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Private Members' Public Bills: What They Are and How They're Made

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Legislative Overview Series

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Summary

This research paper discusses the purpose and practice of Private Members' Public Bills in Ontario, with special attention to the process that leads from ideas to law.

Introduction

Private Members' Public Bills (PMBs) are an important tool that Members of Provincial Parliament can use to shape law and public policy in Ontario. PMBs allow backbench and opposition Members to take a direct hand in legislating responses to policy problems. The overwhelming majority of bills sponsored by ordinary Members, rather than government Ministers, will not become law. But the last several Parliaments have witnessed a marked increase in how many PMBs are passed. Moreover, PMBs can prove consequential even when they are not passed, by preparing the groundwork for government legislation, creating pressure, or galvanizing public awareness.

What are Private Members' Public Bills?

Most bills passed by the Legislative Assembly of Ontario are Government Bills—bills tabled by a Minister on behalf of Cabinet. But like other Westminster parliaments, the Assembly also provides opportunities for Private Members (MPPs who are not Cabinet Ministers and do not belong to the Executive) to introduce their own bills.

If passed, Private Members' Public Bills have the same effect on law as Government Bills. They can create new statutes or amend existing laws. The key difference is that Private Members' Bills cannot be “money bills”: they cannot involve the raising or spending of public funds. This limitation is codified in the Standing Orders (S.O. 60), the *Legislative Assembly Act*,¹ and the constitution itself.² Occasionally the Speaker of the Assembly will be asked to rule on whether a PMB should be considered a money bill because it directs public expenditure or raises a tax. If the Speaker finds that this is the case, the bill is removed from the Order Paper and cannot proceed.

Why “public” bills?

Private Members in the Legislative Assembly can table both public bills and private bills. Private bills are substantially different in content and procedure; they deal with the private interests of an individual or organization (e.g., providing a specific organization with an exemption from general law). Individuals and organizations apply to the Assembly for

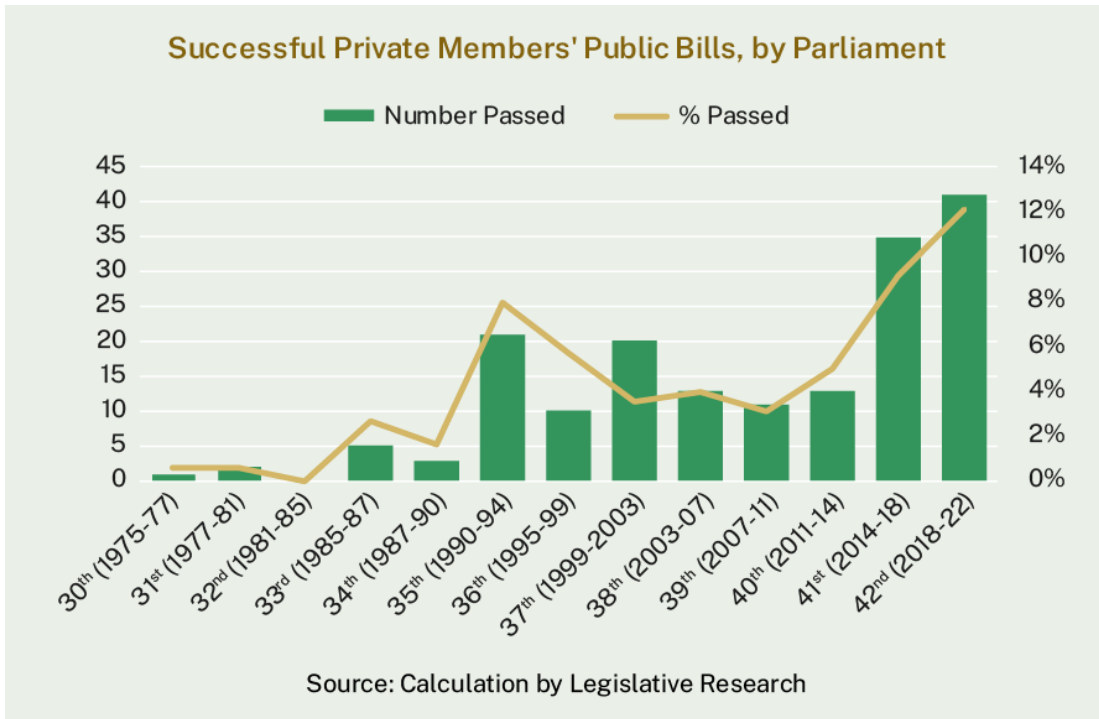
consideration in a private bill, but a Member must introduce the bill in the House. At the Legislative Assembly of Ontario, PMBs are so labelled to make a distinction between the two kinds of bills that an ordinary MPP can sponsor.

The Re-Emergence of PMBs in Ontario

The presence of PMBs at the Legislative Assembly has waxed and waned over time. In the mid-20th century, private members' business was diminished to near-irrelevance. Members continued to produce and table bills, but they received little serious attention in the House. The Assembly passed just a single PMB between 1955 and 1975.³

But in the 1970s, several high-profile reform efforts were undertaken to empower the institution and its Members, resulting in key procedural changes. After 1977, PMBs could come to a vote if they were not blocked; they could no longer simply be "talked out" without any result. Later, the House limited and finally abolished rules that permitted other Members to block a vote on a PMB. The changes resulted in a modest revival of PMBs, with more bills being introduced and passed. It remained the case, however, that the vast majority of PMBs failed to receive debate, and a tiny number became law. In the Parliaments of the 1980s and 90s, on average, fewer than 4% of PMBs passed.

As illustrated in the figure below, recent Parliaments have seen a spike in both the number and share of PMBs that are passed. In each of the last two Parliaments, the Assembly passed more than 30 PMBs. That translates to a success rate of more than 10% of PMBs that were introduced. Nearly a third of total bills passed in the 42nd Parliament were PMBs. In recent years, private members' business has come to assume a markedly greater proportion of the Assembly's work and output.



Beginning the Process

Before Members get to work in earnest with drafting and debating PMBs, there is an important first step which sets the stage for private members' business in the upcoming session.

The Ballot

The order in which PMBs will be considered is established at the outset of a new Session. The order is critical, because far more PMBs will be introduced than will receive debate or ever come to a vote. At the beginning of a new Session, the names of all the MPPs but the Premier, Cabinet ministers, and the Speaker are entered into a ballot box. The Clerk of the Legislative Assembly draws names, establishing the order. Members do not have to indicate at that time what item of business they intend to introduce.

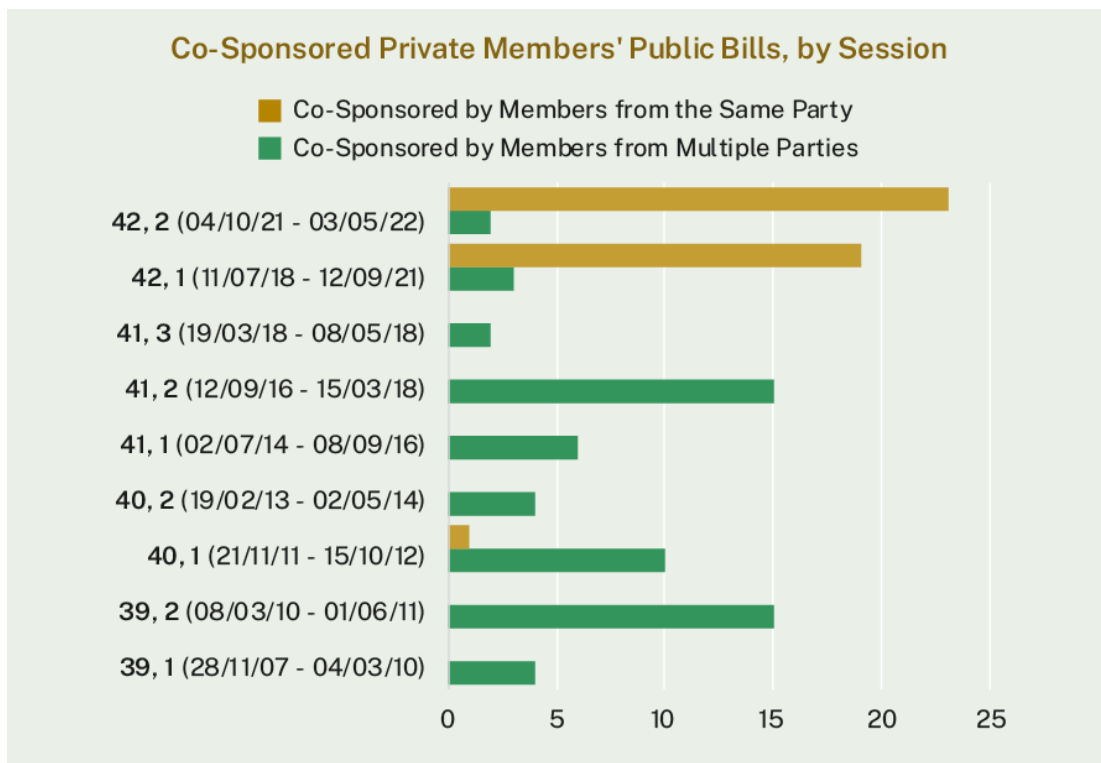
The order can be changed subsequently by a motion passed by the House. Two Members can also agree to trade spots. To do so, they must provide written confirmation of this change to the Clerk, signed off by House Leaders from their party or respective parties.

In order for a Member's business to be considered during PMPB, it has to be designated on the Order Paper eight sessional days before the date of consideration (i.e. the Member's

ballot date). If the Member doesn't have any business designated, by default the first eligible public bill in their name on the Order Paper is considered, then the first eligible motion. If they have no business on the Order Paper on the date of the deadline, the Member loses their spot in the Order of Precedence, and no private members' business is conducted that day.

Collaborate or Go It Alone?

Most PMBs are sponsored by a single Member, but since 2008 the Standing Orders have permitted up to four Members to co-sponsor a bill. In that case, the co-sponsors determine among themselves who coordinates the drafting process and designates the bill as their item of business. Bills can be sponsored by Members of the same party or of multiple parties, as well as by independent Members. The figure below shows that in the first three Parliaments after co-sponsorship was permitted, almost all co-sponsored bills crossed party lines. The most recent Parliament saw an increase in co-sponsorship, but most co-sponsored bills came from Members of the same party. This shift reflects changes to the Standing Orders, which until 2020 provided that bills could only be co-sponsored by up to one Member from each recognized party plus an Independent. Currently, any four private Members may participate in co-sponsorship.



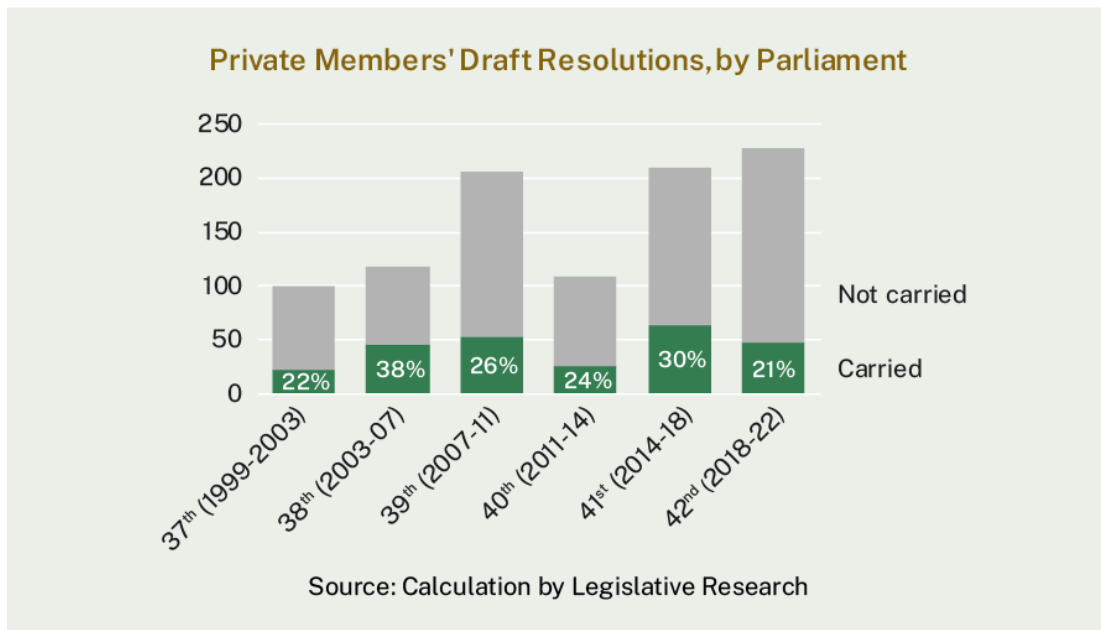
Co-sponsored PMBs have been much more likely to become law than those sponsored by single Members. Approximately one-third of co-sponsored PMBs have received Royal Assent, compared with about 5% of sole-sponsored PMBs over the same period. Twenty-six of the

twenty-nine total successful co-sponsored PMBs were sponsored by Members from multiple parties, suggesting that support across party lines can be an important ingredient in the success of PMBs.

Bill or Motion?

Rather than introducing a bill, an MPP also has the option to move a private Member's motion. A motion does not change the law, and is not binding on the government. It simply provides an opportunity for the Legislative Assembly to express an opinion on a question. A motion begins "that in the opinion of this House..." followed usually by an expressed view or concise call to action. If the House votes in favour of the motion, it becomes a formal statement of the House's view.

While a successful motion has less direct impact than a passed bill, Members may opt to introduce a motion for several reasons. For example, while a Member cannot introduce a money bill that would obligate the government to spend money on a certain issue, they can move a motion calling on the government to do so. Motions can also be relatively swift responses to fast-moving events, as they require fewer procedural steps than bills. Private members' motions also have a greater likelihood of passing. As shown in the figure below, over the last five Parliaments about one-third of draft resolutions, on average, have been passed.



Finding a cause

Where do ideas for PMBs come from? Some Members arrive at the Assembly with deep knowledge in a given area of public policy, and are eager to use their PMB opportunities to advance novel solutions in that area. Other Members will find a project through consultation with constituents or stakeholders. In some cases, Members draw inspiration from legislation introduced in other jurisdictions, or sponsor PMBs as responses to recent events or media reporting. Members also often re-introduce PMBs in multiple sessions.

Members and their staff are not alone in the task of identifying a public policy challenge and scoping a legislative solution. They can call on support from their own caucuses, and consult with external experts. The Office of the Assembly also provides resources to Members to support their legislative work.

Researchers and Librarians at the Assembly

The Legislative Research Branch and the Legislative Library of the Office of the Assembly provide Members with confidential, non-partisan research and analysis to assist them in performing their parliamentary duties. The branches are home to research librarians and a team of cross-disciplinary researchers, including lawyers, political scientists, and public policy experts in a range of fields. Librarians and Research Officers routinely help Members conceptualize, scope, and shape PMBs.

Researchers at the Legislative Assembly do not provide legal advice but can help advance a PMB project by providing background research and analysis. Some examples of PMB-related research questions regularly answered by researchers include the following:

- What statutory or regulatory standards and rules already exist on a given issue, and what would have to be amended to accomplish a given goal?
- How have other provinces, or jurisdictions outside of Canada, addressed a given issue through legislation?
- Has a given issue been addressed at the Assembly before, through a previous PMB or in another way?
- What is the history of an area of law or public policy in Ontario, and what is the rationale for the existing law/policy?
- What are media outlets and stakeholders saying about a given issue?
- What evidence exists on the effectiveness of different legal and policy responses to a given issue?

On request, researchers will produce memos for Members that provide answers to their questions and offer general background on an issue.

Office of Legislative Counsel

Once Members and their staff have studied an issue and developed an idea, the next step is to translate that idea into legislative language and produce an actual bill. The Office of the Legislative Counsel (OLC) at the Ministry of the Attorney General is responsible for drafting all legislation that comes before the Assembly, including PMBs. The lawyers who act as drafters for the OLC work with Members and staff to prepare draft legislation.

To begin the process, OLC drafters may seek certain information from Members, including

- a written, narrative description of what the bill is meant to accomplish;
- whether there are existing Ontario statutes or regulations that deal with the same subject matter, and if they would have to be changed;
- whether the bill should include exceptions with respect to where new rules apply, or take account of transitional considerations, e.g. with respect to when new rules should take effect;
- legislation from other jurisdictions that is similar to what is being proposed, if any exists; and
- research memos provided by the Legislative Research Branch or Library, if any had been requested.

The process of drafting a bill is iterative: drafters receive instructions from the Member's office, ask questions and seek clarification, present drafts of a bill, and evolve those drafts in consultation with Members' offices. Drafters will consider legal issues posed by the bill and may flag some concerns. For example, if there is an aspect of the bill which risks violating the rule against "money bills," drafters may propose solutions. The Standing Orders require the OLC to report to the Clerk if they think a tabled PMB should be considered a money bill and therefore struck from the Order Paper.

Parliamentary Procedure

The basic path that a PMB must travel through the Legislative Assembly once it has been conceived and drafted is broadly similar to that of a government bill.



The rules of and opportunities for debate differ, however. Private Members' Public Business takes place on Tuesday, Wednesday, and Thursday when the House is sitting, at 6pm after the Orders of the Day have concluded. Budget Day and the twelve sessional days following a Speech from the Throne are exceptions; no private members' public business is discussed on those occasions.

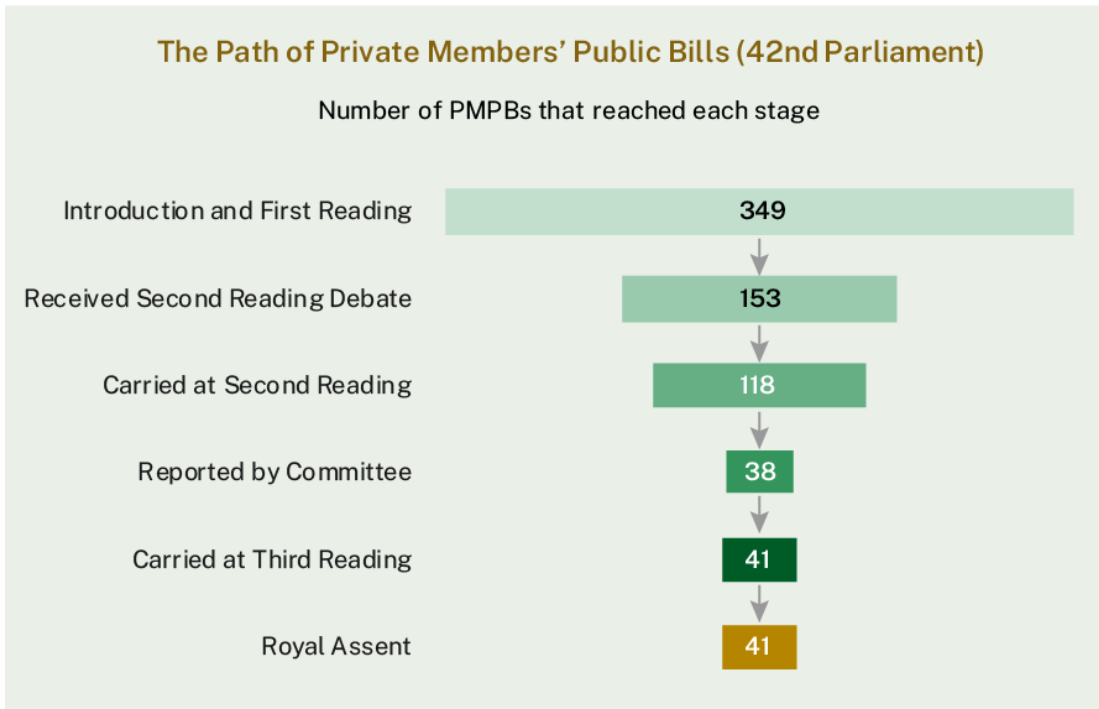
A single item of Private Members' Business may be debated during the allotted time on a given day. The time provided for debate can depend on the composition of the parliament. The debate breaks down as follows:

- The Member moving the motion may speak for 12 minutes.
- Each recognized party is allotted 12 minutes of debate time to be shared amongst its Members. The Member who moved the motion may speak again on behalf of their party, if they wish.
- The Member who moved the motion may reply for up to 2 minutes.
- The Speaker may recognize an independent Member to speak for up to 5 minutes.

If a PMB is given second reading, it stands referred to the Committee of the Whole House, unless the House instead refers it to a standing or select committee. The sponsor typically specifies the committee they would like their bill to be referred to, and that direction is usually followed by the House. Ultimately, very few PMBs are actually considered by a Committee of the Whole House.

A committee may invite experts, stakeholders, and members of the public to comment on the bill, either orally or through a written submission. Committee members will then carefully scrutinize each clause of the bill and report it back to the House either as-is or with amendments. If the committee's report is adopted by the House, the bill is ordered for third reading. If the bill passes a vote following third reading debate, it is sent to the Lieutenant Governor to receive Royal Assent and become law in Ontario.

The office of the Clerk of the Legislative Assembly fields procedural questions from Members and their staff about the passage of PMBs.



The figure above shows the fate of all PMBs in Ontario’s 42nd Parliament. A little less than half of PMBs that were introduced and received first reading went on to be debated at second reading. Most (77%) PMBs that were debated at second reading were carried (passed), though 34 bills were lost on division (they were voted down after second reading debate). Three bills were ordered directly for third reading after receiving second reading, while the rest were referred to committees. One-third of the bills that went to committees were ultimately reported back to the House. All of those bills passed third reading and received Royal Assent, as did the three bills which bypassed committee.

Major winnowing therefore took place at two stages: after first reading, and after bills were referred to committees. In both cases, this is chiefly due to time constraints; the House and committees are unable to give attention to all of the PMBs that come before them.

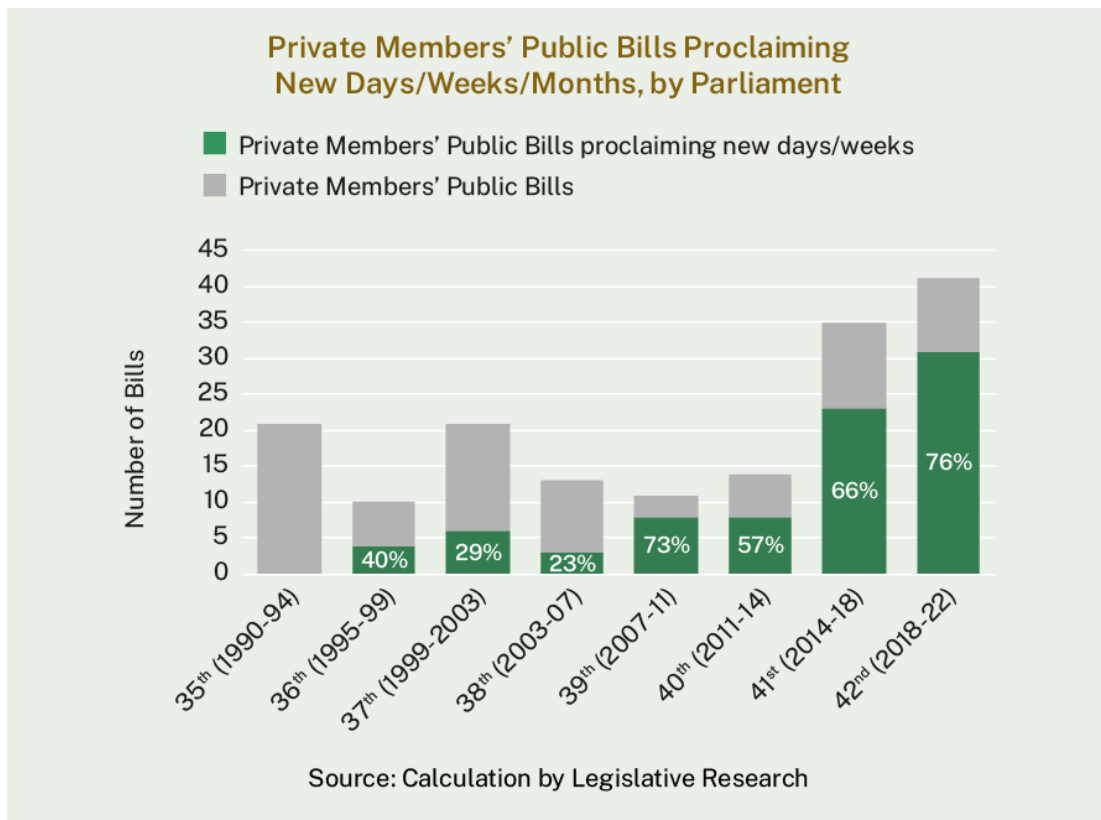
What are PMBs For?

As outlined, private members’ business involves a serious commitment of time and energy. Questions persist about whether the exercise is worthwhile. While the success rate for PMBs has improved in recent years, it remains true that only a small minority of bills will become law. This section therefore reflects on the multiple purposes and functions of PMBs, as observed in Ontario as well as other Westminster parliaments.

Making law, directly

In the first place, PMBs exist to create and change law, and this does happen. With a favourable ballot position and strong support throughout the House, a Member can see a bill through from conception to Royal Assent.

As the figure below illustrates, there is a clear trend in the kinds of PMBs that are more likely to pass. Commemorative bills, which (for example) declare special days to highlight the contribution of ethnocultural groups or professions, or raise awareness of historical events, diseases, or other issues, make up a large and increasing share of successful PMBs. The figure shows that the vast majority of PMBs passed recently created new statutes designating a commemorative day, week, or month.



Other kinds of substantive changes to existing law are also achieved through PMBs. While Government bills can be longer and often entail multiple legal changes, successful substantive PMBs tend to advance a solution to a single, carefully defined problem.

A few examples of changes introduced through PMBs in recent decades across several areas of provincial law and policy include

- *Health care*: limits on the use of constraints on patients;⁴ liability protection for “good Samaritans” voluntarily providing first aid;⁵ requirements on schools and school boards to be prepared to respond to anaphylaxis;⁶ limits around prescribing fentanyl patches.⁷
- *Local government*: expanded police services options for municipalities;⁸ extended polling hours on municipal election days.⁹
- *Transportation*: new limitations on people convicted of drinking and driving,¹⁰ and drinking and boating;¹¹ rules enabling firefighters in personal vehicles to signal that they are responding to a fire.¹²
- *Consumer protection*: oversight mechanisms for the collision repair industry;¹³ new rules for farm implement dealers and distributors;¹⁴ regulation of the human resources profession.¹⁵
- *Infrastructure*: Establishment and maintenance of a “one-call” system for identifying buried infrastructure before digging.¹⁶
- *Human Rights*: Adding gender identity and expression as prohibited grounds of discrimination.¹⁷

Most Westminster parliaments have seen major legislative changes achieved through private members’ business. A notable example from Canada’s federal Parliament is the *Non-Smokers’ Health Act*, 1986, a Private Member’s Bill which required federally regulated workplaces to become smoke-free. The bill was opposed by Cabinet but passed by the House of Commons and Senate.¹⁸ More recently, several changes to the Criminal Code came via successful private members’ bills. In peer Westminster democracies like the UK, Australia, and New Zealand, significant social reforms, including the introduction of same-sex marriage, the abolition of capital punishment, and the institution of mandatory voting were initiated in private members’ bills.

Making law, indirectly

Members also understand that PMBs do not have to pass every stage of the legislative process in order to create change. Studies of Westminster Parliaments, including in Canada¹⁹ and the UK²⁰, find that ostensibly unsuccessful private members’ bills often influence government policy in the longer term. In some cases, failed bills are reintroduced as government bills in future sessions, either as-is or with modest changes. In other cases, parts of private members’ bills are effectively copied and pasted into government bills. Private members’ bills can also contribute to pressure on governments in a given area, by setting an agenda or maintaining attention. For example, successive private members’ bills in Canada’s House of Commons which sought to create an access-to-information framework have been credited with pushing the federal government to eventually introduce such a system years later.²¹

Raising awareness and representing constituents

Legislative change is not always the only or even primary motivation behind PMBs. They can also be vehicles for highlighting local or broader concerns raised by constituents and stakeholder groups. Members have other opportunities to raise issues in the House, but PMBs

can draw more concrete and lasting attention to issues, possibly attract media attention, and outline solutions. Members can use PMBs as tools in broader public campaigning and movement-building outside the Assembly, even without the expectation of producing direct or indirect legislative change.

Promoting Legislative Discourse

PMBs are also an opportunity to create time for debates within the Assembly on issues of great public importance. In the course of a Parliament's main legislative agenda, parliamentarians may only have a chance to discuss a limited range of key issues in provincial public policy—those which are receiving legislative action from the government at a given time. But through introducing and debating PMBs, Members can create opportunities to get on the record about other important topics, and invite other Members to do the same.

Conclusion

Nearly fifty years ago, a prominent columnist lamented how backbench MPPs' talents were wasted on private members' bills, which were "a legislative dead-end, candidates only for oblivion."²² That observation simply does not hold anymore, as approximately thirty per cent of bills passed in recent Parliaments have been PMBs. Moreover, passing a bill is not always the point. By identifying a problem and carefully refining a legislative solution, MPPs can achieve impact directly or indirectly, within and outside the Assembly.

Notes

- ¹ *Legislative Assembly of Ontario Act*, 1990, s. 57.
- ² *Constitution Acts*, 1867 to 1982, s. 54.
- ³ Norman Webster, "Talent of MPPs wasted," *Globe and Mail*, Feb 7, 1975.
- ⁴ Patient Restraints Minimization Act, 2001.
- ⁵ Good Samaritan Act, 2001.
- ⁶ Ryan's Law (Ensuring Asthma Friendly Schools), 2015.
- ⁷ Safeguarding our Communities Act (Patch for Patch Return Policy), 2015.
- ⁸ Police Services Amendment Act, 2001.
- ⁹ Municipal Elections Amendment Act, 1994.
- ¹⁰ Highway Traffic Amendment Act (Ignition Interlock Device), 2000.
- ¹¹ Highway Traffic Amendment Act (Drinking and Boating Offences), 2006.
- ¹² Highway Traffic Amendment Act (Firefighters), 1994.
- ¹³ Collision Repair Standards Act, 2002.
- ¹⁴ Farm Implements Amendment Act, 2005.
- ¹⁵ Registered Human Resources Professionals Act, 2013.
- ¹⁶ Ontario Underground Infrastructure Notification System Act, 2012.
- ¹⁷ Toby's Act (Right to be Free from Discrimination and Harassment Because of Gender Identity or Gender Expression), 2012.
- ¹⁸ David Forbes, "Are Private Members' Bills a Useful Tool in Today's Legislatures?," *Canadian Parliamentary Review* 35, no. 4 (2012): 9.
- ¹⁹ Kelly Blidook, *Constituency Influence in Parliament: Countering the Centre* (UBC Press, 2012).
- ²⁰ Meg Russell and Daniel Gover, *Legislation at Westminster: Parliamentary Actors and Influence in the Making of British Law* (Oxford University Press, 2017).
- ²¹ Kelly Blidook, *Constituency Influence in Parliament: Countering the Centre* (UBC Press, 2012): 96-97.
- ²² Norman Webster, "Talent of MPPs wasted," *Globe and Mail*, Feb 7, 1975.

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