

Submission to
Municipality of Killarney
Ad Hoc Committee
Review of Ward Structure/Council Representation
Public Input Meeting
Saturday, June 1, 2013

Robert J. Williams, Ph.D.
Public Affairs Consultant
~ specializing in municipal electoral systems ~
Waterloo, Ontario

This submission is prepared *pro bono publico* in response to a request from a group of electors in Killarney for advice in relation to participation in the Ad Hoc Committee Public Input Meeting, Saturday, June 1, 2013.

The author is a retired faculty member from the Department of Political Science at the University of Waterloo. During his 35-year career, Dr. Williams' research and teaching has included municipal government and electoral systems. Since retirement he has conducted independent ward boundary reviews for Kitchener, Milton, Whitchurch-Stouffville, Windsor, New Tecumseth, Oakville and Markham and worked in partnership with Watson and Associates, Economists on ward boundary reviews in Bradford West Gwillimbury, Gravenhurst, Barrie and Pelham. Dr. Williams also provided advice to municipal clerks on ward boundary issues in Ajax, Wilmot and Brantford and conducted peer reviews of electoral district boundaries in Kingston and the Township of Georgian Bay. He has served as an expert witness in nine OMB hearings on ward boundaries since the 1990s and prepared two reports for the Nova Scotia Utilities and Review Board on representation issues in 2011.

It has recently come to my attention that the Council of the Municipality of Killarney authorized the Mayor to strike what is referred to as an "in-house" Ad Hoc Committee to "review Killarney's municipal governance electoral Ward Structure/Council representation with a view to confirming its efficiency and effectiveness, or recommend improvements and/or changes." (Ad Hoc Committee Background Information)

This action arises in response to a request from a number of residents supporting a "request to look into the feasibility of eliminating the present structure of our Ward System and creating a 'Councillor at large' system." The request is also made "to correct what is perceived to be an unfair representation of Councillor to Elector ratio"¹ (Council Resolution No. 13-140, April 10, 2013)

In order to implement any changes before the 2014 municipal election, Council's resolution required that the Ad Hoc Committee complete its study and report back to Council at its June 12, 2013 meeting.

In addition, a petition to rescind a by-law in relation to realigning ward boundaries passed by the Council in 2005 was submitted to the Ontario Municipal Board in late December 2012. This appeal was submitted under section 223(4) of the *Municipal Act* on the grounds that Council failed to "pass a by-law in accordance with the petition" since a motion to act on the petition was defeated on December 12, 2012. The petition requested that the ward boundary realignment implemented in 2005 be rescinded on the grounds that it was detrimental to some residents of Ward 2, although it also claimed that there were procedural irregularities in relation to the 2005 by-law.

The OMB has offered to mediate this matter; at the moment, the appellant has accepted the offer but the Municipality has not yet responded to the offer, having referred the matter to its solicitors.

From the perspective of an outsider who has been engaged in a professional capacity in designing and assessing municipal electoral systems in Ontario, I would like to provide a brief assessment to the Ad Hoc Committee of the suitability of these alternatives for the Municipality of Killarney.

¹ It should be noted that the use of the concept of a "Councillor to Elector ratio" is problematic in some materials in relation to Ward One. The assumption appears to be that with three Councillors and 783 electors, the "ratio" is 1 councillor per 261 electors. While the basic arithmetic is valid, the political reality is that, after an election, each Councillor represents the entire Ward, not just one third of it. Therefore the Ward One "Councillor to Elector" relationship should be understood to mean that each of the three councillors represents 783 electors.

For the record, over the last five years I have

- conducted 11 ward boundary reviews in Ontario (either independently or association with a respected firm of municipal planning consultants);
- advised five other municipalities in relation to electoral arrangements; and
- participated as an expert witness in three Ontario Municipal Board hearings on ward boundary issues.

Alternative Electoral Arrangements for Killarney

As of the Public Input Meeting on June 1, there appear to be three alternatives before Council: retain the existing ward configuration (tacitly endorsed through its December 2012 decision in relation to the petition), realign the existing wards along the pre-2005 boundaries (to comply with the petition) and dissolve the wards to provide for the election of all Councillors in a general vote (as posed in the April 2013 resolution establishing the Ad Hoc Committee).

1. The existing ward configuration

The two-ward, four-member configuration has been in place since the Municipality was created at the beginning of 1999. At that time, one existing Township (Rutherford and George Island) was joined with fourteen unorganized townships to form a new municipality named "Killarney." An "unorganized township" is defined in the Ontario *Municipal Act, 2001*, as "a geographic area without municipal organization."

According to background information issued by the Ad Hoc Committee, the premise for Killarney's ward system was that "Council of the day did not want Killarney to lose its identity by being 'taken in' by another municipality." Leaving aside the process that is cited to as justification for adopting the resulting ward configuration, the result was that the former Township of Rutherford and George Island (the only municipality involved in the amalgamation) become Ward One in the new municipality and all of the remaining unorganized territory became Ward Two. By Ministerial order, Ward One was assigned three seats on the new Council and one seat was awarded to Ward Two. The mayor is elected at large. Killarney's council is the minimum size permitted under Ontario legislation.

Should the present ward configuration be maintained? In a word: no.

There are three basic reasons for this assessment:

- the present distribution of electors in the two Wards is inequitable: according to information provided in April 2013 by the Municipal Clerk, 783 electors are listed for Ward One and 541 electors for Ward Two. Using these figures, 75% of the Councillors are assigned to a ward with about 60% of the electors and 25% of the Councillors are assigned to a ward with about 40% of the electors. This

arrangement epitomizes what Madam Justice McLachlin called “uneven and unfair representation” (in her majority judgment in *Reference re Provincial Electoral Boundaries (Saskatchewan)* (1991), commonly known as the *Carter* decision, page 32).

- the currency of electoral democracy is the ballot: a system that gives some voters three and others only one is transparently unfair. Not only are Ward One electors overrepresented, the present ward configuration multiplies their individual voices by three compared to electors in Ward Two.
- the present ward system prompts uncomfortable echoes of the American revolutionary slogan “No taxation without representation.” As Madam Justice McLachlin wrote in the *Carter* decision: “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...” (page 32) Representative institutions like municipal councils are empowered to levy taxes, to determine how heavy they are, and to establish the purposes for which they are collected. If a significant proportion of the taxpayers are not given equitable treatment to deliver their views through their elected representatives when the taxation and the resource allocation decisions are made, the structure is unsound.

Furthermore, the process of representation potentially implicates all residents of the municipality while the act of voting involves only eligible electors. Issues and problems dealt with on a routine basis by municipal governments (many of which require the allocation of public resources) do not only arise from electors but from non-citizens, from newcomers to the municipality as well as children and youth, none of whom would have had a vote in the previous election but many of whom pay taxes in the municipality. For this reason – among others – the population of the wards is arguably more important in the allocation of representatives than the number of electors living in the wards.

Killarney's website asserts that the “year-round population” is less than 500 people. Information compiled for an American research database that offers “complete and interesting profiles” of communities in North America shows that, in 2006, the population of the Municipality was 454 but only 196 of the 590 private dwellings in the municipality were “occupied by usual residents” (presumably permanent residents). [<http://www.city-data.com/canada/Killarney-Municipality.html>]

My inference is that a significant proportion of the households in the municipality may not be reflected in the figures related to electors cited in the first bullet above. Since the formalities of ownership of properties not “occupied by usual residents” (presumably “seasonal residents”) are many and varied, the allocation of council seats solely on the basis of the eligible electorate (or formal owners) is therefore also problematic.

For our democracy to work, citizens must believe that elections are fair in all respects. In my assessment, the present ward configuration in Killarney does not support one of the key perspectives that the Ad Hoc Committee is directed to consider: representative democratic principles.

2. The pre-2005 ward configuration

Given that a two-ward, four-member configuration has been in place since the Municipality was created at the beginning of 1999, it is not clear that reverting to the pre-2005 ward boundaries will address the core issues of ensuring fair representation in Killarney, for essentially the reasons just presented.

For our democracy to work, citizens must believe that elections are fair in all respects. In my assessment, reverting to the pre-2005 ward configuration does not support representative democratic principles.

3. A general vote (or at-large) system

Section 222(1) of the *Municipal Act* authorizes a municipality "to divide or redivide the municipality into wards or to dissolve the existing wards." Dissolving the existing wards means using what is called a "general vote" or "at-large" system in which the entire municipality is a single electoral division and all councilors are selected on a single ballot. All electors have as many ballots as there are seats to fill (in this case, four).

Should a general vote system be implemented in Killarney by dissolving the existing wards? In a word: yes.

The original decision to adopt a ward system appears to have been premised on ensuring that political control of the new municipality remained in the hands of the electors residing in the only pre-amalgamation municipality in the new corporation. It established and entrenched an inequitable bifurcation of the municipality based on pre-amalgamation conditions. It is time to move beyond that status. In the *Carter* decision Madam Justice McLachlin noted that the Court would not suggest "that inequities in our voting system are to be accepted merely because they have historical precedent" and "historical anomalies and abuses" cannot be used "to justify continued anomalies and abuses.... " (pages 36 – 37)

My experience as an expert witness in Ontario Municipal Board hearings in relation to ward systems in several municipalities in the 1990s and in a 2009 hearing in the Town of Kearney suggests to me that dissolving a defective ward system is both plausible and beneficial.

It would be plausible because

- smaller population municipalities function effectively across Ontario with an at-large system;
- the OMB has sustained petitions and by-laws changing from wards to an at-large arrangement even in municipalities with much larger populations than Killarney; and
- most municipalities in northeast Ontario, Parry Sound and the Almaguin region have abandoned ward systems in favour of at-large elections.

It would be beneficial because

- it precludes the need to design and maintain an equitable system of wards that embodies population (not elector) parity - as well as meeting the evaluation criteria articulated in the Ad Hoc Committee's Background Information; and
- an at-large system in a small municipality can make a positive contribution to community-building and reduces the tendency to perpetuate internal distinctions that were superseded by amalgamation.

For our democracy to work, citizens must believe that elections are fair in all respects. In my assessment, an at-large electoral system in Killarney supports representative democratic principles.

Reaching An Equitable Electoral Arrangement in Killarney

While the *Municipal Act* is clear that the final step in the local process of determining a local electoral system requires an authoritative decision made by the municipal council (that is, a by-law), no other provisions are included in the Act or in regulations. However, a scrupulous review process would ensure that no one or no group is in a position to manipulate the procedure, the information, the alternatives or the choice. This is a key reason why such a by-law can be appealed to an external body (the Ontario Municipal Board) whereas a by-law related, for example, to the composition of council is not treated the same way.

The Ad Hoc Committee has been established with three alternative electoral arrangements already in play and an external adjudicative process pending. Assigning responsibility for a recommendation on the Municipality's response to an "in house" body comes very late in the game and provides no real opportunity for a comprehensive review process, however well-meaning or knowledgeable its members may be.

To ensure that Killarney's future electoral arrangements are fair and the decision principled, I encourage the Ad Hoc Committee to endorse an impartial process that places the community's interest at the forefront.

Three procedural options are still available to reach such a conclusion before the next election:

1. accept the OMB's offer to mediate in relation to the petition;
2. allow the petition to proceed to an OMB hearing where the various alternatives can be defended in public; or
3. engage a third party to evaluate the alternatives available and make a recommendation to Council.

Conclusion

In my professional assessment, the present ward structure in Killarney is indefensible since it does not treat the entire community fairly. Local acceptance of a system that has been flawed from the outset should not trump basic democratic principles related to representation in Canada.

My own conclusion is that a general vote system would instantly bring fair and effective representation to all residents of Killarney.

Robert J. Williams

Public Affairs Consultant

Waterloo, Ontario