
Representation in the House of Commons: A Long Term Proposal

David Gussow

On December 16, 2011 Bill C-20 An Act to amend the Constitution Act, 1867, the Electoral Boundaries Readjustment Act and the Canada Elections Act received Royal Assent (now Chapter 26 of the Statutes of Canada, 2011). It increased the number of seats in the House of Commons from 308 to 338 by giving extra seats to Ontario, British Columbia, Alberta and Quebec. While representation in the House of Commons is now settled for at least a decade the issue of representation by population will arise again as mandated in section 52 of the Constitution Act, 1867 and protected in section 42 of the Constitution Act, 1982. This article makes a number of suggestions for the next time rep by pop is debated in Canada. Among other things it calls for improved provisions for the smaller provinces, a new mechanism for adjusting the Electoral Quotient and future constitutional negotiations to deal with problems that have developed over the years.

Section 51 of the *Constitution Act 1867* provides that the number of members of the House of Commons and the representation of the provinces therein shall be readjusted on the completion of each decennial census, according to a number of rules. Rule 1 calculates the initial seat allocation for all the provinces strictly according to representation by population. Rule 2 adds seats to the provincial numbers based on two minimums: the “Senate Floor” (no less than the number of senators) and the “Grandfather Clause” (no less than the 1976 numbers). Rules 3 and 4 add seats to any province that was previously overrepresented such that it will not become underrepresented. Rule 5 provides that more accurate provincial population estimates are to be used in the calculation rather than the actual census figures. And rule 6 sets out an electoral quotient (constituency size) for rule 1 and provides for a specific method of recalculation every ten years.

Protecting the Smaller Provinces

The “Grandfather Clause” which was enacted in 1985 guaranteed each province no fewer seats than it

had in 1976 to protect the smaller provinces. The 1976 seats were based on the census figures of 1971 with a formula that was a compromise proposal following a period of minority government enacted in 1974. The 1974 provision was found to be unworkable after just one readjustment of representation. In other words the last time we had a “true” reflection of the correct proportions was based on the 1961 census – over 50 years ago.

The 1985 formula when looked at from our current vantage point had done two things. It prevented the faster growing provinces from reaching their fair proportion of representation and also prevented the slower growing provinces from having a fairer proportion of representation among themselves. The Fair Representation Bill addressed only one of the matters resulting from the 1985 formula – the proportionality for the larger provinces. The aspect which was not addressed was the proportionality among the slower growing provinces.

The most striking example of the unfairness of the “Grandfather Clause” is with the provinces of Nova Scotia and Manitoba. One need only look at the Backgrounder that was provided by the government when announcing their proposal for Bill C-20. There is a table for seat projections based on the “Fair Representation Act Formula.” It does not give the

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whole picture and that is the resulting constituency sizes. The table below gives the constituency sizes and shows the results for Nova Scotia and Manitoba.

Should Nova Scotia be having a constituency size 17% more than Saskatchewan? Should Manitoba be having a constituency size 18% more than its neighbouring province? The arbitrary nature of the “Grandfather Clause” based on populations from forty years ago should be updated.

Province	Population	Seats	Constituency Size
Prince Edward Island	145,855	4	36,464
Newfoundland and Labrador	510,578	7	72,940
New Brunswick	755,455	10	75,546
Nova Scotia	945,437	11	85,949
Saskatchewan	1,057,884	14	75,563
Manitoba	1,250,574	14	89,327
Alberta	3,779,353	34	111,157
British Columbia	4,573,321	42	108,889
Québec	7,979,663	78	102,303
Ontario	13,372,996	121	110,521
Canada	34,371,116	335	102,600

My suggestion is to dispense with the Grandfather Clause in Rule 2 (leaving only the “Senate Floor”) and to modify Rule 1 so as to add two seats to every province after the remainders are considered. The point of adding two seats to every province is to increase the weight of the smaller provinces in the House of Commons. It also has the effect of almost removing the necessity of adding seats for the Senate Floor. Only New Brunswick would need one more seat.

It is a much fairer formula for Nova Scotia and Manitoba. The proportions move every province towards representation by population, even more so than that in C-20. It is true that it does not maintain the number of seats for Saskatchewan, but it still protects the number of seats for slower-growing provinces, including Saskatchewan. Saskatchewan still has a much better constituency size than its neighbouring province, Alberta. The disparity in voting power for those that live on either side of the provincial boundary in the city of Lloydminster is still quite pronounced. At least this proposal will make it somewhat better. Unfortunately having a “Fair Representation” and “Maintaining the number of seats for all slower-

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Alberta	3,779,353	36	104,982
British Columbia	4,573,321	44	103,939
Québec	7,979,663	79	101,008
Ontario	13,372,996	123	108,724
Canada	34,371,116	340	101,092

growing provinces” is irreconcilable unless the number of members is increased even more significantly. Using the same figures in the table in the Backgrounder with the percentages for this proposal, one can see that they improve upon C-20. (The Backgrounder referred to the 1985 rules as the “status quo”).

Adjusting the Electoral Quotient

The number chosen for the “Electoral Quotient” is fairly arbitrary. Parliament should have the ability using an easier process to change it from time to time after each decennial census. As the backgrounder makes clear it “theoretically represents the average population per seat,” but it is not the case. Take a look at Table 1. It is higher than in any province. There is no reason why it cannot be adjusted.

Changing the number by a small amount may have a significant impact on the number of seats for a province. For example with the current population estimates a difference of just nine (9) in the electoral quotient (just nine people out of 111,166) would result in two provinces receiving one (1) more member each – Alberta and Quebec.

If the basic formula was limited to rule 1 then the significance for Quebec and the smaller provinces would be much greater. The closer the number of members assigned to each province is a whole number, before rounding up any fractional remainder, can cause the proportions to vary significantly.

Another reason to allow more flexibility can be the resulting size of the House of Commons. It may not be desirable to have a decrease or as much of a decrease in the membership, or vice-versa it may not be desirable to have an increase or as much of an increase in the membership. It could only be evaluated after each decennial census.

Table 3: Comparing Seats and Percentages based on the 2011 Population Estimates

Province	1985 rules Seats*	1985 rules %	Fair Representation Seats	Fair Representatirion %	Fairer Representation Seats	Fairer Representation %	Population %
Prince Edward Island	4	1.28	4	1.19	4	1.18	0.42
Newfoundland and Labrador	7	2.24	7	2.09	7	2.06	1.49
New Brunswick	10	3.21	10	2.99	10	2.94	2.20
Nova Scotia	11	3.53	11	3.28	11	3.24	2.75
Saskatchewan	14	4.49	14	4.18	12	3.53	3.08
Manitoba	14	4.49	14	4.18	14	4.12	3.64
Alberta	31	9.94	34	10.15	36	10.59	11.00
British Columbia	37	11.86	42	12.54	44	12.94	13.31
Québec	75	24.04	78	23.28	79	23.24	23.22
Ontario	109	34.94	121	36.12	123	36.18	38.91
Canada	312*	100%	335**	100%	340**	100%	100%

* Assuming C-20 had not been adopted
 ** Does not include seat in territories

Present Rule 1

There shall be assigned to each of the provinces a number of members equal to the number obtained by dividing the population of the province by the electoral quotient and rounding up any fractional remainder to one.

Present Rule 2

If the number of members assigned to a province by the application of rule 1 and section 51A is less than the total number assigned to that province on the date of the coming into force of the *Constitution Act, 1985* (Representation), there shall be added to the number of members so assigned such number of members as will result in the province having the same number of members as were assigned on that date.

From 1867 to 1946 the numbers were fixed based on Quebec’s population having 65 members. From 1946 to 1976 the numbers were based on an overall cap for the whole of Canada. The formula used in 1976 opened the floodgates. It wouldn’t be surprising if the formula from 1985 to 2011 has resulted in the widest disparity from proportionality envisaged by section 52 of the *Constitution Act, 1867*. C-20 truly improves the situation in terms of the proportionality, but again might have some unintended consequences in the future.

One way to allow flexibility would be to remove rule 6 dealing with the setting of the electoral quotient from the rules in the *Constitution Act, 1867* and enacting it in ordinary statute law like the *Electoral Boundaries Readjustment Act*. The same provisions could be placed there but they could be subject to a different number being proposed by the Governor-in-Council “subject to affirmative resolution of Parliament” in the same manner as if it were a regulation. That way

Proposed Rule 1

There shall be assigned to each of the provinces a number of members equal to the number obtained by dividing the population of the province by the electoral quotient and rounding up any fractional remainder to one plus two further members.

Proposed Rule 2

If the number of members assigned to a province by the application of rule 1 is less than the number of senators representing that province, there shall be assigned to that province a number of members equal to the number of senators.

if the calculation after a new census resulted in a significantly different size for the House of Commons then an adjustment could be made at that time. That adjustment would then become the norm used for the next decennial calculation.

At the same time as removing the calculation of an “electoral quotient” from the *Constitution Act, 1867*, one could keep a minimum number which would prevent a Commons size dropping below approximately double the Senate size.

Future Constitutional Negotiations

It is time for the government to strive for a package of democratic reform that would, among other things, eliminate the Senate floor, entrench the Basic Formula (rule 1) and provide for a strong elected Senate with divisional equality (Quebec guaranteed 25% of the elected total).¹

Present Rule 6

In these rules, “electoral quotient” means:

- (a) 111,166, in relation to the readjustment following the completion of the 2011 decennial census, and
- (b) in relation to the readjustment following the completion of any subsequent decennial census, the number obtained by multiplying the electoral quotient that was applied in the preceding readjustment by the number that is the average of the numbers obtained by dividing the population of each province by the population of the province as at July 1 of the year of the preceding decennial census according to the estimates prepared for the purpose of the preceding readjustment, and rounding up any fractional remainder of that multiplication to one.

C-20 is one of the parts of the package and it should be correct before embarking on the road to constitutional reform. In the package there would be plusses for most provinces and particularly for Quebec. It would in a sense be to return to what the Fathers of Confederation had set up in 1867. The Prime Minister of the Province of Canada at the time of the Confederation Debates (Taché) stated quite clearly that the cornerstone of the proposals was representation by population in the House of Commons and divisional equality in the Senate. It should also not be forgotten that the Senate set up in 1867 was in the main “elected”, was considered to be powerful both in law, as set out in the *Constitution Act, 1867* (co-equal with the House of Commons), but also in fact, as can be seen that one third of the cabinet ministers came from the Senate (13 in today’s terms). If representation by population is reinstated in the House of Commons opposite a strong elected Senate with divisional equality or a variant that has Ontario and Quebec equal and Quebec obtaining 25% overall (it was 33% in 1867) then a package might be doable.

Planning for the future means that the smaller provinces will have to understand that a larger House of Commons has diluted their proportionate weight. Therefore they might be more amenable

Proposed Rule 6

In these rules, “electoral quotient” means:

the number, not less than half the total estimated population of the provinces divided by the total number of senators of all the provinces, established by such authority, in such manner, and from such time as the Parliament of Canada provides from time to time.

to constitutional negotiations that will enhance the Senate as an equal powerful chamber where their clout would be much stronger – especially if elected based on proportional representation. It is also clearly in the interest of Quebec to have a strong elected Senate where they would have 25% of the total. The whole package then allows a House of Commons where the membership is truly representation by population. When that happens rule 1 could return to the current wording if, in the future, it is amended to allow for an alternative “grandfather clause” and rules 2, 3, 4 and 5 could be dropped. It should be noted that the territories could easily be included in the entrenched rule 1.

Notes

1. The full package would also include financial primacy for the House of Commons, Senate elections based on proportional representation with term lengths coincident with the House, minimum 4-year terms for Parliament and a deadlock breaking mechanism. Certainly a package of democratic reform is possible. It might be useful to proceed with a reduced package using ordinary statute law and section 44 of the *Constitution Act, 1982* but entrenchment in the long run would be the preferable option.