

**Assent Against the Odds:  
Accounting for the Success of a Private Member's Bill**

by

Matthew Gray  
2009-2010 Intern  
Ontario Legislature Internship Programme (OLIP)  
1303A Whitney Block  
Queen's Park  
Toronto, Ontario M7A 1A1

Phone: 416-325-0040

Email: [graymatthew87@gmail.com](mailto:graymatthew87@gmail.com)

[www.olip.ontla.on.ca](http://www.olip.ontla.on.ca)

## INTRODUCTION

In a Westminster-style Parliament, the capacity for a backbench member to affect change is often described as limited at best. Common portrayals of Members of Parliament or Members of Provincial Parliament outside of Cabinet have included “trained seals” and “nobodies,” the latter expressed by Prime Minister Elliot Trudeau in his memoirs (quoted in Blidook, 2010). As cynical as the popular opinion may be, the role of the backbencher can be more significant than most people presume. Based on the analysis of Parliamentary records and interviews with several MPs, Kelly Blidook argues the backbencher’s ability to impact policy in Canada’s parliament has improved over the past 25 years. She attributes this development in part to reforming the rules that govern *Private Members’ Business*, the time during which backbench MPs can debate a proposed motion or bill of their own conception. In particular, Blidook notes the impact had by allowing for a greater number of Private Members’ Bills (PMBs) to be voted on, a change first introduced in the late 1980s. In addition to increasing the number of PMBs that can actually become law, this change allowed more opportunities for a backbench MP to generate dialogue on a certain issue and potentially prompt government legislation to a comparable effect.

Similar reforms have recently been introduced in the Legislative Assembly of Ontario. Changes to the Standing Orders introduced in October of 2008 included more time for Private Members’ Business and more private members’ items (a bill or motion) to be debated on a weekly basis. The time allotted for Private Members’ Business was increased from 2 hours to 2.5 hours every Thursday afternoon the House is sitting, with the number of items debated and voted on changing from 2 to 3. Of perhaps greater significance was the introduction of a statute allowing for a PMB to be co-sponsored by backbenchers from multiple parties, an idea that will be examined more in-depth later on. These reforms were proposed in the *Report on Enhancing the Role of the Private Member* (2002), prepared by the all-party Standing Committee on the Legislative Assembly, though its suggestion was actually to double the amount of time devoted to Private Members’ Business from 2 to 4 hours.

While these changes may accomplish their intended goal of enhancing the role of the backbencher and the PMB through endogenous reform, the question of what makes for a successful PMB is virtually unexamined. “Successful” is taken to mean the bill receives Royal Assent or is subsequently incorporated into government legislation – two obviously different routes to becoming law, but both ways a PMB can affect change. In any event, there exists little analysis of the qualitative aspects of successful PMBs, which is particularly true of the provincial level. This is likely because the subject can be dismissed as trivial, given their extremely low success rate and the centralized nature of Westminster-style parliaments. Scholars of political science have often expressed arguments similar to that of David Docherty, who alleged that “so few such bills become law that truly meaningful participation is more illusion than reality” (Docherty, 2005: 117). However, such sentiments not only discount the indirect influence PMBs may have, they too decisively attribute a low success rate to factors outside of the control of the individual MPP. What’s more, the changes to Private Members’ Business and the rules that govern PMBs noted above warrant some further consideration of the subject, as the

potential for the private member to play a more substantive role does exist. Thus, it is useful to examine the Ontario Legislature and the success of PMBs therein, especially considering the scope of pertinent issues that under provincial jurisdiction.

This paper intends to identify and explain the features of recently successful PMBs in the Ontario Legislature, with “success” referring to either passed in their original form or adopted by government. The goal will be to highlight what sets these bills and their architects apart from the majority of PMBs, which go nowhere. The information conveyed is based primarily on interviews with several backbench MPPs. First, it will be helpful understand the conception of a PMB and how a member chooses their issue. It will then look at the process of introduction, debate, and passage of a PMB. This will be followed by a quantitative assessment of a PMB’s likelihood of receiving Royal Assent, drawing on legislative records from the past 20 years. Furthermore, it will explore the behind-the-scenes “horse-trading” that transpires in determining which PMBs the House will ultimately pass. This section will be complimented by notable characteristics of PMBs that do *not* become law, with emphasis on those that are lost on a vote and fail to go second reading. Next, it will explain the distinction between the two types of success a PMB may enjoy (Royal Assent or government adoption, with the former being far less-easily quantified) and attempt to account for what determines the route to becoming law. Focus will also be on the role played by the media in influencing the fate of a PMB. Finally, the paper will underscore the important role played by the individual MPP in affecting the success or failure of a PMB.

### CHOOSING A “WINNING” ISSUE

The scope of issues PMBs touch on is wide reaching; their only official limits are they cannot introduce a tax and cannot call for the allocation of public funds (Standing Orders of the Legislative Assembly of Ontario, Statute 57). Docherty has noted that private members “have to very careful in creating legislation, because even indirect or less obvious expenditures can quickly be ruled out of order” (2005: 110). MPPs in the Ontario Legislature, and likely in many jurisdictions, approach Private Members’ Business and PMBs with different mentalities. Some members elect to introduce a bill that is adversarial in nature, meant to embarrass the government and criticize its policies. In the same vein, MPPs may introduce a bill that is heavily partisan, radical, or completely impractical.

When taking one of these routes, an MPP has no delusions that his or her bill will pass (Flynn, Mar. 29, 2010), despite media releases and press conferences suggesting otherwise. It is important not to dismiss PMBs of these sorts as irrelevant, as they can serve the important function of generating dialogue on a certain issue. The focus of this section, however, is the use of PMBs when the genuine aim is to become law, i.e. by proposing a “new or alternative policy idea without necessarily pointing the finger at current practices” (Blidook 2010: 35). Taking into account interviews with MPPs from all three major parties, we can gain an understanding of how an MPP chooses their issue when the true intent is to see one’s bill receive Royal Assent and bring about positive change.

One of the most important considerations cited by MPPs in the creation of a PMB

is his or her riding. Often, this means addressing an issue directly brought to the member's attention by constituents. According to MPP Ernie Hardeman, who represents the rural riding of Oxford, the debate of one's own bill presents the best opportunity to represent your constituents and put forth a policy idea that can benefit them (Mar. 29, 2010). However, an MPP in Ontario represents 1 of 107 ridings and resolving to pass legislation that benefits yours in particular is challenging. If many people across the province can identify with the issue, the bill is more likely to succeed. When this is not the case, Hardeman explained, "The big secret is that other groups or the broader public must not see any negative implications with the proposed bill. If the benefits a bill will bring to constituents and others is at the direct expense of another group, the bill will fail." Consider MPP Hardeman's most recently successful PMB, of which he has two, the *Signage to Promote Ontario Produced Agricultural Product Act, 2008*. The bill changed an existing act that disallowed the use of signs along a major highway, unless permission had been obtained from the Ministry of Transportation. As a result of Hardeman's bill, farmers are now able to use signs to advertise the sale of their produce on the side of major provincial highways without requiring a permit.

Hardeman's signage bill is a prime example of a PMB that benefits the MPP's constituents with no adverse effects to another group. On the other hand, some members suggested there is some flexibility in this respect. MPP Dave Levac, who has had a remarkable 4 successful PMBs since 2000, emphasized the importance of minimizing "collateral damage" if the bill necessarily causes problems for a particular group (March 30, 2010). Levac further alleged that if the benefits a PMB will bring outweigh the negative effects by a significant enough margin, the bill could conceivably pass or be adopted by government. Hardeman also made this point, but indicated the increased difficulty that comes with trying to have a bill of this nature passed.

Rather than identify an issue specific to constituents, an MPP may decide to champion a certain policy idea concerned with the broader public good. The effects of these bills are wide reaching and can be met with more contention. MPP Laurel Broten's successful PMB, the *Child Pornography Report Act, 2008*, is a good example. The bill made it a criminal offence to fail to report any information on, or suspicions of, child pornography. PMBs related to safety and the public good are often be inspired by a significant report, event, or tragedy. According to various MPPs interviewed, these are common triggers for successful PMBs for two main reasons: they might identify a possible flaw or shortcoming with current policy (Flynn, Mar. 29, 2010); and the policy idea is more likely to be publicly supported, inasmuch as the incident/report serves as a catalyst to influence awareness of the issue (Zimmer, April 28, 2010). Public support and positive media coverage are perhaps the most important factors in the success of a PMB. This can also influence the avenue to success, inasmuch as government may be more likely to adopt a bill if public praise is especially strong (Prue, May 3, 2010). This idea will be explored more in depth later on.

These are several notable examples of successful PMBs triggered by highly publicized events or reports. This includes MPP David Zimmer's 2006 bill to criminally punish the operator of a boat who is under the influence of alcohol. It was prompted by the 2003 death of a young man boating while inebriated in Muskoka (Zimmer, April 28, 2010). MPP John O'Toole, who proposed the idea to outlaw electronic devices while driving, was inspired by a Canadian Automobile Alliance report detailing the greater risk

associated with driving while using a cell phone (O'Toole, May 11, 2010). His PMB was eventually incorporated into government legislation. Another example is *Sabrina's Law*, introduced by MPP Dave Levac and enacted in 2005, which required every school board in the province to maintain an anaphylactic policy. The bill was in response to the death of a young girl who suffered a severe allergic reaction and died at school in 2003 (Levac, March 30, 2010). A stakeholder or lobby group often spearheads the initiative to enact a law as a response to a report or tragic event. This might include an association, a union, a not-for-profit, or community activists. Good policy ideas conceived of by specific groups often seek out a backbench member to "champion" the issue. These groups are often constituents of the member who takes up the cause, though not necessarily. Several MPPs cited these types of lobbying efforts as the driving force behind their respective successful PMBs, including Levac and Zimmer. Combined with the support of colleagues and the public, these bills can enjoy success in their PMB form or be adopted by government.

One prevalent theme in successful PMBs is the focus on health and safety. This is in part due to the fact that a backbench member cannot introduce a "money bill," as mentioned above, which puts an immediate limit on the types of bills that can be introduced. Moreover, PMBs revolving around health and safety tend to receive less opposition, especially if introduced directly after public awareness of the issue has increased. They are also usually perceived as non-partisan and can therefore be supported across party lines. The governing party seldom rejects PMBs dealing with public health and safety, according to MPP Michael Prue (May 3, 2010). He attributes this mainly to the poor public perception that might come from rejecting an idea meant to help or protect Ontarians. In characterizing a successful PMB, it is also important to mention the frequency of "feel-good bills" that raise awareness of or recognize a certain medical condition, group of people, disease, or ethnic group. These PMBs are of the least contentious sort and are always unanimously supported. They include bills such as the *Asian Heritage Day Act, 2005* (MPP Tony Wong), the *Highway Memorials for Fallen Police Officers Act, 2002* (MPP Rick Bartolucci), and the *Deaf-Blind Awareness Month Act, 2005* (MPP David Young). David Docherty makes reference to this idea, explaining that private members often introduce "doable" legislation; "those measures they think will have a greater chance of passing legislative scrutiny" (2005: 110). Though mattering greatly to the group receiving the recognition, bills of this nature propose no substantive change to law. Now that we have some understanding of what constitutes a "winning" issue, let us consider the likelihood of a PMB influencing policy or actually receiving Royal Assent, as well as how it makes this improbable journey.

### A TOOL FOR CHANGE OR ILLUSORY INFLUENCE?

The first and easiest step to a PMB realizing success is its introduction (i.e. first reading). Only backbenchers are permitted to introduce a PMB, meaning MPPs holding Ministerial portfolios and the Speaker of the House are not permitted to introduce one. After an MPP has decided on an idea for a PMB, they instruct Legislative Counsel of their intent. It is here that the bill is formally drafted. Legislative Counsel ensures it is crafted in proper legal terminology and not a duplicate of a bill already tabled. There is

no limit to the number of PMBs an MPP may introduce and it is not uncommon for a backbench member to introduce several bills in a given session.

Regardless of how many bills an MPP may have introduced, they are afforded a finite number of “ballot dates” over the course of a session. The ballot date is a specified Thursday when their chosen bill or motion is debated and voted on. Usually, each MPP receives 1 or 2 of these ballot dates per session, depending on how long the session may extend. The order is determined purely by chance, wherein the Clerk of the Legislature draws names from a hat to establish sequence. The frequency of an MPP’s ballot date has recently increased with the aforementioned changes to Private Members’ Business in the Standing Orders (Standing Orders of the Legislative Assembly of Ontario, 98. [a]). With these reforms, the 80 backbench MPPs currently in Ontario receive about 1 ballot date per year (about 24 weeks sitting x 3 items per Thursday = 72), or about 2 per session. As mentioned above, the time allotted to Private Members’ Business in the Ontario Legislature is currently 2.5 hours everything Thursday afternoon the House sits, starting at approximately 2:00. Each party is given 12 minutes to speak to the bill, divided up as they so choose, and the MPP introducing the bill is also allotted a total of 14 minutes.

Ontario is the only Canadian jurisdiction outside of federal Parliament where there are a greater number of PMBs introduced than legislation introduced by the Executive (Docherty, 2005: 112). As a result, the success rate of PMBs in Ontario is remarkably low in comparison to other provincial jurisdictions. This reinforces the skepticism one might have of the private members’ ability to affect change. Consider the fact that only 69 PMBs of the 1,508 that have been introduced in the Ontario Legislature between 1990 and 2010 received Royal Assent (figures provided by Ontario Legislature’s Library records). Those that do not receive Royal Assent simply die at prorogation, at which time session ends and the Order Paper is wiped clean. This amounts to a success rate of approximately 4.6%. What’s more, this 20-year period actually represents an unprecedented jump in the number of successful PMBs, as only 9 were passed between 1976 and 1990, and none were passed in the 2 decades prior (White, 1997: 86). These statistics, though showing improvement in the last couple of decades, leave little reason to believe a PMB can affect substantial change.

Further undermining the notion that PMBs provide an outlet for policy change is the abovementioned idea that many successful ones would be best classified as “feel-good” or “motherhood” bills that recognize a certain group, medical condition, etc. and do not change law. The percentage of successful PMBs that were non-contentious “feel-good” bills was markedly higher under the majority government of Progressive Conservative Premier Mike Harris, and in particular between the years 1996 and 2000. Over this time, most PMBs that received Royal Assent were of the non-controversial sort. This can likely be attributed to the highly-centralized and ideological nature of governance during this period, wherein the Executive and the Premier’s office was distinctively more dominant, especially in dealing with contentious issues (White, 1997: 103). This alludes to another important idea influencing the success of a PMB. That is, some governments may have a greater tendency to suppress the success of PMBs than others, based on a more centralized governing style. Alternatively, an above-average number of more contentious bills received Royal Assent under Premier Bob Rae, as well as under Premier Dalton McGuinty to this point. Regardless, the point remains: only 69 of 1,508 PMBs introduced over the past 20 years received Royal Assent and many would

be categorized as non-contentious – roughly 27 out of 69, depending on one’s exact definition of “contentious”. In spite of these discouraging figures, turning to a qualitative analysis of PMBs and their broader implications over the last 20 years paints a somewhat different picture. What’s more, going beyond this poor success rate to the explanation behind it may also challenge the common perception of PMBs’ ineffectiveness.

First and foremost, consider the abovementioned idea that each MPP is free to introduce as many PMBs as he or she would like, despite having a limited number of ballot dates. This might be done for the sole reason of appeasing a stakeholder and generating support from a specific group (Brotten, April 21, 2010). According to Michael Prue, this can potentially do more harm than good. Stakeholders unfamiliar with the process can become confused if an MPP has no intention of using a PMB pertaining directly to them for their ballot date. (May 7, 2010). It may also be that the MPP wants to draw some attention to the issue without actually prioritizing it for a ballot date. In any event, of the 1,508 PMBs introduced over the last 20 years, only 610 were actually debated and voted on. This figure may open the door to the criticism that an inadequate amount of time is set aside for Private Members’ Business. However, consider that some MPPs use their ballot date for a motion, rather than a PMB. What’s more, the recent changes to the rules that govern PMBs will work towards increasing this number. Regardless, when accounting for the much smaller number of PMBs that were both introduced and debated, it is more appropriate to say that 69 out of the 610 PMBs that actually stood a chance to become law received Royal Assent. This boosts the success rate to a more respectable 11.3% over the last 20 years. Moreover, this figure does not account for those PMBs that were adopted by government and incorporated into subsequent legislation.

It is also worth considering that a much higher number of bills actually voted on were carried to second reading, rather than being lost on division. This can largely be attributed to the general “sense of camaraderie” (Flynn, Mar. 29, 2010) that exists during Private Members’ Business, wherein colleagues from all parties can recognize when an MPP is actually trying to accomplish something positive and non-partisan for constituents or all Ontarians. MPP Kevin Flynn further clarified this point, alleging that, “Members who treat Private Members’ Business as a non-partisan enterprise are in return respected” and their bills will typically pass second reading (March 29, 2010). This non-partisan approach to creating and debating a PMB seems to be the general tendency, given that only 76 of the 610 PMBs debated in the last 20 years failed to receive second reading. Accordingly, 533 of the 610 PMBs put to a vote did were carried to second reading.

More often than not, the nature of those PMBs debated and lost on division were adversarial, radical, highly partisan, or otherwise contrary to government policy. David Docherty also noted, “Private members can table all kinds of bills knowing they will never see the legislative light of day. Further, if they were to become law, the responsibility for implementing them would rest with the government and not the members themselves.” (2005: 112) This type of mentality opens the door to all sorts of impractical ideas that simply sound like a superior policy, as compared to government practice. In such cases, the MPP in question decides to debate their bill knowing full well it will not pass. All members of the Ontario Legislature recognize this fact, as observed by Hardeman: “If the proposed bill runs directly contrary to government policy or is

treated as an opportunity to embarrass the government of the day, you know it will get voted down” (March 29, 2010). To be sure, that is not to suggest votes for PMBs are not free. All MPPs interviewed alleged there is never a whipped vote during Private Members’ Business, wherein the House Leader or Whip demands their caucus vote a certain way and reprimands them for doing otherwise. However, government backbenchers also explained that representatives from a Ministry potentially affected by a PMB will brief the government caucus on certain bills before they are debated and voted on. These briefings may point out some practical implications of the bill that may not have been considered, but more importantly they provide a strong sense of how Cabinet would prefer members vote on a particular bill.

Some government MPPs expressed annoyance with the pressure sometimes felt to vote a certain way, especially considering they have no interest in making things difficult for their own government. Indeed, one exasperated government MPP noted, “I can decide whether [a PMB] is harmful to my government or not. And if it is, I will weigh that against what the member is trying to do, along with the fact that what they are trying to do probably won’t happen anyway.” Thus, the peculiar consensus seemed to be that votes during Private Members’ Business are free, but could be “freer.” In any event, bills that are extremely problematic, radical, or adversarial towards the government seldom pass second reading. Rather, they serve the purpose of stirring the proverbial pot or otherwise embarrassing the government. Perhaps Michael Bryant explained it most aptly when he stated, for a PMB to succeed, “Good-will must trump partisanship” (April 7, 2010).

#### INSIDE BASEBALL: THE ROLE OF HOUSE LEADERS AND CABINET

It has been demonstrated above that most PMBs an MPP chooses to debate and put to a vote are carried to second reading. Instances when the PMB selected for a ballot day is voted down and not carried to second reading are typically a conscious decision. Hence, this particular hurdle has certainly not been insurmountable in the Ontario Legislature over the last 20 years. However, the idea that a bill must represent a non-partisan policy idea that has merit and will bring about substantially more benefits than harm is necessary, but not sufficient, for a PMB to receive Royal Assent. Of equal importance to the success or failure of a PMB is the “horse-trading” that transpires behind-the-scenes, or as Michael Bryant put it, the “inside baseball” (April 7, 2010). All MPPs interviewed for this paper were familiar with this idea, which will be explored below.

At the end of a session, House Leaders from each of Ontario’s three major parties come together to negotiate which PMBs that have passed second reading will proceed to Committee, go to third reading, and receive Royal Assent. In a majority situation, the government has no real obligation to do this. Former Government Whip MPP Dave Levac noted that it is done mainly to minimize obstructionist tactics on the part of the opposition parties (March 30, 2010). In exchange for slight compliance with the will of the government, House Leaders from each opposition party will suggest a few bills from their respective caucuses they wish to see become law. In the relatively small NDP caucus, the process of choosing which PMBs are given priority treatment is currently done through a caucus-wide vote, said NDP MPP France Gelinias (Mar. 30, 2010.) The



process of choosing which PMBs are prioritized from the governing party and the official opposition (currently the Progressive Conservatives) is more complex. A variety of factors come into play, including which PMBs are looked upon favourably by the caucus' higher-ups and how effectively the MPP lobbies on behalf of his or her bill. Multiple MPPs have highlighted the latter point, especially in the governing caucus, where numbers are greater and the competition for your bill to receive Royal Assent can be fierce. (Crozier, May 12, 2010) (Levac, March 30, 2010) (Bryant, April 7, 2010). In this way, generating support from your caucus and specifically your House Leader is paramount.

Currently, bills selected by the House Leaders to move forward are usually proportioned relative to the makeup of the House. With the division of seats from the 2007 general election, the governing party might see 4 or 5 PMBs receive Royal Assent, the official opposition would be granted 2 or 3, and the third party only 1 per session (Gelinas, Mar. 30, 2010). The recent advent of co-sponsorship may stand to complicate this unofficial process, but considering even a co-sponsored PMB has one initiator or "champion," this can likely be taken into account. Again, it should be emphasized that the nature of the government of the day directly influences this process in the passage of PMBs. Some Government House Leaders, acting on the will of the Executive, may not be as concerned with an equitable prioritization of PMBs as others. This might result in a disproportionately higher number of successful PMBs originating from government backbenchers, which was the case from 1995–2002 under Premier Mike Harris. Alternatively, the government may give sole consideration to the qualitative aspects of the PMB itself, rather than being concerned with how many from each party are successful. This could result in any number of government, opposition, and third party PMBs succeeding. The chart below gives some idea of how the division of successful PMBs has varied over the passed 20 years under different governments, with the omission of the 2002-2003 government of Ernie Eves.

Premier	Governing Party PMBs (As a % of total)	Opposition PMBs (As a % of total)	Third Party PMBs (As a % of total)
Rae (1990-95)	6 (30%)	7 (35%)	7 (35%)
Harris (1995 – 2002)	18 (70%)	4 (15%)	4 (15%)
McGuinty (2003 – 2009)	12 (55%)	8 (36%)	2 (9%)

Thus, despite these tripartite negotiations, the success of a PMB comes down to the decision of the Executive. This is especially true in a majority situation. The governing party has the final say on what PMBs go to committee and receives Royal Assent, and therefore has the ability to veto a bill prioritized by an opposition party. NDP Member Michael Prue, among others, noted that the Government House Leader will not hesitate to refuse consideration of certain bills if they stand to "cause the government any grief" or impose a measure of which Cabinet does not approve (May 7, 2010). Hence, the opposition party house leaders provide a list of multiple PMBs they would like to see passed, providing alternatives in the event that top choices are vetoed. Possible "grief" caused by the passage of a PMB might include upsetting part of the government's support

base (Prue, May 7, 2010) or simply seeming difficult to implement (Levac, March 30, 2010). However, to even reach the stage of consideration by House Leaders, the problems a PMB could bring about must be outweighed by the apparent value of the bill, or at least the value perceived by the electorate. That is to say, the bill must have been carried to second reading, indicating members of governing party would have seen some value in supporting it. This can be attributed to the government deliberately avoiding the outright rejection of a bill that may be positively received by the media and the public, which was discussed above.

To contextualize this idea, consider Official Opposition MPP Ernie Hardeman's bill, the *Hawkins Giganc Act (Carbon Monoxide Detectors)*, 2008. After four members of the Hawkins family tragically perished in his riding as a result of a carbon monoxide poisoning, Hardeman introduced a bill to make carbon monoxide detectors mandatory in all homes. The bill was first introduced in 2008 and was carried to second reading, but died at prorogation in early 2010. Given the bill's obvious merit and non-partisan nature, it may be perplexing that it did not receive Royal Assent, nor did government adopt it. The reason, according to Hardeman, is the problems it would pose for the Ontario Homebuilders Association, who do not want to be burdened with another cost in the building of a new home (Mar. 29, 2010). Hardeman alleges that the government will not implement the law out of fear they will lose the support of this stakeholder – one of the ways a proposed PMB can cause the government “grief.” In situations such as this, the centralized control over PMBs can cause frustration to the private member who is devoted to what he or she believes is a worthy cause. This frustration is understandable if the bill is well intentioned and apolitical, and especially when the MPP championing the cause deeply believes the benefits of their PMB vastly outweigh any negative implications. Thus, it seems as though even when the criteria for a successful PMB is met, the discretion of the Executive will ultimately dictate the bill's fate.

Consider now Michael Prue's fire escape bill, the *Fire Protection Statute Law Amendment Act*, 2007. The bill aims to disallow fire escapes made out of a combustible material in all residential buildings and has passed second reading 3 times, first introduced in 2007 and twice killed at prorogation. It has also gone to committee, been subject to consultations, and been amended. The bill undoubtedly has merit, is non-partisan in nature, and the NDP caucus has chosen it as its main priority. Nevertheless, Prue has faced difficulty in getting his bill to receive Royal Assent. He attributes this in part to the government's fear of upsetting the Ontario Landlord Association, who would be negatively impacted by means of the cost of replacing current fire escapes (May 3, 2010). The situation seems to parallel Hardeman's, with one important difference. Regardless of all the difficulties he has faced, Prue expressed complete confidence the fire escape law will be implemented in the near future. It would therefore seem the “grief” potentially caused by a PMB can be overcome through persistence, namely by pressuring government relentlessly until convincing them it is a good idea. According to Prue, the success of his policy idea is likely to come to fruition in the form of government adoption, rather than in its PMB form.

“ANY AVENUE TO SUCCESS”:

### THE MENTALITY OF A TRUE CHAMPION

There exist competing views as to why a PMB does not pass in its original form, but is eventually adopted by government. France Gelinias contended, the government “thinks it has a monopoly on good ideas” and adopts valuable policies simply to receive the credit (Mar. 30, 2010). Similar sentiments were common among other opposition members and even a few government backbenchers. MPPs of this view alleged it is the degree of support in the media and the public that directly determines the route to a PMB’s success, either Royal Assent in its PMB form or government adoption. Graham White likewise observed that governments often regard PMBs as “trial balloons,” (1997: 86) wherein they are used to gauge public reaction to an idea before ultimately doing it themselves. Though it is tempting to attribute government adoption solely to a glory-seeking Machiavellian Executive, there are in fact two sides to the argument.

Minister Laurel Broten attributes adoption of a PMB to the much greater amount of resources and staff at the disposal of the government. She alleged, “The capacity to carry out consultations and work with specialized lawyers, who are meticulous about wording and interpretation, is far greater for the government. A Private Members’ Bill is not the traditional way for a meaningful and complex law to be passed” (April 21, 2010). Dave Levac argued a similar justification for government adoption and pointed to his and France Gelinias’ successful *Smoke-free Ontario Amendment Act (Cigarillos), 2008* as an indication. The co-sponsored PMB called for the total prohibition of flavoured cigarillos sold in packs of less than 20, arguing these tobacco products are geared directly at children. Though it received Royal Assent as a PMB, thereby crediting the bill’s architects, it was simply too difficult to implement in its original form and remained unproclaimed for two years after it passed (Levac, March 30, 2010). Finally in 2010, a law to the same effect was implemented through the government budget bill. Levac contended this is clearly not a matter of glory seeking, since Gelinias and himself had already successfully championed the bill and had it pass under their names. Rather, it was about how to most practically approach the bill’s complex implementation and regulations

This explanation of government adoption ostensibly makes sense. That is, the idea that “Government must necessarily control the legislation they will be faced with implementing” (Dochery, 2005: 114). Docherty made this claim to explain why so few PMBs succeed, yet it can also provide justification for why valuable policy ideas proposed through PMBs are incorporated into government legislation, rather than become law as such – so they can be further researched, contemplated and modified as needed. Michael Bryant also alluded to this point: “Sometimes government has to weigh in, bring their expertise and allow the civil service to do their work” (April 7, 2010). On the other hand, if the rationale behind government adoption were wholly pragmatic, why would Cabinet Ministers neglect to credit backbenchers with initially proposing the idea? Many MPPs interviewed acknowledged the occasional failure of the Executive to recognize a backbencher for their work on a certain policy idea, pointing to the degree of public support as the determinant.

The propensity to omit acknowledgement is greater when an opposition member introduced the PMB, according to NDP members Gelinias and Prue. Prue cited one instance in which a former Minister failed to acknowledge NDP member Andrea

Horwath's PMB, which she fought for adamantly, to compensate volunteer firefighters for work-related medical conditions. He explained that his caucus was livid with the Minister and how partisan the behaviour seemed to be (May 3, 2010). Conversely, MPP Dave Levac attributes the government's decision to recognize a private member partially to the demeanor of the members themselves. He alleged the government might be more likely to recognize an opposition backbencher championing a policy idea who is doing so in a non-partisan way and seemingly for the "right reasons" (March 30, 2010). Moreover, MPP Bruce Crozier noted that sometimes the policy idea proposed by a PMB has long been "on the government's radar" and already under consideration (May 12, 2010). In such circumstances it might seem that acknowledgement is warranted when it actually is not, as the relationship between the PMB and the government legislation is spurious, not causal (Blidook, 2010). As Blidook acknowledged, these scenarios further complicate any attempt to quantify the indirect influence of PMBs.

In examining transcripts of the introduction and debate of recent government bills, the acknowledgement of a backbench members' contribution is come across sporadically. Under the McGuinty Government, examples include: the Minister of Health crediting Bruce Crozier's PMB in implementing a law that ensures users of defibrillators and the owners and operators of premises on which they are installed are protected from civil liability; the Minister of Transportation recognizing John O'Toole for his devotion to the prohibition of electronic devices while driving; the Minister of Health Promotion crediting David Oraziotti's *Protecting Youth from Smoke in Automobiles Act*, which influenced the government decision to outlaw smoking in a car when accompanied by persons under the age of 16; and the Minister of Transportation acknowledging Pat Hoy's PMB in the move to impose liability on the operator of a vehicle that fails to stop for a school bus with its red lights flashing. All of these examples saw the incorporation of a policy idea proposed through a PMB into a larger government bill. Three of these four examples denote the recognition of a government backbencher (all except O'Toole), which seems to be representative of a broader trend. However, this is not necessarily a result of partisanship, but simply a greater number of quality, apolitical PMBs originating from MPPs in the majority party.

In reality, the truth as to why a government adopts a PMB is likely somewhere in the middle of these explanations – a combination of credit seeking and practicality. Regardless, whether Royal Assent as a PMB or government adoption, with recognition or without, Ernie Hardeman observed: "If the bill was generated for the purpose it was supposed to be generated, the Member should not care how it is passed" (Mar. 29, 2010). When the avenue to success is not the chief concern, the member can focus entirely on demonstrating that the cause is an important one. In this way, the PMB is regarded merely as a tool to affect a worthwhile change; seeing the bill itself receive Royal Assent is "just gravy" (Flynn, Mar. 29, 2010). The real objective is to generate dialogue on the issue and convince the Executive to consider it.

Almost every single MPP interviewed, government and opposition alike, conceded that a good policy idea with sufficient support will get its due course. The onus is on the individual MPP to demonstrate to the government this support exists, and to garner more of it – from the public, the media, and the entire Legislature. Graham White pointed out the benefits that come from being a "media-savvy member" who can successfully draw attention to a PMB by providing relevant information (1997: 251).

Generating media coverage is of the utmost importance and can determine whether a policy idea is realized or if it disappears unnoticed – a reality identified by all MPPs interviewed. Extending beyond the support of a stakeholder or activist lobby group and creating a swell of public support is the most effective way to influence the position of government on a PMB (Levac, March 30, 2010). Members with a good policy idea who try to make use of all available media outlets are most likely to succeed. This might include appearing on shows such as TV Ontario's *The Agenda*, doing radio interviews, coordinating demonstrations and press conferences, speaking to newspaper reporters, sending out press releases and the like. As Michael Bryant pointed out, translating a good policy idea into a newsworthy product and then capturing the attention of the media is up to the individual MPP (April 7, 2010). Ironically, it is often not the practical and apolitical PMBs that receive the bulk of media attention, but the exceptionally radical, populist, or partisan ones, which have an even lesser likelihood of becoming law. Thus, the MPP with the comparatively less attention-grabbing policy idea must devote that much more effort to getting the attention of the media.

In terms of generating support within your caucus and the entire Legislature, Dave Levac noted the importance of educating your colleagues on the subject and illustrating to them that a problem does exist. This was vital to foster internal support for the cigarillo bill, explained Levac, as many MPPs were not even familiar with the product (March 30, 2010). Michael Bryant also emphasized the impact that simply talking to your colleagues can have, and the fact that rarely a member will snub a fellow backbencher looking for co-operation. He said, "If [a colleague] came into my office saying, 'Mike, I'm working on something and I can really use your support on it,' I would say, 'Sure thing. What is it?' – in that order" (April 7, 2010). Convincing fellow MPPs to be supportive not only ensures the bill passes second reading, it may influence the decision-making of House Leaders in choosing which PMBs to send to committee. The degree of endorsement within the House, in conjunction with public support, can also affect the Executive's stance on the idea.

The value of co-operation amongst backbench members was not lost on the Standing Committee on the Legislative Assembly when it produced its *Report on Enhancing the Role of the Private Member* in 2002. Namely, it proposed a reform that would allow MPPs to collaborate on a PMB, suggested on page 36 of the report:

The Committee recommends that, in order to foster co-operation among members, give private members' public bills and resolutions greater credibility, and ultimately enhance the role of the private member, up to three private members, regardless of their party affiliation, should be permitted to co-sponsor a private member's public bill or a resolution.

As mentioned above, in 2008 the Ontario Legislature did ultimately adopt the concept of co-sponsorship, albeit with the condition that those members co-sponsoring the bill come from different parties. This decision was likely an appropriate one, considering co-sponsorship of a PMB within a party might exacerbate the prevalence of politicized PMBs. Cross-party co-sponsorship encourages co-operation across the floor and allows the champion(s) of a PMB to more easily secure support from another caucus, insomuch as co-sponsors can convince their respective caucuses the bill is worth endorsing.

In addition to reaching out to fellow backbench MPPs, several Members

highlighted the value of approaching whichever Minister will be affected by a PMB. Both opposition and government backbenchers identified this as important, though particularly government backbenchers emphasized not using a PMB to “blind-side” your own government (Crozier, May 12, 2010). Dave Levac even noted that speaking with the Minister can resolve instances when a PMB comes precariously close to calling for the allocation of public funds, and potentially circumvent that rule, citing his successful *Sabrina’s Law* as an example (Levac, March 30, 2010). For an opposition member, communicating with the Minister can demonstrate the non-partisan commitment to what he or she believes is a worthy issue. Hence, speaking with the Ministers whose portfolio would be affected by a PMB is a sensible step for all backbenchers truly trying to affect change.

### CONCLUSION

The idea that backbench MPPs have no capacity to influence policy is becoming increasingly less accurate, especially with the recent changes to the rules that govern Private Members’ Business in the Ontario Legislature. Though more limited than government legislation, a PMB can be a real tool for change. It has also been demonstrated that PMBs are created with different mentalities and are often used for political purposes, rather than to propose a practical new policy idea. They can be deliberately impractical, adversarial or merely a way to appease a stakeholder or support group. This in part explains their low success rate.

When a PMB proposes a practical new policy idea that the member actually intends to see through, constituents, activists, reports, or certain highly publicized events often serve as the inspiration. To stand a chance of overcoming all the legislative hurdles and receive Royal Assent, the bill must be apolitical, not cause the government any substantial problems, and have a determined champion. When the government is convinced of the value of the proposed policy, they may adopt the bill instead of implementing it in its PMB form, for various reasons. This is still a success if the member’s intentions are what he or she alleges them to be: to help constituents and Ontarians in general.

Throughout these interviews, many MPPs asserted that PMBs do play a significant role, but there is much room for improvement. Mainly, they argued more PMBs should go to committee after being carried second reading and for the decision-making at this point in the process to be less centralized. Regardless, it also became apparent that private members themselves determine their capacity to affect change, to a great extent. Though the success of a PMB is ultimately up to government, effectively championing a policy idea involves several components, many of which are in the control of the private member. They include the merit of the idea itself, advocating in a non-partisan way, educating and lobbying other caucuses and House Leaders, generating ample media attention and public support, and communicating with the Executive. The advent of co-sponsorship makes several of these elements less difficult to carry out. Regardless, affecting change from the backbench is a daunting task – it requires passion and persistence, often involving the introduction of the same PMB multiple times. Moreover, some styles of governance might pose a greater challenge than others in terms

of convincing the government one's PMB is worthwhile. Though challenging it may be, it is certainly not impossible. Notions of the "big bad centre" suppressing good policy ideas that originate from the peripheries are inaccurate, or at least an exaggeration (Bryant, April 7, 2010). It is a matter of demonstrating to government that the idea is in fact a good one and this responsibility lies with the member.

### Bibliography

Blidook, Kelly. March 2010 "Exploring the Role of 'Legislators' in Canada: Do Members of Parliament Influence Policy?" *The Journal of Legislative Studies*. Vol. 16, No. 1, pp 32-56.

Brotten, Laurel - MPP (Etobicoke-Lakeshore). *Interview*. Wednesday, April 21. 2010. 5:00 pm. Queen's Park, Toronto.

Bryant, Michael - former MPP (St. Paul's). *Interview*. Wednesday, April 7. 2010. 10:00 am. 200 Bay Street, Toronto.

Crozier, Bruce - MPP (Essex). *Interview*. Wednesday, May 12. 2010. 2:00 pm. Queen's Park, Toronto.

Docherty, David C. 2005. *Legislatures*. Vancouver: UBC Press.

Flynn, Kevin - MPP (Oakville). *Interview*. Monday, March 29. 2010. 11:45 am. Queen's Park, Toronto.

Gelinas, France - MPP (Nickel Belt). *Interview*. Tuesday, March 30. 2010. 10:15 am. Queen's Park, Toronto.

Hardeman, Ernie - MPP (Oxford). *Interview*. Monday, March 29. 2010. 12:45 pm. Queen's Park, Toronto.

Levac, Dave - MPP (Brant). *Interview*. Tuesday, March 30. 2010. 1:00 pm. Queen's Park, Toronto.

O'Toole, John - MPP (Durham). *Interview*. Tuesday, May 11. 2010. 2:40 pm. Queen's Park, Toronto.

Prue, Michael - MPP (Beaches-East York). *Interview*. Monday, April 27. 2009. 3:00 pm. Queen's Park, Toronto.

*Report on Enhancing the Role of the Private Member*. Prepared by the Standing Committee on the Legislative Assembly. December 2002. Queen's Park, Toronto.

White, Graham (Ed). 1997. *The Government and Politics of Ontario*. Fifth Edition. Toronto: University of Toronto Press.

Zimmer, David - MPP (Willowdale). *Interview*. Wednesday, April 28. 2009. 3:15 pm. Queen's Park, Toronto.