

# **OUTLINE OF FINAL ARGUMENT ON BEHALF OF THE COUNTY OF PRINCE EDWARD**

## **INTRODUCTION/OVERVIEW**

Bylaw 3719-2016 is a bylaw of the Council of Prince Edward County that implements Ward boundary reform for Prince Edward County.

Bylaw 3719-2016 merges two former wards, namely Bloomfield and Hallowell into one ward thereby reducing the total wards in the County from 10 to 9.

There is a consequent reduction in the number of Councillors from 15 to 13 in a separate companion bylaw that is not before this Board.

The evidence has shown that there was an extensive public consultation process leading to the adoption of the two bylaws.

The extensive public consultation and input from the public went far beyond the statutory requirements of the Municipal Act.

Council had enough information through the public process to make an informed decision on the best choice for ward boundary reform.

The 9-ward proposal adopted by Council is reasonable and achieves a common-sense amalgamation of the Bloomfield and Hallowell wards that

results in ward boundary reform that improves voter parity from the current 10 wards comprising the County while respecting communities of interest and historical boundaries.

## ONUS ON APPELLANT

- There is an onus on the Appellant to demonstrate that Council's adopted nine-Ward boundary should be rejected by this Board for either failing to meet the statutory requirements of the Municipal Act or failing to result in effective representation.

- In *Hodson, Re.*, the Board states:

*Firstly, it is to be understood that the Board is reluctant to interfere with decisions made by the duly elected municipal Council unless there are clear and compelling reasons to do so. The fact that one takes issue with the review process and/or prefers a different ward system is not justification for overturning the decision of Council (Para 58)*

- Clearly, as set out in Mr. Klein's notice of appeal he preferred a different ward system (but failed to bring his proposal for a massive restructuring of the existing 10 wards forward during the well advertised public consultation process).
- The Appellant's case before this Board was largely if not entirely focused on the issue of "mathematical parity" and failed to give

proper regard and weight to the other factors that lead to “effective representation”.

- The Supreme Court of Canada in the Carter case said: Section 3 of the Charter of Rights establishes a right to “effective representation” which “.... **comprehends the idea of having a voice in the deliberations of government as well as the idea of having the right to bring one’s grievances and concerns to the attention of one’s government representative**” (Tab 13, p. 470, para 26)
- The Appellant focused on variances from mathematical parity and completely failed to bring any compelling evidence to suggest that the residents of the County were not being "effectively represented".
- In fact, no evidence was offered by the Appellant that any citizen of the County is being denied the right to bring one’s grievances and concerns the attention of one’s government representative or having a voice in the deliberations of government under the current system or the proposed nine Ward system.
- To the contrary Kathleen Vowinckel was shown this quotation from the Carter case and unequivocally testified that the nine Ward proposal would achieve this result.

- The evidence of Monica Alyea was also supportive of effective representation being achieved by the nine Ward proposal.
- The Appellant spent the entire first day of the hearing attempting to elicit evidence from James Hepburn (County CAO), Grant Hopkins (County GIS supervisor), James Bar (County Land Use Planner), Kim White (County Clerk).
- In my respectful submission, not only did the Appellant not succeed in obtaining the testimony in support of his case that he obviously sought from these witnesses but again focused his attention on process and mathematical parity with no focus on factors that the Courts and the OMB have recognized as justifying variation from mathematical voter parity.

## **EVIDENCE**

- I would like to briefly review and comment on some of the other evidence that has been presented to the OMB during the first two days of this hearing.

### **Evidence of Prof. Robert Williams**

- Very little weight if any, should be placed on the evidence of Prof. Williams.
- Although I did not dispute the qualifications of Prof. Williams, his evidence did not measure up to what this Board would expect and would find helpful in a case such as this as an expert witness called to support the Mr. Klein's appeal to the OMB.
- In particular, Prof. Williams did not conduct any independent investigations into the existing or proposed Ward system to determine the applicability of important "Carter" criteria such as where are the communities of interest?; what are the historical boundaries?; how does geography factor into the ward boundaries?
- Prof. Williams did not contact employees at the County to obtain information even though his client had summonsed the CAO, the Clerk and the GIS technician.

- Prof. Williams did not contact Mr. Thompson, the author of the nine-ward plan to gain an understanding of the rationale behind the proposal.
- Prof. Williams did not bring a written report for the consideration of the Board and the parties as one would usually expect from an expert witness and certainly in this type of case.
- In cross-examination, Prof. Williams indicated that it was not part of his retainer to consider and form opinions as to if boundary wards if so, how and where. As a consequence, the Board has no evidence beyond the evidence that was called at this hearing in support of the nine Ward proposal adopted by Council.
- Prof. Williams was retained by the Appellant after the filing of his appeal and thus the Appellant did not have the benefit of Prof. Williams opinions in framing the grounds listed in his Notice of Appeal.
- Perhaps this explains why the Appellant's case is focused on mathematical parity and falls substantially short on evidence considering the factors that the courts and the OMB have recognized as justifying variations from mathematical parity.

- Prof. Williams expressed concerns with the current structure of having more than one Councillor in some of the wards resulting in his “asymmetrical analysis”.
- With respect to Prof. Williams, the difficulty with his asymmetrical analysis is at least twofold: firstly, it is not a criterion that is recognized in the Carter Decision but rather his own theory of what voter parity should look like; secondly, the analysis is out of step with reality in the immediate area.
- As one example only, the adjacent municipality of Belleville is an amalgamation of two former municipalities, namely the City of Belleville and the Township of Thurlow. The original municipal boundaries were maintained through a ward system with the result that there are only two wards in the amalgamated City of Belleville. Yet voter representation in amalgamated City of Belleville is obtained through each Ward having numerous councillors per ward-specifically six Councillors in Belleville and two councillors in Thurlow Ward.
- Prof. Williams stated in his evidence in chief that while absolute parity absolute voter parity is impossible the Supreme Court of Canada ruled that "you can only vary from absolute parity when you have no choice and even then you can't go very far”.



- Under cross-examination, Prof. Williams conceded that the Carter case does not say that.
- In cross-examination, I took Prof. Williams to the exact language in the Supreme Court of Canada case and he conceded that there is no fixed range of variation from voter parity whether by statute or in the jurisprudence.
- Prof. Williams also conceded that the courts made it clear that whatever the variance is from absolute parity one must look to factors such as historical boundaries and communities of interest - factors which are essential to effective representation.
- in my view, the Appellant's case focused much too much on mathematical parity and ignored the fundamental principle of "effective representation".
- in the Carter case, the Supreme Court of Canada said the following about effective representation: Section 3 of the Charter of Rights establishes a right to "effective representation" which "**comprehends the idea of having a voice in the deliberations of government as well as the idea of having the right to bring one's grievances and concerns to the attention of one's government representative**" (Tab 13, p. 470, para 26)

- it was Prof. Williams opinion that the mere extension of services such as municipal water would de facto result in an enlargement of an existing “community of interest” to include the area serviced with water.
- in cross-examination, he acknowledged that the extension of pipe services would be a factor that he would consider but conceded it would not be determinative of what constituted a community of interest.
- at one point in his testimony, Prof. Williams opined that the County is “one community now”. Clearly, that opinion, based on no independent investigation, is at odds with the evidence detailed evidence brought forward by Kathy Vowinckel, David Mowbray and Monica Alyea.
- Prof. Williams did state in his evidence in chief that it was “important to settle on a population number and then have everybody use it”
- the Board is aware that that is precisely what the Clerk did by preparing a current 2015 population analysis broken down by Ward, and putting it in a staff report [May 6, 2015, Exhibit 2, Tab 6B, p.70] so that all individuals submitting Ward boundary proposals would be using the same numbers.

- in the final analysis, in my respectful opinion, Prof. Williams opinions must be given little or no weight in this case for the reasons I have stated.

### **Evidence of Kathleen Vowinckel**

- Long-time resident of the County and 3-time councillor in the former Township of Sophiasburgh.
- Provided evidence that maintaining township boundaries was purposeful choice at amalgamation.
- Commented that process leading to the nine Ward system adopted by Council was more than fair and open.
- Gave the example of the importance of historical boundaries by reference to manual to help brand the County:
  - “A few years ago, Council commissioned a manual to help brand the County, as we move forward in a changing economy. Prince Edward County’s historic villages, hamlets and townships (now wards) are essential to the County, (and I quote) this being a “community of communities, brought together by geography, that collectively excels by working together while celebrating the uniqueness and charm of each

area of the County” ... and that the County “will continue to celebrate these timeless traditions”. These traditions are important with our new focus as a tourist destination.”

- Her evidence referenced the public desire to remain with the status quo, but saw the incorporation of Bloomfield into Hallowell as a compromise she could live with.
- Agreed that description of what constitutes “effective representation” found at para 26 in Carter is “absolutely” met by Nine Ward Proposal.

#### **Evidence of Dave Mowbray**

- Lifelong resident of the County, specifically Sophiasburgh.
- Supports 9-Ward proposal on the basis that it respects historical ward boundaries and communities of interest.
- Used his own ward of Sophiasburgh as example of a community of interest. Of particular note are his comments regarding the public mobilization around protecting a community asset namely, the local public school

#### **Evidence of John Thompson**

- Life-long resident of the County, very involved in municipal politics
- Author of nine-ward proposal

- Extensive involvement in ward boundary review process
- Outlined the characteristics of the 9-Ward Plan (Statistics - Tab 6C, Page 110) (Map – Tab 6F, Page 269)
- Provided evidence of the below benefits of the Nine Ward plan:
  1. The combining of Bloomfield with Hallowell was a natural fit that recognized how these two wards function as one community of interest sharing services. No one has appeared at this hearing objecting to the proposal to merge these two wards.
  2. Representation by population is a strength in this proposal as the current disparity in representation represented by Bloomfield was eliminated.
  3. The strength and diversity of a relatively large Council would be maintained.
    - Strength of Large Council – less work load, lots of councillors for advisory committees
  4. Ample representation is provided so good attention can be provided to individual issues.
  5. Accountability of councillors – residents know representative.
  6. Maintains historical boundaries
    - Familiar/historical identification
  7. Maintains the rural/urban balance which is necessary to ensure proper and effective representation.
  8. No area has a controlling vote as it might have in other proposals
    - eliminates the potential that the most populated areas could vote in majority of councillors leaving other areas without representation.

- Both Mr. Thompson and Ms. Alyea acknowledged the discretion that Council has to accept or reject recommendations from staff. In particular, they supported Council's decision not to accept the recommendation that the two Ward and three Ward boundary proposal were the top two preferred proposals based on their involvement and observations during the public process.

### **Evidence of Monica Alyea**

- Life-long resident of the County, very involved in municipal politics.
- Extensive involvement in ward boundary review process.
- Started from position of support for "status quo-existing 10 wards" based on history of past review exercises, and understanding of compromise at amalgamation.
- Moved from that position in response to logic of the Nine Ward Plan and its respect for historical boundaries and communities of interest.
- Provided evidence that the nine Ward proposal respects County history, its various communities as emphasized in County promotional materials, as well as the individual sense of identity that attaches to historical ward boundaries.
- Provided evidence as to the communities of interest in South Marysburgh, where she calls home, the community of Ameliasburgh

and the community of Bloomfield/Hallowell and why the combination of the two communities is a natural fit.

### **Evidence of John Maddox**

- Mr. Maddox was retained by the County of necessity when the appeal was filed by Mr. Klein seeking a hearing before the OMB.
- Retaining outside consultants and undertaking an “elaborate” process is not required by legislation or caselaw to date (*Milani, Re*, para 55)
- Mr. Maddox had extensive experience over his lengthy career in provincial and municipal government having occasion to be involved in and direct restructuring proposals thus making him familiar with matters such as the Carter criteria including the importance of voter parity, community history, community interests and historical boundaries.
- Mr. Maddox’s opinions were based on his experience, his desktop review of the extensive process followed by Prince Edward Council and the input of the public during the process, his attendance during the entire hearing (unlike Prof. Williams) and the evidence that he heard of all witnesses called.

- Mr. Maddox was unshaken in his opinion that the nine Ward proposal represented effective representation and that it would be appropriate for the OMB to approve same.



## BRIEF REVIEW OF SELECTED CASES AND STATUTE

### ***Section 222 of the Municipal Act***

- Municipal By-Law
- Council in this case easily met and exceeded the minimum requirements in the Municipal Act.
- the fact that there is little or no statutory requirements for such a bylaw is a clear indication in my view that the Province intends ward boundary reviews to be reflective of the characteristics of the individual municipalities undertaking such reviews.

### ***Reference re Provincial Electoral Boundaries (1991) (Exhibit 3, Tab 13)***

- No requirement for process, beyond fairness (para 53)
- Effective Representation means “the idea of having a voice in the deliberations of government as well as the idea of the right to bring one’s grievances and concerns to the attention of one’s government representative” (Tab 13, para 26)
- Stated that while parity of voting power is the goal of “effective representation, “absolute parity is impossible and in any event, could prove to be undesirable [emphasis added] if it had the effect of detracting from the primary goal of effective representation by

ignoring factors such as geography, community history, community interests, etc. The SCC noted that the list of such factors was not closed. (Tab 13, p. 470, paras 30-31)

***Hodson, Re, 2013 Carswell Ont 17030 (Exhibit 10)***

- No legislated process (para 59)
- MPAC figures accepted by Williams (para 34)
- Use of population figures vs. elector figures is subject of debate (para 66)
- Board reluctant to interfere unless clear and compelling reasons (para 58)

***Milani, Re, 2009 Carswell Ont 7420***

- Council does not have to be at arm's length in a ward review.
- Retaining outside consultants and undertaking an "elaborate" process is no guarantee that the process will be upheld (para 55)

## **CONCLUDING REMARKS**

- Based on all of the evidence and the review of the applicable law, it is respectfully requested that the OMB dismiss the appeal of Mr. Klein thereby allowing the Council adopted nine Ward system to come into effect in time for the next election.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 21<sup>st</sup> DAY OF JULY,  
2017

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### **TEMPLEMAN MENNINGA LLP**

205 Dundas Street East, Box 234  
Belleville, ON K8N 5A2

Tel.: (613) 966-2620  
Fax: (613) 966-2866

Wayne Fairbrother  
Solicitors for the Corporation of the  
County of Prince Edward