
Private Members' Bills in recent Minority and Majority Parliaments

Evan Sotiropoulos

This article compares the use of Private Members' Bills (PMB) during the 40th Parliament with the four previous Parliaments, two of which were minorities and two were majorities. Among other things it compares the number of bills, the bills introduced by party and the few bills that eventually receive Royal Assent. The article shows how Private Members' Bills have been effected by the shift from majority governments (1997-2004) to minority ones (2004-2011) and suggests some reforms for consideration as we head back to a period of majority government.

A "private Member" is one not part of the Ministry and, according to the Standing Orders, not the Speaker, the Deputy Speaker or a Parliamentary Secretary. Currently, one hour is set aside each sitting day of the House of Commons for the consideration of private Members' business. The time is typically used to advance proposed legislation and to express views on a wide range of topics.

Unlike recent Parliamentary history, at the beginning of Confederation the time allocation was actually skewed in favour of the private Member. Over the years, however, the use of special orders and changes to the rules that govern the House gave precedence to government business, leaving little time for private Members.¹

Today, the way in which private Members' business is conducted is largely influenced by the Special Committee on Reform of the House of Commons – commonly referred to as the McGrath Report.

Chaired by James McGrath (who would go on to become Newfoundland and Labrador's Lieutenant Governor), this seven member all party task force tabled its final report in June 1985. The committee's analysis was positively received by the House and many of its recommendations (e.g., Speaker election by secret ballot and creating the Board of Internal

Economy) were eventually enacted. McGrath's efforts were aided by the strong support provided by party leaders, including Prime Minister Brian Mulroney, who highlighted the committee's work in the Speech from the Throne.

The task force noted that, "One step needed to enhance the role of the private Member is to change significantly the method of dealing with private Members' business [since] the House does not attach any great importance to private Members' business as it is now organized."² Following the final report, the Order of Precedence was established and a process was put in place to decide on which items would be deemed votable and how they would be debated in the House.

Building on those recommendations, there have been a number of adjustments made to private Members' business since the mid-1980s, including: the ordering of items caused by the absence of MPs; an increase in the number of days which private Members' business would be considered; and, allowing each item in the Order of Precedence to be votable unless procedurally inadmissible or unless its sponsor opts to make it non-votable.

Regarding private Members' bills specifically, there are two types, public and private, with the former being the most common. According to *House of Commons Procedure and Practice*, "Public bills deal with matters of public policy under federal jurisdiction, whereas private bills concern matters of a private or special interest to specific corporations and individuals and are designed to confer special powers or benefits upon the beneficiary or to exclude the beneficiary from the general application of the law."³ The Office of the

Evan Sotiropoulos has an M.A. in political science from the University of Toronto and is a frequent commentator on Canadian politics. He can be contacted at esotiropoulos@gmail.com.

Law Clerk and Parliamentary Counsel help MPs with legislative drafting to ensure that proper process and protocols are followed. For example:

- Those proposing the expenditure of public funds or the raising of revenue must secure a royal recommendation or a ways and means motion, respectively, both of which only a Minister can provide.
- The Standing Orders give the Speaker authority to reject a PMB deemed too similar to an existing proposal.
- Bills are introduced during Routine Proceedings, where the Member is given roughly one minute to provide a summary. In practice, this is the First Reading – without debate, amendment or question and where the vast majority of PMB (upwards of 90 per cent) remain forever.

Research Findings

The first thing that stands out when looking at PMB from the previous five Parliaments is the large increase in their use, particularly since 2004.

Parliament	PMB Tabled	Sitting Days
36th	311	376
37th	298	419
38th	263	159
39th	355	292
40th	441	290

In the 36th and 37th majority Parliaments, for example, there were notably fewer private Members' bills tabled than total House of Commons sitting days. In the three recent minority Parliaments, on the other hand, the number of such bills grew significantly. The ratio of private Members' bills tabled per House sitting days tells the story.

- 36th: 0.827
- 37th: 0.711
- 38th: 1.654
- 39th: 1.216
- 40th: 1.521

While this can be at least partly explained by the fact that opposition parties have a majority of MPs in the House and therefore have a greater incentive to introduce PMB, there was not a surge of them receiving Royal Assent as one would presume.

More telling than simply the raw numbers is the tabling of private Members' bills by political party.

Since 1997, the Bloc Québécois (BQ) has introduced about the same number – never exceeding 40 in any one Parliament – with their total of all bills ranging between six and 12 per cent.

Parliament	Bloc Québécois	Conservative	Liberal	NDP
36th	37	129	108	36
37th	18	130	77	63
38th	21	130	27	80
39th	35	56	107	157
40th	28	39	113	259

The Conservative Party proposed almost the exact same number of private Members' bills in the three Parliaments in which they were in opposition, but their numbers fell substantially beginning in 2006 when they first formed government. Having private Members putting forth proposals on controversial policy issues could become problematic to the government which has its own legislative priorities.

Bill C-484 proposed by Ken Epp in the 39th Parliament, for example, sought to amend the *Criminal Code* regarding the death of an unborn child. Opponents of the bill argued that its true intent was to re-open the abortion debate. The government, facing pressure to not open such a debate, distanced itself from it, going so far as to introduce its own competing bill.

The Liberal Party closely mirrors the Conservatives, particularly when looking at the three minority Parliaments – that is, few private Members' bills introduced when in power and many put forward when in opposition. If you were to include the first two Parliaments, however, the comparison is not so straightforward: the Liberals were second only to the Conservatives when they enjoyed a majority yet still introduced many PMB. One explanatory variable for this may be the increase control of backbench MPs from the “centre” or Prime Minister's Office, today compared to just a few Parliaments ago.

The numbers of the NDP point to a clear and identifiable upward trend. Despite having the smallest caucus of any party in most cases, the NDP proposed more than half of these bills since 2006. Their efforts notwithstanding, the NDP have only managed to have one bill (dealing with amending the *Criminal Code* as it relates to hate propaganda) receive Royal Assent in the last 15 years.

Based on this, one would be correct to assert that “Bills are just put on the Order Paper to get a quick media hit and/or television interview, knowing full well that there is little chance of it becoming law.”⁶

In fact, very few private Members' bills get more than a simple 60-second introduction. As O'Brien and Bosc have written, “With the exception of bills dealing with changes to the names of electoral districts, relatively

few private Members' bills receive Royal Assent. Between 1945 and 1993, 127 private Members' public bills received Royal Assent; only 31 of those bills did not deal with changes to the names of constituencies."⁷

In the two majority Parliaments, only 13 of 609 PMB, representing 2 per cent, moved past First Reading stage to be voted upon (four) or receive Royal Assent (nine). Among those becoming law were bills establishing a national day of remembrance of the Battle of Vimy Ridge and a Merchant Navy Veterans Day.

Although in the three minority Parliaments we see a significantly higher percentage of private Member's bills being voted on and passed by the House (an expected occurrence since most are proposed by the opposition), we actually see a lower percentage of them becoming law – since 2004, only 14 PMB (representing 1.3 percent of the total) received Royal Assent. The main reasons for this are the overall increase in the number of bills being tabled, the clutches of party discipline and, more importantly, the obstructionist role played by the Senate.

Although in theory party discipline does not apply to private Members' business in general and to PMB voting specifically, we see the opposite to be true in practice.

In a recent study published by Samara entitled *"It's My Party": Parliamentary Dysfunction Reconsidered*, 65 former MPs who averaged more than 10 years of service in the House were interviewed: these ex-parliamentarians noted that "there are no real free votes" and "heavy party intervention" on PMB, with some MPs complaining that "political parties were increasingly limiting the abilities of MPs to introduce their own private member's bill, instead using them to test a potential piece of legislation."⁸

One such example from the last Parliament is C-391, *An Act to amend the Criminal Code and the Firearms Act (repeal of long-gun registry)*, proposed by Conservative MP Candice Hoepfner which, for all intents and purposes, was a government bill.

Regarding the role of the Senate, a number of private Members' bills passed by the democratically elected House of Commons sat in the Red Chamber until the dissolution of Parliament. Among them were two controversial NDP bills: C-232, *An Act to amend the Supreme Court Act (understanding the official*

languages) and C-311, *An Act to ensure Canada assumes its responsibilities in preventing dangerous climate change*.

The system for private Members' bills is not working under the current construct. Even though many more bills are being tabled, fewer of them are becoming law. Ideas need to be developed and implemented that give the private Member a meaningful role, while keeping in mind that it is ultimately the executive – not individual members – that is in charge of administration.

This fact and its importance is highlighted by bill C-253 proposed by former Liberal MP Dan McTeague in the 39th Parliament that would have made RESP contributions tax deductible. Finance officials estimated that this measure could have cost up to \$900 million annually in lost tax revenue. Although the bill was passed by the House (it died in the Senate), this is one example where additional legislative authority for backbench MPs is fraught with difficulties.

Recommendations

Though the primary role of backbench MPs in a Parliamentary democracy is to scrutinize and not to legislate, these recommendations are practical steps that could be implemented to streamline the existing process. Short of radical reforms, it is unlikely that these or similar suggestions will alone increase the number of bills that receive Royal Assent; they will, however, allow for a more efficient use of the limited time devoted to private Members' business.

- Cap the number of private Members' bills an MP can introduce to three

We know that few bills make it pass First Reading and fewer yet receive Royal Assent. So why are MPs allowed to table dozens of private Members' bills that simply consume House of Commons resources? Take NDP MPs Pat Martin and Peter Stoffer, for example: in the last two Parliaments, they introduced a combined 108 PMB. To put this in perspective, the entire BQ and Conservative caucuses introduced only 63 and 95 bills, respectively, over the same time period. While MPs can currently introduce as many bills as they wish, this wasn't always the case and shouldn't be today.

- Prorogation should purge selected private Members' bills

While "Prorogation of a session usually brings to an end all proceedings before Parliament ... for the purposes of private Members' business, prorogation has almost no practical effect."⁹ This should change. In order to streamline the process, all bills at First Reading stage should not automatically be carried over from session to session. Where progress has been made on a bill (e.g., referred to a Standing Committee, at Second

Reading, etc.), the status quo, which is admittedly a recent development, should continue – otherwise a clean slate should be started.

- Group together similar private Members' bills

Rules exist to ensure that similar items cannot be introduced in the same Parliament. A parallel system could be developed where similar PMB are grouped together to make the process more efficient. In the last Parliament, for example, there were more than 25 PMB proposing changes to the *Employment Insurance Act* and more than 50 proposing changes to the *Criminal Code*. While developing a grouping mechanism may be initially difficult, a solution to overlapping bills would enhance the likelihood of some PMB advancing in the legislative process.

Conclusion

Examining more than 1,600 private Members' bills over a 15 year period proves the vast majority of them are forgotten soon after their introduction. While parties, the NDP in particular, have made more use of the process, bills receiving Royal Assent have not seen a corresponding increase.

While three consecutive minority governments allowed the opposition to leverage the private Members' bills system to their advantage, the results of the 2011 federal election may change the strategy behind the introduction of bills. (Although it's early days in the 41st Parliament, 65 PMB were already introduced in only the first 14 sitting days: 51 of them, or almost 80 per cent, are NDP sponsored.) How the NDP caucus approaches the PMB process now that it is the official Opposition will be interesting, since the

party's bills may face increased media scrutiny given that they are the "government in waiting" as tradition dictates.

The Conservative Party's majority will likely deter other parties from pushing too many bills, since the likelihood of them passing is greatly reduced. Longer term, however, the Conservative Party will have an ace up its sleeve since it controls the Senate and can delay passage of bills it does not favour for years to come.

Notes

1. Audrey O'Brien and Marc Bosc, eds. *House of Commons Procedure and Practice*, Second Edition, 2009.
2. James A. McGrath, P.C., M.P. (Chairman), *Report of the Special Committee on Reform of the House of Commons*, June 1985, p. 40.
3. O'Brien and Bosc, eds. *op. cit.*
4. Only PMB on the Order Paper at the end of the last session of each respective Parliament have been included.
5. PMB introduced by the Reform, Canadian Alliance or Progressive Conservative parties have been grouped under the Conservative Party banner. PMB introduced by Independent MPs (equalling 18 over the five Parliaments or 1.1 per cent of the total) have not been included.
6. Evan Sotiropoulos, "Private members' bills more often just a penny for MPs' thoughts," *The Hill Times*, November 1, 2010.
7. O'Brien and Bosc, eds. *op. cit.*
8. Samara, "It's My Party": *Parliamentary Dysfunction Reconsidered*, Toronto, 2011, p. 21.
9. O'Brien and Bosc, eds. *op. cit.*