

## FRIENDS OF DEMOCRACY

### Purpose

Friends of Democracy is an organization of Canadian citizens, residents of the Northwest Territories, that seeks to establish fair electoral representation in the Legislative Assembly of the Northwest Territories. The right of each and every citizen of Canada to effective representation in Parliament or a provincial or territorial legislative assembly is protected under Section 3 of the Canadian Charter of Rights and Freedoms.

On November 12, 1998, the Legislative Assembly of the Northwest Territories refused to accept the recommendations of the Commission it had appointed to revise our electoral boundaries. The direct result of this decision is that the upcoming election for a new territorial government in 1999 will be held on the basis of the present 14 electoral constituencies that have hugely unequal populations. The legislature made its decision against the advice it received from the Supreme Court of Canada in 1991, from the Chief Electoral Officer of Canada in 1995 and finally, from the NWT Electoral Boundaries Commission of 1998 that the existing inequalities in constituency sizes do not comply with Section 3 of the Canadian Charter of Rights and Freedoms.

Because the 13th Legislative Assembly has refused to correct the disparities in the electoral system, citizens who want to exercise their right to effective political representation have formed Friends of Democracy to ask the courts to order new electoral boundaries that pass the test of the Canadian Charter of Rights and Freedoms.

### Representative Assemblies

In the earliest forms of democratic governance, every eligible citizen participated directly in the making of legal and political decisions. Each vote cast was exactly equal to every other. Direct democracy becomes unworkable in larger societies. Over time, representative institutions have developed to which citizens elect a representative who votes on their behalf in an assembly of similarly elected representatives. The vote cast by each elected member of a representative assembly is exactly equal to the vote cast by every other member. Representative assemblies can make good decisions that gain broad acceptance from the general population the more closely the membership in the assembly matches the society as a whole.

The great advances in democratic representation have been in improving the match between the composition of the assembly and the population at large. The removal of property-owning restrictions on the right to vote gave representation to rich and poor alike. The end of voting restrictions by sex gave representation to men and women alike.



## Electoral Boundaries

Since each member's vote in a legislative assembly carries equal power to affect the decisions the assembly makes, every member must represent roughly the same number of electors. Otherwise, the votes of a small number of citizens would have the same legislative power as the votes of a much larger number of citizens. This result would deny the basic principle of equality that underlies representative democracy. The legitimacy of a democratic assembly depends on its members representing electorates that are fairly equal in size.

As society changed from an agricultural to an industrial base, people moved from the countryside to the cities. To maintain the electoral balance in democratic assemblies, changes in constituency boundaries were necessary to accompany the population movements. As the modernization of society has continued, people have become increasingly mobile. The maintenance of modern democracies requires the regular revision of electoral boundaries.

This simple sketch of representative democracy does not overlook that at every step in its extension and improvement, democracy has never wanted for powerful opponents determined to frustrate and subvert it. The democratic institutions we have today were bought and paid for at great sacrifice by many.

## Canadian Charter of Rights and Freedoms

One of the many ways governments have influenced the balance of power in legislative assemblies has been through the manipulation of electoral boundaries. The appointment of an independent Electoral Boundaries Commission puts the drawing of electoral boundaries at arm's length from the political direction of the government in power. Even so, until Canada patriated its Constitution in 1982 and, with it, proclaimed the Charter of Rights and Freedoms, there were no fixed standards in law to measure the fairness of electoral boundaries.

Since 1982, the Charter of Rights and Freedoms has been used to challenge inequalities between constituency populations as infringements on Section 3's protection of every citizen's right to vote. In the 16 years since the Charter was proclaimed, Canadian courts have now delivered judgements on electoral boundaries in five Charter cases. A body of case law has emerged narrowing the limits of variation in constituency populations and placing the onus squarely on governments and commissions to justify instances of excessive variation constituency by constituency.

The case law in Canada has established the general rule of thumb that constituency populations may not vary by more than  $\pm 25\%$  from the average. In an imaginary jurisdiction, for example, of 1,000 people with a 10 seat legislature, the average constituency population would be 100 citizens. By the  $\pm 25\%$  rule, the populations in the 10 constituencies could vary between 75 and 125 people. Unless the government could supply a very good reason, the court would find that a constituency of less than 75 or more than 125 was in violation of Section 3 of the Charter and order a revision of the electoral boundaries



to correct it.

It is worth noting that the election laws in Saskatchewan do not permit variations of more than 15% and in Manitoba and Prince Edward Island no more than 10%.

### Northwest Territories Electoral Boundaries

In its short 20 year history of responsible government, the Northwest Territories has shown a shameful disrespect for the principles of democracy. In 1991 the Saskatchewan electoral boundaries were referred on appeal to the Supreme Court of Canada and the Minister of Justice of the Northwest Territories intervened. In his submission, the Minister of Justice told the Supreme Court that the Charter of Rights and Freedoms applied only in federal elections to the Parliament of Canada and not to elections in the provinces or territories. He went on to say that the right of provinces/territories to create electoral boundaries as they see fit must be taken as being an inherent limitation on the right to vote in Section 3.

Madame Justice McLachlin's answer to our Minister of Justice was crisp. "I cannot accept this submission. ...the Charter...binds every province and territory of Canada."

In his review of the 1995 Territorial Election, Jean-Pierre Kingsley, the then Chief Electoral Officer of Canada, told the Legislative Assembly that its electoral boundaries were not in compliance with the Charter of Rights and Freedoms and advised the Assembly to revise them before the next election because they were not likely to withstand a Charter challenge.

In June of 1998 the Legislative Assembly appointed an Electoral Boundaries Commission to recommend a new set of boundaries for the post-division Northwest Territories. However, on November 12, 1998, the Legislative Assembly refused to accept the Commission's recommendations.

Coming to the end of its term and having failed to revise its electoral boundaries, the Legislative Assembly is headed into another territorial election in less than a year with the same 1995 electoral boundaries that the Chief Electoral Officer of Canada said would not survive a Charter challenge.

According to the 1996 Census, the populations of the 14 constituencies in the western Northwest Territory are as follows:



<u>Constituency</u>	<u>Pop</u>	<u>Deviation from Mean</u>
Yellowknife South	7,105	151.6%
Yellowknife North	4,207	49.0%
Hay River	3,697	30.9%
Yellowknife Center	3,369	19.3%
Inuvik	3,296	16.7%
Yellowknife Frame Lake	2,784	-1.4%
Sahtu	2,598	-8.0%
North Slave	2,471	-12.5%
Thebacha	2,452	-13.2%
Nahendeh	2,132	-24.5%
Nunakput	1,778	-37.0%
Mackenzie Delta	1,767	-37.4%
Deh Cho	1,037	-63.3%
Tu Nedhe	<u>842</u>	-70.2%
Total Population	39,535	
Mean Riding Population	2,824	

It is obvious what the Chief Electoral Officer of Canada meant. Dividing the territorial population of 39,535 by the 14 seats in the Legislative Assembly gives an average constituency population of 2,824. Applying the +/-25% rule, no seat should have a population less than 2,118 or more than 3,530. Only 7 seats, just half the Assembly, pass the test. Three seats are too large. In these seats, the voters are under-represented in the Assembly. Four seats are too small and their voters are over-represented.

That the disparities in constituency sizes can block democratic decision making is perfectly illustrated by the vote in the Legislative Assembly of November 12, 1998. The Assembly defeated the recommendations of the Electoral Boundaries Commission by a vote of 7 Members opposed and 6 Members in favour.

#### Recorded Vote in Assembly on NWT Electoral Boundaries - Nov 12, 1998

Deh Cho (Speaker) 1,037

#### For:

#### Against:

Yellowknife South	7,105	Hay River	3,697
Yellowknife North	4,207	Inuvik	3,296
Yellowknife Center	3,369	North Slave	2,471
Yellowknife Frame Lake	2,784	Thebacha	2,452
Sahtu	2,598	Nahendeh	2,132
Nunakput	1,778	Mackenzie Delta	1,767
		Tu Nedhe	842
6 votes representing	21,841	7 votes representing	16,657





The Members opposed represented 7 constituencies with a combined population of 16,657. The Members in favour represented a population of 21,841 in 6 constituencies. In this vote, a majority of Members representing a minority of the population were able to defeat a minority of Members representing a majority of the population. Democracy breaks down when constituency sizes are out of whack.

### Two Aspects of Effective Representation

In its decision on the Saskatchewan Electoral Boundaries, the Supreme Court of Canada discussed two types of representation that a Member of a Legislative Assembly performs. One aspect of representation is the Member's role as ombudsman, in which the Member acts as an intermediary on behalf of constituents with the apparatus of government. The second is the Member's role as legislator in which the Member votes in the Assembly on budgetary appropriations and the passage of bills.

#### (i) Constituency Business

The opponents of electoral boundary reform have spoken mainly about the ombudsman aspect of effective representation. They justify retaining the inequalities in constituency sizes because of the special problems they have in representing their constituents who live in the small and remote communities of the Northwest Territories.

This argument may have been compelling some time ago but it loses more of its force with every passing day. Many years ago, aside from direct exchanges in person, the postal service was the sole means of distant communication. With the astonishing developments in communication technologies, it is ever more difficult to claim that anywhere on the face of the earth is truly remote. With few exceptions today, even in the smallest of communities, Members and their constituents can communicate by conventional mail, telephone (fixed and/or cellular), fax or e-mail. Regardless of location, whether across the territory or across the street, the obstacles to timely and effective communication between Member and their constituents have largely disappeared.

The Member who represents several small communities may spend a good deal of time travelling to visit a distant community in person. However, once in the community, the Member can easily meet almost every constituent in a matter of hours. For the Member who represents an urban center, one apartment building can often have more people living in it than an entire community. The urban Member can spend as much time making repeat calls to find constituents at home as the rural Member spends travelling. Certainly the rural and urban Members experience different challenges keeping in touch with their constituents but it is not obvious that one is more taxing than the other.



## **(ii) Equitable Voting Power**

The opponents of reform have avoided speaking about the second aspect of effective representation - equality in legislative voting power. Severe imbalances in constituency size, such as we have in the Northwest Territories, produce inequalities in legislative voting power and undermine democratic decision making. In effect, under the present electoral boundaries, a citizen's vote in Deh Cho carries 7 times the weight of a citizen's vote in Yellowknife South. A vote in Hay River or Inuvik is worth only a quarter of a vote in Tu Nedhe.

There have been accusations that those who insist on equality of voting power are engaged in a ruthless power grab. If there is a power grab in play, it is by those who would keep something to which they know they are not entitled.

Those who oppose voter equality offer specious arguments as a distraction and remain silent on the critical point. With Madame Justice McLachlin, they know full well that the "...dilution of one citizen's vote as compared with another's should not be countenanced."

## **Fear of a Yellowknife Bloc**

A fear is often expressed that under fair electoral boundaries Yellowknife voters would elect a bloc of Members who could then dominate the Legislative Assembly. No lawful redistribution of seats would give a majority of seats to Yellowknife. More importantly, there is no present or historical pattern to show that Yellowknife electorates have ever voted as a bloc. In the same elections, voters in the Yellowknife ridings have returned Members of quite different political persuasions. Most importantly of all, there is no evidence to suggest that the Yellowknife vote is polarized on ethnic or racial lines. Indeed, quite the opposite. On present evidence, Yellowknife voters mark their ballots for the best candidates.

A proper redistribution would certainly add some seats to Yellowknife. If three and four Yellowknife Members in the past have been unable to organize themselves as a bloc, then six or seven Members will find the feat just that much more difficult to accomplish. And, even if they did, they would still fall short of a majority in the Assembly.

The fear that voter equality would give control of territorial politics to Yellowknife is unfounded.

## **Timing**

The most pernicious argument of all put forward by those who oppose electoral reform is that there is already too much change and now is just not the time. "The time is not right for democracy - Later, not now!" This is the signal excuse of every regime that seeks to deny democracy. The opponents of reform must explain how fair representation would interfere with good government. If there are political aspirations afoot that find fair representation inconvenient, then all the more reason to have fair representation immediately.



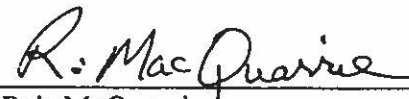
Conclusion

There is no good reason that the people of the Northwest Territories should not have good government. There is no good reason that everyone in the Northwest Territories should not have fair and equal electoral representation. There is no good reason that fair and equal representation is better put off for tomorrow than today.


It is regrettable that the Legislative Assembly of the Northwest Territories will not give its citizens the full and equal right to vote to which the Canadian Charter of Rights and Freedoms entitles them. It is a shame that Canadian citizens in 1998 must band together to protect their democratic rights from their government.

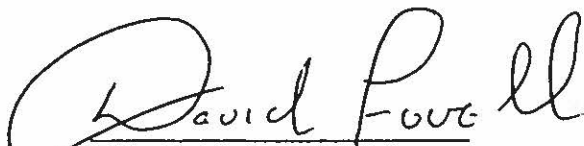
The Canadian Charter of Rights and Freedoms was proclaimed for exactly this purpose. We will have no one to blame but ourselves if we do not use it.

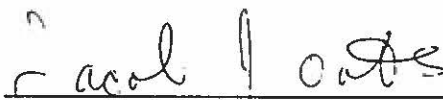
  
Robert Slaven  
President

  
Bob McQuarrie  
Vice-President


  
Bill Enge  
Treasurer

  
Sandy Holmes  
Secretary

  
David Lovell  
Mayor of Yellowknife

  
Member of Legislative Assembly

\_\_\_\_\_  
Yellowknife Municipal Councillor

  
Fraser Weir

