



Position Paper #51

Private Members' Bills and Abortion

In Canada, there are two ways to enact legislation. The majority originate in the Cabinet, a body of elected Members of Parliament chosen by the Prime Minister to lead specific ministries or departments. The proposed legislation is referred to as a “Government Bill” or public bill.¹

Another way to enact legislation is through the introduction of a “private member’s bill,” which is introduced in the House of Commons by an MP who is not a Cabinet Minister². Private Member’s Bills (PMBs) are often ways in which MPs attempt to address a particular issue that is important to their constituents, or may be something that was part of their own election platform. PMBs usually do not contain provisions to spend government funds, and are less overarching than economic or foreign policy (for example, changing the name of a riding or declaring a commemorative day). Sometimes they are used simply to bring attention to an issue, with no hope of it passing.³ MPs may also introduce private member motions to make a statement of some kind,⁴ which anti-choice MPs have sometimes brought forward to “re-open the debate” towards abortion recriminalization.⁵

A PMB follows the same legislative process as a government bill, but many are never enacted since they have been tabled without prior Cabinet support. PMBs are more likely to pass in a minority government where support exists across parties for the bill. In the most recent

¹ https://www.ourcommons.ca/procedure/procedure-and-practice-3/ch_21_2-e.html

² A Cabinet Minister is appointed by the Prime Minister and assigned to particular portfolio (eg, Minister of Health) and who develops and implements policy. Non-Cabinet members are called backbencher MPs, who have been elected to who serve the interest of their constituents.

³ <https://www.revparlcan.ca/en/parliamentary-rules-concerning-private-members-bills/>

⁴ https://www.ourcommons.ca/procedure/procedure-and-practice-3/ch_21_3-e.html

⁵ Conservative MP Stephen Woodworth introduced Motion 312 in 2012 to have a Parliamentary committee examine if the Criminal Code definition of “human beings” should include fetuses. <https://www.arcc-cdac.ca/presentations-anti-bills/>

Parliament (44th session that began in Nov 2021), 18 private members' bills received royal assent, 7 in the House and 11 in the Senate.⁶

Unlike government bills, PMBs are subject to a lottery-type system. When the Parliamentary session begins, the names of all non-Cabinet MPs are included on a “List for the Consideration of Private Members’ Business.” A draw occurs to establish the Order of Precedence, and names first on the list have priority to introduce PMBs.⁷

For both types of bills, members of the governing party usually support bills enacted by a Minister or MP in their party. But on some issues, MPs are allowed to vote according to their conscience—these “free votes” often occur in relation to “moral” issues and an MP can vote for or against the bill based on their personal beliefs (or the general opinion of their constituents, which is more the intention). If it’s a core party value, the party leader will sometimes “whip” the vote, meaning they will force their MPs to vote based on party lines, even if it goes against the MPs personal beliefs. For example, after his election as Prime Minister in 2015, Justin Trudeau required all Liberal MPs to vote pro-choice on any bills related to reproductive rights.⁸ At the time, several Liberal MPs were known to be anti-choice, and in previous years, some Liberal MPs had introduced anti-choice PMBs (as recently as 2007 but the last bill prior to that was in 1999). In the last three decades, anti-choice PMBs have primarily been introduced by Conservatives.⁹

Today, it would seem bizarre to have a Liberal, NDP, or Bloc Quebecois MP with anti-choice leanings. Indeed, the NDP and Bloc Quebecois have policies supporting reproductive rights, which effectively disqualify candidates with an anti-choice stance and prevent any votes in favour of a PMB that might negatively impact abortion rights or access.

Anti-choice PMBs on abortion seek to amend the Criminal Code and would thereby re-criminalize some aspect of abortion. This is problematic for several reasons. First, PMBs do not involve oversight by the Department of Justice. When government bills are introduced to change the *Criminal Code*, the Minister of Justice must examine them to make sure they aren’t inconsistent with the *Charter of Rights and Freedoms*. A PMB does not require this, which means that a PMB to restrict abortion could skip this hurdle despite not being constitutional.

Second, anti-choice MPs in the Conservative Party introduce PMBs in part because their party policy prohibits the introduction of government bills on abortion.¹⁰ Thus, such PMBs represent

⁶ https://lop.parl.ca/sites/ParlInfo/default/en_CA/legislation/privateMembersBills

⁷ https://www.ourcommons.ca/procedure/procedure-and-practice-3/ch_21_5-e.html

⁸ Mas, Susana. Anti-abortion candidates need not apply in 2015, Justin Trudeau says. *CBC News*. May 7, 2014. <http://www.cbc.ca/news/politics/anti-abortion-candidates-need-not-apply-in-2015-justin-trudeau-says-1.2634877>

⁹ Anti-Choice Private Member Bills and Motions Introduced in Canada Since 1987, Abortion Rights Coalition of Canada. <https://www.arcc-cdac.ca/presentations-anti-bills/>

¹⁰ Policy 86: <https://cpcassets.conservative.ca/wp-content/uploads/2023/11/23175001/990863517f7a575.pdf>

both a defiance of the party's official position on abortion and an exploitation of PMB privileges as a way to attack human rights.

Third, PMBs do not get nearly as much time under consideration as government bills, meaning that something of vast importance to human rights as abortion won't receive proper consideration.¹¹ This lack of time, combined with anti-choice MPs' use of deceptively progressive language to defend their PMBs, could mean they hope that MPs will vote for the bill without really understanding its true motive. For example, past PMBs would have criminalized sex-selective abortion to prevent "gender discrimination" and given rights to fetuses in order to "protect pregnant women" from violent attacks.¹² In 2016, several pro-choice MPs voted in favour of Bill C-225 because they mistakenly thought it wouldn't threaten abortion rights.¹³

In essence, PMBs are being misused by anti-choice MPs in an attempt to undermine human rights. This is a blatant, underhanded attempt to bypass a system that is intended to protect our rights and freedoms.

¹¹ <https://www.revparlcan.ca/en/parliamentary-rules-concerning-private-members-bills/>

¹² <https://www.arcc-cdac.ca/presentations-anti-bills/>

¹³ <https://www.arcc-cdac.ca/media/anti-choice-unknown-mps-jun-24-2023.pdf>