

Reference re Provincial Electoral Boundaries (1991) - Electoral District Boundaries and the Right to Vote

[Section 3](#) of the *Canadian Charter of Rights and Freedoms* guarantees the right of citizens to vote in federal and provincial elections. Canadian courts have interpreted this right - along with all other *Charter* rights - in a “broad and purposive” way.[\[1\]](#) This means that the right to vote should not be read narrowly and strictly to mean merely the right to cast a ballot in an election. Rather, it should be interpreted generously with an eye to achieving the purpose of the right to vote.[\[2\]](#)

With this principle in mind, in 1991 the Supreme Court of Canada addressed the question of whether proposed alterations to Saskatchewan’s electoral map infringed an essential element of the right to vote. The proposed changes to the electoral boundaries would have meant variances in the populations of some ridings by as much as fifty percent.[\[3\]](#) In other words, a vote in one riding might have the weight of one and a half votes in another riding. The crux of the question in Saskatchewan’s Electoral Boundaries Reference was “to what extent, if at all, does the right to vote enshrined in the *Charter* permit deviation from the ‘one person - one vote’ rule?”[\[4\]](#) A 6-3 majority ruled that the variations did not infringe the right to vote.

Effective Representation

Justice McLachlin, writing for the majority, identified two distinct models of democratic electoral systems. The United States Supreme Court has espoused the “one person - one vote” model.[\[5\]](#) This contrasts somewhat with the history of the right to vote in Canada, which is rooted in a “less radical, more pragmatic” model.[\[6\]](#) Canadian democracy “tolerates deviation from voter parity in the interests of better representation.”[\[7\]](#) The purpose of the right to vote in Canada is aimed at achieving “effective representation.”[\[8\]](#)

Effective representation does not mean that a wide discrepancy in the value of individual votes is always acceptable. Rather, effective representation includes “relative parity of voting power.”[\[9\]](#) A citizen’s vote should not be “unduly diluted” in a riding that is significantly more populous than another.

However, absolute parity is practically impossible. Births, mortality, immigration and emigration mean that the voter population of any given riding is in constant flux. And even if it were possible, voter parity would, in some cases, detract from effective representation. There are differences between urban and rural interests that must be accounted for. Also, geographic and demographic considerations mean that northern ridings in Saskatchewan

(and the rest of Canada) will be larger and less populous. These discrepancies are a necessary result of representing the interests of rural and sparsely populated regions. Thus, the majority found no breach of section 3.

The Dissent

Justice Cory, writing in dissent, essentially agreed with principles set out in the majority decision. The history and principles of the right to vote in Canada do not strictly adhere to the American emphasis on voter parity. While there must be relatively equality of one vote to another, there must be room for variation based on geographic and demographic considerations.[\[10\]](#)

Justice Cory noted that there is no fixed percentage of deviation from parity that is acceptable. The amount of leeway must be assessed by each province with its unique geographic and demographic features. One province may determine that a ten percent variation is acceptable, while another may allow for twenty-five percent.[\[11\]](#)

In this case, the process of drawing the 1989 Saskatchewan electoral map gave Justice Cory concern. Specifically, when compared with the 1981 map, in which riding populations varied only as much as fifteen percent, the 1989 map with variations over twenty-five percent did not seem to be a reasonable accommodation of differing electoral interest.[\[12\]](#)

The Saskatchewan government did not put forward any reasonable explanation as to why the 1989 map broadened the gap between riding populations. Therefore, Justice Cory claimed that there is no way to determine if the decision may be saved as a reasonable limit on the right to vote.[\[13\]](#)

Jim Young (June 14, 2010)

[\[1\]](#)*Reference re Prov. Electoral Boundaries (Sask.)*, [1991] 2 S.C.R. 158 at 27. [\[2\]](#) *Ibid.* at 27-28. [\[3\]](#) *Ibid.* at 40. [\[4\]](#) *Ibid.* at 30. [\[5\]](#) *Ibid.* at 34. [\[6\]](#) *Ibid.* at 35. [\[7\]](#) *Ibid.* at 35. [\[8\]](#) *Ibid.* at 32. [\[9\]](#) *Ibid.* at 32. [\[10\]](#) *Ibid.* at 12-13. [\[11\]](#) *Ibid.* at 21. [\[12\]](#) *Ibid.* at 17. [\[13\]](#) *Ibid.* at 23.