



Legislative Summary

Bill C-12:

An Act to amend the Constitution Act, 1867 (Democratic representation)

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Legislative Summary of Bill C-12

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Any substantive changes in this Legislative Summary that have been made since the preceding issue are indicated in **bold print**.

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LEGISLATIVE SUMMARY OF BILL C-12: AN ACT TO AMEND THE CONSTITUTION ACT, 1867 (DEMOCRATIC REPRESENTATION)

1 INTRODUCTION

Bill C-12, An Act to amend the Constitution Act, 1867 (Democratic representation) (short title: Democratic Representation Act), was introduced in the House of Commons by the Minister of State (Democratic Reform), the Honourable Steven Fletcher and was given first reading on 1 April 2010. The bill amends the *Constitution Act, 1867* by readjusting the number of members of the House of Commons and the representation of the provinces therein. Bill C-12 has twice been previously introduced in the House of Commons: during the 2nd Session of the 39th Parliament as Bill C-22, and during the 1st Session of the 39th Parliament as Bill C-56. Both bills died on the *Order Paper* prior to second reading.

The democratic goal of the Canadian electoral system, as set out in the *Canada Elections Act*, is embodied by the principle of “one elector – one vote.”¹ Realistically, however, the exercise of this principle requires a certain degree of acceptable compromise. Since Confederation, several formulas for assigning House of Commons seats to the provinces have been employed, each having attempted to locate a balance between absolute equality of voting power and effective representation.

Bill C-12 is designed to address a distortion in the manner in which population growth is reflected by growth in the number of elected representatives assigned to each province. The bill seeks to remedy this distortion by enacting a new formula for seat readjustments in the House of Commons. As with the formula presently employed to readjust the number of members seated in the House, Bill C-12 prescribes a formula that readjusts seats after each decennial census, while also apportioning any newly created seats to the province or provinces that experienced population growth from one decennial census to the next.

The distinguishing feature of the formula prescribed by Bill C-12 is that essentially, it lowers the number by which the population of each province is divided (the “electoral divisor”), employed during the calculation of a province’s seat allotment in the House of Commons. This electoral divisor is meant to represent the maximum national average riding population.² Given that smaller divisors produce larger quotients, the use of the formula would result in a greater increase in the number of members in the House of Commons from provinces with growing populations than would result from the current formula. The basis for adjusting seats in the House of Commons is found in section 51 of the *Constitution Act, 1867*, which vests the authority, the manner and the time frame for seat readjustments with the Parliament of Canada.³

With regard to the power of Parliament to amend section 51 of the *Constitution Act, 1867*, section 44 of the *Constitution Act, 1982* states:

Subject to sections 41 and 42, Parliament may exclusively make laws amending the Constitution of Canada in relation to the executive government of Canada or the Senate and House of Commons.

Section 44 of the *Constitution Act, 1982*, therefore, grants the government the power, through an act of Parliament, to amend the constitutional formula for assigning the number of members seated in the House of Commons.

2 BACKGROUND

2.1 HISTORY OF THE FORMULA

Differences in relative population sizes between Ontario, Quebec and the Maritime Provinces at the time of Confederation resulted in the adoption of “representation by population,” or voter equality, as the guiding principle of representation in the House of Commons.⁴ Over time, as the country grew, the population distributed itself unevenly throughout the provinces, creating numerical disparities that required compromises and allowances aimed at reconciling deviations from a strict adherence to voter equality.⁵

2.1.1 THE FORMULA AT CONFEDERATION

Section 51 of the *Constitution Act, 1867* stated that the number of seats assigned to each province in the House of Commons was to be calculated by dividing the province’s population by a fixed number, referred to as the “electoral quota” or “quotient.”⁶ This electoral quota was obtained by dividing the population of Quebec by 65, or the number of seats guaranteed to the province of Quebec by the *Constitution Act, 1867*. After each decennial census, beginning with the 1871 census, the number of seats in the House was to be readjusted.

A further stipulation in the *Constitution Act, 1867* was that no province could lose seats as a result of a readjustment except in instances where a province had decreased in its share of the national population between the last two censuses by at least five percent, or one-twentieth; this provision was thus known as the “one-twentieth clause.”⁷

2.1.2 THE “SENATORIAL CLAUSE” (1915)

During the years preceding Confederation, concerns arose that trends in population displacement would eventually result in the significant loss of representation in some provinces.⁸ To guard against this possibility, the first change to the original representation formula was made in 1915 through the insertion of section 51(A) into the *Constitution Act, 1867*. This section, still in effect today, specified that a province can under no circumstance have fewer seats in the House of Commons than it does in the Senate.⁹

2.1.3 CHANGES TO THE FORMULA IN 1946 AND 1951

In view of rising dissatisfaction among a number of provinces that the rules for redistribution created unacceptable distortions in the principle of representation by population,¹⁰ the Constitution was amended in 1946 to establish a new formula for readjusting the seat assignments in the House. A fixed total of 255 seats was established; one seat was set aside for the Yukon, while the other 254 seats were divided among the provinces on the basis of their share of the total population of Canada, rather than the average population per electoral district in Quebec.¹¹ In addition, the one-twentieth clause was repealed.¹²

It was soon noted that, under the new formula, because population rates grew unevenly across the provinces, those with the slowest growth rates would experience seat losses in the House. With Nova Scotia, Manitoba and Saskatchewan all slated to lose seats after the 1951 census, the *Constitution Act, 1867* was amended by the insertion of a “15 percent clause” to prevent a rapid decline in seats in some provinces.¹³ The clause stated that no province could lose more than 15 percent of the number of seats in the House to which it had been entitled at the last readjustment, nor could a province have fewer seats than a province with a smaller population. Nonetheless, in subsequent readjustments, a growing list of provinces continued to lose seats.

2.1.4 THE “AMALGAM” FORMULA (1974)

The *Representation Act, 1974*, also known as the “amalgam” formula, was introduced to guarantee, among other things, that no province could lose seats.¹⁴ The new formula fixed the number of seats in Quebec at 75, up from 65, and further prescribed an automatic increase by four seats in Quebec at each subsequent readjustment to take population growth into account. The formula also created three categories of provinces: large provinces (population of 2.5 million or more); intermediate provinces (population between 1.5 and 2.5 million); and small provinces (population under 1.5 million). The large provinces were to be allocated seats in strict proportion to Quebec, while separate and more favourable rules were used to calculate the number of seats for the small and intermediate provinces.¹⁵

The amalgam formula was applied once, establishing 282 seats in the House of Commons in 1976, but was not applied again, given that calculations revealed that the formula would yield, in subsequent readjustments, an unwelcome number of seats.

2.1.5 THE *CONSTITUTION ACT, 1985 (REPRESENTATION)*

The formula presently used to calculate the distribution of seats in the House of Commons is set out by the *Constitution Act, 1985 (Representation)*, also known as the *Representation Act, 1985*. The seats assigned to each province are calculated as follows:

- The Act mandates that there be 282 seated members in the House: one seat is allocated to the Northwest Territories; one seat is allocated to the Yukon; and one seat is allocated to Nunavut.¹⁶ The remaining 279 seats are used to calculate the electoral quotient.
- The electoral quotient is derived by dividing the total population of the ten provinces by 279.
- The number of seats assigned to each province is calculated by dividing the population of each province by the electoral quotient, with remainders of 0.50 or more rounded up to the next whole number.

The *Representation Act, 1985* put in place a further guarantee against a province losing seats as a result of a readjustment by supplementing the “senatorial clause” with the “grandfather clause.” The latter stipulates that a province is guaranteed no fewer seats in the House of Commons than it had in 1976, or during the 33rd Parliament.¹⁷ Following the 2001 decennial census, the number of members seated in the House was readjusted to 308.

3 DESCRIPTION AND ANALYSIS

Clause 1 states that Bill C-12 may be cited as the Democratic Representation Act.

Clause 2 replaces section 51(1) of the *Constitution Act, 1867*. Included are three rules that outline the calculation for readjusting seat assignments to the provinces in the House of Commons. These are as follows:

1. Each province shall be assigned a number of members seated in the House of Commons equal to the quotient produced by dividing the given province’s population by the “electoral divisor” (see below). Fractions produced by the calculation are rounded up to one.
2. Should the assigned number of seats for a given province derived either through rule 1 or by the application of section 51(A) of the *Constitution Act, 1867* (also known as the “senatorial clause”) be lower than the number of seats assigned to that province on the date of the coming into force of the *Constitution Act, 1985 (Representation)*, a corresponding number of members will be added to bridge the difference produced by a readjustment.
3.
 - a) The “electoral divisor” for the first readjustment to the number of seats in the House after the coming into force of the bill is 108,000.
 - b) The “electoral divisor” for seat readjustments that follow any subsequent decennial census will be derived by multiplying the total population of the provinces as determined through that census by the previously used electoral divisor (in the case of the second readjustment following the coming into force of the Act, this number would be 108,000); dividing the product produced by this calculation by the total population of the provinces according to the preceding decennial census; and rounding up any fractional remainder to one.

Clause 3 of the bill prescribes that, for the purposes of interpretation, a reference to the *Constitution Act, 1867* and the *Constitution Act, 1982* is deemed to include a reference to this Act.

4 COMMENTARY

The purpose of Bill C-12, as stated in the preamble, is to bring the Canadian electoral system closer to its original principle of representation by population. Compared with the formula currently employed for readjusting the number of seated members in the House of Commons, a readjustment using the formula prescribed by Bill C-12 draws nearer to the principle of representation by population. Employing this latter formula and the most recent estimates of the Canadian population, the fastest growing provinces of Alberta, British Columbia and Ontario would be scheduled to receive a share of seats in the House of Commons after the 2011 readjustment closer to, and in some cases, virtually identical to their share of the total population of the provinces.¹⁸

As with past incarnations of this legislative proposal, the effects that the formula proposed by Bill C-12 would have on a redistribution of seats in the House of Commons has raised concerns, if not opposition, in some quarters. Members of the Bloc Québécois, along with Université de Moncton professor Donald Savoie, among others, have spoken out against the diminished presence in the House of Commons of Quebec and the Atlantic provinces that would result pursuant to the formula prescribed by Bill C-12.¹⁹ Although Quebec and the Atlantic provinces, along with Manitoba and Saskatchewan, would retain their present seat count, these provinces would experience a relative decline in seat percentage in the House under the new readjustment regime. Indeed, some estimates project that Quebec's share of the seats in the House of Commons would fall slightly below its share of the national population under the new formula for seat readjustments.²⁰

It may be worth noting that Bill C-12 employs a floating electoral divisor to calculate seat readjustments in the House of Commons. Given that total population growth of all the provinces is to be expected from one decennial census to the next, the formula in Bill C-12 for arriving at an electoral divisor used to apportion seats for each province adjusts the divisor upwards in the case of increases in total population (and downwards in the case of decreases in total population). This adjustment to accommodate for population fluctuations serves to maintain a maximum citizens-per-riding ratio that changes little from one seat readjustment to the next.

NOTES

1. Elections Canada, "[Representation in the House of Commons of Canada](#)," March 2002, p. 3.
2. Government of Canada, "[Canada's Government Restores Fair Representation in the House of Commons](#)," News release, 1 April 2010.
3. *Constitution Act, 1867*, Section 51(1):

The number of members of the House of Commons and the representation of the provinces therein shall, on the coming into force of this subsection and thereafter on the completion of each decennial census, be readjusted by such authority, in such manner, and from such

time as the Parliament of Canada from time to time provides, subject and according to the following rules.

See also the subsection “The Formula at Confederation” in the Background section of this Legislative Summary.

4. Russell Alan Williams, “Canada’s System of Representation in Crisis: The ‘279 Formula’ and Federal Electoral Redistributions,” *The American Review of Canadian Studies*, Spring 2005, p. 103.
5. *Ibid.*, pp. 99–100.
6. Elections Canada (2002), p. 6.
7. *Ibid.*
8. Williams (2005), p. 104.
9. Elections Canada (2002), p. 6.
10. Audrey O’Brien and Marc Bosc, *House of Commons Procedure and Practice*, 2nd ed., Éditions Yvon Blais, Montreal, 2009, p. 167.
11. *Ibid.*
12. See the *Constitution Act, 1946*, R.S.C. 1985, Appendix II, No. 30. For additional information, see Norman Ward, *The Canadian House of Commons: Representation*, University of Toronto Press, Toronto, 1950, pp. 54–5.
13. *Ibid.*, pp. 144–5.
14. See *Debates*, 2 December 1974, p. 1846. For additional information, see Norman Ward, *Dawson’s The Government of Canada*, 6th ed., University of Toronto Press, Toronto, 1987, p. 91.
15. Elections Canada (2002), p. 8. See also *Debates*, 2 December 1974, pp. 1845–7, where Mitchell Sharp, President of the Privy Council, outlines the amalgam formula.
16. As enacted by the *Constitution Act, 1999 (Nunavut)*.
17. Elections Canada (2002), p. 9. Every province possesses the same number of seats it did in 1976, with the exception of British Columbia, Alberta and Ontario, which have acquired seats since 1976. As a result, only these three provinces are subject to the possibility of seat losses due to a diminishment in their provincial population.
18. Bea Vongdouangchanh, “House seats bill could affect 19 Tory, 10 Grit ridings, and one NDP riding,” *The Hill Times*, 12 April 2010, p. 5.
19. *Ibid.*, p. 4.
20. L. Ian Macdonald, “Larger Commons would cut Bloc’s influence,” *Times Colonist* [Victoria], 8 April 2010, p. A10.