**BILL C-22: AN ACT TO AMEND
THE CONSTITUTION ACT, 1867
(DEMOCRATIC REPRESENTATION)**

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LEGISLATIVE HISTORY OF BILL C-22

HOUSE OF COMMONS		SENATE	
Bill Stage	**Date**	**Bill Stage**	**Date**
First Reading:	14 November 2007	First Reading:	
Second Reading:		Second Reading:	
Committee Report:		Committee Report:	
Report Stage:		Report Stage:	
Third Reading:		Third Reading:	

Royal Assent:

Statutes of Canada

This bill did not become law before the 39th Parliament ended on 7 September 2008.

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

Legislative history by Michel Bédard

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THE CONSTITUTION ACT, 1867 (DEMOCRATIC REPRESENTATION)[*]

INTRODUCTION

Bill C-22, An Act to Amend the Constitution Act, 1867 (Democratic representation), was introduced in the House of Commons by the Leader of the Government in the House of Commons and Minister responsible for Democratic Reform, the Honourable Peter Van Loan, PC, MP, and was given first reading on 14 November 2007. 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-22 had previously been introduced in the House of Commons during the 1st Session of the 39th Parliament as Bill C-56. As of prorogation, Bill C-56 was awaiting 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-22 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-22 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.

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[*]   Notice: For clarity of exposition, the legislative proposals set out in the bill described in this Legislative Summary are stated as if they had already been adopted or were in force. It is important to note, however, that bills may be amended during their consideration by the House of Commons and Senate, and have no force or effect unless and until they are passed by both houses of Parliament, receive Royal Assent, and come into force.

[1]   "Representation in the House of Commons of Canada," Elections Canada, March 2002, p. 3, http://www.elections.ca/scripts/fedrep/federal_e/fed_prlmnt_e.htm [Elections Canada].

The distinguishing feature of the formula prescribed by Bill C-22 is that it raises the number by which the total population of the provinces is divided, which at present is fixed at 279. Further, this "electoral divisor" would continue to increase with each decennial census, assuming total population of the provinces continues to grow. The effect that the formula, and specifically the electoral divisor, would have on a readjustment to the number of members seated in the House of Commons would be to enlarge the increases experienced as a result of growth in the total population of the provinces.

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 to the Parliament of Canada.[2]

With regard to the power of the 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.

BACKGROUND

A. 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

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(2) *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.

Also see this Legislative Summary's Background subsection: 1. The Formula at Confederation, p. 3.

Commons.[3]   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.[4]

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."[5] 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."[6]

2. The "Senatorial clause" (1915)

During the years proceeding Confederation, concerns arose that trends in population displacement would eventually result in the significant loss of representation in some provinces.[7] 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.[8]

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(3)   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.

(4)   Ibid., pp. 99-100.

(5)   Elections Canada, p. 6.

(6)   Ibid., p. 6.

(7)   Williams, p. 104

(8)   Elections Canada, p. 6.

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,[9] 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.[10] In addition, the one-twentieth clause was repealed.[11]

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.[12] 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.

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.[13] 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

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(9)   Robert Marleau and Camille Montpetit, *House of Commons Procedure and Practice*, 2000, House of Commons: Ottawa, p. 144.

(10) Ibid., p. 144.

(11) 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.

(12) Ibid., pp. 144-5.

(13) 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.

(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.[14]

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.

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.[15] 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.[16] Following the 2001 decennial census, the number of members seated in the House was readjusted to 308.

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(14) Elections Canada, p. 8. See also *Debates*, 2 December 1974, pp. 1845-1847, where Mitchell Sharp, President of the Privy Council, outlines the amalgam formula.

(15) As enacted by the *Constitution Act, 1999 (Nunavut).*

(16) Elections Canada*,* p. 9.

DESCRIPTION AND ANALYSIS

Bill C-22 may be cited as the *Constitution Act, 2007 (Democratic representation)* (clause 1).

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

1. The total population of the provinces shall be divided by the "electoral divisor" (see below). The quotient obtained shall then be used to divide the population of each province, which in turn produces a quotient equal to the number of seats assigned to a given province (counting numerical remainders in excess of 0.50 as one after the latter division).

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. Additional seats will be assigned to any province that has not experienced an increase as a result of the application of both rules 1 and 2, so that its number achieves an electoral quotient as close as possible to that of the most populous province to receive additional seats, provided that the province in question has a lower population than the most populous province to receive additional seats.

4. 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 calculated by dividing the total population of the provinces, using the most recent decennial census, by the number of members in the House of Commons assigned to all provinces in the first readjustment that followed the coming into force of the *Constitution Act, 1985 (Representation)*.

   b) The "electoral divisor" for subsequent seat readjustments will be derived by dividing the total population of the provinces, using the most recent decennial census, by the number of members of the House of Commons thirty years prior to this most recent decennial census.

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

COMMENTARY

Bill C-22 is part of a broader package of democratic reforms introduced by the government in the 1st and 2nd Sessions of the 39th Parliament. The purpose of the bill 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-22 arguably draws nearer to the principle of representation by population. According to the latter formula, 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.[17]

However, it has been pointed out by the Premier of Ontario, Dalton McGuinty, among others, that even under the new readjustment regime provided by Bill C-22, Ontario will remain under-represented in the House.[18] Further concerns regarding the bill have been raised in the Quebec National Assembly. Although the province will retain its 75 seats, Quebec's seat percentage in the House will decline under the new readjustment regime. On 16 May 2007, the National Assembly unanimously adopted a motion calling on the government to withdraw its democratic reform package.[19]

It may also be worth noting that Bill C-22 employs an upward moving divisor to calculate seat readjustments in the House of Commons. As such, the increases in the number of members sitting in the House will be larger than those achieved through a formula based on a fixed electoral divisor. Further, 30 years after the coming into force of the bill, the effect of these additional seat increases will compound itself by employing a seat total as readjusted by an upward moving electoral divisor, as opposed to a seat total readjusted with a fixed electoral divisor. This may potentially lead to a situation similar to the unacceptably large seat readjustments produced by the "amalgam" formula.

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(17)   Ibid., pg. A1.

(18)   Brian Laghi and Karen Howlett, "Tory Bill Unfair, McGuinty Charges," *The Globe and Mail*, 18 May 2007, pg. A1. See also Bea Vongdouangchanh, "Government's seat increase bill 'flies in face of rep by pop,' says Aucoin," *The Hill Times*, 26 November 2007, p. 1.

(19)   Chantal Hébert, "Harper Running Out of Options on Quebec," *The Toronto Star*, 21 May 2007, pg. A13.