

The Private Member Battleground: The Future of Private Member's Bills at the Manitoba Legislative Assembly

J A S O N S T I T T *

I. INTRODUCTION

Given the advent of fixed-date elections,¹ Private Member's Bills (PMBs) from the Opposition will increase in volume for political positioning purposes during election years. I will use the term "political positioning" to refer to a politician or political party seeking a favorable situation or circumstance in relation to power in the governmental or public affairs of the Province. This paper will draw upon data from the past 30 years of legislative sessions (1982 – 2012), spanning nine Legislatures and 36 sessions and relies on simple statistical analysis and evidence from Hansard and the media. The author will attempt to survey historical patterns in the number of PMBs introduced from session to session over the past 30 years and speculates as to how fixed-election dates may affect those patterns. Given the recent imposition of fixed-election dates in 2008, this paper predicts that a more stable pattern will develop in terms of the volume of PMB introductions in the Manitoba Legislature by Opposition parties preparing for a general election. This paper anticipates that Opposition parties will focus their PMB efforts on election years in the Legislature in response to the recently fixed political cycles in Manitoba.

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¹ *The Elections Act*, SM 2006, c 15; CCSM c E30 s 49.1(1). Fixed election dates were introduced in Bill 37, *The Lobbyists Registration Act and Amendments to The Elections Act, The Elections Finances Act, The Legislative Assembly Act and The Legislative Assembly Management Commission Act*, 2nd Sess, 39th Leg, Manitoba, 2008 (assented to 9 October 2008), SM 2008 c 43.

Through analyzing the aspect of political positioning through Opposition PMBs, this paper builds upon a recent trend of scholarly attention to Private Member's Bills and their purpose in legislatures. The Journal of Legislative Studies has published papers on the legislative influence of PMBs at the Federal level in Canada, such as Kelly Blidook's article, "Exploring the Role of 'Legislators' in Canada: Do Members of Parliament Influence Policy?"² A series of articles has appeared in the Manitoba Law Journal's "Underneath the Golden Boy" publication which focus on particular PMBs and their purposes in the Manitoba Legislature.³ Memoirs, articles and interviews with past MLAs or Premiers, such as Howard Pawley,⁴ reveal good insight into the political circumstances of parties in Opposition at the Manitoba Legislature as well as certain aspects of their political behavior. Local Manitoban newspapers such as the Brandon Sun, The Winnipeg Sun and the Winnipeg Free Press also provide coverage of PMBs as they are introduced in the Legislature, albeit coverage may be limited.

At the Standing Committee on Private Bills, June 11, 2012, four relatively innocuous Private Member's Bills came under consideration.⁵ By innocuous, this paper means they were not meant to be overtly critical of the Government and there was very little, if any, public disapproval of these Bills. All four of them received widespread support among the three political parties within the Legislative Assembly and all three public presenters had a polite and receptive audience of MLAs and staff. Mr. Graydon (Emerson) thanked the Members on both sides of the house who spoke in favor of his Private Member's Bill Bill 208, *The Remembrance Day Awareness Act*.⁶ However, at this meeting of the Standing Committee on

² Kelly Blidook, "Exploring the Role of 'Legislators' in Canada: Do Members of Parliament Influence Policy?" (2010) 16:1 Journal of Legislative Studies 32.

³ See e.g. Bryan Schwartz & Andrew Buck, "Bill 37: Battle Hymn of the Incumbent" (2009) 6 Underneath the Golden Boy 1; Adam Nathanson, "Legislating Jordan's Principle: An Indirect Success" (2011) 34:3 Man LJ 215.

⁴ Howard Pawley, *Keep True: A Life in Politics* (Winnipeg: University of Manitoba Press, 2011).

⁵ Manitoba, Legislative Assembly, *Debates and Proceedings*, 40th Leg, 1st Sess, Vol 1 (11 June 2012).

⁶ *Ibid* at 9, Bill 208, *The Remembrance Day Awareness Act*, 1st Sess, 40th Leg, Manitoba, 2012 (assented to 14 June 2012), SM 2012, c 41.

Private Bills in June 2012, the likelihood of a general election in Manitoba was at least three long years away.

II. PRIVATE MEMBER PRIVATE BILLS COMPARED TO PRIVATE MEMBER PUBLIC BILLS

The distinction between Private Member ‘Private’ Bills and Private Member ‘Public’ Bills will not be a significant topic of this paper. This next section is meant to give a brief overview of the two different types of bills which may be sponsored by a Member of the Legislative Assembly (MLA) as well as their role within the larger context of legislative activity in the Manitoba Legislature. This is intended to show how some PMBs, which are often simply known as ‘special acts of the Legislature’,⁷ are almost entirely separate from PMBs which are designed for political positioning.⁸ However, despite all attempts to distinguish political positioning from other types of activity within the Legislature, it is necessary at this juncture to remind the reader that nothing really happens in the Manitoba Legislature which is completely apolitical.

Firstly, when an MLA is acting within his or her capacity as a ‘Private Member’ it refers to acting within their legislative privilege to introduce a bill, resolution, motion or any other legislative activity as an elected representative outside of privileges granted specifically to the Executive Council of Manitoba.⁹ Technically, only Cabinet Ministers (Executive Council) are considered as comprising the “Government” in the context of the Legislative Assembly. Privileges which are reserved for the Lieutenant Governor of Manitoba according to the *Constitution Act, 1867*, section 12¹⁰ are advisable only by the Executive Council of Manitoba.¹¹

⁷ Introduced as series 300 Bills.

⁸ Introduced as series 200 Bills.

⁹ *The Executive Government Organization Act*, RSM 1987, C E170, s 3(1) The Lieutenant Governor in Council may appoint, under the Great Seal of the province, from among the ministers, to hold office during pleasure, a President of the executive council and ministers to preside over the several departments and to discharge such duties, exercise such powers and perform such functions as he may prescribe; and the Lieutenant Governor in Council may determine the titles by which those ministers shall be known.

¹⁰ *Constitution Act, 1867* (UK), 30 & 31 Victoria, c 3, s 12, reprinted in RSC 1985 App II, No 5.

Since bills introduced by Ministers normally exercise those legislative powers reserved for the Executive Council under *The Executive Government Organization Act*, Ministers typically introduce “Government (Public) Bills”¹² as opposed to PMBs of either sub-type (Public or Private). For example, PMBs of neither sub-type can propose the expenditure of public funds and they cannot impose taxes.¹³

PMBs of either sub-type are introduced to the Legislature in a similar way as Government Public Bills and they are read for the first time during Routine Proceedings. For greater certainty, usually the introduction of a Private Member Public Bill has a policy oriented title, such as Mr. Smook’s (La Verendrye) *The Participation of Manitoba in the New West Partnership Act*,¹⁴ whereas a Private Member Private Bill typically has some type of organization within the title such as *The Jewish Child and Family Services Incorporation Act*.¹⁵ After a PMB is introduced within the Legislature, PMBs are given a second reading only during Private Member’s hour, which is currently scheduled for Tuesday and Thursday mornings.¹⁶

¹¹ *The Manitoba Act, 1870*, 33 Victoria, c 3 (Canada), s 2. On, from and after the said day on which the Order of the Queen in Council shall take effect as aforesaid, the provisions of the Constitution Act, 1867, shall, except those parts thereof which are in terms made, or, by reasonable intendment, may be held to be specially applicable to, or only to affect one or more, but not the whole of the Provinces now composing the Dominion, and except so far as the same may be varied by this Act, be applicable to the Province of Manitoba, in the same way, and to the like extent as they apply to the several Provinces of Canada, and as if the Province of Manitoba had been one of the Provinces originally united by the said Act.

¹² Introduced as series 100 Bills.

¹³ *The Financial Administration Act*, SM 1996, c 59 – Cap. F55, s 5 In addition to matters specifically assigned to it under this or any other Act of the Legislature, the Treasury Board is responsible for... (c) government fiscal management and control, including the management and control of expenditures and revenues.

¹⁴ Bill 210, *The Participation of Manitoba in the New West Partnership Act*, 1st Sess, 40th Leg, Manitoba, 2012.

¹⁵ Bill 300, *The Jewish Child and Family Service Incorporation Act*, 1st Sess, 40th Leg, Manitoba, 2012

¹⁶ *Rules, Orders and Forms of Proceedings of the Legislative Assembly of Manitoba*, As amended December 7th, 2005, Winnipeg, Manitoba, s 4(3) Except during the debates on the motion for an Address in Reply to the Speech from the Throne and the Budget the House shall also sit on Tuesdays and Thursdays at 10:00 a.m., to consider Private Members’ Business, and on those days the Speaker shall leave the Chair at 12:00 noon until 1:30 p.m.

An MLA introducing a Private Member's Private Bill follows a substantially different protocol from Private Member Public Bills or Government Public Bills. A Private Member Private Bill or simply a 'Private Bill' is an act of the Legislature which can grant powers to an organization seeking new or exceptional powers which cannot be granted under *The Corporations Act*.¹⁷ For example, with Bill 300 – *The Jewish Child and Family Services Incorporation Act* (2012)¹⁸, The Jewish Child and Family Service organization (JCFS) sought to modernize their legal status, "to better reflect the objects and powers of Jewish Child and Family Service and the services and activities it provides to the community."¹⁹ In order to procure the desired amendments to their governing statute, the JCFS approached Ms. Sharon Blady (Kirkfield Park) and asked if she would sponsor a Bill for them in the Legislature. Next, they submitted their petition to the Legislature, complied with the reporting requirements and made arrangements to have the fees paid to publicly advertise the bill.²⁰ Private Bills are interesting because they create special arrangements for some organizations under *The Corporations Act*,²¹ but rarely does a Private Bill become a target for political scrutiny within the Legislature. However, an analysis of voting patterns in subsequent Manitoban elections within a stakeholder community or organization following the passage of a Private Bill would be an interesting topic for a future paper.

Private Member Public Bills from Members of the Opposition or Independent Members form the bulk of PMB activity in the Legislature and they will be the main focus for this paper. There are no procedural differences between PMBs introduced by a government backbencher or any member of the Opposition however, Private Member Public Bills are conceptually different as they often serve a given Party's political positioning purposes in the Assembly. As was observed above during the

¹⁷ Legislative Assembly of Manitoba, "Process for Passage of a Private Bill in the Legislative Assembly of Manitoba" (July 2010) online: Legislative Assembly of Manitoba <<http://www.gov.mb.ca/hansard/bills/privatebillguidelines.pdf>> see *The Corporations Act*, RSM 1987 c C225 s 167(1-7), 175(2), 182(13), CCSM c C225.

¹⁸ *Supra* note 15.

¹⁹ *Ibid* at explanatory note.

²⁰ In the case of a non-profit organization, such as the JCFS, printing and advertisement fees will normally be carried by the Legislative Assembly.

²¹ *The Corporations Act*, *supra* note 17. Notably, s 167(7) A special act corporation cannot amend its articles without an Act of the Legislature except to change its name.

Standing Committee on Private Bills, June 11, 2012, sometimes Opposition PMBs are relatively innocuous. However, this is rare with Opposition PMBs. For instance, in the 40th Legislature, 1st Session alone, 23 PMBs were introduced and 20 were from the Opposition, of which only one (Bill 208)²² received Royal Assent. The reason most of these PMBs do not receive Royal Assent is because they are often used to overtly criticize the governing party and present a policy proposal which weakens the reputation of Government policies in favor of a clear alternative.

Second Readings for PMBs allow only ten minutes per speaker to make arguments in favor or against a Bill, as opposed to second readings on Government Bills which allow up to thirty minutes per speaker.²³ Following a Second Reading, they are usually sent to the Standing Committee on Private Bills to be debated and amended if necessary.

There is a brief negotiation which takes place immediately prior to Private Member's Hour between the House Leaders from the Government, Opposition and Independents in order to choose which PMBs will be debated during the Private Member's Hour. Interestingly, there is no public record of these negotiations but they could be very important to the fate of a PMB. In fact, depending on the political positioning of the parties, these negotiations could arguably decide the fate of some PMBs, which will never get a second reading.²⁴ PMBs which have not been prioritized by the sponsoring party will likely expire at the end of the legislative session. A PMB which was not a priority for a sponsoring party will not be recommended for a debate by either House Leader during the Private Member's Hour. This leads to the Bill "dying on the

²² *Supra* note 6.

²³ No MLA may speak for more than 30 minutes however, unlimited time is allowed to the Premier, the Leader of the Official Opposition, the Leaders of Recognized Opposition Parties and certain others as specified in the Rules of the House. Speeches during Private Member's hour are limited to 10 minutes. Manitoba, Legislative Assembly, *Rules, Orders and Forms of Procedures of the Legislative Assembly of Manitoba* at 43 online: Legislative Assembly of Manitoba <http://www.gov.mb.ca/legislature/house_biz/rulebook.pdf>.

²⁴ *Ibid* at 23. Private Members' Private Bills and Private Members' Public Bills shall be called in the order as listed on the Order Paper. For the purpose of listing Bills on the Order Paper during Private Members' Business, Concurrence and Third Readings shall precede Debate on Second Reading. When a Private Members' Public Bill or Private Bill is called for debate on the Order Paper and is not disposed of within that hour, it shall be placed on the bottom of the list of bills of that type.

docket”, that is, it never gets a second reading and must be reintroduced in a subsequent session of the Legislature. Despite the confidentiality of caucus meetings, this paper presumes that priorities for PMBs in terms of their recommendation for debate by the House Leaders depend on a rolling and complex set of political factors, favours and the standing of an MLA in the sponsoring political party.

PMBs may well have received significant scrutiny within the privacy of caucus meetings, but once introduced into the Legislature, MLAs will support a PMB from their own party unanimously. The bills tend to be concerned with issues the sponsoring MLA feels are important to him or her personally, such as Mr. Gaudreau’s (St. Norbert) *The Apprenticeship Recognition Act* (2012).²⁵

III. PRIVATE MEMBER’S BILL STRATEGY

There are currently two different political parties in Opposition in Manitoba, the Progressive Conservative (PC) Party of Manitoba, which holds 19 seats in the Legislative Assembly and the Liberal Party of Manitoba, whose leader, Dr. Gerrard (River Heights) holds the only seat. A political party of Manitoba needs to hold a minimum of four seats in the Legislature in order to have Official Party status, therefore Dr. Gerrard is often referred to as an Independent Member. As well, the Manitoba NDP, which currently forms government, was in Opposition from 1988 – 1999. This paper will often refer to the ‘Opposition Party’ in terms of all three parties interchangeably, as well as any future Party in Opposition in Manitoba, in some cases. While there are political differences between these three parties, this paper will demonstrate that PMB strategy while in Opposition has been similar across the partisan divide.

Over the past 30 years, the total number of Government Bills introduced in the Legislative Assembly per session has typically fluctuated with the total number of sitting days per session. Government Bills introduced by Ministers form the bulk of legislative activity in a given session and they are also the greatest source of changes to the laws of Manitoba. Interestingly, there has been a recent trend in the total number of Government Bills introduced in a given session to exceed the total

²⁵ Bill 202, *The Apprenticeship Recognition Act*, 1st Sess, 40th Leg, Manitoba, 2012 (assented to 14 June 2012), SM 2012 c 42.

sitting days per session, however, an in depth analysis of Government Bills as a ratio of sitting days is beyond the scope of this paper.

While the total number of Government Bills generally varies with the number of sitting days in session, total PMB numbers have seen three oscillations which were closely correlated to political cycles over the past 30 years (see table 1). The first was during the 32nd and 33rd Legislatures of the Pawley administration (1982 – 1988). The second was during the 34th – 36th Legislatures of the Filmon administration (1988 – 1999). The third oscillation began with the 37th Legislature and seems to have peaked by the 39th Legislature, which did not culminate with a change in Government, but it did represent a change in the Premier, from Mr. Doer (Concordia) to Mr. Selinger (St. Boniface).

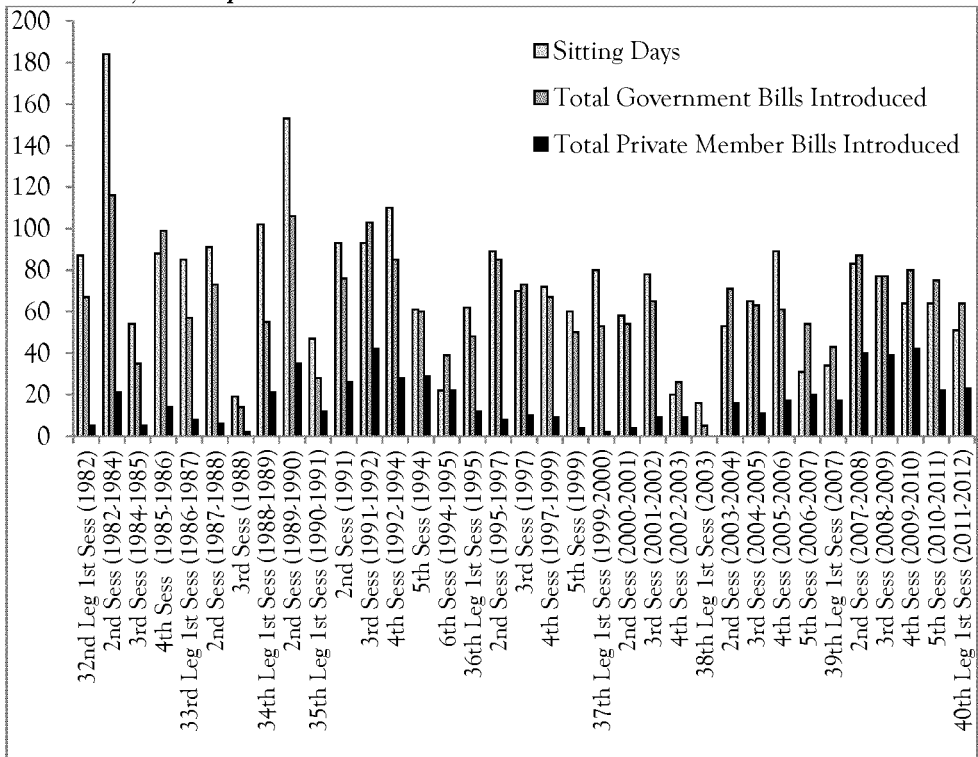
PMB numbers over these three oscillations fluctuated from 5 to 21 and down to 2 in the first oscillation, from 2 to 42 and back down to 2 in the second, and from 2 back up to the 40 range during the third. As of the 40th Legislature, 1st Session, the total number of PMBs introduced in the session had dropped back down to 23. Therefore, PMB volumes follow a pattern that depends less on the sitting days of a session but is related to political cycles.

PMB volumes over the past 30 years have gained significant momentum through consecutive terms of a party in power. The inference is that PMB volumes are a signal by the Opposition parties of their increasingly consolidated criticism over consecutive terms and a demonstration of their ability to present an alternative set of policies. As well as their resolve to introduce those policy ideas during a session or in preparation for a general election. PMB volume from an Opposition Party typically peaks during the second term in Opposition (see table 2). This is one piece of evidence which encourages the hypothesis that the strategic behavior of PMB activity from the Opposition may become more predictable through fixed election dates. In other words, the act of increasing the number of PMBs during a legislative session signals to the public that the Opposition has a serious set of alternative policy ideas which it would be willing to implement upon forming the next Government.

Table 2 also provides the ratios of Private Bills, Government Backbencher PMBs and Opposition PMBs across 30 years of legislative sessions. As one can see, the bulk of PMB activity in a given session is typically Opposition PMBs. It is interesting to note however, that Private

Bills and Government Backbencher PMBs actually outnumbered Opposition PMBs during the 32nd and 33rd Legislatures. PMB activity changed completely during the 34th Legislature, which was the first Filmon Legislature (1988 - 1990). This suggests that Opposition PMB activity underwent a transition 25 years ago from being used sparingly for the purposes of private Members to becoming primarily used as a venue for the Opposition's alternative policy ideas and political positioning.

Table 1 - Sitting Days compared to Total Public Bills and PMBs over 30 years to present: 1982 - 2012.²⁶

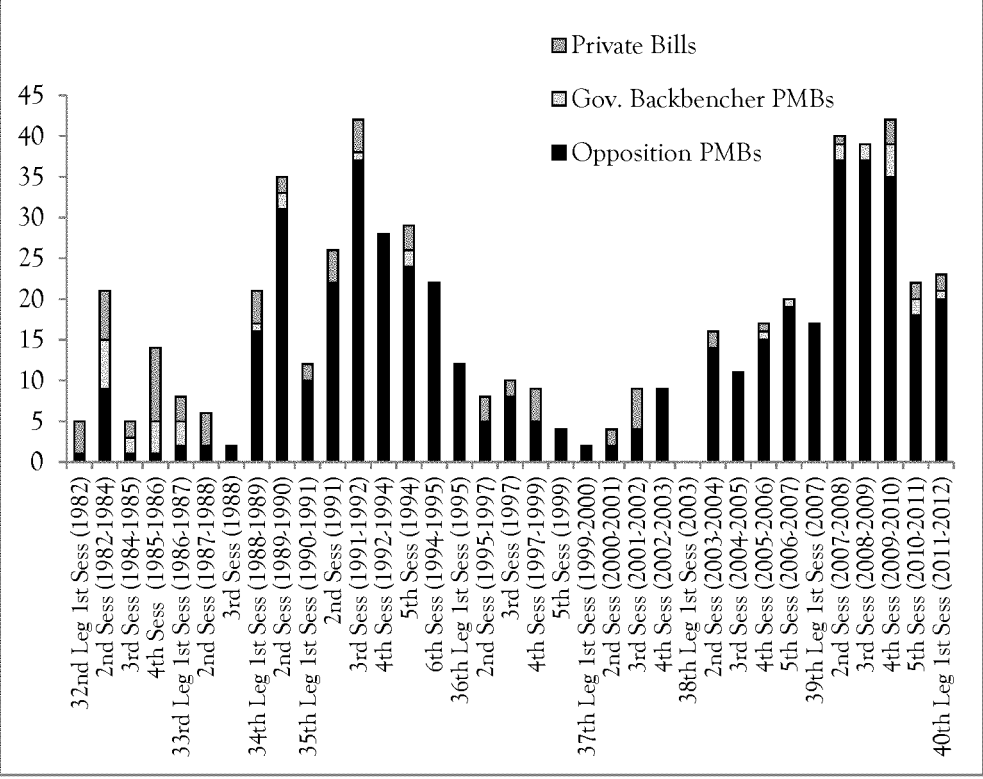


Government Backbencher PMBs virtually disappeared for 10 years between 1994 and 2004. This drought in Government Backbencher PMBs could only speculatively represent disinterest from the caucuses,

²⁶ Manitoba, Legislative Assembly, *Journals of the Legislative Assembly of Manitoba*, 32nd Leg, 1st Sess - 40th Leg, 1st Sess, vol 126-159 (1982-2012) at appendices.

deprioritized activity, busy schedules, the centralization of power, or any number of complicated circumstances outside the scope of this paper. However, it seems as though the Opposition's volume of PMB introductions into the Legislative Assembly has increasingly become a demonstration of alternative and otherwise critical policy proposals by the Opposition over the past 25 years.

*Table 2 - Total Private Member Bills Introduced over 30 years to Present: 1982 - 2012*²⁷



Looking more closely at PMB activity between general elections, another interesting pattern has begun to develop. Over a span of the three

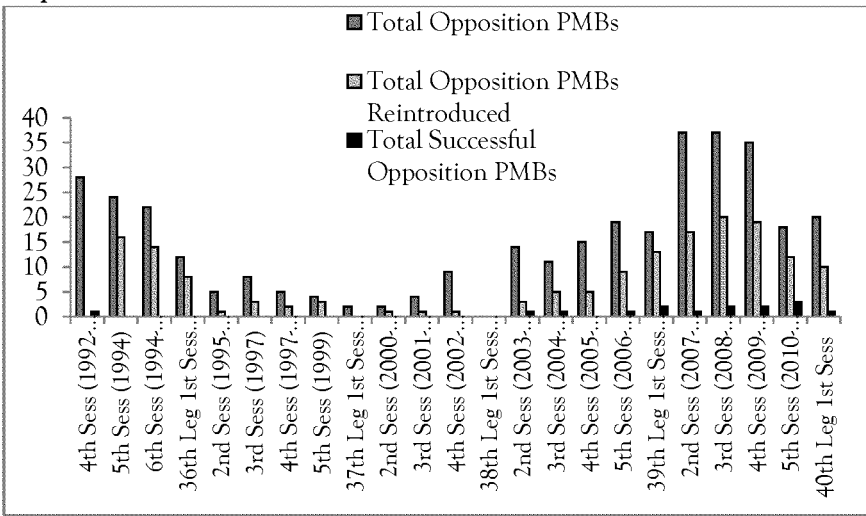
²⁷ Manitoba, Legislative Assembly, *Journals of the Legislative Assembly of Manitoba*, 32nd Leg, 1st Sess - 40th Leg, 1st Sess, vol 126-159 (1982-2012) at appendices.

most recent Legislatures, from the 37th Legislature to the 39th Legislature, the number of Opposition PMBs introduced in the session immediately preceding a general election has been greater than the first session of that Legislature. In fact the only exception to this phenomenon over the past 30 years was the 33rd Legislature and the 36th Legislature, when the total number of Opposition PMBs over the duration of the Legislature declined. However, despite some predictability between the first and last sessions of a Legislature, the number of Opposition PMBs introduced during the sessions in between can fluctuate greatly. This demonstrates that Opposition PMB numbers are currently increasing across consecutive terms of a government, though not necessarily in a linear fashion. There is some evidence for a pattern of intensifying PMB efforts leading up to election years, however, it has not yet developed into a highly predictable political tactic.

Another important factor which influences the total number of PMBs in a given session is the reintroduction of PMBs from Opposition MLAs across multiple sessions and even Legislatures. Table 3 represents the rate of Opposition PMB reintroductions in a given session as well as the success rates of Opposition PMBs over the past 20 years. Reintroduction in this context means a given policy proposal came from any past session while the Party was in Opposition, for example, Mrs. Taillieu (Morris) introduced a version of *The Personal Information Protection and Identity Theft Prevention Act* - eight times, with few variations between drafts, from 2004 – 2011.²⁸ It is also interesting to note how low the passage rate has been for Opposition PMBs, which has been anywhere from zero to three per session in the past 20 years.

²⁸ Bill 201, *The Personal Information Protection and Identity Theft Prevention Act*, 1st Sess, 40th Leg, Manitoba, 2011; Bill 201 *The Personal Information Protection and Identity Theft Prevention Act*, 5th Sess, 39th Leg, Manitoba, 2010; Bill 200 *The Personal Information Protection and Identity Theft Prevention Act*, 4th Sess, 39th Leg, Manitoba, 2009; Bill 219 *The Personal Information Protection and Identity Theft Prevention Act*, 3rd Sess, 39th Leg, Manitoba, 2008; Bill 216 *The Personal Information Protection and Identity Theft Prevention Act*, 2nd Sess, 39th Leg, Manitoba, 2007; Bill 206 *The Personal Information Protection and Identity Theft Prevention Act*, 1st Sess, 39th Leg, Manitoba, 2007; Bill 200 *The Personal Information Protection and Identity Theft Prevention Act*, 5th Sess, 38th Leg, Manitoba, 2006; Bill 207 *The Personal Information Protection and Identity Theft Prevention Act*, 4th Sess, 38th Leg, Manitoba, 2005.

Table 3 – Total Opposition PMBs compared to number of PMBs Reintroduced and number of Successful Opposition PMBs over 20 years to present: 1992 – 2012.²⁹



The reasoning behind so many PMB introductions by the Opposition despite their abysmal passage rate is varied. Firstly, a noble, pragmatic and appropriate idea from the Opposition which seeks to remedy or improve upon the existing legal framework may be passed successfully, as mentioned with Bill 208-*The Remembrance Day Awareness Act and Amendments to The Public Schools Act*.³⁰ Also, it could become incorporated into future Government policy ideas, such as Mr. Lamoureux’s (Inkster) three-time introduction of *The Highway Traffic Amendment Act (Bicycle Helmets)*.³¹ About 1 in 20 times an Opposition PMB is based on a relatively non-partisan policy idea, which is not directly critical of the Government. Therefore, if the Opposition is not trying to be critical of the Government

²⁹ Manitoba, Legislative Assembly, *Journals of the Legislative Assembly of Manitoba*, 32nd Leg, 1st Sess – 40th Leg, 1st Sess, vol 126-159 (1982-2012) at appendices.

³⁰ *Supra* note 6.

³¹ Bill 225, *The Highway Traffic Amendment Act (Bicycle Helmets)*, 2nd Sess, 39th Leg, Manitoba, 2008; Bill 202, *The Highway Traffic Amendment Act (Bicycle Helmets)*, 3rd Sess, 39th Leg, Manitoba, 2009; Bill 216 *The Highway Traffic Amendment Act (Bicycle Helmets)*, 4th Sess, 39th Leg, Manitoba, 2009. This bill was adopted in *The Highway Traffic Amendment and Summary Convictions Amendment Act (Bicycle Helmets)*, SM 2012, c 39.

and instead manages to cooperate with Government's policy direction laid out in the current session's Throne Speech, then many more PMBs would likely be passed. However, complicity is simply not the primary purpose of the Opposition.

The primary purpose of the Opposition is to serve as a form of check on the power of the Government within the Legislative Assembly. More interestingly for the purposes of this paper, the Opposition also serves the role of the government-in-waiting. The role of the government-in-waiting simply means the Party(s) in Opposition typically has the most potential of forming the next Government through a subsequent general election or as a result of the loss of a motion of non-confidence, which happened in Manitoba in 1922 and 1988.³² It is a critical investment for the Opposition to have a record in Hansard and in the public's consciousness of their policy ideas and commitments prior to a general election or motion of non-confidence. Therefore, multiple reintroductions of PMBs over consecutive sessions has become a form of insurance against the Achilles' heel that the government-in-waiting has not proposed any concrete policy ideas of their own during their time at the Legislature.

The third reason Opposition MLAs may want to reintroduce PMBs over multiple sessions is to signal a consistent vocal criticism of the direction of Government policies through alternative policy ideas. Opposition PMBs are mainly used as a way to show that the Opposition disagrees with the current policy direction of the Government and that they seek to present a remedy for the situation. In this sense, the Opposition can be quite critical of the Government as there is often no expectation of their bills to pass through the Legislature. Therefore, with the persistent reintroductions of certain Opposition PMBs such as Mrs. Taillieu's *The Regulatory Accountability and Transparency Act* (2012)³³ or Mrs. Stefanson's (Tuxedo) *The Increased Transparency and Accountability Act (Various Acts Amended)* (2012)³⁴ the Opposition is using these reintroductions to consistently demonstrate their Party's position on

³² Beverley Bosiak, "By One Vote: The Defeat of the Manitoba Government" (1989) 12:1 Canadian Parliamentary Review 15.

³³ Bill 203, *The Regulatory Accountability and Transparency Act*, 1st Sess, 40th Leg, Manitoba, 2012.

³⁴ Bill 211, *The Increased Transparency and Accountability Act (Various Acts Amended)*, 1st Sess, 40th Leg, Manitoba, 2012.

certain issues facing Manitobans, while simultaneously forcing the Government's position on those issues as well.

These PMBs represent what this paper terms "political positioning", as opposed to "innocuous" PMBs. As Opposition PMBs are often for the purpose of better positioning themselves with the electorate, it would make sense strategically for Opposition parties to align their PMB efforts to peak in volume right before a general election. These bills demonstrate a powerful criticism of the governing Party through a number of clear alternative policy ideas which have a consistent and recent record within the Legislative Assembly.

One of the main aspects of political positioning through multiple reintroductions of PMBs into the Legislature is forcing the Government to articulate their policy position (or lack thereof) on a given issue. The main venue for this would be the Question Period in Routine Proceedings, but Private Member's Hour can be an equally useful arena to force the governing party to reveal their stance on a policy proposal by the Opposition. PMBs can be particularly helpful to articulate a party's position in anticipation of a potentially highly contested issue in an upcoming general election, such as Mr. Borotsik's (Brandon West) initial introduction and Mrs. Taillieu's multiple reintroductions of *The Crown Corporations Public Review and Accountability Amendment Act*.³⁵ One of the main campaign issues highlighted by the PC Party in the general election of 2011 was Crown Corporation reform, particularly with Manitoba Hydro's new Bipole construction project and the public review process.³⁶

In order to make the case that PMBs are potentially serious alternatives to Government policy ideas, this paper will briefly analyze the willingness of the Opposition to follow-through with PMB ideas upon forming the government. Unfortunately, tracking every single PMB introduction over 20 or 30 years with respect to the specific nature of the

³⁵ Bill 221, *The Crown Corporations Public Review and Accountability Amendment Act*, 3rd Sess, 39th Leg, Manitoba, 2008; Bill 224 *The Crown Corporations Public Review and Accountability Amendment Act*, 4th Sess, 39th Leg, Manitoba, 2010; Bill 202 *The Crown Corporation Public Review and Accountability Amendment Act*, 5th Sess, 39th Leg, Manitoba, 2010.

³⁶ Larry Kusch, "McFadyen vows to put end to hydro line down west side," Winnipeg Free Press, Nov. 8, 2010, online: Winnipeg Free Press <<http://www.winnipegfreepress.com/local/mcfadyen-vows-to-put-end-to-hydro-line-down-west-side-106873208.html>>.

policy proposals they contained would develop into a lengthy technical discussion. There is a sample of PMBs which received multiple reintroductions during the 36th Legislature which could be analyzed in terms of follow-through as the NDP moved from Opposition to form the Government during the 37th Legislature. One can expect a certain amount of continuity between the PMBs introduced in Opposition and those bills introduced by the same party once they have formed government. Without follow through Opposition PMBs could not be respected by the public as viable policy alternatives.

For example, while in Opposition, Mr. Ashton (Thompson) introduced a version of *The Legislative Assembly Amendment Act* four times during the 36th Legislature in which he proposed the introduction of an elected Speaker.³⁷ Prior to the 37th Legislature, the Speaker had always been appointed by the Premier and seconded by the Leader of the Opposition before the first Speech from the Throne in a new Legislature. However, Mr. Ashton proposed the introduction of a secret ballot process for selecting a new speaker, which he argued would make the process more democratic and involve all the MLAs, instead of a seemingly arbitrary decision by the Premier. In his PMB introduction of March 10th 1997, Mr. Ashton asserted to the Legislature that the House of Commons and the majority of Canadian provinces were electing their Speakers by secret ballot and therefore, so should Manitoba.³⁸ Mr. Ashton's efforts eventually paid off and on November 18th 1999, Mr. Hickes (Point Douglas) became the first Speaker of the Legislative Assembly elected by secret ballot.

In another example, Mr. Chomiak (Kildonan) introduced a PMB version of *The Protection of Persons in Care Act* three times during the 36th Legislature in which he proposed to make any kind of abuse in a personal care home a reportable offence with mandatory reporting requirements for all employees and staff.³⁹ This Bill was inspired by an event at a personal

³⁷ Bill 200, *The Legislative Assembly Amendment Act*, 1st Sess, 36th Leg, Manitoba, 1995; Bill 200, *The Legislative Assembly Amendment Act*, 3rd Sess, 36th Leg, Manitoba, 1997; Bill 203 *The Legislative Assembly Amendment Act*, 4th Sess, 36th Leg, Manitoba, 1998; Bill 200 *The Legislative Assembly Amendment Act*, 5th Sess, 36th Leg, Manitoba, 1999.

³⁸ Manitoba, Legislative Assembly, *Debates and Proceedings*, 36th Leg, 3rd Sess, Vol 6A (10 March 1997) (Steve Ashton).

³⁹ Bill 207, *The Protection of Persons in Care Act*, 3rd Sess, 36th Leg, Manitoba, 1997; Bill 202, *The Protection of Persons in Care Act*, 4th Sess, 36th Leg, Manitoba, 1998; Bill 201, *The Protection of Persons in Care Act*, 5th Sess, 36th Leg, Manitoba, 1999.

care home, the Holiday Haven, in which a case of alleged intimidation by the management of the personal care home kept the purported abuse from being reported to the authorities by the employees.⁴⁰ Upon the NDP's victory during the 1999 general election in Manitoba, Mr. Chomiak reintroduced *The Protection for Persons in Care Act*, which was passed through the Legislative Assembly with support of the governing party.⁴¹

An MLA's transition from Opposition to Government may also see an expansion in the mandate of the earlier PMB as in the case of Mr. Mackintosh's (St. Johns) two time introductions of *The Graffiti Control and Consequential Amendments Act*.⁴² During the second reading of Mr. Mackintosh's Bill 203-*The Graffiti Control and Consequential Amendments Act*, Mr. Mackintosh explained,

I know from speaking to victims of graffiti how they are put in fear when graffiti, particularly graffiti which indicates a particular gang shows up on their property. They are scared to remove it for fear of retaliation. They are then worried that crime is right at their doorstep. The fear of crime, it has often been said, is just as bad as crime itself...⁴³

Two sessions and a general election later, during the 2nd Session of the 37th Legislature, Mr. Mackintosh introduced *The Safer Communities and Neighbourhoods and Consequential Amendments Act*,⁴⁴ in which he stated,

[t]his bill replaces *The Community Protection Act*. It establishes a swifter, less complicated, safer and less costly scheme to help people who believe that property in their neighbourhood or community is being continuously or habitually used for such things as prostitution, the unlicensed sale of alcohol, the sale or use of illegal drugs, and the illegal sale or use of other intoxicating substances.⁴⁵

⁴⁰ Manitoba, Legislative Assembly, *Debates and Proceedings*, 36th Leg, 4th Sess, Vol 63 (18 June 1997) (Dave Chomiak).

⁴¹ *The Protection for Persons in Care Act*, SM 2000, c 12; CCSM c P144.

⁴² Bill 204, *The Graffiti Control and Consequential Amendments Act*, 4th Sess, 36th Leg, Manitoba, 1998; Bill 203, *The Graffiti Control and Consequential Amendments Act*, 5th Sess, 36th Leg, Manitoba, 1999.

⁴³ Manitoba, Legislative Assembly, *Debates and Proceedings*, 36th Leg, 5th Sess, Vol 50A (24 June 1999) (Gord Mackintosh).

⁴⁴ *The Safer Communities and Neighbourhoods Act*, SM 2001 c 6; CCSM c S5.

⁴⁵ Manitoba, Legislative Assembly, *Debates and Proceedings*, 37th Leg, 2nd Sess, Vol 30 (15 May 2001) (Gord Mackintosh).

As one can see, the ethos of *The Graffiti Control and Consequential Amendments Act* is consistent with *The Community Protection Act* although the scope of the latter is expanded from Mr. Mackintosh's earlier effort. The difficulty with this third example is that the earlier PMB containing a similar ethos to the purported follow-up bill does not contain anything about graffiti itself, and the enacted statute was not created within the first session of the new Government. This example is weaker evidence of a direct transposition from a PMB effort to official Government policy but there are a number of consistencies between the two which may have predicted Mr. Mackintosh's political beliefs about community safety at the time.

Given the examples above, it would be safe to predict that Mrs. Taillieu's eight-time PMB *The Personal Information Protection and Identity Theft Prevention Act*, which calls for the collection, use, disclosure and destruction of personal information by organizations in the private sector to be part of a mandatory reporting and disclosure mechanism,⁴⁶ would be introduced in some variation should there be a PC victory at the polls in the general election of 2015 or 2016.

This paper has argued so far that PMB numbers are independent of sitting days, that they follow a distinct pattern in terms of volume, that they are most often used by the Opposition for political positioning and other strategic behaviour and that they contain the potential for follow-through as official Government policies. Next, this essay seeks to predict how PMB introduction rates could respond to fixed-date elections in Manitoba.

IV. FIXED-DATE ELECTIONS AND PRIVATE MEMBER'S BILLS

According to *The Elections Act*, Manitoba's general election must be held on the first Tuesday of October, four calendar years after a preceding general election.⁴⁷ While *The Elections Act* was amended in 2008 to allow for the first fixed-date election in Manitoba in 2011,⁴⁸ the 40th Legislature

⁴⁶ *Supra* note 28.

⁴⁷ *Supra* note 1.

⁴⁸ Bill 37, *The Lobbyists Registration Act and Amendments to The Elections Act, The Elections Finances Act, The Legislative Assembly Act and The Legislative Assembly Management*

will be the first full political cycle between fixed-date elections in Manitoba. However, in anticipation of a possible overlap between provincial and federal general elections, *The Elections Act* was amended on June 14th, 2012 to incorporate an alternative election date, the third Tuesday of April in the following year after the first Tuesday of October.⁴⁹ Despite the possibility of having an alternate fixed election date, this paper still considers the 40th Legislature as the first full political cycle with a fixed election date in Manitoba.

A critical link between the predictions articulated at the beginning of this paper and the area from which it has drawn most of its evidence of Legislative behaviour is the highly sensitive concept of political advertising leading up to elections in Manitoba. On June 7th, 2012, during the second reading of Bill 33, the PC Justice Critic, Mr. Goertzen (Steinbach), reiterated his earlier criticism of the Minister of Health, Ms. Oswald (Seine River) and the Minister of Education, Ms. Allan (St. Vital), for their infringement on public advertising restrictions within 90 days of the general election in 2011.⁵⁰ Regardless of whether the Commissioner of Elections (Mr. Bowles) had ruled the NDP's advertisement violation was inadvertent,⁵¹ it is still a highly critical topic in Manitoba's Legislative Assembly. If an incumbent Minister is indeed in violation of the terms and conditions of advertisement restrictions during an election campaign, it compounds the existing competitive disadvantage in advertisement resources available to challenger candidates during a general election.

On May 15, 2008 Mrs. Driedger (Charleswood) introduced *The Ending Government Spending on Partisan Advertising Act*, which sought to establish a criterion for Government advertising which required public advertising campaigns to be in the public interest and non-partisan.⁵² This PMB was

Commission Act, 2nd Sess, 39th Leg, Manitoba, 2008 (assented to 9 October 2008), SM 2008 c 43.

⁴⁹ Bill 33, *The Election Financing Act and Elections Amendment Act*, 1st Sess, 40th Leg, Manitoba, 2012 (assented to 14 June 2012), SM 2012 c35.

⁵⁰ Manitoba, Legislative Assembly, *Debates and Proceedings*, Vol 28B (3 May 2012) at 763 (Kelvin Goertzen).

⁵¹ Steve Lambert, "Governing NDP in Manitoba broke rules in lead up to election: commissioner" *The Huffington Post* (2 May 2012) online: Huffington Post <http://www.huffingtonpost.ca/2012/05/02/governing-ndp-in-manitoba_n_1470946.html>.

⁵² Bill 234, *The Ending Government Spending on Partisan Advertising Act*, 2nd Sess, 39th Leg,

ignored by the Government, but a critical analysis of the public media and incumbent advantages during general elections is periodically revisited in academic circles and the media upon the launch of a new public advertisement campaign in Manitoba.⁵³

The resources available to incumbent Governments for public advertisement campaigns seriously disadvantage challenger candidates during general elections in Manitoba.⁵⁴ Firstly, Government Ministers and sometimes Government Backbencher MLAs receive privileged acknowledgments in the public media's advertisements in terms of news releases, announcements, showcases for Government projects, periodicals and other publications, the official Government website, billboards, bus advertisements, etc.⁵⁵

A second reason public advertising resources are perceived as a significant disadvantage to non-incumbent candidates during a general election is the disparity between the financial limitations imposed on political parties during election campaigns and the multi-million dollar budget of Government communications. As Mrs. Driedger argued in 2008,

according to Freedom of Information documents, this Doer Government spends between \$10 million and \$15 million a year on Government advertising, communications and marketing. At the same time, they have capped, for the last six years, our advertising to \$50,000 a year; so \$15 million for Government, \$50,000 for Her Majesty's Official Opposition, less than 1 percent of what they can spend...⁵⁶

Schwartz and Buck reiterate that although the governing party is subject to expense limits by virtue of being a political party, the Government of Manitoba's self-congratulating communications campaign remains unrestricted until 90 days before an election during election years.⁵⁷ In addition, *The Elections Act* states that during the year before a general election, a candidate's advertising expenses cannot exceed \$6,000,

Manitoba, 2008.

⁵³ Bryan Schwartz & Andrew Buck, "Partisan Advertising by Incumbent Governments" (2008) 5 *Underneath the Golden Boy* 25.

⁵⁴ *Ibid* at 38.

⁵⁵ *Ibid* at 26-7.

⁵⁶ Manitoba, Legislative Assembly, *Debates and Proceedings*, 39th Leg, 2nd Sess, Vol. LX No. 42B (15 May 2008) at 2188 (Myrna Driedger).

⁵⁷ *Supra* note 53 at 31.

while a registered political Party cannot exceed \$250,000.⁵⁸ In other words, the resources for the Government of Manitoba media on any given year far exceeds anything a political party is legally permitted to spend during an entire Legislature combined. Those candidates who are not currently in Government are put at a significant disadvantage in advertising resources prior to an election campaign.

On the other hand, sometimes PMB efforts are published by the private media when an MLA receives accolades from third party organizations, such as the CFIB's nomination of Mrs. Taillieu for the golden scissors award due to her efforts on regulatory reform.⁵⁹ It is in the interest of the Opposition parties to make their political efforts as visible as possible to the private media in the hopes that they will be published to restore some balance during election years. This is not to say that Manitoba's Opposition parties should start naming their PMBs after organizations such as the "CFIB" or the "Winnipeg Sun" in hopes of receiving media attention during an election year. It would simply make a lot of sense, according to this paper, to have a wave of Opposition PMBs peak during an election year in Manitoba. This could be perfectly accessible to the press and be part of an effort to respond to the disparity in advertising resources which favor the incumbent Ministers during an election year. In this way, the Opposition would be attempting to provide to the public, via the Legislature, their alternative policy ideas which could potentially be useful to counter the surge in public advertisement spending which the Government of Manitoba will typically find ways to deploy during election years.

For example, three months prior to the 2011 General Election, the Provincial Government and the provincial NDP party (which are separated only semantically from each other) began a triple-pronged political advertisement effort which included: the Premier's own three week Government of Manitoba campaign to support the Canadian Wheat Board in June 2011 in reaction to the Federal Conservative Party's pledge to end the monopsony in the upcoming fall session;⁶⁰ a marked boost in

⁵⁸ *Supra* note 1 at s 54.1(1).

⁵⁹ Prescott James, "Taillieu honoured to be among Canada's elite", *Winnipeg Free Press* (27 January 2012) online: *Winnipeg Free Press* <<http://www.winnipegfreepress.com/our-communities/headliner/Taillieu-honoured-to-be-named-among-Canadas-elite-137994528.html>>.

⁶⁰ The Canadian Press, "Manitoba starts ad campaign to save CWB", *CBC News* (13

funding announcements;⁶¹ and the NDP's own partisan attack ads against the leader of the PC Party Hugh McFadyen (Fort Whyte).⁶² To suggest that this effort from the Manitoban Government and the provincial NDP was not a coordinated effort three months prior to a general election is to completely ignore the work of political staff and researchers in Manitoba's political system. Although the Government of Manitoba denies any allegations of unfairness, it remains a brazen political strategy.⁶³ *The Election Financing Act* currently prohibits all public advertisements by Government departments or Crown agencies within 90 days of an election campaign.⁶⁴ However, as Mr. Goertzen argued in his criticism of Ms. Oswald and Ms. Allan, the recent imposition of these laws in 2008, which were designed to help level the playing field during an election campaign have not yet received due diligence by all incumbent Ministers.⁶⁵ A contender in this situation is left feeling as though a simple guarantee for the sake of fairness was ignored so that the electorate has a fresh idea of the work of the Minister in a given constituency immediately preceding the General Election.

In sum, this essay suggests PMBs will follow a more fixed pattern during election years because it would be a rational counter-strategy to the Government of Manitoba's massive communications efforts within the province during election years. However, this argument is not meant to be prescriptive to current sitting MLAs. The merits of this argument should stand or fall on its own logic and assumptions.

June 2011) online CBC News <<http://www.cbc.ca/news/canada/manitoba/story/2011/06/13/mb-save-wheat-board-manitoba.html?ref=rss>>.

⁶¹ Paul Turenne, "NDP buying votes with your money", *Winnipeg Sun* (9 July 2011) online: *Winnipeg Sun* <<http://www.winnipegsun.com/2011/07/09/ndp-buying-votes-with-your-money>>.

⁶² Staff Writer, "Manitoba NDP releases new Tory attack ad", *Winnipeg Free Press* (3 June 2011) online: *Winnipeg Free Press* <<http://www.winnipegfreepress.com/breakingnews/NDP-releases-123126813.html>>.

⁶³ Bryan Schwartz, "Political Diversity: Money Talks and its Language is Incumbency", in *From Suppliant Society to Diversity & Dynamism* (Winnipeg: Frontier Centre for Public Policy, 2011).

⁶⁴ *The Election Financing Act*, SM 2012 c 35 Sch A, CCSM c E27, s 92(13).

⁶⁵ *Supra* note 42.

V. CONCLUSIONS

There are understandable strengths and weaknesses to the predictions found within this paper. Although this paper seeks to present a logical outcome from the research upon which it was founded, strategic political behavior is often much too complex to anticipate with upmost certainty.

Firstly, there is currently a downward trend in Opposition PMB numbers in Manitoba, as any observer may have noticed from Tables 1, 2 or 3. If the hypothesis of this paper is proven false, it will be demonstrated through the downward trend in PMBs over consecutive legislative sessions leading up to the general election of 2015 or 2016. The logic behind a downward trend in PMBs would be the opposite of this paper's contention, meaning Opposition PMBs are not going to be a significant factor in upcoming general election campaign for the Opposition Party(s) in Manitoba. This would maintain the historically oscillating pattern in PMB introductions. However, this paper is offering a speculation that the use of PMBs may change in reaction to the recently imposed political cycles of fixed-date elections in Manitoba.

Secondly, election campaigns in Manitoba are typically fought on scare tactics and exaggerated partisan advertisements as opposed to rational policy ideas.⁶⁶ The problem with a PMB effort leading up to a general election may be that it could potentially detract from the typical leader-heavy media focus of political advertising in election campaigns. A massive PMB effort during an election year may prove to be a waste of precious time and resources, while the exposure gained through presenting a large series of alternative policy ideas by individual MLAs may confuse the average voter who is simply trying to vote for the next Premier. Alternatively, it could easily back-fire on the Opposition by seeming overly zealous to implement wide spread legislative changes if they in fact win Government. However, a large PMB effort in an election year may be the logical new approach to election campaigns in Manitoba and could potentially become the norm for gaining serious exposure as a viable alternative to the current Government's policy direction.

Thirdly, there are two different political parties which this paper has lumped together in order to show the statistics on Opposition PMBs. The

⁶⁶ Sid Green, "Selinger can't win with scare tactics", *Winnipeg Free Press* (7 October 2010) online: *Winnipeg Free Press* <<http://www.winnipegfreepress.com/opinion/analysis/selinger-cant-win-with-scare-tactics-104473164.html>>.

problem is a PMB introduced by Dr. Gerrard will be completely different in terms of political experience, circumstance and purpose within the Legislature than that of the PC MLAs. Even among PC MLAs, such as Mrs. Mitchelson (River East) or Mr. Helwer (Brandon West) there is a vast difference in terms of experience, circumstance and purpose in the Legislature. Arguably, Dr. Gerrard is not required to 'synchronize the Liberal Party's message' every day at caucus meetings, while the PC Party has many Members, three of whom were in Government twelve years ago and five are rookie MLAs in the 40th Legislature. However, the only difference between Dr. Gerrard's PMBs and PC PMBs for the purposes of this paper is a slight difference in reintroduction rates. This paper has found a similar PMB strategy applied to Dr. Gerrard, the PC Party of Manitoba and the NDP of Manitoba while each was in Opposition.

Fourthly, there were no interviews or opinions of individual MLAs reflected in this paper. The idea for this paper was to develop a theory of argumentation within Manitoban politics which would be removed from political bias. Of course many MLAs may in fact disagree with the analysis which this paper proposes. One of the least savvy acts an individual MLA in Opposition can do in politics is reveal his or her ideas on future political strategy to MLAs on the opposite side of the house. Staff caucus researchers are also a particularly astute group of individuals within any political organization who are always looking for hints of future political activities from rival MLAs or parties. In other words, reflecting the views of sitting MLAs or any political staff might have affected this paper's purpose as a 'hypothesis', therefore, insider interviews and opinions were strictly omitted.

Finally, perhaps the hypothesis seems too deterministic in such a complex and volatile environment. As the former UK Prime Minister, Harold Macmillan was once quoted as saying in response to a journalist who asked about what is most likely to interrupt his Government's plans, "Events, my dear boy, events!"⁶⁷

If the hypothesis is proven correct, it will be demonstrated through an objective statistical analysis. Observers would note a marked increase in PMB numbers from the Opposition in an election year as opposed to non-election years, although not necessarily in a linear progression between

⁶⁷ Elizabeth M. Knowles, *What They didn't Say: A Book of Misquotations*, (New York: Oxford University Press, 2006) at 33.

sessions. There would be a zero passage rate of Opposition PMBs in an election year to signify the presence of more partisan PMBs as opposed to innocuous PMBs. PMBs will play a more inclusive role in the overall campaign strategy of an Opposition Party during the general election of 2015 or 2016 as represented in the Party platform, pamphlets, brochures, interviews, speeches, door-knocking, etc. This strategy would become the norm and become more predictable in the private media over consecutive general elections. This would respond strategically to the spike in overtly flattering pro-Government public media during an election year.

In sum, perhaps the reality of PMB strategy by the Opposition leading up to the general election of 2015 or 2016 will not be as precise as this paper predicts. For instance, it may be that expectations mentioned above, such as a zero passage rate, are more likely to happen, while other expectations, such as an increase in the volume of PMBs, may not be as likely. Perhaps a PMB focused pre-election campaign is something that will not be of interest to the PC Party, the Liberal Party, the private media or any social networking websites during the 40th Legislature and instead become a fixture of the NDP or another provincial Party during the next Legislature that they find themselves in Opposition. However, the increased introductions of PMBs over the past 30 years suggests that we can expect their continued use.

This paper sought to articulate a fairly simple observation as well as future speculation about one aspect of political activity within Manitoba's Legislative Assembly. Private Member's Bills introduced by the Opposition are both important and interesting pieces of legislation from a political science point of view. They often demonstrate policy ideas which are truly inspired by issues that matter to individual MLAs and they can also be indicative of the Party brand. They have a history of follow-through to become official Government policy in the Legislature when a Party battles their way into Government, particularly over consecutive sessions in Opposition. This author predicts the advent of fixed date elections will result in the increased use of PMBs as a political tactic in election years. PMBs are a hint of what may come in Manitoba and they may indeed become important elements of future general election campaigns and political science literature in Manitoba.