



Legislative Summary

BILL C-14: AN ACT TO AMEND THE CONSTITUTION ACT, 1867 (ELECTORAL REPRESENTATION)

Publication No. 44-1-C14-E

28 March 2022

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28 March 2022

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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.

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LEGISLATIVE SUMMARY OF BILL C-14: AN ACT TO AMEND THE CONSTITUTION ACT, 1867 (ELECTORAL REPRESENTATION)

1 BACKGROUND

Bill C-14, An Act to amend the Constitution Act, 1867 (electoral representation),¹ (alternative title: Preserving Provincial Representation in the House of Commons Act), was introduced in the House of Commons on 24 March 2022 by the Minister of Intergovernmental Affairs, Infrastructure and Communities.

The bill amends the *Constitution Act, 1867*² (the Act) to guarantee that the number of members assigned to a province, following a readjustment of the number of seats in the House of Commons, never falls below the number of members assigned to that province during the 43rd Parliament.

1.1 CALCULATING SEAT DISTRIBUTION IN THE HOUSE OF COMMONS

Under section 51(1) of the Act, the number of seats in the House of Commons is to be readjusted following each decennial census. The number of seats to be assigned to each province is calculated according to the rules in this section, which taken together, form the representation formula.

Following this calculation, 10 independent commissions, established by proclamation of the Governor in Council, begin the work of drawing electoral boundaries. Each commission represents a separate province and must prepare a report on the new electoral districts that will be tabled in the House of Commons for consideration by a parliamentary committee. In the final step of this process, the chief electoral officer prepares a representation order describing the electoral districts established by the commissions, which will eventually be proclaimed by the Governor in Council.³

The most recent decennial census was conducted in 2021. As a result, and in keeping with the *Electoral Boundaries Readjustment Act*,⁴ the chief electoral officer calculated the number of seats to be allocated to each province, based on the population estimates as at 1 July 2021 and the representation formula. The results of the calculation were published in the *Canada Gazette* on 16 October 2021.⁵

Based on this calculation, the number of seats allocated to Quebec drops from 78 to 77. If this allocation were to stand, it would be the first time a province lost a seat in the federal Parliament since 1966.⁶

Bill C-14 prevents this potential loss of seats and any future loss of seats that would cause the number of members assigned to a province to drop below the number assigned to that province during the 43rd Parliament.

1.2 PREVIOUS AMENDMENTS TO THE REPRESENTATION FORMULA AND CONSTITUTIONAL CONSIDERATIONS

The representation formula has been amended several times since its initial adoption. Fundamentally based on the principle of representation by population whereby each member must represent roughly an equal number of constituents, the formula has evolved over the years to include exceptions and compromises to this basic principle.

For example, during the 33rd Parliament, the formula was amended to specify that a province cannot have fewer seats than it had when the *Representation Act, 1985*⁷ came into force. Similarly, in 2011, with the adoption of the *Fair Representation Act*,⁸ the formula was again amended to ensure the representation of provinces with fast-growing populations while maintaining the representation of smaller provinces.⁹ To achieve this, amendments to the Constitution of Canada were made through both these statutes.

Bill C-14 also seeks to amend the Constitution of Canada. Under section 44 of the *Constitution Act, 1982*,¹⁰ Parliament has exclusive jurisdiction to amend provisions of the Constitution of Canada relating to the House of Commons, subject to certain conditions. In addition, section 52 of the *Constitution Act, 1867* provides that the number of members of the House of Commons may be increased from time to time by Parliament, provided the proportionate representation of the provinces remains unchanged.

The ability of the federal Parliament to unilaterally amend the representation formula is subject to two exceptions. Consequently, a change that would affect the principle of proportional representation of the provinces in the House of Commons requires the agreement of the Senate, the House and the legislative assemblies of at least seven provinces that represent at least 50% of the population of the provinces. In addition, an amendment affecting the right of a province to have a number of members equal to or greater than the number of senators representing that province requires the consent of all provincial legislative assemblies, in addition to the approval of the Senate and the House of Commons.¹¹

Since the amendment proposed by Bill C-14 is similar to the previous unilateral amendments brought about by the *Representation Act, 1985* and the *Fair Representation Act*, it can be assumed that neither of these exceptions would apply and that Parliament can therefore proceed unilaterally.

2 DESCRIPTION AND ANALYSIS

Bill C-14 contains five clauses, including an interpretation provision and two transitional provisions. The clauses of the bill are discussed below.

2.1 AMENDMENT TO THE *CONSTITUTION ACT, 1867* (CLAUSE 2)

The representation formula in section 51(1) of the Act consists of six rules for determining the number of seats to be assigned to the provinces. In addition, section 51A of the Act provides that a province may not have fewer members than senators; this is the senatorial clause.¹² The representation formula does not affect the number of territorial members, as each territory is entitled to one member under section 51(2) of the Act.

The current six rules in section 51(1) of the Act can be summarized as follows:

1. Rule 1 provides that each province is to be assigned a number of members equal to the result obtained by dividing its population by the electoral quotient determined according to rule 6. If the final result has a fractional remainder, it is rounded up to the next whole number.
2. Rule 2 provides that the number of members assigned to a province cannot be less than the number of members assigned to that province at the time the *Representation Act, 1985*¹³ came into force, notwithstanding the result obtained under rule 1 and section 51A. This rule is sometimes called the grandfather clause in the representation formula.
3. Rule 3 allocates additional seats to provinces that would become under-represented as a result of the calculations under the first two rules and the senatorial clause. The objective is to ensure that a province's share of seats remains equal to or greater than its share of the population. This is the representation rule.
4. Rule 4 sets out the circumstances in which rule 3 would apply to a province. Rule 3 applies to a province if, using figures as at 1 July of the previous year of the decennial census, that province had a proportion of seats in the House equal to or greater than its population.
5. Rule 5 provides that, unless any context indicates otherwise, the population of a province is the estimate of its population as at 1 July of the year of the most recent decennial census.
6. Rule 6 provides the manner in which the electoral quotient used in rule 1 is to be calculated.¹⁴

Clause 2 of Bill C-14 amends current rule 2 in section 51(1) to replace the reference to the number of seats held upon the coming into force of the *Representation Act, 1985* with a reference to the number of seats held by the province

during the 43rd Parliament. Therefore, even if the calculation based on the electoral quotient determines that a province loses one or more seats, the province's representation cannot fall below the number of members assigned to it during the 43rd Parliament.

Table 1 shows the distribution of members during the 43rd Parliament, the projected distribution for the next readjustment as calculated in October 2021, and the effect of the bill on this distribution.

Table 1 – Distribution of Members During the 43rd Parliament, Projected Distribution as at 16 October 2021 and Effect of Bill C-14 on the Projected Distribution of Seats

Province/ Territory	Number of Members During the 43 rd Parliament	Projected Distribution of Seats as at 16 October 2021	Reasons for Seat Allocation Calculated as at 16 October 2021	Effect of Bill C-14 on the Projected Distribution of Seats	Reasons for Allocation of Seats Following the Adoption of Bill C-14
British Columbia	42	43 (+1)	Population ÷ Electoral quotient	43 (+1)	Population ÷ Electoral quotient
Alberta	34	37 (+3)	Population ÷ Electoral quotient	37 (+3)	Population ÷ Electoral quotient
Saskatchewan	14	14	Population ÷ Electoral quotient Grandfather clause	14	Population ÷ Electoral quotient New grandfather clause (C-14)
Manitoba	14	14	Population ÷ Electoral quotient Grandfather clause	14	Population ÷ Electoral quotient New grandfather clause (C-14)
Ontario	121	122 (+1)	Population ÷ Electoral quotient	122 (+1)	Population ÷ Electoral quotient
Quebec	78	77 (-1)	Population ÷ Electoral quotient Grandfather clause Representation rule	78	Population ÷ Electoral quotient New grandfather clause (C-14)
New Brunswick	10	10	Population ÷ Electoral quotient Senatorial clause	10	Population ÷ Electoral quotient Senatorial clause
Nova Scotia	11	11	Population ÷ Electoral quotient Senatorial clause Grandfather clause	11	Population ÷ Electoral quotient Senatorial clause New grandfather clause (C-14)
Prince Edward Island	4	4	Population ÷ Electoral quotient Senatorial clause	4	Population ÷ Electoral quotient Senatorial clause
Newfoundland and Labrador	7	7	Population ÷ Electoral quotient Senatorial clause Grandfather clause	7	Population ÷ Electoral quotient Senatorial clause New grandfather clause (C-14)
Yukon	1	1	Section 51(2) of the <i>Constitution Act, 1867</i>	1	Section 51(2) of the <i>Constitution Act, 1867</i>
Northwest Territories	1	1	Section 51(2) of the <i>Constitution Act, 1867</i>	1	Section 51(2) of the <i>Constitution Act, 1867</i>
Nunavut	1	1	Section 51(2) of the <i>Constitution Act, 1867</i>	1	Section 51(2) of the <i>Constitution Act, 1867</i>
Total	338	342 (+4)		343 (+5)	

Sources: Table prepared by the Library of Parliament using information obtained from [Bill C-14, An Act to amend the Constitution Act, 1867 \(electoral representation\)](#), 44th Parliament, 1st Session; and Elections Canada, [House of Commons seat allocation by province 2022 to 2032](#).

2.2 INTERPRETATION PROVISION (CLAUSE 3)

Clause 3 of the bill is an interpretation provision which states that a reference to the Constitution Acts of 1867 to 1982 includes a reference to clause 2 of the bill.

2.3 TRANSITIONAL PROVISIONS (CLAUSES 4 AND 5)

Clause 4 of the bill sets out the definitions and terminology that apply to the transitional provisions. In particular, the term “old calculation” means the calculation published in the *Canada Gazette* on 16 October 2021.¹⁵

Clause 5(1) of the bill provides that, as soon as feasible after the bill comes into force, the chief electoral officer must calculate the number of seats to be assigned to each province according to the amended representation formula. The results of the calculation are to be published in the *Canada Gazette*, as required by the *Electoral Boundaries Readjustment Act*.

In practice, after the next readjustment, only Quebec would receive a different number of seats. The combined effect of the other subclauses of clause 5 is to give more time to the commission in charge of drawing Quebec’s electoral boundaries to fulfill its obligations, while allowing the redistribution process to continue without interruption for the nine provinces whose representation is not affected by the bill.

Clause 5(2) of the bill sets out what happens if the number of seats assigned to a province under the new calculation is different than the number assigned under the old calculation:

- Clause 5(2)(a) of the bill provides that any report of the commission for the relevant province prepared on the basis of the old calculation is legally invalid. The same applies to any action taken under sections 19 to 23 of the *Electoral Boundaries Readjustment Act* on the basis of the report.
- Clause 5(2)(b) of the bill requires the commission for the relevant province to prepare a report based on the new calculation. The report made under section 14(2) of the *Electoral Boundaries Readjustment Act* must, in particular, set out the commission’s recommendations on the division of that province into electoral districts.
- Under the *Electoral Boundaries Readjustment Act*, the chief statistician of Canada is required to prepare a certified return showing the population of Canada by province, electoral district and dissemination area. The certified return

is sent to the minister of Infrastructure and Communities and to the chief electoral officer who must send a copy of it to the chairperson of each commission. Upon receiving this certified return, each commission has 10 months to prepare a report for presentation to the House of Commons which sets out its considerations and contains proposals concerning the division of the province into electoral districts, the descriptions and boundaries of the districts, and the population of and name to be given to each district.

Clause 5(2)(c) of the bill provides that the 10-month period does not begin, in respect of the relevant province, until the day on which the results of the new calculation are published in the *Canada Gazette*. This same clause provides that the duties and functions set out in sections 19 to 23 of the *Electoral Boundaries Readjustment Act* are not to be carried out until after the report is prepared, based on the new calculation.

Clause 5(3) of the bill provides that if a representation order based on the old calculation is not prepared and transmitted to the minister of Infrastructure and Communities before the coming into force of clause 5, the chief electoral officer must transmit to the minister a representation order that applies to the other provinces, without waiting for the report of the commission affected by the new calculation. Clause 5(4) of the bill provides that if a representation order based on the old calculation is prepared and transmitted to the minister before clause 5 comes into force, that order and any proclamation by the Governor in Council take effect in the provinces not affected by the new calculation.

Clause 5(5) provides that, where clause 5(3) or 5(4) applies, a representation order must be prepared and a proclamation made based on the new calculation for the relevant province. Clause 5(6) provides that until such a representation order takes effect, the representation order annexed to the *Proclamation Declaring the Representation Order to be in Force Effective on the First Dissolution of Parliament that Occurs after May 1, 2014*,¹⁶ continues to apply to the relevant province.

Clause 5(7) provides that once the representation order and the proclamation for the province affected by the new calculation are published in the *Canada Gazette*, the chief electoral officer must publish, on the Elections Canada website, an administrative consolidation consisting of that representation order and the portion of the representation order that applies to the other provinces. The consolidation must set out the day on which the applicable representation order comes into force in each province.

NOTES

1. [Bill C-14, An Act to amend the Constitution Act, 1867 \(electoral representation\)](#), 44th Parliament, 1st Session.
2. [Constitution Act, 1867](#), 30 & 31 Victoria, c. 3 (U.K.).

3. Elections Canada, [Timeline for the Redistribution of Federal Electoral Districts](#).
4. [Electoral Boundaries Readjustment Act](#), R.S.C. 1985, c. E-3, s. 14(1).
5. [Parliament: Office of the Chief Electoral Officer – Electoral Boundaries Readjustment Act](#), 6 October 2021, in *Canada Gazette*, Part I, 16 October 2021.
6. At that time, Quebec, Manitoba and Nova Scotia had each lost one seat from the 1952 redistribution, while Saskatchewan had lost four. See Marc Bosc and André Gagnon, eds., "[Chapter 4: The House of Commons and Its Members](#)," *House of Commons Procedure and Practice*, 3rd ed., 2017.
7. [Representation Act, 1985](#), S.C. 1986, c. 8.
8. [Fair Representation Act](#), S.C. 2011, c. 26.
9. Marc Bosc and André Gagnon, eds., "[Chapter 4: The House of Commons and Its Members](#)," *House of Commons Procedure and Practice*, 3rd ed., 2017.
10. [Constitution Act, 1982](#), being Schedule B to the *Canada Act 1982* (U.K.), 1982, c. 11, ss. 38(1) and 42(1)(a).
11. *Ibid.*, s. 41(b).
12. Elections Canada, [The representation formula](#).
13. [Representation Act, 1985](#), S.C. 1986, c. 8.
14. [Constitution Act, 1867](#), 30 & 31 Victoria, c. 3 (U.K.).
15. [Parliament: Office of the Chief Electoral Officer – Electoral Boundaries Readjustment Act](#), 6 October 2021, in *Canada Gazette*, Part I, 16 October 2021.
16. [Proclamation Declaring the Representation Order to be in Force Effective on the First Dissolution of Parliament that Occurs after May 1, 2014](#), SI/2013-102.