



# **Report of Referendum Commissioner to the Speaker of the Legislative Assembly of Prince Edward Island pursuant to s. 7(1) of the Electoral System Referendum Act**

**August 2019**

August 05, 2019

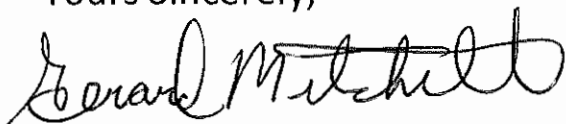
Honorable Colin LaVie  
Speaker of the Legislative Assembly  
Prince Edward Island  
PO Box 2000  
Charlottetown, PE  
C1A 7N8

Dear Mr. Speaker:

Please find enclosed my report to you concerning the matters referred to in section 7(1) of the *Electoral System Referendum Act*, R.S.P.E.I. 1988 Chapter E-2.2 (ESRA).

Unfortunately, I could not deliver this report prior to the end of the recent Legislative Assembly session. I did not receive all the financial information I needed until after it had closed.

Yours Sincerely,

A handwritten signature in black ink that reads "Gerard Mitchell". The signature is written in a cursive style with a large, prominent "G" and "M".

Gerard Mitchell

Referendum Commissioner

## Background

The *Electoral System Referendum Act*, R.S. P.E.I. 1988 Chapter E -2.2 (ESRA) was enacted in 2018 to facilitate a referendum on the Province's electoral system (The Referendum).

I was appointed Referendum Commissioner by the Legislative Assembly on November 28<sup>th</sup>, 2018 pursuant to s. 5(3) of the ESRA.

My role was to oversee and guide the process of the Referendum respecting the Mixed Member Proportional (MMP) system that was to be conducted throughout the Province in conjunction with the General Election of April 23, 2019.

Referendum voters were asked whether they wanted to change the Province's current voting system to a mixed member proportional system. Those wanting change were to vote "Yes". Those who did not want the change were to vote "No".

The Province's current voting system is referred to as First Past the Post (FPTP) or single member plurality. It is a system in which the candidate who gets the most votes wins. MMP is an electoral system in which voters get two votes. One to decide on a representative for their district and one for a political party.

The main argument for changing to an MMP system is that it will produce more proportional results than FPTP.

Sometimes FPTP can result in very disproportionate results. For example, in 2015 the Liberal party got 41% of the popular vote but 66% of the seats in the Legislature. Under the MMP system described in schedule 2 of the ESRA there would not likely be any lop-sided legislatures. The most seats (of 27) one party could win would be eighteen – except in the unlikely event it got more than 66% of the popular vote. Thus, there would always be a substantial number of opposition members in the Assembly.

Under the proposed MMP system a party would have to win 14 of the 18 districts seats (78%) to have enough to form a majority government without getting any party list seats. Realistically, the chance that any party winning 11 or more district seats would get any list seats would be very slim because they would have to win more than 41% of the popular vote. In other words, under an MMP system minority governments would be routine.

In addition to more proportionality, proponents of MMP argued that it would bring more collaboration and diversity to the legislature.

Opponents of MMP argued it was too confusing and complicated; that it would reduce rural representation and lead to unstable and indecisive government.

According to the ESRA the Government would be bound to make the change to MMP only if a majority across the Province voted “Yes” **and** a majority of voters in at least 60% (17) of the Province’s 27 districts also voted “Yes”.

The Referendum vote took place on April 23, 2019. The “No” side got 51.74% (42,372) of the 81,888 votes validly cast across the Province. The “Yes” side got 48.26% (39,516). The difference was 3.48% (2856). The “No” side got a majority in 13 of the 27 districts. The “Yes” side got a majority in 14 districts. [See: district by district breakdown and the map showing the location of the districts won by the “Yes” and “No” sides, prepared by Paul Alan of Elections PEI and attached to this report as Appendices A and B.]

The results of the Referendum mean that Government is not bound to take any steps under s. 4(2) of the ESRA to put forward legislation to implement the Mixed Member Proportional voting system. Accordingly, the FPTP voting system remains in place.

### **Section 7 Report**

Section 7(1) of the ESRA requires that I deliver a report to you concerning three matters.

The first relates to the public education and information efforts undertaken pursuant to s. 6(1)(a) of the ESRA.

The second relates to the financial reports to be filed with me within ninety days following ordinary polling day by the two Registered Referendum Advertisers pursuant to s. 12(4) of the ESRA.

The third concerns any matters related to the Referendum process that I consider should be brought to the attention of the Legislative Assembly.

### **1- Public Education and Information**

The public education and information efforts undertaken pursuant to s. 6(1)(a) of the *Electoral System Referendum Act* included the following:

- Established an Office of the Referendum Commissioner (ORC) located at 149 Kent Street in Charlottetown. In addition to the Commissioner the ORC had two employees. Laura Lodwich was the Office Manager and Matthew MacPhee was the Director of Communications.
- The ORC was open from 9 to 5 Monday to Friday to provide information and written materials to anyone interested in the Referendum and to assist those interested in becoming Registered Referendum Advertisers.
- Set up and maintained a website [www.referendumpei.ca](http://www.referendumpei.ca) on which information regarding the Referendum process, options, and rules was posted. The website was in both English and French.

- Met with representatives of all political parties regarding the participation of parties and candidates in the Referendum process.
- Presented at 26 Referendum information events across the Province between January 17<sup>th</sup>, 2019 and April 17<sup>th</sup>, 2019.
- Provided members of the public attending information sessions with booklets and other handouts containing detailed information about the Referendum process and the rules around Referendum advertising contributions.
- Extensively used Facebook, Twitter, and Instagram (including a live feed of an information session from the College of Piping in Summerside on April 11<sup>th</sup>, 2019).
- Participated in a Public Forum on the Referendum hosted by CBC on March 28<sup>th</sup>, 2019.
- Did several radio interviews regarding Referendum issues.
- Published three articles about Referendum issues in *The Guardian* and *Journal Pioneer* newspapers. The first described the proposed Mixed Member Proportional electoral system. The second outlined the rules regarding advertising and contributions. The third was a summary of the Referendum process and options.

- Created and mailed out a Voter's Guide about the Referendum options to every household in the Province on February 21<sup>st</sup>, 2019.
- Published a full-page advertisement on April 10<sup>th</sup>, 2019 explaining the Referendum options in *The Guardian*, *The Journal Pioneer*, *The Eastern Graphic*, *The Western Graphic* and *La Voix Acadienne*.
- Ran daily radio advertisements during March and April 2019.

A copy of my basic explanation of the Referendum process and options to the public is enclosed with this report as Appendix C.

## **2- Financial Reports of Registered Referendum Advertisers**

Two groups applied for and were granted Registered Referendum Advertiser status. A group called "No What to Vote" became a Registered Referendum Advertiser proponent for the "No" vote. A group called "Vote Yes PEI" became a Registered Referendum Advertiser proponent for the "Yes" vote. Each of the groups successfully applied for public money. Each was given \$75,000 for their campaign.

Pursuant to s.12(4) of the ESRA the Financial Agents for each of the two Registered Referendum Advertisers were required to file financing reports with me within 90 days after ordinary polling day. The reports were to be accompanied by invoices, receipts and other vouchers. The



report was also to be accompanied by an affidavit of the Financial Agent verifying the report and stating that no payment not permitted by the ESRA was made with his or her knowledge and consent, and that to the best of his or her knowledge and belief every expense incurred is entered on the report.

The Financial Agent for Vote Yes PEI, Brenda Oslawsky, filed her financing report with me on June 24, 2019. The report was very thorough and complete. The report shows that Vote Yes PEI incurred Referendum expenses totaling \$74,947 which were duly paid for from the public money it received. The report was accompanied by the invoices, receipts, and the verifying affidavit required by s.12(4) of the ESRA. The report also included a cheque to the Minister of Finance for \$53.00, being the unused portion of the Public Money Vote Yes PEI had received.

After reviewing Ms. Oslawsky's report, I am satisfied that \$74,947.00 of the public money received by Vote Yes PEI was used for the payment of advertising, acquiring and paying for services, acquiring meeting or event space, providing refreshments and acquiring and distributing promotional material. All of these are legitimate "Referendum Expenses" as defined in s. 1(u) of the ESRA. I am also satisfied that none of the Public Money received by Vote Yes PEI was used to incur any capital expense, to make political donations, or for any other improper or prohibited purpose.

Sean Bradley, the Financial Agent for No What to Vote, filed his financing report on July 18, 2019. This report, too, was very thorough and complete. The report shows that No What to Vote incurred

Referendum expenses totaling \$66,538.37 which were duly paid for from the Public Money it received. The report was accompanied by the invoices, receipts, and the verifying affidavit required by s.12(4) of the ESRA. The report also included a payment to the Minister of Finance for \$8,461.63 being the unused portion of the Public Money No What to Vote had received.

In a letter accompanying his report Mr. Bradley stated: “No What to Vote” wishes to note the intention was to use all of the \$75,000 in public funds for the referendum campaign. An unforeseen vendor error resulted in a refund of \$7,800.83 in the final days of the campaign; not enough time to redirect the refunded funds towards other campaign expenditures.”

After reviewing Mr. Bradley’s report, I am satisfied that \$66,538.63 of the Public Money received by No What to Vote was used for the payment of advertising, acquiring and paying for services, and acquiring and distributing promotional material. All of these are legitimate “Referendum Expenses” as defined in s. 1(u) of the ESRA. I am also satisfied that none of the Public Money received by No What to Vote was used to incur any capital expense, to make political donations, or for any other improper or prohibited purpose.

Summaries of the spending of Public Money by both Registered Referendum Advertisers are attached to this report as Appendices D and E.

### **3 – Some comments and observations about the Referendum and its aftermath based on my own opinions and my interactions with members of the public during and after the process.**

The Yes side did not get enough votes to bind government to make the change to MMP, largely because most rural Islanders voted No. The main reason they voted against MMP seemed to be their belief that the system proposed in Schedule 2 of the ESRA would result in a diminishment of their representation. Under the proposed MMP system, districts would be larger and fewer, while Province wide party list seats would most likely be won by urban candidates. MMP might have received more support from rural voters if the list seats were regional rather than province wide.

Opponents of MMP argued strenuously that it would lead to constant minority governments that would be indecisive and unstable. Proponents of MMP argued that minorities would be good because they would require more collaboration. Ironically, we now have a minority government delivered via the First Past the Post (FPTP) system. Three other Canadian Provinces with FPTP voting systems also have minority governments. Obviously, FPTP systems can no longer be counted on to regularly deliver majority governments.

Many members of the public expressed the view that the threshold for change to MMP was set too high by the Legislature. They complained that requiring more than a simple Island wide majority was unfair and anti-democratic. Even the “No” side has complained about having to get majorities in at least 60% (17) of the districts in addition to a Province wide majority.

The thing about the proposed MMP system that seemed to cause the most difficulty for the public was the use of the second part of the ballot to determine the popular vote and thus the allocation of list seats. Although independent candidates could run in district elections, many still thought the first part of the ballot should be used to determine the popular vote and the entitlement to list seats for each of the parties. Votes for independents could easily be discounted. In the 2019 General Election independents got only 282 votes in total.

In my opinion, the debate in the Legislature about the ESRA was too much about the Referendum rules and not enough about the proposed MMP system. The results of the Referendum might have been somewhat different if Schedule 2 of the ESRA had:

1. Mandated democratic selection procedures for Party list candidates;
2. Included a threshold for eligibility for list seats;
3. Clarified whether there could be dual candidacy; and
4. Explained how list seat vacancies occurring between general elections would be filled.

The failure of Schedule 2 to address these four matters was problematic to many members of the public. Being told that these issues could be addressed later did not satisfy their concern. Unfortunately, Schedule 2 of the ESRA which described the proposed MMP system was not the subject of any debate in the Legislative Assembly during the Spring session of 2018. If Schedule 2 had been debated these issues might have been addressed.

The threshold for eligibility for list seats in a PEI MMP system, in my view, should be set at 10% (about 8000 votes). This would avoid factionalism and keep single issue parties from taking up seats.

I am also of the opinion that if the Province ever changes to an MMP system, the use of democratic procedures for the selection of party list candidates should be mandated by legislation.

Although the results of the Referendum on the voting system were split, there was widespread consensus on both sides of the Referendum question that our democratic system could do with some reform. The recent changes to the structures of standing committees represents a step in that direction.

I don't think party leaders should owe allegiance to any one district or section of the province. A change that could work in conjunction with either a FPTP or an MMP system would be to add seats in the Legislative Assembly for leaders of parties that get at least 10% of the popular vote in a general election. This means leaders would not run in any of the 27 districts. Their entitlement to occupy a seat would depend on the Province wide performance of the parties they lead. This change would increase the number of seats by perhaps three or four.

## Thanks

Before ending my report, I wish to thank the Standing Committee on Legislative Management and the Legislative Assembly for giving me the opportunity to serve as Referendum Commissioner. It was an interesting and enjoyable experience. I also thank Joseph Jeffrey, Clerk of the Legislative Assembly, and all the Legislative Assembly staff for their support and cooperation. Thanks, too, to Tim Garrity, Stephanie Roberts and Paul Alan of Elections PEI. Last, but certainly not least, I thank my Office Manager Laura Lodwich and my Communications Director Matthew MacPhee. They both did a great job. It was a pleasure to work with them.

A handwritten signature in black ink, reading "Gerard Mitchell". The signature is written in a cursive, flowing style with a large initial "G".

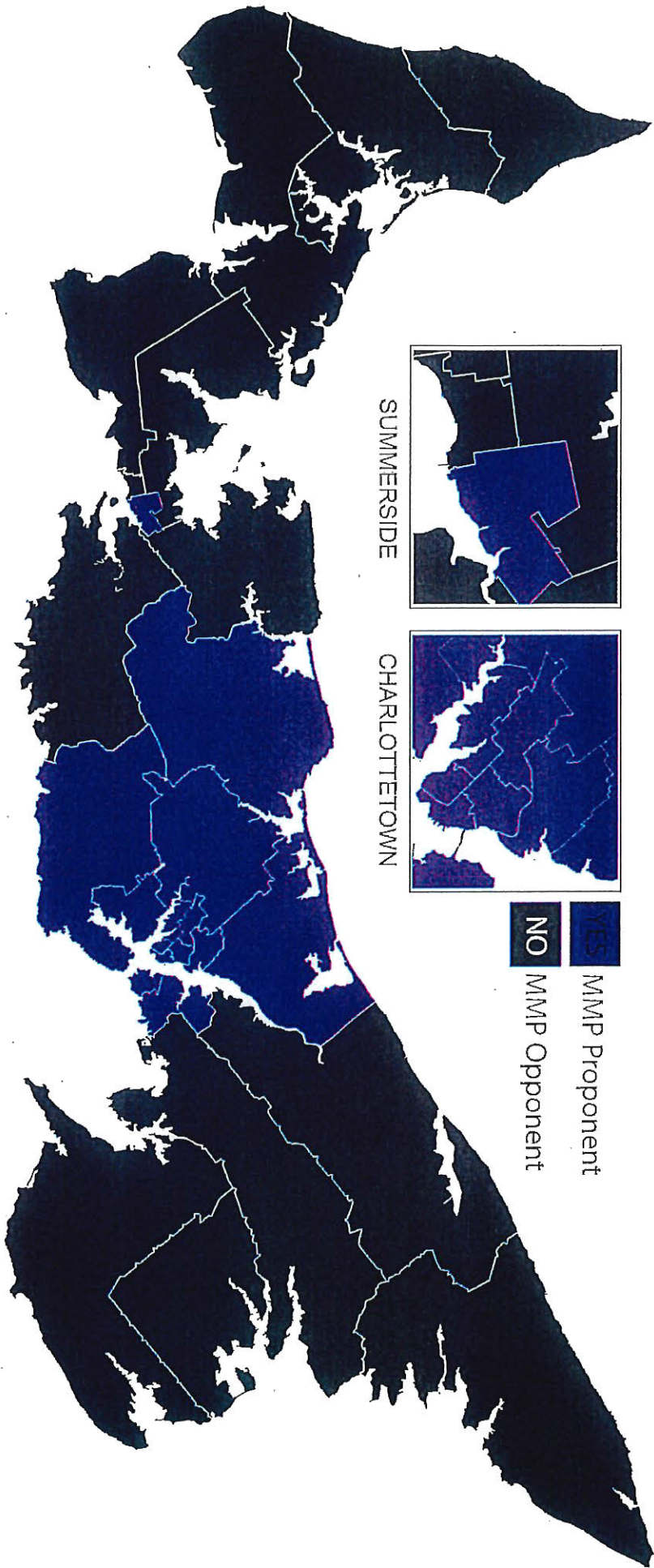
Gerard Mitchell

Referendum Commissioner

## Appendix A

District	NO	YES	TOTAL VOTES	NO	YES
<u>1</u>	1763	1203	2966	59.44%	40.56%
<u>2</u>	1589	1448	3037	52.32%	47.68%
<u>3</u>	1586	1339	2925	54.22%	45.78%
<u>4</u>	1585	1338	2923	54.23%	45.77%
<u>5</u>	1271	1736	3007	42.27%	57.73%
<u>6</u>	1300	1665	2965	43.84%	56.16%
<u>7</u>	1626	1375	3001	54.18%	45.82%
<u>8</u>	1564	1698	3262	47.95%	52.05%
<u>9</u>	997	1365	2362	42.21%	57.79%
<u>10</u>	1572	1787	3359	46.80%	53.20%
<u>11</u>	1571	1599	3170	49.56%	50.44%
<u>12</u>	1078	2041	3119	34.56%	65.44%
<u>13</u>	1316	1893	3209	41.01%	58.99%
<u>14</u>	1415	1583	2998	47.20%	52.80%
<u>15</u>	1544	1568	3112	49.61%	50.39%
<u>16</u>	1619	1769	3388	47.79%	52.21%
<u>17</u>	1539	1919	3458	44.51%	55.49%
<u>18</u>	1619	1696	3315	48.84%	51.16%
<u>19</u>	1665	1511	3176	52.42%	47.58%
<u>20</u>	1635	1548	3203	51.67%	48.33%
<u>21</u>	1570	1624	3194	49.15%	50.85%
<u>22</u>	1476	1465	2941	50.19%	49.81%
<u>23</u>	1661	1415	3076	54.00%	46.00%
<u>24</u>	1329	1079	2408	55.19%	44.81%
<u>25</u>	1992	667	2659	74.92%	25.08%
<u>26</u>	2271	595	2866	79.24%	20.76%
<u>27</u>	2199	590	2789	78.85%	21.15%
<b>TOTAL</b>	<b>42372</b>	<b>39516</b>	<b>81888</b>	<b>51.74%</b>	<b>48.26%</b>
	<b>51.74%</b>	<b>48.26%</b>			

# Appendix B





## Appendix C

### The PEI Electoral System Referendum Explanation

The referendum asks – Should PEI change its electoral system to a mixed member proportional system? If you don't want to change, you vote NO. If you want to change to an MMP system, you vote YES.

Anyone eligible to vote in the General Election is eligible to vote in the Referendum. Voting on the referendum will be at the same times and places as the General Election.

If the "Yes" side gets majorities provincially and in 60% of the 27 districts the Government will take steps to implement an MMP system for the next following General Election.

The electoral system PEI has now is commonly referred to as "first past the post" (FPTP). Each voter gets one vote for a candidate to represent his or her district. The candidate that gets the most votes wins the seat. The party that wins the most seats usually governs. However, there is no proportionality between the number of votes a party gets in the election and the number of seats it gets. Parties often get more or less seats than their share of the popular vote warrants.

The alternative to FPTP being put forward in the referendum is a "mixed member proportional system". MMP does not do away with the FPTP system altogether. It mixes FPTP with proportional representation in a way designed to produce more balanced results than pure FPTP. Under MMP a party that gets 30% of the votes will get about 30% of the seats. MMP can produce a majority government but more often the result will be a minority or coalition.

Under the proposed MMP system there will still be 27 seats in the Legislature. However, only 18 of them will be district seats. The other 9 will be Province-wide party list seats. The 18 districts would be considerably larger than any of the 27 are now.

An MMP ballot will be in 2 parts and each voter will have 2 votes. On the first part of the ballot a voter would mark an X for their preferred district candidate who might represent a party or be an independent. Eighteen district MLAs will be elected this way on a FPTP basis.

The second part of the ballot is strictly for parties and party list candidates. Independents are not allowed. Each party puts forth a list of its candidates for the 9 seats available on this part of the ballot. A voter will vote for his or her preferred party by marking an X for one of the candidates on that party's list. Nine province-wide MLAs will come from this part of the ballot.

Under an MMP system, if a party's list candidates together get 40% of the total validly cast votes on the second part of the ballot, that party will be entitled to 40% (11) of the 27 seats in the Legislative Assembly. If the party won less than 11 seats at the district level, it would be allocated some of the 9 province-wide seats to make up the difference. For example, a party that got 40% of the validly cast votes on the second part of the ballot but only won 8 district seats would get 3 of the 9 province-wide list seats. The 3 seats would be occupied in the Legislative Assembly by the 3 highest vote-getters on the party's list.

If the party that got 40% of the popular vote wins 13 district seats it would not be eligible for any of the 9 list seats because it already has more than enough (48%) to reflect its share of the popular vote. However, the party would keep all of the 13 district seats it won. The 9 list seats would be allocated among the remaining parties that did not win enough districts to reflect their share of the popular vote.

**Appendix D**

THIS IS EXHIBIT " A " REFERRED TO IN THE AFFIDAVIT  
 OF Brenda Oslawsky SWORN TO BEFORE  
 ME THIS 24 DAY OF June, 2019.

**Vote Yes PEI**

Paula Campbell  
 A COMMISSIONER FOR TAKING OATHS AND AFFIDAVITS  
 IN THE SUPREME COURT OF PRINCE EDWARD ISLAND

<b>Overview of Expenditures</b>	
Digital/Social Media Staff	6000.00
Campaign Staff	8205.00
Print Ads	13425.22
TV Ads	5749.23
Radio Ads	3054.29
Signage	6910.75
Social Media Advertising	6735.23
Website/Database	443.93
Printing	6376.04
Mailing	12903.00
Travel Costs	1754.50
Miscellaneous	473.41
Rent/Office Expense	2916.40
<b><i>Returned Amount</i></b>	<b>53.00</b>
<b>Total</b>	<b>75000.00</b>

## Appendix E

No What To Vote  
Registered Referendum Advertiser 2019  
Financial Summary

<b>Revenue</b>	
Government Funding	\$ 75,000.00
<b>Expenditures</b>	
Postage	15,470.67
Printing	11,047.86
Signage	7,547.78
Signage installation and removal	3,000.00
Office	297.52
Communications Contractor	3,200.00
Advertising	20,584.40
Social Media	1,330.94
Buttons	276.85
Miscellaneous	3,782.35
Total Expenditures	<u>66,538.37</u>
Excess of Revenue of Expenditures	<u>\$ 8,461.63</u>