

# The Omnibus Budget Implementation Bill: Balancing Democratic Accountability with Legislative Efficiency

[Bill C-38](#),<sup>[1]</sup> the first of two budget implementation bills for 2012<sup>[2]</sup>, was highly contentious because of its size. Although the opposition certainly did express its qualms with policy in the bill<sup>[3]</sup>, much of the public's attention centred on process and Bill C-38's omnibus nature. Was it democratic, it was asked, for MPs to vote "yes" or "no" on such a large bill?

Omnibus bills are considered more efficient because they deal with several issues and often contain changes to several pieces of legislation. By going through the process of passing an omnibus bill once, the thinking is that time will be saved in that each of the issues does not have to be dealt with separately. The "omnibus budget implementation bill" sparked an important discussion on whether omnibus legislation undermines democratic accountability in order to achieve higher levels of legislative efficiency.<sup>[4]</sup>

## WHAT IS AN "OMNIBUS BILL"?

Though "omnibus bill" is a familiar concept, its meaning is largely open to interpretation. Generally speaking, an omnibus bill is one that changes multiple pieces of legislation at one time, while having "one basic principle or purpose which ties together all the proposed enactments."<sup>[5]</sup>

The size of a bill isn't what makes it "omnibus." A bill doesn't have to be long to be omnibus and isn't necessarily an omnibus if it is long. While omnibus bills do tend to be lengthy, the length of a bill can be a misleading gauge. A better barometer may be the number of other acts that an omnibus bill impacts, through amendment or deletion. Bill C-38, the budget implementation bill, impacted roughly 70 acts.

Omnibus bills are not new. They have been used by governments for some time - it is [believed](#) that the first omnibus bill was introduced in 1888.<sup>[6]</sup> However, the term became a familiar one to Canadians in 2012 as three highly publicised omnibus bills passed through Parliament - "omnibus crime bill", the "[omnibus refugee bill](#)" and the "omnibus budget implementation bill" (Bill C-38).

For several reasons, it is difficult to define an "omnibus bill". First, the term is most often used as a political tool. There is no neutral body that categorises bills as "omnibus" or "not omnibus;" therefore, when we see the term it is often because opposition parties have called a bill "omnibus". Generally, when opposition parties use the word it is a signal to the media and the public that the bill is large and deals with several issues. Sometimes, opposition

parties attach the omnibus label to a bill to make it seem illegitimate, because the term has a negative connotation. The association of “illegitimacy” with the term “omnibus” comes mostly from the perception that it covers so many issues or is so large that it will affect the ability of opposition parties to properly debate its content. The perception then is that it is ‘illegitimate’ because it stifles the democratic process.

In short, an omnibus bill is generally perceived as one where many issues with one defining principle are brought together. In the case of a budget implementation bill, that defining principle is the budget. Often, because of the number of issues that an omnibus bill deals with, it will be a lengthy bill.

## **“LEGITIMATE” AND “ILLEGITIMATE” OMNIBUS BILLS**

The Annual Budget is a naturally omnibus bill because it sets out spending and taxation for all areas of government. It necessarily addresses several subjects and will impact many pieces of legislation. There is no question that dealing with each budget issue on its own bill would paralyse the legislating process. Therefore, ordinarily, a budget bill is considered a ‘legitimate’ omnibus bill.

Oftentimes, as with the annual budget, omnibus bills are not controversial.<sup>[7]</sup> With Bill C-38, however, questions were raised about whether the scope of the “omnibus budget implementation bill” was appropriate. If some omnibus bills are seen as legitimate and some are not, there must be some distinction between legitimate and illegitimate omnibus bills. So, at what point does an omnibus bill become “illegitimate”?

There are no specified limits on the point at which an omnibus bill becomes too large, too broad, or too disjointed. However, the debate surrounding Bill C-38 provides one example. When Green Party MP, Elizabeth May, raised a [point of order](#) asking that Bill C-38 be ruled out of order<sup>[8]</sup> in accordance with Parliamentary [Standing Order 68\(3\)](#),<sup>[9]</sup> she attempted to evoke the requirement that no bill which is “in an imperfect shape” can be introduced. [Historically](#), this rule has pertained to whether bills follow certain guidelines, like whether the bill has a title or actually contains text.<sup>[10]</sup> But May asked the Speaker to consider her point because Bill C-38 did not have a single theme and therefore was not “a proper omnibus bill.” She [argued](#) that the House needed to set limits on omnibus legislation,<sup>[11]</sup> referring to a ruling by former Speaker Lamoureux in 1971. In that ruling, Lamoureux [ruled](#) that the ‘omnibus’ bill he was considering was in order. However, he also said that there was some point at which an omnibus bill would be too large or disjointed to stand. In other words, without limits, the government might at some point decide to pass all legislation in one bill.<sup>[12]</sup>

In the case of MP May’s point of order, Speaker Scheer responded to MP May’s concerns, and [ruled](#) that he would not divide the bill.<sup>[13]</sup> Among other things, Speaker Scheer reiterated that there are no guidelines for speakers to determine what renders a bill properly “omnibus” or not, referring to several examples where previous speakers had refused to split a bill or rule it out of order. Scheer agreed that the presence of a central theme was important to an omnibus bill, but pointed out that the Government had

articulated a central theme: implementing a budget.[\[14\]](#) Ultimately, “in the absence of any clear rules,” he believed that “the most appropriate role for the Chair is to step aside and allow the House to determine the matter.”[\[15\]](#)

Though Speaker Scheer’s ruling reiterated the view that a Speaker of the House should not order omnibus bills split, in absence of clear House rules on the subject, his ruling reaffirms the importance of a unifying theme in omnibus legislation. A “legitimate” omnibus bill, then, is akin to a machine bearing many components, all of which work to achieve one function. Size is not the issue. Rather, the difference between a legitimate and illegitimate omnibus bill relates to a bill’s focus. In the case of the omnibus crime bill, as with the omnibus refugee bill, several laws were changed but the proposed legislation could be understood as having a single thrust, a direction towards which it was aiming.

Based on the perceived lack of a central theme in the bill, it was characterized as illegitimate by opposition parties.

Was Bill C-38 a legitimate omnibus bill? Without further descriptive guidelines this question is, to an extent, subjective. The section below looks at Bill C-38’s policy content, with an eye towards whether it was legitimate.

## **WHAT WAS IN BILL C-38? FROM FISH TO SPIES TO EMPLOYMENT INSURANCE**

Bill C-38 addressed many issues. The sections below describe some of the most controversial changes it proposed.

### ***Changes to Environmental Legislation***

Perhaps most contentiously, Bill C-38 impacted environmental protections and reporting requirements. The bill repealed an act on the Kyoto Protocol which requires reporting on the success of our environmental efforts.[\[16\]](#) It [reduced](#) the number of environmental assessments that must take place and allowed Cabinet to override National Energy Board decisions on development projects.[\[17\]](#) Among several changes to the *Fisheries Act*, West Coast Environmental Law [reasons that](#) Bill C-38 may have the effect of “offloading” the duty of protecting fish habitats to provinces.[\[18\]](#)

### ***Changes to Other Pieces of Legislation***

In addition to environmental issues, Bill C-38 also:

- [Repealed](#) the *Fair Wages Act*, a law passed in 1985 which compels contractors who bid on government contracts to pay “fair wages” and overtime.[\[19\]](#) Arguably, this put private and public workers on equal-footing;
- [Eliminated](#) the position of CSIS Inspector General, shifting some of the responsibility for monitoring the spy agency’s conduct to the Minister of Public Safety;[\[20\]](#)

- [Gave cabinet](#) power to change Employment Insurance rules through regulation, avoiding the need to go through the legislature;[21]
- Changed foreign-ownership restrictions in the telecommunication industry;[22]
- [Imposed](#) harsher sanctions on charities involved in political activities;[23]
- [Reduced](#) Parks Canada's budget significantly;[24] and
- [Raised](#) the retirement age for some federal pensions.[25]

The Government saw the elements of Bill C-38 as all fitting under a single, overarching task: implementing a budget. Opposition parties argued that there were at least two themes that emerged in the bill - budget implementation and changes to environmental regulations - and a few other provisions which did not fit within either theme.

The legitimacy or illegitimacy of Bill C-38 as an omnibus bill is linked to the presence of a central theme or purpose. Depending on your perspective, you may feel that many or most of these provisions can be linked with the purpose of Bill C-38, to implement the budget. Or, you may not.

Is it important for a bill to have a single purpose? Why? The issue largely has to do with the balance between legislative efficiency and democratic accountability. The next section considers this issue, in the context of Bill C-38.

## **“OMNIBUS” AND LEGITIMACY: QUESTIONS OF LEGISLATIVE EFFICIENCY AND DEMOCRATIC ACCOUNTABILITY**

Those opposed to Bill C-38 felt it dealt with so many issues that it had a detrimental effect on the ability of the House of Commons to effectively debate it. In this way, the Bill reduced democratic accountability - members of the Government could not be held accountable for the changes being made to legislation because they could not be aware of all the changes. Critics like Andrew Coyne worried that the volume and variety of proposed changes in the Bill made it impossible for MPs to decide upon them all in one vote,[26] rendering them unable to properly represent constituents. The omnibus budget implementation bill, they argued, undermined the power of legislators to act, making the House of Commons and the Senate “impotent” and the executive too powerful.[27]

Defenders of Bill C-38 had a different perspective. [For them](#), Parliamentary majority means a mandate to govern.[28] They argued that a budget bill helps get things done - changes can be made efficiently and effectively. After all, there is a finite amount of time for Parliament to pass legislation. They argued that there is a unifying principle among provisions in the budget implementation bill, working towards “making Canada's economy stronger.”[29] Seen this way, opposition was perceived to be obstructing the workings of Parliament by fussing with time allocation in the legislature. From this perspective, opposition parties were obstructing legislative efficiency, [potentially jeopardizing](#) the passage of other bills that session.[30]

These arguments articulate two principles: democratic accountability and legislative efficiency.

### ***Legislative Efficiency***

The purpose of governing is to ensure social order by creating a system of laws - rules that set expectations about how people interact with one another in society. This includes the imperative to legislate efficiently - in other words, to produce laws in a timely fashion.

### ***Democratic Accountability***

Democratic accountability is essential to ensure public confidence in government. How does democratic accountability work?

The Government of Canada exists by the consent of Parliament - the Crown (the Governor-General), the Senate and the House of Commons - not the electorate. Individual MPs serve with the consent of the electorate. Government represents the people by maintaining the support of elected MPs, who have a duty to represent their constituents. So, democratic accountability in Canada requires that government is accountable to the House of Commons (because the Senate and the Governor General are not elected) and that House Members be accountable to individual districts. This is important, because it explains why democratic accountability needs to take place in the day-to-day workings of the House of Commons and not just during elections.

Because bills are usually written by the executive branch - by ministers and their ministries - most MPs do not become involved in the process of passing a bill until it is introduced in House of Commons. So, democratic accountability relies on the actions of MPs between the introduction of a bill and when it passes the third reading in the House of Commons. It is true that a government which holds a majority in the House will usually win votes. Still, floor debate and amendments play a crucial role in democratic accountability by raising public awareness, by scrutinizing proposed laws and by advancing amendments to improve the quality of legislation.

### ***Balancing Legislative Efficiency with Democratic Accountability***

When multiple bills are wrapped into omnibus legislation, bills are passed more quickly but there is less time for floor debate and votes. The risk of overvaluing legislative efficiency by having less floor debate is that MPs will have less of an opportunity to ensure democratic accountability. On the other hand, there is a finite amount of time in a legislative session during which government must pass laws to preserve the social order. Overvaluing accountability can mean it takes too much time to pass laws, sometimes creating what is called "gridlock." The debate that emerged over Bill C-38 speaks to the importance of achieving a balance between the two principles.

## **TOWARDS REASONABLE LIMITS ON OMNIBUS BILLS**

Omnibus bills improve the legislative productivity of government. But if accountability

stands opposed to efficiency in passing bills, a balance must be struck between the two principles. All of this raises the question: should there be some Parliamentary rule which places “[reasonable limits](#)” on omnibus bills?[31]

Liberal MP Marc Garneau has tabled a [motion](#) in the Standing Committee on Procedure and House Affairs to study and propose recommendations for limits on omnibus bills. If the motion passes, the Committee will report its findings by December 2012, possibly catalysing new House regulations.[32] Proponents argue that placing limits on the scope of omnibus bills would empower MPs to properly represent constituents.[33] The Globe and Mail has [reported that](#) several members of the Tory caucus are uncomfortable with omnibus bills.[34] As a result, a bill limiting the possible scope of omnibus bills may have a chance of passing.

The problem will be in defining what those limits will be. How does one quantify “too big” or “too broad”, in the context of an omnibus bill? If the reasonable limits rules are too vague, it will be up to the Speaker of the House to interpret them on a case-by-case basis. The risk of doing this is potentially politicising the Speaker’s role by forcing the Speaker to use considerable discretion regarding the substance of bills. Until it is clear whether and what omnibus rules may take shape, these worries remain speculative.

Despite considerable policy dispute, much of the omnibus budget implementation bill debate centred on democracy, the role of MPs, and whether omnibus bills limit government accountability. In its aftermath, new Parliamentary rules may emerge. Public debate on Bill C-38 raised questions about the duties that government is expected to fulfil in order to preserve Canadian parliamentary democracy.

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[1] *Jobs, Growth, and Long-term Prosperity Act*, RSC 2012, c C-38.

[2] For an explanation of what a budget implementation act is, see ““Trojan Horse” Omnibus Budget Bill: Readjusting to a Majority Parliament, Opposition’s Procedural Odyssey.”

[3] Bill C-38 received royal assent on 29 June 2012 and is now an Act. It is referred to, here, as a bill because this article considers the legislation with regards to its contentious nature before it became law.

[4] See, for example: Elizabeth May, “[Points of Order – Bill C-38](#)” *Elizabeth May MP* (4 June 2012), online: Elizabeth May MP; Beth Hong, “[Opposition MPs Prepare for Battle Against New Omnibus Legislation in the Fall](#)” *Vancouver Observer* (21 June 2012), online: Vancouver Observer; Matt Gurney, “Matt Gurney: Semi-Rogue Tory MP Shouldn’t Underestimate Caucus Unrest” *National Post Full Comment* (24 May 2012), online: The National Post; Aaron Wherry, “[Can This Baby be Split?](#)” *Macleans* (7 May 2012), online: Macleans.ca.

- [5] Robert Marleau & Camille Montpetit, eds, [House of Commons Procedure and Practice](#) (2000), online: Parliament of Canada.
- [6] *Ibid.*
- [7] *Ibid.*: Marleau and Montpetit listed several omnibus bills that were not controversial: “Bill C-125, *An Act to amend the Old Age Assistance Act, the Disabled Persons Act and the Blind Persons Act* (S.C. 1963, c. 26); Bill C-40, *Statute Law (Military and Civilian War Pensions, Compensation and Allowances) Amendment Act* (S.C. 1980-1983, c. 19); Bill C-42, *Canada Post Corporation Act* (S.C. 1980-1983, c. 54); Bill C-43, *An Act to amend the Lobbyists Registration Act and to make related amendments to other Acts* (S.C. 1995, c. 12); and Bill C-41, *An Act to amend the Divorce Act, the Family Orders and Agreements Enforcement Assistance Act, the Garnishment, Attachment and Pension Diversion Act and the Canada Shipping Act* (S.C. 1997, c. 1).”
- [8] Elizabeth May, “Points of Order - Bill C-38” *Elizabeth May MP* (4 June 2012), online: Elizabeth May MP.
- [9] House of Commons, *Standing Orders of the House of Commons*, s 68(3).
- [10] “Annotated Standing Orders of the House of Commons” *Parliament of Canada* (2005), online: Parliament of Canada.
- [11] *Supra* note 9.
- [12] [House of Commons Debates](#), 28th Parl, 3rd Sess (26 January 1971), online.
- [13] *House of Commons Debates*, 41st Parl, 1st Sess, No 138 (11 June 2012) at 1205 (Hon [Andrew Scheer](#)), online: Parliament of Canada. Speaker Scheer refers to this quote, from page 724 of the *House of Commons Procedure and Practice* manual, in his ruling.
- [14] *Ibid.*
- [15] *Ibid.* This ruling was consistent with that of previous Speakers. Because the Speaker of the House is supposed to be impartial, past speakers have refrained from splitting or disallowing omnibus bills. For example, on “June 8, 1988, when he informed the House that he could not divide Bill C-130, *Canada-United States Free Trade Agreement Implementation Act*, Speaker Fraser ruled as follows: ‘Until the House adopts specific rules relating to omnibus Bills, the Chair’s role is very limited and the Speaker should remain on the sidelines as debate proceeds and the House resolves the issue.’”
- [16] Elaine Golds, “Lack of Consultation on Bill C-38” *Tri-City News* (13 June 2012), online: Tri-City News.com.
- [17] Joanna Smith, “[Federal Budget 2012: Highlights of the Legislative Changes to Bill C-38](#)” *The Toronto Star* (14 June 2012), online: TheStar.com.
- [18] Andrew Gage, “[Will Bill C-38 Offload Fisheries to the Provinces?](#)” *West Coast*

*Environmental Law* (15 June 2012), online: West Coast Environmental Law.

[19] Aaron Wherry, "[C-38: Repealing the Fair Wages Act](#)" *Macleans* (25 May 2012), online: Macleans.ca.

[20] Paul Kennedy, "['Willful Blindness' to CSIS Pitfalls Must Carry a Price](#)" *iPolitics Insight* (31 May 2012), online: iPolitics.

[21] Aaron Wherry, "['This is supposedly a budget implementation bill, but in fact, it is a mishmash of things'](#)" *Macleans* (3 May 2012), online: Macleans.ca.

[22] Jamie Sturgeon, "Bill C-38 Changes to Telecom Ownership Stir Foreign Takeout Talks" *Ottawa Citizen* (15 June 2012), online: Ottawa Citizen.

[23] Joanna Smith, "[Federal Budget 2012: Highlights of Legislative Changes in Bill C-38](#)" *Toronto Star* (14 June 2012), online: TheStar.com.

[24] "[Parks Canada Staff Banned from Criticizing Feds](#)" *CBC News - Politics* (14 June 2012), online: CBC News.

[25] John Ibbitson, "[Tread Carefully, Tories: Governments Can Live to Regret Omnibus Bills](#)" *The Globe and Mail* (8 May 2012), online: The Globe and Mail.

[26] Andrew Coyne, "Coyne: The C-38 Debate is a Last-Ditch Effort to Save Democracy's Soul" *The Ottawa Citizen* (13 June 2012), online: The Ottawa Citizen.

[27] Andrew Coyne, "Illegitimate Use of Omnibus Bills Renders Parliament a Lame Duck" *The Montreal Gazette* (3 May 2012), online: The Montreal Gazette.

[28] Monte Solberg, "[Bill C-38 Heeds Economy's Need for Speed](#)" *Toronto Sun Opinion Columnists* (10 June 2012), online: The Toronto Sun.

[29] Bruce Cheadle, "[Budget All-Nighter Frustrates Flaherty: 'This is, Like, Chutzpah?'](#)" *The Globe and Mail* (14 June 2012), online: The Globe and Mail.

[30] John Ibbitson, "[Budget Filibuster Could Sideswipe Other Bills on Tory Agenda](#)" *The Globe and Mail* (7 June 2012), online: The Globe and Mail.

[31] Aaron Wherry, "[Parliament's Fundamental Purpose](#)" *Macleans* (21 June 2012), online: Macleans.ca.

[32] Beth Hong, "[Opposition MPs Prepare for Battle Against New Omnibus Legislation in the Fall](#)" *Vancouver Observer* (21 June 2012), online: Vancouver Observer.

[33] "MPs Leave Steamy Ottawa Behind as Commons Hits Recess" *CBC News - Politics* (21 June 2012), online: CBC News.

[34] Stephanie Levitz, "[Tories Fear Budget-Bill Showdown Burnt Substantial Political Capital](#)" *The Globe and Mail* (15 June 2012), online: The Globe and Mail.