
The Size of Legislatures: A Perspective on the House of Commons

by Louis Massicotte

This article points out many of the problems in redistributing (and possibly reducing) the number of seats in the House of Commons. It argues that the redistribution of seats has become an ad hoc operation in which the constitutional and legal criteria meant to guide the whole process are modified along the way to accommodate the requirements of the interested parties at a particular time. This has resulted, especially since the 1960s, in significant delays between the census date and the coming into force of the boundaries based on that census, thereby increasing the inequalities in representation. This article is an extract from a brief submitted to the House of Commons Standing Committee on Procedure and House Affairs on July 6, 1994.

Not since the 1930s has a redistribution been carried out without amending the rules in force at the time. During the 1940s, and again during the 1950s, the formula for distributing seats among the provinces was changed. During the 1960s, the boundary procedure was changed. In 1974 and in 1985, the distribution formula was changed along the way, while at the same time minor changes were also made in the boundary formula.

The current boundaries were established in 1987 and are based on 1981 figures. At the time of the 1993 election, one constituency out of five exceeded the 25% variance allowed in each province. In Ontario alone, one-fourth of the ridings exceeded the allowed variance. In Quebec, one riding in five is in the same situation. If the electoral map is not redrawn in the meantime, these figures will undoubtedly be even higher at the next election. According to the act, variances greater than 25% are justified only under exceptional circumstances.

The Supreme Court has rejected the principle of absolute voter parity and opted instead for "effective"

representation. However, this principle must take into account relative voter parity. The Court did not ask legislators to ignore the population criterion. It said that parity of voting power, though of prime importance, was not the only factor to be taken into account in ensuring effective representation. "A system which dilutes one citizen's vote unduly as compared with another citizen's vote runs the risk of providing inadequate representation to the citizen whose vote is diluted. The legislative power of the citizen whose vote is diluted will be reduced, as may be access to and assistance from his or her representative. The result will be uneven and unfair representation."

Should the number of seats in the House of Commons be capped or reduced?

The number of members has almost been capped under the current formula. Adding six seats, based on 1991 figures, would bring the total number to a level higher than the psychological threshold of 300; however, this is an increase of only 2%. Based on the projections, by the year 2016 there would be an additional increase of 17 seats in 25 years, or less than one seat a year.

I wonder whether this modest increase justifies replacing the current formula with yet another one, which would be the third over three redistributions and

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the seventh since 1867. In the past, we have tended to adopt new formulas to solve one particular problem without realizing that in so doing we might be creating other problems.

In 1974, it was the loss of seats by several provinces which prompted the abandonment of the formula which essentially dated from 1946. We started from the assumption that a province should not lose seats in the House of Commons even if its population was decreasing in relative terms. The provinces were divided into three categories: small, medium and large. Although this formula ("amalgam method") was extremely complicated, the underlying principle was simple: the small provinces would not lose any seats, but the big ones would be given more seats (this was the "Quebec plus four" clause), although it meant continuous increases in the total number of seats in the House of Commons. On the whole, this formula resulted in a less proportional representation than the previous one, to the detriment of Ontario and Quebec.

In short, every formula has unpleasant consequences that are likely to be criticized. Based on the experience of the last few decades, we should closely examine the alternatives.

Ten years later, we realized that we had made a poor choice. We had expected an increase in Quebec's population. In the 1981 census, Quebec's population was actually lower than predicted. Since the formula provided for an automatic increase of four seats for Quebec, regardless of the changes in its population, and gave Ontario a number of seats based on Quebec is the low Quebec standard catapulted Ontario's representation to a far higher level than had been expected. As a result in 1981 the House of Commons was expected to have 310 seats instead of the 294 that had been predicted seven years earlier. Statistics Canada's projections suggested subsequent increases of about thirty seats every decade.

In 1985, inflation of parliamentary seats became the biggest worry. The new government was concerned about the additional costs this would entail and wanted to stabilize the growth of the House. A decision was therefore made to start with a fixed number of seats to be distributed (279), to which would be added a sufficient number of seats so that no province would have fewer members than senators and would not lose ground in relation to its 1986 representation. Representation

became slightly less proportional than it was under the amalgam system, notably because the grandfather clause applied in relation to a lower total number of seats. Naturally, it is the provinces with the fastest-growing populations who lose out under this "electoral equalization," to the benefit of the provinces whose populations are decreasing.

Skepticism regarding the existence of any truly superior alternatives is reinforced when one looks at the formula being proposed by the Royal Commission on Electoral Reform. After having considered this issue the Commission was unable to come up with a better formula than one that would in the immediate future result in a House of 308 seats — 13 more than it has now — with this number increasing to 319 in 2001, 332 in 2011 and 339 in 2016. If the population of Quebec does not increase as fast in the future as Statistics Canada has currently forecast, as occurred in 1981, then the total number of members will be even higher. If our concern is to cap or to reduce the total number of members, then this formula does not appear very attractive.

The Lortie formula would have the added disadvantage of not treating equally all provinces whose populations are decreasing. Some would keep all their seats thanks to the senatorial floor clause, others would lose at most one seat at every redistribution, and Quebec, as the pivotal province, would be frozen at 75 seats. Quebec and Manitoba would become the only provinces with decreasing populations to be underrepresented. The current formula, because of the senatorial and grandfather clauses, has the advantage of treating all provinces with decreasing populations equally; no provinces would lose seats and all will be slightly overrepresented.

The Lortie Commission, reflecting the views of a number of academics, criticized the current formula for undermining proportional representation. This stems from three provisions in the formula:

- First the territories are entitled by law to three seats, although their total population would justify only one.
- Second, the senatorial clause, at present, allows Prince Edward Island and New Brunswick to keep as many members as senators. This clause is virtually untouchable, since the unanimous agreement of the provinces is required to amend it.
- Third, no province can be allocated fewer seats than it had in 1986; this is the grandfather clause, which protects Newfoundland, Nova Scotia, Quebec, Manitoba and Saskatchewan, in addition to providing additional protection to the two provinces protected by the senatorial clause. This provision,

unlike the preceding one, can be abolished simply by an act of Parliament.

The argument that the current formula seriously undermines proportional representation failed the test of the courts in 1987-88. The protection provided under the current formula to provinces whose populations are decreasing may seem excessive compared to the situation in typical federations such as the United States, Australia and Switzerland. However, in those countries proportional representation was accepted for the lower house only because states with very low populations were considerably overrepresented in the upper house, whose powers were equal or almost equal to those of the lower house.

This is not the case in Canada. Historically, we have tended to make up for the lack of a powerful upper house by providing provinces with low or decreasing populations more seats in the House of Commons than their populations would justify. All the representation formulas that have been used since 1867 have included provisions aimed at either preventing a province from losing seats or minimizing any loss of seats.

Slowing the growth of the House of Commons is not the least of the advantages of the current formula. It also prevents each province from losing seats, which, in addition to fostering a sense of security among seven provinces that account for 45% of the Canadian population, minimizes the changes required after electoral redistribution and addresses a very great concern of members, evidence of which can be found not only in the 1970s but also throughout our entire electoral history.

Quebec does not fare too badly under this formula, since the formula grants Quebec the protection accorded to all the other provinces whose populations are increasing less quickly than the average, and does so

without favouring one province in particular, which the 25% clause in the Charlottetown Consensus Report would have done. Nothing compels us to consider only Quebec's viewpoint on this issue, but this is one aspect to take into account, like the views of the other regions of the country.

The possibility of reducing the size of the House of Commons has a number of implications which we should weigh carefully. Here are three:

- Virtually no riding would be left intact by redistribution if the number of seats were reduced by 100 or even 50. The result would be a boundary upheaval far greater than that for which MPs criticized the 1993 commissions.
- Reducing the number of seats would mean increasing the average riding population. A House with 250 seats would mean that the average riding population would increase from 91,500 to 108,000 (an 18% increase). For a House with 200 seats, the average would jump to 135,000, an increase of 48%. For members from rural or northern regions, this would mean that the districts they represent would be even larger than they are now. Because of this increased workload, additional riding staff would very likely have to be hired. The advantages of a reduction in the number of seats might be more symbolic than financial.
- A major reduction in the total number of seats would make the problem of provinces with declining populations even more acute. Either the senatorial clause and the grandfather clause are maintained in full, in which case the provinces with increasing populations would complain about being penalized even more than they currently are; or this protection is removed, in which case the provinces with declining populations would likely greet this decision with hostility. ♦