
The Courts and Redistribution in Canada

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For many years American courts have ruled that they lacked the jurisdiction to alter the reapportionment (called redistribution in Canada) of electoral districts or constituencies.¹ In 1962 the Supreme Court of the United States reversed its decision after a group of voters in Tennessee challenged the reapportionment that established wide disparities in population between urban and rural ridings for the state legislature. The court² ruled that the equal protection of the laws principle found in the fourteenth amendment to the Constitution gave the judiciary the authority to intervene so that democratic politics was effective. Two years later, the Supreme Court decided that the fundamental principle of representative government was equal representation for an equal number of people in congressional districts since legislators represented people not farms, cities, or economic interests.³ The same⁴ principle was also supported for state legislatures.

In Canada, the voter had no legal basis to challenge the redistribution of federal and provincial electoral boundaries until section 15(1) of the Canadian Charter of Rights and Freedoms, that states "Every individual... has the right to the equal protection and equal benefit of the law...", came into force recently. This Canadian clause about "the equal protection of the law" is similar to the "equal protection of the laws" clause found in the United States' constitution. The Charter has been used in British Columbia to challenge the redistribution of provincial ridings that had 15 or 16 times more electors in some ridings than others. The British Columbia Supreme Court ruled that section 32(1) (b) of the Charter means the Charter applies to the legislature and government of each province for all matters within the

authority of the legislature.⁵ A ruling about the applicability of other sections of the Charter, including section 15(1), to the redistribution of seats in British Columbia is expected in 1988. This case is important because a provincial court has decided that the judiciary has the authority to intervene in the redistribution process without indicating how it will do this until 1988. The Charter will probably apply also to the redistribution of federal electoral boundaries, because section 32 (1) (a) indicates that the Charter applies to the Parliament and government of Canada in respect of all matters within the authority of Parliament. Therefore, in the future some Canadian court will likely have to determine how equal or unequal the size of federal and provincial electoral ridings are and if the United States' principle of equal representation for an equal number of people is to be followed in Canada.

Fortunately, a measure called the Gini index exists to aid any court. The Gini index is a statistical measure used in the social sciences to show the level of inequality in the distribution of wealth, income, productivity, goods, social mobility and political equality. It has been applied to assessing redistributions and has been shown to be a better measure of inequality than the equal-share coefficient, the Schutz coefficient, the minimal-majority measure and the per cent of goods held by the most favoured 1 per cent of value holders.⁶ The Gini scale ranges between 0, which is complete equality, and 1, which is complete inequality. For example, complete equality (0) would occur when all the ridings in British Columbia had the same population and complete inequality would occur when one riding had all the population and other ridings had no people in them.

The following table indicates the Gini index based upon recommendations of the federal electoral boundaries commissions for each province.

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Province	1986-87 Proposed to Parliament
Saskatchewan	.011
Manitoba	.035
Prince Edward Island	.042
Ontario	.051
British Columbia	.067
Quebec	.070
Nova Scotia	.073
Alberta	.077
New Brunswick	.098
Newfoundland	.167

The lowest index indicates that the redistribution is approaching representation by population or an equal number of people in each riding. Since the Federal Electoral Boundaries Commission must follow specific rules in drawing boundaries, one should not expect the index to be 0.

The table demonstrates that Saskatchewan had the lowest index at .011 and Newfoundland had the highest at .167. By comparing the Gini indices, one could contend that the proposed federal redistribution for all provinces except Saskatchewan violate section 15(1) of the Charter of Rights and Freedoms.

The courts could accept a higher value of the Gini index than the values shown for Saskatchewan but it seems likely that half of the federal redistributions could violate the Charter, if "the equal protection of the law" clause is to have any meaning in Canada. Thus a Canadian court could

order the federal redistributions to be done again, even if they were eventually passed by Parliament.

In summary, then, section 15(1) of the Charter of Rights and Freedoms has complicated federal and provincial redistributions in Canada, especially if a Canadian court agrees with the interpretation of the Supreme Court of the United States. Assuming that the Dixon case is not going to resolve all the issues, especially the applicability of the Gini index one solution is to have a reference case clarify this situation so that members of electoral boundaries commissions at the federal and provincial levels of government would know how to interpret the Canadian Charter of Rights and Freedoms.

Notes

1. *Colgrove v. Green* 328 U.S., 549 (1946).
2. *Baker v. Carr* 369 U.S. 186 (1962).
3. *Wesberry v. Sanders* 376 U.S. 1 (1964).
4. *Reynolds v. Sims* 377 U.S. 533 (1964).
5. *Re Dixon and Attorney General of British Columbia* (1986), 31 D.L.R. (4th) 546.
6. For a statistical explanation about the Gini index, see H. Alker, Jr. and B. Russett, "On Measuring Inequality," *Behavioral Science*, 9(1964) pp. 207-218; David C. Leege and W. Francis, *Political Research: Design, Measurement and Analysis*, New York: Basic Books Inc., 1974, pp. 274-278; and Harvey Pasis, "The Inequality of Distribution in the Canadian Provincial Assemblies," *Canadian Journal of Political Science*, v (1972) pp. 433-436.
7. Although the data are not presented here, my preliminary findings indicate that all provincial redistributions have higher Gini indices than those at the federal level. Thus, courts may rule all provincial redistributions violate the Charter.