
Omnibus Bills in Theory and Practice

Louis Massicotte

There is no concise definition of what is an Omnibus Bill. O'Brien and Bosc (2009) state that an omnibus bill seeks to amend, repeal or enact several Acts, and is characterized by the fact that it has a number of related but separate "initiatives". The latter word is an improvement over the previous edition, by Marleau and Montpetit, that spoke of separate "parts" – plenty of bills are divided into Parts, without being omnibus bills at all. This article looks at the use of omnibus bills in Canadian provinces, the United States and in the House of Commons, particularly Bill C-38 the Budget Implementation Bill. It argues that the extensive use of omnibus bills is detrimental to the health of our parliamentary institutions.

Anybody looking for a detailed statistical compendium showing how many omnibus bills were introduced and passed in the Canadian Parliament and in provincial legislatures would search in vain. Comparable figures are easily available if you are searching for the number of public bills, private bills, appropriation bills, taxation bills, private members' public bills and the like. They can be found, for example, in the marvellous work of former Senator Stewart, who met the challenge of making parliamentary procedure intelligible for those I would call the "middle-informed", those whose knowledge on the topic is higher than among the public at large without exceeding that of the practitioners of Parliament.

It is time-consuming, but not too difficult, to go through the *Journals* and the statute books in order to "code" each piece of legislation under the appropriate heading. Private bills, though formally sponsored by an MP or a Senator, are introduced by way of a petition submitted by a physical or moral person outside of Parliament. Appropriation bills are passed under a distinct set of rules that provide for lengthy consideration of estimates by special committees followed by an extremely quick process whereby the three readings are done within a few minutes. Taxation bills necessitate the preliminary passage of ways and means motions, and in the past they had to be studied in Committee of the Whole. Government bills are

sponsored by cabinet ministers and bear the Royal Recommendation. Private Members' Public Bills can be sorted through by looking at the party affiliation of their sponsor, etc. No specific procedure is applicable to omnibus bills that would facilitate research on the issue.

The underlying "basic principle or purpose" of an omnibus bill can be anything, ranging from the most innocuous to the most controversial. As an example of hardly objectionable purpose, I can cite the British practice of passing at times, from the 1860s onwards, a *Statute Law Revision Act*, that repealed legislative enactments that had become spent. Some Commonwealth countries, like Canada and Australia, have emulated this practice. Constitutional scholars are aware that some of those bills repealed provisions of Canadian constitutional documents, without Canada either requesting or objecting to the measure, because such bills really amounted to cleaning jobs. Hundreds of different statutes could be altered at one stroke by such pieces of legislation, the basic purpose of which was to expunge from the statute book provisions that were either obsolete or spent. Five years ago, Ireland passed a statute of that nature that repealed no less than 3,225 statutes, arguably a world record.

Such bills normally do not raise controversy. But they might. In British Columbia, they are called *Miscellaneous Statutes Amendment Acts*, and are a regular occurrence. In the 2009 edition of this Bill (No. 13), the BC Civil Liberties Associations singled out a provision (s. 77) that amended the province's *Municipalities Enabling and Validating Act*, by allowing municipal officials in the Vancouver area to remove unauthorized signs during the period of the Olympic Games in 2010.

Louis Massicotte is a Professor in the Department of Political Science at Laval University. This is an edited version of his presentation to the Canadian Study of Parliament Group on October 10, 2012.

The Council of Canadians, which intended to post such signs, launched a campaign against the bill.¹ The controversial measure was nevertheless passed.

Americans have their own definition of “Omnibus bills”. The *Duhaime Legal Dictionary* offers the following: “A draft law before a legislature which contains more than one substantive matter, or several minor matters which have been combined into one bill, ostensibly for the sake of convenience”.² As we shall see later, most US State Constitutions prohibit the introduction of bills that deal with more than one subject at a time.

Omnibus bills are not new. When did this practice begin? *O'Brien and Bosc* suggest that this is an ancient practice, quoting an 1888 private bill that confirmed two separate railway agreements.³ More recent examples are cited from the 1950s onwards by the same source.⁴ My earliest personal recollection of hearing the expression “omnibus bill” dates back to December 1967, when Pierre Trudeau, then Minister of Justice, introduced his landmark Criminal Law Amendment Bill, which dealt with issues as varied as homosexuality, abortion, contraception, lotteries, gun ownership, drinking-and-driving penalties, harassing phone calls, regulated misleading advertising and even cruelty to animals.⁵ The underlying purpose was to make criminal law more in tune with modern times, but the argument could be made that these were really different issues and that few members of Parliament were likely to agree with each and everyone of the proposed solutions.

Another very controversial omnibus bill was Prime Minister Trudeau’s Bill C-94, *The Energy Security Act 1982*, that raised the ire of the Progressive Conservative opposition. Upon the refusal of Speaker Sauvé to divide the bill, the Conservatives refused to allow their whip to join the Liberal whip after bells started ringing for a division, with the result that the sitting of March 2, 1982 lasted two full weeks during which the bells rang continuously. Gallant parliamentary constables on duty were provided with ear plugs in order to carry their duties without risking lifetime deafness. In the end, the government agreed to divide the bill into eight separate pieces of legislation. In 1988, Bill C-130, implementing the Canada-US Free Trade Agreement, raised concerns as well. During the 1990s, governments started to present Budget Implementation bills, which leads us to Bill C-38.

Omnibus Bills in Canadian provinces

One may ask: “Are Canadian omnibus bills confined to Ottawa”? The answer is no. To my knowledge, there is no exhaustive treatment of the matter but I

was able to find mentions of omnibus bills in at least seven provinces throughout the country: Ontario and Quebec, of course, but also Manitoba, Alberta and British Columbia, Nova Scotia and even Prince Edward Island, with a Speaker having to issue a ruling in Alberta (26 May 1997) and Ontario (5 December 1995).

In Québec, the Parti Québécois started in the early 1980s to present omnibus bills that purported to combine into a single piece of legislation numerous short single-issue bills, in order to expedite their passage. The Liberal opposition objected, stating that this practice violated parliamentary tradition that required a vote on the principle of a bill at second reading. They claimed that such omnibus bills actually included more than one principle. Upon their return to office in 1985, the Liberals discontinued this practice, with the result that the total number of bills increased markedly. I remember hearing a superficial observer poking fun at this apparent “legislative inflation” coming from a government that had promised to “legislate less”, not realizing that the total number of bills had suddenly increased merely because of the abandonment of omnibus bills.

The *Standing Orders* of the Québec National Assembly now include specific provisions (S.O. 258 to 262) on how omnibus bills are to be dealt with. Such bills are known as “*Projets de loi modifiant plusieurs lois*”, and are defined as “*un projet de loi ayant pour seul objet d’apporter plusieurs modifications de nature mineure, technique, corrective ou de concordance à des lois* ». The wording of the standing orders clearly acknowledges that such measures have more than one principle, and may cover topics on which many standing committees have jurisdiction. In this case, the Government House Leader may move after second reading that the bill be referred to a special committee, to the committee of the whole or to a specific standing committee. Clearly, omnibus bills like C-38 are much more ambitious than that.

Omnibus Bills in the United States

Another question, related to the previous one, is whether omnibus bills are a universally accepted practice that only those who indulge in nostalgia for older days can deplore. This does not appear to be the case, as some jurisdictions have outlawed this legislative technique. For example, the Constitution of California provides (Art. 4, Sec. 9) that “a statute shall embrace but one subject, which shall be expressed by its title. If a statute embraces a subject not expressed in its title, only the part not expressed is void”. This is no isolated case. A list of US States constitutional

provisions that require bills to deal with one subject at a time has been compiled.⁶ We learn that no less than 42 States have provisions of this nature, though appropriation bills are often exempted from this requirement.

Why did so many jurisdictions come to prohibit omnibus bills? In 1901, the Commonwealth Court of Pennsylvania offered a comment on legislative proceedings that can rarely be found in judicial decisions. In *Commonwealth vs. Barnett* (199 Pa. 161), the Court said the following about the situation that prevailed before the adoption in 1864 of an amendment to the State Constitution that prohibited the passage of bills containing more than one subject:

“Bills, popularly called *omnibus bills*, became a crying evil, not only from the confusion and distraction of the legislative mind by the jumbling together of incongruous subjects, but still more by the facility they afforded to corrupt combinations of minorities with different interests to force the passage of bills with provisions which could never succeed if they stood on their separate merits.

So common was this practice that it got a popular name, universally understood, as *logrolling*.

A still more objectionable practice grew up, of putting what is known as a *rider* (that is, a new and unrelated enactment or provision) on the appropriation bills, and thus coercing the executive to approve obnoxious legislation, or bring the wheels of the government to a stop for want of funds.

These were some of the evils which the later changes in the constitution were intended to remedy.”⁷

Considering that so many former politicians were sitting on the bench in those days, one may wonder if the learned judges did not have first-hand knowledge of the subject!

The US Congress does not appear to have embraced this rule. There is an organization called “Downsize DC”, that is campaigning for the adoption of a “One Subject at a Time Act” (OSTA), in order to:

“Stop Congressional leaders from passing unwanted laws by attaching them to popular, but unrelated, bills; Require each bill to be about ONLY one subject, and to stand or fall entirely on its own merits; Make it easier for your elected officials to represent you by allowing them to vote on specific proposals, instead of on groups of bills containing divergent measures; Create a *de facto* “line item veto” by putting only one measure under the President’s pen at any one time; and Give [the public] expanded influence by making bad legislation more vulnerable to public opposition.”⁸

On January 23, 2012, Representative Tom Marino, a Republican from Pennsylvania, introduced in the US House of Representatives Bill HR 3806, The One Subject at a Time Act, that purports “to end the practice of including more than one subject in a single bill by requiring that each bill enacted by Congress be limited to only one subject, and for other purposes”.⁹ The Bill has not been passed.

The Case for Omnibus Bills

What are the motives behind omnibus bills? What led legislators (in our case, successive governments) to turn to this legislative technique?

Omnibus bills, when presented in legislatures where members are free to vote as they wish, may include the outcome of complex negotiations between self-interested legislators. One wishes a bridge over a river, another one cries for a new building for the school, a third one pushes for a subsidy for a local orchestra and so on. Probably none of these measures, presented in isolation, would muster enough votes to pass, so what if legislators engaged in deals following which a single package will include all of the above? There is an old saying that “I’ll scratch your back, you scratch my back”, sometimes followed by “and if you don’t scratch my back, I will scratch your nose”. This practice was common in US state legislatures in the past, and it still survives during appropriation debates. Mind you, this is the way we have conducted constitutional negotiations from the 1970s to the 1990s. Documents like the *Victoria Charter*, the final patriation deal, the Meech Lake and Charlottetown Accords were all based on the assumption that nobody would be satisfied by each facet of the deal if considered in isolation, but that we should try to include in the package a little something for everybody, so as to generate a minimal consensus, if not genuine enthusiasm for the whole package.

In the US Congress, the possibility that the President may veto a bill, but in this case has to veto the entire bill, not just the provisions he objects to, has led Congress to devise legislative measures that mix items the President agrees with (or could object to only at great political cost) with items that he finds definitively unacceptable, thus placing the President in a difficult quandary. Most US states prevent this by empowering their respective Governors with a line item veto.

In legislatures dominated by a single party, like ours, omnibus bills do not aim at generating a wider consensus. They can be defended on the ground, for example, that measures 1 to 67 being supported by all parties, why wasting precious legislative time by

considering them distinctively? This is the ostensible purpose of the statute law revision acts quoted above. Or there may be a very obvious common thread among myriads of small measures, like adapting the statute law to the *Charter of Rights*.

From the point of view of the government, omnibus bills have plenty of advantages, which may explain why governments of all stripes have adopted this technique at times. First, they save time and shorten legislative proceedings by avoiding the preparation of dozens of distinct bills necessitating as many second reading debates. The House of Commons used to sit about 175 days a year on average prior to the 1991 procedural reforms. In 2010, there were only 136. This had the side effect of sparing the government quite a few question periods. This reasoning of course assumes that the opposition does not retaliate by engaging in dilatory manoeuvres that have the effect of lengthening the legislative process. The bells crisis of 1982, or the multiplication of amendments to C-38 recently, stand as a warning on that account.

Second, omnibus bills generate embarrassment within opposition parties by diluting highly controversial moves within a complex package, some parts of which are quite popular with the public or even with opposition parties themselves. Omnibus bills tend to be bulky. You must first analyze them thoroughly, and reach a decision as to whether those items you disagree with are abhorrent enough to warrant rejecting the whole package. The government could then turn to the public and lament the fact that opposition parties wanted to prevent the adoption of measure so and so, which everybody likes. The French have an expression for this in their parliamentary procedures: *“la carte forcée”*. This is a dilemma we are all facing at times as consumers when selecting for example a cable TV package, an organised trip, a life insurance policy or a subscription to the year’s concerts. Obviously, this is not a justification for including all of the above in a single package!

The fact that Canadians had minority administrations from 2004 to 2011 may have something to do with the development of omnibus bills dealing with budget implementation. The 2005 bill introduced by Paul Martin was bigger than earlier legislations of this type, and the bills later introduced under Stephen Harper continued and amplified the trend. Omnibus bills may be seen as a weapon used by minority governments to ensure their survival, as they may diminish the likelihood that all opposition parties agree to defeat the government on one specific issue. Whether the continuation of this practice is warranted in a majority context remains matter for debate.

The Dangers of Omnibus Bills

Bill C-38 has been widely condemned, and criticisms came from unexpected sources.¹⁰ Why are so many people concerned about omnibus bills? The reasons are in many ways the exact reverse of the previous ones. From the point of view of the opposition, omnibus bills are as attractive as the closure, time allocation, supply guillotines and so on. They create quandaries for opposition parties and oblige them to object to some popular measures delicately hidden in a less attractive package.

The real question, however, beyond the convenience of the government or of the opposition parties, may well be: is the public interest well served by omnibus bills? Take for example the clause-by-clause study in committee. When a bill deals with topics as varied as fisheries, unemployment insurance and environment, it is unlikely to be examined properly if the whole bill goes to the Standing Committee on Finance. The opposition parties complain legitimately that their critics on many topics covered by an omnibus bill have already been assigned to other committees. The public has every interest in a legislation being examined by the appropriate bodies.

We know that Speakers have consistently refused to act as referees on such issues, while at times hinting that the House might provide for some special procedures. One of them, Lucien Lamoureux, came up with what is probably the best question: is there any end? Could a government wrap up half of its legislative programme into a single measure dealing with the improvement of the life of Canadians or ensuring prosperity for all?

We often hear that omnibus bills are like closure and time allocation: “all governments do it”, which of course is true. This is why some of the most eloquent pleas against the practice of omnibus bills have been made in the past by the present Prime Minister, and were no less eloquently refuted by then Cabinet ministers now sitting in opposition. But in recent years, the logic behind omnibus bills has been pushed to extremes never seen before. It has been computed that between 1994 and 2005, budget implementation bills averaged 73.6 pages, while since 2006 they averaged 308.9 – four times longer.¹¹ But the increase is even more huge than it looks. While during the first period a single budget implementation bill was presented each year (there were none in 2002 and two in 2004), bills of that nature have since then been presented twice a year except in 2008, when there was a single one. The yearly average of budget implementation legislation in recent years is therefore closer to 550 pages – this is seven times longer! Another contrast is that during

the first period, budget implementation bills tended to be slimmed down markedly between first reading and Royal Assent, while in recent years they kept their initial size throughout.

The debate on Bill C-38 reminds us that omnibus bills have become a slippery slope now generating high controversy. In my view, they do little to improve the already low esteem in which legislators are held by the Canadian public. My colleague Ned Franks wrote three years ago that omnibus budget implementation bills “subvert and evade the normal principles of parliamentary review of legislation”.¹² I fully concur with his assessment.

Notes

- 1 “ACTION ALERT : Oppose BC’s Miscellaneous Statutes Amendment Act”, 14 October 2009, website <http://www.canadians.org/campaignblog/?p=1976>, accessed September 23, 2012.
- 2 Duhaime Legal Dictionary, “Omnibus Bill definition”, website <http://www.duhaime.org/LegalDictionary/O/OmnibusBill.aspx>, accessed on September 22, 2012.
- 3 Audrey O’Brien and Robert Bosc, *House of Commons Procedure and Practice*, 2nd. Editions Yvon Blais, 2009 pp 724-725.
- 4 *Idem*, fn. 81.
- 5 Lorne Gunther, “Omnibus bills in Hill History”, *The Toronto Sun*, 18 June 2012, website <http://www.torontosun.com/2012/06/18/omnibus-bills-in-hill-history>, accessed September 23, 2012.
- 6 “‘One Subject at a Time’ Excerpts from State Constitutions”, website <http://www.downsizedc.org/files/1subject-excerpt-state-constitutions.pdf>, accessed on September 23, 2012.
- 7 Quoted in “Omnibus Bill Definition”, see note 2 above.
- 8 <https://secure.downsizedc.org/etp/one-subject/>, accessed on September 23, 2012.
- 9 <http://www.govtrack.us/congress/bills/112/hr3806>, accessed on September 23, 2012.
- 10 “Editorial: Omnibus bills fundamentally undemocratic”, *The Gazette*, Montreal, September 22, 2012; Michael Den Tandt, “Op Ed: Omnibus bill fuels fire that eventually will burn Tories”, *Edmonton Journal*, June 13, 2012; John Ibbitson, “Tread carefully, Tories: Governments can live to regret omnibus bills”, *The Globe and Mail*, May 8, 2012; Andrew Coyne, “Bill C-38 shows us how far Parliament has fallen”, *The National Post*, April 30, 2012; Manon Cornellier, “Dernier vote sur le C-38: Au mépris de la confiance”, *L’Actualité*, June 18, 2012; Carole Beaulieu, “L’autre loi qui change tout”, *L’Actualité*, May 25, 2012; Kelly McParland, “Elizabeth May leads commendable effort to halt Tory omnibus juggernaut”, *The National Post*, June 11, 2012.
- 11 Aaron Wherry, “A rough guide to Bill C-38”, *Maclean’s Magazine*, June 6, 2012, website <http://www2.macleans.ca/2012/06/06/a-rough-guide-to-bill-c-38/>, accessed on October 7, 2012.
- 12 C.E.S. Franks, “Omnibus bills subvert our legislative process”, *The Globe and Mail*, July 14, 2010, <http://www.theglobeandmail.com/commentary/omnibus-bills-subvert-our-legislative-process/article1387088/> accessed on October 7, 2012.