

Ontario Municipal Board
Commission des affaires municipales
de l'Ontario



ISSUE DATE: November 30, 2017

CASE NO(S): MM160019

PROCEEDING COMMENCED UNDER subsection 222(4) of the *Municipal Act*, 2001, S.O. 2001, c. 25, as amended

Appellant: Pierre Klein
Subject: By-law No. 3719-2016 to restructure the ward boundaries
Municipality: Prince Edward County
OMB Case No.: MM160019
OMB File No.: MM160019
OMB Case Name: Klein v. Prince Edward (County)

Heard: July 19 – 21, 2017 in Picton, Ontario

APPEARANCES:

Parties

Counsel

Pierre Klein

Self-represented

Prince Edward County

W. Fairbrother

DECISION DELIVERED BY M. A. SILLS AND ORDER OF THE BOARD

[1] In January 2016, the municipal Council of the Corporation of the County of Prince Edward (the “County/Municipality”) passed By-law No. 3719-2016 (the “By-law”), a by-law to re-divide the Municipality’s Electoral Ward Boundaries.

[2] The effect of the By-law is that the existing wards of Bloomfield and Hallowell are merged into a single ward, reducing the total number of wards from ten to nine. There are no other electoral ward boundary changes effected by the By-law. The By-law was appealed by Pierre Klein (the “Appellant”).

[3] The consequent effect of the merging of these two wards is that County Council is reduced by 2 Members. A companion by-law, By-law No. 3720-2016, effects changes to the composition of Council, from the Head of Council (Mayor) and 15 Ward Councillors to the Head of Council (Mayor) and 13 Ward Councillors; 1 Councillor each for the wards of Wellington, Athol, Sophiasburgh, Hillier, North Marysburgh, South Marysburgh, 2 Councillors for each of the wards Bloomfield/Hallowell and Picton, and 3 Councillors for the Ward of Ameliasburg. That by-law is not before the Board.

LEGISLATED AUTHORITY

[4] The *Municipal Act*, 2001 (the “Act”), provides the authority for the establishment of wards:

s. 222(1) Establishment of Wards. – Despite any other Act, a municipality may divide or re-divide the municipality into wards or dissolve existing wards.

[5] On appeal from the passing by a municipal Council of a By-law to divide or re-divide the municipality into wards:

s. 222(7) The Board shall hear the appeal and may, despite any other Act, make an order affirming, amending or repealing the by-law.

[6] The authority for a local municipality to make changes to the composition of a municipal Council is established by s. 217 (Changes to Council) of the Act.

[7] There is no right of appeal provision established in s. 217 of the Act. Moreover, it is well established that the composition of a municipal Council is not a matter for which the Board has jurisdiction (reference: Divisional Court in *Wager v. London (City)* 2006 CarswellOnt 1094 Ontario Superior Court of Justice (Divisional Court)).

BACKGROUND

[8] The existing electoral ward boundaries were established in 1997 by Order of the former Ministry of Municipal Affairs and Housing (“MMAH”) to amalgamate the municipalities of the County of Prince Edward, Town of Picton, Village of Bloomfield, Village of Wellington, Township of Hallowell, Township of Hillier, Township of North Marysburgh, Township of South Marysburgh and the Township of Sophiasburgh.

[9] The composition/size of County Council and ward boundary configurations has been the subject of debate through many terms of Council since amalgamation.

[10] In 2008, Council established an ad hoc committee, the Composition of Council Committee (the “CCC”), to review the size of Council. The CCC was initially primarily established for the purpose of reviewing the size of Council, although it became apparent early in the process that any change in the composition of the Council would likely impact ward boundaries. The CCC was composed of members of Council and the public and met six times in 2008.

[11] In October 2008, the CCC provided a report to Council offering options on electoral boundaries and Council representation. The report contained various options for electoral boundaries on the basis of a Council comprised of 10 Councillors and a Mayor. These included a 2-Ward System and a 5-Ward System, as well as an at Large System with no electoral boundaries. Following much debate, Council decided to take no action on the report, opting instead to place a Question on to the 2010 municipal election ballot.

[12] Subsequently, a Petition of Electors (the “Petition”) was filed by Lyle McBurney, pursuant to s. 223(1) of the *Municipal Election Act*, 2001. The petition requested Council to enact a by-law to restructure the existing 10-Ward System into a 6-Ward System, and to reduce the size of Council from 15 Councillors and the Mayor to 12 Councillors (2 per ward) and a Mayor elected at Large.

[13] Council took no action on the Petition and Mr. McBurney and Jim McPherson appealed to the Ontario Municipal Board (“OMB or Board”), pursuant to s. 223(4) of the Act. The hearing lasted nine days and resulted in a total cost to the Municipality of \$118,098.88, not including staff time. The decision by Vice-Chair Zuidema issued on December 24, 2009 dismissed the appeal and denied the application (OMB File MM090016).

[14] The following Question was then placed on the 2010 Municipal Election Ballot:

- Are you in favour of Council commencing a public consultation process to review the size of Council for the County of Prince Edward?

[15] Although the result of the vote was not legally binding due to less than 50 percent (“%”) of eligible voters casting ballots (i.e. 47.37%), it was recognized that a significant number of the electors casting a ballot

(71%) were in support of commencing a public consultation process to review the size of Council. Up to that point, discussions on the subject had been largely internal (municipal staff and Council).

[16] At its meeting on September 15, 2011, Council considered a report prepared by the Corporate Services Commission regarding the Size of Council Question on the Ballot. That report recommended that in the event Council decided to pursue this matter further, the public consultation process should be:

- Open, fair and accessible to a large number of stakeholders;
- Have a strong process for consensus gathering and problem solving;
- Be free from political and staff influence; and
- Indicate clear recommendations.

[17] The report was received by Council and no further action was taken at the time.

[18] In March 2013, the Municipality issued a Request for Proposal “to obtain an independent facilitator to conduct a public consultation process with the broadest number of stakeholders from all wards to review the size of Council”. A proposal submitted by Dr. Jonathan Rose, an Associate Professor in the Department of Political Studies at Queen’s University, was selected.

[19] Under the leadership of Dr. Rose, the County Citizen’s Assembly (the “CCA”) was established. The CCA, which was comprised of 23 residents of the County selected at random using a civic lottery system, met on three occasions. The final report of the CCA was presented at a Special Committee of the Whole Meeting held on September 19, 2013, and recommended that the size of Council be reduced from the current 15 Councillors plus a Mayor, to 10 Councillors and a Mayor. Notably, this report sets out that “any redistricting must be accompanied by meaningful consultation with citizens of Prince Edward County”.

[20] The report of the Committee of the Whole was considered at a Special Council meeting held on October 9, 2013, and although the report included various possible motions respecting the size of Council and Electoral Ward Boundaries, none were adopted by Council at the meeting.

[21] At a meeting held on January 7, 2015, Council passed a motion confirming its short-term goals for the year 2015, one of which was to investigate the size of Council.

[22] At the May 6, 2015 meeting, Council adopted the following motions:

1. THAT the size of Council and Electoral Ward Boundary system for the Corporation of the County of Prince Edward be reviewed;
2. THAT this review consist of, but not be limited to, the following proposals to create new Electoral Ward Boundaries:
 - Electoral Districts being North and South;
 - The N.E.W. (North/East/West) Plan; (amended by Motion at the June 25, 2015 to include all three options);
 - Plan 13; and
 - Current Council Size and Electoral Ward Boundaries (Status Quo).
3. THAT an advertisement be placed in the local papers, local radio and on the website immediately seeking further Electoral Ward Boundary proposals to be submitted no later than June 4, 2015, 5:00 p.m. for Committee consideration [emphasis added];
4. THAT a Special Committee of the Whole meeting be scheduled for Thursday, June 25, 2015 at 6:00 p.m. to review any additional proposals brought forward by Committee or a member of the public prior to June 4, 2015, and to initiate the review of all proposals;
5. THAT a Special Committee of the Whole meeting be scheduled for Thursday, July 16, 2015 at 6:00 p.m. for the purpose of finalizing the review of Electoral Ward Boundary proposals, recommending a preferred option or options and recommending a number of Councillors for each proposal for the purpose of vetting the option(s) by public consultation.

6. THAT that a least one public meeting be held in each Ward during September 2015.

[23] The request for further proposals resulted in 12 additional proposals and several emails and letters being submitted. At a Special Committee of the Whole meeting held on June 25, 2015, a motion was passed to further explore in detail three change options: the N.E.W. Plan (3 Wards), Plan 13 (9 Wards system) and the Equity Plan, or to maintain the status quo. The Equity Plan proposal was later eliminated from consideration when it was confirmed by the County's legal counsel and MMAH that a single-tier municipality is not permitted to use a weighted voting system.

[24] At a Special Committee of the Whole meeting held on July 16, 2015 a motion was passed to include a proposal for 2 Electoral Wards with 5 Councillors for each Ward and a Mayor at Large in the list of options for further review. During that same meeting, Council confirmed the four options selected to put forward for public consultation and comment: 2 Wards with 11 Members; 3 Wards with 13 Members; 9 Wards with 14 Members; and 10 Wards with 16 Members (status quo).

[25] At the August 13, 2015 meeting, Council approved the form and content of the on-line/hard copy survey, the meeting format for the Public Consultation sessions and materials to be provided, and named two County residents to act as facilitators at the these sessions. The survey invited residents of the County, and/or owners and/or spouses of owners of property in the Municipality to rank the four selected proposals in order of preference. The on-line survey was posted on the County's website from September 1, 2015 to October 5, 2015, and hard copies were made available at municipal offices and buildings and distributed at each public consultation meeting.

[26] The results of the 649 surveys received are as follows:

- The 2 Electoral Ward option received 302 or 46.5% as their first choice (weighted average 2.72).
- The 3 Electoral Ward option received 310 votes or 47.8% as their second choice (weighted average 2.73).
- The 9 Electoral Ward option received 341 votes or 52.5% as their third choice (weighted average 2.52).

- The 10 Electoral Ward option (status quo) received 370 votes or 57% as their fourth choice (weighted average 2.03).

[27] Overall, the two preferred options selected by individuals completing the survey were the 2 Electoral Ward Proposal (5 Councillors representing each Ward and a Mayor elected at Large), and the 3 Electoral Ward Proposal (4 Councillors representing each Electoral Ward and a Mayor elected at Large).

[28] Nine ward public meetings were held during the month of September 2015 with attendance ranging from 15 to 40 individuals.

[29] Mr. Klein appeared as a deputation at the October 15, 2015 meeting and made representations on the matter of the Size of Council and Electoral Ward Boundaries. The public record indicates that Mr. Klein also attended the Special Council on October 29, 2015, at which time he introduced an alternate 10 Electoral Ward Boundary proposal. Basically, Mr. Klein's proposal establishes electoral ward boundaries on the basis of Statistics Canada population and dwellings census data (dissemination blocks).

[30] The Special Committee of the Whole meeting held on October 29, 2015 for the purpose of deciding the Size of Council and Electoral Ward Boundaries matter did not result in dissolution. A Motion to confirm the 2 Ward - 11 Member Proposal, and the 3 Ward - 13 Member Proposal as the preferred options was defeated. The following Motion was then passed:

THAT Committee agree to the process to vote on all 4 proposals, the proposal receiving the least number of votes gets dropped off, a vote would then be taken on the remaining 3 proposals, the proposal receiving the lowest number of votes to be dropped, a vote then be taken on the remaining two proposal.

[31] The outcome of the ranked ballot voting was that the 2 Ward and the 9 Ward proposals were eliminated. The successive vote on the 3 Ward Proposal and the 10 Ward proposals (status quo) resulted in tie vote—a tie vote is a LOST vote.

[32] That was followed with the following Motion:

THAT further investigation be undertaken to determine whether the 3 Electoral Ward Boundary Proposal (13 Members of Council) and the 10 Electoral Ward Boundary Proposal (current status) (16 Members of County Council meet the following criteria:

- a) Odd number of Council Members;
- b) Voter parity;
- c) Equitable distribution of population;
- d) Respect identifiable communities of interest
- e) Utilize natural physical boundaries;
- f) Serve the larger public interest.

[33] That Motion also failed and the meeting was adjourned.

[34] Following three failed Motions on the matter at the November 10, 2015 Council meeting, the following Motion was ultimately passed:

THAT the 9 Ward Proposal which creates 9 new wards boundaries for electoral purposes for the County of Prince Edward be approved; and

THAT 13 Councillors be elected to represent each new electoral ward as follows:

- Picton – 2 Councillors
- Bloomfield/Hallowell – 2 Councillors
- Wellington – 1 Councillor
- Ameliasburg – 3 Councillors
- Athol – 1 Councillor
- Hillier – 1 Councillor
- North Marysburgh – 1 Councillor
- South Marysburgh – 1 Councillor
- Sophiasburgh – 1 Councillor
- And a Mayor at Large

REPRESENTATIONS BY THE APPELLANT

[35] Mr. Klein maintains that the 9 Ward electoral boundaries system adopted by County Council fails to follow the criteria required to redistribute ward boundaries as supported in case law. It is his position that the 9 Ward system adopted by Council has been justified solely on the basis of “community history”, and to the exclusion of all the other criteria established in the *Carter* case (*Reference re Provincial Electoral Boundaries, 12991 CarswellSask 188*, ([1991]) S.C.J. No. 46).

[36] County staff members, James Hepburn (Chief Administrative Officer), Kim White (Clerk), James Bar (Land Use Planner), and Grant Hopkins (GIS Supervisor) have been subpoenaed to give evidence. The Board was unable to discern any relevant evidence of a factual or a compelling nature from the testimony of these witnesses that was not otherwise available in the Board’s file or provided for in the documents and materials produced at the hearing.

[37] It should be noted that Mr. Klein objected to the Board allowing Mr. Fairbrother to question these witnesses, citing a *Rule of Civil Procedure* which he purports to prevent Mr. Fairbrother from cross-examining subpoenaed witnesses; however, he was not able to produce the citation to which he was referring.

[38] Dr. Robert Williams is a political scientist with expertise in Municipal government and has considerable experience as a consultant on electoral boundary matters. He provided evidence in support of the appeal.

[39] Dr. Williams affirmed he had examined the ward boundary system in the County when he was invited to submit a proposal to conduct the Size of Council review undertaken in 2011. At that time, he opined that the existing ward boundaries disregard the Supreme Court’s ruling in the *Carter* case. In his opinion, the prevailing population imbalances dilute the votes of many electors and the existing system of representation is discriminatory.

[40] The current 10 ward system in the County was imposed by the Province as part of the restructuring of the former two-tier County into a single tier municipality. The existing wards exactly replicate the pre-amalgamation municipalities. It is Dr. Williams’ opinion that this arrangement is basically inequitable on two levels: firstly, the distribution of Council seats fails to deliver representation by population even though,

through negotiation the Province agreed to assign an extra Councillor (per 2,500 people) to three wards, and two extra Councillors to another ward. Secondly, the effect of this “compensation” is to create another form of inequity: asymmetry, or the assigning of more votes to some portion of the population.

[41] Dr. Williams contends the present system in the County is further flawed in that it does not utilize natural, physical boundaries that are locally recognized. While it is true that the boundaries embody those that demarcated the pre-amalgamation municipalities, many of the boundary lines are more notional than tangible.

[42] Dr. Williams maintains that it is in fact the exclusive use of the pre-amalgamation municipalities as wards at the time of amalgamation that is the most serious obstacle to effective representation in the County. Rarely does the population of a municipality grow in a way that the population of the wards established by the Province at amalgamation is balanced, and the only way to address this dilemma is to design wards that move in the direction of building a single County community out of the previous 10 municipalities. Ward boundaries themselves are not a permanent fixture of the municipal landscape since they are intended to reflect the population distribution for a limited set of elections.

[43] Dr. Williams explained that ward boundaries are a means to an end; they provide representation to the inhabitants of existing settlements and communities but do not change those communities or their meaning. The inherent expectation is that each vote will have a reasonably equal impact on the election of a representative but also that each voter can exert an equivalent influence on the selection of the collection of representatives who will make decisions for the municipality.

[44] In critiquing the four options presented to the public during the consultation meetings, Dr. Williams opined that none of those options successfully meet the criteria he would use, or as used in the *Carter* case and by the Board. In his assessment, the ward design adopted in the By-law fails to meet the broad parameters of representation by population.

[45] It is Dr. Williams’ contention that several of the wards are not coherent communities of interest; many use boundaries that are not recognizable or easily remembered and the entire design is not based on independently verifiable population numbers for 2016, let alone anticipated population growth projections. He told the Board he can find no plausible rationale or justification for the proposed wards. The variations

appear to be treated as an innate consequence of the demographic features of the historic wards that will be addressed by falling back on asymmetric representation, which is another inequitable solution. The reality is that the “historic wards” are not themselves balanced in population and he sees no way to address population inequities or to achieve effective representation as long as it has been pre-determined that new wards must fit these pre-amalgamation constraints.

[46] In conclusion, it is Dr. Williams’ professional opinion that the Board should rescind the By-law and order a new set of wards based on a workable alternative.

[47] Under cross-examination, Dr. Williams affirmed that he did not consult with County residents or municipal officials; he did not contact the author of the 9 Ward Plan (Mr. Thompson); he did not undertake an external review and/or conduct an independent investigation to determine communities of interest; and he “did nothing” to establish the geography of the Municipality. He also confirmed that asymmetrical distribution is not mentioned in the *Carter* case and that neither the court nor the OMB have set a maximum voter parity deviation percentage. Moreover, he agrees that paragraph 26 of the *Carter* case provides an important message:

“It is my conclusion that the purpose of the right to vote enshrined in s. 3 of the *Charter* is not equality of voting power per se, but the right to “effective representation”. Ours is a representative democracy. Each citizen is entitled to be *represented* in government. Representation comprehends 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; as noted in *Dixon v. British Columbia (Attorney General)*, [1989] 4 W.W.R. 393 at 413, 35 B.C.L.R. (2d) 273, 59 D.L.R. (4th) 247 (S.C.), elected representatives function in two roles – legislative and what has been termed the “ombudsman role”.

[48] Dr. Williams confirmed he was retained by Mr. Klein after the appeal was filed. Moreover, he explained that the scope of his work was limited by the financial arrangements of his retainer. Notably, Dr. Williams did not attend the first day of the hearing, necessitating an early afternoon adjournment of the hearing. When asked by this Member to provide a copy of his Witness Statement to the Board and Mr. Fairbrother at the start of his testimony, Dr. Williams implied that due to the limitations of his retainer he had not prepared copies of this document. Consequently, the hearing was recessed so that copies could be processed by the Municipal Clerk, with the requisite fee being assigned to Mr. Klein.

REPRESENTATIONS BY THE MUNICIPALITY

[49] The Municipality takes the position that the 9 Ward proposal adopted by Council is reasonable: it achieves a common-sense amalgamation of the Bloomfield and Hallowell wards and effects ward boundary reform that improves voter parity while respecting communities of interest and historical boundaries. There was extensive public consultation leading to the adoption of the By-law and Council had more than enough information to make an informed decision about what was the best choice for ward boundary reform.

[50] Two County residents, John Thompson and Monica Alyea, and former MMAH official John Maddox gave evidence in support of the By-law on behalf of the Municipality.

[51] Except for four years while attending the University of Guelph and four subsequent years working for the Ontario Ministry of Agriculture, Food and Rural Affairs (“OMAFRA”) in Brantford, Mr. Thompson is a lifelong resident of the County and a third generation farmer in the Sophiasburgh Ward. Mr. Thompson, who served on County Council from 2006-2010, told the Board that the size of Council was also debated extensively during his tenure.

[52] Mr. Thompson said at that time the Council of the day established a Committee of Council with the objective of reducing the size of Council and changing the ward boundaries to fit the new number of Councillors. The committee ultimately provided a list of options to Council, but the process was deadlocked because every option presented involved splitting the existing wards and drawing new ward boundaries. As a result of the opposition to changing the boundaries, which at the time were considered to best reflect and represent the communities of interest, a decision for change was not made.

[53] Mr. Thompson is the author of the 9 Ward proposal adopted by County Council. He explained the objectives of his proposal are to provide a more equitable representation by population system, to maintain historical ward boundaries, and to reduce the size of Council. In the course of the ward boundary review process he appeared before Council several times. He also presented his proposal to the Prince Edward Federation of Agriculture, which he said, supports the plan.

[54] Mr. Thompson believes the benefits/strengths of the 9 Ward Plan are that the ward boundaries of the former townships are being preserved. In this regard, he explained that Bloomfield, which is an urban centre

but too small to qualify as a Ward, will be fittingly blended into Hallowell; representation by population is strengthened; the number of Councillors will be reduced while at the same time ample representation will be provided; the strength and diversity of a relatively large Council will be maintained; and the rural/urban balance and historical boundaries are being maintained. Also important, there will be no one area that has a controlling vote as may be the case with other proposals.

[55] In Mr. Thompson's view, "real County government" is one where every community of interest as defined by former Township boundaries has elected someone. He said large wards would make running for Council very expensive, favouring those candidates with the most financial resources or backing.

[56] Ms. Alyea has lived in the County for 59 years, and spent 20 years growing up on a farm in Hillier Ward. After spending seven years in Toronto attending university and working with OMAFRA, she returned to the County (in 1977) and has lived in the same house for the past 40 years.

[57] Ms. Alyea served as the Ward Councillor for South Marysburgh from 2000 – 2010 and continues to be very engaged in community affairs. She has actively participated in the current ward boundary review; she attended and presented at all the public consultation meetings and has made several presentations to Council.

[58] Ms. Alyea conceded that originally she was a staunch supporter of the status quo, but was moved from that position to supporting the 9 Ward model because in her view, that model had the most merit. It improves voter parity, reduces the size of Council, and maintains long standing communities of interest.

[59] Ms. Alyea explained that wards have been used as a basis for encouraging community involvement, support and volunteerism. In her view, the present ward boundaries are consistent with identifiable communities of interest and still have relevance in the daily lives of the majority of the electors and the Municipality.

[60] The County has a large geographic area and comprises a diversity of communities. It has tourism areas, beaches, retirement communities, agricultural activity areas, wineries, urban areas and rural areas. The 9 Ward structure recognizes and protects that diversity. Ms. Alyea said the County is 225 years old this year. The current configuration of Wards/Townships has been in place since 1871 – "that's 146 years". She

said that's 146 years having the same name for our rural community, 146 years of developed communities of interest, 146 years of being a community and 146 years of governance as that community. In her view, with the exception of the merging of the Bloomfield and Hallowell Wards, the existing ward structure does not need to be changed.

[61] Mr. Maddox was retained by the Municipality in November 2016 for the purpose of conducting a review of the proposed By-law and the review process. Mr. Maddox was a Senior Municipal Advisor with MMAH at the time of amalgamation and has knowledge of the County Amalgamation Order.

[62] Mr. Maddox testified that the 10 wards established by the Province in 1998 recognized the existing historic communities and was consistent with the criteria in the *Carter* case, decided in 1991. The only ward boundary changes effected by the By-law results from the merging of the Bloomfield Ward with the Hallowell Ward. Otherwise, all exterior ward boundaries are being maintained and current communities of interest and service areas are respected. Mr. Maddox pointed out that the proposed 9 Ward system will result in an improvement in voter parity and maintains historic boundaries and existing communities of interest.

[63] Mr. Maddox submits that the population figures of the new combined ward when compared with the other remaining wards falls within a reasonable range. The census figures set out following indicate that population figures have not changed much since the time of amalgamation:

County Population % Change since Amalgamation

2016 – 24,735	-2.1%
2011 – 25,258	-0.9%
2006 – 25,496	+2.4%
2001 – 24,901	-0.6%
1996 – 25,046	(Amalgamation – January 1, 1998)

[64] As illustrated by these numbers, population increases in the County as a whole and in the individual wards has not occurred in any significant or meaningful way. The difference from the 1996 Census to the 2012 Census demonstrates that the County's overall population has decreased by 311.

[65] Mr. Maddox confirmed that many municipalities continue to use existing ward boundaries when restructuring, particularly where there has been limited growth which has not necessitated an alteration of boundaries. In any event, at any time an electoral ward experiences a significant increase/decrease shift in population the municipal Council has the ability to pass a by-law to alter the electoral ward boundaries.

[66] Mr. Maddox maintains that while effective representation seeks relative parity of voting power, the focus must be on effective representation and not mathematical parity. The Courts and the OMB have noted that effective representation cannot be achieved without taking into account contributing factors like geography, historic boundaries, and communities of interests. In this respect, it is his opinion that the 9 Ward proposal adopted by Council maintains a reasonable balance of all the ingredients that go into ward boundary consideration.

[67] In the County's case, voter parity is being addressed by the use of different numbers of Councillors in some wards. The estimated population divided by the number of Councillors for each of the 9 wards results in a population per Councillor that deviates from absolute parity by no more than 28%, with the exception of South Marysburgh which deviates by 38%. Mr. Maddox indicated that the information provided to him was that at the time of amalgamation the 1996 population for South Marysburgh was 1,018 and the percentage at the time was 35% so there is a slight increase in the parity deviation for that ward. The population of South Marysburgh increased by just under 100 people from 1996 to 2015 (1.1% increase). In his view, the South Marysburgh deviation for voter parity is more than offset by the other *Carter* criteria. The elector counts have also been reviewed to ensure reasonable equity as well. If elector counts are used, the deviation in South Marysburgh is reduced from 38% to 30%.

[68] Mr. Maddox pointed out that the Act does not prescribe a process that must be followed in the review of ward boundaries. However, the process must be fair and the Municipality is expected to take necessary steps to ensure transparency and access to all ratepayers. The County process included an extensive, open and transparent process which provided numerous opportunities for public review and comment. In addition to the nine advertised public meetings held in wards throughout the County to seek input from the public, a survey was conducted. In his opinion, the 9 Ward proposal adopted by Council has proper regard for voter parity when balanced with communities of interest, historical boundaries and geographical boundaries, and serves the public interest well.

REPRESENTATIONS BY THE PARTICIPANTS

[69] Participant status was granted to Dennis Fox, Kathleen Vowinckel and David Mowbray.

[70] Mr. Fox is opposed to the decision by Council to reduce the number of wards by one and the number of Councillors by only two. Mr. Fox believes it is time for the OMB to make a fair and responsible decision on the electoral boundaries for the County based on Council's own set of priorities [criteria] combined with the recommendations from the Citizen's Assembly. He also said he objects to losing a Councillor for his ward.

[71] It is Mr. Fox's view that having 16 Councillors to govern less than 25,000 people amounts to "over-governing". He recounted the history, failed review processes, and the substantive costs incurred over the past 10 years attempting to resolve the matter of the size of Council, all of which in his view have been to no avail. In his words, "real damage has been inflicted on the democratic process at the municipal level in this community".

[72] Mr. Fox's frustration with the process, and what he perceives as a lack of decision and the questionable conduct of Council Members was apparent. It is his strongly held belief that the will of the public is being ignored and he wants the OMB to take control of the situation. He concluded his presentation by saying that at this point "he just wants a decision to be made"!

[73] Ms. Vowinckel served three terms on the former Sophiasburgh Township Council and now resides in Ameliasburg. She was on Council at the time that amalgamation was "forced" on the County. Ms. Vowinckel told the Board that the Provincial amalgamation directive was highly disputed, with the Townships of Ameliasburgh and Sophiasburgh going so far as to taking legal action in an attempt to prevent it from happening. The final resolve was that the 10 then-existing Townships were replaced by Wards, keeping the boundaries, historic structure and relationships intact.

[74] Ms. Vowinckel maintains that the first real public awareness of the issue of the size/composition of County Council came about as a result of the referendum appearing on the 2010 municipal election ballot. She told the Board that although the results of the referendum did not authorize change, or even meet the threshold for pursuing the issue of downsizing Council, a few citizens kept pushing for the matter to be reopened. She said although consecutive Councils have opted to maintain the status quo, "we still keep

going back to the issue and over the same ground". She recounted a petition being circulated in 2013 in response to the continued "push for change". The petition, which solicited support for keeping the County the same, was signed by more than 800 people in just two weeks. It is her contention that this issue has taken up too much of Council's time and has placed a significant financial burden on the County.

[75] Ms. Vowinckel told the Board she has been involved in the possible restructuring process for many years, and was chosen for the Citizen's Assembly. In her view, the process was flawed in that the Citizen's Assembly did not have a mandate to consider the implications of changing the size Council on the ward boundaries. Notably, Ms. Vowinckel registered a dissenting opinion in respect to the recommendation of the Citizen's Assembly.

[76] Ms. Vowinckel said although she does not always agree with Council, it is her view that over the years County Council has done its very best to allow everyone to be included in the process. In the case of the current review, several citizens presented different visions of how to solve the problem of possible redistribution. These options were presented and discussed at public meetings held throughout the County, and citizens were encouraged by Council to voice their opinions and to identify their choice of preferred options. It is her contention that "the public process has been more than fair".

[77] Ms. Vowinckel made reference to a "branding tool" manual commissioned by Council a few years ago for the purpose of "moving the County forward in a changing economy". This manual describes the County as "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 commits that the County "will continue to celebrate these timeless traditions". It is her view that these traditions are important to the County's new focus as a tourist destination. She maintains that it is that sense of community that provides the cohesiveness and strength of the area - "it is what makes the County a special place".

[78] Ms. Vowinckel told the Board there are very strong opinions held in different areas of the County. Currently, most constituents know their Councillors personally and Councillors typically know their constituents very well. In her view, any major changes in electoral distribution would be very disruptive and would alienate politicians from their constituents.

[79] At the time of amalgamation, Bloomfield was granted an exception for both historical and economic reasons. She said although many citizens did not want any changes to be made to the current composition of Council, everyone was aware of the representation-by-population imbalance created by the Bloomfield Ward. In this case, the incorporation of Bloomfield into Hallowell was a compromise that the majority of Council and concerned citizens could agree to. It is her view that this compromise will serve to eliminate a very flagrant disparity, while at the same time preserve the very essence of the County. In this regard, Council has not created incoherent communities of interest; to the contrary, the historical communities of interest of the County are being preserved.

[80] Ms. Vowinckel encouraged the Board to maintain the decision of County Council and “finally put this matter to rest so that the elected officials of the local government can focus on governing for the future”.

[81] Mr. Mowbray is a resident of Sophiasburgh and has lived in the County for most of his life. He supports the 9 Ward, 13 Councillors proposal that was approved by Council.

[82] Mr. Mowbray told the Board that historically all County Townships/Wards have maintained their own identities, facilities and social groups. In this regard, he pointed out the aspects of Sophiasburgh which he maintains defines it as identifiable community of interest. For example, the local church is well attended and provides a number of activities including a children’s summer program. The local public school, which was scheduled for closure at the end of the school year, has been given a one-year reprieve by the Board of Education as a result of a proposal brought forward by local community residents. The Sophiasburgh Recreation Community organizes a Winter Carnival, Maple Pub Night, occasional dances, an Easter Egg Hunt and a Halloween Party for local children. The Women’s Institutes provides luncheons and dinners for local seniors.

ANALYSIS, FINDINGS, AND DISPOSITION

[83] In arriving at this disposition, the Board has reviewed the documents and materials provided and given careful consideration to the evidence and opinions of the expert and lay witnesses, the representations of the Participants, and the submissions and case law referred by Messrs. Klein and Fairbrother.

[84] The Board will first deal with the matter of the ward boundary proposal submitted by Mr. Klein.

[85] Principally, due to the lateness of the submission local residents and property owners were not given a reasonable opportunity to review and comment on Mr. Klein's proposal. In my view, that flies in the face of the importance of public consultation and the right of engagement in a process that is extremely democracy sensitive.

[86] Although s. 222 of the Act does not prescribe a process for a Ward Boundary review, or require that a public meeting be held, County Council adopted a review process that invited and encouraged engagement by the public. In that regard, an invitation to submit proposals was extended to the public and June 4, 2015 was established as the deadline for submissions.

[87] Several comments and proposals were submitted within the requisite timeframe. Those proposals were then reviewed and evaluated in accordance with the established criteria and four preferred options (as determined by Council) were put forward for consideration at nine public ward meetings held in the month of September. Many of the presenters of proposals and members of the local community have been actively engaged in both the current review and previous exercises involving the size of Council and ward structure of the County. There is no question that the public participation and consultation process was comprehensive and well beyond what is required and may typically be expected to.

[88] By contrast, there was no evidence of involvement by Mr. Klein in the process until his attendance at the September 9, 2015 public consultation meeting held in Athol. Mr. Klein followed that with a deputation at the October 15, 2015 Council meeting at which time he introduced a new-concept 10 Ward plan. He also attended and spoke at the Special Council Meeting convened for the purpose of deciding the ward boundary matter on October 29, 2015. Mr. Klein told the Board that the response to his proposal from Council was that "he came to the party too late". The Board agrees.

[89] Equally important to consider, is that there was not enough information made available to Council in advance of the scheduled vote on the ward boundary matter, and therefore, Mr. Klein's proposal was not considered. The Board takes note that the proposal submitted Mr. Klein would appear to adopt a novel approach for identifying wards, whereby, ward boundaries are determined almost entirely on the basis of census population data (dissemination blocks). While this approach may well have strength as far as voter parity is concerned, it has not been demonstrated that it responds appropriately to the other established

criteria, or the criteria set out in the *Carter* case, such as geography, effective representation, community history and communities of interest.

[90] Mr. Klein has asked the Board to repeal the By-law and to direct that the County be re-divided in accordance with the criteria outlined in the *Carter* case.

[91] Principally, although on appeal the Board may amend the By-law, I do not agree that s. 222(7) of the Act confers upon the Board the powers to issue a directive requiring a municipality “be re-divided”. More importantly, even if it were within the purview of the Board to do so, I would not choose to exercise that authority, because in my view, such a directive would be dismissive of the will of the people and undermine the authority of the municipal Council.

[92] In this respect, the view of this Member enunciated in a previous decision and referred to the Board by both Mr. Klein and Mr. Fairbrother continues to be apropos in this case:

[paragraph 58] “the Board is reluctant to interfere with decisions made by the duly elected 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” (*RE Hodson, 2013 CarswellOnt 17030*).

[93] To better appreciate the essence of the relief being sought by Mr. Klein it is also important to understand the ramifications of the Board allowing the appeal. In this case, the only boundary change effected by the appealed By-law occurs as a result of a new, single ward being created (Bloomfield/Hallowell) from what is now two wards (Bloomfield Ward and Hallowell Ward). The provisions of the By-law respecting the remaining eight wards are essentially moot because they replicate the existing electoral ward boundaries first established at the time of amalgamation. The outcome, should the Board allow the appeal, is that the By-law is repealed; the existing 10 electoral ward boundaries will remain in place and the current electoral districts will continue to be in force and effect, at least through the next election cycle (2018 – 2022).

[94] The situation in the County is that the population of the Bloomfield Ward is substantially lower than that of all the other wards. As Mr. Maddox correctly pointed out, the merging of the Bloomfield and Hallowell Wards will improve voter parity in the County. The Board did not hear any objection or unfavorable comments about the merging of the Bloomfield and Hallowell Wards at the hearing. In fact, it was Ms.

Vowinckel's impression that everyone was aware of the representation-by-population imbalance created by Bloomfield, and as such, the incorporation of Bloomfield into Hallowell was a compromise that the majority of Council and concerned citizens could agree to.

[95] The combining of the Bloomfield and Hallowell Wards results in the elimination of a Councillor seat on County Council. For some of the residents, such as Mr. Fox, the concern is not voter parity per se, but rather, it is the size of Council that he takes issue with. In his view, there are too many Members of Council. In fact, it was the size of Council issue that led to the formation of the CCC in 2008; it was the size of Council issue that triggered the Petition of Electors in 2009; it was the size of Council issue that led to a Question being placed on the 2010 election ballot; it was the size of Council issue that influenced the formation of the CCA in 2013; and, it was the size of Council issue that was the catalyst for the current review.

[96] Ironically, if the appeal is allowed there will continue to be a 10 Ward system in the County, and both the Bloomfield and Hallowell Wards will be individually represented on Council. In other words, the one electoral ward boundary change that improves voter parity and reduces the size of Council, and the single ward boundary change that most people can agree to, will be negated.

[97] In his closing submissions, Mr. Klein critiqued his arguments in support of the appeal, as follows:

1. the lack of voter parity;
2. the failure to provide representative accountability and accessibility;
3. the creation of an incoherent collection of communities;
4. the emphasis on maintaining the existing wards;
5. the failure to consider communities of interest;
6. the lack of informed criteria;
7. the failure to have proper advice;
8. relied on inaccurate and misleading data;

9. the failure to analyze the options in accordance with the *Carter* criteria; and
10. violates the Charter of Rights and Freedoms.

[98] In the circumstances, Mr. Klein's objectives are not attainable regardless of whether the Board allows or dismisses the appeal. In my view, dismissing the appeal is the better option because that way voter parity will be improved, albeit slightly, and the size of Council will be reduced by one Member as a result. On the other hand, allowing the appeal equates to maintaining the status quo, the option least preferred by members of the community and County Council. The Board agrees that the status quo is not a preferable option, nor do I expect that it is one that Mr. Klein either intended or is hoping for. In fact, failing to seize the opportunity to even improve voter parity is not consistent with Mr. Klein's argument in respect to voter parity (Item 1 above), and does not maintain the spirit of the *Carter* case or further the principle of representation by population. The Board can agree that, as Mr. Fairbrother put it, the merging of the Bloomfield and Hallowell Wards is "a step in the right direction". The By-law will implement the merging of these wards.

[99] In conclusion, the Board finds that the By-law is appropriate. The public consultation process was open and fair and the engagement by the public was impressive. The Board is satisfied that Council had proper regard for the greater public good, and only after assiduous consideration made its decision. The Board finds no reason to interfere with the decision made by County Council.

ORDER

[100] The Board orders that the appeal is dismissed and By-law No. 3719-2016 of the Corporation of the County of Prince Edward shall come into force and effect on December 1, 2018.

"M. A. Sills"

M. A. SILLS
MEMBER

If there is an attachment referred to in this document,
please visit www.elto.gov.on.ca to view the attachment in PDF format.

Ontario Municipal Board

A constituent tribunal of Environment and Land Tribunals Ontario
Website: www.elto.gov.on.ca Telephone: 416-212-6349 Toll Free: 1-866-448-2248