

Amending *EBRA*

A Brief Legislative History of *EBRA*, 1964-2014



Redécoupage
Circonscriptions fédérales

Redistribution
Federal Electoral Districts

A Brief Legislative History of *EBRA*

- 1964
 - Parliament enacted *EBRA* in 1964 alongside the *Representation Commission Act* in 1963
- 1972:
 - 1st *EBRA Suspension Act* cancels Redistribution 1973
- 1974
 - Amended by private member's bill
 - Amended by government bill along with a new Representation Formula, starting a new Redistribution
- 1979
 - Parliament repealed the *Representation Commission Act* and transferred the commissioner's functions to the Chief Electoral Officer
- 1986
 - Amended extensively in 1986 along with a new Representation Formula, erasing the incomplete Redistribution of 1983

A Brief Legislative History of *EBRA*

- 1992:
 - 2nd *EBRA Suspension Act* delays the 1990s Redistribution until 1994
- 1994:
 - 3rd *EBRA Suspension Act* stops the 1990s Redistribution that had just started with the goal of enacting massive amendments to *EBRA*
- 1995:
 - Almost repealed and replaced by Bill C-69, left to die on the *Order Paper*
 - The 1990s Redistribution restarts, but under the same old *EBRA*
- 2005:
 - Recommendations Report by Jean-Pierre Kingsley (CEO, 1990-2007) for Amending *EBRA*
- 2011:
 - Amended alongside a new Representation Formula
- 2014:
 - Minor amendments
- 2022:
 - Transitional provisions apply only to Redistribution 2022 alongside modified Representation Formula

1964: The Original *EBRA*

- The basic structure and steps within *EBRA* have remained the same since 1964
 - Proposal
 - Public Hearings
 - Preliminary Report
 - MPs' objections
 - Final Report
 - Representation Order
- Differences have arisen in:
 - The membership of the Commissions (eliminating the Representation Commissioner)
 - The Rules by which the Commissions establish electoral districts
 - The timeline for completing the Report to the House of Commons
 - The gap between the promulgation and entering into force of the *Representation Order*

1964: The Original *EBRA*

- The Representation Commissioner
 - Best job in the Government of Canada: 2 years of work in every 10
 - Created alternative maps for all 10 provinces – which the Commissions then rejected in 1966, 1973, and 1976
- Membership
 - The Representation Commissioner sat as an *ex officio* fourth man on all 10 commissions
 - He didn't seem to meet with any of them though

1964: The Original *EBRA*

- Rules
 - 13(a) “Population [...] shall correspond as nearly as may be to the electoral quota”
 - 13 (b) Possibility of continuing dual-member districts in PEI and NS
- Departure from Rules
 - “The commissions may depart from the strict application of rules [...] where”
 - “special geographic considerations, including in particular the sparsity, density, or relative rate of growth of population of various regions of the province”
 - “accessibility of such regions”
 - “size and shape thereof [of such regions]”
 - “any special community or diversity of interests of the inhabitants of various regions of the province”
 - “render such a departure necessary or desirable”
- Variance of $\pm 25\%$ applies without exception

1964: The Original *EBRA*

- Timeline
 - Maximum of 12 months by default to complete the *Preliminary Report* to the House of Commons
 - No extensions, no exceptions
- Same 30 days to respond to PROC's objections in the *Final Report*
- *Representation Order*
 - Must be promulgated within 5 days of receipt, as today
 - But “effective upon the dissolution of the then existing Parliament”, instead of the first dissolution at least 12 or 7 months later

1974: Minor Amendments to *EBRA*

- A private member's bill updated the definitions in section 2
 - Commission, recommendations, report, Representation Commissioner, Speaker
- A government bill (*Representation Act, 1974*) repealed the *EBRA Suspension Act, 1972* and started a new Redistribution under the new Representation Formula (The Amalgam Formula)
- Made single-member districts universal

1979: Minor Amendments to *EBRA*

- The *Government Reorganization Act*
 - Abolished the office of Representation Commissioner on the recommendation of Jules Castonguay, the first and only RC who had just retired
 - Replaced all references to “Representation Commissioner” with “Chief Electoral Officer” under *EBRA*
 - Added “Minister” to the definitions under section 2 of *EBRA*
 - Changed the Commissions to only 3 members
- This is where Elections Canada assumed the responsibility of providing the Commissions administrative support

1986: Major Amendments to the Rules

- The *Representation Act, 1986* amended the rules by which the Commissions establish electoral districts
- “The population of each electoral district [...] shall as close as reasonably possible correspond to the electoral quota for the province”
- “The Commissions shall consider”
 - “the community of interest” or
 - “the community of identity” or
 - “the historical pattern of an electoral district” and
 - “a manageable geographic size for districts in the sparsely populated, rural, or northern regions”

1986: Major Amendments to the Rules

- The Commissions may depart from the application of rule (a) in any case where the commission considers it necessary or desirable to depart therefrom [...]
 - to respect
 - The community of interest or
 - The community of identity in or
 - The historical pattern of an electoral district
 - to maintain
 - A manageable geographic size for districts in sparsely population, rural or northern regions of the province
- The French originally said the same

1986: Major Amendments to the Rules

- Added that MPs can make representations at public hearings
- The *Representation Order* must now specify the names, legal descriptions, and population of each electoral district
 - The first *RO* in 1966 did not list the populations

1980s: Changing the Wording of the French Rules

- *EBRA Amendment Act, 1986 Chapter 6 (2nd Supplement)*
 - Consolidated the wording of section 15, but only in French
- *Miscellaneous Statute Law Amendment Act, 1987 (Chapter 1, 4th Supplement)*
 - Section 15(1)(b)(i)
 - « la communauté d'intérêts ou la spécificité d'une circonscription électorale d'une province ou son évolution historique »
 - English translation of the French: “the community of interest or the specificity of an electoral district of a province or its historical evolution”
 - What the English text says: “the community of interest or community of identity in or the historical pattern of an electoral district”
 - The English and French texts no longer match.

1995: The New *EBRA* That Almost Happened

- This would have completely repealed and replaced *EBRA*
- Anyone could apply to become a Commissioner by replying to the Speaker's announcement in the *Canada Gazette*
 - House of Commons could debate and veto candidates
- It would have repealed the reference to members of a “legislative council”
- CEO would have prepared maps “illustrating the distribution of population in each province” – just as the Representation Commissioner used to do.
- The bill would have given the CEO more control to coordinate the process overall, like what Parliament intended for the Representation Commissioner in 1963
- The CEO would have obtained “all amounts required for payments of salaries and expenses fixed [...] or necessary for the implementation of this Act” from the Consolidated Revenue Fund directly
 - More clarity on expenses, and more autonomy for Elections Canada from the Treasury Board Secretariat

1995: The New *EBRA* That Almost Happened

- Quinquennial redistributions – but only when certain thresholds are met
 - Quinquennial redistribution for a province only when the populations of at least 10% of electoral districts vary by at least +25% of the electoral quota
- Decennial redistributions remain the norm
 - Except when a province holds the same number of MPs under the Representation Formula and census calculation AND
 - The population of each electoral district still falls within $\pm 25\%$ of the electoral quota
 - This would have allowed the status quo to prevail with no redistribution at all in some cases
- Only decennial redistributions involve calculating the number of MPs per province under the Representation Formula
 - Quinquennial redistributions would have kept the same number of MPs and simply equalised differences in population that arose over the last five years

1995: The New *EBRA* That Almost Happened

- *Proposal* must be published only in the *Canada Gazette* – no newspapers – and additionally “by whatever method the CEO deems appropriate”
- Each Commission develops three “plans” with accompanying maps and then endorses 1 of the 3 as its true *Proposal*.
- Three rounds of consultations
 - 1st round of written comments for 30 days before the Commissions craft their *Proposals*
 - 2nd round of public hearings (currently in place)
 - 3rd round of public hearings if at least 25% of the population changes districts
- Would have abolished PROC’s role altogether
 - MPs could make representations at public hearings like everyone else

1995: The New *EBRA* That Almost Happened

- Commissions had 12 months by default and up to 18 months after extensions to complete their reports.
- Massive changes to the Rules
 1. “effective representation be the paramount consideration in determining reasonable electoral districts”
 2. Yet “The population of each electoral district [...] shall as close as reasonably possible correspond to the electoral quota for the province [...] but in no case shall it vary by more than 25% from that quota”

1995: The New *EBRA* That Almost Happened

3. “The Commission shall consider in determining reasonable electoral district boundaries”
 - “community of interest”
 - “a manageable geographic size for the districts in sparsely populated, rural or northern regions of the province
 - “the probability that there will be a substantial increase in the population of an electoral district in the next five years”
4. Makes the *status quo* the default:
 - “the commission shall recommend changes to existing boundaries only where the [above] factors are sufficiently significant”
5. Narrows the Extraordinary Circumstances Clause:
 - Commissions can still go below -25% of the quota when an area is “geographically isolated from the rest of the province or is not readily accessible from the rest of the province”
- Community of interest “includes”
 - Economy
 - Existing or traditional boundaries
 - Urban or rural characteristics of a territory
 - Boundaries of municipalities and First Nations reserves
 - Natural boundaries
 - Access to means of communication and transport

2005: Kingsley's Recommendations Report

- Similar suggestions to Bill C-69 of 1995
- The report got lost in the maelstrom of May 2005 and the first minority parliament in a generation
 - tabled the day after a famous floor-crossing and budget vote
- Lowering the variance from $\pm 25\%$ down to $\pm 15\%$
- Introducing 2 more rounds of public hearings
 - Written comments before the *Proposals*
 - Written comments after PROC's studies and before the *Final Reports*
 - Commissions take 60 days to respond to both PROC and the written public comments
- Repealing requirement to publish *Proposals* in newspapers
- The *Parliamentary Constituencies Act* implemented three rounds of consultation in the United Kingdom in 2020 in a format very similar to that of Bill C-69 in 1995.

2011: Amendments to the Timing

- The *Fair Elections Act, 2011* repealed and replaced the Representation Formula
- Introduced the disparity between population estimates under the Representation Formula but the census under *EBRA*
- Reduced the timeline from 12 months to 10 months by default with the possibility of extending to 12 months
- Tasked Elections Canada with sharing digital geospatial data with registered political parties

2014: Minor Administrative Amendments

- The *Fair Elections Act, 2014* outlined the administrative support services that Elections Canada provides to the Commissions
 - Human resources management
 - Financial management
 - Information management
 - Information technology
 - Communications
 - Real property
 - Materiel services
 - Acquisition services
- Redistribution 2022 is the first to test out these new provisions.

Thank You!



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