
Are Private Members' Bills A Useful Tool in Today's Legislatures?

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Private Members' Bills are ones presented by members who are not part of cabinet. They may be opposition members or private members on the government side. This article argues that private members' bills are useful mechanisms to serve citizens regardless of whether the bill passes or not. They can serve as a catalyst for generating the discussion and motivation required to achieve the policy end.



My own interest with private member's bills started in the winter of 2007 while I was serving as the Minister of Labour for the Calvert government in Saskatchewan. The Opposition had announced in early January that it was going to introduce a private member's bill regarding Reservists Leave

in the upcoming spring sitting. Following a quick discussion, the government announced in a press release that it would "work with the Official Opposition Saskatchewan Party to bring about the necessary changes." I was quoted saying, "This is an instance where the government and the opposition can – and should – work together." Although the private member's bill was tabled, we ultimately brought forward the necessary changes in a government-sponsored bill.

Many political observers and politicians believe that private member's bills can be an effective way for private members to serve their constituents. Brazier and Fox write:

It enables individual parliamentarians to develop their role as initiators of policy, as campaigners, and as legislators, it provides a useful check on the executive and it offers a valuable channel to ensure Parliament can address emerging topical

issues, thereby demonstrating its responsiveness to evolving matters of public concern."¹

In the last three years, as a member of the Opposition, I have sponsored three private members' bills (Protection of Service Animals, The R Word, and currently, Bill 601, Jimmy's Law) with varying degrees of success. I am now, more than ever, convinced that private members' bills are an effective tool for MLAs to meet the needs of our constituents and our citizens through their Legislature.

Many have suggested that there are four key elements that lead to the success of a private member's bill; 1) the substance of the bill, 2) the engagement of the stakeholders and interested public, 3) media engagement and now social media and 4) openness of the government to entertain private member's bills.

Getting Things Done

I want to reflect on my four experiences with private members' bills as each one illustrates important elements of our role as elected representatives (whether in government or in opposition) when we serve our constituents, whether they are individuals or stakeholders with a special interest.

The Reservists Leave Bill, initially launched by the Opposition of the day, really illustrates the flexibility of a private member's bill to respond quickly to an emerging need or a gap in government policy. We were at war in Afghanistan and local reservists felt that they needed job protection should they be required to take a leave to serve in the Canadian Forces. They actively lobbied both sides of the House to get the necessary amendments to the Saskatchewan Labour Standards Act, a statute for which I was responsible as Minister of Labour.

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The Opposition seized the opportunity to champion this issue, causing the government to explain itself, really an indefensible position. As Minister of Labour, at the request of the premier of the day, I offered to work together with the Opposition by first consulting with the stakeholders and then drafting the appropriate legislation. While we did not include all aspects of the private member's bill in the government sponsored legislation (they wanted to include a scholarship program, which they later passed when they became government), we were able to achieve the Opposition's cooperation and support for a number of reasons: First, the government was open to the issue and was able to assure that the necessary amendment was drafted correctly because it could bring its resources to the table. Secondly, we were also prepared to give the Opposition credit in the House for their efforts.

The experience taught me some valuable lessons:

- We were able to achieve a significant policy objective on behalf of a group of citizens. Focusing on this objective (rather than on political wins and losses) meant that cooperation with the other side of the Legislature was mutually beneficial.
- The policy issue itself, the right of reservists to have their jobs protected when they take leave from their employment to serve in the Canadian Forces, was (if I may be colloquial) a "righteous" one – a substantive matter that required a policy solution.
- Giving credit where credit is due allows all sides of the Legislature to secure "political" wins.

I have taken these lessons forward in my experience in Opposition, where I have now tabled three private members' bills.

My next experience with a private member's bill was Bill 617 *An Act to Provide for the Protection of Service Animals* in November 2010. This was my first experience tabling a private member's bill.

I do not think many private members' bills are of original thinking, we often borrow from others and this certainly was the case here. Through contacts and discussions, it came to my attention that throughout North America, Animal Protection Acts were being updated to give greater protection to service animals. Modeled after *Layla's Law* from Washington State and via Sharon Blady an MLA in Manitoba, I became aware of this initiative in April 2010. I reached out to some local activists in the disabilities community and to the Saskatoon Canine Police Unit over the summer of 2010 and invited them to discuss this issue. Little did I know that each group was already working on the same issue independently calling for similar legislative protection. They were happy to join together in this work.

At the same time, although we were unaware of it, the government was preparing a major update to the *Animal Protection Act* – although this update did not include additional protection for service animals. The government was equally unaware of our work until we made it public on November 22, 2010. We had built a strong coalition of the disabilities community and police forces. The best part, was the day I introduced *The Service Animals Bill*, we had nine service animals in the Legislative chamber. It was quite the occasion – even the security folks had to smile!

In spite of the House being at the first stages of pre-election rumblings, the government took *The Service Animal Protection Bill* and essentially rolled it into its very own section of the government's bill before the House. It passed third reading on December 8 (only 2 weeks after the private member's bill had been tabled) – very quick work!

Of course this was very good news for the stakeholders as their needs were being met. But more than that it meant they had the government as the administrator for the new Act. This is no small thing as it often becomes a problem for private member's bills. Who looks after the details once the bill is passed?

This bill had some similar characteristics to the amendments to *The Labour Standards Act* to address reservist job security. It was a substantive issue and it had a strong coalition of affected stakeholders. However, there was one added element in this case – the government was already planning significant amendments to the relevant statute. This made it a relatively simple matter for the government to cooperate. The policy issue we were trying to address was easily rolled into their process.

In our own caucus, the decision regarding whether to cooperate with the government or not was not an easy one. The pre-election time period was just beginning and the issue had created significant profile for our caucus. In the end, it was the issue itself that won out. We realized that we were able to achieve our goal by cooperating with the government and citizens were well served. There was sufficient media attention to the issue to go around and the affected stakeholders were appreciative of our efforts on their behalf.

I introduced *The Respectful Language Act* on April 18, 2011 calling for the removal of the last traces of the "R" word (references to mental retardation) from our statutes. I also called on the government to look through their print and on line materials to change any negative references to more respectful language. Many of us will be aware of the campaign against the

“R” word. Rosa’s Law, in the United States is one of the first examples of this effort. Again, here was an occasion where a very effective stakeholder group wanted a very focused but important job done by their legislators. I happened to be at a People First event calling for the end of the “R” word and, after hearing the arguments, I felt I needed to act and I had the tool to do it – a private member’s bill. Again the bill was not passed but the effect of the private member’s bill was felt throughout government and the point was made. There remains more work to be done in this area in Saskatchewan (and I am sure in other jurisdictions as well) and legislators will hear more about this.

My current project, Jimmy’s Law, Bill 601, was tabled in the Saskatchewan Legislature in December 2011. This is a more substantive bill than the others in that it calls for greater protection for late night retail workers by having two employees at the store or barriers in place. Largely based on Grant’s Law from British Columbia, this effort came about because of the shooting death of gas bar employee, Jimmy Wiebe, of Yorkton in 2011 while he was working a late shift.

After the incident, Jimmy Wiebe’s friend, Aaron Nagy, started a social media campaign gathering considerable support for the introduction of greater protections for late night retail workers, including some support from organized Labour. Shortly after the fall election, we decided to take on the issue. In this case, the interested stakeholder group was not organized and identifiable. While the issue itself was substantive, there was not a clearly defined group advocating for it as had been the case for other private member’s bills I have been involved with. Our first job was to get some media attention to the issue and to also build awareness of the issue among late night retail workers. We launched midnight tours in eight of our larger cities to highlight the working conditions in our late night retail stores and to meet with late night retail workers. The lesson here is media engagement. We garnered a lot of media interest for this issue and interestingly the media has continued to be very engaged as they have conducted follow-ups over the year.

While the bill was not dealt with in the session and will likely die on the order paper, the final settlement of the issue is not yet resolved. We have a commitment from the current minister that action will be taken. We are not yet sure what form that action will be, but it is likely to be amendments to *The Occupational Health & Safety Regulations*. If there is no action, we will likely retable the bill.

I would argue from my own experiences that, through circumstance and political management, private member’s bills can be effective tools to address

emerging policy issues and gaps. Of the four key elements that lead to the success of a private member’s bill; (the substance of the bill, the engagement of the stakeholders and interested public, media engagement and now social media and openness of the government to entertain private member’s bills). Those of us in Opposition have little control over the last of these points. We do have considerable control over the first three. In my experience, it is the management of these that can lead to success – recognizing that success may not necessarily mean the passage of a bill.

Potential Enhancements

In the course of my experience and my reading there are several ideas in the literature that offer some help in making private member’s bills more effective. I bring forward three suggestions for discussion.

First, cap the number of private member’s bills introduced. Interestingly, the number of private member’s bills being introduced across Canada is very uneven and the argument is made especially in the House of Commons that some private member’s bills are really introduced only for first reading impact. For example the number of Federal private member’s bills in the 39th Session was 355, 40th session 441 and in this session so far, 230. Provincial private member’s bills ranged from British Columbia (15), Alberta (2), Saskatchewan (3), Manitoba (17), Ontario (88), Quebec (34), Nova Scotia (52) New Brunswick (8), Newfoundland & Labrador (0), Prince Edward Island (0), Northwest Territories (0), Yukon (3).

This suggestion raises a lot of questions about processes of selection of private member’s bills (such as the federal lottery process). If we are committed to focusing on substantive issues, should there be a determination of merit or support?

Secondly, consider the implication of Prorogation on private member’s bills. This is an important issue here in Saskatchewan as government bills are carried forward but not private member’s bills. The likelihood of a private member’s bill actually making it through all the legislative stages is very limited as there is just not the time for it. Specifically, my current bill 601 will likely die on the order paper at prorogation, as it cannot be brought forward. Alternatively, others argue that prorogation is a way of cleaning up the private member’s bill’s clutter as they are seldom introduced with the intention of seeing them go through to third reading.

Third, consider different procedures when a private member’s bill has broad support. These procedures would have to be developed at the local level, bringing

into account scheduling, committees and so forth but the implication is that some private member's bills have significant support across the House and they are worth the extra resources such as committee support, research and drafting resources. The test for "broad support" is likely to be difficult to negotiate, but there is some merit in exploring the matter more fully.

Several themes emerged through my work as a legislator on private members' bills. If private members are to fully serve the needs of their constituents then a private member's bill can be an effective tool in their tool kit. They enhance legislators' work and relevance to their constituents both inside and outside the chamber.

Strategically, private members' bills play an important role in shaping policy and giving voice to stakeholders and the public as well as responding quickly to emerging social and economic issues.

The sticking point though, seems to be on how to allow private member's bills to have a higher success rate in actually passing and becoming law and accessing the necessary resources to do so in the current circumstances. Interestingly though, while some will argue that change is needed, others would say it is not. They would suggest that the status quo is quite effective as it is – the challenge for private members and private member's bills is really political strategy and management.

Many politicians will remember some very effective private member's bills from their own day, I would add these two bills as positive examples for those who believe that private member's bills have no place in our chambers:

- The *Commonwealth Electoral Bill 1924*, in Australia introduced compulsory voting for federal elections. Senator Herbert Payne's private member's bill was passed in 1924, with less than 1 hour's debate.
- NDP MP Lynn McDonald's private member's bill,

the "Non-smokers' Health Act" 1986, restricting smoking in federally regulated workplaces and on airplanes, trains and ships. The bill was passed in a free vote despite being voted against by all members of the cabinet, including the Minister of Health.

Many would argue that the intent of a private member's bill is not necessarily to have the bill make it to third reading, because of the almost certain failure rate but to keep it alive so the issue remains for public debate. I have found this to certainly be the case. In fact a private member's bill has an interesting way of getting results not by the usual means and that's all that matters to our constituents. The lyrics from a song by the Rolling Stones succinctly summarizes my philosophy about Private Members' Bills.

"You can't always get what you want,
But if you try sometimes You just might find,
You get what you need"

Mick Jagger, Keith Richards, 1969

Notes

- 1 Alex Brazier and Ruth Fox. "Enhancing the Backbench MP's Role as a Legislator: The Case for Urgent Reform of Private Members Bills." *Parliamentary Affairs* 63, no. 1 (January 2010): 201-211. Available at: <http://pa.oxfordjournals.org/content/by/year> Accessed October 2011.

For additional articles on Private Members' Bills see Mark Holland, "Private Members' Bills from a Perspective of a Parliamentarian." *Journal of Parliamentary and Political Law* 4 (2011): 91-94. Linda Jeffrey, "Private Members and Public Policy." *Canadian Parliamentary Review* 31, no. 4 (Winter 2008-09): 2-6. Evan Sotiropoulos, "Private Members' Bills in Recent Minority and Majority Parliaments." *Canadian Parliamentary Review* 34, no. 3 (Autumn 2011): 34-37. R.R. Walsh "By the Number: A Statistical Survey of Private Member's Bills". *Canadian Parliamentary Review* 25, no. 1 (Spring 2002): 29-33.

Editor's Note: On November 7, 2012 the Government of Saskatchewan announced new regulations similar to what was proposed in Jimmy's Law, Bill 601 to better protect late-night retail workers from violence in the workplace. The regulations include safe cash handling procedures, use of video cameras, and the provision of good visibility and signage for all late-night retail premises. In addition, the regulations will require a check-in system and personal emergency transmitters to be provided to all workers working alone in late-night retail establishments.