FNEBC also attended NAN’s Spring Assembly on May 10, 2017 and GCT3’s Spring Assembly on May 16, 2017. At these meetings, the FNEBC gauged the interest of the communities and also received feedback regarding what communities should be visited during the public information meeting process. A summary of these meetings will follow in the Final Report.
e. Meetings with MPPs

Pursuant to s. 4(8)(g) of the Representation Act, 2015, the FNEBC met with MPPs representing Northern Ontario. All 11 Northern MPPs were invited to a meeting held on May 29, 2017. Gilles Bisson, MPP for Timmins—James Bay was the only MPP to attend, though others sent staff members. The FNEBC later met with Sarah Campbell, MPP for Kenora—Rainy River, on June 13, 2017 at Sioux Lookout. A summary of feedback received from Ms. Campbell and Mr. Bisson will follow in the Final Report.

f. Submissions

The Commission received and considered written submissions, many through e-mail or through the FNEBC's website. The Commission also received and considered oral submissions during public information meetings in the above listed communities as well as at the NAN and GCT3 Spring Assemblies. A summary will follow in the Final Report.

g. Summary of Public Information Meetings

A summary of all feedback received at the FNEBC’s public meetings will follow in the Final Report.
Recommendations
8. Recommendations

a. Recommendation for Two Additional PEDs

Our statutory mandate requires us to add at least one, and no more than two, additional PEDs in the Far North. We propose that two should be added. The overwhelming consensus from participants in the Far North Electoral Boundaries Commission’s (FNEBC’s) consultations was to create two additional PEDs, for a total of four, in the current territories of Kenora—Rainy River and Timmins—James Bay, given the difficulties in ensuring effective representation for the Far North. It would have been truly unexpected for residents of the communities within Kenora—Rainy River and Timmins—James Bay to have requested less representation. Nonetheless, this recommendation seems appropriate due to the large geography of the Far North and the way populations are distributed. This conclusion was bolstered by the overwhelming consensus in the public feedback that increasing the representation of Indigenous communities in the provincial legislature should be a factor of particularly great importance. We heard this input from both Indigenous and non-Indigenous communities. Accordingly, we recommend the creation of four PEDs in the Far North. Our next task was to set the boundaries and the names of the four PEDs.

After giving due consideration to all of the factors set out in the statute, the constitutional criteria, and the public input and feedback we received, the FNEBC recommends the creation of the following four PEDs:

1. **Kenora—Rainy River**: comprising the southern portion of the current PED of that name, including Dryden, Fort Frances, Kenora, and Rainy River. The population will be 53,010, 13% of whom are Indigenous and 2% of whom are francophone.

2. **Kiiwetinong**: comprising the northern, primarily Indigenous portion of the current PED of Kenora—Rainy River, and also including Marten Falls First Nation, but excluding Weenusk (Peawanuck) First Nation. The population will be 32,784, 60% of whom are Indigenous and 2% of whom are francophone.

3. **Mushkegowuk**: comprising the northern portion of the current PED of Timmins—James Bay, excluding the City of Timmins and Marten Falls First Nation, but including Weenusk (Peawanuck) First Nation. The
population will be 29,687, 15% of whom are Indigenous and 61% of whom are francophone.

4. **Timmins**: comprising the City of Timmins itself. The population will be 41,788, 3% of whom are Indigenous and 39% of whom are francophone.

More precise descriptions follow below in Section 8(b) and will follow in Section 9 of the Final Report. Further explanation of the names follows in Section 8(d).

We believe this option is the most consistent with the relevant legal and constitutional criteria we are obliged to consider, the public feedback we received, and the challenges inherent in ensuring effective representation given the vast geography of the Far North. There are myriad advantages to this proposal.

First, this is the proposal that leads to four PEDs that is most respectful of representation by population. There is relative equality within the Far North PEDs. The two southern and more urban PEDs have similar total populations. The two northern PEDs also have relatively similar populations. Other options that we considered would have resulted in PEDs with much lower populations. Our proposal respects the constitutional principle of representation-by-population to the extent possible given the distribution of population across a large area.

Second, the PEDs are more geographically manageable than the status quo while also geographically manageable in and of themselves. This respects and takes into consideration the statutory principles of geographic features, sparsity, density and the rate of population growth in the geographic areas, and the availability and accessibility of means of communication and transportation in the geographic areas.

We also took into account election administration. The more manageable size of the ridings will facilitate Elections Ontario administration of elections in each PED, by minimizing transportation and communication difficulties, to the extent possible, within each district.

Third, it will create one PED—Kiiwetinong—with a majority Indigenous (Ojibwe, Oji-Cree, and Cree) population, and a second PED—Mushkegowuk—with a substantial minority Indigenous (Cree) population, and a large majority of the population (76%) being either Indigenous or francophone. Enhancing Indigenous representation is very important in this period of reconciliation in Canadian history, as is reflected in the statute. The Indigenous population will have
Recommenda
tions

an enhanced opportunity to benefit from effective representation and to elect representatives of their choice, particularly in Kiiwetinong, but also in Mushkegowuk.

Fourth, effective representation will be facilitated by respecting the diversity of the Indigenous peoples of the Far North and reflecting their wishes. The Indigenous population of Mushkegowuk will be primarily Cree while Kiiwetinong will be primarily Oji-Cree and Ojibwe. Moving Marten Falls to be in the PED that shares a common language and history is only appropriate. Similarly, moving the boundary to incorporate Weenusk Reserve with the village of Peawanuck is appropriate given the linkage between the two—Weenusk is a summer gathering place for Weenusk (Peawanuck) First Nation, who now live in Peawanuck. The present “straight line” that divides Kenora—Rainy River and Timmins—James Bay did not accommodate these linkages. Moving Marten Falls and Weenusk (Peawanuck) First Nation accordingly respects the statutory criteria of representation of Indigenous people and representations of interested persons. We do note, however, that we have not spoken to residents of Weenusk (Peawanuck) First Nation regarding this change. We will do so before release of the Final Report. We also note that Fort Severn First Nation, although being a Cree First Nation, explicitly requested to remain in the northwestern PED, as their infrastructure is connected to the west, and Sioux Lookout is their primary service centre.

Fifth, it was clear from speaking to the residents of Kiiwetinong that they wish for Sioux Lookout to be in Kiiwetinong, as Sioux Lookout (which has a significant Indigenous population) is their “service centre” and they wish to have an MPP who is an “advocate” for that service centre. Sioux Lookout’s representations to the FNEBC enthusiastically supported this idea, noting the good relationship between the Indigenous population in Sioux Lookout, the non-Indigenous population in Sioux Lookout, and the nearby Indigenous population. Including Sioux Lookout in Kiiwetinong also increases the similarity in population between the four PEDs. This respects the statutory criteria of communities of interest and representation of Indigenous people, in addition to the constitutional principle of representation-by-population.

Sixth, the creation of a francophone majority riding will enhance the effective representation of that group. It also reflects ties between the francophone communities north of Timmins and Indigenous communities. The predominantly francophone communities along Highway 11 such as Hearst and Kapuskasing
indicated a desire to be in a PED with the Cree population to their north. These francophone communities have economies largely based in the forestry industry while Timmins’s economy is largely based in the mining industry. Moreover, the Cree communities in the northern part of Timmins—James Bay indicated a trust of and willingness to work with the francophone communities along Highway 11 on areas of common concern. This approach respects the statutory criteria of communities of interest.

Seventh, the proposed PED of Timmins will be a compact urban PED, akin to Sudbury or Sault Ste. Marie, leading to more effective representation of Timmins and consistency with the representation of Sudbury and Sault Ste. Marie. This respects the statutory criteria of communities of interest and municipal boundaries.

Eighth, the population of the new proposed PED of Kenora—Rainy River will consist primarily of the southernmost portion of the current PED of Kenora—Rainy River. The new proposed PED will have a fairly common economy, and a much more compact geography, leading to more effective representation, respecting the statutory criteria of geographical features and sparsity, density and the rate of population growth in the geographic areas.

Ninth, even though the populations will be small by the standards of Ontario PEDs, creating separate PEDs of Kiiwetinong and Mushkegowuk leads to them having more manageable geography, respecting the statutory criterion of geographic features. If they were to be merged into a single PED, it would be geographically enormous – larger than the present district of Kenora—Rainy River. It would be difficult to effectively represent such a PED, much less be effectively represented in it. Given the unique nature of Northern Ontario, and specifically the Indigenous communities that live in the proposed new PEDs of Kiiwetinong and Mushkegowuk, the FNEBC firmly concludes that any deviation from the electoral quotient can be justified as a reasonable limit on the right to vote guaranteed by s. 3 of the *Charter*.

Tenth and finally, these proposed boundaries do not “split” any municipal or administrative boundaries, respecting that statutory criterion. Nor are any communities “orphaned” from the rest of the proposed PEDs, by being on the other side of a lake, river, or other geographical feature, respecting the statutory criterion of geographic features.
Ultimately, given the factors that the FNEBC is statutorily obligated to consider, it believes that the creation of the four PEDs as described in this report best reflects how to balance those factors.

b. Boundaries

The legal description of the PEDs will follow below in Section 9 in the Final Report, and a sample map is appended to this report as Appendix A. In overview:

1. **Kenora—Rainy River** shall encompass all parts of the current PED of Kenora—Rainy River that lie south of an approximately straight east-west line (approximation necessary due to the need to respect municipal and administrative boundaries) extending from the PED of Thunder Bay—Atikokan in the east to the province of Manitoba in the west, with Sioux Lookout lying on the north side of said line.

2. **Kiìwetinong** shall encompass all portions of the current PED of Kenora—Rainy River: a) lying north of an approximately straight east-west line (approximations due to the need to respect municipal and administrative boundaries) extending from the PED of Thunder Bay—Atikokan in the east to the province of Manitoba in the west, with Sioux Lookout lying on the north side of said line; and b) the territory of Marten Falls First Nation and surrounding areas. It shall exclude Weenusk (Peawanuck) First Nation and surrounding areas.

3. **Mushkegowuk** shall encompass all portions of the current PED of Timmins—James Bay except: a) the City of Timmins; and b) Marten Falls First Nation and surrounding areas. It shall include Weenusk (Peawanuck) First Nation and surrounding areas.

4. **Timmins** shall encompass the City of Timmins itself.

We note that Grassy Narrows First Nation is currently just “on the north side” of the proposed border between Kiìwetinong and Kenora—Rainy River. Given this, it is particularly important for us to consult Grassy Narrows First Nation in our second round of public feedback to be conducted in July.

c. Variance from Electoral Quotient

The average population of an Ontario PED is approximately 110,234 while the average PED of the eleven Northern Ontario PEDs is approximately 76,330. The populations of these four PEDs would be:
1. **Kenora—Rainy River**: 53,010, leading to a 51.9% variance from the provincial average, and a 30.6% variance from the Northern Ontario average

2. **Kiiwetinong**: 32,784, leading to a 70.3% variance from the provincial average, and a 57% variance from the Northern Ontario average

3. **Mushkegowuk**: 29,687, leading to a 73.1% variance from the provincial average, and a 61.1% variance from the Northern Ontario average

4. **Timmins**: 41,788, leading to a 62.1% variance from the provincial average, and a 45.3% variance from the Northern Ontario average

d. **Names**

We propose that the new PED encompassing the City of Timmins be named “Timmins”, as the city’s boundaries and the PED’s boundaries are coextensive. This also aligns with the practice for PEDs such as Sudbury and Sault Ste. Marie.

“Kenora—Rainy River” is an appropriate name for the new PED encompassing the southern portion of the present PED of Kenora—Rainy River given that the new PED primarily encompasses parts of the districts of Kenora and Rainy River. Moreover, the majority of constituents of the old PED of Kenora—Rainy River will remain in the new PED. The common name not only suggests continuity for these common constituents, but also prevents expense and confusion occasioned by an unnecessary name change. Finally, the vast majority of individuals in the proposed new PED from whom we have received feedback were in favour of retaining the name.

Our consultations left no doubt in our minds that incorporating Indigenous languages in the names of the new PEDs was important to the local communities. The three Indigenous languages in the area are Cree, Oji-Cree, and Ojibwe. As such, we propose that the new PEDs be given names in one of these languages, to reflect the significant current Indigenous populations and also their statuses as First Nations. Based on the feedback received in our consultations, we believe “Kiiwetinong”—the Ojibwe word for “North”—is an appropriate name for the PED encompassing the current northern portion of Kenora—Rainy River. “Mushkegowuk”—the Swampy Cree name for the lowland/swampy area where the Swampy Cree’s traditional territory is located—is an appropriate name for the PED encompassing the northern portion of Timmins—James Bay.
We recognize that the name “Mushkegowuk” does not incorporate a name that reflects the significantly francophone population of the PED. We considered the following, but considered them all to be problematic for various reasons:

- “Mushkegowuk—Corridor Onze”: This name recognizes the importance of Highway 11 to the francophone communities, though the commission thinks it odd to place the name of a highway in a PED name (Toronto—Danforth is a notable exception given that the Danforth has become a community as well as a street in Toronto.) “Corridor Onze” would also translate into English as “Highway 11”, and does not convey the francophone nature of the community.

- “Mushkegowuk—Hearst—Kapuskasing”: This name reflects the largest francophone communities in the proposed new PED, though it creates a name that is slightly long, and excludes the other francophone communities.

- “Mushkegowuk—Nord-Aski”: This name reflects the name of a regional development/infrastructure corporation linking the Cree communities in the north of the PED with the francophone communities in the south. It is also a combination of the French word for north (“Nord”) and the Cree word for land (“Aski”). However, we are reluctant to give the PED the name of a corporation.

- “Mushkeowuk—Nord-Est”: This name recognizes the importance of the francophone community, reflecting that this PED represents the northeast of the province, “nord-est” being French for “northeast”. However, we fear this would be lost in a translation into English as “Northeast”.

Though we believe the name “Mushkegowuk” on its own is an appropriate name, particularly in this period of reconciliation in Canadian/Ontario history, we are nonetheless open-minded to incorporating a name meaningful to the francophone community in the PED’s south. We look forward to receiving further feedback regarding potential names from the Indigenous and francophone populations in the proposed new, northeastern PED.

**e. Compliance with the Charter**

We have outlined the constitutional criteria of effective representation flowing from section 3 of the *Charter*: geography, community history, community interests, and minority representation. These criteria are consistent with those prescribed by the *Representation Act, 2015*: communities of interest,
representation of Indigenous peoples, municipal and administrative boundaries, sparsity, density, rate of growth in the geographic areas, geographical features, the availability and accessibility of means of communication and transportation in the geographic areas, representations by members of the Legislative Assembly who represent constituencies in Northern Ontario, and other interested persons, and anything else the FNEBC considers appropriate.

We have explained earlier in this report the means chosen to obtain all relevant information and opinions relative to these criteria. We came to the conclusion that the constituencies under review have very unique features and that establishing an electoral map to achieve optimal and effective representation poses serious challenges.

The FNEBC is comprised of five members, the majority of whom are Indigenous. This accords with the fact that a primary object of the FNEBC is to favour Indigenous participation and representation in the electoral system. We note that the mandate was given while the Legislature had already accepted to retain the 11 PEDs in the north, avoiding reductions such as those that had been agreed to with regard to PEDs in the south. This all means that there is legislative and political recognition of the fact that voter parity must not prevent the addition of new PEDs that are necessary in order to achieve effective and fair representation in the Far North.

During the public information meetings, we found particularly strong support for changes designed to improve the representation of Indigenous peoples. The constitutional status of Indigenous peoples is recognized and protected in section 35 of the Constitution Act, 1982. Though s. 35 does not per se apply to the FNEBC’s mandate, it is still indicative of the unique status of Indigenous peoples in Canadian/Ontario law. What we have proposed is the result of a careful reading of the Supreme Court decision in Carter and the Nova Scotia Reference. It is also worth mentioning that the interpretation of the Constitution is guided by the unwritten principle of the protection of minority populations, a principle described in the Quebec Secession Reference.65

We did not set aside relative voter parity in our analysis; we tried to provide for the least significant deviations, accepting only deviations that could be justified on the grounds of practical impossibility or the necessity of giving sufficient

Footnotes:
Recommendations

weight to other factors needed to achieve effective representation. There is no undue dilution of voter parity when there is such necessity. The claims of Indigenous persons to participate in the affairs of Ontario are of great importance; they can be accommodated without adverse impact on the democratic process. Our solution is a response to the Legislature’s call for effective representation of all peoples of the north, and to the extensive consultations of those peoples.

It is obvious that the creation of one or two new PEDs will further affect the overall provincial voter representation average. This was unavoidable. We were careful however to propose a map that would favour a fair voter representation in the four proposed PEDs, recognizing that the north is and will continue to be treated differently, out of pure necessity. The special attention to Indigenous representation is mainly achieved in creating a PED in the northwest, called Kiiwetinong, where the Indigenous population is in the majority. Based on preliminary research and meetings, there was no possibility of creating a second such PED without affecting voter parity significantly.

We are unanimously convinced that our preliminary decision is consistent with s. 3 of the Charter. The geography of the region, the sparse population, the uniquely difficult communications, fly-in only communities, and the great importance of Indigenous languages are all matters of utmost attention in our deliberations. The FNEBC believes the preliminary recommendation strikes the right balance between voter parity and the other criteria for effective representation in s. 3.
Proposed Legal Descriptions of New PEDs
9. Proposed Legal Descriptions of New PEDs

Proposed legal descriptions of the new PEDs will follow in the Final Report.
Further Considerations
10. Further Considerations

The Legislative Assembly specifically tasked the Far North Electoral Boundaries Commission (FNEBC) with the decisions to add one or two PEDs to the Far North, to set the boundaries of the PEDs in the Far North, and to establish their names. The previous sections of the report explain how we responded to our statutory mandate. During our public information meetings, we also heard a great deal of feedback that was interesting, valuable, and informative, but was not directly statutorily mandated. Given our collective experience as Commissioners during this process and our prior expertise, we believe the FNEBC is well-placed to inform the Legislative Assembly of other matters to be considered in respect of the process for how electoral boundaries should be drawn in the future. We acknowledge that this does not fall within the strict confines of our statutory mandate. However, we are also of the firm opinion that we would be remiss not to share valuable insights we learned during the process of fulfilling our statutory mandate, or to inform the government of expectations and/or aspirations that may exist among the populace.

First, the FNEBC asks that Ontario consider having a regular process regarding the drawing of electoral boundaries. The FNEBC offers no opinion on whether Ontario’s PEDs outside of the Far North should copy the boundaries set by the federal electoral boundary commission for the province of Ontario convened every ten years under the federal Electoral Boundaries Readjustment Act, or legislate that a provincial commission establish the boundaries. But enshrining in law that there be a regular process, whatever the form, could enhance predictability and efficiency.

Second, the Commission wishes to emphasize that any future process for drawing boundaries must remain independent and non-partisan. The FNEBC operated independently from the Legislative Assembly and acted in a non-partisan fashion in all of its work. Independence and non-partisanship are essential elements for the drawing of electoral boundaries that must be preserved in any future process. These values should be represented in the composition and mandate of any future commissions.

Notes:
66 RSC 1985, c E-3, ss. 3ff.
Third, the FNEBC believes that it would be helpful for future commissions assigned to redraw boundaries to be given specific guidance in statute as to the acceptable deviations from the average population in a PED in Ontario. Our statute established the factors that we were to consider, but not the maximum permitted deviation from representation by population. Statutorily established variances could be nuanced—e.g., different for Southern, Northern, and Far Northern Ontario. Even these could be varied from in exceptional circumstances, as for example, federal legislation permits. Certain PEDs could also be exempted, either due to geography, the presence of minority voters, or Indigenous peoples. The Supreme Court of Canada in Carter held that deviations from voter parity could be acceptable if justified according to the criteria it set out, but also contemplated that some variations would be so great as to be inconsistent with the primary principle of voter parity. Guidance from the Legislative Assembly as to what deviations are permitted would be desirable in any future process.

Fourth, the FNEBC asks that the Legislative Assembly consider recognizing the transportation and communications challenges posed by the large geography of the Far North by adjusting upward the spending limits imposed on nomination contestants and candidates in the PEDs of the Far North. Air travel to remote communities not accessible by road or rail is expensive. Spending limits are calculated based on the number of electors in each PED. Given the relatively small populations in the PEDs, the FNEBC heard that these limits are inadequate to fund campaigns that truly reach all members of the community. Similarly, the Legislative Assembly should consider amending the Legislative Assemblies Act to increase the funding available for Far North MPPs to travel to see their constituents. We heard in our public information meetings that the cost of travel and communication was a deterrent for contact between those seeking and holding elected office and voters in the Far North. The Legislative Assembly should look to remedy this problem, ideally prior to the general election scheduled for June 2018.

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67 Ibid, s. 15(2).
68 Election Finances Act, RSO 1990, c E7, s 38.
69 Section 67(6) of the Legislative Assemblies Act, RSO 1990, c L10 treats Kenora—Rainy River and Timmins—James Bay the same as most other Northern Ontario PEDs in this respect.
Fifth, the FNEBC asks the Legislative Assembly to consider giving future provincial governments an obligation to implement—rather than merely introduce legislation to implement—the boundaries proposed by future electoral boundary commissions. Other Canadian jurisdictions have an obligation to implement the recommendations of electoral boundary commissions, and this can be done through having Commission reports become law upon the next dissolution of the legislature after being released (e.g., Manitoba).\(^70\) Electoral boundary commissions are not infallible. But removing any discretion on the part of the government to “not implement” their recommendations would help ensure that commissions continue to operate in a non-partisan and independent fashion, and continue to be perceived to be non-partisan and independent.

Sixth, the FNEBC requests that consideration be given to further steps to increase Indigenous representation and political participation in Ontario. The FNEBC emphasizes that increasing Indigenous representation is of great importance in this period of reconciliation in Ontario and Canada’s history. As the TRC noted, Indigenous and non-Indigenous Canadians must continue to live alongside each other. Dialogue between Indigenous and non-Indigenous Canadians is necessary to improve this ongoing relationship. Non-Indigenous Canadians must respect traditional Indigenous knowledge, political practices, and cultures regarding how to participate in public life.

The Legislative Assembly should consider further measures to encourage Indigenous candidates to run for provincial office and to increase voter turnout among Indigenous peoples in Ontario.

In a democracy where representatives are chosen from geographic territories, ensuring minority representation can be challenging. As such, the FNEBC also urges legislators to consider the possibility of creating unique seats in the Legislative Assembly that are dedicated for the purposes of Indigenous representation. This could be accomplished in several ways, such as the model in New Zealand to ensure Maori representation. Such an approach would be a departure from the tradition of contiguous, geographically based districts, but new practices are needed to ensure effective representation of Indigenous peoples.

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Footnotes:
\(^70\) Electoral Divisions Act, CCSM c E40, s. 10(5).
The consent of Indigenous peoples for any such plan would be essential for its legitimacy. New Brunswick for example abandoned a proposal to establish guaranteed PEDs for Mi’kmaq representatives after the Mi’kmaq rejected the plan.\footnote{Niemczak, Peter, “Aboriginal Political Representation: A Review of Several Jurisdictions” Library of Parliament, 27 October 2008, <https://lop.parl.ca/content/lop/researchpublications/bp359-e.pdf>}. The FNEBC understands and respects the historical reluctance of many Indigenous peoples to participate in provincial politics. We heard on several occasions understandable concerns that increased representation in the Legislature could come at the expense of Indigenous self-government. The FNEBC nonetheless firmly believes that increasing Indigenous representation in the provincial Legislature can be complementary—rather than in opposition—to Indigenous self-government, if established with consent and in the spirit of reconciliation.
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Election Finances Act, RSO 1990, c E7
Legislative Assemblies Act, RSO 1990, c L10
Representation Act, 2015, SO 2015, c C31
Appendix A: Map Illustrating Preliminary Recommendations

Preliminary Recommendation

- Kenora—Rainy River
- Keewatin
- Mushkegowuk
- Timmins
## Appendix B: List of Far North Electoral Boundaries Commission (FNEBC) Staff

<table>
<thead>
<tr>
<th>Title</th>
<th>Name</th>
</tr>
</thead>
<tbody>
<tr>
<td>Commissioner (Chair)</td>
<td>The Honourable Joyce Pelletier</td>
</tr>
<tr>
<td>Commissioners</td>
<td>Greg Essensa, Eric Fisher, Theresa Hall, Michael Pal</td>
</tr>
<tr>
<td>Executive Director</td>
<td>Fiona Mackintosh</td>
</tr>
<tr>
<td>Manager, Operations</td>
<td>Shikha Vyas</td>
</tr>
<tr>
<td>Communications Coordinator</td>
<td>Eleni Armenakis</td>
</tr>
<tr>
<td>Mapping Specialist</td>
<td>Christopher Angelone</td>
</tr>
<tr>
<td>Report Writer</td>
<td>Gerard Kennedy</td>
</tr>
<tr>
<td>Research Support</td>
<td>Meghan Blom, Cody Fraser</td>
</tr>
<tr>
<td>Executive Advisor</td>
<td>Tahnee Caraballo</td>
</tr>
<tr>
<td>Logistics Officer</td>
<td>Laura-Lynn Stewart</td>
</tr>
<tr>
<td>Community Liaison</td>
<td>Ryan Tuomi</td>
</tr>
<tr>
<td>Administrative Support</td>
<td>Barbara Hupe</td>
</tr>
</tbody>
</table>
Appendix C: s. 4 of the *Representation Act*, 2015

**Far North Electoral Boundaries Commission**

4. (1) There is established a body to be known as the Far North Electoral Boundaries Commission in English and Commission de délimitation des circonscriptions électorales du Grand Nord in French (“the Commission”), which shall be composed of the following persons appointed by the Lieutenant Governor in Council:

1. A current or former judge of a court in Ontario, who shall act as the chair of the Commission.
2. The Chief Electoral Officer.
3. A member of the faculty of a university in Ontario.
4. Two community representatives who identify as Indigenous persons. 2016, c. 33, s. 36 (1).

**Remuneration**

(2) Members of the Commission, other than the Chief Electoral Officer and the chair of the Commission, if the chair is a current judge, may be paid such remuneration as may be determined by the Lieutenant Governor in Council. 2016, c. 33, s. 36 (1).

**Reimbursement for expenses**

(3) Members of the Commission are entitled to be reimbursed for reasonable expenses incurred in the work of the Commission, as determined by the Lieutenant Governor in Council. 2016, c. 33, s. 36 (1).

**Staff**

(4) The Commission may engage staff to assist it in its work, and those staff shall be paid salaries or wages comparable to those determined under Part III of the *Public Service of Ontario Act, 2006* for public servants employed under that Part, except for persons whose services are provided under subsection (5). 2016, c. 33, s. 36 (1).

**Seconded staff**

(5) The Commission may enter into agreements for any service required by the Commission with,
(a) the Chief Electoral Officer for the provision of services by employees of the Office of the Chief Electoral Officer; and

(b) the Crown for the provision of services by public servants employed under Part III of the *Public Service of Ontario Act, 2006*. 2016, c. 33, s. 36 (1).

**Charge on CRF**

(6) All remuneration, expenses and other costs incurred in the work of the Commission shall be paid out of the Consolidated Revenue Fund. 2016, c. 33, s. 36 (1).

**Mandate**

(7) The Commission shall consider and make recommendations with respect to the creation of at least one and no more than two additional electoral districts within the geographic areas occupied under this Act, at the time of the establishment of the Commission, by the electoral districts of Kenora-Rainy River and Timmins-James Bay and with respect to the boundaries and names of all of the electoral districts in those geographic areas. 2016, c. 33, s. 36 (1).

**Matters to be considered**

(8) In making its recommendations, the Commission shall take into account,

(a) communities of interest;

(b) representation of Indigenous people;

(c) municipal and other administrative boundaries;

(d) sparsity, density and the rate of population growth in the geographic areas;

(e) geographical features;

(f) the availability and accessibility of means of communication and transportation in the geographic areas;

(g) representations by members of the Legislative Assembly who represent constituencies in Northern Ontario, and other interested persons; and

(h) anything else that the Commission considers appropriate. 2016, c. 33, s. 36 (1).

**Preliminary and final reports**

(9) The Commission, after holding public hearings and performing any other consultation it considers appropriate, shall release a report containing its preliminary
recommendations, and, after holding further public hearings and performing any other consultation it considers appropriate, shall produce a report containing its final recommendations. 2016, c. 33, s. 36 (1).

**Submission of final report**

(10) Within three months of the day when all the members of the Commission have been appointed, the Commission shall submit the report containing its final recommendations to the Attorney General, who shall promptly make the report public. 2016, c. 33, s. 36 (1).

**Recommendations by consensus**

(11) The Commission shall operate by consensus in making its decisions and recommendations, but in the case of an inability to reach consensus with respect to its preliminary or final recommendations, the recommendations of the dissenting member or members shall be included in the Commission’s report. 2016, c. 33, s. 36 (1).

**Duty to introduce legislation**

(12) A member of the Executive Council shall, before October 30, 2017, introduce legislation to implement the final recommendations of the Commission. 2016, c. 33, s. 36 (1).

**Repeal**

(13) This section is repealed on December 31, 2017.

2016, c. 33, s. 36 (1). APPENDIX D: Map of Current Electoral Districts of Kenora–Rainy River and Timmins–James Bay
Appendix D: Map of Current Electoral Districts of Kenora–Rainy River and Timmins–James Bay