
By the Numbers: A Statistical Survey of Private Member's Bills

by R.R. Walsh

Many Private Members' Bills are drafted by House of Commons legislative counsel but not all are later introduced in the House of Commons and few are adopted. Nevertheless, Private Member's Bills constitute a helpful educational tool even when they do not succeed in changing the law or making new law. This article looks at Private Member's Bills introduced over the last two Parliaments and offers insights about the use of this particular parliamentary tool.

Members of Parliament often complain about the limited opportunities for them in respect of legislative initiatives. Sometimes their concerns are expressed in terms of the resources provided to private Members for this purpose. Other times, the complaints relate to House procedure in respect of Private Members' Business.

A 1974 study noted a significant increase in the number of Private Member's Bills (PMB's) introduced in the House but no significant increase in the number enacted as law.

For the most part, the empirical data confirms the generally accepted view of the place of Private Member's Bills in the policy process. Policy decision-making is primarily the preserve of the Government which closely guides the schedule of the House of Commons to ensure the passage of its programmes....

Therefore, there are two basic perspectives from which PMB's can be assessed as to their saliency within the political system. Their role as a means of introducing policy is of little significance; however, their role of providing a means by which to express opinion...is of some significance which should not be readily overlooked.¹

An earlier British study of PMB's summarized the difficulties with PMB's, apart from "mechanical" problems relating to House procedure, as a function of "the modern conception of governmental responsibility:"

There is a widely-held supposition...that the Government of the day, because it will be responsible for administering any new Act of Parliament, ought not to be expected to have to take responsibility for administering any new Act that it had not itself decided to introduce. The obverse side of this argument is that it is wrong for individual Members of Parliament, as individuals, to introduce measures for the administration of which they will themselves have no responsibility.²

In a later British study on PMB's, the author argues that the independence of the legislative branch from the executive branch, which all parliamentary systems are based on, can be usefully measured through PMB's because sponsoring a PMB is the only area where a private Member plays a key role in respect of legislation:

As such it represents almost a base line against which to judge the influence of the individual MP....If, in this area, the Government still plays the key role, despite the constitutional position, then we have further important evidence of the limited nature of the legislature position. Very little would then be left to the ordinary MP.³

Despite their limited impact on lawmaking a statistical survey of PMB's illustrates a number of interesting features of this part of the parliamentary agenda.

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The Numbers

Before looking at the statistics a few preliminary points must be kept in mind.

- Legislative counsel are required to give priority service to Members who are making their first PMB's request of the session. Otherwise, these Bills are drafted on a first-come, first-served basis.
- While there were 295 Members of Parliament in the 35th Parliament (1994-97), and 301 members thereafter, only individuals who were not ministers or Chair occupants constitute the client group for drafting PMB's. This group consisted of 261 members in the 35th Parliament and 265 in the 36th Parliament.
- We must distinguish between new and recycled PMB's. A new bill is one that was not drafted or introduced in the House in an earlier session. A recycled bill was drafted and prepared for introduction, and in some cases was introduced, in an earlier session. A bill that is to be recycled must nonetheless be reviewed by legislative counsel and possibly redrafted in part where the law has changed. As a rule, it takes less time to prepare a recycled bill than it does to prepare a new bill.

As shown in the accompanying table in the first session of the 35th Parliament (1994-96), House legislative counsel received 438 requests for a PMB, of which 366 were for new bills and 72 for recycled bills. Of the 438 requests, 297 were completed and made ready for introduction in the House, of which 166 were introduced. Of these bills, half were drawn for debate, 14% were designated as votable, 8% were approved by the House on a vote at second reading, less than 2% were adopted by the House at third reading and received royal assent and became law. The table shows the corresponding figures for the later sessions.

Only 16% of the PMB's introduced in the first session of the 35th Parliament were *recycled* bills. The 35th Parliament saw a change of government and a significant change in the membership of the House. For this reason, the number of Private Members in the 35th Parliament who had introduced a PMB in the previous 34th Parliament was lower than it otherwise would be. In later sessions the number of *new* PMB's decreases while the number of *recycled* PMB's increases. In 36/2, as much as 83% of the PMB's introduced in the House were *recycled* bills. There had not been a change of government or a significant change in the membership of the House between these sessions.

In 36/2 as many as 79 PMB's were introduced in the House for a third time, another 27 for a fourth time and 8 for a fifth time. Session 36/2 was a session during which there was widespread expectation of dissolution for a

general election. This proved to be the case after the session had lasted only one year. It might be supposed that some Private Members, anticipating a general election soon, wanted to be visibly responsible, as a matter of record, for a legislative initiative important to his or her riding and for this purpose revived legislative initiatives from previous sessions.

The average page length of PMB's was fairly consistent across the four sessions, though it is important to note that the upper end of the range is significantly higher. The average length of the longest 25% of PMB's is on average twice the overall average and three times the average for the shorter 75%. While PMB's are invariably much shorter and less complex than Government Bills, length is not necessarily indicative of legal complexity nor can it be said that bills of similar length take the same time to prepare.

Most PMB's amend existing Acts of Parliament. In 35/1, 70% of PMB requests were to amend an existing federal statute. In 35/2, it was 76% and then again 70% in each of the two sessions of the 36th Parliament. In each of the four sessions, the *Criminal Code* was the leading target: 19%, 18%, 15% and 16% of PMB requests in each session, respectively. In second place is the *Income Tax Act* at 6%, 4%, 6% and 7% and in third place, the *Employment Insurance Act* at 3%, 2%, 3% and 3%.

What is not indicated in the accompanying table is the use of PMB's by Members in each of the recognized political parties in the House. Those who might think of PMB's as opposition bills should know that 45% of the PMB's introduced in the House in the 35th Parliament came from the government side of the House. This figure went down to 35% in the 36th Parliament. The Official Opposition Members (Reform Party and then Canadian Alliance Party), at 20%-22% of the eligible client group in both Parliaments, introduced 35%-39% of the PMB's. Bloc Quebecois Members, at 20% of the client group in the 35th Parliament and 17% in the 36th Parliament, sponsored 12% of the PMB's introduced in the House in each Parliament. NDP Members, at 3.5% of the client group in the 35th Parliament, sponsored 8% of the bills introduced in that Parliament. At 7% in the 36th Parliament, NDP Members were responsible for 10% of the PMB's introduced in the House. The Progressive Conservative Members, being only 2 in number in the 35th Parliament, did not get on the scoreboard in that Parliament. In the 36th Parliament with 15 to 20 Members or 5% - 7% of the client group they sponsored 3% of the PMB's.

The other profile that emerges from the statistics, though not in those included in the accompanying table, is the number of Private Members who requested more than one PMB. In 35/1, 60 of the 139 Private Members requesting a PMB made 3 or more requests and were re-

sponsible for 75% of the PMB's requested in that session. This group constitutes 23% of the client group of 261 Private Members in 35/1. In subsequent sessions, these figures were 52 Members (20%) being responsible for 76% of the requests in 35/2, 78 Members (29%) being responsible for 80% of the requests in 36/1 and 58 Members

(22%) being responsible for 78% of the requests in 36/2. In other words, it is a minority of Private Members that generates a majority of the requests for PMB's.

Numbers also paint a picture of how the traffic in PMB requests varies at different times of the year. PMB requests are higher in the month or two following the open-

Session	35/1	35/2	36/1	36/2
Dates	(Jan. 1994 to Feb. 1996)	(Feb. 1996 to Apr. 1997)	(Sept. 1997 to Sept. 1999)	(Oct. 1999 to Oct. 2000)
Sitting Days	283	165	246	134
Private Members eligible ¹	261	261	265	265
Private Members requesting a PMB	139 (53%)	131 (50%)	164 (62%)	143 (54%)
Requests by Private Members	438	390	587	486
- New PMB's	366 (84%)	229 (59%)	381 (65%)	158 (33%)
- Recycled ²	72 (16%)	161 (41%)	206 (35%)	328 (67%)
- Completed	297 (68%)	332 (85%)	436 (74%)	407 (84%)
- Terminated ³	141 (32%)	58 (15%)	151 (26%)	79 (16%)
Introduced in the House	166 (38%)	244 (62%)	320 (55%)	312 (64%)
- Drawn for debate	83 (50%)	58 (23.5%)	73 (23%)	40 (12.5%)
- Designated votable	23 (14%)	20 (8.2%)	17 (4.4%)	12 (3.5%)
- Adopted at 2 nd reading	15 (8%)	25 (10%)	14 (4.4%)	11 (3.5%)
- Adopted at 3 rd reading	3 (1.8%)	8 (3.3%)	8 (2.5%)	5 (1.6%)
- Received Royal Assent	3 (1.8%)	6 (2.5%)	6 (1.9%)	3 (1.0%)
PMBs per sitting day	0.6 (166/283)	1.5 (244/165)	1.3 (320/246)	2.3 (312/134)
House time (hours) ³	1,441	845	1,327	637
- Government Orders	946 (66%)	555 (66%)	871 (66%)	418 (6%)
- Private Members' Business ⁴	215 (15%)	126 (15%)	198 (15%)	95 (15%)
- Private Member's Bills	107 (7.4%)	69 (8.2%)	95 (7%)	45 (7%)
Average PMB length (pages)	5.1 (range = 2 to 42)	5.2 (range = 2 to 32)	5.2 (range = 2 to 64)	5.3 (range = 2 to 66)
Turnaround time (days) ⁵	58	77	62	49

Notes:

1. Includes all Members except Ministers, the Speaker and other Chair occupants.

2. Terminated PMB's are ones that were withdrawn, put on hold or cancelled by the sponsoring Member before completion.

3. The only firm numbers here are those for Private Members' Business and those for Private Member's Bills as these hours are recorded by the Private Members' Business Office. The weekly schedule of the House totals 33.5 sitting hours, of which 5 hours (15%) are scheduled for Private Members' Business, 5 hours (15%) for Question Period/S.O. 31 and approximately 1.5 hours (4.5%) for Routine Proceedings, the balance (66%) is scheduled for Government Orders, including the Business of Supply. On this basis, the hours given in the Table for Government Orders (including Business of Supply) are estimated with reference to the hours recorded for Private Members' Business as 15% of the scheduled sitting week. The hours estimated for Question Period/S.O. 31 and for Routine Proceedings are included in the estimated total House time for each session but not included in the breakdown as not relevant.

4. Based only on PMB's that were completed and sent to the sponsoring MP ready for introduction in the House.

5. Includes hours given to both Private Members' Motions and PMB's.

ing of a new Parliament or session. Generally, September/October and February/March are the busy periods for *new* PMB's. Requests for *recycled* PMB's are high at the start of a session and decrease considerably within a month or so.

A more difficult phenomenon to measure in numbers is turnaround time, that is, the time between legislative counsel receiving a request from the sponsoring Member and delivering back to the Member a bilingual bill ready for introduction in the House. Without spending an inordinate amount of time, it is not possible to determine a "net" turnaround time, that is, turnaround measured in working days only. Accordingly, the turnaround times reported in the table are calendar days, that is, include weekends, statutory holidays and annual leave.

The Office of the Law Clerk tries to monitor the amount of time taken at each of the three stages in the preparation of a PMB, namely, pre-drafting, drafting and post-drafting. The pre-drafting stage is generally the time a PMB request waits for attention on legislative counsel's desk. If not a priority first request, each request must wait its turn (and legislative counsel must at all times give priority to drafting Private Member's amendments to Government Bills for use at committee stage or report stage). There was an average pre-drafting wait of 10 calendar days in 35/1, 13 days in 35/2, 8 days in 36/1 and 16 days in 36/2. The increased time waiting in 36/2 might be explained by the increased demand for amendments at report stage during this session.

In session 35/1, the drafting stage on average took 50 calendar days, 40 days in 35/2, 78 days in 36/1 and 42 days in 36/2. Why the increase to 78 days in 36/1? This was due to an increased demand for amendments at both committee stage and especially report stage during this period coupled with the fact that the legislative counsel complement was still at the 1994 level of two lawyers and had not yet increased to its present level of four.

The post-drafting stage includes translation of the final draft PMB into the second language, editing review by legislative editors and formatting into the dual-column format required for introduction in the House. The average time for this stage was 5 days in 35/1, 11 days in 35/2, 23 days in 36/1 and 12 days in 36/2. The increased average post-drafting turnaround time in 36/1 corresponds with the increased drafting turnaround time in this period, perhaps for the same reason.

Turnaround time differs considerably as between *new* and *recycled* PMB's. The latter must wait their turn along with the *new* PMB's but once at the drafting stage they usually take less time. The average turnaround time for a *recycled* PMB over the period 1994-2000 was 53 calendar days and for *new* PMB's was 118 days. The average turnaround time by political party indicates an average of 60

days for both Liberal Members and Reform/Canadian Alliance Members, 47 days for Bloc Quebecois Members, 64 days for N.D.P. Members and 55 days for P.C. Members.

Over the seven-year period 1994-2000, the average turnaround time on PMB requests that went to completion, that is, were made ready for introduction in the House at first reading, was 59 days. This breaks down to an average of 10 days at the pre-drafting stage (waiting in line), 33 days in drafting (which includes consultations with the sponsoring Member on drafts and waiting for comments or further instructions) and 16 days in post-drafting (translation, editing and formatting).

One might ask how the past four sessions since 1994 compare with earlier sessions. From 1968-1969 to 1999-2000, there were 22 parliamentary sessions over a period of 32 years. Using sitting days as a basis for a comparison of sessions in respect of PMB's, session 28/1 (1968-69) had 0.8 PMB's per sitting day, session 30/1 (1974-76) had 0.7 PMB's per sitting day, session 32/1 (1980-83) had 0.8 PMB's per sitting day, session 34/3 (1991-93) had 1 PMB per sitting day and session 36/2 (1999-00) had 2.3 PMB's per sitting day.

It would appear that the rate of PMB's per sitting day went from 0.8 in the late 1960s to 2.3 by the end of the 1990s, a tripling over the 32-year period. However, the increase is not in a straight-line progression. The rate of PMB's per sitting day, over the 22 sessions and 32 years, is usually between 0.5 and 1.5. It is higher where the session is comparatively short as most PMB's are introduced in the earlier part of a session. Comparisons made between different sessions must use sessions of comparable length.

In the current session, 37/1, at the time of writing, the House has been sitting for 152 days and 235 PMB's have been introduced for a ratio of 1.6 PMB's per sitting day, the 7th highest of 23 sessions since 1968. Comparable sessions are session 30/3 (1977-78), 25 years ago, which had 151 sittings days and 1.8 PMB's per sitting day and session 2/28 (1969-70), over 30 years ago, which had 155 sitting days and 1.3 PMB's, per sitting day.

In the end, the numbers suggest that 75% of "eligible" Private Members in the Canadian House have little or no interest in using a Private Member's Bill as an arrow in his or her parliamentary quiver. Is this because the process holds very little prospect of a worthwhile result, i.e., becoming law? Might this change if more time were made available for Private Member's Bills? Despite only 25% of Private Members using PMB's, there are more PMB's introduced in the House than could ever be debated even if the time were increased significantly. Should the House reduce the time allowed for debate on each PMB to, say, one hour to enable more of them to be

debated? If all PMB's were subject to a vote, would this cause more Private Members to introduce a PMB?

For the 35th and 36th Parliaments, a total of 1,901 PMB's were requested, of which 1,472 (77%) were completed for introduction in the House. Of the latter 1,042 (71%) were introduced in the House, of which (24%) were drawn for debate, (7%) were designated as votable, (2.3%) were adopted by the House and (1.7%) later became law on Royal Assent.

And what are the few "successful" PMB's about? In session 35/1 (1994-96), the House (and Senate) approved three PMB's. Bill C-216 amended the *Unemployment Insurance Act* (as it then was) to enable persons serving on jury duty to remain qualified for unemployment insurance benefits.⁴ Bill C-207 enabled the Auditor General to report to the House more frequently than on an annual basis. Bill C-212 gave legislative sanction to recognizing ice hockey and lacrosse as Canada's national sports.

In session 35/2, the House approved 8 PMB's, of which one went through all stages on the same day by unanimous consent of the House and 6 later received Royal Assent. Bill C-202 declared the last week of April as "National Organ Donor Week". Bill C-347 changed the names of 22 electoral districts. Bill C-275 gave corporate status and legal powers to the Canadian Association of Former Parliamentarians. Bill C-300 established the Canadian Peacekeeping Service Medal. Bill C-243 amended the *Canada Elections Act* in respect to the reimbursement of political parties for election expenses. Bill C-270 amended the *Financial Administration Act* to limit the use of special warrants of the Governor General for authorizing payments out of the Consolidated Revenue Fund.

In session 36/1, the House adopted 8 PMB's, of which 6 by unanimous consent were approved at all stages on the same day. Six PMBs received royal assent and became law. Of these, three changed the name of the sponsoring Member's electoral district. A fourth changed the names of 19 electoral districts. Bill C-411 amended the *Canada Elections Act* to enable the Chief Electoral Officer to accept late filings and payments by candidates. Bill

C-208 amended the *Access to Information Act* to provide sanctions against persons who destroy or falsify government records in an attempt to deny access.

In session 36/2, the House adopted 5 PMB's of which 2 were adopted at all stages on the same day. Three PMB's later received royal assent and became law. Bill C-445 changed the name of an electoral district while Bill C-473 changed the names of 12 electoral districts. Bill C-202 amended the *Criminal Code* to create the offence of trying to evade the police while driving a motor vehicle.

In summary, of the 18 PMB's from 1994-2000 that became law, 7 changed the names of electoral districts, 2 were "nominal" or declaratory and did not make a substantive change in the law and 9 were substantive and made a change to the statutory laws of Canada. Private Members may not think this a great score.

The problem is not a shortage of bills, including bills making a substantive change to the laws of Canada. The problem, from the sponsoring Private Member's point of view, might be the lack of House time sufficient to consider both the Government's legislative agenda and the various and many legislative initiatives of Private Members.

Notes

1. Stewart Hyson, "The Role of the Backbencher - An analysis of Private Member's Bills in the Canadian House of Commons", *Parliamentary Affairs*, 1974.
2. P.A. Bromhead, *Private Member's Bills in the British Parliament*, London: Routledge & Kegan Paul, 1956), p. 3.
3. Marsh, David and Read, Melvyn, *Private Member's Bills* (New York: Cambridge University Press, 1988) at p. 2.
4. This PMB required a royal recommendation as it authorized the spending of public funds and is the only PMB to obtain a royal recommendation since the rules were changed in 1994 to enable a PMB that required a royal recommendation to be introduced and proceed through the legislative process provided a royal recommendation is obtained before the bill is put to a vote at third reading.