

# Omnibus Bills: Constitutional Constraints and Legislative Liberations

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OVER THE PAST DECADE, the use of omnibus bills has become routine in the Parliament of Canada. Omnibus budget implementation bills have grown in size to several hundred pages and acquired their own political term with a decidedly negative connotation: “omnibudget bills”. These omnibus and omnibudget bills have been a source of controversy and, at times, political protest. In its 2015 election platform, the Liberal Party of Canada promised to change the House of Commons’ Standing Orders to end the “undemocratic practice” of using omnibus bills. This article analyses the understanding, use, and history of omnibus bills in the Parliament of Canada. It argues that such bills undermine parliamentarians’ ability to responsibly and effectively carry out their duties to examine and debate legislation. Omnibus bills reveal a tension between the doctrine of the separation of powers and the principle of democracy. Excessive deference to the doctrine of the separation of powers has allowed omnibus bills to become a threat to parliamentary democracy in Canada, and the balance needs to be recalibrated. This paper considers various ways in which omnibus bills might be restrained and the constitutional challenges that such options present. It considers the role of the House of Commons, the Senate, the Governor General, and the courts. Ultimately, this paper concludes that in the absence of action by Parliament

AU COURS DE LA dernière décennie, le recours à des projets de lois omnibus est devenu une sorte de routine au sein du Parlement du Canada. Les projets de lois omnibus d’exécution du budget n’ont cessé de voir leur nombre de pages grossir au point d’atteindre plusieurs centaines et on a même fini par les qualifier, avec toute la connotation politique négative que cela suppose, de «projets de lois omnibudget». Ces projets de lois omnibus et projets de lois omnibudget ont fait l’objet de controverses, voire parfois, de protestations politiques. Dans son programme électoral de 2015, le Parti libéral du Canada promettait de modifier le Règlement de la Chambre des communes dans le but de mettre fin à cette «pratique antidémocratique» que représente le recours à des projets de lois omnibus. Dans cet article, nous analysons l’interprétation, l’utilisation et l’histoire des projets de lois omnibus au Parlement du Canada. Nous soutenons en outre que des projets de lois de cette nature minent la capacité des parlementaires à s’acquitter de leurs fonctions de manière responsable et efficace, lesquelles consistent à examiner la législation et à en débattre. Les projets de lois omnibus révèlent une tension entre la doctrine de la séparation des pouvoirs et le principe démocratique. Une déférence excessive envers le principe de la séparation des pouvoirs a permis aux projets de lois omnibus de devenir une menace pour la démocratie parlementaire au

itself, the courts may be forced to find a way to restrict the most abusive uses of omnibus bills.

Canada, et dans cette optique, il est nécessaire de rétablir l'équilibre. Dans ce texte, nous examinons les diverses manières dont nous pourrions limiter les projets de lois omnibus et les défis constitutionnels que ces options présentent. Nous nous penchons en outre sur le rôle respectif de la Chambre des communes, du Sénat, du Gouverneur général, et des tribunaux judiciaires. Enfin, l'article conclut en affirmant qu'en l'absence d'action de la part du Parlement lui-même, les tribunaux seront peut-être forcés de trouver une façon de restreindre les recours les plus abusifs à des projets de lois omnibus.

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# Omnibus Bills: Constitutional Constraints and Legislative Liberations

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*Bill C-2—An Act to implement certain provisions of the Speech from the Throne delivered January 18, 2020 and the budget tabled on March 2, 2020, and to implement certain provisions contained in the ministerial mandate letters tabled on January 27, 2020, and to implement certain provisions of the Trans-Pacific Partnership Agreement, Part II, tabled on March 18, 2020, and to implement certain provisions of the agreement reached at the Paris Climate Conference (COP23) on December 21, 2019, and to amend 87 statutes and other matters.*

Short Title: *The Efficient Governance Act, 2020*

## I. INTRODUCTION

The epigraph may sound far-fetched, but how far are we actually from the above scenario? On October 22, 2013, the Minister of Finance, the Honourable James Flaherty, introduced Bill C-4, *A Second Act to Implement Certain Provisions of the Budget Tabled in Parliament on March 21, 2013 and Other Measures*. The short title for this 322-page bill was the *Economic Action Plan*

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2013 Act No. 2. By this time, eight years into the Harper ministry, the use of omnibus bills—bills that seek to amend, repeal, or enact several Acts, and which are usually made up of a number of related but separate initiatives<sup>1</sup>—had become routine. Omnibus budget implementation bills, which are simply omnibus bills that implement the government’s annual budget, also became routine. By the early 2010s, such bills had acquired their own nomenclature: “omnibudget bills”.<sup>2</sup> During this time, opposition to such bills had become a source of protest both inside and outside Parliament.<sup>3</sup>

But by October 2013, such protests had become muted. Bill C-4 passed second reading after five days of debate and was referred to committee on October 29, 2013. The Standing Committee on Finance devoted five sessions to considering the 472 sections contained in Bill C-4 and reported back to the House without a single amendment.<sup>4</sup> The House passed the bill without amendment after two sessions of debate. In the Senate, the Standing Committee on National Finance began studying the bill while it

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1 Audrey O’Brien & Marc Bosc, eds, *House of Commons Procedure and Practice*, 2nd ed (Cowansville, QC: House of Commons & Éditions Yvon Blais, 2009) at 724.

2 See e.g. Kady O’Malley, “Omnibudget Watch: So, Now What?”, *CBC/Radio-Canada* (31 October 2012), online: Inside Politics Blog <[www.cbc.ca](http://www.cbc.ca)>; The Council of Canadians, “Omnibudget”, (30 October 2012), online: <[canadians.org](http://canadians.org)>. This phenomenon also led to the creation of its own hashtag on Twitter. See #omnibudget, online: Twitter <[twitter.com](http://twitter.com)>.

3 See Allison Cross, “Mulcair Steps Up Environmental Attacks After Tories Refuse to Split Omnibus Bill”, *National Post* (9 May 2012), online: <[news.nationalpost.com](http://news.nationalpost.com)>; The Canadian Press, “After 22-Hour Voting Marathon, MPs Finally Pass Tories’ Omnibus Budget Bill”, *National Post* (14 June 2012), online: <[news.nationalpost.com](http://news.nationalpost.com)>; Gloria Galloway, “Opposition Makes Last Stand Against Catch-all Tory Budget Bill”, *The Globe and Mail* (11 June 2012), online <[www.theglobeandmail.com](http://www.theglobeandmail.com)>; John Ivison, “How Stephen Harper Learned to Love the Omnibus Bill”, *National Post* (3 May 2012); Gloria Galloway & Daniel Leblanc, “The Tale of 2012’s Omnibus Budget Bill”, *The Globe and Mail* (12 June 2012), online: <[www.theglobeandmail.com](http://www.theglobeandmail.com)>; Lorne Gunter, “Omnibus Bills in Hill History”, *Toronto Sun* (18 June 2012), online: <[www.torontosun.com](http://www.torontosun.com)>; “Another Budget, Another Contemptuous Tory Omnibus Bill”, *The Globe and Mail* (12 May 2012), online: <[www.theglobeandmail.com](http://www.theglobeandmail.com)> [“Another Budget”]; Aaron Wherry, “A Short History of Budget Implementation Acts”, *Maclean’s* (4 May 2012), online: <[www.macleans.ca](http://www.macleans.ca)>. See also Aaron Wherry, “Another Omnibus Budget Bill and a Test of Parliament’s Bill”, *Maclean’s* (15 May 2015), online: <[www.macleans.ca](http://www.macleans.ca)>; Christopher Alemany, “Office of MP James Lunney” (2 June 2012), posted on *Rally Against Conservative OmniBudget*, online: Facebook <[www.facebook.com](http://www.facebook.com)>.

4 Sections 471 and 472 of Bill C-4 were referred to the House Standing Committee on Justice and Human Rights for study and were considered during two sessions on November 19 and 21, 2013. Seven witnesses, including this author, appeared before that committee. See House of Commons, Standing Committee on Justice and Human Rights, *Subject Matter of Clauses 471 and 472 of Bill C-4, A Second Act to Implement Certain Provisions of the Budget Tabled in Parliament on March 21, 2013 and Other Measures* (19 and 21 November 2013), online: <[www.parl.gc.ca](http://www.parl.gc.ca)>.

was still before the House and considered the bill over 11 sessions.<sup>5</sup> The Bill was then introduced in the Senate on Monday, December 9, 2013, passed second reading on Tuesday, December 10<sup>th</sup>, was considered by committee on Wednesday, December 11<sup>th</sup>, which reported back to the Senate with no amendments on Thursday, December 12<sup>th</sup>. The bill passed third reading in the Senate and received Royal Assent on Friday, December 13, 2013. The Senate dealt with the 322-page bill in five days. To be fair, the Red Chamber spent more time than the House did scrutinizing Bill C-4.

The speed with which this bill moved through Parliament does not cast either chamber in a particularly good light. While Bill C-4 included a number of highly controversial provisions (such as rescinding the right to strike for some federal employees<sup>6</sup> and a host of other measures affecting employment insurance, workplace safety, veterans affairs, solicitor-client privilege, and immigration policy),<sup>7</sup> it would likely have escaped sustained public attention<sup>8</sup> if not for two provisions: sections 471 and 472, amendments to the *Supreme Court Act*, which were tacked onto the bill at the eleventh hour as an attempted response to a legal challenge to the appointment of Federal Court of Appeal Justice Marc Nadon to the Supreme Court of Canada. The federal government also initiated a reference to the Supreme Court on the constitutionality of these two sections.<sup>9</sup>

5 The Senate undertook a “pre-study” of Bill C-4 prior to its passage by the House of Commons and prior to its introduction in the Senate. See Senate, *Debates of the Senate (Hansard)*, 41st Parl, 2nd Sess, vol 149, No 12 (5 November 2013) (Hon Noël A Kinsella) [*Debates of the Senate*, (5 November 2013)]. This practice is allowed for under the *Rules of the Senate*, 10–11(1), and is not uncommon. See Senate, *Rules of the Senate of Canada*, (December 2015) at 10–11(1).

6 See “Harper’s New Omnibus Bill a Stealth Blow to Civil Servants”, Editorial, *The Toronto Star* (23 October 2013), online: <www.thestar.com>.

7 *Ibid.*

8 But see Clark Scott & Peter DeVries, “Bill C-4 and the Slow Strangulation of Parliament”, *iPolitics* (25 October 2013), online: <ipolitics.ca>.

9 Two weeks before Bill C-4 was introduced, Toronto lawyer, Rocco Galati, launched a judicial review application over the appointment of Federal Court of Appeal Judge Marc Nadon to the Supreme Court of Canada. The government responded with a two-barrelled approach. It directed a reference to the Supreme Court of Canada and amended the *Supreme Court Act* to “clarify” the meaning of sections 5 and 6 of that act. Rather than introducing a stand-alone bill, the government simply added the amendments to the pending omnibus bill. Sections 471 and 472 were the very last provisions of Bill C-4. They purported to amend the *Supreme Court Act* to clarify the meaning of sections 5 and 6 of that act. From the moment Bill C-4 was introduced, the constitutionality of these provisions was in question. By directing a reference to the Supreme Court on the validity of the sections, the government admitted as much. See generally *Reference re Supreme Court Act, ss 5 and 6*, 2014 SCC 21, [2014] 1 SCR 433 [*Reference Re Supreme Court Act*].

Neither the legal challenge nor the reference slowed the House of Commons from its rapid consideration and enactment of Bill C-4. Nor did it cause the Senate to pause to exercise its role as the chamber of “sober second thought.” Ironically, the Supreme Court was hearing about this idealized role of the Senate at the same time as the Senate was demonstrating its lack of capacity to exercise its historic constitutional function.<sup>10</sup>

While omnibus bills are neither intrinsically good nor bad, Bill C-4 demonstrates the problematic nature of some omnibus bills, which creates the possibility of an omnibus bill like the one suggested in the epigraph. It is therefore important to distinguish between the *parliamentary* understanding of omnibus bills and the *political* connotation that has developed. Thus, in parliamentary terms, an omnibus bill is simply a bill that enacts or amends multiple statutes.<sup>11</sup> However, in political usage, the term has become an epithet. The Liberal Party’s 2015 platform castigated the Harper government for its use of omnibus bills, and promised not to follow suit.<sup>12</sup> Nevertheless, when Liberal Minister of Finance Bill Morneau introduced the Trudeau government’s first budget implementation bill, he categorically denied that it was an omnibus bill.<sup>13</sup> As the Liberals’

10 See *Reference re Senate Reform*, 2014 SCC 32, [2014] 1 SCR 704 [*Re Senate Reform*] (appeal heard November 12–14, 2013). Bill C-4 was introduced in the House on October 22, 2013 and the Senate commenced pre-study of it on November 5, 2013. See “Bill C-4, A Second Act to Implement Certain Provisions of the Budget Tabled in Parliament on March 21, 2013 and Other Measures”, online: <www.parl.gc.ca>; *House of Commons Debates*, 41st Parl, 2nd Sess, No 5 (22 October 2013) at 1005 (Hon Kerry-Lynne D Findlay); *Debates of the Senate*, (5 November 2013), *supra* note 5 at 398 (Hon Yonah Martin). By putting sections 471 and 472 in a budget bill, the government was boxing in both the House and Senate, constitutionally speaking. Even if they were inclined to vote against the measures, members of the House could only do so by voting against a budget bill. This would be considered a vote of non-confidence. Similarly, even if members of the upper house had discovered their historic role attributed to them by the Supreme Court in its judgment months later, they too had no procedural option other than to vote down the entire bill, a move that would have been as controversial as it would have been unlikely.

11 O’Brien & Bosc, *supra* note 1 at 724.

12 See Liberal Party of Canada, *Real Change: A New Plan for a Strong Middle Class* (Ottawa: Liberal Party of Canada, 2015), online: <www.liberal.ca/files/2015/10/New-plan-for-a-strong-middle-class.pdf> (“Stephen Harper has also used omnibus bills to prevent Parliament from properly reviewing and debating his proposals. We will change the House of Commons Standing Orders to bring an end to this undemocratic practice” at 30).

13 See Aaron Wherry, “New Liberal Budget Bill Raises Old Concerns About Omnibus Legislation”, *CBC/Radio-Canada* (24 April 2016), online: <www.cbc.ca> [Wherry, “Omnibus Concerns”]. See also *House of Commons Debates*, 42nd Parl, 1st Sess, No 44 (21 April 2016) (Hon Bill Morneau) (“Mr. Speaker, our budget implementation act is absolutely not an omnibus bill. Every measure in the budget implementation act is related to our budget, unlike previous omnibus bills from the members opposite” at 2544).

budget implementation bill sought to amend dozens of statutes, there is no question that parliamentary speaking, it was an omnibus bill<sup>14</sup>—and understandably so.<sup>15</sup>

Omnibus bills are efficient because they permit the bundling of enactments or amendments to multiple statutes in a single bill. When these relate to the same subject matter, they may facilitate parliamentary consideration of that particular area. However, when omnibus bills stretch the understanding of the “same subject matter” criterion or tack on unrelated subjects, as in the case of Bill C-4, they may become democratically problematic. In such circumstances, omnibus bills make it difficult for parliamentarians to properly scrutinize a bill’s content and exercise their function in holding the government to account. In some sense, the Canadian parliamentary practice of using omnibus bills is unique: omnibus bills are not used in the United Kingdom and Australia,<sup>16</sup> and they are restricted in New Zealand.<sup>17</sup>

Consequently, when Bill C-4 was introduced, and even after it was enacted into law, no judicial challenge was brought to the bill itself because of its omnibus character.<sup>18</sup> This is because, as I will describe, the Supreme Court of Canada has been remarkably deferential to the internal workings of Parliament, either on the grounds of non-justiciability or respect for parliamentary privilege. The result, as articulately documented by Professor Vincent Kazmierski,<sup>19</sup> has been a meagre interpretation given to

14 See Bill C-15, *An Act to Implement Certain Provisions of the Budget Tabled in Parliament on March 22, 2016 and Other Measures*, 1st Sess, 2nd Parl, 2016.

15 The Trudeau government’s first budget contained many provisions that required legislative change to implement them. See Canada, *Growing the Middle Class*, tabled in the House of Commons by the Honourable William Francis Morneau, PC, MP, Minister of Finance (Ottawa: 22 March 2016), online: <[www.budget.gc.ca/2016/docs/plan/budget2016-en.pdf](http://www.budget.gc.ca/2016/docs/plan/budget2016-en.pdf)>.

16 O’Brien & Bosc, *supra* note 1 at 724–25. In the United States, the use of omnibus bills is accepted but controversial. See Louis Massicotte, “Omnibus Bills in Theory and Practice” (2013) 36:1 *Can Parliamentary Rev* 13 at 14–15 (for a discussion of omnibus bills in Canadian provinces and in the United States).

17 See New Zealand House of Representatives, *Standing Orders* (2014), rules 260–63 at 78, online: <[www.parliament.nz/resource/en-nz/ooHOHPBReferenceStOrders4/eb7c8b9e4a6c7aa88a47d14dc4100513b2557e60](http://www.parliament.nz/resource/en-nz/ooHOHPBReferenceStOrders4/eb7c8b9e4a6c7aa88a47d14dc4100513b2557e60)>.

18 Instead, Toronto lawyer Rocco Galati launched a legal challenge to the appointment of Federal Court of Appeal Justice Marc Nadon to the Supreme Court of Canada prior to the introduction of Bill C-4. With the introduction of Bill C-4, the Harper government also launched a reference to the Supreme Court of Canada on the legality of the appointment of Justice Nadon and the constitutionality of sections 471 and 472 of Bill C-4. See *Reference re Supreme Court Act*, *supra* note 9.

19 See Vincent Kazmierski, “Draconian but not Despotism: The ‘Unwritten’ Limits of Parliamentary Sovereignty in Canada” (2010) 41 *Ottawa L Rev* 245.

the unwritten constitutional principle of democracy, a poor cousin to the über-principle of judicial independence.

The abuse of omnibus bills challenges our understanding of parliamentary democracy, where citizens elect representatives who consider different viewpoints in proposing, debating, and enacting laws. When parliamentarians relinquish this role and simply defer to the executive, which prepares government bills, they fail in their representative function and risk making a mockery out of the constitutional right to vote by emptying it of any substance. The regulation of omnibus bills presents a constitutional and legal challenge, however, because Parliament enjoys the privilege of determining its own processes without interference from the other branches of government (*i.e.*, the executive or the courts). In short, Parliament is autonomous or sovereign in the administration of its own process. This paper shows how omnibus bills reveal a tension between the doctrine of the separation of powers and the principle of democracy. Excessive deference to the doctrine of the separation of powers has allowed omnibus bills to become a threat to parliamentary democracy in Canada, and the balance needs to be recalibrated.

Moreover, Parliament's refusal to deal with abusive omnibus bills—especially their most abusive variant, the omnibudget bill—threatens its autonomy and powers in the long term. If the current omnibus trend is not arrested by the House of Commons, the historical non-interventionist approach to the internal workings of Parliament will be challenged. There would be strong pressure on the courts to intervene in the face of such gross abuses of power as envisioned by this article's epigraph. Given high levels of public confidence in the courts, compared to low levels of public confidence in parliamentarians,<sup>20</sup> the results for the independence and integrity of Parliament could be highly deleterious. Fortunately, there are a number of relatively easy ways for the House to deal with the problem of omnibus bills, identified in this paper.

This paper has four parts including this introduction. Part II describes the history of omnibus bills and the development of the highly problem-

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20 See e.g. Robert Benzie, "Canadians Rank Politicians Among Least Trusted Professionals: Poll", *The Toronto Star* (5 November 2014), online: <[www.thestar.com](http://www.thestar.com)> (the poll found that 13 percent of respondents trusted politicians to behave ethically, above only lobbyists at 9 percent; judges came second overall at 65 percent, behind only doctors at 78 percent); Daniel Tencer, "Canada's Most and Least Trusted Professions: Sorry, CEOs and Politicians", *Huffington Post Canada* (20 January 2015), online: <[www.huffingtonpost.ca](http://www.huffingtonpost.ca)> (the survey found that 42 percent of respondents trusted judges, while 6 percent trusted national politicians).

atic omnibudget bills. It is important to understand this history because abusive omnibus bills, like Bill C-4, did not suddenly happen—they developed over time through the acquiescence of Parliament and successive speakers.

Part III analyzes some of the constitutional challenges in attempting to curb the use of omnibus bills as well as potential solutions. The easiest way forward would be to amend the House of Commons Standing Orders or the *Parliament of Canada Act* to impose restrictions on the use of omnibus bills. There are no constitutional impediments to such a course of action. The Speaker could become more assertive in protecting the historic rights of individual members to carry out their legislative responsibilities. If the House and Speaker fail to act, it is possible that at some point the Senate would. Specifically, the Senate has the legal power to veto omnibus bills, but by convention it usually defers to the House. Moreover, omnibudget bills present a special challenge because they are money bills and votes of confidence. This could either prove very opportune or very dangerous for the Red Chamber. Some might wish for the Governor General to deny Royal Assent to such acts, but this would properly be considered an egregious violation of constitutional convention.

Additionally, due to the separation of powers, the courts have shown a very high degree of deference to the internal workings of Parliament. Thus, we would seem to be at a legislative and constitutional impasse in the face of abusive omnibus bills. However, I lay out the juridical basis for court intervention and also explain how such intervention would undermine the independence of the House of Commons in the long term. Finally, this paper ends with a brief conclusion.

With this introduction, I now turn to the development of omnibus bills in Canadian parliamentary practice.

## **II. FROM OMNIBUS TO OMNIBUDGET**

### **A. Origins, Definition, Justifications, and Objections**

Omnibus was not always a dirty word. While not popular, omnibus bills were not always opposed, likely because they were used more sparingly in the past than in modern times and only started to become large bills within the last 50 years. The Library of Parliament and the *House of Commons Procedure and Practice* handbook date the first omnibus bill back to 1888, when a private bill was introduced to confirm two separate railway

agreements.<sup>21</sup> However, the Library of Parliament suggests that omnibus bills have their genesis in the very first session of Parliament, in which a statute was enacted that continued legislation that was about to expire, while also “amending *several statutes* with different subject matters such as bankruptcy, peace at the borders, and banks.”<sup>22</sup>

The *House of Commons Procedure and Practice* handbook states that “there is no precise definition of an omnibus bill.”<sup>23</sup> However, it proceeds to explain that generally, “an omnibus bill seeks to amend, repeal or enact several Acts, and is characterized by the fact that it is made up of a number of related but separate initiatives.”<sup>24</sup> The working parliamentary understanding of an omnibus bill is a bill that has “one basic principle or purpose which ties together all the proposed enactments and thereby renders the Bill intelligible for parliamentary purposes.”<sup>25</sup> This definition comes from an explanation provided by the Right Honourable Herb Gray. In 1988, Mr. Gray, then the Opposition House Leader, stated:

The essential defence of an omnibus procedure is that the bill in question, although it may seem to create or amend many disparate statutes, in effect

21 O'Brien & Bosc, *supra* note 1 at 724, cited in Library of Parliament, *Omnibus Bills: Frequently Asked Questions*, Publication No 2012-79-E (1 October 2012) [Library of Parliament].

22 *Ibid* at 2 [emphasis in original], citing *An Act to continue for a limited time the several Acts therein mentioned*, SC 1868, c 29. Omnibus bills of this sort were introduced in the first four or five decades of Confederation without any comment. According to the Library of Parliament, the first negative response to an omnibus bill occurred in 1923, when the Senate rejected a government bill as being overly broad. Bill 234, *An Act respecting the Construction of the Canadian National Railway Lines*, contained a proposal for constructing 29 railway lines. A review of the debate in Hansard indicates that the Senators were primarily concerned with the lack of precise costing that should have accompanied the authorization sought by the government for these construction projects. During the debate in the upper chamber, Senators suggested to the government that if their proposal was reintroduced, it should take the form of separate bills for each of the 29 railway lines. The government followed this advice and in the next session, it introduced a series of separate bills that passed in both the House of Commons and Senate. See Library of Parliament, *supra* note 21 at 2, n 17, citing *Senate Debates*, 14th Parl, 2nd Sess, vol 1 (28–29 June 1923) at 1239–47, 1280–1301; Robert A MacKay, *The Unreformed Senate of Canada*, revised ed (Toronto: McClelland & Stewart, 1963) at 102–104. As will be discussed in Part III, Bill 234 is notable because it was vetoed by the Senate. However, it is fair to say that a bill like Bill 234 would be unlikely to raise much opprobrium today. In fact, despite meeting the parliamentary definition of an omnibus bill, it is unlikely that Bill 234 would be politically castigated as such today.

23 O'Brien & Bosc, *supra* note 1 at 724.

24 *Ibid*, citing *House of Commons Debates*, 35th Parl, 1st Sess, No 46 (11 April 1994) at 2861 (Hon Gilbert Parent) [*House of Commons Debates*, (11 April 1994)].

25 *Ibid*, n 77, citing *House of Commons Debates*, 33rd Parl, 2nd Sess, No 13 (8 June 1988) at 16255 (Hon John Allen Fraser) [*House of Commons Debates*, (8 June 1988)].

has one basic principle or purpose which ties together all the proposed enactments and thereby renders the bill intelligible for parliamentary purposes.<sup>26</sup>

This statement was cited with approval in subsequent Speakers' rulings.<sup>27</sup>

A frequently cited reason for a government wanting to introduce an omnibus bill "is to bring together in a single bill all the legislative amendments arising from a single policy decision in order to facilitate parliamentary debate."<sup>28</sup> Successive Speakers' rulings have referred to the importance of a "unifying principle,"<sup>29</sup> "single purpose,"<sup>30</sup> "unifying thread,"<sup>31</sup> and "unitary purpose."<sup>32</sup> These statements are important to keep in mind when we move to the discussion of omnibus bills. The "unifying purpose" provides an important normative justification for omnibus bills. But this normative justification does not guarantee that a particular omnibus bill will be in the public interest. As Professor Louis Massicotte has written, "[t]he underlying 'basic principle or purpose' of an omnibus bill can be anything, ranging from the most innocuous to the most controversial."<sup>33</sup>

Massicotte identifies two distinct advantages of governments using omnibus bills. First, omnibus bills save time and shorten legislative proceedings by avoiding the preparation of dozens of distinct bills, which would each necessitate second reading debates. Second, they generate embarrassment for opposition parties by insulating highly controversial proposals within a complex legislative package, parts of which can be quite popular with the public or even with opposition parties themselves.<sup>34</sup>

While omnibus bills may be economical and convenient for governments, they raise a host of problems. The most fundamental challenge to omnibus bills is that they compromise the House of Commons' ability

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26 *House of Commons Debates*, 33rd Parl, 2nd Sess, vol 13 (30 May 1988) at 15880 (Hon Herb Gray) [*House of Commons Debates*, (30 May 1988)].

27 See e.g. *House of Commons Debates*, (8 June 1988), *supra* note 25 at 16255; *House of Commons Debates*, 34th Parl, 3rd Sess, No 7 (1 April 1992) at 9147 (Hon John Allen Fraser) [*House of Commons Debates*, (1 April 1992)]; *House of Commons Debates*, (11 April 1994), *supra* note 24 at 2860, cited in Library of Parliament, *supra* note 21 at 1.

28 O'Brien & Bosc, *supra* note 1 at 724, citing *House of Commons Debates*, 32nd Parl, 1st Sess, No 14 (1 March 1982) at 15485–86 (Hon Marc Lalonde).

29 *House of Commons Debates*, (11 April 1994), *supra* note 24 at 2859.

30 *House of Commons Debates*, (8 June 1988), *supra* note 25 at 16258.

31 *Ibid* at 16256.

32 *House of Commons Debates*, (11 April 1994), *supra* note 24 at 2861.

33 Massicotte, *supra* note 16 at 13.

34 *Ibid* at 16.

to hold the government accountable.<sup>35</sup> They make it difficult, if not impossible, for members to properly scrutinize legislation.<sup>36</sup> Much stronger language has been used in the media to describe the Harper government's omnibudget legislation, analyzed below.<sup>37</sup>

## B. Raising Questions and Further Development

The House of Commons did not question the propriety of omnibus bills for at least the first 85 years of Confederation.<sup>38</sup> The first actual recorded instance of characterizing and objecting to “omnibus legislation” occurred in 1969 in response to Bill C-150, *The Criminal Law Amendment Act, 1968–69*, which overhauled the *Criminal Code of Canada* by decriminalizing contraception, liberalizing abortion, and decriminalizing homosexual conduct for consenting males over the age of 21. An earlier version of this bill had been introduced in December 1967 by then Minister of Justice Pierre Trudeau.<sup>39</sup> It was in connection with this bill that Trudeau made his famous statement that “there is no place for the state in the bedrooms of the nation.”<sup>40</sup> For many years, this bill became simply known as “the

35 CES Franks, *The Parliament of Canada* (Toronto: University of Toronto Press, 1987) at 130–31 [Franks, *Parliament*]; Brent Rathgeber, *Irresponsible Government: The Decline of Parliamentary Democracy in Canada* (Toronto: Dundurn, 2014) at 73.

36 Rathgeber, *supra* note 35 at 73; Massicotte, *supra* note 16 at 16.

37 “Another Budget”, *supra* note 3 (calling the Harper government’s 2015 budget implementation bill a “contemptuous disregard for Parliament”).

38 The first documented question about an omnibus bill occurred in 1953 when a member asked the Minister of National Defence the following straightforward question: “I have no doubt the minister can explain why this resolution covers two or three acts. Is it customary to do that?” The Minister of National Defence provided a straightforward explanation:

The *National Defence Act* was enacted in 1950, and at that time we incorporated in the one bill a great number of provisions from other legislation. We have decided, and the house so far has concurred, that it would meet the convenience of hon. members, as it does very much of the armed forces, if all amendments to existing legislation relating to the armed forces were contained in a single bill each year. In consequence, the *Canadian Forces Act, 1950*; the *Canadian Forces Act, 1951*; the *Canadian Forces Act, 1952* have been enacted. All of these amended a number of different statutes, and this follows that precedent.

This was the end of the matter. There was no further questioning along these lines and no characterization of the bill as an omnibus one. See *House of Commons Debates*, 21st Parl, 7th Sess, vol 4 (2 April 1953) at 3551 (Hon Brooke Claxton & William Browne).

39 House of Commons, *Journals*, 27th Leg, 2nd Sess, vol 114, No 106 (21 December 1967) at 620.

40 “Trudeau: ‘There’s No Place for the State in the Bedrooms of the Nation’”, *CBC/Radio-Canada*, online: Archives <[www.cbc.ca](http://www.cbc.ca)>.

Omnibus Bill.”<sup>41</sup> The bill stood at 118 pages and was the subject of parliamentary and public debate for over a year,<sup>42</sup> demonstrating that the form of the omnibus bill does not necessarily foreclose extensive parliamentary debate and scrutiny.<sup>43</sup>

In what is believed to be the first explicit ruling on an omnibus bill,<sup>44</sup> Speaker Lucien Lamoureux ruled a motion, which instructed a committee to divide Trudeau’s omnibus criminal bill, while it was still before the House at second reading, as out order. He further stated: “[i]t is not for the Chair to determine whether it is proper or appropriate or politic for the government to present this legislation in the form of an omnibus bill.”<sup>45</sup>

Speaker Lamoureux demonstrated uneasiness with omnibus bills in his next ruling on this issue in 1971. Bill C-207, the *Government Organization Act*, overhauled government structure, which included creating a new Department of the Environment.<sup>46</sup> Speaker Lamoureux acknowledged “the long established practice” of omnibus bills, such as the one before the House. He agreed with the assertion of government ministers that they were following a long established practice and stated that he had to take that into account “because of the importance of the precedent in our system.”<sup>47</sup> But Speaker Lamoureux sounded the alarm in an oft-repeated passage:

[W]here do we stop? Where is the point of no return? . . . [W]e might reach the point where we would have only one bill, a bill at the start of the session for the improvement of the quality of life in Canada which would include every single proposed piece of legislation for the session. That would be

41 See e.g. Library of Parliament, *supra* note 21. See also “Le ‘bill Trudeau’”, *CBC/Radio-Canada*, online: Archives <archives.radio-canada.ca>; Jacques Lamarche, “Le Bill Omnibus et la sentence” (1970) 5 RJT 19.

42 An earlier version of the bill was introduced in December 1967 by then Minister of Justice Pierre Trudeau. Bill C-150 was introduced in the first session of the 28<sup>th</sup> Parliament by Minister of Justice John Turner almost a year later. See House of Commons, *Journals*, 28<sup>th</sup> Leg, 1<sup>st</sup> Sess, vol 115, No 68 (19 December 1968) at 5 [House of Commons, *Journals*, (19 December 1968)]. Bill C-150 was enacted as *The Criminal Law Amendment Act, 1969*, SC 1968-69, c 38.

43 Thank you to my colleague Vanessa MacDonnell for pointing this out to me.

44 Library of Parliament, *supra* note 21 at 4. See also House of Commons, *Journals*, (19 December 1968), *supra* note 42 at 548.

45 House of Commons, *Journals*, 28<sup>th</sup> Leg, 1<sup>st</sup> Sess, vol 115, No 77 (23 January 1969) at 617.

46 Bill C-207, *An Act respecting the organization of the Government of Canada and matters related to or incidental thereto*, 3<sup>rd</sup> Sess, 28<sup>th</sup> Parl, 1971 (assented to 10 June 1971), RSC 1970 (2<sup>nd</sup> Supp), c 42.

47 House of Commons, *Journals*, 28<sup>th</sup> Leg, 3<sup>rd</sup> Sess, vol 117, No 62 (26 January 1971) at 284 [House of Commons, *Journals*, (26 January 1971)].

an omnibus bill with a capital “O” and a capital “B”. But would it be acceptable legislation? There must be a point where we go beyond what is acceptable from a strictly parliamentary standpoint.<sup>48</sup>

Speaker Lamoureux was not willing to rule Bill C-207 out of order. He stated that “the government has followed the practice that has been accepted in the past, rightly or wrongly.”<sup>49</sup> However, he added that “we may have reached the point where we are going too far and that omnibus bills seek to take in too much. All honourable Members should be alerted to this difficulty of which the Chair is fully conscious.”<sup>50</sup>

Importantly, Speaker Lamoureux saw a role for the Speaker in alerting the House to the introduction of an omnibus bill and providing members with an opportunity to object to it, although he was not clear on what the threshold would be for the Speaker to take such action. He stated:

In my view it should be the responsibility of the Chair, when such a bill is introduced and given first reading, to take the initiative and raise the matter for the consideration of the House by way of a point of order, as I have taken the liberty of doing with a number of Private Members’ Bills. When those bills came before the House for first reading I entered a *caveat* about them and gave honourable Members an opportunity of expressing their views. At any rate some of those bills were refused by the Chair.<sup>51</sup>

Successive speakers have not followed this practice. Instead, Speakers have remained wholly reactive, mildly apologetic, and almost completely accommodating of any and all omnibus bills.

Speaker James Jerome’s comments in response to Bill C-51, *The Criminal Law Amendment Act, 1977*, reflect the general approach of speakers before and since: expressing concern but refusing to take any action. In dismissing an objection to the bill, Speaker Jerome expressed concern “about whether our practices in respect of bills do in fact provide a remedy for the very legitimate complaint of the hon. member that a bill of this kind gives the government, under our practices, the right to demand one decision on a number of quite different, although related, subjects.”<sup>52</sup>

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48 *Ibid.*

49 *Ibid* at 285.

50 *Ibid.*

51 *Ibid* at 284 [emphasis in original].

52 *House of Commons Debates*, 30th Parl, 2nd Sess, vol 6 (11 May 1977) at 5522 (Hon James Jerome) [*House of Commons Debates*, (11 May 1977)].

A critical event occurred in 1982 that represented a fork in the road for the Speaker and for the House. In February 1982, the government introduced Bill C-94, the *Energy Security Act*. This omnibus bill implemented the government's highly controversial energy policy. The opposition objected to the omnibus nature of the bill on March 1, 1982, and the next day Speaker Jeanne Sauvé refused to rule the bill out of order.<sup>53</sup> In her ruling, Speaker Sauvé said: “[i]t may be that the House should accept rules or guidelines as to the form and contents of omnibus bills, but in that case the House and not the Speaker, must make those rules.”<sup>54</sup>

The opposition responded by refusing to cooperate and attend the House when the bells were rung to call a vote. Because the opposition refused to meet with the government, the bells continued to ring. They rang for two full weeks<sup>55</sup> until the government agreed to break Bill C-94 into eight individual bills.<sup>56</sup> The “bell-ringing incident,” as it has become known, was the impetus for the most ambitious project of procedural reforms in the House to date, known as the McGrath Committee reforms.<sup>57</sup> Ironically, the abuse of omnibus bills was not addressed by McGrath.<sup>58</sup>

Thus, omnibus bills continued to be introduced, challenged, and upheld in the House. In 1988, the Mulroney government introduced Bill C-130, the *Canada–United States Free Trade Agreement Implementation Act*. A challenge to its omnibus nature was dismissed by Speaker John Fraser in June 1988.<sup>59</sup> The Senate blocked the bill and it died on the order paper when Parliament was dissolved on October 1, 1988. The very subject of Bill C-130—the *Canada–US Free Trade Agreement*—became the focus of the election, which returned the Mulroney government to power. After the election, the Bill was re-introduced and enacted into law in December 1988.<sup>60</sup> Omnibus bills continued to grow in the 1990s.

53 *House of Commons Debates*, 32nd Parl, 1st Sess, vol 14 (2 March 1982) at 15532–39 [*House of Commons Debates*, (2 March 1982)].

54 *Ibid* at 15532.

55 Franks, *Parliament*, *supra* note 35 at 133.

56 *Ibid* at 134.

57 Canada, *Special Committee on Reform of the House of the Commons*, Chair James A McGrath (Ottawa: Queen's Printer for Canada, 1985). See generally Canada, Law and Government Division, *House of Commons Procedure: Its Reform*, by James R Robertson, (Ottawa: Library of Parliament, 2002).

58 Bill Blaikie & Gary Levy, “Reform of the Commons: Thirty Years After McGrath” (2015) 231:9 *J Parliamentary & Political L* at 240.

59 *House of Commons Debates*, (8 June 1988), *supra* note 25 at 16258.

60 See Peter W Hogg, *Constitutional Law of Canada*, 5th ed (Toronto: Carswell, 2007) (loose-leaf 2007 supplement § 9.5(c)) at 9–17, n 41.

One of the most comprehensive and articulate objections to omnibus bills was made by then Reform MP Stephen Harper in 1994. It is worth quoting Mr. Harper's objections at some length:

Mr. Speaker, I would argue that the subject matter of the bill is so diverse that a single vote on the content would put members in conflict with their own principles.

In this present case, the drafters of Bill C-17 have incorporated in the same bill the following measures: public sector compensation freezes; a freeze in Canada assistance plan payments and Public Utilities Income Tax Transfer Act transfers; extension and deepening of transportation subsidies; authorization for the Canadian Broadcasting Corporation to borrow money; and changes to unemployment insurance with respect to benefits and the payroll taxes.

First, there is a lack of relevancy of these issues. The omnibus bills we have before us attempt to amend several different existing laws.

Second, in the interest of democracy I ask: How can members represent their constituents on these various areas when they are forced to vote in a block on such legislation and on such concerns?

We can agree with some of the measures but oppose others. How do we express our views and the views of our constituents when the matters are so diverse? Dividing the bill into several components would allow members to represent views of their constituents on each of the different components in the bill.

The bill contains many distinct proposals and principles and asking members to provide simple answers to such complex questions is in contradiction to the conventions and practices of the House.

As well this will cause fairly serious difficulties in committee. This bill will ultimately go to only one committee of the House, a committee that will inevitably lack the breadth of expertise required for consideration of a bill of this scope. Furthermore, the workload of that committee will be onerous and it will be very difficult to give due consideration to all relevant opinion.<sup>61</sup>

Mr. Harper was complaining about the Liberals' budget implementation bill.

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61 *House of Commons Debates*, 35th Parl, 1st Sess, No 3 (25 March 1994) at 2775-76 (Hon Stephen Harper) [*House of Commons Debates*, (25 March 1994)]. The objection was dismissed as being raised too late in the process (*ibid* at 2776-77 (Hon Peter Milliken)).

### C. From Omnibus to Omnibudget

The development of “omnibudget bills” (*i.e.*, omnibus budget implementation bills), is a recent parliamentary phenomenon. Budget bills are bills that implement certain aspects of a government’s annual budget. Before 2001, it does not appear that budget implementation bills were particularly long or complex, and there is little indication that MPs complained about the omnibus nature of budget bills. The Liberal government’s 1994 budget implementation bill, about which Mr. Harper complained, was 24 pages long.<sup>62</sup>

Budget implementation bills have grown significantly longer since Mr. Harper objected to the Liberal Bill in 1994. It is estimated that the average length of budget implementation bills between 1995 and 2000 was 54 pages.<sup>63</sup> Between 2001 and 2008, the average jumped to between 139 and 155 pages, depending on the consulted source.<sup>64</sup>

A different point of comparison might be between the Chrétien/Martin governments (1993–2005) and the Harper government (2006–2015). According to Aaron Wherry, who has studied the issue closely, there were 12 budget bills tabled between 1994 and 2005, averaging 73.6 pages. Between 2006 and 2011, 11 budget bills were tabled, averaging 308.9 pages.<sup>65</sup> These statistics show a significant increase in the size of budget bills between 1994 and 2011.<sup>66</sup> While MP Stephen Harper complained about the Liberals’

62 Bill C-17, *An act to amend certain statutes to implement certain provisions of the budget tabled in Parliament on February 22, 1994*, 1st Sess, 35th Parl, 1994, c 18 (assented to 15 June 1994).

63 See Aaron Wherry, “A Short History of Budget Implementation Acts”, *Maclean’s* (4 May 2012), online: <www.macleans.ca> [Wherry, “Budget Implementation”]. According to Franks, the average length of budget implementation bills between 1995 and 2000 was 12 pages. CES Franks, “Omnibus Bills Subvert our Legislative Process”, *The Globe and Mail* (14 July 2010), online: <www.theglobeandmail.com> [Franks, “Omnibus Bills”]. There is reason to question the accuracy of Franks’ assertion, as no supporting data is included, understandably given the publication, and the number seems low given available data.

64 Franks calculates the average at 139 pages. See Franks, “Omnibus Bills”, *supra* note 63. Wherry’s numbers reveal an average of 155 pages. See Wherry, “Budget Implementation”, *supra* note 63.

65 Aaron Wherry, “Giving Those Other Omnibus Budget Bills Their Due”, *Maclean’s* (1 June 2012), online: <www.macleans.ca>.

66 See also Michael Lukyniuk, “Tax Bills and the Ways and Means” (2011) *Can Parl Rev* 26 at 30, Table 3: “Size of Budget Implementation Bills, 1998–2010”. The statistics also clearly show a significant increase in the size of budget implementation bills under the Harper government. *Ibid* (“[b]etween 1994 and 2005, when the Liberals were in power, Parliament never passed a budget bill larger than 144 pages (2003). The Conservatives have passed eight budget bills longer than that, C-38 would be the ninth”).

24-page so-called omnibus budget bill in 1994,<sup>67</sup> MPs did not begin to complain in earnest about the omnibus character of budget implementation laws until the Martin minority government (2004–2006). All four budget bills enacted during his minority government exceeded 100 pages in length.<sup>68</sup> Complaints about the omnibus character of budget implementation bills became routine under the Martin government.<sup>69</sup>

Massicotte suggests that the regime of minority governments from 2004–2011 may have contributed to the development of omnibus bills:

The 2005 bill introduced by Paul Martin was bigger than earlier legislations of this type, and the bills introduced under Stephen Harper 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.<sup>70</sup>

If Massicotte is correct, it hardly gives Canadians reason to cheer for minority governments.<sup>71</sup>

The Harper government expanded and regularized the use of omnibus bills. It was during this time that the term became popularized. In 2010, Professor Ned Franks wrote a strong critique of omnibus budget bills.<sup>72</sup> He complained that the year before, the two budget implementation acts comprised 580 pages, representing 32 percent of Parliament's legislative output for that year. Franks complained that "[t]he 2010 *Budget Implementation Act*, Bill C-9, contains 883 pages of varied and unrelated legislative provisions. It could form close to half the pages of Parliament's legislative

67 *House of Commons Debates*, (25 March 1994), *supra* note 61 at 2775–76.

68 See Lukyniuk, *supra* note 66 at 30, Table 3: "Size of Budget Implementation Bills, 1998–2010" (where Prime Minister Martin tabled two budget implementation bills on March 23, 2004 while he still led a majority government bequeathed to him by Jean Chrétien; these bills were 57 and 76 pages in length).

69 See *House of Commons Debates*, 37th Parl, 3rd Sess, vol 139, No 37 (20 April 2004) at 2153–54 (Hon Gurmant Grewal); *House of Commons Debates*, 38th Parl, 1st Sess, vol 140, No 88 (22 April 2005) (Hon Peter MacKay) ("the omnibus, blunderbuss budget implementation bill" at 5446); *House of Commons Debates*, 38 Parl, 1st Sess, vol 140, No 81 (13 April 2005) (Hon Andrew Scheer) ("[t]he Liberals are playing games here with the budget bill by placing unrelated provisions into one single omnibus bill" at 5041).

70 Massicotte, *supra* note 16 at 16.

71 Peter H Russell, *Two Cheers for Minority Government: The Evolution of Canadian Parliamentary Democracy* (Toronto: Emond Montgomery, 2008).

72 Franks, "Omnibus Bills", *supra* note 63.

output for 2010. These omnibus budget implementation bills subvert and evade the normal principles of parliamentary review of legislation.”<sup>73</sup>

A critical development occurred during the Martin/Harper minority government years. These omnibudget bills frequently contained measures that were not mentioned in the budget they purported to implement. This practice, known as “tacking”, originated in the United Kingdom’s House of Commons prior to the 18<sup>th</sup> century. The House would annex unrelated provisions to money bills because amendments by the House of Lords to money bills were viewed as a breach of the privilege of the Commons. The Lords opposed the practice of tacking, which they saw as a breach of their privileges. The rules of order of the Commons now prohibit the possibility of any foreign matter being tacked onto such bills.<sup>74</sup>

However, in Canada, despite having a constitution “similar in principle to that of the United Kingdom, successive speakers have sanctioned this practice,”<sup>75</sup> while at the same time asserting that the “unifying theme” in such omnibus bills is the connection to the budget.<sup>76</sup> This explains how Bill C-4—with its 322 pages, ending with two clauses amending the *Supreme Court Act* that had absolutely nothing to do with the budget tabled earlier that year—could evoke nary a peep in objection. The Harper era ended with a relatively modest omnibudget bill. Bill C-59, the *Economic Action Plan 2015 Act No. 1*, was “only” 158 pages.<sup>77</sup> The Justin Trudeau era began with the 179-page budget implementation bill.<sup>78</sup>

### III. CONSTITUTIONAL PROBLEMS AND POTENTIAL SOLUTIONS

#### A. Introduction

Constitutional interpretation and constitutional convention severely restrict the ability of other actors to address the abuse of omnibus bills. The Senate and Governor General are part of the legislative process, and no

<sup>73</sup> *Ibid.*

<sup>74</sup> Sir William McKay, ed, *Erskine May’s Treatise on the Law, Privileges, Proceedings and Usage of Parliament*, 23rd ed (London: LexisNexis UK, 2004) at 913–14, 924–26.

<sup>75</sup> See *House of Commons Debates*, 39th Parl, 2nd Sess, vol 142, No 66 (13 March 2008) at 4109–4110 (Hon Peter Milliken). See also Lukyniuk, *supra* note 66 at 28–29.

<sup>76</sup> See e.g. *House of Commons Debates*, 41st Parl, 1st Sess, vol 146, No 138 (11 June 2012) at 9121–23 (Hon Andrew Scheer).

<sup>77</sup> Bill C-59, *Economic Action Plan 2015 Act, No 1*, 2nd Sess, 41st Parl, 2015 (assented to 23 June 2015), SC 2015, c 36.

<sup>78</sup> Bill C-15, *Budget Implementation Act, 2016, No 1*, 1st Sess, 42nd Parl, 2016 (assented to 22 June 2016), SC 2016, c 7.

omnibus bill can be enacted without each of their approval. However, a longstanding practice of deferring to the House of Commons has constrained the Senate from refusing to enact bills presented to it by the House.<sup>79</sup> For the Governor General, there is a strong constitutional convention against the exercise of any independent discretion in granting royal assent to bills validly enacted by the House and Senate. The remaining option is judicial review by the courts. The courts have shown a very high degree of deference to the internal workings of Parliament in the name of the separation of powers. I examine each option in turn.

## B. Limited Only By Its Own Lack of Will: The House of Commons

The House of Commons is master of its own procedure—no legal constraints exist on curbing the use of omnibus bills. The only challenge is finding the political will. This requirement should not be understated: for decades, the House has blocked any consideration, let alone attempt, at reform. Objections have been raised to omnibus bills on various grounds. Members have invoked their “ancient privilege” to vote on bills individually;<sup>80</sup> they have objected on the grounds that a bill is too complex or composite<sup>81</sup> or that it embodies more than one principle.<sup>82</sup> Successive speakers have refused to divide omnibus bills when objections have been raised to them, as set out above in Part II. Speakers have not only refused to accept objections to omnibus bills; they have ruled objections out of order in most circumstances. Thus, Speakers have ruled that objections may only be made at first reading, not at second or third reading. Motions to divide omnibus bills at committee have also been ruled out of order. “Unless a committee has been otherwise instructed by the House, it may only report

79 As this article was being written, the future status of the Senate was in flux, at least in terms of its relationship with the House of Commons and the willingness of Senators to exert their independence from the will of the lower House. See e.g. Selina Chignall, “Bumpy Road Toward an Independent Senate ‘A Work in Progress’: Harder” *iPolitics* (29 April 2016), online: <ipolitics.ca>.

80 *House of Commons Debates*, (11 May 1977), *supra* note 52 at 5522.

81 *House of Commons Debates*, (2 March 1982), *supra* note 53 at 15532; *House of Commons Debates*, 32nd Parl, 1st Sess, vol 23 (20 June 1983) at 26537–38 (Hon Jeanne Sauv ); *House of Commons Debates*, (8 June 1988), *supra* note 25 at 16255–57; *House of Commons Debates*, (1 April 1992), *supra* note 27 at 9147–49; *House of Commons Debates*, (37th Parl, 1st Sess, vol 137, No 82) (20 September 2001) at 5328–29 (Hon Peter Milliken) [*House of Commons Debates*, (20 September 2001)].

82 *House of Commons Debates*, (11 April 1994), *supra* note 24 at 2860; *House of Commons Debates*, (20 September 2001), *supra* note 81 at 5328–29.

the bill with or without amendment.”<sup>83</sup> A committee may, however, divide a bill when it has been instructed to do so by the House.<sup>84</sup> Committees have not been able to get around this by providing multiple reports on a bill referred to them, each one addressing separate subjects in the bill.<sup>85</sup> It is acceptable, however, for a committee to seek instruction from the House on whether to divide a bill.<sup>86</sup>

There are, however, at least two ways for the House to address the problem of omnibus bills. Parliament can change the rules, or the Speaker can change the interpretation of the existing rules. The first is relatively easy, and the second is more challenging but still eminently achievable. The House of Commons could either amend its Standing Orders on its own or amend the *Parliament of Canada Act* with the Senate’s concurrence. Neither are original ideas or particularly difficult to achieve.

Amending the *Parliament of Canada Act* was proposed by former New Democratic Party MP Peter Stoffer in 2015, in a private member’s bill. Stoffer’s Bill C-654 would have amended the *Parliament of Canada Act* to add a section that would have provided:

Neither the Senate nor the House of Commons may adopt a bill that proposes to amend, enact or repeal more than one Act or that proposes a combination of those actions, unless the bill relates to a single subject matter or to subject matters that have a clearly demonstrable interrelationship and may reasonably be regarded as implementing a single broad policy.<sup>87</sup>

Bill C-654 would have provided an exception for a bill that proposed “(a) the enactment of a Miscellaneous Statute Law Amendment Act; or (b) the implementation of a federal budget, if all of the substantive provisions of the bill have a purpose that is primarily financial in nature.”<sup>88</sup>

Similar language could simply be added to the House of Commons Standing Orders. This is what Saskatchewan has done. The Rules of the

83 O’Brien & Bosc, *supra* note 1 at 726, n 87, citing House of Commons, Standing Committee on Miscellaneous Estimates, “Minutes of Proceedings and Evidence”, No 39 (27 June 1975) at 106.

84 *Ibid*, citing *House of Commons Debates*, 37th Parl, 1st Sess, vol 137, No 197 (3 June 2002) at 12025.

85 *Ibid* at 727, n 89, citing House of Commons, Standing Committee on Justice and Legal Affairs, “Minutes of Proceedings and Evidence”, No 45 (6 May 1976) at 5–7.

86 *Ibid* at 727, n 90, citing Standing Committee on Indian Affairs and Northern Development, “Minutes of Proceedings and Evidence”, No 23 (2 June 1970) at 40.

87 Bill C-654, *An act to amend the Parliament of Canada Act (omnibus bills)*, 2nd Sess, 41st Parl, 2015 (first reading 19 February 2015).

88 *Ibid*.

Saskatchewan Legislative Assembly were amended after a 2013 report to prohibit abusive omnibus bills.<sup>89</sup> These rules now provide:

74(1) No bill to enact more than one new Act or to amend more than one Act may be introduced if that bill joins together separate and distinct matters of unrelated subjects except as specified in the Rules.

74(2) An omnibus bill may be introduced to amend more than one Act if:

- (a) the amendments deal with an interrelated topic that can be regarded as implementing a single broad policy;
- (b) the amendments to be effected to each Act are of a similar nature in each case.<sup>90</sup>

There is not much difference between amending the Standing Orders and amending the *Parliament of Canada Act*. A greater likelihood of judicial scrutiny exists if the prohibition against omnibus bills is included in legislation. For the House, this may militate against proceeding by way of legislation, but given the House's inability to address this issue, it may be in the public interest to do so.

Unless and until the House acts, the Speaker could take more aggressive measures under the existing rules to restrict the most egregious use of omnibus bills, especially omnibudget bills. In 1971, Speaker Lamoureux stated that it should be the Speaker's responsibility when an omnibus bill is introduced "to take the initiative and raise the matter for the consideration of the House by way of a point of order" in order to give members an opportunity to express their views.<sup>91</sup> To my knowledge, this suggestion has not been followed. But it should be.

Second, all of the Speakers' rulings on various omnibus bills dating back to the original Omnibus Bill in 1969 reference the "unifying theme" of omnibus bills. Recall the Right Honourable Herb Gray's defence of omnibus bills was that they have "one basic principle or purpose which ties together all the proposed enactments and thereby renders the bill intelligible for parliamentary purposes."<sup>92</sup> Subsequent Speakers' rulings

89 Saskatchewan, Legislative Assembly, Standing Committee on House Services, *A Proposal to Refine The Rules and Procedures of the Legislative Assembly of Saskatchewan*, 3rd Sess, 27th Leg, 5th Report (7 November 2013) (Chair: Hon Dan D'Autremont).

90 Saskatchewan, Legislative Assembly, *Rules and Procedures of the Legislative Assembly of Saskatchewan*, (2013).

91 House of Commons, *Journals*, (26 January 1971), *supra* note 47 at 284.

92 *House of Commons Debates*, (30 May 1988), *supra* note 26 at 1588o.

have cited this with approval.<sup>93</sup> This principle and these rulings should be the basis for curbing the worst abuses of omnibudget bills—specifically, the inclusion of provisions that were not mentioned in the budget or have nothing to do with the budget. Speakers should take a much stricter approach to whether provisions are tied to the budget and should rule out of order those provisions that are not directly related to the budget. This would make the amendments to the *Supreme Court Act* contained in Bill C-4 in 2013 an easy ruling for the Speaker because the events giving rise to those amendments did not occur until after the budget was tabled, and there were no spending implications attached to the amendments. In the words of former Conservative MP Brent Rathgeber, “[i]f the government will not respect Parliament enough to allow us to do our jobs, then the Speaker must intervene to defend parliamentary privilege. That is how a functioning parliamentary democracy would proceed.”<sup>94</sup>

### C. Restricted by History and Its Own Illegitimacy: The Senate

As a strict formal matter of constitutional law, the Senate is the co-equal to the House of Commons.<sup>95</sup> The only restriction on the powers of the Senate contained in the *Constitution Act, 1867* is that money bills—any bills appropriating public revenue or imposing a tax or a duty<sup>96</sup>—must first be introduced in the House of Commons and cannot originate in the Senate.<sup>97</sup> Any other bill can be introduced in either the House of Commons or Senate. In law, both the Senate and House of Commons exercise a veto over the actions of the other chamber; “[a]s a matter of strict law the Senate enjoys a total freedom to amend, delay, or reject outright any

93 See e.g. *House of Commons Debates*, (8 June 1988), *supra* note 25 at 16255; *House of Commons Debates*, (1 April 1992), *supra* note 27 at 9147; *House of Commons Debates*, (11 April 1994), *supra* note 24 at 2860, cited by Library of Parliament, *supra* note 21 at 1, n 6.

94 *House of Commons Debates*, 41st Parl, 2nd Sess, vol 147, No 218 (27 May 2015) at 14213 (Hon Brent Rathgeber).

95 See Hogg, *supra* note 60 at § 9.5(c). Of course, in practice, the House of Commons came to be the dominant chamber of Parliament because its members are elected and the Senate’s are not. See *Re Senate Reform*, *supra* note 10 at paras 54–61.

96 Parliament of Canada, “House of Commons Compendium: Financial Procedures” (October 2015), online <[www.parl.gc.ca](http://www.parl.gc.ca)>.

97 *Constitution Act, 1867* (UK), 30 & 31 Vict, c 3, reprinted in RSC 1985, Appendix II, No 5, s 53 [*Constitution Act, 1867*].

bill or motion, including money bills.”<sup>98</sup> In fact, the Senate has more legal and constitutional powers than the House of Lords.<sup>99</sup>

In practice, the Senate’s powers are strongly restricted by convention.<sup>100</sup> Nevertheless, the Senate has frequently amended Commons bills and vetoed bills from time to time. In the first recorded rejection of an omnibus bill in 1923, the Senate refused to pass a Commons bill dealing with various railway lines. The Senate forced the Commons to break up the bill into separate bills for each line.<sup>101</sup> The bill also happened to be a money bill,<sup>102</sup> which presents additional issues described below.

When we move from omnibus to omnibudget bills, one would think that the Senate’s role as a chamber of sober second thought would be on heightened alert, precisely because such bills have tended to include such a variety of subjects and have been subject to minimal scrutiny under abbreviated timeframes in the House. This is not the case.

Professor Andrew Heard considers money bills “[p]erhaps the biggest area of controversy about Senate amendments.”<sup>103</sup> He explains that the members of the House of Commons have asserted that the principles of responsible government “endow their House with the unique right to deal substantively” with issues in money bills (*i.e.*, spending and taxation).<sup>104</sup> The House has asserted this principle in Standing Order 80(1), which provides:

All aids and supplies granted to the Sovereign by the Parliament of Canada are the sole gift of the House of Commons, and all bills for granting such aids and supplies ought to begin with the House, as it is the undoubted right of the House to direct, limit, and appoint in all such bills, the ends,

98 Andrew Heard, *Canadian Constitutional Conventions: The Marriage of Law & Politics*, 2nd ed (Don Mills, Ont: Oxford University Press, 2014) at 143 [Heard, *Constitutional Conventions*].

99 *Ibid* at 143–44. The *Constitution Act, 1982* introduced a limitation on the power of the Senate to veto constitutional amendments. Section 47 of the *Constitution Act, 1982* provides the Senate with only a “suspensive veto” over most resolutions to amend the Constitution. In effect, the Senate’s veto is only effective for six months. After six months, the House of Commons may re-enact a resolution to amend the Constitution and it will be valid without the approval of the Senate. See generally *Constitution Act, 1982*, being schedule B to the *Canada Act, 1982* (UK), 1982, c 11, s 47.

100 Heard, *Constitutional Conventions*, *supra* note 98 at 143–44.

101 *Ibid* at 144. See also MacKay, *supra* note 22 at 102. The Senate did not subsequently accept all of the Commons’ revised bills, demonstrating both that the problems went beyond the omnibus nature of the original bill and the willingness of the Senate to exercise its legal powers during this period.

102 See MacKay, *supra* note 22 at 102–103.

103 Heard, *Constitutional Conventions*, *supra* note 98 at 145.

104 *Ibid*.

purposes, considerations, conditions, limitations and qualifications of such grants, which are not alterable by the Senate.<sup>105</sup>

As Heard explains, this statement is entirely symbolic because the Standing Orders of the House of Commons can only apply to the workings of that chamber and have no force in the Senate<sup>106</sup> (which has its own Standing Orders that contain no such similar restriction). The Senate has expressly declared that it has such a right.<sup>107</sup>

In practice, the Senate has amended money bills on many occasions over the years. At times the House has accepted these, and at other times, the House has objected to such amendments in principle. According to House of Commons Clerks Audrey O'Brien and Marc Bosc, "[w]here the Commons choose to accept a Senate amendment (to a bill appropriating funds or imposing a tax), they usually waive their financial prerogative, while insisting that their decision in this instance does not constitute a precedent."<sup>108</sup> They also point out that the Commons has from time to time accepted Senate amendments without asserting its own privileges. This leads Heard to conclude that in practice, the House has conceded some role for the Senate in financial matters.<sup>109</sup> But this practice remains controversial.

A Senate that refuses to pass omnibus legislation sent to it by the House on anything other than an exceptional basis would create nothing less than a revolutionary restructuring of the traditional relationship between the two chambers of Parliament. To be clear, by "exceptional basis," I mean essentially once or twice in a decade, which is the general rate at which the Senate has explicitly defeated Commons bills since 1990.<sup>110</sup> The Senate is also able to "thwart the Commons" through means of an "indirect veto": "[b]y simply delaying consideration or extending the time in committee, it is possible to effectively shelve a bill until it dies at the end of a session."<sup>111</sup>

105 House of Commons, *Annotated Standing Orders of the House of Commons*, 2nd ed, "Chapter X—Financial Procedures: Order 80(1)" (2005), online: <www.parl.gc.ca>.

106 Heard, *Constitutional Conventions*, *supra* note 98 at 145.

107 See *Journals of the Senate*, 13th Parl, 1st Sess, vol 54 (15 May 1918) at 193–204, cited in Heard, *Constitutional Conventions*, *supra* note 98 at 147, n 110. See also Elmer A Driedger, "Money Bills and the Senate" (1968) 3:25 *Ottawa L Rev*, cited in Heard, *Constitutional Conventions*, *supra* note 98.

108 O'Brien & Bosc, *supra* note 1 at 838.

109 Heard, *Constitutional Conventions*, *supra* note 98 at 147.

110 See Andrew Heard, "Tapping the Potential of Senate-Driven Reform: Proposals to Limit the Powers of the Senate" (2015) 24:2 *Const Forum Const* 47 at 50 [Heard, "Senate-Driven Reform"] (noting that the Senate has explicitly defeated a Commons bill five times since 1990—an average of twice a decade).

111 *Ibid.*

Or the Senate may simply hold a bill up and delay it from coming to a vote (as it did in 1988, with the Tories' Canada–U.S. Free Trade bill).<sup>112</sup>

During the Mulroney years, the Liberal-controlled Senate flexed its political muscles on several notable occasions: in 1988, when it refused to pass the bill implementing the Canada–U.S. Free Trade Agreement, and two years later in 1990, when it refused to enact Mulroney's GST.<sup>113</sup> Such direct clashes where the Senate outright refuses to enact Commons bills are rare and put the Senate's legitimacy directly in the spotlight. It will remain difficult and polarizing for the Senate to exercise its legal veto over the Commons, so long as its legitimacy deficit remains.<sup>114</sup>

Recent attempts by the Trudeau government to make the Senate more independent may result in Senators exercising greater independence from the political parties that control the business of the Commons. Whether this will result in episodic or wholesale change in the relationship between the two chambers remains to be seen. Short of the wholesale change that vetoing Commons bills would entail, the Senate could certainly become more vigorous in asserting its role as a chamber of sober second thought. It could take the necessary time to study legislation, draw attention to problematic omnibus legislation that tacks on unrelated subjects, as was the case with Bill C-4, propose amendments, and delay passage of the bill. Such tactics may countermand the sought-after efficiency in some omnibus bills and perhaps act as a disincentive to their use.

#### **D. Chained by Constitutional Convention: The Governor General**

From time to time, calls are made for the Governor General to refuse assent to some legislation that particular members of the public find objectionable. No Governor General has ever refused assent to a bill enacted by Parliament,<sup>115</sup> although there have been refusals by Lieutenant Governors.<sup>116</sup> Even here, no Lieutenant Governor has refused to provide royal assent to

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112 *Ibid.*

113 See CES Franks, "The Canadian Senate in Modern Times" in Serge Joyal, ed, *Protecting Canadian Democracy: The Senate You Never Knew* (Montreal & Kingston: McGill–Queen's University Press, 2003) 152 at 158–64.

114 See generally Adam M Dodek, "Addressing the Senate's 'Triple Deficit': The Senate as Driver of its Own Reform" (2015) 24:2 Const Forum Const 39.

115 Hogg, *supra* note 60, citing JR Mallory, *The Structure of Canadian Government*, revised ed (Toronto: Gage, 1984) at 241–42 [Mallory].

116 Frank MacKinnon, *The Government of Prince Edward Island* (Toronto: University of Toronto Press, 1951) at 154–55.

a bill since 1945 or invoked the power of reservation since 1961.<sup>117</sup> In 1961, when the Lieutenant Governor of Saskatchewan reserved a bill regarding mineral rights due to his own opposition to the bill, the reaction was swift and strong. Acting on the advice of Prime Minister Diefenbaker, the Governor General immediately granted royal assent to the bill.<sup>118</sup> In his memoirs, Saskatchewan Premier Allan Blakeney offered a scathing critique of Lieutenant Governor F.L. Bastedo's actions, saying that he "had less than a full understanding of his constitutional role" and exercised the power of reservation without any instructions from Ottawa, leading Ottawa to move "with unaccustomed alacrity in giving assent to the bill."<sup>119</sup> The 1961 precedent, concerning the independent exercise of discretion by a governor, must consequently be taken as a negative one.

A scholarly debate exists as to whether there are any circumstances under which a governor may properly refuse to grant royal assent. Some believe that a governor could properly do so if it was discovered that there was a flaw in a bill, and the governor was acting on the advice of cabinet. The Supreme Court, speaking in *obiter* without much consideration of the issue,<sup>120</sup> declared in the *Patriation Reference* that neither the Queen nor her representatives can "of their own motion refuse to assent to any such bill on any ground."<sup>121</sup> Professor Peter Hogg is in accord, stating that "[t]here is no circumstance which would justify a refusal of assent."<sup>122</sup> Other Canadian scholars are similarly categorical in asserting non-intervention by a governor,<sup>123</sup> despite the more recent and frequent intervention by Canadian governors.

Heard has made a much more careful study of the issue than the Supreme Court has. He is unwilling to accept such categorical statements. His reaction to the Supreme Court's declaration is that "[i]f assent were

117 Heard, *Constitutional Conventions*, *supra* note 98 at 71.

118 *Ibid.*

119 Allan Blakeney, *An Honourable Calling: Political Memoirs* (Toronto: University of Toronto Press, 2008) at 54–55.

120 See Adam M Dodek, "Courting Constitutional Danger: Constitutional Conventions and the Legacy of the Patriation Reference" (2011) 54 SCLR (2d) 117 (for my critique of the Supreme Court's treatment of constitutional conventions in the *Patriation Reference*). See also Lorne M Sossin, *Boundaries of Judicial Review: The Law of Justiciability in Canada*, 2nd ed (Toronto: Carswell, 2012) 217–22 (for a more objective analysis).

121 *Reference Re Resolution to Amend the Constitution*, [1981] 1 SCR 753 at 881, (*sub nom Reference re Amendment of the Constitution of Canada (Nos 1, 2, and 3)*), 125 DLR (3d) 1 [*Patriation Reference*].

122 Hogg, *supra* note 60 at § 9.5(d).

123 See *ibid.*; Richard J Van Loon & Michael S Whittington, *The Canadian Political System: Environment, Structure & Process*, 3rd ed (Toronto: McGraw-Hill Ryerson, 1981) at 174–75.

ever to be refused, it might possibly be done with any hope of correctness only if the proposed legislation would eradicate the very foundations of parliamentary democracy that the convention exists to protect.”<sup>124</sup> Thus, Heard’s own articulation of the convention is slightly less absolute.<sup>125</sup> Professor J.R. Mallory was cautious in his assessment of the power, writing:

There is probably a vestigial authority, which is part of the royal prerogative, to refuse to assent to bills, but it is significant that assent has not been refused to a bill in the Canadian Parliament since Confederation, and in the United Kingdom royal assent has not been refused to bills since [1707, during] the reign of Queen Anne.<sup>126</sup>

Heard does entertain the possibility of exceptional circumstances under which governors may refuse assent on their own initiative, as do several British scholars. For example, Professor Geoffrey Marshall posited the scenario where a law is entrenched and can only be amended by a specific procedure and that procedure has not been followed.<sup>127</sup> Professor Rodney Brazier suggests that in a constitutional crisis, the Queen could validly refuse Royal Assent.<sup>128</sup> Such a scenario might present itself if Parliament were ever to abolish elections or prevent individuals from seeking any remedy in the courts. Whether the scenario suggested in this article’s epigram would meet these scholars’ definition of a constitutional crisis warranting the governor’s intervention is uncertain. This remains an open question.

Simply put, intervention by the Governor General is not the answer to curbing omnibus abuses except in the most extreme cases, perhaps such as the one set out in the epigraph to this article. The Governor General is the guardian of our Constitution, but the governor cannot and should not act unless there is a threat to our constitutional democracy of the highest order, as suggested above in the discussion on withholding Royal Assent. The Governor General was famously described by Professor Frank

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124 Heard, *Constitutional Conventions*, *supra* note 98 at 73.

125 *Ibid* at 71–72.

126 Mallory, *supra* note 115 at 241.

127 Geoffrey Marshall, *Constitutional Conventions: The Rules and Forms of Political Accountability* (New York: Oxford University Press, 1984) at 21–23.

128 See Rodney Brazier, *Constitutional Practice: The Foundations of British Government*, 3rd ed (Oxford, UK: Oxford University Press, 1999) at 195. In the Canadian context, section 3 of the *Charter* would undoubtedly prevent the abolition of elections. Thank you to Michael Pal for raising this obvious but important point with me and making sure I did not overlook it. *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11, s 3.

MacKinnon as a “constitutional fire extinguisher.”<sup>129</sup> The Governor General’s reserve powers should be conceived as a single-use fire extinguisher that cannot be replenished simply by purchasing a replacement at a local hardware store. Instead, as MacKinnon explained, the reserve powers of the Governor General are restricted for “serious” trouble; “[t]o use the Crown’s powers on ordinary troubles would make a mess, and weaken their potential force in a real crisis.”<sup>130</sup> This suggests that intervention by the Governor General in ordinary political troubles could result in the politicization of the office of the Governor General and the weakening of its powers. The Governor General is the last bastion of constitutional defence against tyranny. Calls for vice-regal intervention have become more frequent in recent years. They reflect increased frustration with the abuse of parliamentary democracy in Canada. However, the solutions to such abuses must be found within the existing parliamentary system and not by inviting the Governor General into the political arena to intercede in partisan disputes. To do so would risk fundamentally altering the role of the Governor General from the guardian of the constitution to a quotidian political arbiter. There is too great a risk that this transformation could negatively impact the strictly non-partisan role of the Office of the Governor General as the representative of the Head of State of Canada.

For these reasons, the Governor General is not the answer to the general problem of omnibus bills or other generally abusive omnibus bills. However, it is admitted that the Governor General could be the last bastion of protection against the passage of a bill along the lines of the one suggested in this article’s epigraph, duly enacted by both chambers of Parliament.

### **E. Self-Restraint, Justiciability, and the Separation of Powers: The Courts**

Canadian courts have taken a strictly non-interventionist approach to reviewing the internal proceedings of Parliament. They have done so in the name of the separation of powers and constitutional protection of parliamentary privilege. They have refused to impose any additional constraints on the legislature beyond those that exist in the text of the Constitution or in statute. Ironically, they have done this by adopting a highly non-textualist

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129 Frank MacKinnon, *The Crown in Canada* (Calgary: Glenbow-Alberta Institute/McClelland and Stewart West, 1976) at 122.

130 *Ibid.*

approach of reading in parliamentary privilege as part of the Constitution of Canada.<sup>131</sup> *Charter* arguments will be addressed below, but first, I address other potential constitutional constraints.

The Constitution provides very little in terms of restraint on the legislative process. Section 17 of the *Constitution Act, 1867* provides that “[t]here shall be One Parliament for Canada, consisting of the Queen, an Upper House styled the Senate, and the House of Commons.” Section 18 provides that “the privileges, immunities, and powers” to be held by members of the Senate and the House shall be defined by legislation but cannot exceed those held by the United Kingdom’s House of Commons at Confederation. Sections 21 to 36 deal with the Senate: its constitution, the appointment of Senators and their qualification, vacancies, speaker, quorum, and voting. They do not address the powers of the Senate.<sup>132</sup> As noted earlier, the only restriction on the power of the Senate is the requirement that money bills originate in the House.<sup>133</sup> The Constitution also requires that all money bills be accompanied by a royal recommendation from the Governor General.<sup>134</sup>

For the House of Commons, the Constitution requires that its members be elected, prohibits Senators from being members, establishes that the Speaker shall be elected, sets the quorum, provides rules for voting, sets the maximum duration of the House at five years, and makes rules for readjustment or redistribution of seats in the House.<sup>135</sup> In short, all of these might be considered meta-rules that provide for the structure and basic operation of the House. The Constitution does not touch on the House’s

131 See *New Brunswick Broadcasting Co v Nova Scotia*, [1993] 1 SCR 319, 118 NSR (2d) 181 [*New Brunswick Broadcasting*]. Professor Hogg is very critical of this decision, particularly its finding of the source for new additions to “the Constitution of Canada” in the preamble of the *Constitutional Act, 1867* to “a constitution similar in principle to that of the United Kingdom.” Hogg states that “this vague phrase is a frail foundation for the addition of new elements to the definition of the ‘Constitution of Canada’ in s. 52(2). Moreover, the Court’s decision means that the definition is capable of judicial expansion by virtue of implications from other parts of the Constitution. This raises the possibility of further additions, which destroys the certainty apparently afforded by the list of 30 instruments that is scheduled to s 52(2).” See Hogg, *supra* note 60 at § 1.4. See also *Harvey v New Brunswick (Attorney General)*, [1996] 2 SCR 876 at 909–20, 178 NBR (2d) 161, per McLachlin J concurring [*Harvey*] (viewing parliamentary privilege as insulating from judicial scrutiny for legislation that banned representatives from holding office if convicted of electoral fraud).

132 See Heard, “Senate-Driven Reform”, *supra* note 110 (for a good discussion of the powers of the Senate in the context of their reform).

133 *Constitution Act, 1867*, *supra* note 97, s 53.

134 *Ibid.*, s 54.

135 *Ibid.*, ss 37–52.

internal operation, other than to prescribe rules for quorum, voting, and money bills. Similarly, the *Charter's* democratic rights provisions do not on their face speak to the internal workings of Parliament. Section 3 protects the right to vote and the right to be elected to the House of Commons (and to the provincial legislatures).<sup>136</sup> Section 4 sets the maximum duration of the House of Commons and provincial legislative assemblies. Section 5 requires a sitting of Parliament and of each legislature at least once every twelve months. Finally, the relevant legislation—the *Parliament of Canada Act*<sup>137</sup>—contains almost no rules regarding the internal workings of Parliament;<sup>138</sup> these are contained almost exclusively in the Standing Orders of the House of Commons.<sup>139</sup>

The courts have been unwilling to add much in way of further restrictions. A strong body of case law supports this general proposition, which is expressed through various doctrines: separation of powers, parliamentary privilege, and *lex parliamenti*.

In his writing on justiciability, Dean Lorne Sossin distinguishes between what he terms the “legislative process” doctrine and parliamentary privilege.<sup>140</sup> This distinction is useful because it underscores the strength of the courts’ refusals to intervene in matters deemed to be part of the “legislative process,” which is based upon and supported by the broader principle of parliamentary privilege. Thus, under the legislative process doctrine, courts will not scrutinize how bills are made, introduced, or considered. In the *Canada Assistance Plan Reference*,<sup>141</sup> Justice Sopinka quoted approvingly from the writing of Professor Gérard Beaudoin in his treatise *La Constitution du Canada* (1990), to the effect that: “[c]ependant, les cours n’interviennent pas au cours du processus législatif au Parlement et dans

<sup>136</sup> But see *Harvey*, *supra* note 131 (the Supreme Court upheld disqualification from holding electoral office for electoral fraud). Thank you to Michael Pal for making this important point to me.

<sup>137</sup> RSC 1985, c P-1.

<sup>138</sup> *Ibid.*, ss 10–13, 19.1–19.4 (notable exceptions include provisions dealing with the examination of witnesses and provisions dealing with the internal administration of the Standing Senate Committee on Internal Economy, Budgets and Administration).

<sup>139</sup> House of Commons, *Standing Orders of the House of Commons* (21 April 2016), online: Parliament of Canada <www.parl.gc.ca>.

<sup>140</sup> See Sossin, *supra* note 120 at 197–204, 223–25 (where Sossin explores the boundaries of the “legislative process” doctrine, examining the extent to which it extends to participation in the policy development of a bill). This inquiry is beyond the scope of this paper, which focuses on the core of the legislative process doctrine: the contents and introduction of the omnibus bill itself.

<sup>141</sup> [1991] 2 SCR 525, 83 DLR (4th) 297 [*Re Canada Assistance Plan*].

les législatures. Elles n'ont pas d'intérêt comme tel pour la procédure parlementaire. Elles s'en sont d'ailleurs expliquées dans certains arrêts. Elles respectent la *lex parliamenti*.<sup>142</sup> Justice Sopinka further declared that “[t]he formulation and introduction of a bill are part of the legislative process with which the courts will not meddle . . . [and] it is not the place of the courts to interpose further procedural requirements in the legislative process.”<sup>143</sup>

Courts will not scrutinize either the substance or the motivation of legislation so long as it complies with the strict terms of the Constitution. Thus, in *Bacon v Saskatchewan Crop Insurance Corp*,<sup>144</sup> the Saskatchewan Court of Appeal refused to apply the rule of law principle to invalidate legislation that was alleged to have an unfair impact on farmers by allowing government to abrogate its contractual obligations to them.<sup>145</sup> Most strongly (and perhaps ominously), in *Babcock v Canada (AG)*<sup>146</sup> Chief Justice McLachlin declared that “[i]t is well within the power of the legislature to enact laws, even laws [that] some would consider draconian, as long as it does not fundamentally alter or interfere with the relationship between the courts and other branches of government.”<sup>147</sup>

Courts have refused to inquire into the motivation of legislators as an independent basis for vitiating a law.<sup>148</sup> For example, the Federal Court rejected the contention that legislation that was arbitrary and passed in bad

142 *Ibid* at 558, citing Gérard A Beaudoin, *La Constitution du Canada: institutions, partage des pouvoirs, droits et libertés* (Montreal: Wilson & Lafleur, 1990) at 92 (“The courts do not intervene, however, during the legislative process in Parliament and the legislatures. They have no interest as such in parliamentary procedure. They have made this clear in certain decisions. They respect the *lex parliamenti*” [translated by the Supreme Court of Canada]).

143 *Re Canada Assistance Plan*, *supra* note 141 at 559.

144 [1999] 11 WWR 51, 180 Sask R 20 (CA).

145 See also *Wells v Newfoundland*, [1999] 3 SCR 199, 180 Nfd & PEIR 269 [Wells].

146 2002 SCC 57, [2002] 3 SCR 3.

147 *Ibid* at para 57. Similarly, in the *Charter* context, courts almost always accept the government’s “pressing and substantial” objective in the section 1 analysis. See Hogg, *supra* note 60 (“In practice, however, the requirement of a sufficiently important objective has been satisfied in all but one or two of the *Charter* cases that have reached the Supreme Court of Canada” at § 38.9(b)).

148 The motivation or intent of legislators will of course be relevant to a claim that the purpose of a law violates the *Charter of Rights and Freedoms*. See e.g. *R v Big M Drug Mart*, [1985] 1 SCR 295, 18 DLR (4th) 321. The intent of the legislature is also relevant to a division of powers analysis. See e.g. *R v Morgentaler*, [1993] 3 SCR 463, 107 DLR (4th) 537. Legislative intent is also relevant to interpreting the meaning of a statute. See e.g. *Re Rizzo & Rizzo Shoes Ltd*, [1998] 1 SCR 27, 36 OR (3d) 418. See generally Ruth Sullivan, *Sullivan on the Construction of Statutes*, 6th ed (Markham: LexisNexis, 2014).

faith could be held invalid on that basis. In *PSAC v Canada*,<sup>149</sup> the Treasury Board negotiated an agreement with the Public Service Alliance of Canada, which confirmed member correctional workers' right to strike. Days later, Parliament passed legislation that effectively vitiated that right to strike and compelled PSAC to advise its members that any direction or authorization that it had given to its members to strike before the legislation was passed was invalid. The Federal Court held that there was no basis in law to support a claim that bad faith could vitiate duly-enacted legislation. Similarly, the Federal Court of Appeal rejected a claim that legislation could be held invalid because the legislature was misled or tricked by the government. In *Turner v Canada*,<sup>150</sup> the Federal Court of Appeal struck a claim; its essence was that Parliament was tortiously misled to enact "[a] retroactive amendment and that the respondent was denied a fair hearing by surreptitious procedures adopted by Parliament."<sup>151</sup>

No right to procedural fairness exists in the legislative process.<sup>152</sup> Affected parties have no right to notice of a proposed law impacting them or the opportunity to be heard before the law is passed. In *Authorson v Canada (AG)*,<sup>153</sup> Justice Major, speaking for a unanimous Court, stated:

Long-standing parliamentary tradition makes it clear that the only procedure due any citizen of Canada is that proposed legislation receive three readings in the Senate and House of Commons and that it receive Royal Assent. Once that process is completed, legislation within Parliament's competence is unassailable.<sup>154</sup>

Similarly, in the *Patriation Reference*, the Court stated that "[h]ow Houses of Parliament proceed . . . is . . . a matter of self-definition, subject to any overriding constitutional or self-imposed statutory or indoor prescription."<sup>155</sup> The Court stated that "[i]t would be incompatible with the self-regulating—'inherent' is as apt a word—authority of House of Parliament to deny their capacity to pass any kind of resolution."<sup>156</sup>

149 192 FTR 23 (FC), 2000 CanLII 15458.

150 [1992] 3 FCR 458, 93 DLR (4th) 628 (FCA) (SCC leave to appeal denied).

151 *Ibid* at 460.

152 *Attorney General of Canada v Inuit Tapirisat of Canada et al*, [1980] 2 SCR 735, 115 DLR (3d) 1; *Re Canada Assistance Plan*, *supra* note 141; *Wells*, *supra* note 145.

153 *Authorson v Canada (Attorney General)*, 2003 SCC 39, [2003] 2 SCR 40.

154 *Ibid* at para 37.

155 *Patriation Reference*, *supra* note 121 at 785.

156 *Ibid*. The Court continued: "[r]eference may appropriately be made to art. 9 of the *Bill of Rights* of 1689, undoubtedly in force as part of the law of Canada, which provides that

Canadian courts have used parliamentary privilege to shield virtually all internal legislative proceedings from review. In making parliamentary privilege part of the “Constitution of Canada”, the Supreme Court has immunized internal parliamentary proceedings from other constitutional provisions. This is stated explicitly by the Supreme Court in *Canada (House of Commons) v Vaid*,<sup>157</sup> where Justice Binnie, speaking for a unanimous court, explained that the courts are careful not to interfere with the workings of Parliament. He stated that none of the parties in the case questioned the pre-eminent importance of the House of Commons as “the grand inquest of the nation” or the need for Parliament’s legislative activities to proceed unimpeded by any external body or institution, including the courts.<sup>158</sup> Justice Binnie went on to state:

It would be intolerable, for example, if a member of the House of Commons who was overlooked by the Speaker at question period could invoke the investigatory powers of the Canadian Human Rights Commission with a complaint that the Speaker’s choice of another member discriminated on some ground prohibited by the *Canadian Human Rights Act*, or to seek a ruling from the ordinary courts that the Speaker’s choice violated the member’s guarantee of free speech under the *Charter*. These are truly matters “internal to the House” to be resolved by its own procedures.<sup>159</sup>

The Court asserts that parliamentary privilege is one of the ways in which the fundamental constitutional separation of powers is respected.<sup>160</sup> Courts “will inquire into the existence and extent of [parliamentary] privilege, but not its exercise.”<sup>161</sup>

This body of doctrine has immunized the internal workings of Parliament from judicial scrutiny. It also likely explains why there have been no legal challenges to the most abusive omnibus or omnibudget bills of the

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“Proceedings in Parliament ought not to be impeached or questioned in any Court or Place out of Parliament.” *Ibid*. The accuracy of this statement is beyond the scope of this paper. It is notable that the *Bill of Rights* of 1689 is not included in the list of documents contained in the Schedule to the *Constitution Act, 1982* that forms part of the “Constitution of Canada” under section 52(2). No pre-Confederation documents are included in the Schedule.

<sup>157</sup> 2005 SCC 30 at para 20, [2005] 1 SCR 667.

<sup>158</sup> *Ibid* at para 20.

<sup>159</sup> *Ibid*.

<sup>160</sup> *Ibid* at para 21.

<sup>161</sup> *New Brunswick Broadcasting*, *supra* note 131 at 350.

last decade.<sup>162</sup> However, these cases also contain within them the seeds that can germinate into a challenge of the abuses of omnibus legislation.

If the House of Commons does not take action as suggested above and abusive omnibus bills continue, attempts to seek some redress in the courts are inevitable. Whether such endeavours would be successful is another matter. As my colleague Professor John Mark Keyes and Anita Mekunnel have written: “[j]udicial and parliamentary bodies have traditionally steered clear of each other when it comes to the way they operate (proceedings and procedure), as opposed to the end products of their operation (laws and decisions).”<sup>163</sup> Any attempt to seek recourse from omnibus bills in the courts would come up squarely against the strong and recently reinforced judicial precedents regarding parliamentary privilege and separation of powers, as discussed above.

However, there are apparent openings in these doctrines as identified by both Sossin and Keyes. Keyes notes, with surprise, the Supreme Court’s willingness in *Re Eurig Estate*<sup>164</sup> “to overcome the traditional judicial reserve about treading into parliamentary affairs.”<sup>165</sup> In *Re Eurig Estate*, a majority found substantive content, or at least principles, that generated substantive obligations in the procedural requirements of section 53 of the *Constitution Act, 1867*, which provides that all money bills must originate in the House of Commons. Keyes asserts that *Re Eurig Estate* raised questions about other constitutional provisions relating to parliamentary procedure and the extent to which these might be judicially enforced as well.<sup>166</sup>

Sossin identifies the series of actions brought by Quebec lawyer Guy Bertrand, challenging the Government of Quebec’s secessionist attempts.<sup>167</sup> According to Sossin, by demonstrating a willingness to entertain Bertrand’s claims, the Quebec courts “seemed to open the door to significantly broader judicial intervention in the political and legislative process.”<sup>168</sup> According

162 While there have been challenges to specific provisions of these bills, there have been no challenges that I am aware of to the validity of the process by which they were enacted.

163 John Mark Keyes & Anita Mekunnel, “Traffic Problems at the Intersection of Parliamentary Procedure and Constitutional Law” (2001) 46 McGill LJ 1037 at 1040.

164 [1998] 2 SCR 565 (*sub nom Re Eurig as Executor of the Estate of Donald Valentine v Registrar of the Ontario Court (General Division) et al*), 40 OR (3d) 160.

165 Keyes & Mekunnel, *supra* note 163 at 1048.

166 *Ibid.*

167 See *Bertrand c Quebec (Procureur general)*, (1995) RJQ 2500, 127 DLR (4th) 408 (QCCG); *Bertrand c Quebec (Procureur general)*, [1996] RJQ 2393, 138 DLR (4th) 481 (QCCS); *Bertrand c Bouchard*, [1998] RJQ 1203, 1998 CanLII 12069 (QCCS) (discussed in Sossin, *supra* note 120 at 202–204).

168 Sossin, *supra* note 120 at 203.

to Sossin, if a dispute can be coached in terms of constitutional rights, “Canadian courts will be loath to decline to adjudicate it.”<sup>169</sup>

In addition to the points raised by Sossin and Keyes, principles contained in more recent Supreme Court constitutional jurisprudence provide the foundation for challenging the Court’s firmly-held approach of non-intervention in internal legislative matters. The conceptual roadmap is provided by the work of Kazmierski.

In an article titled “Draconian but not Despotic: The ‘Unwritten’ Limits of Parliamentary Sovereignty in Canada,”<sup>170</sup> Kazmierski demonstrates that the Supreme Court has privileged the unwritten principle of parliamentary sovereignty over the unwritten principle of democracy without providing justification for doing so. He also demonstrates that the Court has privileged the unwritten principle of judicial independence over both of them, again without rationalization. Kazmierski is rightly critical of the Court’s narrow, textual reading of the protection afforded by the Constitution for democratic rights when compared with its broad, non-textual interpretation of the protection afforded by the unwritten principle of judicial independence. In *British Columbia v Imperial Tobacco*, Justice Major stated that “in a constitutional democracy such as ours, protection from legislation that some might view as unjust or unfair properly lies not in the amorphous underlying principles of the Constitution, but in its text and the ballot box.”<sup>171</sup> Kazmierski points out that Justice Major implied that legislation should conform with the requirements that flow “by necessary implication” from the written terms of the Constitution, including judicial independence. Yet as Kazmierski, Hogg, and others have written, the interpretation given to the unwritten constitutional principle of judicial independence in the *Provincial Judges Reference*<sup>172</sup> extends far beyond any “necessary implication” of the textual provisions of the Constitution. This leads Kazmierski to conclude:

[I]t would be difficult to argue that the protection of the judicial process arises by necessary implications from the express terms of the Constitution while the protection of the democratic process does not . . . . Similarly, it would be difficult to sustain an argument that protection of the democratic process must be rooted exclusively in the process itself. Surely,

<sup>169</sup> *Ibid.*

<sup>170</sup> Kazmierski, *supra* note 19.

<sup>171</sup> 2005 SCC 49 at para 66, [2005] 2 SCR 473.

<sup>172</sup> *Re Provincial Court Judges*, [1997] 3 SCR 3, (*sub nom Reference Re Remuneration of the Provincial Court (PEI)*, 156 Nfld & PEIR 1 [*Provincial Judges Reference*]).

the argument advanced by Justice Major—that protection against arbitrary legislation is found in the ballot box—rings hollow if the results of the ballot box are not representative of the preferences of the electorate.<sup>173</sup>

Kazmierski ultimately argues for a conception of the principle of parliamentary sovereignty that embraces protection against interferences with the democratic process. Kazmierski's argument is strengthened by recourse to the Supreme Court's jurisprudence on the Constitution's preamble as a source for enforceable legal obligations.<sup>174</sup>

The Supreme Court has emphasized the importance of political participation and accountability in the principle of democracy, as noted by Kazmierski.<sup>175</sup> Additionally, Justice McLachlin (as she then was) stated in *New Brunswick Broadcasting Co v Nova Scotia* that “[t]here is no question that [the Preamble to the *Constitution Act, 1867*] guarantees the continuance of Parliamentary governance.”<sup>176</sup> How far this would go is uncertain. If the government refused to have ministers attend the House for questioning about their departments, would the Supreme Court stand on the principle of non-interference in the internal workings of the legislature, or would it invoke the unwritten principle of democracy? Similarly, if standing orders were amended to only allow parties with at least 50 seats the right to participate in question period or have a seat on committees, would that be tolerated?<sup>177</sup> Cases like the *Alberta Press case*<sup>178</sup> demonstrate that the courts frequently find a way to protect the democratic process when it is threatened. Abusive omnibus bills have been so identified as representing a threat to the democratic process in Canada.

Judicial protection against abusive omnibus bills may lie in the unwritten principle of democracy and in section 3 of the *Charter*. In interpreting the right to vote under the *Charter*, the Supreme Court has stated

173 Kazmierski, *supra* note 19 at 276.

174 See *Provincial Judges Reference*, *supra* note 172; *Quebec Secession Reference*, [1998] 2 SCR 217, 156 DLR (4th) 385 [*Quebec Secession Reference*]. See generally Warren J Newman, “Grand Entrance Hall, Back Door or Foundation Stone? The Role of Constitutional Principles in Construing and Applying the Constitution of Canada” (2001), 14 SCLR (2d) 197. See Hogg, *supra* note 60 at § 1.4; Peter W Hogg, “The Bad Idea of Unwritten Constitutional Principles: Protecting Judicial Salaries” in Adam M Dodek & Lorne Sossin, eds, *Judicial Independence in Context* (Toronto: Irwin Law, 2010) 25 (for strongly critical views).

175 See *Quebec Secession Reference*, *supra* note 174 at paras 61–69.

176 *New Brunswick Broadcasting*, *supra* note 131 at 375.

177 *Figueroa v Canada (Attorney General)*, 2003 SCC 37, [2003] 1 SCR 912 [*Figueroa*].

178 *Reference Re Alberta Statutes*, [1938] SCR 100, [1938] 2 DLR 81 [*Alberta Press case*].

that the right means more than the bare right to cast a ballot. In *Figueroa v Canada (Attorney General)*,<sup>179</sup> the Court explained:

Under s. 3 of the Charter, “[e]very citizen of Canada has the right to vote in an election of members of the House of Commons or of a legislative assembly and to be qualified for membership therein”. On its face, the scope of s. 3 is relatively narrow: it grants to each citizen no more than the bare right to vote and to run for office in the election of representatives of the federal and provincial legislative assemblies. But Charter analysis requires courts to look beyond the words of the section. In the words of McLachlin C.J.B.C.S.C. (as she then was), “[m]ore is intended [in the right to vote] than the bare right to place a ballot in a box.”<sup>180</sup>

In the *Saskatchewan Boundary Reference*,<sup>181</sup> the Court had stated that the purpose of the right to vote in section 3 of the *Charter* is the right to “effective representation.” This was critical to the notion of representative democracy, as the Court explained:

Ours is a representative democracy. Each citizen is entitled to be represented in government. Representation comprehends the idea of having a voice in the deliberations of government as well as the idea of the right to bring one’s grievances and concerns to the attention of one’s government representative; as noted in *Dixon v B.C. (A.G.)*, [1989] 4 W.W.R. 393, at p. 413, elected representatives function in two roles—legislative and what has been termed the “ombudsman role”.<sup>182</sup>

Properly understood, section 3 should also apply to the representative function of those who are elected to Parliament and provincial legislatures. To date, the Supreme Court has only focused on one half of the equation of representative democracy: the voter.<sup>183</sup> However, the logic of the Supreme Court’s interpretation of section 3 would apply equally to the representa-

179 *Figueroa*, *supra* note 177.

180 *Ibid* at para 19, citing *Dixon v British Columbia (Attorney General)*, 59 DLR (4th) 247, [1989] 4 WWR 393 at 403.

181 *Reference Re Provincial Electoral Boundaries (Sask.)*, [1991] 2 SCR 158, 81 DLR (4th) 16.

182 *Ibid* at 183.

183 This is in contrast to the existence of a rich body of constitutional literature in the United States on protecting the judicial process as a basis for the legitimate exercise of judicial review. See e.g. John Hart Ely, *Democracy and Distrust: A Theory of Judicial Review* (Cambridge: Harvard University Press, 1980) (for paradigmatic work). See Patrick J Monahan, *Politics and the Constitution: The Charter, Federalism and the Supreme Court of Canada* (Toronto: Carswell, 1987) (for a Canadian application of Ely’s “process-based theory”).

tive. If each citizen is entitled to be represented in government—and representation comprehends the idea of having a voice in the deliberations of government and being able to bring one’s grievances and concerns to the attention of government—then legislation that restricts the ability of elected representatives to carry out those functions should infringe section 3. The legislation in *Figueroa* did not ban political parties who did not run candidates in 50 ridings; it withheld important benefits from such parties. Similarly, omnibudget bills do not ban representatives from bringing forth their constituents’ concerns on the items contained in such bills, but they severely restrict their ability to do so. Thus, if the purpose of section 3 is “effective representation,” then omnibudget bills surely infringe this purpose.

However, we must consider the downside of judicial intervention. Heard cautions:

[I]f judicial attention were turned to the operation of the legislative branch of government, it would have to tread lightly. The presently accepted doctrine of parliamentary privilege, whereby the courts give a wide berth to the internal workings of legislatures, appears to be a necessary policy to pursue. Any deeper inquiry, such as one under the Charter of Rights, would require the courts to re-evaluate the nature of the boundaries between law, convention, and the laws and customs of Parliament. Any application of the Charter to the internal workings of the legislatures may be disastrous if it is not mindful of the profound transformation effected by informal constitutional rules.<sup>184</sup>

Similar concerns were expressed by Professor Warren Newman in his writing on the Rule of Law.<sup>185</sup> Newman cautions that “[i]f there is a ‘democratic deficit’ in the way in which Parliament currently functions, the best means of addressing [it] may be through procedural and structural reforms to the institution itself, not in carving out a still larger role for the courts.”<sup>186</sup> These concerns are legitimate, as are those raised by the Supreme Court in cases such as *Vaid*. However, they must be balanced against the damage caused by abusive omnibus bills to the democratic process and to Parliament itself.

184 Heard, *Constitutional Conventions*, *supra* note 98 at 154.

185 See Warren J Newman, “The Principles of the Rule of Law and the Parliamentary Sovereignty in Constitutional Theory and Litigation” (2005) 16:1 NJCL 175 at 239.

186 *Ibid* at 239, n 214.

#### IV. CONCLUSION

In March 2016, Liberal Minister of Finance Bill Morneau introduced his first budget bill. The 179-page Bill C-15 proposed to amend dozens of statutes. There is no question that Bill C-15 qualifies as an omnibus bill under the parliamentary understanding of that term. However, Minister Morneau vehemently denied that Bill C-15 was an omnibus bill, declaring: “our budget implementation act is absolutely not an omnibus bill. Every measure in the budget implementation act is related to our budget, unlike previous omnibus bills from the members opposite.”<sup>187</sup> Undoubtedly, Minister Morneau had Stephen Harper’s Bill C-4 and its predecessors in mind. In making this argument, Minister Morneau was asserting that the Liberals’ budget bill should not be considered an “omnibus bill” in political terms (*i.e.*, it should not be castigated). This quick exchange shows the divide over the propriety of the use of omnibus bills and the need for their regulation.

This article has explained the development of omnibus bills in Canadian parliamentary practice and their lack of regulation. It has analyzed the different possible responses to regulate and restrict their use and prevent the most abusive omnibus bills, such as those suggested by the epigraph to this article. In the end, the best solution is also the easiest one: the House of Commons can simply restrict the use of omnibus bills in its Standing Orders. No legislation would be necessary; no concurrence from the Senate is required, and there is no constitutional issue that presents itself. The House should do this, not only because it is the best way to address the problem of abusive omnibus bills, but also because if it fails to do so, the alternative options have potentially negative implications for the separation of powers and for the parliamentary democracy in Canada.

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<sup>187</sup> See Wherry, “Omnibus Concerns”, *supra* note 13.