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residency requirements

Legislative Assembly Special Committee on Constitutional Development

RESIDENCY REQUIREMENTS

PART I: RESIDENCE REQUIREMENTS LIMITING VOTING RIGHTS TO PERMANENT RESIDENTS

By:
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July, 1983

PART II: A STATISTICAL ANALYSIS OF RESIDENCY AND MOBILITY PATTERNS IN THE NORTHWEST TERRITORIES

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July, 1983

Prepared for:

Legislative Assembly Special
Committee on Constitutional
Development

PART I

RESIDENCE REQUIREMENTS LIMITING VOTING RIGHTS TO PERMANENT RESIDENTS

Prepared for:

Legislative Assembly Special Committee on Constitutional Development

By:

Michael Posluns
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July, 1983

PART I: Residence Requirements Limiting Voting Rights to Permanent Residents

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RESIDENCE REQUIREMENTS LIMITING VOTING RIGHTS TO PERMANENT RESIDENTS

Introduction

This proposal requires us to consider the implications of a substantial residence requirement as a condition of voting in elections for the legislature of a Western Arctic Territory.

In particular it calls for five pieces of information:

(1) a description and analysis of the residence requirement options suggested to date by northerners;
(2) the integration into this report and discussion of a statistical demographic study conducted independent of this contract;
(3) a listing and description of both legal and political precedents from other parts of Canada;
(4) an examination of precedents from various Commonwealth and other Parliamentary countries for their effectiveness and acceptability; and,
(5) an assessment of the legal/constitutional validity of the options suggested by northerners and other likely options arising from other studies mentioned above.

The description and analysis of residence requirement options has focussed on the consensus achieved at the Second Conference of the Constitutional Development Committee of the Legislative Assembly where it was agreed that "more than a year" was desirable. As a result, our primary focus looks at several different time periods: a year or less; more than a year and less than three years; more than three years. In addition, to the consideration of various lengths of time, there is a question which has not been much discussed in the northern materials we have seen but which seems to us to be pivotal: the technical term is bona fides; and, it means when and how a person actually becomes resident. It is important because it asks the question of whether many of the people who would be caught by a

requirement of "more than a year" are, in fact, residents of the Western Arctic regardless of any durational or time requirement.

The statistical data has not become available at the time of writing. So, we have had to assume for the moment that a substantial part of the potential electorate come to the Western Arctic for a period of less than two years and that many do so without an intention to remain there.

Two legal memoranda are attached to this report. The memorandum by David C. Nahwegahbow considers the issue of durational residence requirement in light of the Charter of Rights. The memorandum by Marcia Tannenbaum Posluns considers other Commonwealth and Parliamentary jurisdictions. Together they provide the information required by items 3 and 4 of the Research Proposal. Nahwegahbow's memo deals with the legal/constitutional validity as required by item 5. And Marcia Tannenbaum Posluns' memo provides further light on definitions and concepts of bona fides in other jurisdictions.

This report, then, pulls together the suggestions of northerners, relevant precedents from around the parliamentary world and the question of their applicability to the Western Arctic. In order to do this, we begin by looking at some broad conceptual questions. While there are useful and instructive precedents, legally and politically, one of the things the precedents demonstrated was the extent to which the question of a fairly strict residence requirement needs to be considered in light of the unique situation of the north.

Residence Requirement

The requirement that a person reside in a jurisdiction in which they vote is so fundamental that it would seem to require no discussion beyond definition of resident, and consideration of length of time. The focus of the question, as it arises in the Western Arctic is two-fold: the duration of residence which should be required before acquiring the right to vote; and the point in time, or conditions necessary for a person to become resident and start the durational clock ticking. The duration of

residence is clearly the focus of the concern with this question as it arises in the Western Arctic.

There are a few prefatory matters which should be noticed before focussing on the durational question.

First, the concept of residence requirement is unique to states, provinces and territories within a federal system. Within a unitary system of government, which may nonetheless be as democratic as our own, and may even be parliamentary in form, the right to vote comes with the acquisition of citizenship, as it does with the right to vote in federal elections in Canada. Most western European countries make it well nigh impossible to become a citizen unless an applicant can show ancestral origins in that country. Resident aliens or landed immigrants who have ancestral origins in the country where they are seeking to become a citizen typically have a three to five year waiting period. Because immigration is controlled by the unitary government, or by the federal government in a federal system, those governments have effective control, by means of citizenship requirements on the duration of residence before a person can vote in the elections for their successor governments.

Only within a provincial, state or territorial government which is a part of a federal system does the question of a residence requirement arise separately from citizenship.

(Municipal voting requirements are usually laid down by the province, state or territory. Very often they require some property interest as well as a residence requirement, thus posing a greater set of restrictions than in the provincial, state or territorial elections themselves.)

Secondly, the voting right at issue is for the purpose of voting for an Assembly made up of Members representing geographically based constituencies, as is common to legislative assemblies in Canada, only the residence requirement which will be applied to determine whether or not a person is eligible to vote in a general election is a major issue.

The secondary question, in which electoral district, or riding, does a person vote, is essentially answered by asking in which riding they were resident when the writs were issued for the election. Such a question supposes that they were, in fact, bona fide residents who had met any durational requirement.

Thirdly, all provinces presently have a residence requirement in their election law. Residence generally focuses on a fairly intangible ingredient: intention. Like the old saying, "Home is where they have to take you in," a person's residence is that place to which he intends to return if he is not there now. So far as intention is largely a state of mind, it can be difficult to prove. It is, therefore, problematic as a legal requirement. Nonetheless, every jurisdiction sets such a requirement of bona fides in its residence provisions. Regardless of how long it is required that a voter be resident, it is essentially a universal requirement that the voter be resident at the time of voting.

The question of whether a person intends to return somewhere else may deserve a fresh examination in light of the special circumstances of the Western Arctic. Generally, if a person is transferred on a temporary basis to a place by an employer, it is presumed that at the end of the specified term he will return whence he came. If there is no specified term, there is a presumption that the transfer is not temporary and the person has established residence whence he has been relocated.

The sale of a house or other goods that cannot be readily transported may be seen as a token of a change of residency. But it may also be a sign of poor market conditions. Or uncertainty in the mind of the person who has been shunted about from place to place by his employer.

Special consideration has usually been given to military personnel and their families so that they are presumed to be resident at whatever base they are stationed. This does not apply to civilian public servants but is a recognition of the special role and nature of military service.

Each province has the right to establish its own election procedure within some broad limits. Those limits that have some bearing on residence requirement are:

(1) "Every citizen of Canada has the right to vote...for a legislative assembly and to be qualified for membership therein." (section 3, Charter of Rights)

(2) "Every citizen...has the right to:
(a) move to and take up residence in any province.
(section 6, Charter of Rights)

The issue of residency has evoked a wide range of responses from residents in the Western Arctic over the last two years. The impetus for the discussion came originally from the Dene proposal for public government which included a call for 10-year residency requirement for voting in elections. The initial reaction of many non-Dene was that such a requirement would be "unrealistic and unacceptable" and would "offend a principle of democracy". Subsequent discussions by both sides led to a gradual moderation of these views. By September, 1982, for example, the Dene indicated they were "prepared to negotiate" the actual length of a residency clause, while reiterating that 6 months or 1 year would still remain unacceptable. For their part, non-Dene showed equal willingness to go beyond their original positions: representatives from Hay River expressed a willingness to support a two-year requirement, while Fort Smith residents expressed a willingness to consider up to three years. These changes took place amidst an increasing awareness that any residency requirement beyond the current maximum within Canada (1 year) would ultimately require the consent of the courts in order to ensure its legitimacy under the new Constitution. In the end, it was agreed by all parties at the last conference on Constitutional Development in the Western Arctic that an attempt should be made to secure a residency clause of "greater than one year", subject to whatever limitations might be imposed by the new Canadian Constitution. The implicit assumption underlying this consensus was that only a residency clause of up to three years may be possible under these conditions, and even one of that duration could not be seen

as a certainty.

Statistical Demographic Data

This data is not available at the time of writing. We understand, however, that when it becomes available, some weeks after this contract is complete that it may well indicate the extent to which some particular figure "more than two years" will be beneficial, for protecting the local public interest in Western Arctic elections.

We, therefore, suggest that this present section be revised and replaced at the time that the data is available.

In the meantime, we are proceeding on the assumption that the data will show that the majority of transients come to work in the Northwest Territories for a period of slightly less than two years.

If this is the case, then a two year, or a three year residence requirement would exclude them from voting.

But, our own studies suggest a further question for the demographic studies, although the information may not be capable of being extrapolated from the existing data base, and special surveys may actually be required.

Of those who are in the Western Arctic for slightly less than two years, there is a question as to how many establish bona fide residence in the Western Arctic, that is, do not have a definite or even a probable intention of returning elsewhere at the end of their term. If the question of bona fides catches most of the temporary residents, then there arises the question of whether a durational requirement which is particularly long is either necessary or effective for the purposes it is being advocated.

Other Parts of Canada

Seven out of twelve provinces or territories in Canada have a six months' residence requirement. The other five have a one year requirement. In

all cases the question of bona fides is covered by some definition provisions.

Those provinces with a six months' requirement are Alberta, Manitoba, British Columbia, New Brunswick, Nova Scotia, Newfoundland and Saskatchewan.

Those provinces with a twelve months' requirement are Ontario, Prince Edward Island, Quebec, the Northwest Territories, and the Yukon.

Precedents from other Commonwealth and other Parliamentary Countries

(a) The Commonwealth

We find ourselves having to restrict our study of Commonwealth countries to those with a multi-party or free election system since any precedent coming from one party systems, that is, a political system in which membership in one particular political party is a requirement for candidacy in an election, would be considered unhelpful. Unfortunately, this stricture upon ourselves has prevented us from a more thorough study of the non-white Commonwealth.

The United Kingdom and New Zealand are both unitary systems of government, that is, they have only national legislature. The right to vote is, accordingly, acquired with citizenship. Access is relatively easy providing that a person is presently a citizen of another multi-party country within the Commonwealth, and has a skill or trade which is currently in shortage within that country. Once granted landed immigrant status or the equivalent, a person waits three years in Britain, or five years in New Zealand for citizenship. (S)he is then entitled to vote in the only legislature in the country.

Australia is a multi-party federal system. The residence requirement period for an Australian moving from one state to another is six to twelve months.

Canada, it should be noted, had a five year citizenship requirement for any person not coming from a Commonwealth country until very

recently. Commonwealth citizens could automatically exercise the rights of citizens after one year. The new Act averages the figures of five and one to apply a three year standard to all immigrants.

(b) Other Parliamentary Countries

Germany, Switzerland and Belgium, of all the relevant European parliamentary countries, are federal. France, Spain, the Netherlands and Italy are all unitary.

France, Switzerland and Germany all have large migrant populations which they exclude from voting by refusing any real opening for citizenship. Even though France and Germany both belong to the European Economic Community, a citizen of one taking up residence in the other would not become entitled to become a citizen if he could not establish some ancestral links (blood ties) to the country to which he had moved and in which he wished to become a citizen.

The ancestral connection also applies in most European countries which do not have a large immigrant population, at present.

Israel is the one parliamentary country where immigration is relatively easy. Surprisingly, this is true for non-Jews. Any Jew has a "right of return" which entitles him to settle in Israel. If he decides to establish his permanent residence there, the same question of bona fides still applying, he can, upon application, become a citizen with no waiting period longer than is required to wade through the bureaucracy. A non-Jew who takes up residence in Israel can become a citizen after five years, the same period as commonly required in many Commonwealth countries, and in Canada until recent revisions of the Citizenship Act.

Hence all these countries have protected themselves from sudden waves of migration by (a) making acquisition of citizenship nearly impossible for the immigrant population; and, (b) making citizenship a requirement of voting.

Only Switzerland and Germany are federal systems where a completely analogous question, a citizen having the right to vote in one region moves to another, can arise. In both those countries there is a short residence requirement similar to those now in effect in the provinces and territories of Canada.

(c) The United States

The United States, even though its political institutions are congressional rather than parliamentary, is the country whose legal precedents are most influential in Canada today. We need hardly add that United States cultural and political trends are equally influential.

Besides the tendency to influence Canada, the fact that the United States is a federal democratic country, similar in size to Canada and with an extremely high internal mobility, means that it is the one country from which a real analogy, can be drawn. For these reasons we have sought an American legal opinion, which is attached.

Several features do distinguish the American precedents from the Canadian circumstance. Some are legal. Some are political.

1. Most of the States are relatively small compared to most Canadian provinces, and compared to the Western Arctic (given any of the proposed boundaries). State lines commonly run through highly populated areas with people crossing state lines between work and home. In a country where 42 per cent of young couples moves every two years, long term residence requirements could effect vely disenfranchise very large proportions of the population.

2. Most legislative assemblies, like the federal House of Representatives, have two year terms. The number who would actually be required to "sit out" an election, if long term residence requirements were permitted, would be double that which would be denied voting privileges under present N.W.T. law with a four year term. (Interestingly, the two territories are the only part of Canada where, like the United States,

there is a fixed term for a legislative assembly. The five year maximum for other legislatures under the Constitution Act needs to be read in light of the four year norm in considering the likely impact of a longer residence requirement.)

3. The Court, in the United States, has interpreted the equal rights protection clause of the Bill of Rights to mean a mathematical equality of voting power, in most instances. This has meant that state senates are prohibited from basing their electoral districts on country lines in the way that the states represent federal senate electoral districts. The Canadian Charter of Rights has no direct counterpart to this provision of the Bill of Rights.

4. The "compelling state interest argument" is similar to the provision in section 1 of the Canadian Charter of Rights of a "reasonable" limit "demonstrably justified in a free and democratic society." This provision of the Canadian Charter has, in its short history, probably been the most argued provision. As the legal opinion on Canadian law, attached, indicates, the current standards appear significantly different from those in the U.S.

An Assessment of the Legal & Constitutional Validity

This question necessarily involved a formal legal opinion. That opinion was sought from David C. Nahwegahbow and is attached.

The opinion concludes that a one to three year residence requirement may be constitutionally valid within the Charter of Rights. There is no doubt that it would offend section 3 of the Charter which guarantees every person the right to vote. But it may be "reasonably" and "demonstrably justified" so as to be saved by section 1 of the Charter.

Conclusion

The precedents throughout the parliamentary, multi-party hemisphere

are thought-provoking but none of them is clearly instructive. Each one, as it is reviewed, suggests as many differences as it has common points:

1. Only in federal systems does the possibility of a short residence requirement arise;

2. Only where there is a relatively widespread possibility of citizenship does the question arise within a federal system;

3. "Demonstrable justification" is likely to arise only in fairly low population jurisdictions which face the likelihood of massive influxes of population for short periods of time; this would distinguish the situation of the Western Arctic from Tennessee where the leading United States case arose;

4. The protection being sought by some of the suggestions made by northerners about duration can be greatly reinforced by a fair but strict definition of residence. The commissioning of further demographic studies addressed to this question should be considered.

5. In framing a durational residence requirement, consideration might be given to the fraction of the lifetime of a legislature which this requirement represented.

Given what appears upon a careful reading of the Proceedings to be a clear consensus of the Second Conference in favour of a residence requirement of "more than a year," given the truly unique political situation of the Western Arctic as well as its unique environmental, geographic and historical situation, there appears to be little reason why the legislature should not frame a residence requirement to meet that expressed desire and fall within the category of one to three years which may be "demonstrably justified" within the meaning of the Charter of Rights.

MEMORANDUM 1

Opinion Respecting the Constitutionality of Durational Residency Requirements for Voting in Elections for Members of the Legislative Assembly in a Proposed Western Arctic Division of the Northwest Territories

Prepared by:

David C. Nahwegahbow, LL.B.
Ottawa
June 1983

Opinion Respecting the Constitutionality of Durational Residency Requirements for Voting in Elections for Members of the Legislative Assembly in a Proposed Western Arctic Division of the Northwest Territories

This opinion examines the constitutional validity of residency requirements, of various durations, for voting in elections for members to the Legislative Assembly in a proposed Western Arctic Division of the Northwest Territories (NWT).

The opinion comprises of four sections: I. Background; II. Issues; III. Discussion; and IV. Conclusion.

I Background

The purpose of a durational residency requirement for the Western Arctic is quite clear. It is to ensure that the true inhabitants of that region of the NWT are accorded a paramount opportunity to determine its future development. What better way is there to accomplish this than by limiting the right to vote to those who are true inhabitants? The susceptibility of this area to disruption from outside influences is well documented by Justice Berger in The Report of the Mackenzie Valley Pipeline Inquiry. In his report, Justice Berger, outlines the delicate and complex nature of the ecological, social, cultural, and economic systems extant in the north; he stresses the need to proceed with caution in the future development of the region. But as the question for resources continues, there is no question that development will take place. Therefore, the law-making body in this region - the Legislative Assembly - will be required to enact legislation to protect the life systems. Accordingly, the members of the Assembly must be sensitive to them; their electorate must be equally sensitive. It is the electorate with which we are primarily concerned here. As development proceeds in the north, people will continue to flood the area. Many of these new arrivals will have no intention of remaining in the north. Some of them may wish to remain, but will not be immediately sensitive to the delicate and complex life systems. A reasonable introductory period will be essential to allow new arrivals to become sensitized to northern life. It is proposed that, in the Western Arctic Region of the NWT, new arrivals will not be entitled to vote in the elections of members to the Legislative Assembly, during this introductory period. This is the proposed durational residency requirement.

An appropriate residency period has not yet been selected. The range of suggestions run from 6 months to 10 years. It is the writer's understanding that a 3 year period is favored. This opinion examines 4 options: (1) 6 months, (2) 6-12 months, (3) 1-3 years, and (4) over 3 years.

Constitution Act, 1981

The selection of an appropriate residency period is predicated to some extent on what is constitutionally acceptable. If an option is unconstitutional, of course, it will not be selected.

The most significant constitutional provisions for our purposes are ss. 3 and 6 of the Canadian Charter of Rights and Freedoms. Section 3 protects the right to vote, and s. 6 protects mobility rights:

> 3. Every citizen of Canada has the right to vote in an election of members of the House of Commons or of a Legislative Assembly and to be qualified for membership therein.
>
> 6. (2) Every citizen of Canada and every person who has the status of a permanent resident of Canada has the right
>
> (a) to move to and take up residence in any province; and
> (b) to pursue the gaining of a livelihood in any province.
>
> (3) The rights specified in subsection (2) are subject to
>
> (a) any laws or practices of general application in force in a province other than those that discriminate among persons primarily on the basis of province of present or previous residence...

It should be noted that the rights protected by these provisions cannot be over-ridden pursuant to s. 33. That section specifically makes only s. 2 and ss. 7-15, subject to the "over-ride power".

Section 32 provides that the rights contained in ss. 3 and 6 are protected from legislative activities by both levels of government:

> 32. (1) This Charter applies
>
> (a) to the Parliament and government of Canada in respect of all matters within the authority of Parliament including all matters relating to the Yukon Territory and Northwest Territories; and
>
> (b) to the legislature and government of each province in respect of all matters within the legislative authority of the legislature of each province.

Section 30 of the Charter makes it clear that the ss. 3 and 6 rights are also protected from the legislative activities of legislative assemblies of both the Territories:

> 30. A reference in this Charter to a province or to the legislative assembly or legislature of a province shall be deemed to include a reference to the Yukon Territory and the Northwest Territories,

or to the appropriate legislative assembly thereof, as the case may be.

Section 52 (1) of the Constitution Act, 1981 provides as follows:

52. (1) The Constitution of Canada is the supreme law of Canada, and any law that is inconsistent with the provision of the Constitution is, to the extent of the inconsistency, of no force or effect.

Therefore if it is found that any law violates a provision of the Charter (including ss. 3 and 6), it will be declared to be of no force or effect. The initial burden of proving a violation is upon the applicant or the person alleging the violation. If this burden is discharged, the law will fall.

However, there is a saving provision. Section 1 of the Charter provides as follows:

1. The Canadian Charter of Rights and Freedoms guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.

A law which is in violation of the Charter will be allowed to stand if it can be shown that the extent to which it limits the guaranteed rights and freedoms is "reasonable" and "demonstrably justified in a free and democratic society". The burden of proving this is upon the person seeking to uphold the law.

In summary:

(1) There are two constitutional obstacles to a durational residency requirement: the right to vote in s. 3, and the right to mobility in s. 6.

(2) If a durational residency requirement is found to violate either s. 3 or s. 6, then, it will fall: s.52. The burden of proving the violation is upon the applicant.

(3) The residency requirement will be allowed to stand if it is shown to be "reasonable" and demonstrably justified in a free and democratic society". The onus is on the person seeking to uphold the law to prove this.

II ISSUES

1. Whether a durational residency requirement violates s. 3 of the Canadian Charter of Rights and Freedoms?

2. Whether a durational residency requirement violates s. 6 of the Canadian Charter of Rights and Freedoms?

3. Whether a durational residency requirement for the Western Arctic Region of the NWT is reasonable and demonstrably justified in a free and democratic society?

III DISCUSSION

1. Violation of Section 3

There is no question that a residency requirement, of any duration, for voting in legislative assembly elections for the proposed Western Arctic Region of the NWT (or for that matter, in any federal, provincial or territorial election), would violate s. 3 of the Charter. Section 3 unconditionally states that "Every citizen of Canada has the right to vote in an election ... of a legislative assembly ...." A requirement that an individual must live in a particular area for a specified period of time before he is entitled to exercise this right is a violation of s. 3.

In the only case to date on durational residency requirements and s. 3, the Attorney General for Saskatchewan, conceded that the requirement violated the said provision: Storey v. Zazelenchuk (Sask. Q.B., November 1982) The Attorney General then went on to argue that the limitation was justified under s. 1 of the Charter.

2. Violation of Section 6

It is not so clear whether a durational residency requirement for voting would violate s. 6.

The only judicial pronouncement on this point in Canada says that it does not. Estey, J. in Storey v. Zazelenchuk, states very briefly:

> Sec. 6 in my view does not deal with voting rights. Insofar as the Charter is concerned, the question is, I believe, the application of secs. 3 and 1 thereof.

It should be noted however that Estey, J's comments on the whole constitutional question in this case may be obiter dicta since the ultimate judgment did not turn on the constitutional points. Furthermore, it is the writer's understanding that the case (including the constitutional points) is being appealed to the Saskatchewan Court of Appeal.

The constitutional right to interstate travel in the United States is similar to the right to mobility contained in s. 6 of the Charter. American jurisprudence on the question of whether a durational residency requirement violates the right to interstate travel is not absolutely settled (The following cases answer this question in the affirmative: Dunn v. Blumstein (1972) 405, US 330; Kahn v. Davis (1970, D.C. Vt) 320 F. Supp. 246, affd. 405 US 1034; Nicholls v. Schaffer (1972, D.C. Conn.) 344 F Supp 238; Bufford v. Holton (1970, DC Va) 319 F Supp. 843, affd. 405 US 1035. And the following cases answer this question in the negative: Fontham v. McKeithen (1971, DC La) 336 F. Supp 153; Howe v. Brown (1970), D.C. Ohio) 319 F. Supp. 862; Affeldt v. Whitcomb (1970, DC Ind) 319 Fupp 69 affd 405 US 1034). However, the latest

pronouncement of the U.S. Supreme Court on the point answers the question in the affirmative. The case of Dunn v. Blumstein 405 U.S. 330, referred to in Storey v. Zazelenchuk, deals with a Tennessee statute which required that prior to voting the voter must have been resident in the state for at least one year and resident in the county in which the voter would vote for at least three months. The Court found both residency requirements unconstitutional because, among other things, it violated the right to interstate travel. In the course of its judgment the Court stated:

> ... Tennessee's durational residence laws classify bona fide residents on the basis of recent travel, penalizing those persons, and only those persons, who have gone from one jurisdiction to another during the qualifying period. Thus, the durational residence requirement directly impinges on the exercise of a second fundamental personal right, the right to travel. (p 338).
> .....
> 'It has long been established that a State may not impose a penalty upon those who exercise a right guaranteed by the Constitution.... Constitutional rights would be of little value if they could be ... indirectly denied....' Harman v. Forssenius 330 U.S. 528, 540 (p. 341).

It is uncertain at this time how Canadian Courts will deal with durational residency requirements vis a vis s. 6 of the Charter. There is one Saskatchewan Queen's Bench case which says very briefly that durational residency requirements do not violate s. 6. The comments by the judge on this point may be obiter dicta. We have an American case, Dunn v. Blumstein, representing the current tendency of the U.S. Supreme Court, which says durational residency requirements violate the right to interstate travel. The reasoning of the Court is compelling. But, of course, Canadian Courts are not bound by American law.

It is the writer's opinion that Canadian Courts will follow the Saskatchewan Queen's Bench precedent, Storey v. Zazelenchuk. Durational residence requirements affect the right to vote. This right is adequately protected by s. 3 of the Charter; there is no need to bring s. 6 in aid, especially since s. 6 is primarily concerned with another matter, namely, the right to move interprovincially.

3. Reasonable and Demonstrably Justified

A. Operation of Section 1

A durational residency requirement on voting may still be valid, notwithstanding that it limits the rights and freedoms guaranteed in ss. 3 and/or 6, provided the limitation is "reasonable" and can be "demonstrably justified in a free and democratic society". This is the effect of s.1 of the Charter.

Canadian courts have not yet formulated a definitive test for the application of s. 1. However, several senior level courts have made pronouncements respecting s. 1 which the writer believes will be influential in the provision's future application.

The first case is Federal Republic of Germany v. Rauca (38 O.R. (2d) 705), a decision of the Ontario High Court of Justice. This case involved a naturalized Canadian, Rauca, who was charged by the Federal Republic of Germany with the murder of approximately 11,500 Jews between 1941 and 1943. The Federal Republic of Germany was seeking to have Rauca extradited pursuant to the terms of a treaty with Canada. Rauca brought an application for an order declaring that extradition would infringe his right to remain in Canada as guaranteed by s. 6 (1) of the Canadian Charter of Rights and Freedoms. Section 6(1) provides: "Every citizen of Canada has the right to enter remain in and leave Canada". The High Court said that the rights guaranteed by the Charter were not absolute, they were subject to reasonable limits as provided by s. 1. It held that, in this particular case, extradition was a prima facie infringement of s. 6(1); however, it was a limitation which was reasonable and demonstrably justified pursuant to s. 1. Accordingly, the application was dismissed.

In the course of its judgment, the High Court said the following about the application of s. 1 of the Charter:

> "The overriding provision in s. 1 places a statutory restriction upon those rights and freedoms set out in the Charter and provides that those guaranteed rights and freedoms are subject "to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society". In my view, the "limits" to be applied require the court to adopt an objective standard in assessing the restrictions "prescribed by law" and that the demonstrable justification which modifies the reasonable limits be interpreted in a manner that leans slightly in favour of the individual when the competing rights of the individual and of society are being balanced in the court. The addition of the words "in a free and democratic society" sets out the parameters within which these competing rights must be resolved.
>
> The question of onus is not free from difficulty. Usually, the one who claims a violation of his rights or freedoms has the evidentiary burden of establishing the "unreasonableness" or "reasonableness" of the law or conduct to which he takes objection ...
>
> .....
>
> However, I believe that a different approach to onus is required when we are considering the impact of the s. 1 restriction upon s. 6(1) rights and freedoms because the alleged infringement or violation is either evident or readily established and results from governmental policy or legislative action. The government is then charged with the onus of demonstrating that the restriction is reasonable within the meaning of s. 1.
>
> The phrase "reasonable limits" in s. 1 imports an objective test of validity. It is the judge who must determine whether a "limit" as

found in legislation is reasonable or unreasonable. The question is not whether the judge agrees with the limitation but whether he considers that there is a rational basis for it - a basis that would be regarded as being within the bounds of reason by fair-minded people accustomed to the norms of a free and democratic society. That is the crucible in which the concept of reasonableness must be tested.

.....

In the phrase "as can be demonstrably justified", the key word is the word "justified" which forms the cornerstone of the phrase. It means to show, or maintain the justice or reasonableness of an action; to adduce adequate grounds for; or to defend as right or proper. The legal use of the word is to show or maintain sufficient reason in court for doing that which one is called upon to answer for. The notion of justification is qualified by the word "demonstrably" which means in a way which admits of demonstration which in turn means capable of being shown or made evident or capable of being proved clearly and conclusively. The standard of persuasion to be applied by the court is a high one if the limitation in issue is to be upheld as valid.

In the present case, I am prepared to hold that the onus is upon the Federal Republic of Germany to establish that the "limits", i.e. extradition laws, are reasonable, are prescribed by law and are demonstrably justifiable in a free and democratic society. I consider the extent of that burden to be the usual civil onus based on the balance of probabilities. Because the liberty of the subject is in issue, I am of the view that the evidence in support must be clear and unequivocal. Any lesser standard would emasculate the individual's rights now enshrined in the Constitution.

The court must decide what is a reasonable limit demonstrably justified in a free and democratic society by reference to Canadian society and by the application of principles of political science. Criteria by which these values are to be assessed are to be found within the Charter itself, which means that the courts are entitled to look at those societies in which as a matter of common law freedoms and democratic rights similar to those referred to in the Charter are enjoyed.

Parliament operating in "a free and democratic society" has enacted the Extradition Act and approved the treaty. Following the usual presumptive canon of construction of legislation validity courts should be extremely hesitant to strike down those laws unless they clearly violate the constitutional rights and freedoms set out in the Charter, and should be equally reluctant to characterize the limitation as not justifiable in a free and democratic society unless it is obviously unreasonable.

.....

> I am satisfied that such statutory restriction which has as its objective, the protection and preservation of society from serious criminal activity, is one which members of a free and democratic society such as Canada would accept and embrace. To hold otherwise would be to declare that a procedure which has been accepted in our country for over a century and in most other democratic societies is no longer a reasonable and proper method of protecting our society from serious criminal activities (emphasis added).

The second case is a decision of the Ontario Court of Appeal: Re Southam Inc. and The Queen (No.1) (March 31, 1983 - Unreported), affg. 70 C.C.C. (2d) 257, subnom. Reference re Section 12(1) of the Juvenile Delinquents Act (Ont. H.C.J.) This case arose when a newspaper reporter (an employee of Southam Inc.) was denied entry into a juvenile court, pursuant to s. 12(1) of the Juvenile Delinquents Act, which states: "The trials of children shall take place without publicity ...." An application was brought under the Charter for a declaration that the said section was "of no force or effect", since it violated the freedom of the press guaranteed by s. 2(b). The Court of Appeal held, first that, s. 12(1) of the Juvenile Delinquents Act was a prima facie infringment of s. 2(b) of the Charter; second, that this was not a limit which was reasonable and demonstrably justified under s. 1. The offensive provision was accordingly struck down.

With respect to the application of s. 1 of the Charter, the Court stated at pp. 17-19:

> "I turn now to the last question to be answered: is the exclusion of the public under s. 12(1) a reasonable limit prescribed by law as can be demonstrably justified in a free and democratic society (to quote the relevant words of s. 1 of the Charter)? As a subsidiary consideration, the standard as formed by Mr. Justice Dickson would have to be met, namely: "Curtailment of public accessibility can only be justified where there is present the need to protect social values of superordinate importance." A preliminary question which has to be determined is: upon whom is the burden of establishing that the limit in issue is a reasonable one demonstrably justifiable in a free and democratic society?
>
> .....
>
> Section 2 states that everyone has the named fundamental freedoms. Section 1 guarantees those rights and, although the rights are not absolute or unrestricted, makes it clear that if there is a limit imposed on these fundamental rights by law, the limits must be reasonable and demonstrably justified in a free and democratic society. The wording imposes a positive obligation on those seeking to uphold the limit or limits to establish to the satisfaction of the court by evidence, by the terms and purpose of the limiting law, its economic, social and political background, and, if felt helpful, by references to comparable legislation of other acknowledged free and democratic societies, that such limit or limits are reasonable and demonstrably justified in a free and democratic society (emphasis added).

And at pp. 29-30, it stated:

> We are left, at present, to a certain extent wandering in unexplored terrain in which we have to set up our own guide posts in interpreting the meaning and effect of the words of s. 1 of the Charter. In determining the reasonableness of the limit in each particular case, the court must examine objectively its argued rational basis in light of what the court understands to be reasonable in a free and democratic society. Further, there is, it appears to me, a significant burden on the proponent of the limit or limits to demonstrate their justification to the satisfaction of the court. As I said earlier that may be easily done in a number of cases.
>
> In determining whether the limit is justifiable, some help may be derived from considering the legislative approaches taken in similar fields by other acknowledged free and democratic societies. Presumably this may also assist in determining whether the limit is a reasonable one. It may be that some of the rights guaranteed by the Charter do not have their counterpart in other free and democratic societies and one is sent back immediately to the facts of our own society. In any event I believe the court must come back, ultimately, having derived whatever assistance can be secured from the experience of other free and democratic societies, to the facts of our own free and democratic society to answer the question whether the limit imposed on the particular guaranteed freedom has been demonstrably justified as a reasonable one, having balanced the perceived purpose and objectives of the limiting legislation, in light of all relevant considerations, against the freedom or right allegedly infringed (emphasis added).

Finally, at pp. 38-39, it stated:

> As I stated earlier, I think it is necessary to view the reasonableness of the absolute ban in light of the purpose of the ban as balanced against the fundamental right guaranteed by the Charter.
>
> Although there is a rational basis for the exclusion of the public from hearings under the Juvenile Delinquents Act, I do not think an absolute ban in all cases is a reasonable limit on the right of access to the courts, subsumed under the guaranteed freedom of expression, including freedom of the press. The net which s. 12(1) casts is too wide for the purpose which it serves. Society loses more than it protects by the all-embracing nature of the section. As stated earlier, counsel for the Attorney General was quick to acknowledge (and very fairly so) that not every juvenile court proceeding would require the barring of public access. An amendment giving jurisdiction to the court to exclude the public from juvenile court proceedings where it concludes, under the circumstances, that it is in the best interests of the child or others concered or in the best interests of the administration of justice to do so would meet

any residual concern arising from the striking down of the section. As Mr. Justice Martin said in R. v. Oakes (released February 2, 1983, unreported) we are not entitled to re-write the statute under attack when considering the applicability of the provisions of the Charter. Parliament can give the necessary discretion to the court to be exercised on a case to case basis which, in my view, would be a prospective reasonable limit on the guaranteed right and demonstrably justifiable. The protection of social values of "superordinate importance" referred to by Dickson J., in the MacIntyre case supra, does not require, in my view, an absolute bar in all cases of the public, including the press, from juvenile court proceedings. (emphasis added).

The final case to be discussed is an eloquent judgment by Jules Deschenes C.J., of the Quebec Superior Court. Que. Association of Protestant School Boards v. Attorney General of Que.*, is the most exhaustive treatment of the application of s. 1 of the Charter, to date. This case involved a challenge to part of the Quebec Charter of French Language, or Bill 101 as it is better known, on the grounds that it violated s. 23 of the Canadian Charter of Rights and Freedoms. Bill 101 provided that the primary language of instruction in Quebec shall be French. However, children could attend English schools in certain circumstances. The Bill set out the criteria which had to be satisfied before a child would be entitled to attend an English school. Section 23 of the Charter guarantees French and English minority language education rights. It also sets out criteria which have to be met before a child will be entitled to receive his/her education in the language (French or English) of the linguistic minority. The criteria contained in Bill 101 were more restrictive than those contained in the Charter. Therefore, to the extent of this inconsistency, it was challenged as being unconstitutional. The Quebec Superior Court held: (1) the Bill 101 provisions limited minority language education rights guaranteed by s. 23 of the Charter; and (2) the limitations were not reasonable within the meaning of s. 1.

In arriving at his judgment, Jules Deschenes, C.J. spent a considerable amount of time analysing the application of s. 1. At p. 56, quoting from an unpublished work by McDonald J., he said:

> "The rights which are guaranteed by the Charter are deserving of the degree of respect to which a supreme law is entitled. These rights are not to be taken lightly.
>
> .....
>
> Thus there is some considerable support for the proposition that the standard of persuasion to be applied by the court is a high one, if the limitation in issue is to be upheld as valid (emphasis added).

* Note: This case was appealed to the Quebec Court of Appeal. On June 10, 1983 the Court of Appeal upheld Duschenes, C.J's ruling. It is not known whether the Court accepted Duschenes, C.J.'s pronouncement with respect to s. 1 of the Charter, however, because at the time of writing the judgment was not available.

At the same page, he sets out the four conditions contained in s. 1, i.e.,

(1) such reasonable limits;
(2) prescribed by law;
(3) as can be demonstrably justified;
(4) in a free and democratic society.

We will not concern ourselves with the discussion of (2) and (4), instead we will go directly to (1) and (3). The discussion is at pp. 59-72:

> Demonstrably justified
>
> We come now to the objective of Bill 101. The next condition ... is concerned with the means used to achieve that objective.
>
> These two conditions are closely related - as is only logical - and the evidence heard by the Court did not distinguish between them.
>
> .....
>
> It soon became apparent that there was hardly any argument about the objective of Bill 101; it was really on the choice of means to achieve it that the parties disagreed. Before considering this point, however, it should be pointed out immediately that it is difficult to isolate Chapter VIII, "The Language of Instruction", from the rest of Bill 101. That is no doubt why the evidence concerning the objective of the limitation presented to the Court went beyond this particular aspect of Bill 101 and dealt with the legislation in its entirety. This must be taken into account.
>
> The Court now proposes to consider the third condition in s. 1 of the Charter: the demonstrable justification by Quebec of the imposition of restrictions on access to English schools, or in other words, the validity of its objective.
>
> Bill 101 is part of a trend in contemporary political thought in Quebec ....
>
> .....
>
> This continuity did not occur by chance, since by as early as the first half of the eighteenth century, as the historian Brunet stated, "the French language (had proved itself to be) a powerful agent of national unity" (I-3, p. 5). This continuity was thus the expression of a political desire to ensure that the French-speaking majority in Quebec survived and flourished, after two centuries of efforts to overcome the effects of the Conquest and resist being swallowed up by the North American economy and culture.
>
> .....
>
> The Court does not have the slightest doubt that this is a legitimate objective which, to use the words of s. 1 of the Charter, "can be demonstrably justified in a free and democratic society".

Only one aspect of this overall objective is of concern to us here, namely instruction, but that is a major aspect.

.....

As we know, as the result of a series of socio-economic factors that we need not go into here, English schools in Quebec have, until recently, had an attraction disproportionate to the size of their normal clientele; most Anglophones registered in them, together with a large number of Francophones: "Just before Bill 22 came into force, one third of the students studying in English did not have English as their mother tongue" (IU-13, p. 6).

In addition to threatening the long-term survival of French-speaking society in Quebec, this abnormal situation was disturbing the economy and undermining the efforts being made to reverse a trend which, in the eyes of many, was leading to the ruin of Quebec.
The 1977 White Paper stated that "French must become the common language of all Quebeckers" (p. 34). The francization of education immediately became a short- and long-term priority.

.....

This specific objective, francization of eduation, thus shares in the legitimacy of the overall objective underlying all of Bill 101. Quebec justified this demonstrably to the Court's satisfaction.

This further requirement set out in s. 1 of the Charter has thus been met.

Reasonable limits

.....

We come now to the means set out in Bill 101 for achieving its objective: are these means exercised within reasonable limits? If not, they will have to give way to the Charter.

This is the touchstone of the new Canadian constitutional system. It demonstrates the validity of the warning of the Honourable Louis-Philippe Pigeon: the adoption of a Charter of fundamental rights would "involve transferring a major portion of the legislative authority to the courts".

The Charter allows limits to be placed on the rights and freedoms it guarantees. How should the law prescribing such limits in turn be interpreted? To use the words of s. 1 of the Charter, how should "reasonable limits" be defined?

Similar, though not necessarily identical, expressions can be found in a number of places. They have given rise to judicial interpretations that cannot fail to be useful in attempting to

establish the meaning and scope of the new Canadian Charter. The Court proposes to examine a small sampling of these precedents: it will necessarily be incomplete, but instructive nonetheless.

(After an examination of these precedents the Chief Justice concluded:)

1. A limit is reasonable if it is proportionate to the objective sought by the legislation;

2. Proof of the contrary implies proof not only of an error, but of an error that offends common sense;

3. The courts must not yield to the temptation to substitute their own opinions hastily for that of the legislature (emphasis added).

Finally, after reviewing the evidence, and arguments, the Chief Justice stated:

In summary, was it proved convincingly to the Court:

(a) that the Quebec clause is necessary for the purpose of the legitimate objective Quebec has set for itself; and

(b) That, despite its rigour, the Quebec clause is not disproportionate to the objective aimed at,

.....

The two questions posed require that the Court consider the socio-political judgment made by the Government of Quebec and the National Assembly in enacting the Quebec clause and maintaining it in effect. The summary of the arguments for and against has provided some idea of the complexity of the debate. The latter is evidence of the enduring Canadian duality, of the "two solitudes" that cannot come to agreement.

If the Court absolutely had to decide the issue affirmatively, it would be inclined to conclude that the Quebec clause is disproportionate to the objective pursued and that it exceeds unnecessarily the limits of what is reasonable.

It is clear that the absence of the Quebec clause would not lessen the impact of Bill 101 in general. Neither would it result in any weakening with respect to the language of instruction, which remains, in principle, French.

The evidence revealed that s. 23 of the Charter would result only in a negligible influx of new students into the English-language school system. Certainly it will not prevent the inevitable decline between

now and the end of the century of the relative size of the English sector of the Quebec school system; at the very most it will result in a slight slowing of this decline, without having any effect on the foreseeable future of Quebec.

These various considerations must have been taken into account in 1977, moreover, when Quebec offered the other provinces reciprocity agreements with respect to minority-language education. Whatever anyone says, s. 23 of the Charter is strangely similar to these proposed agreements and applies to the other provinces as much as and more than to Quebec. The Court has difficulty understanding why Quebec is refusing to accept now what it recently offered the others; of course it is true that constitutional confrontations have arisen in the meantime.

The Court is not required to decide the matter on this basis, however. It is sufficient to note that Quebec has certainly not succeeded in proving on a preponderance of the evidence that the Quebec clause constitutes a "reasonable limit" within the meaning of s. 1 of the Charter, as indicated by the lively disagreements in the evidence (emphasis added).

A number of clear principles emerge from the preceding survey of the caselaw:

(1) It is clear that the burden of proof is on the party seeking to have the law upheld.

(2) The burden of proof is according to the civil standard, i.e., preponderance of evidence", or "balance of probabilities".

(3) "The standard of persuasion to be applied by the court is a high one if the limitation in issue is to be upheld as valid .... evidence in support must be clear and unequivocal."

(4) However, courts should be reluctant to strike down a limit as unreasonable unless it is clearly unreasonable.

(5) In determining whether a limit is reasonable and demonstrably justified, an objective test should be employed: is there a rational basis for it?

(6) The test for determining if a limit is reasonable and demonstrably justified has two branches:

   (a) the first branch looks to the purpose of the legislation containing the limit: does it have a "legitimate objective"?;

   (b) the second branch looks to the means of achieving this objective: is the limit - as a means of achieving the objective - proportional to the objective?

(7) A court may consider evidence of the social, economic, and political background of a piece of legislation, as well as survey the experience in other jurisdictions, in arriving at a decision about the reasonableness of a limitation contained within the said legislation.

B. Bona Fide Residence Requirements and Durational Residence Requirements

There is no question that a bona fide residency requirement on voting would be seen as a reasonable limit within the meaning of s. 1 of the Charter. To date, there has been no judicial pronouncement to this effect. However, it has always been the practice in Canada: all federal, provincial and territorial, election legislation contains such a requirement. Furthermore, the constitutionality of bona fide residency requirements is well established in the United States: Tribe, American Constitutional Law (1978), p. 766.

Before going on to discuss durational residency requirements, it is useful to distinguish the concept of "bona fide residence" from that of "durational residence". Bona fide residence is based on intention: a person can establish that he is a bonafide resident of a place if he can prove an intention to reside there. "Durational residence" is concerned with the period of time a person stays in a place after he has become a resident of such place. A piece of legislation can provide that "a person is not deemed to be a resident of a particular place until he has remained there for a specified period of time", but this is really just durational residency by a different name. It is unlikely that a Canadian court would be any less inclined to strike down a durational residency requirement which is not expressed as a residency requirement, than it would a durational residency requirement which is expressed as one, if in either case the requirement was found unreasonable.

C. Validity of the Durational Residency Requirement

The question of validity of the durational residency requirement raises squarely the application of s. 1 of the Charter. But before dealing with the present situation and the application of s. 1, we shall turn to American law. Durational residence requirements have had much more exposure to the courts in the U.S. It is true that Canadian Courts are not bound by American law, but it is acknowledged, especially in relation to Charter matters, that American jurisprudence is a useful guide. See: Storey v. Zazelenchuk (supra), and the comments of La Forest, J. in "The Canadian Charter of Rights and Freedoms: An Overview, 61 Can. Bar Rev. (1983), 19.

(1) The American Situation

The constitutionality of durational residency requirements in the U.S. is usually raised in the context of the rights to vote and travel interstate, vis a vis the right to equal protection of the law under the Fourteenth Amendment. The contention is that the requirement sets up and discriminates between classes and it is therefore unconstitutional. With respect to the right to vote, it sets up two classes of residents, old

residents and new residents, and discriminates against the latter. And the requirement sets up the classes of recent travellers and not-recent travellers, in terms of the right to interstate travel, and to this extent, the first class is discriminated against.

The American Constitution does not contain a limitation provision similar to s. 1 of the Charter. However, the courts have nevertheless interpreted the rights therein to be subject to limitation. The U.S. Supreme Court has fashioned more than one test to determine whether a limitation is constitutionally acceptable. The test which has been applied to durational residency requirements is the "compelling state interest test". "Under this standard ... the law will be declared unconstitutional (if it abridges a fundamental constitutional right) unless the state can prove that the law is necessary to satisfy some compelling state interest.") D.T. Kramer, "Validity, Under Federal Constitution, of State Residency Requirements for Voting in Elections", Annotation to Dunn v. Blumstein, 31 L Ed 2D 861, 868).

The leading American case on the question of durational residency requirements is Dunn v. Blumstein. As aforesaid, that case involved Tennessee legislation which established two residency periods for voting in state elections: residence in the State for one year and in the county for three months. The Supreme Court struck down both residency periods as unconstitutional. In the course of its reasons, the Court said the following about the compelling state interest test:

> ... durational residence laws must be measured by a strict equal protection test: they are unconstitutional unless the State can demonstrate that such laws are 'necessary to promote a compelling governmental interest'.... The key words emphasize a matter of degree: that heavy burden of justification is on the State, and that the statute will be closely scrutinized in light of its asserted purposes. It is not sufficient for the State to show that durational residence requirements further a very substantial state interest. In pursuing that important interest, the State cannot choose means that unnecessarily burden or restrict constitutionally protected activity. Statutes affecting constitutional rights must be drawn with 'precision', ... and must be 'tailored' to serve their legitimate objectives .... And if there are other, reasonable ways to achieve those goals with a lesser burden on constitutionally protected activity, a State may not choose the way of greater interference. If it acts at all, it must choose 'less drastic means'.... (supra, at pp. 342-43).

The State of Tennessee argued in Dunn that the durational residency requirement was necessary to satisfy two compelling state interests:

(1) Insure Purity of Ballot Box - Protection against fraud through colonization and inability to identify persons offered to vote, and

(2) Knowledgeable Voter - Afford some surety that the voter has, in fact, become a member of the community and that as such, he has a

> common interest in all matters pertaining to its government and is, therefore, more likely to exercise his right more intelligently. (supra, at p. 345).

With respect to the first state interest, the Court said, indeed, the prevention of fraud is a compelling government goal. But it denied that a durational residency requirement was necessary to achieve this goal. The qualifications of a would-be voter in Tennessee are established by oath at the time of registration. The Court said:

> Since false swearing is no obstacle to one intent on fraud, the existence of burdensome voting qualifications like durational residence requirements cannot prevent corrupt nonresidents from fraudulently registering and voting. As long as the State relies on the oath-swearing system to establish qualifications, a durational residence requirement adds nothing to a simple residence requirement in the effort to stop fraud. The nonresident intent on committing election fraud will as quickly and effectively swear that he has been a resident for the requisite period of time as he would swear that he was simply a resident. Indeed, the durational residence requirement becomes an effective voting obstacle only to residents who tell the truth and have no fraudulent purposes. (supra, at pp. 346-47)

With respect to the second purpose, the Court makes the following points:

> (1) "'... has a common interest in all matters pertaining to (the community's) government ....' presumeably ... means that it may require a period of residence sufficiently lengthy to impress upon its voters the local viewpoint. This is precisely the sort of argument this Court has repeatedly rejected ....'Fencing out' from the franchise a sector of the population because of the way they may vote is constitutionally impermissible'. (supra, at pp. 354-55).
>
> (2) ... durational residency requirements are too crude an instrument to use in any attempt to restrict the ballot only to those voters who will vote "intelligently" (assuming such to be a legitimate state objective), for while such laws undoubtedly exclude many uninformed new residents from voting, they also exclude many well-informed new residents from voting, and they do nothing to prevent an uninformed long-time resident from voting. Furthermore, ... durational residency requirements, particularly those of 6 months or more, are not necessary for the creation of an informed electorate in an age where newspapers, radio and television broadcasts, and other types of communications bring instant information to voters on a daily basis. (Kramer, supra, at p. 868).

(2) The Present Situation

It is appropriate now to turn to the present situation and the application of s. 1 of the Charter. What is proposed is the establishment of a

durational residency requirement for voting in Legislative Assembly elections for the Western Arctic Region of the NWT. Will such a requirement be seen by a court as reasonable and demonstrably justified?

Courts have indicated that the application of s. 1 essentially involves the balancing of competing interests. The rights and freedoms of the individual - as protected by the Charter - are balanced against the societal goals to which the legislation - which limits those rights and freedoms - is purportedly directed. The right of the individual, in this particular case, is the right to vote: s. 3. The relative importance of this right vis-a-vis the other rights contained in the Charter, should be noted. This is commented upon by Gerald A. Beaudoin, in The Canadian Charter of Rights and Freedoms:

> The right to vote is of paramount importance. After the right to life and freedom, it is one of the most fundamental rights. As Chief Justice James McRuer observed:
>
> > In any truly democratic country the right or power to vote should be included as a political right. In fact, it is the keystone in the arch of the modern system of political rights in this country.
>
> The right to vote constitutes the very basis of democratic political systems. Mr. Justice Black of the United States Supreme Court, in the case of Westberry v. Sanders wrote: 'Other rights, even the most basic, are illusory if the right to vote is undermined.' In the case of Reynolds v. Sims, the U.S. Supreme Court remarked that 'the right to exercise the franchise in a free and unimpaired manner is preservative of other basic civil and political rights.' (p. 216)

On the other side of the scale is the goal of the durational residency requirement. As aforesaid, this is to allow new arrivals in the region to become sensitized to the delicate and complex life systems in the north, in order that they may make sensible decisions when it comes to voting for members to the Legislative Assembly. The significance of this objective is clear from Justice Berger's Report of the Mackenzie Valley Pipeline Inquiry.

The principles respecting the application of s. 1, set out above, give an idea as to how these competing interests may be balanced. The person seeking to uphold the durational residency requirement must establish, on the balance of probabilities, that it is reasonable and demonstrably justified. On the whole, the balance should lean slightly in favor of the right to vote. However, courts should be reluctant to substitute their own opinions for those of the legislature: a particular durational residency requirement should be found unreasonable only if clearly unreasonable.

These principles are to be distinguished from those applicable to the American situation. The U.S. standard is somewhat more stringent than the Canadian. In Dunn v. Blumstein, the U.S. Supreme Court said a "heavy burden of justification is on the State". Although the same has been said by Canadian courts, they have also expressed a clear reluctance to substitute their own opinions for those of the legislature.

As set out above, the test fashioned by Duschene, C.J. for determining the reasonableness of a particular limit has two branches. In the present context, these two branches may be stated as follows: (a) does the durational residency requirement have a legitimate objective; and (b) is the particular durational residency requirement - as a means of achieving this objective - proportionate to this objective. Each of these will be addressed in turn.

(a) Legitimate Objective

The objective of a durational residency requirement for the Western Arctic is to allow for the sensitization of voters. Is this a legitimate objective? The factors a court will consider in making this determination are as follows:

(i) The election laws of every Canadian jurisdiction contain durational residency requirements.

(ii) A Saskatchewan law containing a six month durational residency requirement was upheld by the Queen's Bench in Storey v. Zazelenchuk.

(iii) This objective resembles the second compelling interest put forth in Dunn v. Blumstein. As aforesaid, the Supreme Court responded to this by saying, "to require a period of residence sufficiently lengthy to impress upon its voters the local viewpoint ... has (been) repeatedly rejected..... 'Fencing out' from the franchise a sector of the population because of the way they may vote is constitutionally impermissible".

(iv) In order to substantiate the objective, a court could look at ecological, social, cultural and economical evidence. In this regard the Berger Report would be particularly significant.

There is very little doubt that this would be found a legitimate objective. The only obstacle is Dunn v. Blumstein. But it may be argued that in the present situation, the purpose of the durational residency requirement is not to impose a local viewpoint. It is to enable new arrivals an opportunity to gain an understanding of northern life and the environment. It should also be reiterated that the U.S. standard is somewhat more stringent than the Canadian standard.

(b) Proportionate Means of Achieving the Objective

There is also little doubt that, in principle, a durational residency requirement is a proportionate means of achieving the objective of voter sensitization. However, Dunn v. Blumstein is an obstacle. In the context of the compelling state interest test, the U.S. Supreme Court, in that case, questioned the effectiveness of durational residency requirements. The Court said that "while such laws ... exclude many uninformed new residents from voting, they also exclude many well-informed new residents from voting, and they do nothing to prevent an uninformed long-time resident from voting".

This is a compelling argument. However, Dunn is distinguishable. Dunn involved the State of Tennessee, we are concerned with the NWT. The issues involved are not standard voter issues. Issues in this region, involve the protection of delicate and complex life systems. Very little is actually known about the north, and one does not gain an understanding of it by simply reading about it. A person has to actually live there for some time.

It is not the principal of a durational residency requirement which is the problem. It is the length of the residency period. As Estey, J. said in Storey, quoting from Dunn v. Blumstein, in every case it is "'a matter of degree' or 'a matter of line-drawing'."

A court will consider a number of factors in determining whether a particular residency period is a sensitization. Among the probable factors it will consider are the following:

(i) Seven Canadian jurisdictions have durational residency periods of six months: Alberta, Manitoba, British Columbia, New Brunswick, Nova Scotia, Newfoundland, and Saskatchewan. Five jurisdictions have one year durational residency periods:

(ii) The case of Storey v. Zazelenchuk holds that a six month durational residency requirement for Saskatchewan is reasonable and justified.

(iii) American case law will undoubtedly be considered.

(iv) Evidence relating to the ecological, social, cultural, and economic environment of the Western Arctic will also probably be considered.

D. Durational Residency Options

As was indicated above, this opinion examines four durational residency options: (1) 6 months, (2) 6-12 months, (3) 1-3 years, and (4) over 3 years.

(1) 6 Months

There is very little doubt as to the constitutionality of a 6 month residency period. Seven out of twelve Canadian jurisdictions have such a requirement. Storey says that it is valid.

(2) 6-12 months

There is also very little doubt about the constitutionality of a durational residency period which is between 6-12 months. It is noted that five Canadian jurisdictions have adopted a 12 month residency period. Some American cases have found one year to be invalid, but a number of cases have found it to be valid (See:

Kramer, supra, pp. 911-13). The leading case of Dunn v. Blumstein, however, says that a one year residency requirement is unconstitutional. This would probably not be an obstacle. As was noted above, the American "compelling interest" standard appears somewhat more stringent than the emerging Canadian standard. Canadian case law also indicates that a limitation must be clearly unreasonable before it is struck down. 6-12 months is not clearly unreasonable.

(3) 1-3 Years

A durational residency period between 1-3 years may be valid. Quite clearly, the closer it is to one year the more likely it is to be found valid.

There is a very strong argument to be made about the delicate nature of the life systems in this area of the north. The complex nature of the area certainly distinguishes it from other southern jurisdictions. If three southern Canadian jurisdictions have residency requirements of one year, then, surely a residency period of somewhat longer than a year for the NWT should not be unreasonable. Or, at least, it should not be found to be "clearly unreasonable".

American case law is not favorable with respect to durational residency periods of more than one year. There are no cases which uphold such extended residency periods. However, as was indicated above, the "compelling interest" standard employed in the U.S. is more stringent than the Canadian standard. Furthermore, the complex ecological, social, cultural and economic nature of this part of Canada makes it clearly distinguishable from the American situation.

(4) Over 3 Years

There is no question that a 3 year durational residency requirement would be found unconstitutional. A court would see such a requirement as being "clearly unreasonable".

IV CONCLUSION

It is the opinion of the writer that:

1. Durational residency requirements violate s.3 of the Canadian Charter of Rights and Freedoms.

2. Durational residency requirements do not violate s.6 of the Canadian Charter of Rights and Freedoms.

3. (1) A 6 month durational residency requirement for the Western Arctic Region of the NWT is "reasonable" and "demonstrably justified" and therefore constitutionally valid.

(2) A 6 - 12 month durational residency requirement for the Western Arctic Region of the NWT is "reasonable" and "demonstrably justified" and therefore constitutionally valid.

(3) A 1 - 3 year durational residency requirement for the Western Arctic Region of the NWT may be "reasonable" and "demonstrably justified" and therefore may be constitutionally valid. The closer the residency period is to 1 year the more likely it is to be found valid. There are compelling arguments in favor of an extended durational residency period (1 - 3 years) for this area.

(4) A durational residency requirement which is greater than 3 years, for the Western Arctic Region of the NWT is not "reasonable" and "demonstrably justified", and therefore is not constitutionally valid.

MEMORANDUM 2

VOTING

Prepared by:

Marcia Tannenbaum Posluns
June, 1983

VOTING

Voting is an essential and necessary part of the democratic system, allowing for participation in the political process. Voting typically is a privilege which goes hand-in-hand with citizenship.[1] But there are limits on this privilege which are also recognized; the most obvious and universal of these is minimum voting age.

The universal age of franchise in the United States was twenty-one until Congress lowered the age to eighteen in federal elections. States then variously chose ages of enfranchisement from eighteen to twenty-one for state and municipal elections, creating such chaos that the 26th Amendment to the Federal Constitution (1971) lowered the voting age in all elections to eighteen.[2]

This Amendment does not apply to Indian tribal elections. There was no violation of the equal protection clause where the voting age in tribal elections was twenty-one.[3]

The concept of "one person, one vote" is restated in Mahan v. Howell[4], and asserts the right to cast a ballot equal to that of any other member of the same constituency. The "one voter, one vote" standard is stated clearly in the concurring opinion of Justice Stewart in Gray v. Sanders[5].

The law of the United States reflects the idea that "restrictions on the franchise must not abrogate constitutionally guaranteed rights".[6] Therefore, wherever there is any restriction of voting, it must be shown to serve a compelling state interest requiring a standard of strict scrutiny.

In 1974, the Supreme Court held that it was constitutional to disenfranchise convicted criminals.[7] It is unclear what the state goal here is, but the Court allowed that under the second Amendment to the United States Constitution there is no violation of constitutional rights.[8]

Certain state policies, to be examined later, deviate from a strict one person/one vote standard. Unfortunately, the Court has not articulated the rule in such a way that the standard is clear.[9]

Reynolds v. Sims[10], dealt with state legislative apportionment. The Court insisted that equal numbers of voters should elect equal numbers of representatives. The Court invalidated Alabama's legislative apportionment scheme since it was grossly malapportioned. The Court reiterated one person, one vote, and asserted that unless the state can show a legitimate objective, "representation in a state legislative must be closely based upon population"[11]. Unfortunately, the Court did not clarify what type of state policies would be adequate justification for deviation from a mathematical equality.[12]

The Court did answer some questions in this area and in Maryland Committee for Fair Representation v. Tawes[13], held that the federal style plan of the Maryland legislature (i.e. a becameral legislative which had an upper house in which each county had one vote and a lower house which was apportioned on the basis of population, similar to the Federal Congressional plan where each state has Senators and the House of Representatives is apportioned by population) was unconstitutional.

In Lucas v. Colorado General Assembly[14], the Court invalidated a "federal plan" legislature because it denied equal weight to each vote. Justice Stewart dissented, calling attention to the benefits of that system but the Court held that the system that the Framers of the Constitution had created was not constitutional on the state level, since they are not analogous bodies[15].

In a recent decision of the Court[16], the voting scheme for election of a water reclamation district's directors which limited voting to landowners and apportioned voting power was upheld. The Court held that the one person, one vote rule was not required in this instance because in the voting scheme established for electing the directors of the district did not violate the equal protection clause of the Fourteenth Amendment since it bore a reasonable relationship to its statutory objectives, and the peculiarly narrow function of the local governmental body and the special relationship of one class of citizens to that body...[17] It should be noted that the dissent by Justice White was concurred in by Justices

Brennan, Marshall, and Blackmun and suggested that a one person, one vote standard should be applied.) It may be that the peculiar nature of water districting in Arizona is so unique as to allow for this result.

> Every state, as well as the federal government imposes some restrictions on the franchise... the need to confer the franchise on all who aspire to it is tempered by the recognition that completely unlimited voting could subvert the ideal of popular rule which democracy so ardently embraces. Moreover, in deciding who may and who may not vote in its elections, a community takes a crucial step in defining its identity. If nothing else, even though anyone in the world might have some interest in any given election's outcome, *a community should be empowered to exclude from its elections persons with no real nexus to the community.*[18]

This statement, by the foremost constitutional authority of the United States, explains Ball v. James and can be applied to other democratic countries, as well. In Israel, for example, citizenship is automatically conferred on adult Jews coming to Israel who express an intention to reside in Israel under the Law of Return. Non-Jews must wait for citizenship and the concomitant privilege of voting for five years. Surely this is an example, albeit a unique one, of Tribe's assertion that the community has the right to define itself by enfranchising those who have a "real nexus" to it.[19]

In respect to the specific issue of residency as a requirement for the privilege of voting, the U.S. Supreme Court has spoken at length.

In Dunn v. Blumstein[20], the United States Supreme Court, in an opinion by Justice Marshall, the durational residency requirements were held to violate the equal protection clause of the 14th Amendment to the U.S. Constitution. (Note that Chief Justice Burger dissented on the ground that the requirements of one year residency in Tennessee was reasonable.)

In looking at this case, one must understand that Dunn was understood to be "a resident" (in the usual sense of someone intending to remain) at the time he brought the action.[21] The standard applied here is that the state has a "compelling interest".

The Court in Dunn concluded that durational residency requirements are unconstitutional, "on the grounds that they impermissibly interfered with the right to vote and created a "suspect" classification of "new Tennessee resident".

The issue here addressed may be rather a definition of *bona fide* resident. Where it can be shown that residency is temporary and not intended to be either longterm or permanent, the state, for example Western Arctic, may well have a compelling interest in restricting the franchise. In American terms, the right which may be affected is the right to interstate travel. In Dunn v. Blumstein, the Court reiterated its *bona fide* resident requirement.

There is a line of cases beginning with Drueding v. Devlin[22], and continuing up through Dunn to 1982 which addresses the issue of durational residency. The Court has demanded strict scrutiny, especially where the right to interstate travel is seen to be at issue.

Most recently, shorter and shorter periods of time are being required where residence is *bona fide*. The case of students seeking to register to vote, the North Carolina Court has asserted that a constitutional violation has not occurred, when a rebuttable presumption is made that a university student is not domiciled where the college is located. If that presumption is rebutted and the student can show that (s)he is a *bona fide* resident of the college community, enfranchisement occurs.[23]

In Holt Civic Club v. Tucaloosa[24], the Court asserted that a government unit has the right to restrict participation in the political process to those who are *bona fide* residents, but even *bona fide* residents may be

constitutionally disenfranchised in the context of special interest elections.

A recent example of this doctrine is discussed at length in Ball v. James.

One might also look to the recent discussion of the Honourable Mr. Justice M.M. de Weerdt in the Supreme Court of the Northwest Territories.[25] The case was brought by citizens of the Northwest Territories who qualified in both federal and Territorial elections and whose standing (i.e. right to bring this action) was not questioned by the Court. The Plebiscite Ordinance being challenged was held by the Court not to be unconstitutional although a three year residency in the Northwest Territories was required for participation by voters.

The Court asserted that the Charter of Rights had not been infringed on. The Court's reasoning was that since a plebiscite is strictly advisory, unlike perhaps a referendum, no infringement of rights occurs when voters are limited to those of a particular group, i.e., with a special interest, who are ordinarily residents in the Northwest Territories for three years.

The Court discusses the difference between a "right and a freedom" and suggests that since a plebiscite is an expression of opinion, no one's right has been infringed upon.[26] The Court, unfortunately for our purposes, does not actually speak to the durational residency question.

Before concluding, we should look at the Indian Law within the boundaries of the United States. Volume 25 of the U.S. Code is the statutory law governing Indians in the United States. Section 1301 is known as the Indian Civil Rights Act and Section 1302 of Constitutional Rights is similar though not identical to the Bill of Rights (the first ten Amendments to the United States Constitution passed at the same time as the Constitution).[27]

Section 58 of 1302 is on voting and elections and upholds the one person, one vote rule where "an Anglo-Saxon democratic process" is being used.[28]

Note further that the quasi-sovereign status of Indian tribes entitles a tribe to determine who will vote in tribal elections, unless there is controlling legislation.[29]

In concluding, I wish to reiterate the essential nature of the one person/one vote doctrine in the United Status democratic process. Where the voter is a *bona fide* resident of a jurisdiction and has a real nexus to the place, strict scrutiny should be applied in order to guarantee the franchise to all those with a real interest in the process.

ENDNOTES

1 Wesberry v. Sanders, 376 U.S. 1,17 (1964)

2 Tribe, American Constitutional Law, 1978, fn. 8 at 763.

3 Wounded Head v. Tribal Council of Ogala Sioux Tribe of Pine Ridge Reservation, C.A.S.D. 1975, 507 F. 2d. 1079.

4 410 U.S. 315, 319 (1973).

5 372 U.S. 368, 382 (1963).

6 Tribe, 763.

7 Richardson v. Ramirez, 418, U.S. 24 (1974).

8 Tribe, 771-2.

9 Tribe, 748.

10 377 U.S. 533 (1964).

11 Reynolds v. Sims at 579, cited in Tribe at 740.

12 Tribe, 740.

13 377 U.S. 656 (1964).

14 377 U.S. 713 (1964).

15 Tribe, 741, fn. 15.

16 Ball v. James, 451 U.S. 355 (1981).

17

68 L. Ed 2d., 150-151.

18

Tribe, 761.

19

Id.

20

405 U.S. 330 (1972).

21

Tennessee has never "disputed that appellee was a *bona fide* resident of the State and the country when he attempted to register." (405 U.S. 330, 334).

22

330 U.S. 125 (1965).

23

Lloyd v. Babb, 296 N.C. 416, 251 SE 2d. 843 (1979).

24

439 U.S. 60 (1978).

25

SC6447, Allman v. Commissioner, January 26, 1983.

26

Tribe, 17.

27

See appendix.

28

Means v. Williams, C.A.S.D. 1975, 522 F.2d. 833, cert. denied 96 S.Ct. 1436.

29

25 U.S.C.A., V. 1302 note 58 at 497.

APPENDIX

Articles in addition to, and amendment of, the Constitution of the United States of America, proposed by Congress, and ratified by the Legislature of the several States, pursuant to the Fifth Article of the original Constitution.

*(1791) ARTICLE I.

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech or of the press; or the right of the people peaceable to assemble, and to petition the Government for a redress of grievances.

ARTICLE II.

A well-regulated militia being necessary to the security of a free State, the right of the people to keep and bear arms shall not be infringed.

ARTICLE III.

No soldier shall, in time of peace, be quartered in any house without the consent of the owner, nor in time of war but in a manner to be prescribed by law.

ARTICLE IV.

The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue but upon probable cause, supported by oath of affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

ARTICLE V.

No person shall be held to answer for a capital or otherwise imfamous crime unless on a presentment or indictiment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject

for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation.

ARTICLE VI.

In all criminal prosecutions the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favour, and to have the assistance of counsel for his defence.

ARTICLE VII.

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined in any court of the United States than according to the rules of the common law.

ARTICLE VIII.

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

ARTICLE IX.

The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people.

ARTICLE X.

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

S 1302. Constitutional Rights

No Indian tribe in exercising powers of self-government shall---

(1) make or enforce any law prohibiting the free exercise of religion, or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble and to petition for a redress of grievances;

(2) violate the right of the people to be secure in their persons, houses, papers, and effects against unreasonable search and seizures, nor issue warrants, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the person or thing to be seized;

(3) subject any person for the same offense to be twice put in jeopardy;

(4) compel any person in any criminal case to be a witness against himself;

(5) take any private property for a public use without just compensation;

(6) deny to any person in a criminal proceeding the right to a speedy and public trial, to be informed of the nature and cause of the accusation, to be confronted with the witnesses against him, to have compulsory process for obtaining witnesses in his favor, and at his own expense to have the assistance of counsel for his defense;

(7) require excessive bail, impose excessive fines, inflict cruel and unusual punishments, and in no event impose for conviction of any one offense any penalty or punishment greater than imprisonment for a term of six months or a fine of $500, or both;

(8) deny to any person within its jurisdiction the equal protection of its laws or deprive any person of liberty or property without due process of law;

(9) pass any bill of attainder of ex post fact law; or,

(10) deny to any person accused of an offense punishable by imprisonment the right, upon request, to a trial by jury of not less than six persons.

(Pub.L. 90-284, Title II, S. 202, Apr. 11, 1968, 82 Stat. 77.)

MEMORANDUM 3

BONA FIDE RESIDENCE, A CLOSER LOOK

Prepared by:

Marcia Tannenbaum Posluns
July, 1983

BONA FIDE RESIDENCE, A CLOSER LOOK

Introduction

The question addressed in this paper is "Would a strict definition of *bona fide* residence provide criteria which would reinforce the objectives implicit in a residence requirement of more than one year?"

Who is a *bona fide* resident? *Bona fide* in the original Latin means literally "in or with good faith; without fraud or deceit; genuine".[1] Here it means someone who is truly a resident of a place.

Resident is defined thus:

> Any person who occupies a dwelling within the State, has present intent to remain within the State for a period of time, and manifests the genuineness of that intent by establishing an ongoing physical presence within the State together with indicia that his presence within the the State is something other than merely transitory in nature. The word "resident" when used as a noun, means a dweller, habitant or occupant; one who resides or dwells in a place for a period of more, or less, duration; it signifies one having a residence, or one who resides or abides....[2]

Note also in the following definition that domicile and residence are not necessary synonymous. Where we speak of *bona fide* residence we mean domicile, i.e., the legal residence of a person, where (s)he intends to remain.

> "Domicile" compared and distinguished. As "domicile" and "residence" are usually in the same place, they are frequently used as if they had the same meaning, but they are not identical terms, for a person may have two places of residence, as in the city and country, but only one domicile. Residence means living in a particular locality, but domicile means living in that locality with intent to make it a fixed and permanent home. Residence simply requires bodily presence as an inhabitant in a given place, while domicile requires bodily presence in that place and also an intention to make it one's domicile. Fuller v. Hofferbert, C.A. Ohio. 204 F. 2d 592, 597. "Residence is not synonymous with "domicile", though

> the two terms are closely related; a person may have only one legal domicile at one time, but he may have more than one residence. Fielding v. Casualty Reciprocal Exchange, La. App., 331 So. 2d. 186, 188.
>
> In certain contexts the courts consider "residence" and "domicile" to be synonymous (e.g. divorce action, Cooper v. Cooper, 269 Cal. App. 2d 6, 74 Cal. Rptr. 439, 441); while in others the two terms are distinguished (e.g. venue, Fromkin v. Loehmann's Hewlett, Inc. 16 Misc. 2d 117, 184 N.Y.S. 2d 63,65).[3]

Intention in establishing *bona fide* residence.

Intention is the key to establishing *bona fide* residence. Although a durational requirement might provide a workable standard, the definition of *bona fide* residence in the voting statutes of the Western Arctic might well accomplish the same purpose and not raise the Constitutional questions inherent in a two to three year durational residency requirement.

The task then, is to define *bona fide* residence in the Western Arctic so that the voters are in fact those who are connected to the community and have a real interest in the future of that community.

A *bona fide* resident is, by this definition, a person who meets all other criteria (e.g. age, citizenship, and duration in the jurisdiction) and intends to remain in the Western Arctic. The term fixed by ordinance (now twelve months) should begin at the time of the establishment of residence, not simply physical presence in the jurisdiction. When a person decides to become a *bona fide* resident the durational clock begins to indicate the twelve months (or such variation as may be) necessary for qualification as a voter.

A system is required that will allow potential voters to make their intention to become residents known. The vote can then be restricted to *bona fide* residents who, presumably, are knowledgeable about the issues and have an interest in the results of elections. (Like a durational residency requirement, the interest in and connection to the community is manifest;

unlike the extension of a durational requirement, *bona fide* residency will not raise questions of Constitutionality.)

Who is a *bona fide* resident in the Western Arctic?

In order to be a *bona fide* resident, one must intend to remain in the Western Arctic and to make it his/her home. If, for example, a miner is on a two-week-in, one-week-out schedule, that person is clearly not a resident for voting purposes. His/her intention is to go "home" every third week. Temporary residence in one jurisdiction does not eradicate domicile in another jurisdiction.

What about the civil servant seconded from Ottawa or Winnipeg for one, two, or even three years, whose "home" awaits and who intends to return after the northern posting? (S)he, too, is not a *bona fide* resident, not someone intending to stay.

On the other hand, the young person(s) who decides to go North for an unlimited time, who has no intention of returning to his/her prior residence except for an occasional visit, and who intends to remain in the Western Arctic should be a *bona fide* resident once the criteria of age, citizenship, and duration of residence are met.

One might wish to make exceptions for certain categories of people in line with exceptions in already existing statutes. The military, for example, might be allowed to vote in territorial elections, if some compelling reason were shown.

Schoolteachers on a two-year posting, but employees of the territorial government, might be considered a separate category.

The nature of the definition should be fair and reasonable. Saying this, it is essential to remember that a voter can only have one vote, one domicile, and can be a *bona fide* resident of only one place at a time.

Exactly what or how that standard is measured will likely require further study but will ultimately serve to provide an electorate in the Western Arctic that is knowledgeable and interested, and which has a longterm commitment to their home.

Who is a *bona fide* resident for the purpose of voting in a Territory or Province of Canada?

Each province and territory has its own legislation which defines, for that jurisdiction, those persons eligible to vote in provincial/territorial elections. There is considerable variation between and among these two jurisdictions.[4] For the purposes of voting in Federal elections, the Canada Elections Act[5], establishes that every person eighteen years old and a citizen of Canada is qualified to have his/her "name included in the list of electors for the polling division in which he is ordinarily resident on the enumeration date for the election and to vote at the polling station established therein".[6]

The major difficulty in determining who is a *bona fide* resident for the purpose of voting arises out of the diverse, though essentially similar definitions of each province/territory of Canada. There is considerable disparity between and among Canadian jurisdictions. That such disparity exists is central to our discussion of a fair standard for voter qualifications in the Western Arctic.

An example of this lack of uniformity is the minimum voting age in Canada. In British Columbia, Newfoundland, and in the Yukon Territories, and in the Northwest Territories, the voting age is nineteen.[7] Throughout the rest of Canada, the voting age is eighteen.

In the language of most of the statutes governing provincial/territorial elections in Canada, a person must be "ordinarily resident" in that jurisdiction for a given time.[8]

In Quebec, Chapter three of the Elections Act establishes the standard of

domicile. As we see in the definition provided in the introduction, a domicile is a permanent residence; a person can have but one domicile though (s)he may have more than one residence.

In the Northwest Territories, the qualifications for voters are defined as being nineteen and "ordinarily resident at least twelve months immediately prior to polling day".[9]

In the Yukon Territory, the definition of residence is quite loose though the age and duration specified are the same as in the Northwest Territories (age of nineteen and twelve months as "ordinarily resident")[10]. The Yukon Ordinance further defines electors in the section entitled Enumeration[11]. There is a lengthy definition of the rules which are to be applied in establishing residence in the Territory. Asserting that "a person can have only one residence (i.e. *bona fide* residence for the purpose of voting) at one time..."[12] and that "the residence of a person is the place in which his habitation is fixed and to which, when absent therefrom, he has the intention of returning"[13].

A scholarly paper by a student at Osgoode Hall Law School[14], discusses the line of cases in the United States and the European Convention of Human Rights, as to reasonable voting restrictions. He suggests that recent cases, expecially Dunn v. Blumstein[15], "illustrate that it is impossible now for states in the United States to set residency requirements (i.e. durational requirements) as a test of *bona fide* residency"[16].

Though intention may seem a peculiar component of a legal definition, there is a longstanding tradition of its importance in the common law system both in tort law, and in criminal law. Criminal law relies heavily on the theory of mens rea = a criminal mind. In most instances, one cannot be found guilty of a crime unless it can be shown that the accused intended to commit that crime.

In Israel, a Jew who comes to live in the country has the immediate right

to citizenship (under the Law of Return) or (s)he can choose to be a temporary or permanent resident. After a number of years as a permanent resident, citizenship (and the concomitant right to vote) is conferred. It is the intention of that new immigrant which determines into which categories (s)he falls. The intention to be a citizen of Israel is all that is required of a new Jewish immigrant for citizenship.

In the United States, a voter must register to vote and in doing so, declares his/her eligbility under the law. That is to say that one must present oneself at a place for official voter registration and show proof of citizenship, age, and residence. The same voting list which is used for federal elections is used for both state and local elections. Indeed, it is common, to have a federal-state-local election at one and the same time.

The Canadian practice of enumerators and published lists is strikingly different from American practice. We must bear in mind these considerable differences, especially when looking South for direction from American courts. Other Canadian peculiarities, such as the disenfranchisement of judges, would not be tolerated (acceptable) under the American system.

Specifically, where the question of *bona fide* residence is involved, an American registering to vote in a particular electoral district attests to his/her eligibility to vote in that district at the time of registration. One can have only one legal residence or domicile (i.e. *bona fide* residence) for the purpose of voting. Note, too, that:

> ...no court has held that a state may not require that its voters be *bona fide* residents of the state, or of a particular subdivision therein, and the imposition of *bona fide* residency requirements for voting has been universally upheld.[17]

Conclusion

The present ordinance, amended to read *bona fide* resident (rather than ordinarily resident) might well succeed in establishing the appropriate

standard for voters in the Western Arctic.

It is essential to look to the definition of *bona fide* resident in order to establish an electorate which will provide the Western Arctic with a future in which enlightened citizens exercise their franchise in their homes.

ENDNOTES

1

Gifis, S., Law Dictionary, 1975, p. 25.

2

Black, Henry, C., Black's Law Dictionary, Fifth Edition, 1979 p. 1177.

3

Id., p. 1176.

4

Please note that the discussion here pertains to the question of *bona fide* residence for voting purposes and that for other purposes, for example social welfare, different criteria may well be reasonably appropriate.

5

R.S.C. 1970, c. 14 (1st Supplement).

6

Section 16(1) Canadian Elections Act, as cited in Tarnopolsky and Beaudoin, The Canadian Charter of Rights and Freedoms, 1982, at p. 219.

7

Statutes: B.C. (Elections Act, RS 1979, c. 103, Section 2(1)(a).
Nfld (Election Amendment Act, June 2, 1971, Section 3(a).
Yukon (Elections Ordinance, 1977, Chapters E-1,2, Section 15(1)(a).
N.W.T. (Elections, 1978, c.3, (3rd), Section 11(1)(b).

8

The specified time is six months for New Brunswick, Nova Scotia, Newfoundland, Manitoba, Saskatchewan, Alberta and British Columbia; and, twelve months for Prince Edward Island, Quebec, Ontario, Yukon Territory, and Northwest Territories.

9

Elections, 1978, c.3, (3rd).

10

Elections Ordinance, 1977, Chapter E-1,2, 18(1)(a) and (c).

11

Section 20.

12

Id., at 20(1)(g).

13

Id., at 20(1)(a).

14 Badger, Gregg, A Residency Requirement for Nunavut, 1982, unpublished.

15 405 U.S. 330 (1972).

16 Badger, at p. 38.

17 Kramer, Donald T., Validity, Under Federal Constitution, of State Residency Requirements for Voting in Elections, 31 L. Ed. 2d. 861, at p. 869.

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PART II

A STATISTICAL ANALYSIS OF RESIDENCY AND MOBILITY PATTERNS IN THE NORTHWEST TERRITORIES

Prepared for:

Legislative Assembly Special Committee on Constitutional Development

By:

Dr. N.M. Lalu
The University of Alberta
July, 1983

A Statistical Analysis of Residency and Mobility Patterns in the Northwest Territories.

Introduction.

This report provides the results of a study of the mobility pattern of the population of Northwest Territories. The examination of the mobility is prompted by the concern of many persons connected with the constitutional development of N.W.T. with regard to the possibility that N.W.T. is unique. Here an attempt is made to draw some comparisons with two other provinces of Canada. Alberta and Ontario are selected for this purpose. One reason for the selection of Alberta is the fact that there has been a tremendous increase in migration to Alberta in the recent years. On the other hand, Ontario is a province where out-migration has over taken the traditional in-migration to Ontario.

Interview with Local Resource People.

As a first step in the research process, persons involved with the Western Constitutional Forum and the Bureau of Statistics of N.W.T. were interviewed. The main objectives of the interviews were to see what data is available that can be used in the study of migration; and what are the perceived alternatives of residency requirement that may be reasonably considered for adoption. From the discussions, it was clear that every body recognises the need of a different (longer than one

year) residency requirement for the N.W.T. It is felt that N.W.T. is unique and special; there is a large flow of population when compared to other provinces. The question is, how large is the difference? Is there any hard evidence to support this general notion that mobility pattern is different in N.W.T.? What will be the consequences of adopting a one year residency requirement? It was made clear in the discussion that politically the maximum length of required residency for voting cannot be put at more than 3 years. Thus the alternatives to be considered are one year residency (which is standard in other provinces) versus two or three years of residency. The question boils down to what percentage of voters will be affected by the different strategies of the residency requirement?

Sources of data for the study.

Interprovincial migration in Canada has been estimated from the transfer of family allowance accounts from the period of 1961 onwards. This is the main source from which one can get estimates of in and out migration on an annual basis. From 1961 to 1973 children between the age 0-15 who were attending school and whose parents were Canadian citizens or landed immigrants of one year standing were eligible for the family allowance payments. Since 1974 children under 18 and who had at least one parent who is a landed immigrant or Canadian citizen or a non-immigrant under prescribed circumstances, were

eligible to receive family allowance. A family which moves is required to notify the Health and Welfare department of the change of address. This information is used to estimate the migration of families and indirectly gives an indication of the general pattern of interprovincial migration. It should however be recognised that the data represents only migrant families with children eligible for family allowance. Statistics Canada has estimated the total migration by applying some multiplicative factors to inflate migration of families to total interprovincial migration. Thus the accuracy of the estimates depend on the accuracy of the correction factor used for each province. In spite of the obvious deficiency of family allowance data for measuring migration, it is the only steady data on an annual basis in Canada in the absence of a continuous population register.

Another source of migration data is health care registration. But unlike family allowance data it is not available from other provinces for comparison. Moreover because of the delays and overlaps, new registration in the health care system do not reflect the migration in a period.

A third source of data of interprovincial migration is the Census of Canada. Two questions are included in the Census that are of particular interest in an evaluation and comparison of mobility pattern. One is the

place of residence of the respondent five years prior to the census. This will identify those people who have stayed in the same province after five years. There are several limitations in this data. This data from the census gives migration from one point in time to another date five years later. We have no indication of any moves in the five year period. For example, if one person moves to another province in 1977 and returns after two years, that person will be recorded as a non-mover in the 1981 Census. But if the person is a family member with children, he will be included among the migrants in two years in the family allowance data. Another problem in using this place of residence data is that it gives only the combined total of in-migrants who have been in the province for less than one year to five years. In this study one of our objectives is to compare one year versus three year residency requirement. From the census data on place of residence alone, it is impossible to assess this. But this data can be used to compare N.W.T. and other provinces in their relative volume of migration.

The census includes a question on place of birth. By a comparison of the place of birth and the place of residence at the time of census we can estimate the amount of life-time migrants. This data also does not indicate anything about the multiple moves between birth and the census date. The data on birth place does not tell anything about the length of residence. At the same

time these data may be employed to compare N.W.T. with other provinces and also to compare ethnic differences within N.W.T.

Analysis of mobility data.

The focus of the analysis is to assess the impact of one, two and three years of residency requirement. How long do the in-migrants stay before moving out of N.W.T.? What percentage of in-migrants in a particular year will remain in N.W.T. in the second year, third year, fourth year and fifth year? Any of the data sources discussed in the last section does not give a direct answer to these questions. Here we try to combine the different sources with some assumptions and make tentative conclusions.

Let us suppose that the immigrants tend to live in N.W.T. for a certain number of years and then leave. If the same pattern of out migration among the in-migrants prevails for a number of years, we should be able to detect this by examining the in and out migration over a number of years. The earlier (1961-75) migration data derived from family allowance data on N.W.T. is combined with Yukon in the Statistics Canada publication. Therefore, we have taken N.W.T. and Yukon together in table 1 to get the longest possible time series data on in and out-migration.

If a large proportion of in-migrants leave after one year, we could expect to find a high correlation between the in-migration of one year and out-migration of the

next year. In other words, correlation between out and in-migration lagged by one year should be nigh. On the other hand, if the peak of the out flow among the in-migrants occurs after 2 years, the correlation of out with in-migration lagged one year will be low but correlation with in-migration lagged 2 years will be high. From the data in table 1, the correlation between out- migration and in-migration was calculated with various lags. In the case of N.W.T., the correlation between out-migration with in-migation with no lag is .48, with one year lag is .55, 2 years lag is .75 and 3 years lag is .70. In the case of Ontario all these correlations are less than .2. In the case of Alberta the correlations are very high (close to .8) but do not show the pattern of increase up to the lag of 2 years and decrease for a lag of three. These correlations are based on 20 years of data. In order to see whether the pattern holds good, even if we restrict our attention to the last 15 years, the correlations were recalculated using the 15 years of data. The same basic pattern was observed for N.W.T. and the provinces. The higher correlation of out-migration with in-migration lagged two years may be taken to mean that out-migration flow among the in-migrants to N.W.T. and Yukon is at a peak in the 3rd year of residency.

The data on migration from the census of 1981 is displayed in conjunction with the data from family

allowance in tables 4 and 5. From the family allowance data on migration we add up the annual in-migrants to N.W.T. in the period of 1976 to 1981. From the census of 1981 we can get the total number of persons in N.W.T. whose place of residence in 1976 was another province and who were staying in N.W.T. at the time of the census. It is clear that these people are the stayers among the in-migrants estimated from the family allowance data on an annual basis. Thus table 5 shows that 47 percent of the people who came to N.W.T. in the period 1976 to 1981 were staying there on the census date. The percentages of persons among the in-migrants in the same five year period who were staying in Ontario and Alberta on the census date are 52 and 70 respectively. In other words 53 percent of the in-migrants to N.W.T. in 1976-81 had left by the census day in 1981.

Table 4 shows the pattern of in-migration for a period of five years and the consequence of an unknown pattern of out-migration among the in-migrants. The total number of in-migrants reported in the census in 1981 is the total number of in-migrants in a five year period reduced by an unknown proportion of people returning in the first, in the second, in the third, in the fourth and in the fifth year of migration.

From the analysis of table 1 we have seen that out-migration among the in-migrants of any particular year peaks in the third year. Here we superimpose two

hypothetical models of return migration among the in-migrants with a peak in the third year.

Model 1.

In this model we assume that none of the in-migrants leave in the first year. Furthermore, we assume that the proportions of in-migrants who leave in the second, third and fourth year are X, 2X and X respectively and none leave in the fifth year. This means that the proportions of in-migrants who will be remaining in the province in the first, second, ... and in the fifth year are 1.0, (1-X), (1-3X), (1-4X) and (1-4X) respectively. Now by trial and error these proportions are estimated so that they are consistent with the number of migrants reported in the 1981 census. The proportions thus obtained are given in table 6. If we apply these proportions to the annual number of in-migrants in table 4 we will get the 8,280 in-migrants staying in N.W.T. at the time of census. Now it should be pointed out that these in-migrants are aged five years and over. In order to assess the impact of various residency requirements we have to estimate the number of in-migrants aged 18 years and over. Now we assume that the same proportions (given in Table 6) apply to persons aged 18 years and over. Thus we may estimate the number of in-migrants aged 18 and over who have stayed in N.W.T. for one year, two years, three year, four years and five years. These are shown in table 8. They are expressed as percentages to the total

number persons aged 18 and over in 1981 and are given in table 10. If we assume model 1, we can assess the impact of various residency requirements from tables 8 and 10.

Model 2.

A second model of return migration among the in-migrants was considered to see how a change in the assumed pattern will affect our inference. In this model the proportions of in-migrants leaving in the first through fifth years are X, 2X, 3X, 2X and X respectively. It should be noted that the peak of the return migration occurs in the third year. The above proportions of annual return migration implies that the the proportion of in-migrants remaining in the province at the end of the first through fifth years are (1-X), (1-3X), (1-6X), (1-8X) and (1-9X) respectively. Now by trial and error these proportions are estimated as in the case of model 1 and are shown in table 7. The annual numbers of in-migrants aged 18 years and over in the period of 1976 to 1981 are multiplied by these proportions to obtain the in-migrants with one to five years of residence remaining in the province on the census date. They are presented in table 9. Then these numbers are expressed as percentages of the total number of persons aged 18 and over in the province and are displayed in table 11.

From the tables 8 through 11 we can study the consequences of one year versus two or three years of residency requirement for voting in the Northwest

Territories. 24 percent of persons aged 18 years and over in N.W.T. have resided there for five years or less. If one year residency requirement is adopted there will be about 24,000 eligible voters. Out of these 24,000 voters 1935 (8 percent) will be persons with less than 2 years of residency and 916 (4 percent) will be persons with less than 3 years of residency in N.W.T. It should be noted that these numbers and percentages apply to the year 1981 and are based on the assumption of model 1. On the other hand if we were to assume that model 2 applies there will be 24,200 eligible voters; of which 1,753 (7.2 percent) will be persons with less than two years of residency and 1,086 (4 percent) will be with less than three years of residency. If a three year residency requirement is adopted 2,851 persons (12 percent of 24,000 persons who would otherwise have been eligible) would be disenfranchised according to model 1. If we assume model 2 the number of persons affected by a three year residency requirement (as opposed to 1 year) will be 2,839 or 12 percent of the eligible voters. These figure could be different if we assume a different pattern of return migration among the in-migrants.

Tables 12, 13 and 14 are derived from the census of 1971. These tables show how N.W.T. is different from other provinces with regard to the composition of in-migrants. In N.W.T. 49 percent of persons of British and French origin were in-migrants who came there in the

period of 1966 to 1971. Among the other groups (which includes Natives) this is only 15 percent. If we look at the place of birth statistics from 1971 census it shows a similar picture. Among the Indians and Eskimos staying in N.W.T. in 1971, 92.5 percent were born in N.W.T.; but among others only 27 percent were born there.

Suggestion for Further Research.

It is impossible to get an accurate picture of the impact of a change in the residency requirement without some further collection of primary data on the distribution of persons by length of residence in N.W.T. If we wish to avoid the pitfalls of using tables 8 to 11(which were derived on the basis of certain assumptions),to assess the impact of various options it is necessary to conduct a survey to get the distribution of voters according to the length of residence. Since we have seen that natives differ from others drastically with respect to migration it will be prudent to treat these two groups separately in the sampling procedure. We have seen that about 10 to 20 percent of the voters may fall in to the categories that we are interested in. These proportions can be estimated with a margin of error of 2 to 3 percent (at 95 percent confidence level) if we take a sample of 500 from the natives and another 500 from other groups. If our concern is only toassess the consequences of two and three year residency requirement only three or four questions need be asked. In this case

a telephone interview (where ever possible) will be the least costly method of collecting the data.

Table 1

In-Migrants and Out-Migrants of all Ages for the Provinces of Alberta, Ontario, Northwest Territories and Yukon

Year	Ontario		Alberta		N.W.T. & Yukon	
	In	Out	In	Out	In	Out
1961	77,502	73,330	45,282	38,077	3,902	3,715
1962	85,647	72,797	46,969	41,978	3,721	4,652
1963	94,928	75,424	44,997	45,395	3,193	4,600
1964	101,081	77,035	45,244	49,440	3,624	5,484
1965	109,017	84,219	47,571	57,157	3,914	4,625
1966	113,944	90,835	55,695	55,673	4,239	4,965
1967	100,702	88,895	56,203	48,679	4,637	3,988
1968	98,677	83,393	54,872	46,238	5,230	4,255
1969	132,439	79,697	63,180	54,257	5,269	3,862
1970	128,486	81,220	59,503	52,598	6,951	4,015
1971	109,224	95,144	61,181	57,606	7,010	5,170
1972	96,003	95,043	62,749	57,185	7,263	5,852
1973	104,724	107,605	72,082	69,847	5,203	6,621
1974	84,965	114,499	79,884	57,307	7,296	6,557
1975	81,141	102,321	76,210	51,588	6,244	5,927
1976	92,628	100,644	84,815	59,490	6,357	7,817
1977	107,055	96,963	88,025	62,856	6,138	6,521
1978	93,903	101,972	92,033	61,664	5,986	7,593
1979	90,726	110,304	105,051	74,118	5,807	7,892
1980	91,544	124,792	119,065	80,937	6,573	7,205

Source: Statistics Canada. International and Interprovincial Migration in Canada. Catalogue No. 91-208.

Table 2

In-Migrants and Out-Migrants Aged 20 and Over for the Provinces of Ontario, Alberta and Northwest Territories

Year	Ontario		Alberta		N.W.T.	
	In	Out	In	Out	In	Out
1978-79	58,228	64,527	56,820	38,948	2,262	2,888
1979-80	56,291	69,790	64,998	46,820	2,126	3,175
1980-81	56,523	78,971	73,650	51,121	2,340	2,966

Source: Statistics Canada. International and Interprovincial Migration in Canada. Catalogue No. 91-208.

Table 3

In-Migration and Out-Migration of Adults (18+) for the Provinces of Ontario, Alberta and Northwest Territories

Year	Ontario		Alberta		N.W.T.	
	In	Out	In	Out	In	Out
1976-77	64,126	69,838	58,345	41,143	2,745	2,968
1977-78	75,194	67,965	61,649	43,674	2,608	3,051
1978-79	66,587	72,310	64,687	43,477	2,560	3,398
1979-80	64,943	79,035	74,653	52,734	2,462	3,411
1980-81	66,016	90,339	85,492	58,137	2,730	3,191

Source: Statistics Canada. International and Interprovincial Migration in Canada. Catalogue No. 91-208.

Table 4

In-Migrants Aged 5 Years and Over for Ontario, Alberta and Northwest Territories

Year	Ontario	Alberta	N.W.T.
1976-77	92,628	84,815	3,975
1977-78	107,055	88,625	3,747
1978-79	89,852	87,773	3,480
1979-80	82,898	95,321	3,133
1980-81	83,530	108,021	3,445
Total 1976-81	455,963	464,555	17,780
Census (1981) Count of In-Migrants During 1976-81	235,085	325,635	8,280

Source: Statistics Canada. International and Interprovincial Migration in Canada. Catalogue No. 91-208; and Statistics Canada. Canada Update from the 1981 Census. March 1, 1983.

Table 5

Estimated Number of Out-Migrants from the Immigrants to the Provinces of Ontario, Alberta and Northwest Territories During the Period of 1976-1981

	Ontario	Alberta	N.W.T.
Total Annual Immigrants 1976-1981	455,963	464,555	177,780
Total In-Migrants in 1976-81 as Counted at the 1981 Census	235,085	325,635	8,280
Percent of In-Migrants Remaining in the Province in 1981	51.5	70.1	46.6
Total Number of Out-Migrants from the In-Migrants	220,878	138,920	9,500
Percent of In-Migrants Who Left by 1981 Census	48.5	29.9	53.4

Source: Statistics Canada. International and Interprovincial Migration in Canada. Catalogue No. 91-208; and Statistics Canada. Canada Update from the 1981 Census. March 1, 1983.

Table 6

Proportion of Persons Staying in the Province From the In-Migrants in the First Year to the Fifth Year According to Model 1

Year	Province		
	Ontario	Alberta	N.W.T.
1	1.000	1.000	1.000
2	0.808	0.868	0.786
3	0.424	0.604	0.358
4	0.232	0.472	0.152
5	0.232	0.472	0.152

Table 7

Proportion of Persons Staying in the Province From the In-Migrants in the First Year to the Fifth Year According to Model 2

Year	Province		
	Ontario	Alberta	N.W.T.
1	0.914	0.942	0.904
2	0.742	0.826	0.712
3	0.484	0.652	0.424
4	0.312	0.536	0.232
5	0.226	0.478	0.136

Table 8

Number of Persons Aged 18 Years and Over in the Provinces at the 1981 Census From the In-Migrants by Year of Migration from Model 1

Year of Migration	Province		
	Ontario	Alberta	N.W.T.
1980-81	66,016	85,492	2,730
1979-80	52,473	64,799	1,935
1978-79	28,232	39,071	916
1977-78	17,445	29,098	396
1976-77	14,877	27,539	417
1976-1981	179,043	245,998	6,395
Persons Aged 18 and Over From 1981 Census	6,243,780	1,566,260	26,670

Table 9

Number of Persons Aged 18 Years and Over in the Provinces at the 1981 Census from the In-Migrants by Year of Migration From Model 2

Year of Migration	Province		
	Ontario	Alberta	N.W.T.
1980-81	60,338	80,533	2,468
1979-80	48,187	61,663	1,753
1978-79	32,228	42,176	1,086
1977-78	23,460	33,043	605
1976-77	14,492	27,888	373
1976-1981	178,705	245,303	6,285

Table 10

Proportion of In-Migrants Aged 18 Years and Over Present at the 1981 Census to the Total Number of Persons Aged 18 Years and Over by Year of Migration From Model 1

Year of Migration	Province		
	Ontario	Alberta	N.W.T.
1980-81	0.0106	0.0546	0.1024
1979-80	0.0084	0.0414	0.0726
1978-79	0.0045	0.0250	0.0343
1977-78	0.0028	0.0186	0.0149
1976-77	0.0024	0.0176	0.0156
1976-1981	0.0287	0.1571	0.2398

Table 11

Proportion of In-Migrants Aged 18 Years and Over Present at the 1981 Census to the Total Number of Persons Aged 18 Years and Over by Year of Migration From Model 2

Year of Migration	Province		
	Ontario	Alberta	N.W.T.
1980-81	0.0097	0.0514	0.0925
1979-80	0.0077	0.0393	0.0657
1978-79	0.0052	0.0269	0.0407
1977-78	0.0038	0.0211	0.0227
1976-77	0.0023	0.0178	0.0140
1976-1981	0.0287	0.1566	0.2357

Table 12

Population 5 Years and Over, by Migration Status and Ethnic Group for Ontario, Alberta and Northwest Territories, 1971

Ethnic Group	Population 5 Years and Over	Migrant		Total	Percentage
		From Different Province	From Outside Canada		
	(1)	(2)	(3)	(2)+(3)	(2)+(3)/(1)
ONTARIO					
Total	7,055,445	241,175	438,610	679,785	9.63
British	4,207,730	145,835	158,700	304,535	7.24
French	672,045	46,390	9,295	55,685	8.29
Brit & French	4,879,775	192,225	167,995	360,220	7.38
Other & Unknown	2,175,670	48,950	270,615	319,565	14.69
ALBERTA					
Total	1,474,130	127,555	59,880	187,435	12.71
British	690,355	71,215	27,260	98,475	14.26
French	85,295	9,745	1,980	11,725	13.75
Brit & French	775,650	80,960	29,240	110,200	14.21
Other & Unknown	698,485	46,590	30,640	77,230	11.06
N.W.T.					
Total	29,330	6,710	925	7,635	26.03
British	7,655	3,535	450	3,985	52.06
French	2,020	715	35	750	37.13
Brit & French	9,675	4,250	485	4,735	48.94
Other & Unknown	19,655	2,460	440	2,900	14.75

Table 13

Population 5 Years and Over, by Migration Status and Age Group for Ontario, Alberta and Northwest Territories, 1971

Age Group	Population 5 Years and Over	Migrant		Total	Percentage
		From Different Province	From Outside Canada		
	(1)	(2)	(3)	(2)+(3)	(2)+(3)/(1)
ONTARIO					
5 +	7,055,445	241,175	438,610	679,785	9.63
5-19	2,279,145	78,175	112,130	190,305	8.35
20 +	4,776,300	163,000	326,480	489,480	10.25
ALBERTA					
5 +	1,474,130	127,555	59,880	187,435	12.71
5-19	523,095	41,320	17,840	59,160	11.31
20 +	951,035	86,235	42,040	128,275	13.49
N.W.T.					
5 +	29,330	6,705	925	7,630	26.01
5-19	12,435	2,135	175	2,310	18.58
20 +	16,895	4,570	750	5,320	31.49

Table 14

Population by Ethnic Group, Showing Birthplace and Residence for Ontario, Alberta and Northwest Territories, 1971

Province	Indian and Eskimo		Other		Total	
	No.	%	No.	%	No.	%
ONTARIO						
Total	63,180	100.0	7,639,925	100.0	7,703.105	100.0
Born and Staying in Ontario	57,450	90.9	5,152,425	67.4	5,209,875	67.6
Born Elsewhere and Staying in Ontario	5,730	9.1	2,487.500	32,6	2,493,230	32.4
ALBERTA						
Total	44,675	100.0	1,583,200	100.0	1,627,875	100.0
Born and Staying in Alberta	40,930	91.6	962,165	60.8	1,003,095	61.6
Born Elsewhere and Staying in Alberta	3,745	8.4	621,035	39.2	624,780	38.4
N.W.T.						
Total	18,580	100.0	16,225	100.0	34,805	100.0
Born and Staying in N.W.T.	17,195	92.5	4,370	26.9	21,565	62.0
Born Elsewhere and Staying in N.W.T.	1,385	7.5	11,855	73.1	13,240	38.0

Source: Data derived from 1971 Census of Canada, Vol: 1-Part 4, Statistics Canada 92-738, Table 29.