4

Equality and Efficacy of the Vote

INTRODUCTION

The right to vote and the right to be a candidate for election to the House of Commons are necessary but not sufficient conditions to ensure that the electoral law promotes both the equality of the vote and effective representation. How we assign Commons seats to provinces and draw the constituency boundaries within provinces can also affect the degree to which we realize these two objectives. Equality of the vote is secured if the assignment of seats to provinces conforms to the principle of proportionate representation and if the drawing of constituency boundaries conforms to the principle of representation by population. Effective representation is secured if constituency boundaries are drawn to recognize the various communities of interest that exist within a province.

In this chapter we examine and assess the processes and principles for assigning Commons seats to provinces and territories and for drawing constituency boundaries within provinces and territories. Although the two processes are related, that is, the boundaries of federal constituencies are drawn only after the number of seats for a province or territory has been determined, they are independent. We therefore present our recommendations for each in sequence. The two processes are sometimes referred to collectively as "redistribution". For clarity, we restrict this term to the assignment of seats to provinces. We use the term "boundaries readjustment" to refer to the process of drawing constituency boundaries.

THE ASSIGNMENT OF SEATS TO PROVINCES

Parliament and Federalism

Canada's federal system means not only that citizens are subject to two orders of government, each with its own jurisdiction, but also that citizens are represented in Parliament on the basis of their membership in both the national and a provincial political community.

As in all western federal systems, the representation of citizens as members of two political communities requires a "bicameral" federal legislature – a legislature with two chambers. One chamber – in Canada, the House of Commons – represents citizens as members of the national political community. The second – in Canada, the Senate – represents citizens as

members of a provincial political community. The constitution requires that seats in the House of Commons be assigned to provinces on the basis of their proportionate populations. In contrast, the constitution requires that seats in the Senate be assigned to provinces in a manner that gives disproportionate (but not equal) representation to the less populous provinces. This distribution of Senate seats is meant to give the less populous provinces greater representational weight to counter the weight of the more populous provinces in the House of Commons. In this way, the Senate is based on a 'federal' principle of representation.

The original assignment of Senate seats in 1867 reflected this federal principle by creating three equal 'divisions', each with 24 seats: Quebec, Ontario and the maritime provinces (Nova Scotia and New Brunswick, each with 12 seats). Prince Edward Island was added to the maritime provinces division when it entered Confederation. It received four of the division's seats; Nova Scotia and New Brunswick each lost two. Manitoba was given two Senate seats when it became a province; British Columbia was given three; and Alberta and Saskatchewan were each given four. In 1915, the number of divisions was increased to four; in the new western provinces division, the four western provinces each received six seats. Newfoundland was given six seats on entering Confederation in 1949. The Northwest Territories and the Yukon received a seat each in 1975, so the current total of assigned seats is 104 (not counting eight senators appointed in 1990 under the terms of the *Constitution Act, 1867*, section 26). This allocation is shown in Table 4.1.

The Senate of Canada, unlike second chambers in other federal systems, including Australia, the United States and Germany, has not effectively realized the federal principle of representation. Although the less populous provinces have a disproportionate number of seats, thus meeting this criterion of the federal principle, its members are neither elected (as in Australia or the United States) nor appointed by the governments of the constituent units of the federation (as in Germany). Rather, Canadian senators are appointed by the federal government (formally by the Governor General on the advice of the prime minister). This means that they have neither the legitimacy of popular election nor the legitimacy of appointment by provincial governments. Without the necessary political legitimacy, the Senate has not been able to use its considerable formal legislative powers in defence of the less populous provinces against the will of the House of Commons.

Because the Senate as an institution fails to adequately realize the federal principle of representation in Parliament, the assignment of Commons seats to provinces subsequent to the original plan has had to accommodate demands from the less populous provinces for greater representation than they would be entitled to according to proportionate representation. The members of the House of Commons, accordingly, have been forced by the politics of federalism to use formulas that compromise the constitutional principle of proportionate representation. As the then President of

the Privy Council, Ramon Hnatyshyn, acknowledged in speaking to the proposed representation legislation in 1985,

> The relative imbalances which exist today and have long been accepted as necessary compromises on the principle of absolute representation by population will remain.... In a Parliament with only one elected House, our system has come to recognize the need of finding ways of ensuring adequate regional representation in the elected body. (Canada, House of Commons, *Debates*, 1 October 1985, 7186)

Table 4.1
Allocation of Senate seats
(by province and territory)

Province / territory	Seats
Ontario	24
Quebec	24
Nova Scotia[a]	10
New Brunswick[a]	10
Prince Edward Island[a]	4
Manitoba[b]	6
British Columbia[b]	6
Saskatchewan[b]	6
Alberta[b]	6
Newfoundland	6
Yukon	1
Northwest Territories	1

Note: This allocation does not include eight senators appointed in 1990 pursuant to the *Constitution Act, 1867*, section 26.

[a]These three provinces form the maritime provinces division.

[b]These four provinces form the western provinces division.

Although the Senate of Canada did not come within our mandate, it is obvious that, should a reformed Senate effectively realize the federal principle, the formula for assigning seats to provinces could then adhere much more strictly to the principle of proportionate representation. As in Australia, this might still include a minimum floor for provincial representation as well as the assignment of Commons seats to the federal territories without unduly undermining the principle of proportionate representation.

The House of Commons and Proportionate Representation

Proportionate representation was adopted at the outset as the principle governing the assignment of seats to provinces in the House of Commons. Before Confederation, representation by population had been the subject

of persistent controversy among political leaders in the province of Canada. The Confederation settlement was possible largely because it divided the province into two separate provinces – Ontario and Quebec – and adopted proportionate representation as the basis for assigning Commons seats. This solution ended a long and bitter dispute over representation in the united legislature of the province of Canada, where Upper Canada and Lower Canada had had an equal number of seats since 1840, despite having unequal populations.

The first House of Commons was based on an agreement among the Fathers of Confederation that secured proportionate representation in the distribution of seats to the four original provinces. It was mainly because of this adherence to proportionate representation that Prince Edward Island refused to become a province in 1867; it would have received five seats, which it regarded as inadequate. (Ward 1963)

The *Constitution Act, 1867* (then the *British North America Act*) contained a formula (section 40) that gave a fixed number of seats to one province, Quebec, and then assigned seats to other provinces according to their population relative to Quebec's population/seat ratio. Quebec not only wanted to have its number of seats guaranteed at 65, the number chosen, but also had the advantage of a comparatively stable population and had neither the largest nor the smallest population.

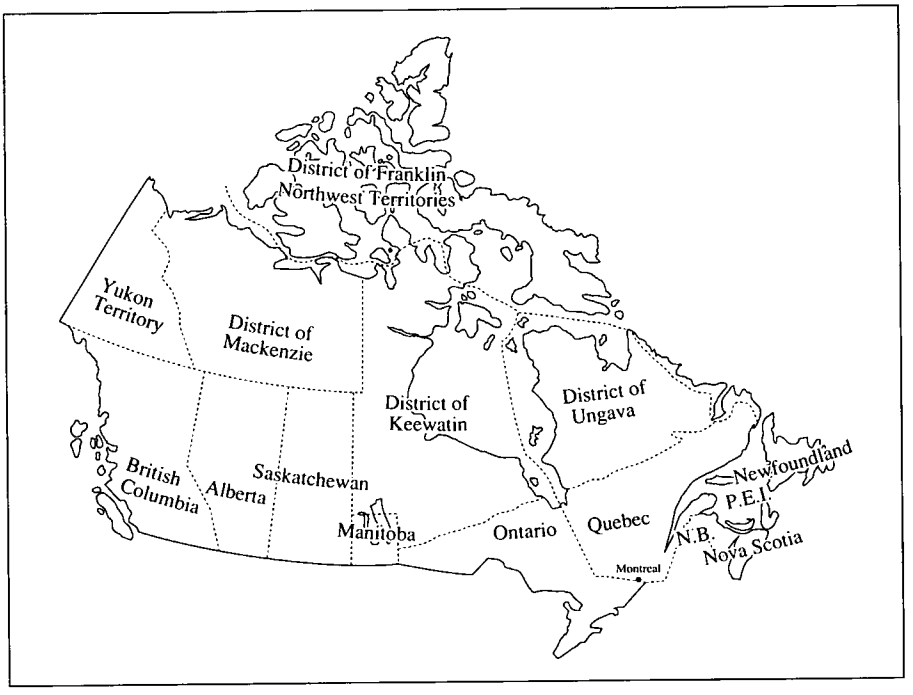
The 1867 formula also contained a provision minimizing the effect on any province whose population might subsequently decline relative to Canada's total population. A province would not lose seats until its population had declined relative to the total population of Canada by more than 5 per cent since the previous census. Thus began the Canadian tradition of minimizing the effects of declining relative population on representation.

Proportionate Representation and the Representation of Provinces

The entry of three new provinces in the decade following Confederation required a departure from proportionate representation. The political bargains struck when Manitoba (1870), British Columbia (1871) and Prince Edward Island (1873) entered Confederation resulted in each receiving greater representation than they would have been entitled to under proportionate representation. In at least the first two cases, the accommodation was considered a temporary measure, given their rates of population growth.

Manitoba, with a population that would not have warranted a single seat, received four, along with a guarantee that this number would be protected until after the 1881 census and the subsequent redistribution. British Columbia, which would have been entitled to one seat, received six and was guaranteed this number permanently. Prince Edward Island received six seats when it entered Confederation in 1873; a strict application of proportionate representation would have given the province only five seats – the same number it considered too low in 1867. In this case, however, and for unknown reasons, no guarantee of seats was provided.

Canada, 1912



Based on these precedents, the Northwest Territories was given four seats in 1886, instead of the two it would have received on the basis of its population (it encompassed the present-day territories as well as what is now Alberta, Saskatchewan and part of northern Manitoba). Following the creation of Alberta and Saskatchewan in 1905, however, the number of seats they received (seven and 10, respectively) was justified on the basis of population. On being admitted to Confederation in 1949, Newfoundland received seven seats on the same basis.

In each of these cases, the political bargains struck at the time a province or territory entered Confederation required consideration of both the principle of proportionate representation and the demand for a disproportionate number of seats in the House of Commons. This consideration did not always result in the overrepresentation of smaller provinces, as is shown by the cases of Alberta, Saskatchewan and Newfoundland.

Various rules have also been used to protect provinces from the effects of declining relative populations. The first, as noted above, was in the 1867 formula: a province would not lose seats until its population had declined relative to the total population of Canada by more than 5 per cent since the previous census.

The maritime provinces were the first to suffer a loss of seats. In 1892, Nova Scotia lost two, and New Brunswick and Prince Edward Island lost one each. Although their populations had not declined absolutely, they had declined as a proportion of the national population since the 1881 census.

When these provinces incurred further losses at the turn of the century, they began to press for special consideration through both the political and the judicial process. Although the provinces were not successful in the courts, the eventual political outcome was the 1915 constitutional amendment guaranteeing a province no fewer seats in the Commons than it had senators. The immediate effect of this "senatorial floor" provision was to guarantee Prince Edward Island four Commons seats – the same as the number of senators it received on joining Confederation. This was one seat more than it would have been allocated under the 1867 formula after the 1911 census.

The first major overhaul of the redistribution formula took place following the Second World War. The original formula had resulted in three provinces maintaining seats solely on the basis of the 1867 provision protecting provinces from a loss of seats. The most significant consequence was that the largest province, Ontario, had maintained its original 82 seats; its population had declined relative to the national population since 1867, but never by more than the specified 5 per cent between two censuses.

Without the formula's protection, Ontario would have lost one seat following the 1920 census, another three after 1931 and a further four after 1941, giving it a total of 74 instead of 82. At the same time, Quebec maintained its share of Commons seats at 65. As Norman Ward notes, "The demand for fair representation, which had been so familiar a cry in the mouths of Upper Canadian statesmen before Confederation, was logically taken over in 1946 by Quebec." (Ward 1963, 53)

The result was the adoption of a completely new formula in 1946 and its implementation in the 1947 redistribution. The formula established a fixed number of seats in the House of Commons – 255, which was raised to 262 with the entry of Newfoundland. The total population of Canada was divided by the number of seats, not counting the seat assigned to the Yukon and Mackenzie Territories, to obtain a quota; seats were then assigned to provinces by dividing their population by the quota, with the 1915 senatorial floor provision still applying. The result was that all provinces except Prince Edward Island, whose seats were protected by the senatorial floor provision, had their number of seats determined by their share of the population.

The 1946 redistribution formula was amended in 1952. First, no province would lose more than 15 per cent of the seats to which it had been entitled at the time of the previous redistribution. This provision was added to avoid a 25 per cent seat loss by Saskatchewan (from 20 to 15 seats) following the 1951 census.

A second amendment provided that no province would have fewer seats than a province with a smaller population. This was required because Alberta would have had fewer seats than Saskatchewan, given the 15 per cent clause, even though Saskatchewan had a smaller population.

In 1974, the formula was altered once again, as population changes had introduced deviations. The objective this time was to ensure that the smaller

provinces maintained their number of representatives while increasing adherence to the principle of proportionate representation. Achieving this required abandoning the idea of a fixed number of Commons seats. If no province was to lose seats from one redistribution to the next, the number of seats had to rise with real population growth. The 1974 formula was used just once, following the 1971 census, and the House expanded from 264 to 282 members. (Balinski and Young 1981)

After the 1981 census, a redistribution was begun as required by the 1974 formula, but it was aborted when the House of Commons failed to complete its consideration of the reports of the electoral boundaries commissions. The formula had produced a House of Commons with 310 members. More significant, perhaps, were projected increases in the size of the House if the formula were maintained indefinitely. The number of seats was projected to be almost 400 at the turn of the century – an increase of 40 per cent over 30 years. The result was a new formula: the *Representation Act, 1985*.

The *Representation Act, 1985* sets out the formula used for the redistribution carried out in 1986:

1. Starting with 282 seats (the number of Commons seats in the 33rd Parliament), three are set aside for the two federal territories (two for the Northwest Territories and one for the Yukon).
2. The total population of the 10 provinces is divided by 279 to establish a national quotient.
3. The population of each province, as established at the decennial census, is divided by the quotient to determine the number of seats to which each province is entitled.
4. If a province's number of seats by this calculation is less than what it was in the 33rd Parliament (following the 1976 redistribution), the former is "topped up" to the latter.

In 1986, this resulted in a House of Commons with 295 seats, 12 of which were top-ups, as shown in Table 4.2.

The *Representation Act, 1985*: An Evaluation

The *Representation Act, 1985* substantially modified the principle of proportionate representation to an extent never before experienced. The consequences of the 1985 Act and the 1915 senatorial floor provision for proportionate representation are amply illustrated by the fact that under its first application, six of the 10 provinces had more seats than they were entitled to under proportionate representation (see Table 4.3). If current population projections hold, that number will increase to seven after the next redistribution, when Newfoundland will fall into this category. This would leave only Ontario, Alberta and British Columbia with seats determined solely on the basis of population; all three would be proportionately underrepresented in relation to the other provinces.

Table 4.2
Allocation of House of Commons seats
(by province)

	Seats prior to 1985 Act	1981 population	Quotient	Population divided by quotient (rounded)	Assigned seats	Adjustment
Ontario	95	8 625 107	87 005	99	99	0
Quebec	75	6 438 404	87 005	74	75	+1
Nova Scotia	11	847 442	87 005	10	11	+1
New Brunswick	10	696 403	87 005	8	10*	+2
Manitoba	14	1 026 241	87 005	12	14	+2
British Columbia	28	2 744 467	87 005	32	32	0
Prince Edward Island	4	122 506	87 005	1	4*	+3
Saskatchewan	14	968 313	87 005	11	14	+3
Alberta	21	2 237 724	87 005	26	26	0
Newfoundland	7	567 681	87 005	7	7	0
Total	279	24 274 287		280	292	+12

Source: Canada, Elections Canada 1986, 17.

*Guaranteed by 1915 senatorial floor provision.

The intention behind the 1985 Act is not without merit. We heard from many Canadians who supported the right of smaller provinces to their present level of representation in the House of Commons. Because there are only 10 provinces and because the Senate inadequately realizes the federal principle, it is unlikely that Prince Edward Island – with a population that merits only one seat in the House of Commons on the basis of proportionate representation – could be persuaded or made to accept such minimal representation.

Australia, for instance, sets the floor at five seats for each state in their federal House of Representatives, even though there is an effective Senate with equal representation for each state. Although the floor for state representation in the U.S. House of Representatives is one seat, the provision of two senators per state in the more powerful Senate adequately compensates the six states with only the minimum one seat in the House of Representatives.

Because our redistribution formula has compromised the principle of proportionate representation, Canadian constituencies deviate from the national electoral quotient to a much greater degree (14.3 per cent) than either U.S. or Australian constituencies (6.4 per cent and 4.4 per cent, respectively; see Appendix A). In 1991, for example, Saskatchewan will have 40 per cent more seats than it is entitled to by proportionate representation.

Put another way, a Member of Parliament from British Columbia will represent, on average, 25 000 more people than a Member from Saskatchewan. The guarantee that no province's seats will ever fall below the number it had in 1976 cannot be justified with reference to any principle of representation.

Table 4.3
Share of House of Commons seats and share of population, 1981, 1991
(by province)

	1981		1991	
	Percentage of seats	Percentage of population	Percentage of seats	Percentage of population
Newfoundland[a]	2.4	2.3	2.4	2.2
Nova Scotia[b]	3.8	3.5	3.7	3.4
Prince Edward Island[b]	1.4	0.5	1.3	0.5
New Brunswick[b]	3.4	2.9	3.4	2.7
Quebec[b]	25.7	26.5	25.3	25.4
Ontario	33.9	35.5	34.7	36.8
Manitoba[b]	4.8	4.2	4.7	4.1
Saskatchewan[b]	4.8	4.0	4.7	3.7
Alberta	8.9	9.2	8.8	9.4
British Columbia	11.0	11.3	11.1	11.9

Source: Adapted from Canada, Statistics Canada 1990b.

[a]Denotes protected province in 1991 only.

[b]Denotes protected province.

If current demographic projections are accurate, the application of the 1985 formula will increase the inequality among provinces over time because the size of the House can increase only to top up the seats of provinces that would otherwise lose seats (Table 4.4). The formula is thus a recipe for increasing the inequality among provinces. Discriminating against provinces with populations that are growing relative to national population growth can only cause unnecessary friction within our country.

In short, the formula errs in two ways: it fails to give sufficient weight to the constitutional principle of proportionate representation; and its restriction on increases in the number of Commons seats, which works to penalize the provinces experiencing population growth, is not related to any principle of representation.

A Return to Our Roots

Within the current constitutional provisions for redistribution, assigning seats to provinces requires a formula that respects both the principle of

proportionate representation and the 1915 senatorial floor guarantee. Of the several formulas that have been used to redistribute Commons seats since 1867, the one that came the closest to ensuring proportionate representation was the original formula of 1867.

Table 4.4
Prospective allocation of House of Commons seats: current formula, 1991, 2001, 2011
(by province and territory)

	Percentage of population[a]			Seats by population			Adjustment[b]			Total seats			Percentage of seats[c]		
	1991	2001	2011	1991	2001	2011	1991	2001	2011	1991	2001	2011	1991	2001	2011
Newfoundland	2.2	2.0	1.8	6	5	5	1	2	2	7	7	7	2.4	2.3	2.3
Prince Edward Island	0.5	0.5	0.4	1	1	1	3	3	3	4	4	4	1.3	1.3	1.3
Nova Scotia	3.4	3.2	3.1	9	9	9	2	2	2	11	11	11	3.7	3.6	3.6
New Brunswick	2.7	2.5	2.4	8	7	7	2	3	3	10	10	10	3.4	3.3	3.3
Quebec	25.4	24.8	24.4	71	69	68	4	6	7	75	75	75	25.3	24.8	24.7
Ontario	36.8	37.2	37.5	103	104	105	—	—	—	103	104	105	34.7	34.4	34.5
Manitoba	4.1	3.9	3.9	11	11	11	3	3	3	14	14	14	4.7	4.6	4.6
Saskatchewan	3.7	3.6	3.6	10	10	10	4	4	4	14	14	14	4.7	4.6	4.6
Alberta	9.4	10.0	10.4	26	28	29	—	—	—	26	28	29	8.8	9.3	9.5
British Columbia	11.9	12.4	12.6	33	35	35	—	—	—	33	35	35	11.1	11.6	11.5
Northwest Territories										2	2	2			
Yukon										1	1	1			
Total				278	279	280	19	23	24	300	305	307			

Source: Adapted from Canada, Statistics Canada 1990b.

[a]Percentage of the total population of 10 provinces; excludes the Yukon and NWT.

[b]Seats added to bring provincial number to senatorial floor or last distribution less one.

[c]Percentage of seats of 10 provinces; excludes three for the Yukon and NWT.

If we returned to this formula, we would need to meet three requirements in order to adhere to the intent of its original provisions. As in 1867, (1) one province must be selected as the base province, (2) the number of seats to be assigned to the base province must be established, and (3) a provision must be included to cushion the loss of seats for provinces with declining relative populations. In addition, because the senatorial floor guarantee must also be respected – and given the current distribution of Senate seats to provinces – there must be a provision that no province have fewer Commons seats than a province with a smaller population. In practical terms, this latter provision is required because Manitoba and Saskatchewan

are each guaranteed only six Senate seats, whereas Nova Scotia and New Brunswick each have 10 Senate seats, even though these two maritime provinces have smaller populations than the two western provinces.

The original provision to cushion provinces with declining relative populations against loss of seats must be modified because, as noted previously, it protected the seats of a large province, namely Ontario, rather than those of the smaller provinces as was originally intended. If increases in the total number of Commons seats are to be kept to a minimum, this provision should simply limit the loss of seats at any one redistribution to one.

Under the 1867 formula, Quebec was the base province. If the House of Commons is to remain reasonably close to the size it is now, only four provinces can be candidates for the base province: Alberta, British Columbia, Ontario and Quebec. The projected relative population declines of the others would produce a national quotient that would increase the size of the House of Commons significantly.

If either Alberta or British Columbia, the two fastest growing provinces, became the base, there would be an increase in the number of protected seats, including those in Ontario, after the redistribution of 2001. At the same time, of course, the number of seats assigned to the base province would remain the same (Table 4.5). Ontario's projected population growth over the next 20 years is expected to be closest to the national average, but using Ontario as the base would also increase the number of protected seats. Just as at Confederation, Quebec is the most appropriate base.

Table 4.5
Prospective allocation of House of Commons seats: proposed formula, 1991, 2001, 2011
(effect of using various provinces as the base)

Base province (number of constituencies)	Total number of members[a]			Protected constituencies			Percentage of protected constituencies		
	1991	2001	2011	1991	2001	2011	1991	2001	2011
Alberta (26)[b]	291	286	282	14	26	30	4.8	9.1	10.6
British Columbia (33)[b]	291	288	284	15	21	23	5.2	7.3	8.1
Ontario (103)[b]	292	292	291	14	15	16	4.8	5.1	5.5
Quebec (71)[b]	292	299	300	14	12	10	4.8	4.0	3.3
Quebec (75)[c]	303	310	314	8	6	7	2.6	1.9	2.2

Source: Adapted from Canada, Statistics Canada 1990b.

Note: See appendices D and E for the assignment of seats to each province under each scenario.

[a]Total number excludes three seats guaranteed to the Territories.

[b]Number of constituencies provinces would be entitled to under present system after 1991.

[c]Current number of constituencies assigned to Quebec.

Using an allocation of 71 Quebec seats as the base (the number of seats Quebec would merit under proportionate representation if the present formula were applied to the 1991 census) would also result in a significant, albeit slightly declining, number of protected seats. Using 75 Quebec seats (its current number) would increase adherence to proportionate representation by reducing the number of protected seats substantially at first and even further over time (Table 4.6). Table 4.5 summarizes these results and compares the effect of using different provinces as the base.

Table 4.6
Prospective allocation of House of Commons seats, 1991, 2001, 2011
(formula using Quebec as the base, with 75 seats)

	Percentage of population[a]			Seats by population			Adjustment[b]			Total seats			Percentage of seats[c]		
Province	1991	2001	2011	1991	2001	2011	1991	2001	2011	1991	2001	2011	1991	2001	2011
Newfoundland	2.2	2.0	1.8	6	6	6	—	—	—	6	6	6	2.0	1.9	1.9
Prince Edward Island	0.5	0.5	0.4	1	1	1	3	3	3	4	4	4	1.3	1.3	1.3
Nova Scotia	3.4	3.2	3.1	10	10	9	—	—	1	10	10	10	3.3	3.2	3.2
New Brunswick	2.7	2.5	2.4	8	8	7	2	2	3	10	10	10	3.3	3.2	3.2
Quebec	25.4	24.8	24.4	75	75	75	—	—	—	75	75	75	24.8	24.2	23.9
Ontario	36.8	37.2	37.5	109	113	115	—	—	—	109	113	115	36.0	36.5	36.6
Manitoba	4.1	3.9	3.9	12	12	12	1	—	—	13	12	12	4.3	3.9	3.8
Saskatchewan	3.7	3.6	3.6	11	11	11	2	1	—	13	12	11	4.3	3.9	3.5
Alberta	9.4	10.0	10.4	28	30	32	—	—	—	28	30	32	9.2	9.7	10.2
British Columbia	11.9	12.4	12.6	35	38	39	—	—	—	35	38	39	11.6	12.3	12.4
Northwest Territories										2	2	2			
Yukon										1	1	1			
Total				295	304	307	8	6	7	306	313	317			

Source: Adapted from Canada, Statistics Canada 1990b.

[a]Percentage of the total population of 10 provinces; excludes the Yukon and NWT.

[b]Seats added to bring provincial number to senatorial floor or last distribution less one.

[c]Percentage of seats of 10 provinces; excludes three for the Yukon and NWT.

Using 75 Quebec seats as the base would restore the primacy of proportionate representation, thereby enhancing the equality of the vote among all Canadians. Some provinces would lose seats as a consequence of declining relative populations, but the losses would be cushioned. For provinces with growing relative populations, the number of Commons seats would rise to accommodate proportionate representation. But the projected increase would be reasonable (Table 4.7).

Table 4.7
Projected House of Commons size, 1991, 2001, 2011

	1991		2001		2011	
Formula	Quotient	Seats	Quotient	Seats	Quotient	Seats
Current formula	97 793	300	105 491	303	113 201	300
1867 modernized	90 560	306	97 148	313	101 979	317

Source: Adapted from Canada, Statistics Canada 1990b.

Recommendation 1.4.1

We recommend that section 51 of the *Constitution Act, 1867* be amended to embody the following principles:
(1) Quebec be assigned 75 seats, and other provinces be assigned seats on the basis of the ratio of their population to the population of Quebec; and
(2) if necessary, additional seats be assigned to provinces to ensure that
(i) the senatorial floor guarantee is respected;
(ii) no province loses more than one seat relative to the previous redistribution; and
(iii) no province has fewer seats than a province with a smaller population.

The Question of Senate Reform

Senate reform could clearly affect the principles and objectives of the redistribution formula we recommend. Our proposals assume that the distribution of Commons seats will meet the dual requirements of proportionate representation and the federal principle. Should the Senate be reformed in ways that effectively realize the federal principle, the need for the distribution of Commons seats to depart from proportionate representation to secure this principle would diminish accordingly. Were this to occur, we recommend that the redistribution of seats in the House of Commons be conducted on the basis of proportionate representation, with the single proviso that each province be entitled to a minimum of four seats in order to secure meaningful provincial representation in the House of Commons. There would still be a need for representation of the territories. Consequently, the Yukon and the Northwest Territories should continue to have one seat and two seats, respectively.

DRAWING CONSTITUENCY BOUNDARIES

Introduction

Once the number of seats for each province is determined by the redistribution formula, the boundaries of the electoral constituencies in each province must be drawn. Boundaries are geographic; electors select their Members of Parliament to represent them as constituents of a local community or contiguous communities.

Representation of Community

This territorial approach to representation can be traced to the origins of parliamentary government in Great Britain, where the Crown summoned individuals to represent local communities in what became the House of Commons. The English term "commons" derives from the French term *commune*, meaning local community. The House of Commons was thus established as a legislative assembly of representatives from territorially defined communities.

With the advent of elections, the territorial approach was maintained; represented in the House of Commons were the shared interests of those residing in territorially defined communities, even though the vast majority did not have the right to vote.

Representation by Population

The ascendancy of modern democratic theory in the eighteenth and nineteenth centuries challenged the prevailing concept of representative government by asserting that individuals were the sole source of the state's political legitimacy. Authorities therefore had to govern with the consent of individuals as expressed through democratic elections.

This philosophy of representation demanded an equality of the vote, expressed in the call for "one man, one vote" or "representation by population". To achieve equality, reformers demanded not only an expanded franchise, but also constituencies that were relatively equal in population, making the value of each vote more or less equal. This understanding of representation conflicted with the traditional idea that individuals were represented solely as members of their territorially defined communities, regardless of population.

Comparable Population

Major electoral reforms followed acceptance of this new idea of representation, but the nineteenth-century reforms did not entirely transform the system of representation. Rather, the system was altered gradually so that its structure reflected both the traditional preference for representation based on territory and the new democratic principle of representation by population.

To reconcile the traditional and new understandings of representation, the boundaries of constituencies were drawn in light of population, but

variations in constituency populations were accepted to accommodate local communities of interest. In both Great Britain and Canada, before and after Confederation, this meant drawing electoral boundaries to respect existing county and municipal boundaries as much as possible. Constituencies were not to be randomly constructed territorial groupings of roughly equal numbers of individuals.

The territorial approach to representation did not assume that each local community would have separate representation. It did imply, however, that within the bounds of "comparable population", communities of interest should be contained within a single electoral constituency so that their members would have a fair chance of influencing the outcome of the election. Deviations from population equality could therefore be justified by community of interest considerations.

The Processes and Outcomes of Boundaries Readjustment

For almost a full century following Confederation, Members of Parliament determined the boundaries of electoral constituencies. Unlike the constitutional provisions governing the assignment of seats to provinces, representation by population or comparable population was not enshrined in the electoral boundaries law. Without constitutionally prescribed objectives and criteria to govern the drawing of boundaries, members of the House of Commons, and thus the governing party, had great latitude in determining the factors used in drawing boundaries; the matter was governed by ordinary statute and thus subject to a simple majority in the House of Commons.

Parliamentary Boundaries Readjustment

From Confederation on, it was recognized that the drawing of electoral boundaries could not be other than partisan so long as Parliament readjusted the boundaries of constituencies. During the Confederation debates, the idea of an independent judicial authority for drawing electoral boundaries was discussed but not accepted.

The first three times Parliament redrew electoral boundaries (1872, 1882 and 1892), the government submitted a bill with its proposals for electoral boundaries. A new practice was established in 1903, that of having a select Commons committee consider the government's proposed boundaries. Although the governing party had a majority on this committee, opposition members did have a greater opportunity to affect the final design.

Several criteria, in addition to representation by population, were used to justify Parliament's decisions on electoral boundaries. Among the most important were adherence to municipal and county boundaries, continuation of prior electoral boundaries, and the need to design rural constituencies of manageable geographic size.

The priority attached to these criteria, especially the last one, could only result in varying constituency populations. The common rationale for

the third criterion was that rural constituencies deserved special consideration given "the problems of accessibility, transport, and communications". (Qualter 1970, 94) Representing rural constituents, it was argued, as well as campaigning in rural areas, required that rural constituencies be as small as possible. This usually meant that they were also smaller in population than urban constituencies. If this meant overrepresentation of rural areas, it was argued, it was offset in part by the then-current practice of rural areas being represented by MPs who lived in urban areas.

In addition, the overrepresentation of rural areas ensured that local communities of interest were recognized adequately when boundaries were drawn. This did not always result in separate representation for all such communities, but it did mean that communities could be incorporated in constituencies where other communities shared their interests. Thus, politicians could address the question of representation of minority groups at the time of boundaries readjustment. The same objectives were also applied to boundaries in urban communities, although here the pressure to recognize communities of interest was usually less intense in part because the acceptance of larger populations in urban constituencies normally meant that there were more possibilities for boundary readjustment, and therefore such demands could be accommodated more easily.

Of course, differences in population were not always the major criterion. Partisan gerrymandering was also a driving force behind the drawing of boundaries. Attempts to secure partisan advantage invariably sacrificed both representation by population and the representation of communities of interest whenever a departure from one or the other suited the governing party. Although gerrymandering did not always secure partisan advantages – in some cases it actually backfired – the effect was to diminish the priority attached to legitimate principles of representation.

Between the first readjustment of boundaries in 1872 and reform of the process in 1964, the combination of these forces resulted in a smorgasbord of constituency designs and populations. Not surprisingly, departures from representation by population and representation by community had inconsistent effects on constituency design. Urban and rural constituencies varied greatly in both geographic configuration and population. There were several rural constituencies with larger populations than urban constituencies in the same province! As Norman Ward concluded in his study of boundaries readjustment between 1872 and 1948, "It is indisputable that [boundaries readjustment] has so far taken place with reference to none but the vaguest of principles." (Ward 1963, 46)

Reforming the Boundaries Readjustment Process

Gerrymandering during the first three boundaries readjustment exercises led the Liberals, then in opposition, to demand reform. The Liberal demand, however, was for a bipartisan, not an independent, process. Having come to power prior to the 1903 exercise, Sir Wilfrid Laurier's Liberal government

initiated reform by referring boundary design to a select committee of the House of Commons. From the 1930s on, proposals for an impartial judicial authority were advanced prior to each exercise.

Following an unsuccessful attempt to redraw electoral boundaries after the 1961 census and redistribution, the *Electoral Boundaries Readjustment Act* of 1964 established an independent and impartial process. The Act introduced an electoral boundaries commission for each province. These commissions are responsible for drawing federal electoral boundaries. Each commission is headed by a judge chosen by the province's chief justice. When a second Northwest Territories seat was established in 1975, the Act was amended: the territorial electoral boundaries commission is headed by a judge of the Court of Appeal or the Supreme Court of the Northwest Territories, appointed by the chief justice of the Court of Appeal. All 11 commissions include two other members selected by the Speaker of the House of Commons, but these persons cannot be members of the Senate, the House of Commons or a provincial or territorial legislature.

Electoral boundaries commissions are appointed after each decennial census. Using census data, the chief electoral officer determines the assignment of seats to provinces and the distribution of population within each province. Using this information, each commission draws an initial map outlining the new boundaries of constituencies in its province. Following publication of the map, the commission holds public hearings on its proposed boundaries. After considering public interventions, a commission may revise its map. It then sends the map to the chief electoral officer, who transmits it to the Speaker of the House of Commons.

Following the 1986 amendments to the *Electoral Boundaries Readjustment Act*, these proposed boundaries can be the subject of hearings before a Commons committee. (Under the original Act, debate was confined to the House.) After this stage, the commissions consider any objections raised by MPs, then submit their final reports. A "representation order", proclaimed by the Governor in Council, then gives effect to the new constituencies for the entire country. This order cannot change the boundaries drawn by the commissions, but the new boundaries do not come into effect until one year after the order is issued. If an election is called before one year has passed, the old electoral map must be used.

The 1964 *Electoral Boundaries Readjustment Act* enshrined the principle of comparable population in federal law for the first time. The Act required the commission for each province[1] to design constituencies so that the population of each corresponded "as nearly as may be to the electoral quota for the province". This quota, known as the electoral quotient, is determined by dividing a province's population by the number of seats it was assigned in the most recent redistribution.

The Act provided an allowance for deviations from the electoral quotient: a 25 per cent variation above or below the quotient is permitted. This allowed commissions to depart from the electoral quotient where

(a) special geographic considerations, including in particular the sparsity or density of the population of various regions of the province, the accessibility of those regions or the size or shape thereof, appear to the commission to render such a departure necessary or desirable; or
(b) any special community or diversity of interests of the inhabitants of various regions of the province appears to the commission to render such a departure necessary or desirable. (*Electoral Boundaries Readjustment Act*, s. 15(2))

The Act was amended in 1986 by the *Representation Act, 1985* to give even greater weight to community of interest objectives. As a result of these amendments, commissions are now required to design constituencies with populations "as close as *reasonably* possible" to a province's electoral quotient (emphasis added).

In addition, boundaries commissions are now required (rather than merely permitted) to consider

(i) the community of interest or community of identity in or the historical pattern of an electoral district in the province; and
(ii) a manageable geographic size for districts in sparsely populated, rural or northern regions of the province. (*Representation Act 1985*, s. 6)

Commissions may also depart from the quotient to respect (i) or to maintain (ii). Finally, commissions were given discretion to depart from a province's quotient altogether in circumstances they deemed "extraordinary". In such cases, they would not be constrained by the maximum variation of 25 per cent above or below the quotient.

Independent Boundaries Readjustment: The Record

The 1964 *Electoral Boundaries Readjustment Act* contained several significant innovations. Recognizing that Members of Parliament were in a conflict of interest, it removed the drawing of electoral boundaries from partisan politics. It also established comparable population as the basis for drawing boundaries, albeit tempered by a generous deviation if needed to accommodate community of interest or geographic size. The subsequent amendments in 1986 sought an even more effective representation of communities of interest.

The 1964 Act was based on the Australian model of independent boundaries readjustment. (Courtney 1988) The Australian experience is highly relevant to Canada because Australia is also a federation and its size and population distribution are comparable to Canada's. Australia's approach emphasizes representation by population, but it also recognizes the importance of community of interest considerations. Australia allowed for these concerns initially by permitting population variations of 20 per cent above or below the quotient in each state; the allowable variation has since been reduced to 10 per cent.

The original Bill that preceded Canada's 1964 legislation recommended a 20 per cent variation, but after parliamentary debate, it was increased to 25 per cent. This means that the population of a constituency at the lower limit might be only 60 per cent of the population of a constituency at the upper limit.

The record since 1964 reveals mixed results with respect to the objectives of the original Act and its subsequent amendments. One positive result is that the provincial commissions collectively moved in the general direction of enhancing comparable population in the exercises of 1966, 1976 and 1987. Each of these resulted in more constituencies that were closer to meeting provincial quotients than in the previous exercise (Table 4.8).

Table 4.8
Seats above and below provincial quotients, 1952–1987

Year (total seats)	Variations from quotient					
	>25%	20–25%	15–20%	10–15%	5–10%	0–5%
1952	35	11	13	13	13	17
(263)	*(91)*	*(28)*	*(33)*	*(33)*	*(33)*	*(45)*
1966	N.A.	11	17	24	26	22
(262)		*(28)*	*(45)*	*(63)*	*(68)*	*(58)*
1976	N.A.	9	24	27	21	19
(279)		*(25)*	*(68)*	*(75)*	*(59)*	*(52)*
1987	2	6	10	16	29	36
(292)	*(5)*	*(18)*	*(30)*	*(48)*	*(85)*	*(106)*

Source: Royal Commission Research Branch.

Note: Percentages may not add to 100 because of rounding.
Bracketed numbers are the number of seats.

At the same time, however, movement toward population equality *within* provinces has been uneven (Table 4.9). Five provinces have moved toward greater equality; in the other five, the movement has been toward greater variation from the province's quotient.

Moreover, the 1986 amendments appear to have reduced adherence to equality in representation. In his analysis of boundary readjustments since 1966, Andrew Sancton compared the proposals of the 1983 boundaries commissions (which were aborted when the House of Commons did not complete debate on their reports) with those of the 1987 commissions at the same stage in the process, that is, the report to Parliament stage. (Sancton 1990) This comparison shows that there was movement away from population equality between the 1983 and 1987 proposals (Table 4.10). Seven of the 10 commissions had moved farther away from their province's quotient, and the movement was significant.

Table 4.9
Gini scores of constituency populations, 1966, 1976, 1987
(by province)

Province	1966	1976	1987	Variation 1966–87
Ontario	0.077	0.080	0.051	-0.026
Quebec	0.060	0.081	0.072	+0.012
Nova Scotia	0.061	0.073	0.073	+0.012
New Brunswick	0.071	0.098	0.098	+0.027
Manitoba	0.104	0.060	0.035	-0.069
British Columbia	0.058	0.071	0.063	+0.005
Prince Edward Island	0.100	0.037	0.042	-0.058
Saskatchewan	0.081	0.054	0.013	-0.068
Alberta	0.086	0.068	0.077	-0.009
Newfoundland	0.086	0.074	0.140	+0.054

Source: Sancton 1990, 453.

Note: Perfect equality is represented by a score of 0, where each constituency's population equals the provincial quotient; greater inequality is portrayed as the score increases from 0 to 1.

Table 4.10
Gini scores of proposed electoral constituency populations at the report to Parliament stage, 1983, 1987
(by province)

Province	1983	1987	Variation 1983–87
Ontario	0.041	0.051	+0.010
Quebec	0.059	0.070	+0.011
Nova Scotia	0.044	0.073	+0.029
New Brunswick	0.088	0.098	+0.010
Manitoba	0.042	0.035	-0.007
British Columbia	0.044	0.067	+0.023
Prince Edward Island	0.055	0.042	-0.013
Saskatchewan	0.011	0.011	0.000
Alberta	0.058	0.077	+0.019
Newfoundland	0.106	0.167	+0.061

Source: Sancton 1990, 455.

Note: Perfect equality is represented by a score of 0, where each constituency's population equals the provincial quotient; greater inequality is represented as the score increases from 0 to 1.

A specific consequence of the 1986 amendments was that three commissions used the provision enabling them to create electoral constituencies

with populations beyond the ±25 per cent variation. The three commissions were Newfoundland's, with two such cases; Quebec's, with two; and Ontario's, with one. In Newfoundland, for example, Labrador was given its own seat: its population is 61.4 per cent below the province's electoral quotient. As a result, the average population of the other constituencies was almost 90 000 – larger than that of any other province. Newfoundland's most populous constituency, St. John's East, with a population 28.8 per cent above the quotient, had more than three times the population of its least populous constituency, Labrador.

Commissions have considerable discretion in approaching their task. Having a commission for each province, rather than a single commission for Canada, has its merits, of course. Most important is a commission's capacity to weigh community characteristics that may justify departures from population equality. Were there no objectives other than population equality, a national commission might be sufficient.

At the same time, however, the record suggests that even in instances where variations from population equality are roughly similar, a different outcome can result. This is illustrated by the approaches taken by the most recent commissions in Saskatchewan and Manitoba.

The Saskatchewan commission achieved the lowest variation of any province, with all its constituencies within 5 per cent of the quotient. As John Courtney, one of its commissioners, stated at our public hearings, "What we were placed in the position of doing was trying to conciliate these different demands [territory and population]. So the conclusion that we reached as the fairest way for the whole province was to go as closely as we could to the arithmetic mean." (Saskatoon, 17 April 1990) The Manitoba commission achieved the second lowest population variation, but it was also able to accommodate a significant number of community of interest considerations: with one metropolitan area with over 60 per cent of the provincial population and fewer population centres of any size in rural areas, the commission for this province could more easily accommodate communities of interest than Saskatchewan. As might be expected, the Saskatchewan commission received a large number of objections to its proposals, whereas the Manitoba body received relatively few.

In some provinces, particularly those where the number of constituencies did not change, commissions have simply taken the path of least resistance, changing the boundaries as little as possible to meet the letter, if not the spirit, of the law. At our public hearings Condé Grondin characterized the most recent New Brunswick commission as "showing an unwillingness to change or to go against the pattern that had been set up by the Commission in 1964 [even though] they were very much aware that the ridings in New Brunswick were departing to a greater degree from the so-called idea of one person, one vote". (Fredericton, 19 March 1990) Grondin argued that New Brunswick could in fact do more to meet the objective of comparable population while also accommodating communities of interest.

We conclude that the drawing of constituency boundaries since 1964 has had mixed success in securing equal and efficacious representation. The principal reason for this outcome is the law itself. The *Electoral Boundaries Readjustment Act*, as amended by the *Representation Act, 1985*, gives mixed, even confusing, signals to electoral boundaries commissions and to citizens. (Sancton 1990) On one hand, the law appears to require commissions to advance the equality of the vote: constituencies are to be designed with populations "as close as reasonably possible" to the provincial quotient. On the other hand, they are required to "consider" community of interest criteria in designing constituencies and in deviating from the provincial quotient. These provisions appear to require that the commissions advance the efficacy of the vote. But to confuse matters even further, commissions may depart from the quotient altogether in "extraordinary" circumstances. Lack of consistency under these conditions is not surprising.

The crux of the problem is that boundaries commissions have interpreted the law in different ways. (Courtney 1988) As we have already seen, this was dramatically evident in the contrasting approaches of the Saskatchewan and Newfoundland commissions in the last boundaries readjustment.

Population comparability and community of interest need not and should not be regarded as contradictory. Even with no variation from population equality, as represented by an electoral quotient, infinite variations on a province's electoral boundaries are possible. The challenge is to draw boundaries that detract from neither voter equality nor community of interest.

We believe that reform can meet both objectives. Reform requires that equality and efficacy be situated in the context of our parliamentary institutions and electoral system.

Toward Equality and Efficacy of the Vote

At our public hearings, two competing schools of thought on electoral reform were well represented. The first, based on strict adherence to representation by population, is part of our political tradition. It occasioned political struggle prior to Confederation and became the basis for assigning seats to the provinces of the Dominion created in 1867. "Rep by pop" was only one of several factors in drawing electoral boundaries during the long period when MPs carried out this task, but it was given primacy in the 1964 *Electoral Boundaries Readjustment Act*.

The second school of thought, which emphasizes the representation of communities of interest, has an equally long history. The original scheme for drawing electoral boundaries recognized the primacy of existing county and municipal boundaries, and throughout the period when Parliament performed this task, claims of community of interest were acknowledged as legitimate influences on constituency design. The 1986 amendments reasserted the fundamental significance of such factors.

Given this tradition, what are we to make of these competing claims? The right to an equally *weighted* vote is clearly an individual right. But the

right to an equally *effective* vote is no less an individual right, even if it takes expression through a community of interest. The apparent contradiction between equality of representation and quality of representation derives, we suggest, from an inadequate appreciation of the dynamic relationship between the equality and the efficacy of representation. We must therefore consider a third approach to the drawing of electoral boundaries, one that does not consider the equality and effectiveness of representation to be contradictory principles. To appreciate this third approach to drawing electoral boundaries, we must situate these two principles in our system of representative democracy.

Equality of the Vote

Representation by population has long been acknowledged in our political tradition. This principle seeks to advance the equality of the vote by asserting the *equal value* of each vote. In a system where legislators are elected from geographically defined constituencies, this means not only a universal franchise, with each elector having only one vote, but also constituencies designed with roughly equal populations.

Canada's use of single-member constituencies reflects the localized character of our political culture. (Smith 1985; Courtney 1985) As a result, despite various nationalizing forces within our political and party systems, maintaining an electoral democracy based on representation of local communities has strong roots in our political tradition. (Bakvis 1991)

Canadians value the personal representation made possible by having a locally chosen MP, making the single-member constituency preferable to the geographically larger multi-member constituencies required by electoral systems such as "proportional representation". Canadians approach their MP for assistance, even if they have not voted for the winner. If anything, Canadians seem to want their MPs to be even more locally oriented than they are now. (Blais and Gidengil 1991 RC) The disciplined public face that parties maintain tends to mask the amount of local advocacy that goes on within parliamentary parties. (Thomas 1991 RC)

At the same time, of course, nationalizing forces – especially the *Canadian Charter of Rights and Freedoms* in recent years – influence the political system. Adopting the Charter signified acceptance of certain national political norms, including democratic and equality rights. One focus for promoting these rights has been constituency design; the major focus here has been the principle of representation by population, based on the objective of the equality of the vote.

Three major court decisions on representation by population and the design of constituencies have given new salience to this principle. Courts in both British Columbia and Saskatchewan (*Dixon* 1989; *Reference re Provincial Electoral Boundaries* 1991) ruled that provincial boundaries readjustment legislation or practices violated the Charter's section 3 guarantee of the right to vote by diluting the equality of the vote between constituencies. In

the *Dixon* case Justice McLachlin stated that the Charter guaranteed citizens "relative equality of voting power"; the Saskatchewan Court of Appeal referred to "relative or substantial equality" of voting power. Neither decision mandated absolute mathematical equality, and both recognized that geography, particularly remoteness and sparsity of population, were mitigating factors in determining boundaries. Justice McLachlin reaffirmed this approach in writing the majority opinion of the Supreme Court of Canada in *Carter* (1991). (The Supreme Court heard this case under the name *Carter* v. *Saskatchewan (Attorney General).*)

The Saskatchewan *Reference* case and its appeal to the Supreme Court of Canada (the *Carter* case) attracted national attention because the issue pitted the principle of voter equality against what was alleged to be partisan gerrymandering by the Saskatchewan government. The alleged gerrymandering resulted from two dimensions of Saskatchewan's *Electoral Boundaries Commission Act* as well as from the constituency boundaries produced by the provincial boundaries commission under this Act. This Act mandated a quota for the number of seats to be given to urban and rural areas of the province and increased the allowed deviation from the provincial quotient from 15 per cent to 25 per cent. The quota meant that urban areas, by legislative design, were to be underrepresented, given the number of seats for urban areas in relation to the urban population of the province. Conversely, rural areas, where the governing party was traditionally well represented, were to be overrepresented.

The electoral boundaries drawn by the Saskatchewan provincial commission in 1988 under the above legislation resulted in a Gini score of 0.081. This was farther from meeting the criterion of equality of the vote than achieved by the previous commission in 1980, with a Gini score of 0.048. It was also on the high side of inequality when compared with federal electoral boundaries commissions for the 10 provinces in 1987 – only Newfoundland and New Brunswick at 0.140 and 0.098, respectively, produced electoral maps with greater inequality of constituency populations. Moreover, the federal boundaries commission for Saskatchewan in 1987 produced a map with a Gini score of 0.013, coming closer to representing equality of the vote than any of the federal commissions for the 10 provinces. These comparisons indicate the extent to which the 1988 Saskatchewan provincial commission departed from recent experience and trends toward the equality of the vote both in Canada generally and in Saskatchewan in particular. In anticipation of an unsuccessful appeal of the *Reference* decision, a second Saskatchewan map was drawn in 1991, following new legislation. This map resulted in a Gini score of 0.031, very much in line with the trend toward equality of the vote.

The Saskatchewan Court of Appeal in the *Reference* case decided that voter equality was required by the Charter and that any deviations from voter equality could be justified only on practical grounds. The Court did not accept the government's claim that rural areas necessarily required overrepresentation

in the legislature. It also decided that the provision whereby constituencies could have populations up to 25 per cent above or below the provincial electoral quotient was unjustified.

The public perception of the decision of the Supreme Court of Canada (*Carter* 1991) on the appeal of this case was complicated by two factors. First, the Saskatchewan government responded to the Court of Appeal decision by enacting new legislation, and its boundaries commission then produced a new electoral map for the province with all but two northern constituencies falling within 5 per cent of the electoral quotient. This was taken to be an admission that voter equality could be achieved if pursued as a matter of public policy. Second, the questions put to the Supreme Court of Canada merely asked whether the original map, rather than the legislation on which it was based, was unconstitutional because it infringed on Charter rights in a manner that could not be justified.

A crucial fact overlooked by most, perhaps all, commentators was the precise wording of the two questions put to the Supreme Court. The two questions considered by the Supreme Court were:

> "(a) Does the variance in the size of voter populations among those constituencies ... infringe or deny rights or freedoms guaranteed by the *Canadian Charter of Rights and Freedoms*? If so, in what particulars? Is any such limitation or denial of rights justified by section 1 of the *Canadian Charter of Rights and Freedoms*?
>
> (b) Does the distribution of those constituencies among urban, rural and northern areas ... infringe or deny rights or freedoms guaranteed by the *Canadian Charter of Rights and Freedoms*? If so, in what particulars? Is any such limitation or denial of rights or freedoms justified by section 1 of the *Canadian Charter of Rights and Freedoms*?" (*Carter* 1991, 30)

The first question was answered in the negative. The Supreme Court stated that absolute equality in the size of constituencies was not required by the Charter; "effective representation", it argued, allows for some deviation from the electoral quotient to represent communities of interest and other non-population factors. The Court also stated that a 25 per cent deviation was not unreasonable. With the exception of the two northern constituencies that even the Saskatchewan Court of Appeal had accepted, all southern constituencies, urban and rural, were within the 25 per cent permitted deviation from the electoral quotient. This latter fact was almost totally ignored in coverage of this decision.

The Supreme Court also answered the second question in the negative. It did so on the grounds that the electoral map produced by the original boundaries commission was based on legislation that recognized the increased population of urban areas, such that the number of seats allocated for urban areas had increased from the previous boundary readjustment a decade earlier. Second, it argued that the resulting difference between the

seat/population ratio for urban areas and that for rural areas was not so large that it infringed on voter equality. Rural areas were overrepresented by 2.6 per cent; urban areas were underrepresented by 3.7 per cent (the two numbers were not identical because of the accepted overrepresentation of the two northern constituencies).

The majority decision of the Supreme Court of Canada in this case thus adhered to the Canadian tradition: absolute voter equality was not required by the Charter. The Court's minority also accepted this position but argued, among other considerations, that the Saskatchewan legislation itself was not justified in creating two classes of constituencies and in reverting to a more generous deviation from the electoral quotient. The provincial election of 21 October 1991 was then conducted using the boundaries drawn by the commission in 1988.

Reacting to this decision, the press created the impression that the Supreme Court had backed away from the fundamental principle of voter equality. This was not the case. The Court reaffirmed that "relative parity of voting power" is the first condition of "effective representation". This reaffirmation of the equality of the vote must also be read in the context of earlier court decisions. In *Dixon* (1989), Justice McLachlin had stated that a 25 per cent allowable deviation, the deviation recommended by the 1988 Fisher Commission on Electoral Boundaries for British Columbia, constituted "a tolerable limit". Given that the provincial boundaries at issue in the Saskatchewan case were drawn so that all constituencies, except for the two northern constituencies, were within a 25 per cent deviation, it is understandable that, in writing the majority opinion in the *Carter* case, she would not revisit the question of the allowable deviation. Second, the decision clearly stated that any departures from this first condition must be "justified on the ground that they contribute to better government of the populace as a whole". (quoted in *Carter* 1991, 35, 36)

Voter equality need not imply that other representational objectives cannot be realized even where a substantial equality of the vote among constituencies is achieved. Support for this approach is evident in the decisions of electoral boundaries commissions over the past 25 years. (Courtney 1988) Not all commissions have achieved comparable results, however, demonstrating that legislative reform is needed to advance the equality of the vote. This is especially the case for Canada's federal constituencies compared with provincial constituencies. Because Canada's federal constituencies are larger than the provincial ones, it is relatively easy for the former to accommodate communities of interest while adhering closely to the equality of the vote. U.S. courts have accepted that the equality of population criterion need not be applied as stringently at the state level as at the federal level, a lesson that should not be lost on Canadians.

Community of Interest

The concept of community of interest is subtler and more complex than the apparently straightforward concept of voter equality; it lacks the clarity and

political appeal of "one person, one vote". The concept also carries the legacy of the political compromises and accommodations, if not outright gerrymandering, that accounted for many of the past inequalities among constituencies – inequalities that could not be justified with reference to any sound principle of representation. The recent Saskatchewan provincial experience has resurrected this concern. Removing partisanship from constituency design may eliminate gerrymandering, but it does not eliminate the need for compromise.

In the current statutory framework for drawing electoral boundaries, community of interest incorporates the several objectives that are linked to it – community of identity, the historical pattern of a constituency, and manageable geographic size in sparsely populated, rural or remote regions. Along with other socio-economic factors, these indices of community of interest constitute legitimate criteria for purposes of representation and thus constituency design.

An important assumption is implicit in the design of constituencies on a territorial basis – that the efficacy of the vote is enhanced to the degree that constituencies represent the shared interests of local communities. This assumption does not presuppose that all communities of interest are geographically concentrated. Some interests are dispersed, and electoral boundaries drawn on a territorial basis cannot recognize them. But many others are concentrated, and boundaries commissions must determine which should be the basis for the boundaries they draw.

The rational approach is to draw boundaries that correspond as closely as possible to the boundaries of communities of interest. To the degree that MPs seek to represent the shared interests of their constituents (and not just the interests of those who voted for them), constituencies should be designed to incorporate the communities of interest in the general region to be represented. In this way the representation of interests is advanced, particularly in areas where communities possess clearly identifiable interests.

Similarly, the efficacy of the vote of members of these communities is enhanced because they have a greater chance of collectively influencing the choice of a representative. This promotes political participation: individuals are more likely to vote when they believe their vote may influence the outcome of an election. When a community of interest is dispersed across two or more constituencies, its voters' capacity to promote their collective interest is diminished accordingly. Their incentive to participate is likewise reduced because the outcome has a lesser relevance to their community of interest. When this occurs, especially if it could have been avoided, the legitimacy of the electoral system is undermined.

The recent experience in the United States with court-mandated redistricting to accommodate communities of interest is testimony to this. After community of interest objectives were ignored by earlier efforts to secure near-equality of the vote, the Americans had to adjust their approach to redistricting to acknowledge the importance attached to community of

interest, especially by members of minority groups – whose interests had never been recognized, except in negative ways, in the design of electoral districts. This practice, referred to as the "affirmative action gerrymandering", has grown in the United States. In recent years, redistricting legislation has evolved from "passive protection" to "active encouragement" of minority group representation. (Cain 1984, 66)

In the United States, Congress has built upon the non-discrimination principles of its *Voting Rights Act of 1965* to ensure that district boundaries are drawn on the basis of voter equality and do not disperse the votes of minority groups. The U.S. Supreme Court has used this Act and the amendments of 1982 to protect collective, as opposed to individual, voting rights. This U.S. experience illustrates that it is possible to design electoral districts in ways that promote the equality of the vote on the one hand and community of interest on the other.

In the United States, wherever possible, it is now considered necessary that a racial or ethnic minority group constitute a majority within an electoral district in order that it be able to determine the outcome of an election and thus be able to elect a candidate from its community. The assumption here, of course, is that serious candidates, representing one of the two major political parties, will be forthcoming from such a community. Even where such a community cannot constitute a majority, the intention is to create electoral districts within which such communities may constitute a significant minority and thus influence the outcome of elections. In each case, the purpose of such "affirmative action gerrymandering" is to ensure that these communities of interest do not have their vote diluted by their dispersal over two or more adjacent electoral districts.

Although community of interest has remained an important consideration in the drawing of federal electoral boundaries in Canada, this should not be taken to mean that the issue of representation of minority groups has always been adequately addressed. As we discuss in the final section of this chapter, Aboriginal peoples, for example, have generally been less than satisfied with the decisions of Canada's boundaries commissions in this respect.

While independent boundaries commissions are clearly the most effective mechanism to eliminate partisanship in the design of constituencies, political independence does not guarantee that the rights of minority groups will be secured. Greater sensitivity to the full range of communities of interest is necessary to accomplish this goal.

The right to an equally weighted vote – as expressed in "one person, one vote" – is an individual right. But citizens, especially those who belong to minority groups, also have a constitutional right to equal protection and benefit of the law. When constituencies do not divide these communities, this objective is enhanced. Indeed, given the demographic weight of members of minority groups in certain areas, it is possible to maximize their electoral influence by ensuring that their community of interest is respected in drawing constituency boundaries.

In terms of their demographic profile, most ethno-cultural groups, including visible minorities, are concentrated in Ontario. In fact, almost half of those belonging to a visible minority group in Canada are concentrated in Ontario, and over three-quarters are located in seven cities across Canada (see Table 4.11).

Table 4.11
Visible minority group members by metropolitan census region, Canada, 1986

Region	Number	Percentage of total population
Montreal	204 740	7.0
Winnipeg	49 530	7.9
Vancouver	230 840	16.7
Toronto	586 495	17.1
Halifax	15 025	5.1
Calgary	72 600	10.8
Edmonton	72 560	9.2
Total	1 231 790	5.0

Source: A. Pelletier 1991 RC, adapted from Statistics Canada data.

In terms of their demographic profile within constituencies, ethno-cultural communities are significant in several federal constituencies. Ethno-cultural communities constitute a majority in 11 constituencies; seven of these are in Ontario. Statistics Canada's 1986 census also indicates ethno-cultural communities constitute 21–50 per cent of the total population in 125 constituencies; 54 of these are in Ontario. Indeed, in fully half of Ontario's federal constituencies these communities account for more than 21 per cent of the total constituency population. In none of these cases, however, does a single ethno-cultural group constitute more than 40 per cent of the population. Table 4.12 details the profile of the 11 constituencies where these ethno-cultural communities are in a majority.

The ability of such groups to elect representatives from their own communities often depends on there being enough voters who have the same ethno-cultural origin as the candidate. The point is not that individual community members always vote the same way – indeed, the candidate's characteristics and party affiliation are important considerations – but that they have an opportunity to collectively influence the outcome. Candidates must also have a political incentive to acknowledge and, once elected, to represent the interests of such communities. At the very least, the ability of ethno-cultural communities to influence the outcome of an election should not be damaged by artificial boundaries.

The drawing of electoral boundaries in Vancouver in 1988, which decreased the Chinese Canadian population's representation, illustrates how ignoring communities of interest substantially minimizes the weight of certain groups and the efficacy of the vote of members of such communities. In 1988, the constituency of Vancouver East (25.4 per cent Chinese) was the only one that had a Chinese population exceeding 20 per cent, whereas in 1984 there had been two: Vancouver Kingsway (24.6 per cent) and Vancouver East (23.9 per cent). Yet by rearranging the 1984 boundaries of Vancouver South and Vancouver Quadra alone, it would have been possible to obtain a third constituency with more than 20 per cent Chinese, namely Vancouver South. (A. Pelletier 1991 RC)

Table 4.12
Constituencies where ethno-cultural groups (single origin) constitute more than 50 per cent of the population, Canada, 1986
(per cent)

Constituency	Total ethno-cultural representation	Predominant ethno-cultural group	Second predominant ethno-cultural group
Mount-Royal	62.2	Jewish (37.7)	Black (2.6)
York South	52.8	Italian (17.7)	Black (6.8)
Don Valley North	53.0	Jewish (10.9)	Chinese (9.8)
Trinity–Spadina	62.7	Chinese (13.1)	Italian (7.9)
Eglinton–Lawrence	63.3	Italian (23.7)	Jewish (11.3)
York West	63.6	Italian (28.3)	Black (7.9)
York Centre	66.1	Italian (31.0)	Jewish (13.6)
Davenport	73.1	Italian (21.4)	Chinese (3.0)
Winnipeg North	71.9	Ukrainian (13.3)	Jewish (7.1)
Regina–Qu'Appelle	64.5	German (16.8)	Ukrainian (5.2)
Vancouver East	56.1	Chinese (25.4)	Italian (7.6)

Source: A. Pelletier 1991 RC, adapted from Statistics Canada data.

This understanding of an equally effective vote for members of a community of interest is not new to our political tradition; it did not arise from the adoption of the Charter, although the Charter does reinforce it, as clearly stated in the *Carter* decision in 1991. This tradition recognizes that neither the franchise nor representation is merely an individualistic phenomenon; both also take expression through collective or community functions. The individualistic perspective is based upon a partial and incomplete understanding of the electoral process and representation. In advancing the ideal of equally weighted votes, it does promote a critical constitutional right. But

in ignoring the community dimension, this perspective is unrealistic at best; at worst it ignores the legitimate claims of minority groups.

It is unrealistic because it assumes that voters do not vote as members of communities of interest or expect to be represented on this basis – and therefore that it does not matter to them how boundaries are drawn so long as constituencies are equal in size. This is not the reality of voting and representation in Canada – or elsewhere for that matter. Many voters do expect to be represented, at least in part, on this community of interest basis. And they therefore care about the way constituency boundaries are drawn.

At worst, the individualistic perspective assumes that electoral majorities or pluralities constitute the exclusive basis for representation, with communities of interest accorded no recognition. This perpetuates the underrepresentation of certain minority groups in the House of Commons by denying the legitimacy of their communities of interest in the drawing of electoral boundaries. It also prevents them from influencing the selection of candidates as well as the outcome of elections as members of a community.

An Approach to Reform

Our approach to electoral reform posits that relative equality of the vote must be the primary objective in drawing electoral boundaries. Having constituencies with relatively equal numbers of voters will promote the equal value of each citizen's vote. It will also result in a House of Commons whose membership on average more accurately reflects the actual distribution of the national vote than would be the case if constituencies were allowed to vary significantly in their populations. This desired outcome will enhance the legitimacy of the House of Commons. At the same time, there is more than sufficient evidence from the Canadian federal experience, the experience in certain provinces, and comparative experience, especially in the United States and Australia, to indicate that this objective can be achieved while giving due regard to communities of interest. Given the number and size of Canada's federal constituencies, the electoral quotient in each province is sufficiently large to allow ample room for consideration of community of interest while adhering to relative equality of the vote. In short, greater adherence to equality of the vote can be realized, while adhering to community of interest, if the law requires commissions to respect a lower deviation from their province's quotient.

Proposals for Reform

The process of designing constituencies by independent boundaries commissions for each province has worked well. The use of such non-partisan commissions has made it possible to give consideration to community of interest criteria without partisanship being a factor. In the United States, in contrast, the courts have had to insist on strict equality of the vote because there, federal redistricting is carried out by state legislatures. We, on the other hand, have been able to allow for variations from electoral quotients on the ground that independent commissions will use this allowance for

non-partisan purposes. At the same time, we have noted progress by electoral boundaries commissions toward the objectives that should govern their drawing of constituencies, namely, equality of the vote and increased efforts to justify variations from electoral quotients.

Recommendation 1.4.2

We recommend that the use of independent electoral boundaries commissions for each province and the Northwest Territories, as well as the composition and manner of their appointment, be maintained.

Recommendation 1.4.3

We recommend that the boundaries commission for each province establish the boundaries of the constituencies in its province according to the principles that the vote of each voter is of equal weight and that each constituency reflects communities of interest.

To achieve representation by population and at the same time draw electoral boundaries so that constituencies effectively represent communities of interest, several improvements are necessary. They include changes to:

- the permitted deviation from electoral quotients;
- the power of boundaries commissions to ignore the quotient altogether;
- the definition of community of interest as a basis for constituency design;
- the basis for determining the quotient;
- the frequency of boundaries readjustment; and
- the process of securing public response to the proposals of boundaries commissions.

Deviations from the Quotient

The provision allowing boundaries commissions to deviate by ±25 per cent of the provincial electoral quotient was generous at the outset. The Australian law on which the 1964 *Electoral Boundaries Readjustment Act* was based provided at that time for a 20 per cent deviation. This deviation has since been reduced there to 10 per cent. Given that the Australian case has been singled out in this regard as the best example of the tradition of other Commonwealth countries (*Carter* 1991, 37–38), that country's experience is germane to our discussions.

The experience of Canadian electoral boundaries commissions since 1964 demonstrates that greater equality in representation can be achieved while still reflecting community of interest. Determining what the deviation should be entails an element of judgement, but we note progress toward

population equality over the past three decades. Following the 1987 boundaries readjustment, 81 per cent of the constituencies were within 15 per cent of the provincial quotient. This was an increase from 67 per cent in 1976, 72 per cent in 1966, and 43 per cent in 1952. Given this progress, and given Canada's constituency design, geography and population dispersal, the figure of 15 per cent is both reasonable and realistic. It remains larger than the 10 per cent allowed in Australia, a country that shares many common geographic and demographic characteristics with Canada. A 15 per cent deviation above and below is sufficient allowance for the accommodation of communities of interest within the Canadian context; the population of a constituency at the lower limit would be approximately 75 per cent of that of a constituency at the upper limit.

Lowering the permitted deviation to ±15 per cent would, in fact, enhance the equality of the vote in each province. Since voters cast their votes for candidates in single-member constituencies, lowering the permitted deviation will result in constituencies being closer to the provincial quotient. The closer constituencies are to the provincial quotient, the closer the total membership of the House of Commons will be, proportionately, to the voting preferences of Canadians. Greater adherence to the equality of the vote, in short, both secures the individual's right to a vote of equal value and enhances the efficacy of the vote of communities, at the constituency, provincial and national levels. This result will thereby serve to enhance public confidence in the federal electoral process by increasing the degree to which the membership of the House of Commons reflects the national vote.

Recommendation 1.4.4

We recommend that

(a) electoral boundaries commissions be permitted to deviate from their provincial electoral quotient by no more than 15 per cent; and
(b) the rules for dividing the two constituencies of the Northwest Territories remain different with respect to the population criterion.

Extraordinary Circumstances

The discretion to depart altogether from the quotient in "extraordinary" circumstances is, in our view, an unjustified departure from the principles that should govern the process. Commissions are not required to justify such departures, and no legislative guidance is provided on either principles or criteria. As John Courtney explained at our hearings:

> [It] places unrealistic burdens on the Election Boundary Commissions.... They don't have any definition of the Act to refer back to; and therefore

> it places them in a very awkward position.... And it's difficult, I think, for commissions to withstand the special pleading that will undoubtedly be brought before them by interested groups. (Saskatoon, 17 April 1990)

The integrity of the law has been severely undermined by this provision. There may be sound reasons for using the maximum variation to create some constituencies where communities are dispersed over an extremely large area. This is recognized in the present law, which allows boundaries commissions to depart from the electoral quotient to the limit of the permitted variation "to maintain a manageable geographic size for constituencies in sparsely populated, rural or northern regions of the province". The traditional argument for the overrepresentation of these areas is based on the obstacles to personal contact – for campaigning and constituency service – that these constituencies present. The evidence does not lend it much support. In fact, the population in most northern constituencies is concentrated in relatively few centres, albeit widely dispersed. And, increasingly, the population is moving to these centres.

More significant is that only one of the five constituencies created under the "extraordinary" clause is among the 10 largest constituencies in geographic size, excluding the constituencies of the Yukon and Northwest Territories. This constituency is Labrador, the largest constituency in Newfoundland by geographic size. By contrast, Ontario has five constituencies larger in geographic size than the single Ontario constituency created under this provision, while in Quebec, where two such constituencies were created, one is the tenth largest and the other the thirteenth largest in geographic size (Appendix B).

We conclude that the "extraordinary" clause has been used mainly for reasons other than to create constituencies of manageable size. Neither Australia nor the United States has considered it necessary to have a special provision for large constituencies. The geographic size of their largest constituencies is comparable to our largest constituencies, yet they adhere much more closely to their electoral quotients than do our largest constituencies (Appendix C).

Advances in travel and communications technology, combined with the administrative and technical resources available to MPs, particularly those from the constituencies in question, mean that geographic size is no longer the obstacle to constituency service it once was. In our view, concerns about manageable size in sparsely populated regions can be accommodated within the population variation we recommend.

Recommendation 1.4.5

We recommend that the provision be removed whereby boundaries commissions may exceed the permitted variation from their provincial electoral quotient under circumstances they deem extraordinary.

Parliament might wish to allow one or more constituencies to surpass the permitted variation for reasons of geography or sparsity of population. In this case, Parliament should provide for this in the *Canada Elections Act* itself, although we do not believe surpassing the maximum deviation is necessary or desirable. The integrity of the electoral system requires that the boundaries created by electoral boundaries commissions conform in every instance to provisions respecting the electoral quotient.

Community of Interest

Recognizing community of interest as a general objective in constituency design presupposes the existence of more than one expression of such interests. The law, for example, identifies not only "community of interest", but also "community of identity" and "the historical pattern of constituency". Provincial laws vary in their statement and treatment of this objective. Quebec's electoral law is perhaps the most comprehensive, for it begins by defining what an electoral constituency "represents". It states:

> An electoral division represents a natural community established on the basis of demographical, geographical and sociological considerations, such as the population density, the relative growth rate of the population, the accessibility, area and shape of the region, the natural local boundaries and the limits of local municipalities.

Provincial electoral laws recognize that factors other than population equality should be considered in designing constituencies. They also recognize that attempts to accommodate factors other than population invariably require decisions on the merits of competing claims. Existing municipal boundaries, for example, may compete with the boundaries of ethnocultural or linguistic communities. As Alan Stewart concludes:

> If conflicts between these factors are to be resolved, there must be some ultimate standard by which the competing claims can be compared. That standard must be community of interest, which requires the weighing of the subjective salience and objective importance of the various shared allegiances and values supporting competing boundary proposals. (Stewart 1991 RC)

Community of interest cannot be interpreted other than on a case-by-case basis. This is acknowledged implicitly in the use of a boundaries commission for each province and by the requirement that commissions conduct public hearings. Although commissions are to be independent of partisan politics, the fact that there are 11 separate commissions assumes that decisions are based on judgement, not merely technical considerations. Public hearings are the mechanism whereby claims can be articulated by those who wish to see a community of interest recognized in electoral boundaries.

In our view, it is the responsibility of electoral boundaries commissions to interpret how the various claims should be assessed and to determine which claims should be accommodated.

At the same time, we consider it essential that commissions not only consider communities of interest but also justify their boundary proposals with reference to community of interest objectives. This can be accomplished if commissions are directed to consider constituencies as representing communities established on the basis of demographic, sociological and geographic considerations and if they take into account the accessibility, area and shape of a region, its natural local boundaries and ecology, and the boundaries of local government and administrative units, as well as treaty areas.

By approaching the design of electoral constituencies in this manner, boundaries legislation and boundaries commissions need not give preference to any one factor. Changes in boundaries ought to accommodate changing patterns of community formation and reflect what is paramount at any point in time. Justice McLachlin made this point clearly in the *Carter* case when she stated that "inequities in our voting system [ought not] to be accepted merely because they have historical precedent". (1991, 38) The same can be said for past preferences in the design of constituencies. This is especially the case with any statutory provision to systematically overrepresent certain areas or to insist on particular boundaries being used, such as the use of municipal boundaries for urban constituencies as legislated in some provinces.

Recommendation 1.4.6

We recommend that

(a) electoral boundaries be drawn to represent communities of interest formed on the basis of demographic, sociological and geographic considerations, taking into account the accessibility, shape and ecology of a region, the boundaries of local government and administrative units, as well as treaty areas; and

(b) electoral boundaries commissions justify their proposals and final decisions with reference to these community of interest considerations and contextual factors.

Ecological Factors

Among the factors that should be considered in designing constituencies is the ecology of a region. At our public hearings, as well as at the most recent hearings of the commissions for Ontario and British Columbia, interveners urged that boundaries be drawn in ways that reflect the need to define communities in terms of local ecosystems.

This concern has emerged over the past decade, reflecting a new environmental consciousness. In addition, the science of ecological land classification has advanced to the point where ecosystem boundaries can be identified with some precision. Several government agencies, such as the Ontario conservation authorities established to co-ordinate water management, have administrative boundaries established on the basis of ecosystems.

Natural borders, such as rivers and mountains, have been used to define electoral boundaries in the past. But an ecosystem embraces what some natural borders have been used to separate; a watershed ecosystem, for example, encompasses both sides of a river. Using ecological considerations to define communities would obviously call for a new approach.

Our research does not support the claim that drawing boundaries in a manner more sensitive to ecological considerations would facilitate environmental protection. (Macdonald 1991 RC) Neither electoral nor jurisdictional boundaries are major factors in formulating and implementing environmental law. On the other hand, communities are beginning to express their interests and identities in a new way. This development should be recognized in constituency design; hence our recommendation that the ecology of a region be taken into account in drawing electoral boundaries. We urge the Canada Elections Commission to make every effort to ensure that staff support to boundaries commissions includes ecologists.

The Basis and Timing of Constituency Design

Efforts to achieve equality of the vote are also affected by the process for designing constituencies. Under the present law, boundaries are redrawn only every 10 years, following the decennial census. Since the 1964 reforms, boundaries have remained in place longer between each redrawing of the electoral map. (Courtney 1988, 688) With continuing change in population distribution and community size, designs intended to achieve population equality inevitably deteriorate over each 10-year period. In addition, the boundaries commission process takes time, and the new boundaries do not come into effect until one year after the commissions complete their work. As Munroe Eagles notes:

> At the time of the last election held on 1966 boundaries (1974), for example, virtually four in every 10 ridings exceeded 25 percent of their respective provincial electoral quotients. Similarly, the last election held on 1976 boundaries (1984) saw more than one in five ridings exceed the 25 percent threshold of tolerable deviations. Even though the current boundaries have only been used once, projected population figures calculated for 1991 suggest just under a fifth (17.4 percent) of all districts would exceed the 25 percent tolerance if an election were to be called this year. (1991a RC)

The 1988 election, for example, was conducted on boundaries established after the 1981 census. By 1988, comparability of population among

constituencies had already been seriously eroded, particularly in Ontario, as shown by the results of Statistics Canada's mid-term population projections in 1986.

In the redrawing of the electoral map following the 1981 census, only 8 per cent of Ontario constituencies exceeded the quotient by ±15 per cent. All were on the low side – that is, less than the quotient – and all but one were in sparsely populated northern Ontario. By 1986, however, two years before the first election conducted on these boundaries, it is estimated that more than 25 per cent of Ontario constituencies deviated from the quotient by more than 15 per cent – more than a threefold increase. The greatest increase was in southern Ontario.

After the 1981 census, no southern Ontario constituency had a population more than 15 per cent over the quotient; by 1986, it is estimated that 11 constituencies had populations that exceeded the quotient by 15 per cent, with six of them exceeding it by 25 per cent. In the province as a whole, constituencies with populations more than 15 per cent under the quotient rose from eight to 14 between 1981 and 1986, with five falling short by 25 per cent or more. With one more federal election to be conducted on the basis of the present boundaries, it is estimated that close to 50 per cent of constituencies in Ontario will likely deviate from the quotient by more than 15 per cent.

Common sense and evidence from other jurisdictions show that maintaining comparability between constituencies requires the most current data available. The most current, complete and accurate, of course, would be the actual number of voters on the final voters lists for the most recent election. This approach is used in Alberta, Quebec and Saskatchewan, as well as Great Britain and Australia. Australia provides an interesting model: boundaries must be redrawn every seven years but also must be redrawn more often should population shifts warrant. This occurs whenever more than one third of the constituencies within a state exceed the 10 per cent variation on the quotient for more than three consecutive months or where population shifts among states require a redistribution of seats among two or more states during the seven-year cycle for both boundaries readjustment and redistribution.

Because we use total population as the basis for drawing electoral boundaries, readjustment cannot occur more than once every 10 years, given that Statistics Canada's mid-term projections are not sufficiently precise for this purpose. The result is a deterioration in population comparability over time. There are several powerful reasons for Canada to use the number of voters, not total population, as the basis for boundaries readjustment.

First, equality of the vote constitutes a compelling reason for drawing boundaries on this basis. Only citizens who have reached the age of 18 have the right to vote. As Justice McLachlin stated in the *Dixon* case, "relative equality of voting power is fundamental to the right to vote enshrined in s. 3 of the Charter". (1989, 293) Although Justice McLachlin was not discussing the drawing of electoral boundaries on the basis of total population

versus the number of voters in this instance, the concept of equality of voting power clearly relates to the numbers of voters in constituencies, not the total numbers of persons.

Second, using number of voters instead of total population would maintain better comparability across constituencies in a highly mobile society because it could be done more frequently (after every election).

Third, it would enhance the equality of the vote, because only voters would be counted. As Munroe Eagles put it, "it would allow a purer measure of relative vote equality to be achieved". (1991a RC)

At the same time, our research confirmed that there is a close relationship between the number of voters and the total population of a constituency. (Eagles 1991a RC)

Areas with the greatest differences between population and voters are in Canada's three largest metropolitan centres, because of their relatively large numbers of recent immigrants. But even in these instances major disruptions would not occur. What would result is greater equality of the vote when the boundaries are drawn and less deterioration in this equality over time relative to the present system. At the same time, given that MPs must serve all residents, not just voters, the data show that drawing boundaries based on the number of voters constitutes an excellent proxy for total population.

In a very few constituencies, MPs would have to provide service to a larger number of non-voters, especially non-citizens. Instead of drawing electoral boundaries in ways to acknowledge this fact, these few MPs should have additional staff and facilities, similar to those provided to MPs from remote or sparsely populated regions. These service functions relate primarily to tasks performed by the staff of MPs in any event; they are not matters of representation with respect to an MP's functions within the House, where constituencies are to be represented according to the equality of the vote.

A system based on the number of voters would also reduce disruption for participants in the electoral system. If relatively minor changes took place more frequently, the system would avoid the highly disruptive changes that often result from boundaries readjustments after the decennial census. This has been the experience in Australia, and our research suggests that this would hold true for Canada as well. More frequent but smaller adjustments to boundaries would contribute to greater stability in boundaries readjustment. In the last exercise of redrawing the electoral map, for example, the boundaries of all but 13 constituencies were changed. More frequent adjustments, even with greater adherence to voter equality, as Munroe Eagles concludes, "would ameliorate the disruptive aspects of necessary boundary revisions by spreading them over a longer period of time than is currently the case". (1991a RC)

Disruption can also be minimized by adjusting boundaries more frequently only where the deterioration of voter equality has passed a certain threshold. The Australian approach is helpful here: a formula triggers adjustments when the number of voters in a certain percentage of

constituencies exceeds the permitted deviation. We consider it reasonable that the number of constituencies in a province exceeding the deviation after a general election should be no higher than 25 per cent of the total number of constituencies in that province.

Recommendation 1.4.7

We recommend that

(a) electoral boundaries be redrawn in all provinces after each redistribution on the basis of the number of voters registered for the most recent federal election;
(b) after each general election the Canada Elections Commission determine the electoral quotient for each province and recommend whether adjustments to boundaries should be undertaken;
(c) electoral boundaries be redrawn after each general election in any province where 25 per cent or more of the constituencies contain a number of voters deviating from the provincial quotient by more than 15 per cent;
(d) no boundaries commission be established according to (a) for any province if there was no change to the number of members of the House of Commons assigned to the province and a boundaries commission had been established for the province after the most recent general election according to (b) and (c); and
(e) no boundaries commission be established for any province after a general election according to (c) during the period commencing on the first day of the year before the year of a decennial census and ending on the day the final report is completed by the boundaries commission established after the census.

After each redistribution, then, and whenever the Canada Elections Commission determined that a province's electoral boundaries should be redrawn after a general election, it would establish electoral quotients for all provinces, or at least the provinces where boundaries are to be redrawn, and electoral boundaries commissions would be appointed. In cases where the Canada Elections Commission determined, following a general election, that less than 25 per cent of a province's constituencies deviated from the electoral quotient by 15 per cent, no boundary adjustments would occur.

Processes and Procedures
Under the *Electoral Boundaries Readjustment Act*, electoral boundaries commissions must be established by the Governor in Council within 60 days

of the time that the chief statistician of Canada presents a certified return of the census data to the designated minister and the chief electoral officer. This is usually nine to 10 months after the decennial census in June. The chief electoral officer must then transmit to the commissions detailed statistics and related maps to allow them to begin their work. The commissions must transmit their descriptions and boundaries of constituencies to the chief electoral officer, for transmittal to the Speaker of the House of Commons, within one year of the time when the chief electoral officer has sent them the electoral maps and statistics.

Traditionally, however, the commissions have been established at the end of the 60-day period. Furthermore, the commissions have been required to use part of their one-year mandate to hire staff, arrange office space and set up logistical support. To put it differently, the commissions are usually not fully operational before July or August of the year following a census year.

In order to avoid these unnecessary delays, the electoral boundaries commissions should be established and appointed no later than the end of September of the year a decennial census has been conducted. This would give the commissions six to seven months to hire administrative support staff, arrange office space and logistical support, recruit and appoint specialists in co-operation with the Canada Elections Commission, and begin work on the boundaries of constituencies based on the voters lists from the previous general election and the preliminary census data, which will be used to assign seats to provinces. The commissions could be fully operational by the time the official census data are available. Given that the preliminary data do not vary greatly from final data on the certified return of the chief statistician, commissions could use with confidence the preliminary number of seats for their province.

With this approach, the reports of the commissions would then be due eight months after the Canada Elections Commission, on the basis of the certified census return of the chief statistician, has transmitted its report to each boundaries commission. If a commission decided or was required to conduct a second round of public hearings, as we will discuss, the deadline would be one year. Where a second round of hearings was not conducted, six months would be cut off the current time limit.

Recommendation 1.4.8

We recommend that

(a) electoral boundaries commissions be established and appointed by the end of September in the year that a decennial census is conducted or within 60 days of the Canada Elections Commission determining that a boundaries adjustment is required in one or more provinces following a general election; and

(b) electoral boundaries commissions report to the Canada Elections Commission within eight months after they have received from the Canada Elections Commission the official census data or within eight months after the date of establishment of an electoral boundaries commission in a province following a general election, unless a second round of hearings is held, in which case the reporting date shall be extended a further four months.

Under the *Electoral Boundaries Readjustment Act* the boundaries that are subsequently brought into force by a "representation order" cannot come into effect for at least one year. This is to permit the necessary changes associated with a modification of the boundaries to be effected. Among other things, this allows for the appointment of returning officers. In Volume 2, Chapter 3, we make recommendations that would ensure returning officers would be in place earlier than has often been the case. This would allow the time until new constituency boundaries come into effect to be reduced from one year to six months following a redistribution of seats. Combined with our above recommendation, this would shorten the time for new boundaries to come into effect by as much as eight months. A further two months could be cut from the overall process if Parliament is not involved, as recommended hereafter. And furthermore, when a boundaries readjustment is required following a general election in one or more provinces, a separate representation order should be made for each province as soon as the report of each boundaries commission is complete. This would mean boundaries readjustment could take effect in one or more provinces without having to wait for the reports of all boundaries commissions, given that the number of seats for each province would not be altered.

Recommendation 1.4.9

We recommend that

(a) the representation order issued after a redistribution of seats following a decennial census be effective on the first dissolution of Parliament that occurs at least six months after the day on which the order was issued; and
(b) a representation order be issued for each province, when following a boundaries readjustment as required after a general election, to be effective on the first dissolution of Parliament that occurs at least six months after the day on which the order was issued.

Each electoral boundaries commission is required to conduct at least one public hearing after making public its initial proposals for constituency

boundaries. Hearings are conducted throughout the province if warranted by the public response. At these hearings, interested individuals and groups may suggest changes to the preliminary map.

Public hearings are essential if the design of constituencies is to respect and reflect community of interest objectives. Through them, citizens can participate in determining a critical dimension of representative government. During the last round of boundary changes, for example, the 11 commissions received over 800 representations from individuals, groups and municipalities. Thus the process is not only independent and impartial but also organized to allow those who will be represented to express their preferences about the geographical structure of political representation. We consider this approach preferable to that taken in Australia – where hearings are conducted prior to, instead of after, the publication of an electoral map – because Canadians can make their representations based on a proposed preliminary map. This is useful especially where major changes must be made. The analogous experiences of municipal zoning and development processes and numerous regulatory processes indicate the effectiveness of this approach to promoting public participation.

After the public hearings, the electoral boundaries commissions consider the suggestions and objections raised and make revisions as appropriate. The commissions then submit their reports on the proposed boundaries to Parliament through the chief electoral officer. The process does not require or permit another round of public hearings by the commissions, even where a commission's new proposals contain revisions not contemplated during the public hearings.

If more than 10 Members of Parliament object to any of the commission reports, however, the objections are heard by a committee of the House of Commons. Parliament has no authority to approve, amend or reject commission reports. Thus this procedure lengthens the process by at least two months while contributing only marginally.

This was illustrated by the experience with the 1987 reports. The Commons committee held public hearings in British Columbia on the report of the commission for that province. It also submitted a report to the commission, rather than simply recording MPs concerns. Finally, it went so far as to request the members of the Saskatchewan commission to appear before it. The commission chair declined, stating that "such an appearance would compromise the independence of the Commission." (quoted in Sancton 1990, 448)

These provisions of the Act and their use by Members of Parliament raise questions about the independence of the process. In Australia, which served as a model for our boundaries readjustment process, parliamentary involvement ceased a decade ago. Clearly, further discussion remains necessary before commissions submit their final reports because they may make substantial and unanticipated changes to their preliminary maps following

their public hearings. The most recent British Columbia commission, for example, removed one seat from Vancouver following objections to its first proposals. When substantial and unanticipated changes are made, a second round of hearings should be held.

But hearings by a Commons committee remove the process from the authority and independence of the boundaries commissions. If each commission were required to conduct a second round of hearings when its second set of proposals departed significantly from its preliminary map, the parliamentary stage could be eliminated. Individual MPs would retain the right to appear before a commission at both rounds of hearings.

Second-round submissions would be restricted to addressing changes in a commission's original report. The second round could not be used to repeat submissions made at the first hearings; the second round would examine boundaries changed in response to interventions in the first round and resulting changes in other parts of the province.

Electoral boundaries commissions should be permitted to conduct a second round of hearings when they deem their revisions to be substantial. To secure the right of citizens to be heard when significant and unforeseen revisions have been proposed, this decision should not rest solely with a commission, nor should the boundaries readjustment process be prolonged unduly. A standard mechanism is therefore required to ensure that significant revisions are considered at a public hearing if citizens wish to be heard.

This mechanism would involve a threshold for measuring significant revisions. The threshold must not be so high that citizens are denied the right to a second hearing; nor should it be so low that matters raised in the first round can be repeated or commissions tempted to draw boundaries in ways intended to avoid a second round of hearings. Based on our estimate of the impact of revisions, we propose that the threshold provide for a second round of hearings when the gross number of voters added to or removed from a constituency as a result of a revision exceeds 25 per cent of the total number of voters in the constituency.

The second round of hearings would work in the following manner:

1. After the first round of hearings on the preliminary map, new boundaries would be drawn and a new electoral map published.
2. If the new map contained changes in the boundaries set out on the preliminary map, the commission could invite submissions on these changes.
3. Where revisions to the preliminary map resulted in the addition to or removal from a constituency of a total number of voters representing 25 per cent or more of the number of voters in any constituency, the commission must invite submissions on these revisions. If submissions are received, the commission must hold public hearings.
4. Following consideration of submissions, the commission would prepare its final map and report.

5. The final report would be submitted to the Canada Elections Commission, which would transmit it, along with the draft representation order, to the minister responsible for proclamation of the order by the Governor in Council.

Recommendation 1.4.10

We recommend that

(a) the present procedure for parliamentary committee hearings on electoral boundaries be discontinued; and
(b) where revisions to the preliminary report of an electoral boundaries commission are made, the commission invite submissions and hold public hearings on these changes; and that where, in the aggregate, revisions involve the addition to or removal from a constituency of 25 per cent or more of the number of voters in any constituency, the commission invite submissions on these revisions and hold public hearings to consider the submissions.

The Names of Constituencies

Since 1964, electoral boundaries commissions have been responsible for naming the constituencies they design. Names as well as boundaries are thus subjects for their consideration and for comments at public hearings. The Act is explicit in assigning this responsibility, and the minister who introduced the bill was equally explicit that boundaries commissions, not MPs, were to have the final say. As Allan MacEachen stated:

> The task of assigning names to the constituencies is for the provincial commissions.... It is possible [for MPs] to make representations to the commissions at hearings [but] government members will have to take their chances along with opposition members as to the names of their constituencies. (Canada, House of Commons, *Debates*, 20 October 1964, 9263–64)

The 1964 legislation contained no guidelines on naming, and at the time there was no intention to depart from the tradition of using geographically specific names. The reports of the first electoral boundaries commissions in 1966 maintained this tradition. The potential for dispute was quickly revealed, however. Of the first 10 objections to these reports, four concerned constituency names.

Since then, MPs have successfully asserted their right to change the names of their constituencies through the mechanism of the private member's bill. Since 1967, passing bills changing constituency names has been a formality: all such bills have been passed unanimously and without debate. Since the 1987 redistribution 18 names have been changed in this manner, but the process affords no opportunity for public participation.

Every name changed in this way since 1967 has involved a change in geographical designation. And in all cases, names have been lengthened by what Norman Ruff referred to in our public hearings as "galloping hyphenation". (Victoria, 26 March 1990) Forty per cent of the constituency names currently used contain either double (36 per cent) or multiple (4 per cent) hyphenation.

Changing constituency names using private member's bills involves costs to the public treasury and to local constituency associations. In addition, boundary adjustments are affected in at least two ways. First, from the perspective of local representation, it is often impossible to choose a name that fully captures the constituency's geographic areas and communities of interest, no matter how many hyphenated words are strung together. As Ruff noted:

> Two names or directional qualifications [east, west, north or south] are perhaps justifiable.... But three and certainly four name combinations are surely overly cumbersome if not absurdities. (Brief 1990, 11)

Second, and more important, is the effect on the willingness and flexibility of commissions to change boundaries to enhance the equality and efficacy of the vote. So long as geographic names are the only means of designating constituencies, controversy can be anticipated whenever names must be altered to reflect boundary changes. Commissions may be pressured to draw boundaries simply to avoid offending a community's pride in its name being used in the name of a constituency.

Other jurisdictions avoid this problem by not using geographically specific names or by using other designations. Numbers, for example, designate U.S. congressional constituencies. In Quebec, the Commission de la représentation électorale, advised by the Commission de toponymie, has the authority to name provincial electoral constituencies after notable persons. The same approach is used in Australia; Aboriginal names and geographical names are also permitted. In Australia, the use of names other than geographic gives electoral boundaries commissions the flexibility to enhance the equality of the vote. In both Australia and Quebec, naming a constituency after a renowned person normally assumes there is some identification of the person with the local community.

To remove obstacles to independent boundary design, two conditions concerning names must be met. First, electoral boundaries commissions should use other than geographically specific names where necessary or appropriate. This would remove obstacles to changing electoral boundaries on the grounds that names would be affected.

Second, the authority to name constituencies should rest solely with electoral boundaries commissions, as originally intended in 1964. This would ensure that names other than geographically specific names would be used where necessary or appropriate. MPs would retain the right

to present their views with respect to constituency names before the commissions.

At the same time, the Canadian Permanent Committee on Geographical Names should be requested to assist boundaries commissions with constituency names, including names with local historical significance. This federal-provincial-territorial committee maintains the National Toponymic Data Base.

Commissions should retain existing geographic names wherever possible, provided they contain no more than a single hyphenation. Names of persons or historic locations should be preferred whenever the constituency cannot be designated adequately by reference to a single locality, including a qualifying direction (e.g., East). Where the name of a person is used, the person should have some historic connection to the local community or area in question.

Recommendation 1.4.11

We recommend that

(a) electoral boundaries commissions be encouraged to use other than geographic names to designate constituencies, particularly where this would avoid the use of multiple hyphenation;
(b) the legislation specify that the name of a constituency not be changed other than during the boundaries readjustment process; and
(c) the commissions ask the Canadian Permanent Committee on Geographical Names to suggest names for constituencies where changes are required or contemplated and that the designations of these constituencies and the rationale for the choice be presented in the commissions' preliminary reports.

ABORIGINAL PEOPLES AND ELECTORAL REFORM

Introduction

One of the most significant challenges to our electoral democracy concerns the representation of Aboriginal peoples in the House of Commons. Aboriginal peoples – Indian, Inuit and Métis – are almost 3.5 per cent of the Canadian population.[2] The total Aboriginal population of Canada is thus greater than that of any of the four Atlantic provinces. Since Confederation, however, only 12 self-identified Aboriginal persons have been elected to the House of Commons: three from Manitoba in the 1870s, when the Métis constituted a majority in that province, and nine since 1960, when Indians living on reserves were granted the right to vote and thus to be candidates. Six of those nine have been elected from the Northwest Territories, where Aboriginal peoples constitute a majority in the Territories' two constituencies.

Canada's Aboriginal people are widely dispersed across the constituencies south of the 60th parallel. Including constituencies that encompass the northern areas of provinces where a significant proportion of Aboriginal people reside, there are only three constituencies where they constitute more than 25 per cent of the population, namely, Churchill in Manitoba, Prince Albert–Churchill River in Saskatchewan and Kenora–Rainy River in Ontario, with 53.9, 29.1 and 25.6 per cent respectively.[3] It should be noted that these population figures include those under the age of 18, the number of which is proportionately higher for Aboriginal peoples – of the order of 50 per cent more.[4]

Many Aboriginal people see this situation as a major factor militating against significant electoral participation. They feel their votes are ineffective in asserting their identity and interests. Partly as a consequence of this, voter participation among Aboriginal peoples has been lower than the national average except in those few cases where there has been a self-identified Aboriginal candidate. (Eagles 1991b RC; Gibbins 1991 RC)

Several factors, in addition to geographical dispersal, can account for the current level of voter participation by Aboriginal people and thus their capacity to have their representational needs met through the electoral process. First, Aboriginal peoples, with the exception of the Métis, did not have the right to participate in the electoral process until fairly recently. The Inuit were denied the vote from 1934 to 1950, and Indians on reserves did not receive the vote until 1960. Traditions of political participation, accordingly, did not develop in these communities in parallel with the rest of Canadian society. On the contrary, the denial of the vote to Indians until 1960 reinforced the idea that they were "distinct" from other Canadians at both the practical and the symbolic level. Political participation is unlikely to be enhanced if changes are not made to secure effective representation for Aboriginal people. Our past is replete with symbols of their exclusion from the Canadian polity. Elimination of discrimination based on law is not sufficient; symbols of inclusion are also needed.

Second, in addition to the fact that Aboriginal people number disproportionately among the poor, the homeless, the transient and the poorly educated, their traditional pursuits of hunting and trapping in hinterland and remote areas have made it difficult, if not impossible, to enumerate or register many of these Canadians within the current framework.

Third, less than adequate communications media are responsible for diminishing the awareness and interest of Aboriginal people in the electoral process. The Aboriginal press and the CBC Northern Services for the eastern Arctic lack the resources necessary to overcome these obstacles. (Alia 1991 RC) Moreover, there is insufficient information available from Elections Canada in the indigenous languages of Aboriginal peoples.

Fourth, officials from Elections Canada are not conversant in local Aboriginal languages, nor are there many Aboriginal people employed as elections officials. Since 1960, for example, only one returning officer has been

identified as being of Aboriginal descent, even though 253 out of 295 returning officers in the last general election assumed their position for the first time. Similarly, only a few Aboriginal people have ever been assigned the position of deputy returning officer.

Fifth, the voting process itself has been, as we have noted, less than welcoming to those voters who find themselves, for one reason or another, in special circumstances or with special needs. Aboriginal people find themselves disproportionately among those who have been negatively affected by the requirements and regulations of the present voting process, especially given their geographic locations and their languages.

Finally, our largest political parties have only recently acknowledged the need to address the issue of Aboriginal representation and political participation. Both the Progressive Conservative Party and the Liberal Party have created an Aboriginal structure to represent Aboriginal peoples within their party organizations. An Aboriginal "caucus" was created within the Progressive Conservative Party in 1985, and an Aboriginal peoples' "commission" was created as part of the Liberal Party of Canada in 1990. The New Democratic Party has recently adopted measures to ensure the participation of Aboriginal people within its governing structures.

Elsewhere in our report, in Volume 2, Chapter 5, for example, we make recommendations that address the concerns noted above. Aboriginal peoples, nonetheless, consider that their distinct status and particular interests require something more than these kinds of changes, however important they may be in increasing their electoral participation. Working within the basic features of the current constitutional framework, two options are available to enhance the effective representation of Aboriginal peoples. The first would require electoral boundaries commissions to give the effective representation of Aboriginal people much greater weight in the drawing of electoral boundaries than has been the case. The second would enshrine in law a process whereby Aboriginal people would have the right to choose to be represented by Members of the House of Commons elected in "Aboriginal constituencies". The number of Aboriginal constituencies would be a function of the number of Aboriginal voters that choose to vote in Aboriginal constituencies in proportion to the size of the other constituencies in a province.

Drawing Electoral Boundaries to Enhance the Efficacy of Aboriginal Peoples' Votes

Requiring that electoral boundaries be drawn in a manner that enhances the efficacy of the vote of Aboriginal peoples can hardly qualify as a novel concept. The very concept of community of interest is a cornerstone of our tradition in the design of constituencies. The legislation governing the process constitutes an explicit attempt to ensure that, as much as possible, the boundaries of constituencies are drawn in ways that pay particular attention to the special interests and identities of segments of the population. The use of geographically based constituencies, especially in areas where

there is significant diversity of communities, has obvious limitations as a mechanism for ensuring the election of persons from particular communities of interest or identity. However, our tradition is one where we have sought to promote a measure of "representativeness" in those elected. Throughout our history, for example, we have often kept rural constituencies smaller in population to preserve their integrity as agricultural constituencies and to enable them to be represented by persons from these communities. In recent years, we have recognized, in drawing electoral boundaries in urban constituencies, the desires of various ethno-cultural communities to be represented by someone with their ethno-cultural identity. In all of these cases, we have implicitly attempted to have MPs elected who belong to the ethno-cultural communities of the constituencies they represent.

One approach to improving Aboriginal electoral representation and participation within our existing system would thus be to give priority to Aboriginal communities in the drawing of electoral boundaries. Recognizing that due consideration has not always been given to Aboriginal communities, this approach would make it an explicit responsibility of electoral commissions. Boundaries of treaty areas should not be overlooked.

This approach would be comparable to the recent experience in the United States, where Congress, supported by executive action and judicial decisions, has sought to enhance the elected representation of minority groups, especially Blacks and Hispanics. This approach, notwithstanding some considerable controversy, has been successful in many areas precisely because of the concentration of racial and ethno-cultural communities there as well as the public recognition of the degree to which the groups affected have been subject to long-standing discrimination in electoral representation and participation. In the Canadian context, however, the legacy of contentious discrimination has been less manifest, especially since electoral boundaries have been drawn by independent boundaries commissions for over a quarter of a century. In the case of Canada's Aboriginal peoples, nonetheless, there has been criticism that the existing process has been less than receptive to their communities in the drawing of constituency boundaries by these commissions. (Committee for Aboriginal Electoral Reform, in Canada, Royal Commission 1991, Vol. 4) The major criticism is that several commissions have ignored the need to draw boundaries in ways that might enhance the influence of Aboriginal votes, such as by drawing boundaries on an east-west, rather than north-south, axis.

In response to these criticisms, we commissioned research to determine if boundaries could be drawn so as to create Aboriginal majorities or significant minorities wherever possible. The research focused on the possible redesign of constituency boundaries in British Columbia, Alberta, Saskatchewan, Manitoba, northern Ontario and northern Quebec, that is, in those provinces or areas of provinces where there are significant numbers of Aboriginal people.

By giving due consideration to Aboriginal communities while adhering to the ±15 per cent variation from provincial electoral quotients that we

recommend, the research demonstrated that in addition to the three seats in the Yukon and Northwest Territories where Aboriginal people already constitute a significant minority or a majority, seven constituencies could be created with an Aboriginal population constituting more than 20 per cent of the total electorate. Of these seven, one constituency would have an Aboriginal population of nearly 60 per cent, one would have more than 40 per cent, two would have more than 30 per cent, two would have more than 25 per cent and one would have more than 20 per cent. In total, then, 10 constituencies would have a significant Aboriginal population. An additional eight constituencies would have an Aboriginal population of over 10 per cent. (Small 1991 RC)

Although this approach would undoubtedly enhance the electoral significance of the Aboriginal vote, it would not ensure the selection or election of Aboriginal candidates in significantly greater numbers than the three Aboriginal MPs elected in 1988. As a result, the Aboriginal peoples of Canada would remain systematically underrepresented in the House of Commons. Consequently, the measures would fall short of what is required to overcome the symbols of exclusion of the past and restore the legitimacy of the House of Commons in the eyes of Aboriginal people. Moreover, this approach assumes that Aboriginal people form simply one among many communities of interest; it does not recognize their unique and special status. A more direct relationship between Aboriginal voters and constituency design is preferable.

Aboriginal Constituencies

A precedent for the direct representation of Aboriginal peoples has long existed in the state of Maine, which adopted guaranteed Aboriginal representation in its state legislature in 1820. Maine's two main Indian communities, the Penobscot and the Passamaquoddy tribes, each have the right to elect a single representative to the state legislature. This system guarantees that the perspectives of both tribes are heard on all issues. Because those electing these representatives are also eligible to vote for a representative from the constituency in which they reside, these two Aboriginal representatives do not have a vote in the state legislature, although they possess all other rights as members, including that of voting in legislative committees. The New Brunswick government has recently indicated its interest in adopting this approach for its provincial legislature.

In 1867, the same year as Canadian Confederation, the New Zealand Parliament dedicated four seats to its Maori Aboriginal peoples from which they elect members to the national Parliament. These seats overlay other constituencies and are geographically designed so that Maori voters belong to one of these Maori constituencies and elect one member under the plurality voting system. Since 1975, each Maori voter has had the option of registering on the Maori roll for their region or on the electoral list for the constituency in which they reside. Unlike Aboriginal representatives in the

Maine legislature, these representatives are full members of the New Zealand Parliament. While many Maori voters now opt to vote in the "general" constituencies, thereby increasing their overall political influence, the four guaranteed seats assure Maori from all regions of New Zealand a voice in Parliament. This explains why this guaranteed Aboriginal representation continues to this day. As Gary P. Gould, President of the New Brunswick Aboriginal Peoples' Council, stated at our public hearings, "Through guaranteed representation, guaranteed participation, the Maoris have become New Zealanders." (Sydney, 5 June 1990)

As demonstrated by the representations to our public hearings, Canadian Aboriginal peoples are aware of, and impressed by, this New Zealand precedent. Indeed, proposals drawing on this experience have been made on numerous occasions in the past, one recent example being that of the Native Council of Canada in the early 1980s. (Committee for Aboriginal Electoral Reform, in Canada, Royal Commission 1991, Vol. 4) Earlier calls for guaranteed representation included those made by Louis Riel in 1870 and by the Malecite Nations in 1946.

Assessments of the New Zealand model and experience vary in the conclusions they reach. (Gibbins 1991 RC; Fleras 1991 RC; New Zealand, Royal Commission 1986) The New Zealand system of four guaranteed seats, it should be emphasized, underrepresents the Maori in proportion to their share of the total population; Maori people constitute approximately 13 per cent of the population, but their four guaranteed seats represent only 4 per cent of the seats in the national Parliament. (Fleras 1991 RC) At the same time, however, the Maori themselves strongly defend this system as giving them a greater say in the governance of New Zealand than they think would otherwise be the case. (New Zealand, Royal Commission 1986)

A recent royal commission on electoral reform in New Zealand concluded that as long as the single-member plurality voting system was retained there, separate Maori seats should be continued. It also recommended that the number of Maori seats be proportionate to the population on the Maori roll, that is, there would no longer be four seats or some such fixed number.

The Case for Aboriginal Constituencies

Canada's electoral system is based upon a consent of citizens to be governed. The design of the electoral system must always respect the fact that Parliament is the central institution of governance in the country. Its legitimacy will be strengthened if, over time, its composition reflects the importance of the various communities in the polity. In this regard, three useful lessons can be drawn from the New Zealand experience.

First, any system of direct Aboriginal representation should provide a process for the creation of Aboriginal constituencies so that Aboriginal voters might exercise their right to direct representation if they so wished. It should not establish or guarantee a fixed number of seats.

Second, the opportunity to directly elect MPs from Aboriginal constituencies by registering as an Aboriginal voter should be a matter of choice and not imposed on individuals.

Third, Aboriginal constituencies should be created according to a formula that enables Aboriginal voters to be represented proportionately to their population in their province. When Aboriginal constituencies are established, their MPs would thus possess the same degree of legitimacy as other MPs from territorially based constituencies, and other Canadians would not have their right to effective representation jeopardized.

A Canadian system based on the lessons drawn from the New Zealand experience, as the Committee for Aboriginal Electoral Reform recommended to us, could constitute a major step toward greater participation of Aboriginal people in the governance of Canada. It certainly would not constitute a form of electoral 'apartheid'. Its purpose and effect would be to include Aboriginal people more effectively in the democratic process and to enhance their sense of political efficacy, rather than to exclude them as is the intent under an apartheid regime. To those who believe in according people the freedom to be themselves, careful implementation of the concept would be counted a gain in civilization. As the Committee for Aboriginal Electoral Reform stated:

> There has been a general feeling among Aboriginal people that the electoral system is so stacked against them that [Aboriginal constituencies] are the only way they can gain representation in Parliament in proportion to their numbers. Direct representation of Aboriginal people would help to overcome long-standing concerns that the electoral process has not accommodated the Aboriginal community of interest and identity. Aboriginal [voters] would elect Members of Parliament who would represent them and be directly accountable to them at regular intervals. MPs from [Aboriginal constituencies] would understand their Aboriginal constituents, their rights, interests, and perspectives on the full range of national public policy issues. (Committee for Aboriginal Electoral Reform, in Canada, Royal Commission 1991, Vol. 4)

For the concept of Aboriginal constituencies to be acceptable, three conditions must be fulfilled. First, there must exist a consensus among Aboriginal peoples in favour of the measure. Second, the practical form the concept will take must be compatible with Canadian traditions and parliamentary system, conform to our constitutional framework and be workable. Third, there must exist compelling reasons for non-Aboriginal Canadians to adopt legislation giving Aboriginal peoples the right to a guaranteed process to choose to create Aboriginal constituencies. These conditions are examined below.

Consultations with Aboriginal Peoples

During the course of our public hearings and our initial research on the electoral participation of Aboriginal peoples, the idea of Aboriginal

constituencies quickly came to the forefront of reform proposals. The general concept of Aboriginal constituencies was raised by or discussed with the many Aboriginal spokespeople who appeared at our hearings. In every case, these spokespeople stressed the need for a thorough consultation process with Aboriginal peoples before the Commission made any proposals to enhance Aboriginal representation in Parliament.

In March 1990, Senator Len Marchand appeared before us with a detailed proposal for the establishment of Aboriginal constituencies.

To ascertain Aboriginal views on Aboriginal representation in the House of Commons, we asked Senator Marchand, who in 1968 was the first Indian person elected to the House of Commons, to lead a series of preliminary consultations with Aboriginal leaders on the concept of Aboriginal constituencies as described in his comprehensive brief to the Commission. These consultations with national and regional leaders found general support for the basic concept of Aboriginal constituencies. Nonetheless, there was a perceived need for more extensive consultation to consider the proposal in greater detail and to assess the degree of support throughout Aboriginal communities across Canada. Accordingly, the above-mentioned Committee for Aboriginal Electoral Reform, chaired by Senator Marchand and composed of three MPs and one former MP, was created to conduct a more comprehensive round of consultations across Canada.

This second round of consultations was based on a position paper, published in the Aboriginal press, that outlined the general principles for the creation of Aboriginal constituencies in a manner that would enable Parliament to implement such a system by acting alone under section 44 of the *Constitution Act, 1982* and that, except for the territorial dimension of electoral boundaries, would be consistent with the basic principles used in drawing the electoral map. On this basis, the Committee's proposal applied the following principles.

First, as seats in the House of Commons are assigned by the constitution to provinces, Aboriginal constituencies would be contained within provincial boundaries, although they would overlay geographically other constituencies within a province or even cover an entire province. Aboriginal constituencies would thus be part of a province's total number of seats; they would not be seats separate from a province's total. Where one or more Aboriginal constituencies were created in a province, the boundaries of the province's other constituencies may have to be redrawn to reflect this fact.

Second, Aboriginal constituencies would be created only when the number of people registered as Aboriginal voters in a province met the minimum number required for a constituency in accordance with the principle of representation by population. In this way, Aboriginal constituencies would satisfy the general criterion of equality of the vote. They would not be given special treatment with respect to a province's electoral quotient. For this reason, the committee noted that an Aboriginal constituency could not be created in any of the four Atlantic provinces without a constitutional amendment.

Third, Aboriginal voters would have the choice of registering as Aboriginal voters or on the general voters lists in the regular constituency in which they reside. They could not be on both lists and thus could not vote more than once. Such voters would not be forced by this system to register as Aboriginal voters. This choice would have to be made, however, before the boundaries of constituencies were drawn. This would occur at least every 10 years following a redistribution of seats, subsequent to the decennial census. It could also occur after an election, on a province by province basis, whenever a redrawing of constituency boundaries became necessary. Once this decision on registration was made, any Aboriginal voter who wished to switch from one list to the other could not do so until the time of the next election, at which time those who had reached the voting age since the last registration could also be registered.

Fourth, the criterion for registration as an Aboriginal voter would be Aboriginal self-identification. This would require, only when an objection is raised, proof of Aboriginal ancestry or community acceptance, the increasingly recognized practice in Canada and internationally. Decisions on objections to any self-identified Aboriginal voters on the voters register for the Aboriginal constituency would be made by a panel of Aboriginal voters. This would be similar to the processes now found in the *Canada Elections Act* for objections to the names on preliminary voters lists, objections that are decided upon by revising officers at formal sittings to hear objections.

Fifth, where the number of Aboriginal voters enrolled on the Aboriginal register in a province required the creation of more than one Aboriginal constituency for a province, the constituencies would be designed on the basis of the comparable population and community of interest criteria used by the electoral boundaries commission for the province. This would allow a commission to create two or more Aboriginal constituencies on a geographical basis or on the basis of distinct Aboriginal peoples within the province. In either case, the commission would make its decisions following discussions and public hearings involving Aboriginal people.

The Committee found general support for its proposal for Aboriginal constituencies, including a majority view that this would not detract from, but rather complement, the objective of self-government and other Aboriginal political objectives. In commenting at our public hearings on Aboriginal participation generally in the Canadian political process, Ovide Mercredi, then Vice-Chief, Manitoba Règion, of the Assembly of First Nations, expressed the view that "there is no inconsistency in Canada recognizing our collective rights of self-government and us still getting involved and maintaining our involvement in the political life of the state, which means getting involved in federal elections". (Winnipeg, 19 April 1990)

At the same time, there was support for the creation of a sufficient number of constituencies to reflect the diversity of Aboriginal peoples. The Committee recognized in its report that a number of constituencies proportionate to the population of Aboriginal people could not accommodate this

diversity in its entirety. It did recommend, however, that the permitted variation from electoral quotients be as large as possible to accommodate different Aboriginal communities. It also recommended that if two or more Aboriginal constituencies were to be created in a single province the distinct communities of different Aboriginal peoples be the basis for drawing Aboriginal electoral boundaries.

The Committee found general acceptance of the need for Aboriginal voters to be enrolled on Aboriginal registers to give effect to this proposal. The criterion of self-identification was also accepted. A specific recommendation was that any objection to the Aboriginal identity or ancestry of an individual voter place the onus on those who objected rather than on the voter.

Finally, the Committee found majority support for having the question of Aboriginal constituencies in the Atlantic provinces considered in separate discussions between Aboriginal peoples and the federal and provincial governments concerned.

Our assessment of these consultations and the Committee's report is that there is sufficient support for the basic concept of providing, in the law, a process allowing for the establishment of Aboriginal constituencies among Aboriginal people. As the Committee concluded:

> Increasing the number of Aboriginal people in Parliament is not the full answer to all Aboriginal issues, but it can be an effective means to promote many Aboriginal aspirations.... Aboriginal views will continue to be expressed by Aboriginal leaders and their organizations and through Aboriginal governments. But Aboriginal people are also citizens of Canada and have as much right as any other citizen to participate freely in the parliamentary process on an equal footing with other Canadians. (Committee for Aboriginal Electoral Reform, in Canada, Royal Commission 1991, Vol. 4)

Aboriginal Constituencies in the Canadian Context

The creation of Aboriginal constituencies would build upon the Canadian tradition of accommodating both individual and collective rights. The Canadian political system has always recognized that there must be a reconciliation of individual rights and membership in the national political community on the one hand and the legitimate interests of citizens for the preservation and promotion of diverse and separate communities within Canada on the other. As Charles Taylor has succinctly put it, "Accommodating difference is what Canada is all about." (C. Taylor 1991, 75)

An explicit acknowledgement of the distinct status of Aboriginal peoples would not constitute a departure from the Canadian tradition. The concept of a community's right to elected representation is not foreign to Canada. Section 80 of the *Constitution Act, 1867*, for example, entrenched special rights in the drawing of electoral boundaries for the Quebec legislative assembly

for a number of English-speaking communities. The second schedule to that act entrenched the boundaries of 12 constituencies with English-speaking majorities. These boundaries could not be changed without the concurrence of the majority of members representing these constituencies. This provision remained in effect until 1970. Similarly, since Confederation, Quebec's 24 senators have each represented an "electoral division" within that province – an arrangement that was intended to ensure Senate representation for Quebec's English-speaking minorities and that remains in force.

On a less explicit, but equally effective, basis, "dual-member" constituencies at both the federal and provincial levels, wherein each voter has two votes and elects two members for a constituency (a constituency with roughly double the population of a single-member constituency), have been used in a number of areas to encourage the election of representatives from specific groups. The former federal constituency of Halifax, for example, was a dual-member constituency until 1966 so that the Liberal and Progressive Conservative parties could each nominate a Roman Catholic as one of its two candidates and thus virtually ensure that whichever party's candidates won, there would be a Roman Catholic MP for Halifax. A similar use was made of dual-member constituencies in the Nova Scotia provincial assembly to ensure the election of Acadian Members of the Legislative Assembly.

The adoption of the Charter has not altered this tradition; indeed, the Charter has actually enhanced the claims of various collectivities to constitutional and political recognition. (Cairns 1990) The Charter is not an exclusively individualistic document; rather, it contains both a symbolic and a juridical recognition of the collectivist dimension of Canadian diversity.

Aboriginal Constituencies and the Best Interests of All Canadians

From a non-Aboriginal Canadian perspective, there exist four compelling reasons to enact legislation on Aboriginal constituencies at the federal level. Each flows from the unique status of Aboriginal peoples and the concepts of fairness and respect for one's contractual obligations, which are the cornerstones of liberal societies.

The Unique Constitutional Status of Aboriginal Peoples Beginning with the *Royal Proclamation of 1763* protecting the Indian peoples' interests in the land of what was then British North America, the British Crown declared its recognition of Indian peoples as constituting Indian nations separate from the European settlers in the territory under the Crown. At Confederation, this responsibility was assumed by the government of Canada, and Parliament was granted powers by the *Constitution Act, 1867* to make law for "Indians, and Lands reserved for the Indians". In each of these ways, including the various treaties between the Crown and Indian nations, the separate status of Indians was recognized. Treaties, in particular, confirmed this status; by definition, treaties between the Crown and other peoples recognize that such peoples have separate status. There were further expressions of constitutional

Indian rights when the prairie provinces received ownership and control of natural resources in 1930. These transfers were made part of the Canadian constitution and protected hunting, fishing and trapping rights for Treaty Indians, as well as protecting unfulfilled land rights arising out of the treaties. In 1939, the Supreme Court of Canada declared that Parliament also had responsibility for the Inuit people. While no judicial decision has been rendered concerning responsibility for Métis people, the *Manitoba Act, 1870* recognized the land rights of the Métis within the boundaries of Manitoba as then constituted and this was constitutionally entrenched by the *Constitution Act, 1871*.

Existing Aboriginal and treaty rights are protected under section 35 of the *Constitution Act, 1982*. This section identifies the Aboriginal peoples of Canada as the Indian, Inuit and Métis peoples. Section 25 of the *Constitution Act, 1982* provides constitutional protection of Aboriginal and treaty rights from legislative impairment by the *Canadian Charter of Rights and Freedoms*. This provision referentially incorporates in the Canadian constitution rights and freedoms pertaining to Aboriginal peoples that existed before Canada was created – an explicit reference is made to the *Royal Proclamation of 1763*. Additionally, rights protected in this section are not qualified by the word "existing". This protection is given further weight by section 35.1, which requires the government of Canada and the provincial governments to consult the Aboriginal peoples at a constitutional conference before any amendments are made to clause 24 of section 91 of the *Constitution Act, 1867* and to sections 25 and 35 of the *Constitution Act, 1982*, the constitutional provisions that affect Aboriginal rights.

The Expressed Desire of Aboriginal Peoples to Preserve Their Separate Identity From the Aboriginal peoples' perspective, they entered into treaties to protect their traditional lifestyle against the influx of immigration. Their leaders were reserving not only the living space for their respective people, but the means to establish and maintain their way of life in the new economic order that was emerging.

The maintenance of their distinct identity has been a major concern of Aboriginal peoples since Confederation. For example, this was clearly expressed on each occasion when the issue arose of giving the vote to Indians. Indians feared that the extension of the vote to them could threaten their relation to the Crown and Parliament's responsibilities for them. Indian populations living on reserves have always been subject to a complex array of legislation that treated Indians and non-Indians differentially. The reserve system also restricted the mobility and residence of non-Indians. When an Indian woman on reserve married a non-Indian, the latter could not become a member of the reserve. When a non-Indian woman married an Indian on reserve, she acquired Indian status and, prior to 1960, thereby lost her right to vote. Whereas the government of Canada sought to pursue a policy on integrating Indians into the general society and polity with the

publication of a white paper in 1969 (Canada, Department of Indian Affairs 1969), there was vehement opposition to the proposal. The explicit rejection of this integrationist policy on the part of Indians at a critical juncture of Canadian and U.S. political history, when it was the conventional wisdom that racial integration was preferable to separate status, reaffirmed their choice of separate identity. Finally, the very concept of self-government as applied to Aboriginal peoples is predicated upon a claim to separate identity within the Canadian polity and a rejection of assimilation.

Hence, contrary to other minorities in North America, Aboriginal peoples have always viewed segregation as an essential means of defending their cultural heritage. In his submission to our Commission, Ovide Mercredi stated that he welcomed "the opportunity to tell another commission of our strong commitment for our right to maintain our distinct identity and of our right to live and survive as distinct peoples in Canada". (Brief 1990, 6) The unique status of Aboriginal peoples in constitutional law protects and gives substance to this fundamental choice. Legislation concerning Aboriginal constituencies would simply extend this historical acceptance of their will to the electoral process, without imposing any burden on non-Aboriginal Canadians.

The Special Responsibilities of Parliament Under section 91(24) of the *Constitution Act, 1867*, Parliament has exclusive power to legislate in relation to "Indians, and Lands reserved for the Indians". The power is exclusive. Consequently, the federal government provides Aboriginal peoples with services that other Canadians receive from provincial and local governments. Although the constitution does not prevent provincial governments from extending any services to Aboriginal peoples, they have generally not been forthcoming in assuming these responsibilities. This unique situation is of particular importance in the design of our electoral system.

To the extent that non-Aboriginal Canadians are represented in the legislatures of the provinces, they have a voice in the formulation of those policies that fall within provincial jurisdiction. In contrast, for Indian and Inuit peoples it is the Parliament of Canada that has jurisdiction in these matters. It is especially critical that they be present in Parliament, given that their particular interests and general welfare are largely determined by the extent to which they are effectively represented there. An example of the need for such direct representation was provided by Ovide Mercredi and by Phil Fontaine, Grand Chief of the Assembly of Manitoba Chiefs, in their separate accounts of Parliament's inattention to the treaty rights of Indian people to hunt migratory birds when Canada entered into the *Migratory Birds Convention* with the United States and Mexico. (Winnipeg, 19 April 1990; Winnipeg, 29 May 1990) Effective representation is best achieved by direct representation, where MPs who are and who are elected by Aboriginal people speak directly on behalf of their Aboriginal constituents. Given that the constitution requires that the Aboriginal peoples be

consulted on any matters affecting them before any constitutional amendments are made and that they must be invited to participate in constitutional conferences, it logically follows that they should also be directly represented in Parliament in order to participate in statutory changes that affect them.

Equality and Effective Representation Direct Aboriginal representation promotes political equality by ensuring that the right of Aboriginal peoples to "effective representation", as articulated by the Supreme Court of Canada in the *Carter* (1991) decision, is placed on an equal footing with that of other Canadians. Other Canadians have chosen to live in the territorial communities where they vote and are represented. Aboriginal peoples, however, should not be denied the right to effective representation simply by virtue of the fact that non-Aboriginal Canadians have settled in Canada in areas adjacent to their communities and thereby have diminished the efficacy of the vote of Aboriginal communities by their greater numbers.

We recommend the continuation of the Canadian system of single-member constituencies defined in a geographic manner because we consider it the best way to achieve the desired equality and efficacy of the vote within the Canadian system of responsible parliamentary government generally. We recognize, nonetheless, that there is nothing "natural" or sacrosanct about this approach.

In accepting an exception to the drawing of electoral boundaries for the creation of Aboriginal constituencies, non-Aboriginal Canadians merely would be acknowledging that they have adopted an electoral system that reflects the unique status and the geographically dispersed character of Aboriginal communities across Canada. It would also acknowledge the crucial fact that although Aboriginal people constitute a minority of the population in every province, the total number of Aboriginal people in Canada, as we noted at the outset, is larger than the total population of each of the four Atlantic provinces.

Summarizing the Case for Aboriginal Constituencies

As noted above, there exist enough precedents in Canada and abroad to support the proposition that the concept of Aboriginal constituencies is not at odds with our tradition and that it is compatible with a parliamentary democracy. Given Canadian traditions respecting collective rights and other efforts to secure the effective representation of various groups in Parliament, the cabinet and government generally, the idea of Aboriginal constituencies, although an innovation in direct representation, would not be contrary to the basic spirit of the federal political process. It is significant that the Monarchist League of Canada, an organization especially concerned with preserving our constitutional heritage, recommended to the Citizens' Forum on Canada's Future the creation of Aboriginal constituencies in order to ensure the effective representation of Aboriginal peoples while maintaining the federal system of single-member constituencies. (Monarchist League of Canada 1991)

As evidenced by the proposal submitted by the Committee for Aboriginal Electoral Reform, such a concept can be implemented within our present constitutional framework. Since section 25 of the Charter places Aboriginal peoples in a special constitutional position, there is no valid reason to believe the establishment of a right to direct representation through a well-crafted process whereby they could vote in Aboriginal constituencies would not survive any challenge in the courts that sought to demonstrate that this right has a negative impact on the equality rights of other Canadians. Under our proposal, such a claim would be without grounds.

Moreover, the direct representation of Aboriginal peoples would not constitute a legal precedent for extending such a right to ethno-cultural communities. Only the Aboriginal peoples have a historical and constitutional basis for a claim to direct representation. Only the Aboriginal peoples have a pressing political claim to such representation. Only Aboriginal peoples can make the claim that they are the First Peoples with an unbroken and continuous link to this land.

In sharp contrast, Canada's ethno-cultural communities have immigrated to Canada and, in so doing, have exercised free choice to accept the electoral system here. The Charter's recognition of the multicultural heritage of Canada does not alter this fact. Furthermore, the stated position of ethno-cultural community representatives at our public hearings, as well as our research on ethno-cultural communities, indicates that members of ethno-cultural communities wish to enhance their participation in Canadian electoral politics by gaining greater access to the existing avenues of elected office and by having their communities more effectively recognized in the drawing of boundaries for general constituencies.

The extensive consultations have elicited a broad consensus in favour of the Committee for Aboriginal Electoral Reform's detailed proposal. We acknowledge that certain Aboriginal leaders may hold a different point of view; however, we never have unanimous agreement in Canadian society, and there is no reason to expect a different situation among Aboriginal peoples. Given that the seats are allocated to each province and that registration would be voluntary, it is quite possible that Aboriginal leaders in one or more provinces will oppose the concept. Even if, at the outset, Aboriginal people in only one or two provinces took advantage of the choice to create an Aboriginal constituency, this would constitute sufficient endorsement for the concept. Profound social innovations take time to mature, and this one should be no exception.

It must be recognized that Aboriginal people are taking significant risks by accepting an approach that guarantees them a process to create Aboriginal constituencies rather than a guaranteed number of seats and by accepting that each of them should have the right to choose whether to register as an Aboriginal voter. The number of Aboriginal voters required to create an Aboriginal constituency in any one province may not be sufficient at the time when electoral boundaries are drawn because a number of Aboriginal

voters in a province may have exercised their right not to register. This fundamental element of choice also means that Aboriginal people may exercise their choice differently at different points in time. The process that we recommend gives them this option; it does not guarantee Aboriginal constituencies in any province.

Contrary to some opinion, Aboriginal constituencies would not "ghettoize" Aboriginal peoples or isolate their representatives in Parliament. These constituencies and their MPs would be different but fully a part of the Canadian electorate and its representation in the House of Commons. Aboriginal voters who choose to vote in Aboriginal constituencies would cast their ballots for candidates who spoke not only to their specific representational objectives but also to the broader issues of national politics from an Aboriginal perspective. In this way, Aboriginal peoples could participate in Canadian politics without being assimilated. Aboriginal MPs would participate in the full range of deliberations and decisions before the House of Commons.

MPs representing other constituencies would be required to consider Aboriginal views and interests as articulated and advanced by the MPs representing Aboriginal constituencies, by members of Aboriginal communities outside Parliament and by Aboriginal voters who chose to remain on the general list. These interests could no more be 'hived off' to MPs from Aboriginal constituencies than the particular communities of interest of MPs representing other constituencies can be ignored. Parliamentary government presupposes that matters of legislation and legislative scrutiny affecting the national interest are debated and undertaken by Parliament as an institution.

The fact that MPs from Aboriginal constituencies would represent less than 4 per cent of the Canadian electorate and would still be relatively few in number does not detract from this reality. MPs from the smaller provinces recognize that the particular provincial interests their constituents share must compete with the interests of larger provinces in a context where majority rule prevails. However, it is also the case that interests of minority groups, however defined, are best protected and secured when they have representatives who can speak directly and explicitly on their behalf. As the Métis Society of Saskatchewan succinctly put it: "How better can the Aboriginal peoples ... contribute to [the] continuing evolution of Canada, than by direct participation in the House of Commons?" (Saskatoon, 17 April 1990)

Any suggestion to the effect that MPs from Aboriginal constituencies would be something less than 'real MPs' ignores the fact that their constituents are no less entitled to be represented in the House of Commons by virtue of the fact that they have constituencies established on a slightly different criterion. Even in constituencies where there are clearly defined communities of interest, such as in agricultural or fishing areas, constituents are also interested in or concerned about the effects of the full range of public policy issues on the political agenda.

Similarly, there is nothing in the basic idea of Aboriginal constituencies to detract from the fundamental roles performed by political parties in our national institutions of government. Although Aboriginal citizens have the same rights as other Canadians to form their own political parties or to nominate independent candidates, the national political parties would have every incentive to practise a policy of inclusion with respect to these voters and those who seek to represent them. The risk of a politics of fragmentation in this respect is not any greater than in other communities of interest, especially since the Aboriginal communities of Canada are already well organized for the purposes of non-partisan political involvement. Our national political parties would undoubtedly have to make efforts to accommodate these new constituencies, but this has been the challenge that parties wishing to govern have always had to meet. Diversity, and not uniformity, has been the fundamental characteristic of the Canadian polity, and the larger national parties have always sought, however imperfectly, to reflect this in their structures and policies.

Finally, the creation of Aboriginal constituencies should not be considered an alternative to, or substitute for, other Aboriginal political objectives, such as Aboriginal self-government. Whatever final form it might take, self-government is not inconsistent with Aboriginal participation in the House of Commons, nor do we see any contradiction between the goal of Aboriginal self-government and the objective of a more effective say for Aboriginal peoples in Canada's central political institution. On the contrary, a cogent and persuasive case can be made that both processes are complementary and mutually reinforcing.

Moreover, it should be noted that most discussions on self-government assume the existence of a land base or a territorially defined jurisdiction. Such an approach would exclude a large, heterogeneous segment of the Aboriginal population: most non-status Indians, those Métis living outside communities where they form a majority, and the approximately one in four status Indians who do not live on reserves or in settlements on Crown land. Although we recognize that some efforts have been made not to overlook the interests of these Aboriginal peoples in the pursuit of the goal of self-government, the establishment of Aboriginal constituencies would give them additional guarantees that their voice would be heard in Parliament. Finally, the creation of Aboriginal constituencies would not abrogate or derogate from any Aboriginal treaty or other rights and freedoms that pertain to Aboriginal peoples. However, the establishment of a process whereby Aboriginal constituencies could be created would require the explicit and substantial support of Aboriginal people.

Establishing Aboriginal Constituencies

The model of Aboriginal constituencies that we recommend, unlike the New Zealand model, does not guarantee Aboriginal peoples a specific number of constituencies, either nationally or by province. Rather, it is the process

for creating such constituencies in one or more provinces that is guaranteed. Constituencies would be created whenever sufficient numbers registered as Aboriginal voters in a province within the 15 per cent variation we recommend for the drawing of electoral boundaries. In this way, Aboriginal constituencies would be created in response to the number of registered Aboriginal voters in a province.

We acknowledge that three different peoples – Indian, Inuit and Métis – are recognized as Aboriginal peoples and that furthermore there are several distinct peoples encompassed therein. We also acknowledge that there will not be a sufficient number of Aboriginal constituencies created in any province to fully reflect this diversity. At the same time, Aboriginal peoples are recognized constitutionally as a distinct group of Canadians, and Aboriginal constituencies would reflect what they have in common. All general constituencies reflect a diversity of communities with different interests and concerns. Finally, it is a fundamental objective of democracy to reconcile, as much as possible, differences among communities within constituencies and to represent the interests and concerns of communities within each constituency. In each of these respects, Aboriginal constituencies will be no different from general constituencies.

This system would apply only to Aboriginal peoples within the provinces. Based on our estimates of Aboriginal voters by province, up to eight Aboriginal constituencies could be created at the next readjustment of constituency boundaries: one in each of Quebec, Manitoba, Saskatchewan and Alberta; two in Ontario; and one or two in British Columbia. Aboriginal constituencies would not be required in the Northwest Territories, given that its two assigned seats already contain Aboriginal majorities. The Aboriginal population in the Yukon is too small to justify an Aboriginal constituency there. The Yukon currently is assigned one seat, and its total population is well below the national quotient.

The total Aboriginal population of Quebec means that the Inuit proposal for an Aboriginal constituency in northern Quebec could not be met: the population of all Aboriginal people in this area is too small to justify an Aboriginal constituency. In the case of the three prairie provinces, where the Indians and Métis desire the creation of an Aboriginal constituency for each of their two communities, the numbers do not indicate that this would be possible at the outset.

The present and projected populations of Aboriginal people in the Atlantic provinces would not justify the creation of an Aboriginal seat in any of these four provinces. The combined populations of Aboriginal people in all four provinces would justify a single seat only if the provincial quotient of Prince Edward Island were used. The creation of an Aboriginal constituency for Atlantic Canada, cutting across provincial boundaries, would thus require a constitutional amendment by Parliament analogous to its creation of seats in the two federal territories. Given that Atlantic Canada is already overrepresented as a region, we support the Committee

for Aboriginal Electoral Reform proposal that the *federal and provincial* governments concerned meet with Aboriginal leaders in the area to determine how a seat could be allocated through a constitutional amendment for the purpose of creating an Aboriginal constituency.

In view of the facts, therefore, that Aboriginal peoples constitute distinct peoples in Canada and desire to be directly represented in Parliament by MPs elected by them, that their interests as distinct communities and the First Nations of Canada cannot be adequately recognized within the existing system of drawing constituency boundaries, that Aboriginal constituencies could be created while respecting the equality of the vote of all Canadians, and that consultations with Aboriginal people indicate solid support for the establishment of Aboriginal constituencies, we recommend a process whereby Aboriginal constituencies could be created.

Recommendation 1.4.12

We recommend that

(a) the *Canadian Elections Act* provide for the creation of Aboriginal constituencies by electoral boundaries commissions in any province where the number of self-identified Aboriginal voters enrolled on an Aboriginal voters register warrants the establishment of one or more such constituencies in relation to a province's electoral quotient;
(b) where two or more such constituencies are to be established within a province, the distinct Aboriginal representational needs within that province be the primary basis for drawing the boundaries of these Aboriginal constituencies, on either a province-wide or geographical basis, provided that the province's electoral quotient is respected; and
(c) the name of Aboriginal constituencies be in an Aboriginal language, reflect the historical link of the community to the land or a historic Aboriginal name or event, and be determined in consultation with the Aboriginal people concerned.

Our recommendation that constituencies not be permitted to vary by more than 15 per cent of a province's electoral quotient should determine the minimum number of registered self-identified Aboriginal voters necessary for the creation of an Aboriginal constituency. Electoral equality for Aboriginal peoples requires Aboriginal constituencies; in this respect Aboriginal people are treated differently from non-Aboriginal people in order to ensure equality. At the same time, however, the equality of the vote of non-Aboriginal voters should not, and need not, be undermined in order to secure the equality of the vote for Aboriginal peoples. A variation greater than 15 per cent as the *minimum* number required to create

Aboriginal constituencies would diminish the efficacy of the vote of non-Aboriginal communities of interest, especially ethno-cultural communities in urban areas, by requiring that general constituencies in a province contain a proportionately greater number of voters. It is also the case that Aboriginal constituencies would be created whenever the number of Aboriginal voters reached the threshold of the electoral quotient minus 15 per cent; non-Aboriginal communities of interest, on the other hand, cannot be assured that electoral boundaries commissions will use this minimum to enhance their efficacy of the vote. For every constituency with a voter population at or close to this lower limit of minus 15 per cent, there is another one with a voter population at or close to the upper limit of plus 15 per cent.

It must be recognized that the process of creating Aboriginal constituencies presents the possibility that, in one or more provinces, an Aboriginal constituency could exceed the province's electoral quotient by more than 15 per cent. This could occur because Aboriginal constituencies would come from the fixed number of seats assigned to a province on the basis of the number of registered Aboriginal voters in the province in relation to the electoral quotient for that province. The electoral quotient for a province is established by dividing the total number of voters registered in the province for the last general election, including Aboriginal voters, by the number of seats assigned that province.

If, for instance, the total number of registered voters in a province was 700 000 and the province was assigned 10 seats, the electoral quotient would be 70 000. The permitted variation of 15 per cent would set the minimum number of voters in a constituency at 59 500 and the maximum at 80 500. If the number of registered Aboriginal voters at the time when an Aboriginal constituency could be created was below 59 500, no Aboriginal constituencies would be created at that time. If the number of Aboriginal voters was within this range of 59 500 to 80 500, there would be one Aboriginal constituency and it would be within the permitted variation from the electoral quotient as all general constituencies must be. If the number of registered Aboriginal voters was greater than 80 500 but less than 119 000 – the number required to create a second Aboriginal constituency – the voter population of the single Aboriginal constituency would exceed the 15 per cent variation. In this case, however, there is no alternative but to allow such a constituency to exceed the maximum variation. This is not an ideal situation, but it is an inherent characteristic of any process that governs the creation of constituencies on other than a formula that divides the total electoral population of a province by the number of seats assigned to it. This is a logical outcome of the process regardless of the size of the permitted variation from the electoral quotient; increasing the permitted variation would not remove this possibility.

Simulations of the impact of a variance of 15 and 25 per cent were made with projections of the electorate for 1991, 2001 and 2011, respectively. The most significant conclusion to be drawn from these simulations is that the

extent to which Aboriginal voters enrol on the Aboriginal voters register will be the determining factor because, under most scenarios, the Aboriginal electorate is very close to the number of voters required to create one or more constituencies in the provinces where this will apply.

Given the importance of the direct representation of Aboriginal peoples and thus the enhancement of their political participation in the process of electoral democracy, this possibility does not detract from the fact that the effective representation of Aboriginal peoples would still be greater than under the current system. Counterbalancing the possibility of such an under-representation of Aboriginal voters in any Aboriginal constituency that exceeded the permitted deviation is the fact that Aboriginal constituencies would be created whenever the *minimum* number of Aboriginal voters is registered. Although this would not give Aboriginal voters any special rights, it is the case that general constituencies cannot expect as a matter of course to be at the low side of the permitted variation. It is also the case that Aboriginal peoples generally are advantaged by the fact that the two seats in the Northwest Territories, where they form majorities, are over-represented in relation to the electoral quotients for every province, including Prince Edward Island. As a practical matter it is further the case that Canadians have accepted that provincial electoral quotients may vary considerably across the provinces, from a current high of just over 87 000 in Ontario to a low of just over 30 000 in Prince Edward Island. Finally, it must be noted that the system we are recommending for the creation of Aboriginal constituencies, when taken together with our recommendation to allow constituency boundaries to be drawn more frequently than only once every 10 years as is now the case, makes the complete process more responsive to changes in the number of voters registered in a province, including of course the number of Aboriginal voters registered in a province.

Recommendation 1.4.13

We recommend that the number of Aboriginal constituencies in a province be equal to such integer as is obtained by dividing the number of voters on the Aboriginal voters register by a number equal to 85 per cent of the electoral quotient for the province.

Finally, given the formula that we recommend for the assignment of seats to provinces in conjunction with population projections for the next redistribution of seats following the 1991 census, we consider it necessary to ensure that a transitional provision be introduced whereby a province would not lose a seat at a redistribution if one or more Aboriginal constituencies had been created in that province. Population projections indicate that this provision, if necessary, would apply only to Manitoba or Saskatchewan. This small adjustment would not unduly affect the proportionate representation of provinces in the House of Commons and can

be constitutionally justified to allow for the introduction of this model of Aboriginal constituencies with the least amount of contention over its effects on provincial representation in the House of Commons.

Recommendation 1.4.14

We recommend that section 51 of the *Constitution Act, 1867* provide that any province, where the redistribution of seats in the House of Commons calls for the reduction of one seat and the boundaries readjustment for the creation of an Aboriginal constituency, be assigned this additional seat for as long as the province has one or more Aboriginal constituencies.

The creation of Aboriginal constituencies should not be considered as affecting any other Aboriginal rights or claims. Aboriginal constituencies acknowledge Aboriginal peoples' desire to be directly represented in the House of Commons. Such representation is not a substitute for Aboriginal self-government or other freedoms.

Recommendation 1.4.15

We recommend that the *Canada Elections Act* state that the creation of Aboriginal constituencies not be construed so as to abrogate or derogate from any Aboriginal, treaty or other rights or freedoms that pertain to Aboriginal peoples.

To create Aboriginal constituencies, Aboriginal voters would be required to register in the provinces where such constituencies could be created. Those who wish to vote in an Aboriginal constituency, moreover, would have to be enrolled on the province's Aboriginal voters register. To register as an Aboriginal voter, an individual would have to identify herself or himself as an Aboriginal person and, only if challenged, may have to provide evidence of Aboriginal ancestry or community acceptance. The burden of proof when an objection is raised should, however, rest with those who are objecting.

Recommendation 1.4.16

We recommend that

(a) Aboriginal voters have the right to enrol on the Aboriginal voters register in their province; and
(b) an Aboriginal voter be defined as a voter who self-identifies as an Aboriginal person, but if an objection is raised, he or she may be required to provide evidence of Aboriginal

ancestry or community acceptance, although the burden of proof should rest with those making the challenge.

Although the mechanics and provisions required to implement Aboriginal voter registration are outlined in greater detail in Volume 2, Chapter 5, it needs to be emphasized here that Aboriginal voters would not be required to compile these lists either for determining whether Aboriginal constituencies would be created in a province or for electoral administration. Rather, as is the case with voter registration generally, responsibility will continue to be a function of the federal machinery of election administration under the general supervision of the Canada Elections Commission.

For the initial registration of Aboriginal voters, and on every occasion when a registration is undertaken to determine whether an Aboriginal constituency is to be created, the chief electoral officer of Canada, assisted by a provincial election office headed and staffed by Aboriginal voters, would be required to undertake a concerted Aboriginal registration drive, making full use of Aboriginal media and Aboriginal organizations. Such a concerted approach is necessary not only to overcome traditional obstacles to enumeration and other forms of registration among Aboriginal voters but also to recognize the significant risks that Aboriginal voters will have assumed by accepting this process for creating Aboriginal constituencies. Aboriginal voters should be assured that the voter registration system will be as complete and accurate as possible.

Recommendation 1.4.17

We recommend that

(a) the registration of Aboriginal voters in each province to determine whether the number of Aboriginal voters warrants the creation of one or more Aboriginal constituencies be undertaken under the general supervision of the Canada Elections Commission;
(b) the registration process be administered by persons qualified to be registered as Aboriginal voters; and
(c) the Commission be required to seek the co-operation of Aboriginal organizations and media in conducting Aboriginal voter registration drives.

Following the 1991 census and the redistribution of seats to provinces to be undertaken subsequent to this census, the chief electoral officer will be able to indicate the potential number of Aboriginal constituencies that could be established in each of the six provinces in question. Given that the next federal general election will be held in 1992 or 1993, the new distribution of

seats will not take place until after this election, as the law requires a period of one year between the redrawing of constituency boundaries following a redistribution and the use of the new boundaries for a general election. The first opportunity to create an Aboriginal constituency in any province, therefore, cannot occur until after the next election. Given our recommendation on when electoral boundaries should be readjusted, however, opportunities for creating Aboriginal constituencies could occur more frequently than every 10 years.

Finally, as we outline in Volume 2, Chapter 5 the ongoing process of voter registration for each election, the voting process and the organization, staffing and responsibilities for electoral administration will be virtually the same for Aboriginal constituencies as for general constituencies. In order to deal with the geographic size and dispersed voter population in Aboriginal constituencies, these constituencies will be included among the new category of "remote constituencies" that we recommend for all similarly characterized general constituencies. Only with respect to a few matters will there be differences, and these are described in Volume 2, Chapter 5.

NOTES

1. The commission for the Northwest Territories was subject to different requirements. This commission, in dividing the Northwest Territories into constituencies, was required to give "special consideration to the following factors: (i) ease of transportation and communication within the electoral districts, (ii) geographical size and shape of the electoral districts relative to one another, and (iii) any community or diversity of interests of the inhabitants of various regions of the Northwest Territories". (*Electoral Boundaries Readjustment Act*, s. 15(3))

2. Estimates of the Aboriginal population

	Population	
	1986	1991
Aboriginal people[a]	851 517	933 395
Canada	25 353 000	26 807 500
Aboriginal population as a percentage of the Canadian population	3.36	3.48

[a]The definition of the Aboriginal population here follows that used by such agencies as Statistics Canada and is the aggregate of the following: registered Indians, Inuit and Métis plus non-registered Indians and Canadians of multiple ethnic origins who also list themselves as North American Indian, Inuit or Métis. (Canada, Statistics Canada 1989). Data on these categories using the 1986 census and for 1991 projections were provided by the Secretary of State as based on the 1986 census. Since 1986 census enumerators were not permitted to enumerate on some reserves, the estimates here take those census data for all but registered Indians (i.e., Inuit, Métis and

multiple ethnic origin Aboriginal people) and add to them the data on Registered Indians provided by the Department of Indian and Northern Affairs for both the 1986 figures and the 1991 projection estimates. (Loh 1990) The population data for Canada are from Canada, Statistics Canada (1990b, 1990c).

3. These estimates are not based only on the underreporting of the Aboriginal population in the 1986 census by constituency (for Canada, a total of 373 265 Aboriginals of single ethnic origin; the total including multiple Aboriginal origins and non-enumerated reserves is 851 517), but also include the apportioning of the extra amount relative to the total estimated Aboriginal population for 1986 among the constituencies. Apportioning the additional amount of the total estimate of Aboriginal people was undertaken on a probability basis such that constituencies that already contained a large number of Aboriginal people were assigned a smaller portion of the additional amount to bring the constituency populations up to estimated provincial totals of the Aboriginal population. (Canada, Statistics Canada 1988) Probability estimates are based on the data from Loh (1990); and estimates by province of the Aboriginal population were provided by the Secretary of State.

4. The percentage of the population aged 17 and under, based on 1986 data, is:

Aboriginals	42.9%
Canada	25.9%

Expressed as a percentage of their relevant total populations, the number of those aged 17 and under is two-thirds larger among Aboriginal peoples than among the total Canadian population. (Canada, Statistics Canada 1988; Loh 1990; and 1986 census data provided by the Secretary of State)

APPENDICES

Appendix A

Allocation of seats in Canada, Australia, United States
(lower chambers)

Canada

Province / territory	Number of seats 1987	Population 1981	Quotient	Percentage difference from the national quotient
Ontario	99	8 625 107	87 122	0.13
Quebec	75	6 438 403	85 845	-1.33
Nova Scotia	11	847 442	77 040	-11.45
New Brunswick	10	696 403	69 640	-19.96
Manitoba	14	1 026 241	73 303	-15.75
British Columbia	32	2 744 467	85 765	-1.43
Prince Edward Island	4	122 506	30 627	-64.80
Saskatchewan	14	968 313	69 165	-20.50
Alberta	26	2 237 724	86 066	-1.08
Newfoundland	7	567 681	81 097	-6.79
Northwest Territories	2	45 741		
Yukon	1	23 153		
Total	295	24 343 181		
(w/o the territories)	292	24 274 287	87 005	
Average deviation (%) from the national quotient				14.32

Source: Adapted from Canada, Elections Canada 1986, 17.

Note: The national quotient is determined by dividing the total population, excluding the territories, by 292 seats.

Appendix A (cont'd)

Australia

State	Number of seats 1988	Population 1988	Quotient	Percentage difference from the national quotient
New South Wales	51	5 660 475	110 990	0.08
Victoria	38	4 233 557	111 409	0.46
Queensland	24	2 706 170	112 757	1.68
Western Australia	14	1 519 918	108 566	-2.10
South Australia	13	1 401 221	107 786	-2.81
Tasmania	5	447 842	89 568	-19.23
Total (w/o the territories)	145	15 969 183	110 897	
Average deviation (%) from the national quotient				4.39

Source: Adapted from Australia, Australian Electoral Commission 1989.

Note: The national quotient is determined by dividing the total population, excluding the territories, by 144 seats (Tasmania has one extra seat protected under the Constitution).

Appendix A (cont'd)

United States

State	Number of districts 1981	Population 1980	Quotient	Percentage difference from the national quotient
Alabama	7	3 893 888	556 270	7.11
Alaska	1	401 851	401 851	-22.62
Arizona	5	2 718 215	543 643	4.68
Arkansas	4	2 286 435	571 609	10.07
California	45	23 667 902	525 953	1.28
Colorado	6	2 889 964	481 661	-7.25
Connecticut	6	3 107 576	517 929	-0.27
Delaware	1	594 338	594 338	14.44
Florida	19	9 746 324	512 964	-1.23
Georgia	10	5 463 105	546 311	5.20
Hawaii	2	964 691	482 346	-7.12
Idaho	2	943 935	471 968	-9.12
Illinois	22	11 426 518	519 387	0.01
Indiana	10	5 490 224	549 022	5.72
Iowa	6	2 913 808	485 635	-6.49
Kansas	5	2 363 679	472 736	-8.97
Kentucky	7	3 660 777	522 968	0.70
Louisiana	8	4 205 900	525 738	1.23
Maine	2	1 124 660	562 330	8.28
Maryland	8	4 216 975	527 122	1.50
Massachusetts	11	5 737 037	521 549	0.43
Michigan	18	9 262 078	514 560	-0.92
Minnesota	8	4 075 970	509 496	-1.89
Mississippi	5	2 520 638	504 128	-2.93
Missouri	9	4 916 686	546 298	5.19
Montana	2	786 690	393 345	-24.26
Nebraska	3	1 569 825	523 275	0.76
Nevada	2	800 493	400 247	-22.93
New Hampshire	2	920 610	460 305	-11.37
New Jersey	14	7 364 823	526 059	1.30
New Mexico	3	1 302 894	434 298	-16.37

Appendix A (cont'd)

United States

State	Number of districts 1981	Population 1980	Quotient	Percentage difference from the national quotient
New York	34	17 558 072	516 414	-0.56
North Carolina	11	5 881 766	534 706	2.96
North Dakota	1	652 717	652 717	25.68
Ohio	21	10 797 630	514 173	-0.99
Oklahoma	6	3 025 290	504 215	-2.91
Oregon	5	2 633 105	526 621	1.40
Pennsylvania	23	11 863 895	515 822	-0.68
Rhode Island	2	947 154	473 577	-8.81
South Carolina	6	3 121 820	520 303	0.19
South Dakota	1	690 768	690 768	33.01
Tennessee	9	4 591 120	510 124	-1.77
Texas	27	14 229 191	527 007	1.48
Utah	3	1 461 037	487 012	-6.22
Vermont	1	511 456	511 456	-1.52
Virginia	10	5 346 818	534 682	2.96
Washington	8	4 132 156	516 520	-0.54
West Virginia	4	1 949 644	487 411	-6.15
Wisconsin	9	4 705 767	522 863	0.68
Wyoming	1	469 557	469 557	-9.58
U.S. total	435	225 907 472	519 328	
Average deviation (%) from the national quotient				6.39

Source: Adapted from United States, Department of Commerce 1983.

Note: The national quotient is determined by dividing the total population by 435 seats.

Appendix B

Canada: exceptional circumstances in 1986–87 boundaries readjustment

Constituency (province)	1981 population	Percentage deviation from quotient	Percentage province average deviation	Percentage average deviation without exceptions	Area km²	Larger/ smaller constituencies in the province
Timiskaming (Ont.)	60 523	-30.5	7.4	7.2	32 466	5 larger
Bonaventure–Îles-de-la-Madeleine (Que.)	52 046	-39.4	10.1	9.4	8 155	12 larger
Gaspé (Que.)	62 986	-26.6	10.1	9.4	12 268	9 larger
Labrador (Nfld.)	31 318	-61.4	17.5	6.5	310 155	Largest
St. John's East (Nfld.)	104 416	28.8	17.5	6.5	1 148	Smallest

Source: Canada 1987; Canada, Elections Canada 1988.

Appendix C

Canada: the 10 largest provincial (in geographic size) readjusted constituencies
(1986–87 readjustment)

Constituency (province)	Area (km^2)	1981 population	Percentage deviation from prov. quotient
Abitibi (Que.)	554 837	86 312	0.5
Churchill (Man.)	480 460	65 254	-10.9
Manicouagan (Que.)	465 680	69 488	-19.1
Cochrane–Superior (Ont.)	351 240	65 927	-24.3
Prince Albert–Churchill River (Sask.)	312 980	69 352	0.3
Labrador (Nfld.)	310 155	31 318	-61.4
Kenora–Rainy River (Ont.)	307 560	74 612	-14.4
Skeena (BC)	242 846	77 697	-9.4
Prince George–Peace River (BC)	215 213	85 626	-0.1
Athabaska (Alta.)	196 260	72 501	-15.8

Source: Canada 1987; Canada, Elections Canada 1988.

Note: In comparison, the area (km^2) of the territorial constituencies are: Nunatsiaq (NWT) – 3 433 165, Western Arctic (NWT) – 1 138 844 and the Yukon – 455 400.

Australia: the 10 largest (in geographic size) redistricted districts
(1984 redistricting)

District (state)	Area (km^2)	Electors 1984 redist.	Percentage deviation from state quotient
Kalgoorlie (W. Australia)	2 308 320	63 299	-0.2
Grey (S. Australia)	848 561	68 241	0.7
Kennedy (Queensland)	772 000	65 747	5.0
Maranoa (Queensland)	625 200	65 909	5.3
Riverina–Darling (NSW)	280 071	66 779	1.4
O'Connor (W. Australia)	168 001	67 236	6.0
Leichhardt (Queensland)	141 300	61 614	-1.6
Parkes (NSW)	124 514	66 749	1.3
Gwydir (NSW)	105 764	67 172	2.0
Farrer (NSW)	67 809	66 772	1.4

Source: Australia 1984.

Note: In comparison, the area (km^2) of the Northern Territory is 1 347 525.

NSW: New South Wales

Appendix C (cont'd)

United States: the 10 largest (in geographic size) redistricted districts
(post-1980 census state redistrictings)

State	Area (km^2)	1980 population	Percentage deviation from state quotient
Nevada (District 1)	274 176	399 857	-0.1
Montana (District 2)	231 928	376 619	-4.3
Oregon (District 2)	182 614	526 968	-0.0
Nebraska (District 3)	154 975	523 827	0.1
New Mexico (District 3)	146 174	432 492	-0.4
Montana (District 1)	144 627	410 071	4.3
New Mexico (District 2)	142 549	436 261	0.5
Arizona (District 3)	141 739	544 870	0.2
Colorado (District 3)	137 165	481 854	0.0
Kansas (District 1)	127 942	472 139	-0.1

Source: United States, Department of Commerce 1983.

Note: In comparison, the area (km^2) of the largest single-member states are: Alaska – 1 478 457, Wyoming – 251 202, South Dakota – 196 715 and North Dakota 179 486.

Appendix D

Prospective allocation of House of Commons seats: formula using Alberta as the base, with 26 seats, 1991, 2001, 2011

Province/ territory	Percentage of population[a]			Seats by population			Adjustment[b]			Total seats			Percentage of seats[c]		
	1991	2001	2011	1991	2001	2011	1991	2001	2011	1991	2001	2011	1991	2001	2011
Newfoundland	2.2	2.0	1.8	6	5	5	—	1	1	6	6	6	2.1	2.1	2.1
Prince Edward Island	0.5	0.5	0.4	1	1	1	3	3	3	4	4	4	1.4	1.4	1.4
Nova Scotia	3.4	3.2	3.1	9	8	8	1	2	2	10	10	10	3.4	3.5	3.5
New Brunswick	2.7	2.5	2.4	8	7	6	2	3	4	10	10	10	3.4	3.5	3.5
Quebec	25.4	24.8	24.4	71	65	61	3	8	11	74	73	72	25.4	25.5	25.5
Ontario	36.8	37.2	37.5	102	97	94	—	4	6	102	101	100	35.1	35.3	35.5
Manitoba	4.1	3.9	3.9	11	10	10	2	2	1	13	12	11	4.5	4.2	3.9
Saskatchewan	3.7	3.6	3.6	10	9	9	3	3	2	13	12	11	4.5	4.2	3.9
Alberta	9.4	10.0	10.4	26	26	26	—	—	—	26	26	26	8.9	9.1	9.2
British Columbia	11.9	12.4	12.6	33	32	32	—	—	—	33	32	32	11.3	11.2	11.3
Northwest Territories										2	2	2			
Yukon										1	1	1			
Total				277	260	252	14	26	30	294	289	285			

Source: Canada, Statistics Canada 1990b.

[a]Population percentage of the total population of 10 provinces; excludes the Yukon and NWT.

[b]Seats added to bring provincial number to Senate floor or last distribution less one.

[c]Percentage of seats of 10 provinces, excludes three for the Yukon and NWT.

Appendix D (cont'd)

Prospective allocation of House of Commons seats: formula using British Columbia as the base, with 33 seats, 1991, 2001, 2011

Province/ territory	Percentage of population[a]			Seats by population			Adjustment[b]			Total seats			Percentage of seats[c]		
	1991	2001	2011	1991	2001	2011	1991	2001	2011	1991	2001	2011	1991	2001	2011
Newfoundland	2.2	2.0	1.8	6	5	5	—	1	1	6	6	6	2.1	2.1	2.1
Prince Edward Island	0.5	0.5	0.4	1	1	1	3	3	3	4	4	4	1.4	1.4	1.4
Nova Scotia	3.4	3.2	3.1	9	9	8	1	1	2	10	10	10	3.4	3.5	3.5
New Brunswick	2.7	2.5	2.4	8	7	6	2	3	4	10	10	10	3.4	3.5	3.5
Quebec	25.4	24.8	24.4	70	66	64	4	7	8	74	73	72	25.4	25.3	25.4
Ontario	36.8	37.2	37.5	102	99	98	—	2	2	102	101	100	35.1	35.1	35.2
Manitoba	4.1	3.9	3.9	11	10	10	2	2	1	13	12	11	4.5	4.2	3.9
Saskatchewan	3.7	3.6	3.6	10	10	10	3	2	2	13	12	11	4.5	4.2	3.9
Alberta	9.4	10.0	10.4	26	27	27	—	—	—	26	27	27	8.9	9.4	9.5
British Columbia	11.9	12.4	12.6	33	33	33	—	—	—	33	33	33	11.3	11.5	11.6
Northwest Territories										2	2	2			
Yukon										1	1	1			
Total				276	267	261	15	21	23	294	291	287			

Source: Canada, Statistics Canada 1990b.

[a]Population percentage of the total population of 10 provinces; excludes the Yukon and NWT.

[b]Seats added to bring provincial number to Senate floor or last distribution less one.

[c]Percentage of seats of 10 provinces, excludes three for the Yukon and NWT.

Appendix D (cont'd)

Prospective allocation of House of Commons seats: formula using Ontario as the base, with 103 seats, 1991, 2001, 2011

Province/ territory	Percentage of population[a]			Seats by population			Adjustment[b]			Total seats			Percentage of seats[c]		
	1991	2001	2011	1991	2001	2011	1991	2001	2011	1991	2001	2011	1991	2001	2011
Newfoundland	2.2	2.0	1.8	6	5	5	—	1	1	6	6	6	2.1	2.1	2.1
Prince Edward Island	0.5	0.5	0.4	1	1	1	3	3	3	4	4	4	1.4	1.4	1.4
Nova Scotia	3.4	3.2	3.1	9	9	8	1	1	2	10	10	10	3.4	3.4	3.4
New Brunswick	2.7	2.5	2.4	8	7	6	2	3	4	10	10	10	3.4	3.4	3.4
Quebec	25.4	24.8	24.4	71	69	67	3	4	5	74	73	72	25.3	25.0	24.7
Ontario	36.8	37.2	37.5	103	103	103	—	—	—	103	103	103	35.3	35.3	35.4
Manitoba	4.1	3.9	3.9	11	11	11	2	1	—	13	12	11	4.5	4.1	3.8
Saskatchewan	3.7	3.6	3.6	10	10	10	3	2	1	13	12	11	4.5	4.1	3.8
Alberta	9.4	10.0	10.4	26	28	29	—	—	—	26	28	29	8.9	9.6	10.0
British Columbia	11.9	12.4	12.6	33	34	35	—	—	—	33	34	35	11.3	11.6	12.0
Northwest Territories										2	2	2			
Yukon										1	1	1			
Total				278	277	275	14	15	16	295	295	294			

Source: Canada, Statistics Canada 1990b.

[a]Population percentage of the total population of 10 provinces; excludes the Yukon and NWT.

[b]Seats added to bring provincial number to Senate floor or last distribution less one.

[c]Percentage of seats of 10 provinces, excludes three for the Yukon and NWT.

Appendix D (cont'd)

Prospective allocation of House of Commons seats: formula using Quebec as the base, with 71 seats, 1991, 2001, 2011

Province/ territory	Percentage of population[a]			Seats by population			Adjustment[b]			Total seats			Percentage of seats[c]		
	1991	2001	2011	1991	2001	2011	1991	2001	2011	1991	2001	2011	1991	2001	2011
Newfoundland	2.2	2.0	1.8	6	6	5	—	—	1	6	6	6	2.1	2.0	2.0
Prince Edward Island	0.5	0.5	0.4	1	1	1	3	3	3	4	4	4	1.4	1.3	1.3
Nova Scotia	3.4	3.2	3.1	9	9	9	1	1	1	10	10	10	3.4	3.3	3.3
New Brunswick	2.7	2.5	2.4	8	7	7	2	3	3	10	10	10	3.4	3.3	3.3
Quebec	25.4	24.8	24.4	71	71	71	3	2	1	74	73	72	25.3	24.4	24.0
Ontario	36.8	37.2	37.5	103	107	109	—	—	—	103	107	109	35.3	35.8	36.3
Manitoba	4.1	3.9	3.9	11	11	11	2	1	—	13	12	11	4.5	4.0	3.7
Saskatchewan	3.7	3.6	3.6	10	10	10	3	2	1	13	12	11	4.5	4.0	3.7
Alberta	9.4	10.0	10.4	26	29	30	—	—	—	26	29	30	8.9	9.7	10.0
British Columbia	11.9	12.4	12.6	33	36	37	—	—	—	33	36	37	11.3	12.0	12.3
Northwest Territories										2	2	2			
Yukon										1	1	1			
Total				278	287	290	14	12	10	295	302	303			

Source: Canada, Statistics Canada 1990b.

[a]Population percentage of the total population of 10 provinces; excludes the Yukon and NWT.

[b]Seats added to bring provincial number to Senate floor or last distribution less one.

[c]Percentage of seats of 10 provinces, excludes three for the Yukon and NWT.

Appendix E

Redistribution comparisons of various formulas, 1991, 2001, 2011

Province (method)	Seats by population			Adjustment			Total seats		
	1991	2001	2011	1991	2001	2011	1991	2001	2011
Newfoundland (current)	6	5	5	1	2	2	7	7	7
(Que. – 75)	6	6	6	—	—	—	6	6	6
(Que. – 71)	6	6	5	—	—	1	6	6	6
(Ont. – 103)	6	5	5	—	1	1	6	6	6
(Ont. – 105)	6	6	5	—	—	1	6	6	6
(Alta. – 26)	6	5	5	—	1	1	6	6	6
(BC – 33)	6	5	5	—	1	1	6	6	6
Prince Edward Island (current)	1	1	1	3	3	3	4	4	4
(Que. – 75)	1	1	1	3	3	3	4	4	4
(Que. – 71)	1	1	1	3	3	3	4	4	4
(Ont. – 103)	1	1	1	3	3	3	4	4	4
(Ont. – 105)	1	1	1	3	3	3	4	4	4
(Alta. – 26)	1	1	1	3	3	3	4	4	4
(BC – 33)	1	1	1	3	3	3	4	4	4
Nova Scotia (current)	9	9	9	2	2	2	11	11	11
(Que. – 75)	10	10	9	—	—	1	10	10	10
(Que. – 71)	9	9	9	1	1	1	10	10	10
(Ont. – 103)	9	9	8	1	1	2	10	10	10
(Ont. – 105)	10	9	9	—	1	1	10	10	10
(Alta. – 26)	9	8	8	1	2	2	10	10	10
(BC – 33)	9	9	8	1	1	2	10	10	10
New Brunswick (current)	8	7	7	2	3	3	10	10	10
(Que. – 75)	8	8	7	2	2	3	10	10	10
(Que. – 71)	8	7	7	2	3	3	10	10	10
(Ont. – 103)	8	7	6	2	3	4	10	10	10
(Ont. – 105)	8	7	7	2	3	3	10	10	10
(Alta. – 26)	8	7	6	2	3	4	10	10	10
(BC – 33)	8	7	6	2	3	4	10	10	10
Quebec (current)	71	69	68	4	6	7	75	75	75
(Que. – 75)	75	75	75	—	—	—	75	75	75
(Que. – 71)	71	71	71	3	2	1	74	73	72
(Ont. – 103)	71	69	67	3	4	5	74	73	72
(Ont. – 105)	73	70	68	1	3	4	74	73	72
(Alta. – 26)	71	65	61	3	8	11	74	73	72
(BC – 33)	70	66	64	4	7	8	74	73	72
Ontario (current)	103	104	105	—	—	—	103	104	105
(Que. – 75)	109	113	115	—	—	—	109	113	115
(Que. – 71)	103	107	109	—	—	—	103	107	109
(Ont. – 103)	103	103	103	—	—	—	103	103	103
(Ont. – 105)	105	105	105	—	—	—	105	105	105
(Alta. – 26)	102	97	94	—	4	6	102	101	100
(BC – 33)	102	99	98	—	2	2	102	101	100

Appendix E (cont'd)

Redistribution comparisons of various formulas, 1991, 2001, 2011

Province (method)	Seats by population			Adjustment			Total seats		
	1991	2001	2011	1991	2001	2011	1991	2001	2011
Manitoba (current)	11	11	11	3	3	3	14	14	14
(Que. – 75)	12	12	12	1	—	—	13	12	12
(Que. – 71)	11	11	11	2	1	—	13	12	11
(Ont. – 103)	11	11	11	2	1	—	13	12	11
(Ont. – 105)	12	11	11	1	1	—	13	12	11
(Alta. – 26)	11	10	10	2	2	1	13	12	11
(BC – 33)	11	10	10	2	2	1	13	12	11
Saskatchewan (current)	10	10	10	4	4	4	14	14	14
(Que. – 75)	11	11	11	2	1	—	13	12	11
(Que. – 71)	10	10	10	3	2	1	13	12	11
(Ont. – 103)	10	10	10	3	2	1	13	12	11
(Ont. – 105)	11	10	10	2	2	1	13	12	11
(Alta. – 26)	10	9	9	3	3	2	13	12	11
(BC – 33)	10	10	9	3	2	2	13	12	11
Alberta (current)	26	28	29	—	—	—	26	28	29
(Que. – 75)	28	30	32	—	—	—	28	30	32
(Que. – 71)	26	29	30	—	—	—	26	29	30
(Ont. – 103)	26	28	29	—	—	—	26	28	29
(Ont. – 105)	27	28	29	—	—	—	27	28	29
(Alta. – 26)	26	26	26	—	—	—	26	26	26
(BC – 33)	26	27	27	—	—	—	26	27	27
British Columbia (current)	33	35	35	—	—	—	33	35	35
(Que. – 75)	35	38	39	—	—	—	35	38	39
(Que. – 71)	33	36	37	—	—	—	33	36	37
(Ont. – 103)	33	34	35	—	—	—	33	34	35
(Ont. – 105)	34	35	35	—	—	—	34	35	35
(Alta. – 26)	33	32	32	—	—	—	33	32	32
(BC – 33)	33	33	33	—	—	—	33	33	33
Territories (All methods)							3	3	3
Totals									
(Current)	278	279	280	19	23	24	300	305	307
(Que. – 75)	295	304	307	8	6	7	306	313	317
(Que.– 71)	278	287	290	14	12	10	295	302	303
(Ont.– 103)	278	277	275	14	15	16	295	295	294
(Ont.– 105)	287	282	280	9	13	13	299	298	296
(Alta.– 26)	277	260	252	14	26	30	294	289	285
(BC– 33)	276	267	261	15	21	23	294	291	287

Source: Royal Commission Research Branch.