

KNOWING WHERE TO DRAW THE LINE

Electoral Boundaries in Alberta

Douglas Stinson

Every citizen of Alberta knows, or should, that the *Charter of Rights and Freedoms* gives Canadians “the right to vote in an election of members of the House of Commons and of a legislative assembly.” The right to vote may be guaranteed, but this doesn’t mean that every Albertan has a vote of equal value. Two rural ballots have the weight of three in the city. A vote cast in Sherwood Park, for example, has less than three-quarters the strength of a vote from Barrhead. There has been a significant imbalance in urban vs. rural representation in Alberta since the late 1960s.

In 1951 Alberta rural residents slightly outnumbered urban dwellers. Five years later the balance shifted forever with 150,000 more in the cities than in the country. According to the Canada West Foundation, a 1996 provincial census put the ratio at 4:1, or 79.5 per cent urban and 20.5 per cent rural. The rural and farm population is dropping in absolute terms and as a population percentage. Alberta’s farm population fell from 370,899 to 178,115 between 1931 and 1986. Whereas in 1931 one of every two Albertans lived on a farm, in 1986 the number was one in 14.

Urbanization has affected just about every jurisdiction in Canada. Since representation by population is a fundamental democratic principle, electoral boundaries must be revised from time to time to reflect where people actually live. Increasingly in Alberta this means Edmonton and Calgary. Nevertheless, many rural residents in Alberta see little reason to alter the status quo. Nor is it in the interests of the present Conservative government to see its power base diminished by a reduction in the number of rural constituencies. However, if major changes do not take place soon, it is possible that the Supreme Court could declare the results of a future provincial election invalid.

Alberta has 83 constituencies and, according to the most recent federal census figures (1991), a population of 2,554,779. To calculate the average number of people in an Alberta constituency, divide the population by 83, for a result of 30,780. For every voter to have equal representation, each constituency should have 30,780 residents.

To determine the extent of over- or under-representation, compare 30,780 to the actual number of people in a particular constituency. (See chart p. 32.) For example, in 1991 Athabasca-Wabasca had a population of 16,621, or 46 per cent fewer people than the average constituency, while Calgary-Fish Creek had a population of 35,666, or almost 16 per cent more than the average. This means that people who live in Athabasca have more than twice the representation and voting power that people in Calgary-Fish Creek have, since it takes so few of them to elect an MLA.

In the pivotal 1989 case, *Dixon v. British Columbia*, B.C. Supreme Court Justice Beverly McLachlin interpreted the right to vote in section 3 of the Charter as requiring “relative equality of voting power.” By this she meant that electoral divisions must be relatively equal in population. The importance of this ruling for Alberta cannot be overstated, because it opens the door for a possible Charter challenge. The grounds for such an action would be that the right of a citizen to representation shouldn’t be unduly compromised by the voter’s place of residence. Judgments of the Supreme Court of Canada have suggested maximum permissible deviation from the provincial average of plus or minus 25 per cent. In Alberta this would mean a constituency could have a population as small as 23,085 or as large as 38,475.

At the time of the *Dixon* case, half of the constituencies in Alberta deviated from the provincial average by more than plus or minus 25 per cent. In August 1989 the Alberta Legislature formed an all-party Select Special Committee on Electoral Boundaries to analyze the Charter’s implications for electoral boundaries and the distribution of constituencies. Then, in November 1990, the provincial government passed a revised Electoral Boundaries

Commission Act, which included some provisions to “Charter-proof” electoral boundaries. In January 1991 the government appointed an Electoral Boundaries Commission based on the new Act; however, by May 1992 the Commission found itself deadlocked over the issue of the creation of hybrid (so-called “rurban”) constituencies, which might have reduced tensions between urban and rural populations.

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In July 1992 the Final Report of the Commission was thrown out and a Special Select Committee of the Legislature comprised of seven MLAs (four Tory, two New Democrat and one Liberal) was established. Opposition parties refused to participate in the Select Committee, objecting in principle to the process of politicians drawing their own boundaries. This left the field exclusively to Tory MLAs. Bob Bogle (Taber-Warner) was appointed chair of the committee and Stockwell Day (Red Deer North) became vice-chair. Patricia Black (Calgary Foothills) and Mike Cardinal (then Athabasca-Lac La Biche) were the two other Conservative appointees. The committee held no public hearings but listened to nine invited consultants and eighteen other groups. The committee’s recommendations for constituency boundaries, presented in November 1992, were based on average populations drawn from 1991 federal census figures for Alberta.

Among its ramifications were the elimination of Calgary’s only New Democrat-held constituency and the creation of four special consideration districts with an average deviation of 42 per cent below the provincial quotient (two of which happened to be the seats of the chairman and the vice-chairman of the Committee). It also raised Calgary and Edmonton seat numbers by one each to 20 and 18 constituencies, respectively. With the additions, Calgary and Edmonton were, on average, over the provincial quotient by 15.4 and 11.3 per cent, respectively. Thirty-three primarily rural constituencies fell below the quotient by an average of 11 per cent. Charges by opposition parties of gerrymandering began in earnest in late 1992. (The term “gerrymander” is the political legacy of Massachusetts Governor Elbridge Gerry who, in 1812, redrew the boundaries of his electoral area in such a way as to ensure his re-election. The resulting shape resembled a salamander. Pundits coined the word by combining the names of the man and the reptile.)

The Judgment of the Court of Appeal of Alberta

Despite a constitutional challenge from the town of Lac La Biche (subsequently withdrawn), the Electoral Divisions Statutes Amendment Act, 1993, was proclaimed in force on May 18, 1993. To test its constitutionality, the government then referred the Act to the Court of Appeal of Alberta. While the Court was still deliberating, a general election based on the new boundaries was held on June 15. The Conservatives formed a majority government, taking 51 seats with about 45 per cent of the popular vote. The Liberals and NDs won 55 per cent of the popular vote but only 24 seats.

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— David Bercuson

The judgment of the Alberta Court of Appeal was finally delivered on October 24, 1994. The Court was very critical of the electoral divisions that had been established, claiming that the “very brief report” of the Select Committee had “offered no detailed explanation for the specific boundaries.” While it acknowledged that “effective representation” sometimes requires the formation of a constituency of a below-average population, it reaffirmed that “there is no permissible variation if there is no justification. And the onus to establish justification lies with those who suggest the variation.” It found little justification in the materials supplied by the Legislature: “The Legislature offered no reasons, but essentially adopted the recommendation of the Select Committee. Before us, Alberta equated the Committee’s reasons with those of the Legislature. We do not know with any certainty or detail what those reasons are.” No transcripts of Committee minutes were provided to the Court. While it was the primary task of the Court to pronounce upon the constitutionality of the approved boundaries, the Court had no option but to conclude: “it is impossible for us to say that the effort here meets a Charter challenge when we do not know with any precision the reasons for the boundaries under review.”

Putting aside subtleties of judicial language the Court claimed that “the practical necessities raised by the principle of effective representation did not, alone, guide the hand of the legislators. On the contrary, what seems to have

motivated this scheme at least in part was the acknowledgment that, whether or not some disparities were warranted, change would be made slowly so as not to offend unduly the political sensibilities of some electors. The boundaries before us, at least in part, seem to be a response to widespread protest from those Albertans who live in farming communities.” The Court took Mr. Bogle to task for advocating the retention of “one of the smallest divisions in the province, which, by happenstance, was that for which he was then the sitting member.” While Bogle had argued that the sudden reduction in the level of representation would greatly displease his constituents, the Court ruled that “the ‘comfort zone’ of a vocal portion of the electorate is not a valid Charter consideration.” The Court went on to conclude: “The fact, then, that a significant number of Albertans do not like the results of an equal distribution of electoral divisions is no reason to flinch from insisting that they take the burden as well as the benefit of democracy as we know it.”

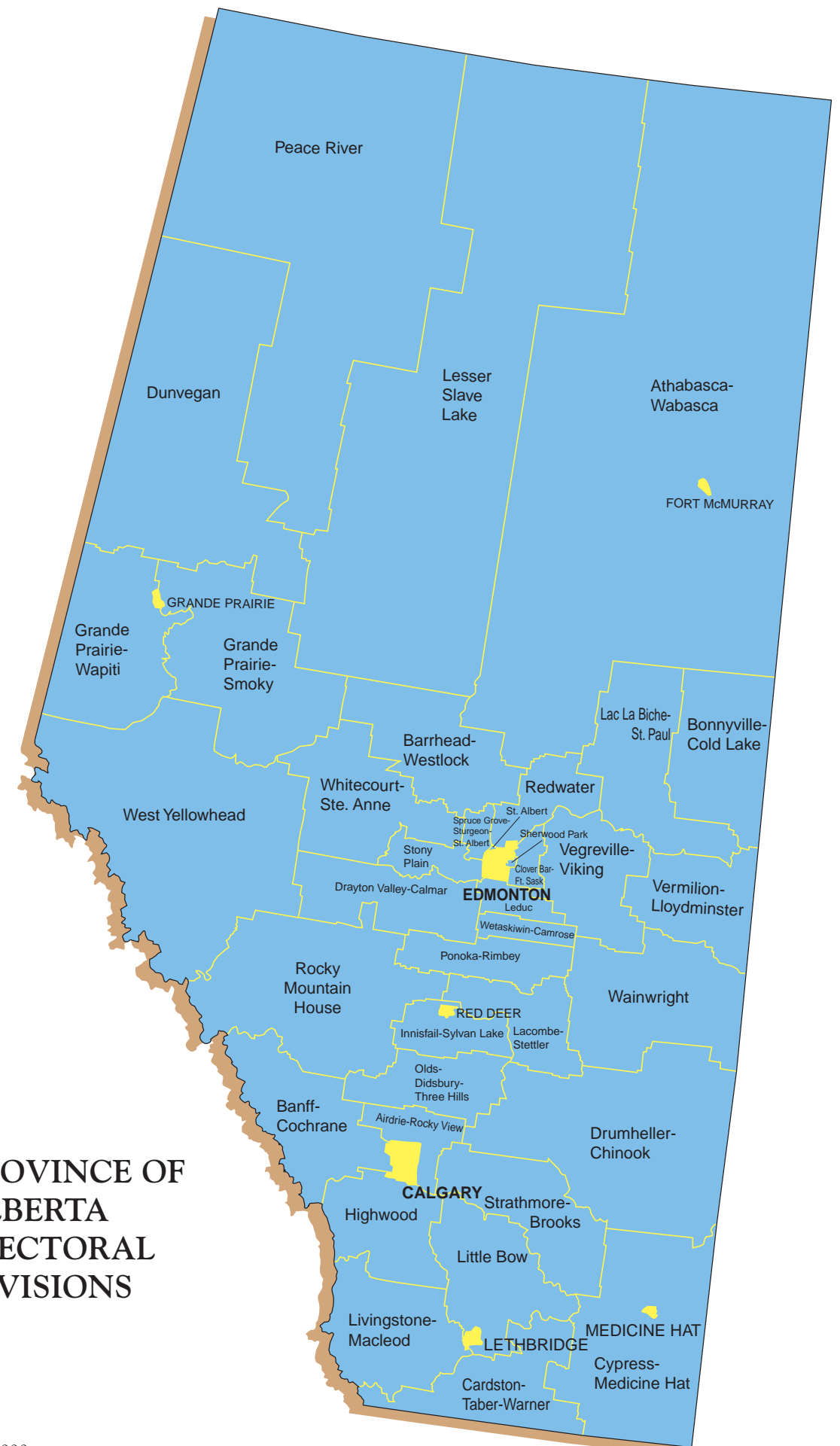
University of Calgary history professor David Bercuson contends that the situation is common across Canada and that the justification for maintaining such a system is solely political control. “What we have is legislatures with rural over-representation deciding the question of whether or not rural over-representation should continue. In other words, these governments are saying, ‘We’ve got control and we’re going to maintain it. We’ve got it and you can’t have it.’”

According to the Court of Appeal, there were only three possible options for correcting the historical disparity in voting powers:

1. *Having agrarian and non-agrarian populations represented in the same constituencies;*
2. *Increasing the size of the Legislative Assembly to provide greater representation; or,*
3. *Reducing the number of constituencies represented by rural residents.*

The first option was ruled out because of widespread sentiment in Alberta that conflicting interests in hybrid constituencies cannot adequately be represented. The second option, the Court said “would fly in the face of the refusal of the people of Alberta to support an increase.” The final option, however unpopular it might be for rural voters, was left as the only alternative.

Recognizing its power to cause major disruption in the electoral process, the Court decided to withhold any Charter condemnation and restrained itself from insisting upon a correction of electoral boundaries. Faced with the possibility of invalidating the 1993 election results, the Court said: “We do not see the democratic value in creating a political crisis.” Clearly dissatisfied with the unjustified boundaries used in 1993, it called for “a new and proper review... before the next general election.” Clearly hinting at the political make-up of the all-Conservative Special Committee that had established the 1993 electoral boundaries, the Court called for a review that would be “insulated from partisan influence” and would be free of “traditional political games, like gerrymandering or log-rolling.”



**PROVINCE OF ALBERTA
ELECTORAL
DIVISIONS**

to deal with 10 different municipal governments, five school boards and perhaps two or three hospital boards. I've seen one constituency with 40 different bodies in its municipal structure and that's got to take much more time and effort," says Herard.

Terming this difference a "myth," Gary Dickson points to the number of complex social issues that rural MLAs don't face. "I get very angry when people say that an urban MLA's job is easier. At the school south of my constituency office, there are 24 languages spoken. When I publish anything, it has to be in five different languages. I'm not suggesting that mine is a tougher job. It's just a different kind of challenge. It's more of an urban geography problem than a physical geography problem."

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Degree of difficulty of representation is really a bogus issue. With increasingly complex urban problems like transportation, deteriorating inner-city schools and hospitals, poverty, human rights, transience of population, and a multitude of language barriers, urban constituencies are no less difficult to represent. They simply have different problems. In any event, an MLA's available time and resources are not the issue. Such so-called difficulties could be addressed by increased funding, perhaps, to staff a second constituency office or to allow for more frequent travel to and from the Legislature. None of these difficulties bear on a citizen's right to be adequately represented when his or her MLA casts a vote in the Legislature enacting laws we all must live by.

Future Boundary Reform in Alberta

On March 23, 1998, Conservative MLA Peter Trynchy (Whitecourt-St. Anne) introduced Bill 226, the goal of which was to cut MLA numbers to 70. On October 29, 1998, a four-member, all-Conservative committee headed by Peter Trynchy was established to review the number of constituencies. Other members of the review team are Victor Doerksen (Red Deer South), Denis Herard (Calgary Egmont), and Julius Yankowsky (Edmonton Beverly-Clareview). The committee's non-binding report is to be presented to the Legislature in late spring, 1999.

The proposed bill is quite clear that any changes in the number of constituencies would not take effect until after

the next provincial election. It will be the third election to use 1991 census figures, ignoring the substantial rise in urban population since that date. Is it to be expected that the Trynchy committee will return a recommendation that 13 rural ridings should be eliminated? With the arrival of the new millennium, a day of reckoning approaches when the rapid expansion of Calgary and Edmonton will finally have to be accounted for in electoral boundary reform. The under-represented citizens of Sherwood Park and Calgary Fish Creek await that day.

The time is ripe for a move to a more accountable democratic system, says Calgary lawyer Brian Edy, past president of the Alberta Civil Liberties Association. The central issue is facilitating fairer representation for an overwhelmingly urban Alberta with increasingly complex urban problems. "What we're talking about is the most basic kind of reform of our electoral system in order to make it more accurately reflect where people actually live. It is allowing their voices to be translated into seats in the Legislature. Although Alberta has important rural and resource interests, it has become predominantly urban. We're not asking for more seats for urban areas. We're asking that the electoral boundaries, when they're drawn, be fairer."

Calgary's population of 820,000 is expected to rise to 900,000 by 2001. Then each of its 21 MLAs will have an average of 42,857 people to represent—or 12,000 more than the average constituency size. The commitment of the Alberta Court of Appeal to a gradual evolution of boundaries conforming to Charter standards cannot wait forever. Commenting on the Alberta situation, University of Saskatchewan law professor Ronald Fritz says that "it will take time for the legislators to accept that it is not business as usual and that partisan political concerns must give way to individual rights. However, the natural inclination of the courts will be to give the politicians time to adjust to this new reality. But the patience of the courts is not infinite."

The last possible date for calling the next election is March 21, 2002. Brian Edy believes the optimal time for a court challenge is prior to this election. "The province is not addressing the boundaries before the next election. The boundaries are becoming less and less representative; therefore, if they don't meet the requirements that the Supreme Court of Canada has laid down, I don't know why the province would expect electors to compliantly put up with an unacceptable situation."

In the words of the Alberta Court of Appeal, "Each year this problem worsens, because each year urban populations increase and non-urban populations decrease. We call this a problem because it impacts significantly on the right to vote of urban Albertans. This cannot be permitted to continue if Alberta wishes to call itself a democracy."

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