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# **GOVERNING AT THE SPEED OF PARLIAMENT: LEGISLATIVE DURATION IN RECENT PARLIAMENTARY SESSIONS**

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Governing at the Speed of Parliament:  
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Among the many questions that shape this series are how leaders at various levels of government immersed in different policy files have reacted to the challenges, pressures, and opportunities that come with elected office. What lessons can we learn from what went right, and at times, what went horribly wrong? This series aims to identify and illuminate what students of public policy and administration need to consider in evaluating the success or failure of various policy decisions.

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September 2023

# Governing at the Speed of Parliament: Legislative Duration in Recent Parliamentary Sessions

Charlie Feldman and Zachery Brandstater<sup>1</sup>

## INTRODUCTION

How long does it take a bill to complete the federal legislative process in Canada? Whether they choose to go fast or slow, parliamentarians are collectively responsible for how much time they accord to considering bills during the legislative process. While much is written about *what* Parliament decides, far less attention is paid to *how* Parliament makes its decisions. To that end, recent trends in legislative duration (the amount of time it takes for a bill to complete its legislative journey) warrant serious consideration, particularly in the context of government bills.

Though it did not attract much attention at the time, the Samara Centre for Democracy observed in early 2020 (at the start of the 43rd Parliament) that “the amount of time the House of Commons takes to consider successful Government bills has risen by more than 50% since the 39th Parliament” (Thomas et al., 2020; Samara Canada, 2020). The same study found that the Senate was also taking longer to consider government bills than in recent sessions. Statistically, it seemed, Parliament was grinding toward a legislative halt just before COVID-19 pandemic.

During the early days of the pandemic, however, the Parliament of Canada adopted legislation at phenomenal speed. On several occasions, Parliament adopted substantive bills relating to COVID-19 in fewer than one sitting each of the Senate and House of Commons (see, in particular, MacDonnell, 2020; Thomas, 2020). In some cases, a bill that had not even been

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<sup>1</sup> The views in this work are those of the authors, who would like to thank Elizabeth McCallion, Melanee Thomas, Shaun Bugyra, Jeremy Leblanc, Yves Pelletier, Alex Marland, and Catherine Beaudoin for their insightful comments on previous drafts.



introduced was expedited through the entire legislative process in a day!<sup>2</sup> In a time of crisis, Parliament was able to respond quickly, though the time accorded for legislative scrutiny was necessarily limited.

The speed of COVID-related legislation stands in stark contrast to the parliament just before the pandemic, in which the average government bill took over 250 calendar days to go from introduction to royal assent—the longest it has taken in decades (see Figure 1.2). Only time will tell what the future will hold for legislative duration in the Parliament of Canada post-pandemic.

To explore legislative duration in recent sessions, this work examines government bills given royal assent from the 35th Parliament, 1st Session, through the end of the 43rd Parliament, 2nd Session (January 1994–August 2021). Relevant legislative information for this period is available online through LEGISinfo, a service of the Parliament of Canada.<sup>3</sup>

For governments, understanding trends in legislative duration is useful for legislative planning as they may influence how legislation is packaged and advanced in Parliament. Squandered parliamentary time is not easily recovered, and, at the extreme end, a government that cannot pass its legislation will find itself unable to govern.

For parliamentarians, legislative duration statistics provide a baseline against which to measure the progress of various initiatives. There are also additional applications, such as in a judicial context when a court invalidates provisions but provides a specified period for Parliament to consider a legislative response before the invalidity takes effect (Cyr et al., 2022). Each of these will be discussed below.

Attempting to answer “How much time should it take to pass a bill?” is a fool’s errand as there is a tremendous variety in the content and context of individual bills. Therefore, this work does not address whether adequate time was provided for the consideration of any particular measure. Rather, it seeks to establish that legislative duration deserves close attention, particularly when it comes to government legislation before the Parliament of Canada.

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<sup>2</sup> On 13 March 2020, the House of Commons adopted a motion that read in part, “a bill in the name of the Minister of Finance, entitled An Act to amend the Financial Administration Act (special warrant), be deemed to have been introduced and read a first time, deemed read a second time and referred to a committee of the whole on division, deemed considered in committee of the whole, deemed reported without amendment, deemed concurred in at report stage on division, deemed read a third time and passed on division.” That same day, the Senate passed the bill, Bill C-12, at all stages.

<sup>3</sup> For information, see <https://www.parl.ca/legisinfo/en/help>. Certain bills from this period have more information available than others; however, all of them had the information required for this work. Government bills were selected because the procedure for their consideration in both Houses of Parliament has remained relatively steady in this period. The procedures in the House for private members’ business changed during this interval. For details, see Bosc and Gagnon (2017), “Since 1984,” under “Historical Perspective” (Ch. 21).



This work will begin by outlining in general terms why legislative duration matters. It will then provide an in-depth review of the methodology employed and explain certain design choices for this study. Findings from the research will follow, interspersed with analysis. The work provides a brief conclusion, largely a call for additional research into this complex and evolving domain.

## LEGISLATIVE DURATION

Far from being a mere statistic, legislative duration is an important indicator frequently cited in discussions on the legislative process and its efficiency (Voermans et al., 2015), and it is a relevant consideration when assessing Parliament's practices on the scrutiny of legislation (Keyes, 2021). However, it must be noted that not all parliamentary time spent considering a bill is necessarily time engaged in its detailed and specific scrutiny.<sup>4</sup> Indeed, some might seek to slow the consideration of government legislation simply because they oppose it. Or, additional time might be accorded to allow for gathering input from stakeholders or raising public awareness of an issue before the legislature.

It should be obvious that passing bills too quickly may not produce ideal outcomes. Indeed, numerous journal articles and editorials bear the title "Legislate in Haste, Repent at Leisure" (Howard, 2009; Kennedy, 2001; Marston, 2010; Spencer, 2010). As is well documented, passing bills too quickly can lead to significant mistakes. A classic tale from British Columbia is of an obsolete statute's repeal measure that was advertised as a housekeeping item. Inadvertently, this quickly passed bill ended the legal existence of an active insurance company, putting thousands of policy-holders and millions of dollars in assets in limbo. (The legislature was recalled several days later to undo it).<sup>5</sup> As an example related to the COVID-19 federal legislative response, it was realized that the Canada Emergency Response Benefit legislation—as introduced—contained no penalty provisions in cases of fraud or abuse. The government later returned to Parliament with legislation in this regard (Bill C-17, 2020).

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<sup>4</sup> Much turns on perception: One person's obstructionist filibuster may be another's detailed scrutiny exercise. Be that as it may, consider Bill C-49 of the 37th Parliament, 2nd Session entitled *An Act respecting the effective date of the representation order of 2003*. The bill as introduced contained a single provision proposing to change the date on which new riding boundaries would become effective. The bill was discussed over the course of several sittings in the House, was the subject of four committee meetings in the House, and ultimately died in the Senate after being discussed on eight separate sitting days. Both senators and Members of Parliament talked about issues ranging from the boundary redistribution process and regional representation in Parliament to voter turnout and the relationship between the government and parliament—matters beyond the simple question of fixing a date for new riding boundaries to become effective.

<sup>5</sup> See British Columbia (1979) and the discussion therein, "Repeal of the Obsolete Statutes Repeal Act."



Perhaps such provisions would have been included in the initial bill—or their absence raised during parliamentary consideration—if there had been more time to consider the legislation.

The slow passage of legislation has its downsides as well. If Parliament rarely enacts new measures or does so far too slowly, it may be seen as unresponsive to the needs of Canadians. Further, there is a risk that court deadlines are missed or that intervening events occur and require further amending bills before Parliament.<sup>6</sup> In addition, confusion may arise if government announces a measure and Canadians plan their affairs while assuming it will become law, but that law never materializes or it does so far later than anticipated.

This work will use “legislative duration” to refer to the time elapsed between the start (introduction) and enactment (royal assent) of a government bill. The international legislative studies literature uses concepts such as legislative velocity (Chaisty, 2014), legislative duration (Hiroi & Renno, 2017), and legislative pace (Borghetto & Giuliani, 2008; Riedl, 2019). Despite the terminological differences, all appear to describe and measure a bill’s journey through the legislative process, be it the number of days it was under consideration by the legislature, the amount of time it spent under consideration relative to other bills, or certain stages of legislative consideration proceeding more quickly than others. Importantly, the international literature illustrates some differences in methodological approaches to employ given the particularities of law-making practices (Borghetto & Giuliani, 2008; Riedl, 2019), which can be highly jurisdiction-specific.

Whether an individual bill spent more or less time in a legislature than another is something measurable; measuring legislative duration for bills across sessions can provide useful insights on Parliament. Yet, as Riedl (2019) observes in the German context, “both journalists and politicians base their statements regarding the pace of legislation on (subjective) judgements.” She suggests that those opposed to a bill’s policy may claim it did not spend enough time in Parliament, just as those who championed a bill may suggest it ought to have been enacted into law sooner.

Only Parliament is capable of deciding how much time should be accorded to a bill, within the existing practices of Parliament. However, parliamentary practices are not frozen in time and the *Rules of the Senate* and *Standing Orders of the House of Commons* can be amended as each House of Parliament considers necessary. Whether modifications should occur is a political and policy question, but one which can be informed by data. What follows is a

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<sup>6</sup> As an example, in the 42nd Parliament, 1st Session, Bill C-83, *An Act to amend the Corrections and Conditional Release Act and another Act*, overtook a previous bill on the subject, Bill C-56, *An Act to amend the Corrections and Conditional Release Act and the Abolition of Early Parole Act*, which had not advanced far in the legislative process. While Bill C-83 was moving through Parliament, additional court rulings on the bill’s subject were handed down, thus requiring amendments to address the evolving jurisprudence. For discussion, see Casavant and Charron-Tousignant (2019).



discussion of the methodology for this work, explaining how the data presented later in this work was collected.

## METHODOLOGY

### Data Collection

The statistics in this work were compiled by using the LEGISinfo web interface to identify government bills (introduced in either the Senate or House of Commons) that received royal assent in all available completed parliaments and sessions (the 35th Parliament through the 43rd Parliament, inclusive). The provided XML Exporter option was then used to generate a spreadsheet.

In a few instances, data quality issues were observed, such as royal assent being indicated for a bill *before* it had completed third reading. To minimize the risk of errors, a query was run to identify any cases in which the given royal assent date was before the date of any other legislative stage. Once identified, these bills (seven out of over 900) were individually cross-referenced with the LEGISinfo page for the bill (or, if needed, the relevant *Journals*), and the LEGISinfo administrators were notified. That the data herein reflects LEGISinfo export data comes with a major caveat: It *may* have errors or inaccuracies even when compared to the LEGISinfo web interface, and indeed, data may have been modified since it was initially exported for this work. Ultimately, the *Journals of the Senate* and *House of Commons Journals* are the relevant official records.

### Considerations Affecting Legislative Duration

Numerous variables affect the journey of any piece of legislation through Parliament, including the following: the type of bill (i.e., government bill, non-government public bill, or private bill) and the time allotted for the consideration of that type of bill in the parliamentary schedule, the parliamentary procedures used to advance a bill (e.g., time allocation and closure), Parliament's composition when the bill was before it, the bill's introduction date relative to the beginning and anticipated end of the parliamentary session, whether similar legislation was introduced and studied in previous sessions, and the committees to which it might be referred and their workload. This is to say nothing of the bill's content and whether it enjoys the support of parliamentarians (including support to expedite its passage at one or more stages).



Each bill must be considered within its unique context. Two non-governmental bills from the 42nd Parliament, 1st Session, are illustrative. The House of Commons sped its consideration of a bill introduced by the Honourable Rona Ambrose—regarding sexual assault education for judges—and allowed the bill, exceptionally, to jump the queue for private members’ business, bypassing second reading and going straight to committee (House of Commons, 2017). It was revealed shortly thereafter that Ms. Ambrose was retiring from politics. Similarly, the consideration of legislation regarding the national anthem was unique, owing to the health of its sponsor, the Honourable Mauril Bélanger, who died not long after the bill passed the House. While notice was given of a report stage motion, its mover declined to move it (House of Commons, 2016), thus the bill advanced directly to third reading.

Importantly, a bill’s journey in Parliament does not necessarily end only with its outright defeat or with prorogation or dissolution mid-process. Bills can end their journey by being, *inter alia*, non-votable (House of Commons, 2003),<sup>7</sup> struck or dropped from the order paper,<sup>8</sup> combined with other measures for passage (Feldman, 2018), abandoned by their sponsor,<sup>9</sup> or simply overtaken by events.<sup>10</sup>

As Bar-Siman-Tov (2015) catalogues comprehensively in a recent piece, the legislative process itself is ripe for critiquing on matters bearing upon the “speed” of lawmaking, such as the use of omnibus legislation and emergency procedures. This work does not delve into whether the Canadian legislative process, in any and all its permutations, is good or bad, produces desirable

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<sup>7</sup> Regarding Bill C-228, *Antipoverty Act*, see House of Commons (2003).

<sup>8</sup> For an example of a dropped bill, see Senate (2022). Bill S-240, *An Act to amend the Old Age Security Act (definition of income)*, was dropped pursuant to Rule 4-15(2) of the *Rules of the Senate*. Under that rule, an item is dropped if 15 sitting days pass without it being considered unless otherwise ordered by the Senate. For an example of a bill being struck, see statement of the Speaker of the House of Commons on *Bill C-250, An Act to amend the Criminal Code (prohibition — promotion of antisemitism)*, in House of Commons (2022a, 7,341).

<sup>9</sup> A classic example is from the 41st Parliament, 2nd Session. The sponsor of *Bill C-461, An Act to amend the Access to Information Act and the Privacy Act (disclosure of information)*, unhappy with amendments made at committee and displeased with results of votes on motions at report stage, declined to move the motion to concur in the bill as amended at report stage. Accordingly, the Speaker ruled that “the bill be dropped from the order paper.” See House of Commons (2014, 3,259).

<sup>10</sup> Bill C-250 was dropped from the Order Paper by the Speaker of the House of Commons on 9 September 2022. As the Speaker explained in the *Debates of the House of Commons* for that day,

As members will recall, clause 332 of Bill C-19 contained near identical text to Bill C-250.

... [T]here is a long-standing principle to keep or avoid having the same question from being decided twice within the same session. On May 11, 2022, the Chair had therefore ordered that, pending the fate of Bill C-19, Bill C-250 may not be called for its second hour of debate at second reading.

Bill C-19 received royal assent on June 23, 2022. Accordingly, I am ordering that the order for the second reading of Bill C-250 be discharged and that the bill be dropped from the Order Paper.



or undesirable results, or is generally fit for purpose. Instead, it looks only to the data on legislative duration, although it recognizes that this data is produced because of a legislative process filled with particularities and quirks.

Importantly, although the legislative process for government bills did not change much in the period examined, significant institutional changes occurred, primarily as concerns the Senate (Furey, 2017; Thomas, 2019). In brief, a modified appointments process has resulted in more recognized parliamentary formations existing (be they caucuses, groups, or a political party) than at any time in Senate history, with new groups not necessarily having formal alignment with a political party represented in the House of Commons.

As well, the COVID-19 pandemic's impact on parliamentary activities cannot be understated. Most notably, sittings were reduced in the early part of the pandemic. The House of Commons sat eight times from April to June 2020, inclusive, compared to 45 times for the period from April to June 2019 and 48 times from April to June 2021. Further, remote participation and voting by parliamentarians were permitted for certain periods, sometimes occasioning delays or interruptions during proceedings due to technical difficulties—though these did not appear to force votes to be conducted during a subsequent sitting. That said, there are occasional instances where the course of business on a particular sitting day was impacted for brief periods in ways that were not observed before the pandemic.<sup>11</sup>

## Measurement: Parliaments, Sessions, and Sittings

Identifying useful time measurement units in the parliamentary context is contentious. Typically, one speaks of parliaments and sessions. A parliament begins with a Speech from the Throne and concludes at dissolution; there may be one or more sessions within a parliament. Each session starts with a throne speech and ends with either prorogation (a new session within the same parliament would begin afterwards) or dissolution upon the conclusion of the parliament's last session, followed by an election. Thus, while parliaments and sessions delineate various moments of parliamentary time, their overall utility as units can be critiqued, as their duration varies considerably.

For their part, the number of sitting days in each House of Parliament changes from year to year. Indeed, Parliament can go many months without meeting in an election year.<sup>12</sup> A question thus arises about whether to use calendar days or sitting days when studying

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<sup>11</sup> For example, the deputy chair announced to the House: "We will suspend the sitting for a few moments because I am having computer problems" and the House then suspended for 14 minutes. See House of Commons (2020).

<sup>12</sup> Parliament is, however, required to meet at least once every 12 months under section 5 of the *Canadian Charter of Rights and Freedoms*.



legislative duration. Additionally, the houses sit on their own schedules, leading to a suggestion that *sitting* days ought to be used as opposed to *calendar* days.

One flaw of both measures is that they do not account well for interrupted or short sittings. A particularly recent example was that of Wednesday, 16 November 2022, when a power outage occurred in downtown Ottawa, at the start of the Senate sitting. Senate records for that day show that the Speaker reported that there was a problem and that senators agreed to reconvene an hour earlier than usual the next day (Senate, 2022). This was both a sitting day and a calendar day, though no legislative business was conducted. Other examples of short sittings run the gamut of experiences. For example, an earthquake unexpectedly cut short the Senate's proceedings on 23 June 2010 (Senate, 2010). For its part, the House has typically adjourned early when a sitting member has died (House of Commons, 2016).

At the same time, long sittings pose the opposite problem. Neither a calendar day nor a sitting day accounts well for situations in which one chamber's deliberations continue uninterrupted for more than 24 consecutive hours.<sup>13</sup> Complicating matters even more (though fortunately rarely in the modern era) is the fact that there have been periods in history when a House of Parliament has had separate and distinct sittings on an individual calendar day (House of Commons, 1868; Senate, 1959). This further confuses "sitting" or "sitting day" as a metric relative to calendar days.

The most refined measure of legislative time might be the hours of actual debate. However, even this can be delicate in instances when parliamentarians agree to "see the clock" and advance the "time" in the chamber relative to the outside world.

For this work, calendar days will be used. All things considered, each House of Parliament chooses the calendar days when it sits within a session, and from there, it can decide how long or short its sitting will be. Certainly, calendar days include weekends, the summer adjournment period, and holidays on which Parliament is unlikely to sit. However, the exceptions here may prove the rule. The House of Commons met on a consecutive Saturday and Sunday as recently as February 2022 (House of Commons, 2022b), the Senate has had multiple sittings in July,<sup>14</sup> and both houses have sat on Canada Day (when it was still known as Dominion Day) (House of Commons, 1961; Senate, 1919).

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<sup>13</sup> Notoriously, the House of Commons sitting that began at 2 pm on 13 June 2012, ended on Thursday, 14 June 2012, at 11:26 pm, and included 22 hours of back-to-back votes.

<sup>14</sup> The Senate sat on 4, 5, 6, 18, 19, and 20 July 2005. See relevant *Journals of the Senate*.



## RESULTS AND DISCUSSION

### Calendar Days and Sitting Days in Recent Parliamentary Sessions

Table 1.1 presents the parliamentary sessions under consideration and indicates the number of calendar days for each session. For the sole purpose of illustrating how Senate and House of Commons sitting days can vary in the same calendar period, the sitting days for each chamber are included for reference.<sup>15</sup> Further indicated alongside is the number of government bills passed by both houses during the relevant session. Importantly, the extraordinarily short 40th Parliament, 1st Session (18 November–4 December 2008), is excluded because no bills of any kind were passed during that session before it was prorogued.<sup>16</sup>

Table 1.1 Recent parliamentary sessions: Calendar days, sitting days, and passed government bills

<b>Parliament– Session</b>	<b>Dates</b>	<b>Calendar Days</b>	<b>House Sitting Days</b>	<b>Senate Sitting Days</b>	<b>Passed Government Bills</b>
35–1	17 Jan. 1994–2 Feb. 1996	746	278	133	94
35–2	27 Feb. 1996–27 Apr. 1997	425	164	96	60
36–1	22 Sept. 1997–18 Sept. 1999	726	243	158	77
36–2	12 Oct. 1999–22 Oct. 2000	376	133	84	34
37–1	29 Jan. 2001–16 Sep. 2002	595	211	124	61

<sup>15</sup> Data from the Library of Parliament:  
[https://lop.parl.ca/sites/ParlInfo/default/en\\_CA/Parliament/parliamentsSessions](https://lop.parl.ca/sites/ParlInfo/default/en_CA/Parliament/parliamentsSessions).

<sup>16</sup> The session's unique events are recounted in Heard (2009).



37–2	30 Sep. 2002–12 Nov. 2003	408	153	97	29
37–3	2 Feb. 2004–23 May 2004	111	55	42	21
38–1	4 Oct. 2004–29 Nov. 2005	421	159	100	53
39–1	3 Apr. 2006–14 Sept. 2007	529	175	113	40
39–2	16 Oct. 2007–7 Sept. 2008	327	117	73	30
40–2	26 Jan. 2008–30 Dec. 2009	338	128	83	34
40–3	3 Mar. 2010–26 Mar. 2011	338	149	99	33
41–1	2 Jun. 2011–13 Sept. 2013	834	272	162	61
41–2	16 Oct. 2013–2 Aug. 2015	655	235	181	61
42–1	3 Dec. 2015–11 Sept. 2019	1378	442	308	68
43–1	5 Dec. 2019–18 Aug. 2020	257	45	29	12
43–2	23 Sept. 2020–15 Aug. 2021	326	124	56	20
AVERAGES:		517	181	114	46

As shown in Table 1.1, parliamentary sessions varied in duration from several months (111 days in the case of the 37th Parliament, 3rd Session) to almost four years (42nd Parliament, 1st Session). The average session lasted 517 calendar days—or just shy of 17 months—and saw an average of 46 government bills passed, though this varied from a high of 94 bills in the 35th Parliament, 1st Session, to a low of 12 in the so-called Pandemic Parliament of the 43rd Parliament, 1st Session.

Plotting the above Senate and House of Commons sitting days and the number of bills passed reveals something that might be unexpected. Figure 1.1 illustrates that although sitting days showed great fluctuations, the number of government bills enacted in each session did not. In other words, the fact that the Houses of Parliament sit more in a session does not mean more government legislation will be passed in consequence. The data from the 42nd Parliament, 1st Session, is perhaps most striking. A tremendous increase in the number of sitting days is found relative to the previous two sessions, but the number of enacted government bills does not show much variation.

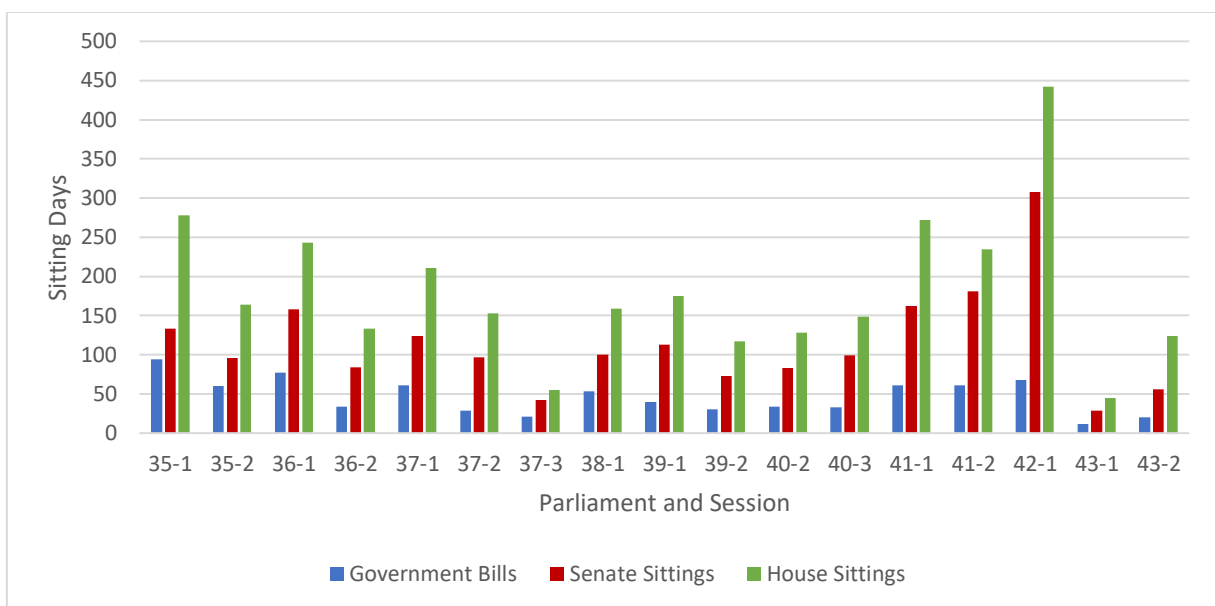


Figure 1.1 Government bills enacted (with Senate and House of Commons sitting days) in recent sessions

The 42nd Parliament, 1st Session, data relative to other sessions invites an obvious question: If Parliament is sitting more but a similar number of government bills is enacted, are bills taking longer to complete the legislative process?

While this question will be explored below, other possibilities do exist; however, the most obvious are easily discounted. For example, it could be that more government bills were being debated and more were defeated or that more time was being spent during government orders on the consideration of government motions rather than bills. These hypotheses fail quickly. The 42nd Parliament, 1st Session sees the lowest non-passage rate for government legislation for all those in the period,<sup>17</sup> so it cannot be that the government was simply exploring more legislation and taking longer to pass any of it. As

<sup>17</sup> Data calculated from LEGISinfo.



well, the number of non-bill items of government business in the House does not appear to have increased significantly, particularly when compared to the previous session.<sup>18</sup>

There could be less obvious reasons for changes in legislative duration, such as a change in the frequency or length of sittings, the number of members in the legislature, or other procedural changes. It is true that 30 new MPs were added to the House at the start of the 42nd Parliament. However, no related changes in sitting times or chamber procedures appear to have been made between the 40th and 42nd Parliaments—at least, not in such a way as to explain the dramatic difference in legislative duration in those parliaments.

## Legislative Duration in Recent Parliamentary Sessions

Moving away from each chamber's unique sitting days in a session and to this work's consideration of overall calendar days for legislative duration, Figure 1.2 depicts the average number of calendar days it took for an enacted government bill to complete the legislative process, from introduction to royal assent. Immediately noticeable is the 43rd Parliament, 1st Session, when the COVID-19 pandemic occurred. Most government bills that passed were adopted in a matter of days, if not completing the entire legislative process on the same day.

Appropriations bills commonly go through the legislative process in a single sitting in both the Senate and the House of Commons; however, they are included in this work because there are exceptions.<sup>19</sup> What occurred in the 43rd Parliament, 1st Session, is less common. Substantive bills, such as Bill C-12, *An Act to amend the Financial Administration Act (special warrant)*, and Bill C-14, *COVID-19 Emergency Response Act, No. 2*, were passed by both houses and received royal assent in a day.

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<sup>18</sup> The *Status of House Business* document prepared by the House of Commons lists 30 motions under "Government Business" for the 42nd Parliament, which was four years in duration. The 41st Parliament, which was also four years in duration, saw 17 and 21 government motions in its 1st and 2nd sessions, respectively.

<sup>19</sup> For example, the *Appropriation Act No. 3, 2001-2002* (Bill C-45 from the 37th Parliament, 1st Session) was debated at second reading in the Senate over the course of five sitting days, one of which involved a request for leave to, exceptionally, amend the text of the legislation at second reading. See Senate (2001).

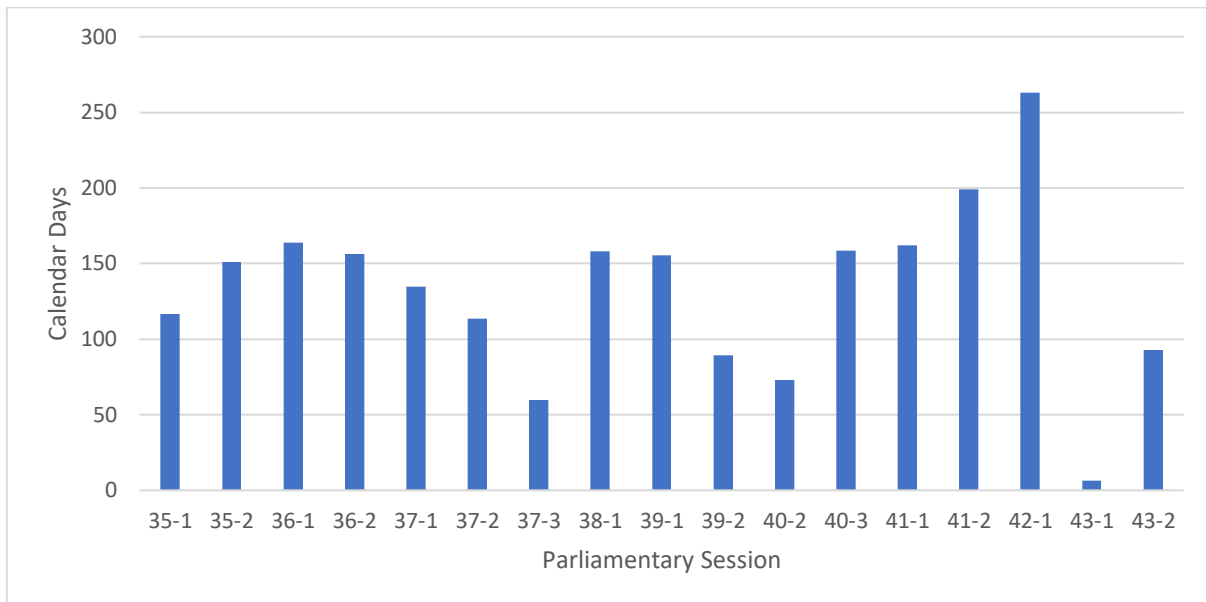


Figure 1.2 Average legislative duration (calendar days) from introduction to royal assent for government bills in recent parliamentary sessions

The difference between the 42nd Parliament, 1st Session, and the 43rd Parliament, 1st Session, cannot be overstated. In the latter, a government bill averaged 6.25 calendar days from first reading to royal assent, compared to the 263-day average in the preceding Parliament. This marks a 97 per cent decrease.

While Figure 1.2 depicts an increase in the average legislative duration of government bills just before the pandemic, an even bigger difference exists when one examines the time government bills spent in the Senate and House of Commons from introduction through to third reading.

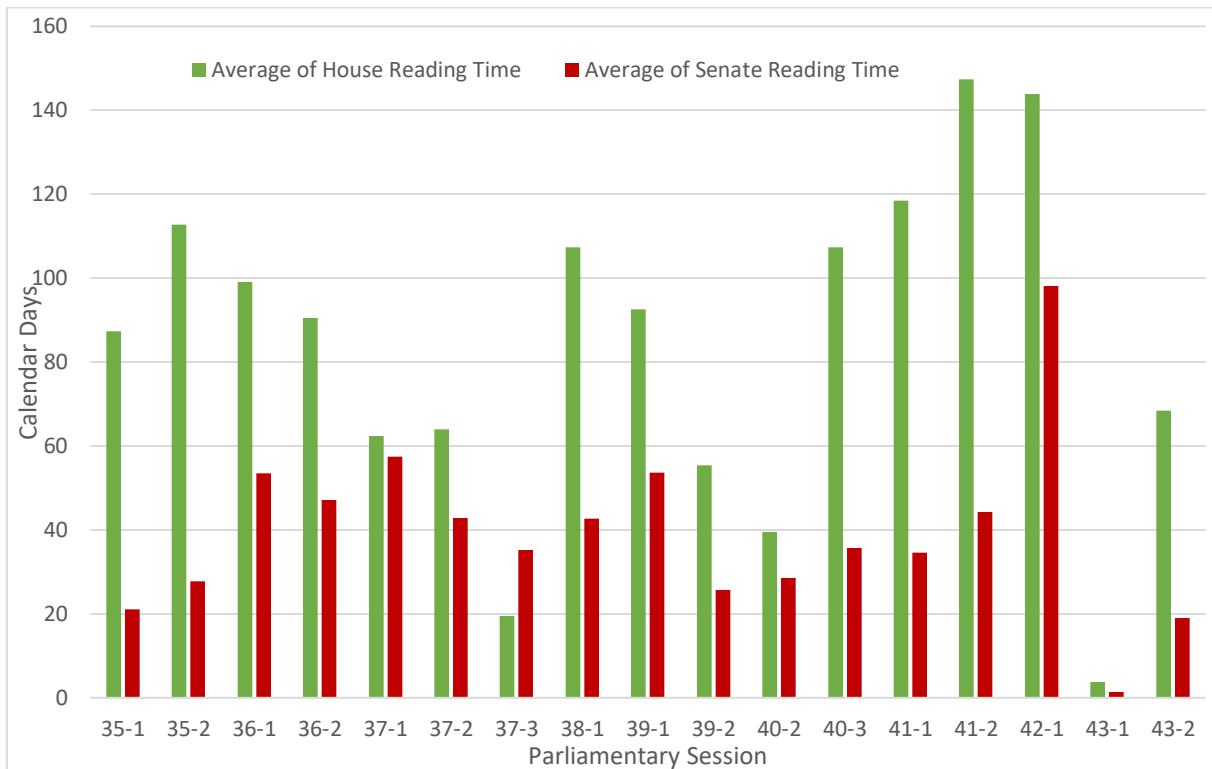


Figure 1.3 Average legislative duration in each House of Parliament for government bills enacted in recent parliamentary sessions

As Figure 1.3 illustrates, the House sees more volatility in the average number of calendar days from introduction to third reading of government bills relative to the Senate. Again, the 43rd Parliament, 1st Session, stands out for how quickly government bills passed in both chambers. With the exception of the 37th Parliament, 3rd Session (which will be discussed later), government bills were advanced faster in the Senate than in the House of Commons.

To return to the matters raised at the outset of this paper, the average legislative duration for government bills did indeed increase dramatically from the 39th Parliament to the 42nd Parliament. The increase within this period (comparing first- to third-reading duration) is observed most keenly within the House of Commons. That is a perhaps curious finding given that the government of the day, in both the 41st and 42nd Parliaments, had a majority of seats in the House. Certainly, the dramatic increase in Senate legislative duration in the 42nd Parliament (discussed in more detail later) is notable as well, but it would appear that, overall, there is more volatility in House than in Senate duration (particularly when the “Pandemic Parliament” is set aside).

While the above reflects all government bills enacted, the data also tells an interesting story when one looks at government bills by chamber of introduction (Figure 1.4).

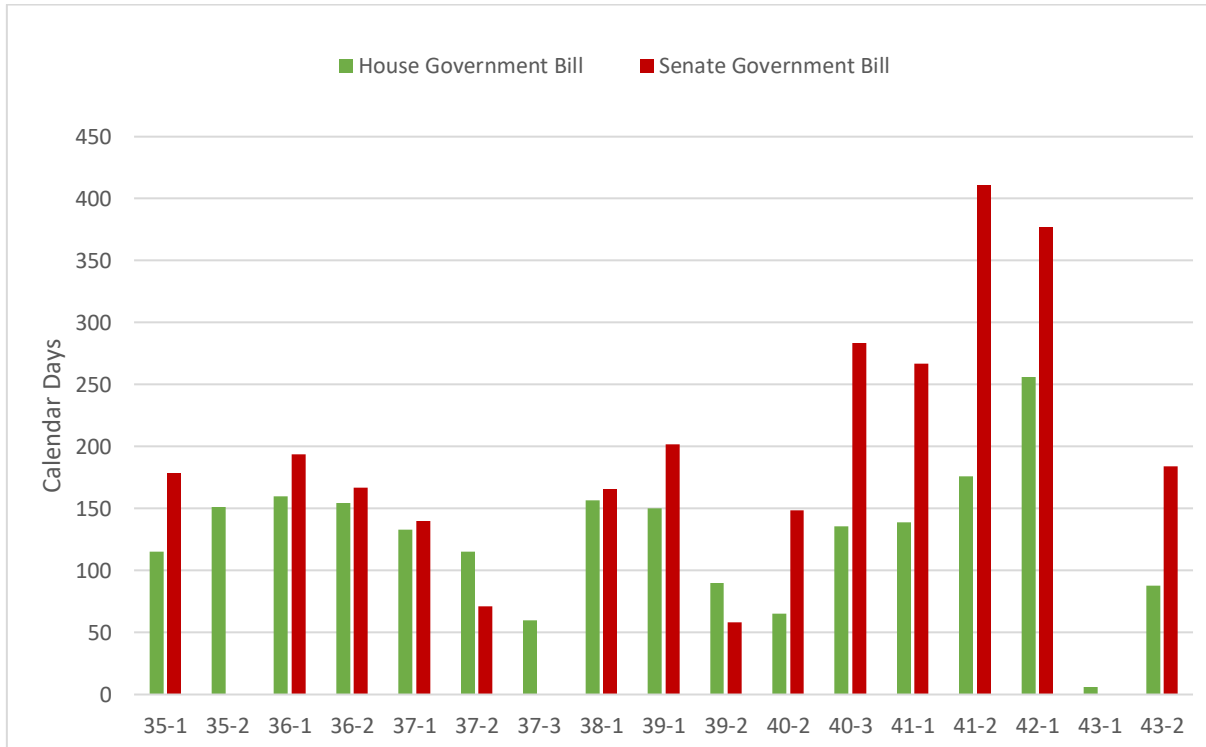


Figure 1.4 Average legislative duration for enacted government bills in recent sessions by chamber of introduction

On average, Senate government bills have taken longer to go from introduction to royal assent in recent parliaments than have their House-introduced counterparts. The Senate exercises a primary review role when government legislation is introduced there, in contrast to the typical conception of it being a chamber of “sober second thought.” Government bills have not been introduced in the Senate in every session, hence the gaps in some sessions for Senate government bill data. More study is warranted on how the Senate discharges its role of primary review of government legislation and how this may differ from the approach of the House of Commons to that task.

Though more research is merited on this point, the increase in Senate days for government bill consideration in the 41st and 42nd Parliaments may be attributable to that body’s changing composition and increased amendment activity (McCallion, 2022).

While the above has focused on the overall legislative process, the effects of duration changes within a bicameral system must also be considered by looking at each chamber individually,

as illustrated in Figure 1.5. This figure shows a marked increase from the 40th through 42nd Parliaments in terms of how long each chamber took, on average, to move a government bill from first reading through to the end of third reading.

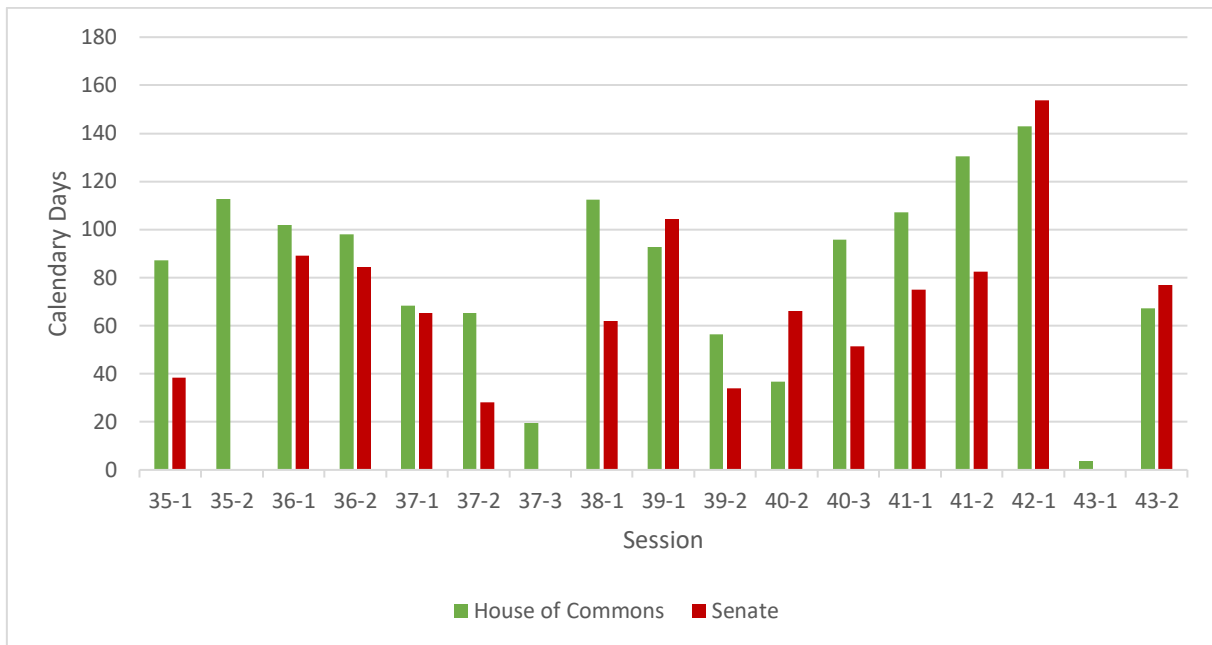


Figure 1.5 Average calendar days from first reading to third reading for enacted government bills in recent sessions in their chamber of introduction

It is no secret that a government has a preferred timetable for its legislation to pass.<sup>20</sup> If one assumes the government wants a bill to pass before the winter break but the House of Commons is taking longer to discharge it, for example, the Senate's consideration of it would need to be compressed for the government's timetable to be met and without senators otherwise needing to remain in Ottawa over the holidays. This is not to suggest that the Senate is beholden to the government or its timetable; rather, it is a reminder that legislative planning requires considering two chambers and that changes in one, planned or unplanned, can have unintended or additional consequences in the other.

<sup>20</sup> Expressions of this reality have appeared frequently in the Senate record in recent years. For example, consider a remark from the Government Representative in the Senate that "the government hopes to see the Budget Implementation Act, Bill C-30, passed very soon" (see Senate, 2021b), or a speech by a senator indicating, "I want to note my disappointment that more attention could not be given to resolving the issues brought before the committee and this chamber due to manufactured deadline created by this government's inability to manage its legislative agenda" (see Senate, 2021a).



Of course, no new government arrives in office on day one with all its legislation ready for introduction. Even if everything were ready, no government would likely put every policy into one giant omnibus bill with the hope of passing it all in one fell swoop to save space on the legislative calendar.<sup>21</sup> But how many bills to introduce in each house and when to introduce them are things governments can and do consider. It may be that more time needs to be built into the process if evolving parliamentary consideration practices—including committee practices—are causing legislative duration to increase.

## A Long and Winding Road

The five bills that took the longest to work through the parliamentary process during the period examined were all introduced during the 42nd Parliament, which, as noted earlier, was a period of majority government. Though it may seem counterintuitive, the statistics reveal that legislative duration for government bills is actually longer in majority governments than in minority governments: 164 days versus 128 days in the period examined. Future research may explain the reasons behind this. It could be, for example, that minority governments are stricter in their legislative planning or that minority governments consult more with other parties before introducing legislation, so as to ensure cooperation for speedy passage. However, the precise reasons for this observation are beyond the scope of this work.

The most epic legislative journey in the period examined was that of Bill C-21, *An Act to amend the Customs Act*. Introduced in the House of Commons on 15 June 2016, it did not complete third reading there until June 2018. The Senate then passed it on 5 December 2018, and it received royal assent the following week, thus taking over 900 days to wind through the legislative process (which was complicated in part by a Senate amendment, details of which are below).

Importantly, the government of the day expressed concerns about “political” prorogation, including in a 2017 white paper in which it wrote: “There have been instances where Governments have prorogued early in the session to avoid politically difficult situations. The Government committed to Canadians not to abuse prorogation in such a manner” (Government of Canada, 2017).

As the government had a majority and was prorogation-averse, it was likely the 42nd Parliament, 1st Session would last a full four years, until the anticipated election—which it did. The government thus had time on the legislative calendar in a way most governments do not.

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<sup>21</sup> This is to set aside the politics of such a move; legislatively, it would be feasible. Most enacted government bills are introduced within the first 10 per cent of the calendar days of a session. The passage numbers begin dwindling rapidly for new government bills introduced after the final third of a session has begun, though there are exceptions and last-minute bills whose passage is expedited.



The point is that while Bill C-21 and other long-haul bills are notable for the time they took, it is perhaps because the government had that parliamentary time to give to them. Arguably, this is an instance of Parkinson's (1955) law: "[W]ork expands so as to fill the time available for its completion." The incompleteness rate for government legislation is much lower in majority parliaments than in minority ones (Feldman, 2021),<sup>22</sup> and very few government bills did not receive royal assent in the 42nd Parliament. This suggests that Bill C-21's journey, in which it seemingly stalled in the House for months on end, may have resulted from deliberate planning as other matters were prioritized for debate.

It is perhaps worth highlighting one element of Bill C-21's journey to illustrate a challenge of the utility of any findings in this area for those looking to analyze how legislatures and legislators spend their time when considering a bill. The House amended Bill C-21 from its initial form to enact a requirement regarding the keeping of certain personal information. The proposed new section 93.1 originally read, "Subject to section 6 of the *Privacy Act*, information collected under sections 92 and 93 shall be retained for 15 years beginning on the day on which the information is collected."<sup>23</sup> The Senate amended the proposed text to change two things. First, it made the retention period "not more than" 15 years. Second, it clarified that the information in question was that "collected by the agency" under the specified sections.

This amendment was the only one the Senate sent to the House. It replaced one line in English and two in French (House of Commons, 2018a), arguably fine-tuning a matter on which the House was essentially agreed. (Notably, by unanimous consent, the bill was deemed adopted on division at third reading in the House.) The amendment was debated during two sittings in the House at the message stage, which nominally has a narrow scope for debate: the message from the Senate (Renna, 2021). However, if one reads the debate, little discussion occurred on the specific legislative questions of whether the period should be "15 years" or "not more than 15 years" and whether it was wise to clarify that the information in question was that collected "by the agency."

This is not said to diminish the discussion in the House in any way, because members certainly debated the bill. The contention is that consideration of a bill at two different points in the process is a different exercise in each instance. A second-reading debate in the chamber of introduction that establishes a bill's scope is not the same as a debate at the message stage when both houses will have already considered and agreed to much of the bill's content. However, as the example above seeks to show, the exercise in which a chamber may be

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<sup>22</sup> "[A]round 38 per cent of government bills will not pass in any given parliamentary session. More specifically, the average non-pass rate is 31 per cent in majority parliaments and 49 per cent in minority parliaments. Government bills did not pass in a given session between 17 per cent (42-1) and 56 per cent (40-3) of the time." See Feldman (2021, 15).

<sup>23</sup> Bill C-21, *An Act respecting additional COVID-19 measures*, 42nd Parliament, 1st Session, as passed by the House of Commons, June 20, 2018.



technically and procedurally engaged, such as a narrow debate on a message regarding a bill, may not align with how the debate unfolds in practice. Bill C-21's message-stage debate in the House of Commons was curtailed by time allocation (House of Commons, 2018b), though debate ended before the allocated time elapsed.

While much has been said about various legislative practices that result in more or less time being allotted to bills, a cardinal rule of procedural reform is worth repeating here: The governing party tactics about which an opposition party complains today become invaluable tools for advancing the opposition's own agenda if elected to form government tomorrow. Similarly, the opposition tactics about which a governing party complains today are the tools it would have to manifest dissent if it finds itself becoming the opposition party after the next election.

## THE REINTRODUCTION CHALLENGE

As evidenced in the figures above, the 37th Parliament, 3rd session, appears to be anomalous given its quick legislative duration for government bills overall and for the unique case in which the Senate appears to have taken longer to consider government bills than did the House. As is often the case, all is not as it appears from parliamentary statistics alone because, in that session, the government introduced something known as a reintroduction motion.

In its most generic form, a reintroduction motion, if adopted, allows the government to re-present a bill that was previously introduced, and the House then deems that bill to be wherever it left off in the previous session. For a bill that was introduced in the House and had made it to the Senate, a reintroduction motion declares that bill passed in the House at all stages and sends it to the Senate immediately, at which point it starts afresh in that chamber. (The House cannot deem certain stages of Senate debate to be dispensed with or vice versa.) In the case of the 37th Parliament, 3rd Session, the adopted motion read as follows:

That during the first thirty sitting days of the present session of Parliament, whenever a Minister of the Crown, when proposing a motion for first reading of a public bill, states that the said bill is in the same form as a Government bill in the previous session, if the Speaker is satisfied that the said bill is in the same form as the House of Commons had agreed to at prorogation, notwithstanding Standing Order 71, the said bill shall be deemed in the current session to have been considered and approved at all stages completed at the time of prorogation of the previous session. (House of Commons, 2004c)

This motion was then used for Bills C-4, C-5, C-6, C-7, C-8, C-11, C-13, C-14, C-15, C-16, C-17, and others, for a total of 21 bills. Only 25 bills in total received royal assent that session,



meaning that the vast majority had a running start from having been considered in the previous session. (All three private members' bills (PMBs) given royal assent had been reinstated under the Standing Orders (House of Commons, 2004a).) In that sense, one might consider that the 37th Parliament, 3rd Session, should be considered an extension of the 2nd Session as far as any calculations are concerned, despite the change in ministry.<sup>24</sup>

Reintroduction of PMBs after prorogation has been automatic for some time in the House of Commons, whereas the issue for government bills has been described as an "odyssey" (Levy, 2003). While the 37th Parliament, 3rd Session, was a notable departure from others in terms of averages, it is useful to keep in mind that, in parliaments with multiple sessions, bills in the second and subsequent sessions are likely to include some reinstatements, be they automatic or by motion. However, this does not mean the average legislative duration will decrease in a second or subsequent session, as is evidenced by the 35th Parliament, 1st and 2nd Sessions, in the figures above.

Notably, the 37th Parliament, 3rd Session, was so light on new government bills that a non-confidence motion was moved in this regard: "That, given the lack of new legislation introduced by the Liberal government during the Third Session of this Parliament, this House recognizes that the current government is not new, but rather one that is intricately linked to the past decade of mismanagement, corruption and incompetence, and has accordingly lost the confidence of this House" (House of Commons, 2004d).

In responding to the opposition's critique that "all the Prime Minister and his cabinet could do was reintroduce, rehash, bring back and recycle" legislation (House of Commons, 2004b), the government noted that "to judge what is being done in Parliament by the number of bills before it ... [is] so simplistic that it is almost beyond comment" (House of Commons, 2004b), noting that much happens in Parliament beyond the consideration of legislation. This is certainly a point worth bearing in mind: Although this work focuses on bills, Parliament's time is also spent debating motions and other matters that do not evidence themselves through statistics on the passage of legislation.

Reintroduction and motions to speed the consideration of reintroduced legislation may explain another phenomenon observed during the period: Legislative duration generally shortens with each session within a parliament. Figure 1.6 depicts this.

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<sup>24</sup> The remaining bill given royal assent that session was a speedily considered private bill initiated in the Senate, Bill S-15, *An Act to amend the Act of incorporation of Queen's Theological College*.

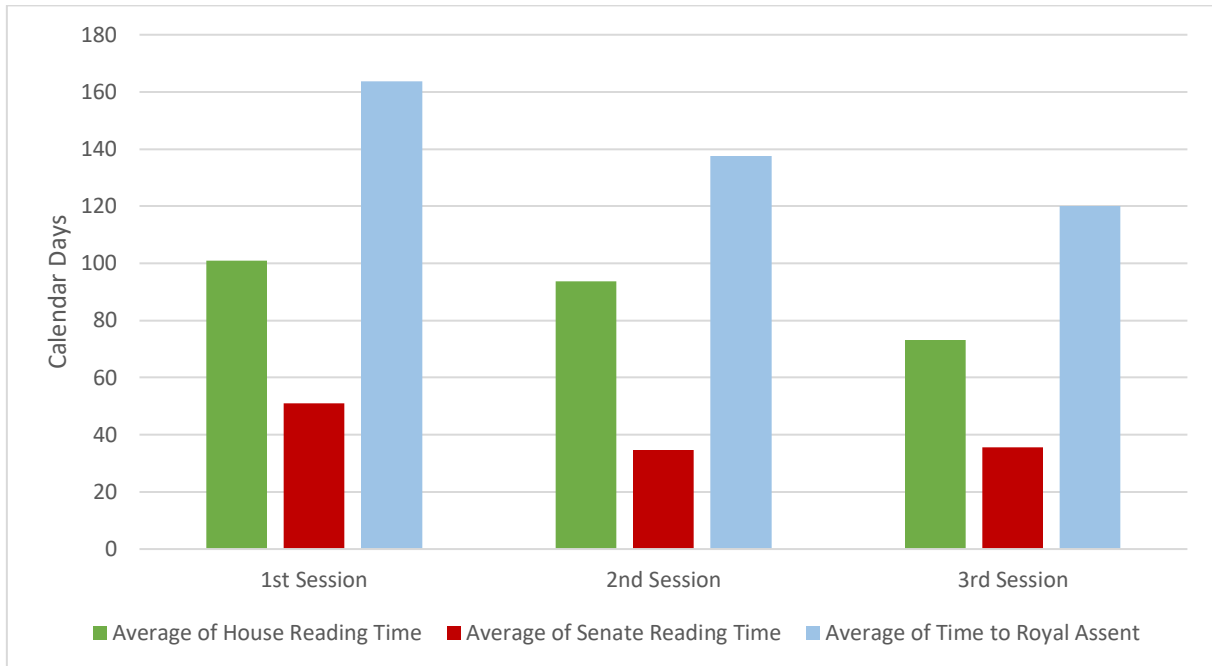


Figure 1.6 Average enacted government bill legislative duration (calendar days) for sessions within a parliament (35th to 43rd inclusive)

Bear in mind that the period examined includes eight first sessions and seven second sessions but only two third sessions.<sup>25</sup> Accordingly, more research is suggested in this area to see if the trend holds for parliaments with more than two sessions. However, even if one looks only at a parliament's first two sessions, a thesis to explore is whether a government's parliamentary technique becomes more refined the longer that government is in power. Another possible line of inquiry is that, if a government has devoted its legislative real estate to electoral promises early in its mandate, it may be approaching Parliament with less controversial measures in later sessions so as not to "rock the boat" before an election.

<sup>25</sup> Conceptually, it might be suggested that the third session of the 40th Parliament should be treated as a second session given the abrupt prorogation of the first session. Similarly, the duration of the two third sessions in the data is vastly different—388 days vs. 111 days. Only limited conclusions should be drawn from this data until more observations can be made. I thank a reviewer for these excellent insights!



## HOW LONG DOES PARLIAMENT TAKE?: A COMMENT ON SUSPENDED DECLARATIONS OF INVALIDITY

The Honourable James Alexander Jerome, former Associate Chief Justice of the Federal Court, once remarked:

I cannot imagine anything less predictable than the course of legislation through Parliament. Indeed, the only thing that is certain about life in Parliament is that nothing is certain. The ever-present possibility of a crisis leading to an election or a general election without such a crisis, to say nothing of a hostile Senate, underline only the most basic realities that make it impossible to predict whether any measure will become law, let alone when.<sup>26</sup>

Jerome, it should be noted, was no ordinary judge. He had previously served as Speaker of the House of Commons.

Understanding, then, that each bill and its context are unique and that Parliament is unpredictable, attention turns to a practical application question about how long Parliament might take to pass a government bill. As previously mentioned, courts sometimes afford Parliament the time to rewrite legislation after having declared it invalid but having also suspended the declaration of invalidity. In a new study, Cyr et al. (2022) found that, of 75 cases in which a suspension was granted, the suspension was mostly for a period of about 12 months, although in 21 cases it was for six months or fewer.

For all government bills from the 35th through the 43rd Parliaments, the average number of calendar days from introduction to royal assent was 152, with the median number of days being 103. Of course, the question might then arise as to whether a court should allot five months—the average—as a rule. The answer is an unequivocal and resounding no.

The parliamentary process can only begin once a bill is introduced, which means it must first be drafted (in both official languages). For government bills, this first requires a memorandum to cabinet that includes drafting instructions—in other words, before the drafting even begins.<sup>27</sup> And before any of this, thought would have been given to the policy response, which might require extensive consultations and analysis, particularly in respect of legal risk.<sup>28</sup>

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<sup>26</sup> *Iscar Ltd. v. Hertel GmbH* (1988) (unreported decision rendered 29 January 1988, file T-2332-85 [since reported in 18 F.T.R. 264, 19 C.P.R. (3d) 385, 8 A.C.W.S. (3d) 207]).

<sup>27</sup> For a detailed discussion of the process within government, see Privy Council Office (2001).

<sup>28</sup> For discussion of the uncertain legal terrain that may be present when legislating, particularly in constitutional matters, see *Schmidt v. Canada (Attorney General)*, 2018 FCA 55, para. 90–8.



Put simply, anything less than six months is, on average, asking the government to rush its analysis of how to respond and asking it to attempt to seek parliamentary approval in no longer than average time. This may be an unreasonable request in part given that, if a court itself has indicated that an existing scheme is invalid but that court also thinks that scheme cannot be scrapped without significant consequences—hence the suspended declaration of invalidity—it is certainly an issue requiring the government to think carefully before legislating, and one that Parliament will undoubtedly want to scrutinize intensively.

Of course, this is to say nothing about what happens when Parliament does not sit due to prorogation or dissolution. As was observed in the *Carter* context, in which the government had to seek an extension because Parliament had not had time to respond legislatively to a court decision about medical assistance in dying (Ettel, 2017), a very real risk exists that a court's assessment of how long Parliament might take is short-sighted. In reality, courts need to consider how *two* branches of government will work: the executive in developing a response to a declaration and Parliament in considering that response once presented with it. And while the government may be in a position to speak to how long the executive might take to respond, it certainly should be wary of making submissions in court regarding an unpredictable parliament.

## CONCLUSION

How Parliament discharges its legislative work, particularly in regard to government legislation, impacts Canadians. There are consequences, monetary and otherwise, both for hastily made errors and lengthy delays in legislative responses. To that end, studying legislative duration is critical to establishing a base for assessing Parliament's legislative work.

Any given bill may take more or less time to pass than another, and the reasons for this are innumerable. However, the research herein offers three primary findings in respect of the legislative duration of government bills in recent parliamentary sessions. First, the COVID-19 pandemic legislative response saw a monumental drop in enacted government bill legislative duration: The government was able to pass bills through Parliament quickly in a period of crisis. Second, legislative duration was increasing before the pandemic, including during periods of majority government. This might indicate more careful consideration of legislation or more partisan activity that slowed down the passage of government bills. Further research is needed in this regard. Third, parliaments with multiple sessions have seen the legislative duration of their enacted government bills decrease with each subsequent session.

This work looks only at duration, which reflects the start and stop of the legislative process and says nothing about the steps along the way. A bill that takes 100 days to pass could be



debated on 100 of those days or sit dormant for 99, so this approach has its limitations. Knowing legislative duration alone does not reveal anything about parliamentarians' engagement with the bill—such as how many speeches were given, how many witnesses were heard, or how many amendments were considered—let alone the quality of that engagement, however measured. But the approach taken in this study opens the door for future research that could evaluate the speed and quality of legislative output through other measures and that could address whether it is changing in some way. Indeed, it could be that Parliament is debating bills more extensively and that those bills are longer than before. More research needs to be done in this area, ideally down to the debate hours and intervention-specific level.

All told, the early pandemic response showed that, when there is co-operation among parliamentary actors, legislation can move incredibly quickly, even in a minority government context. However, Parliament otherwise appears to be taking more time to enact government bills. This presents a challenge with which future governments will have to contend in planning their legislative agendas, and it may impact the ability of parliamentarians to achieve other aims, such as making Parliament more family-friendly by reducing or compressing sittings (House of Commons, 2016).

One metric that may be worth watching is the number of pages in budget implementation acts (BIAs), which are sometimes noted for their inclusion of measures beyond those strictly necessary to implement a budget.<sup>29</sup> Though the format for federal legislation has changed in recent years (Justice Canada, n.d.), the length of BIAs has increased significantly in the last few decades as illustrated in the figure below. The inclusion of increased and disperse measures for parliamentarians to consider in a single bill presents challenges for ensuring comprehensive scrutiny.

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<sup>29</sup> An example can be seen in provisions modifying the eligibility requirements for Justices of the Supreme Court of Canada enacted through sections 471 and 472 of the *Economic Action Plan 2013 Act, No. 2*, considered by the Supreme Court of Canada in *Reference re Supreme Court Act, ss. 5 and 6*, 2014 SCC 21, [2014] 1 S.C.R. 433.

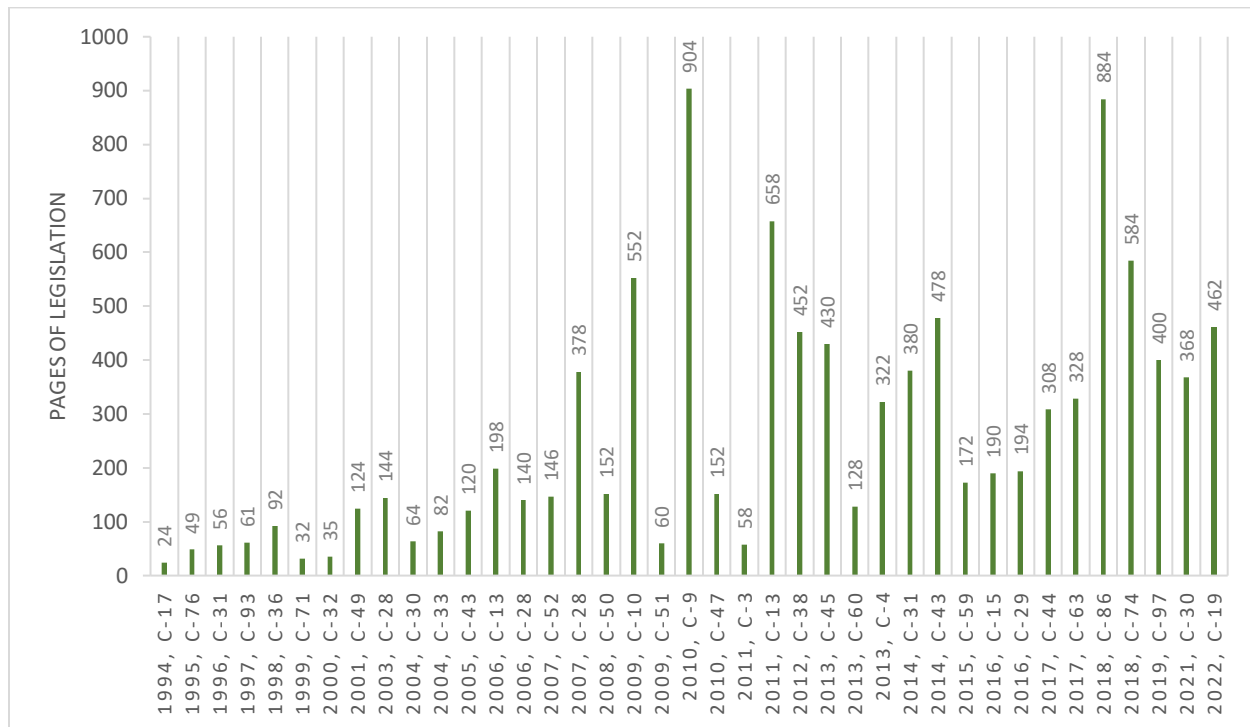


Figure 1.7 PDF pages in federal budget implementation acts (1994–2022)

Regardless of the reasons for its evolution, legislative duration is important to observe as Parliament emerges from the “Pandemic Parliament” and as institutional changes—particularly those in the Senate—manifest. If trends return to their pre-pandemic trajectory, legislative duration will only further increase. On the one hand, this could mean increased sittings or longer bills in the future as the government seeks to implement its agenda more efficiently, particularly through the BIA process. On the other, it could mean that renewed efforts will be made at compromise and collaboration by parliamentary actors—including potential procedural reforms—to prevent intolerably long and more frequent sittings or limitations on procedural manoeuvres that only serve to delay a bill.

There is no shortage of ideas on how parliamentary procedure might be reconsidered in relation to debate time (Plante, 2013). To that end, the government’s 2017 “white paper” regarding reform of the House of Commons included the suggestion of the “application of a ‘Made-in-Canada’ programming scheme for Government bills, motions and for the handling of Senate amendments (Government of Canada, 2017). No proposal was subsequently introduced for debate.

Paradoxically, the challenge may be finding time in Parliament to debate any proposal in this regard. The time Parliament spends debating *how to debate* bills is time it cannot spend *debating*



*actual bills*. Put simply, only one debate occurs on the floor of a legislature at a time. As such, the planning and use of parliamentary time is a critical area for research and analysis, to which it is hoped that this work contributes.

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