

Results at a glance

Evaluation of Charter Statements

In December 2019, a new section of the *Department of Justice Act* came into force requiring the Minister of Justice to ensure a Charter Statement is tabled in Parliament for every new government bill.

Charter Statements are short documents that describe, in an informal manner and using accessible language, the potential effects of a bill on the rights and freedoms included in the Canadian Charter of Rights and Freedoms (the Charter). They are intended to inform parliamentary and public debate on a bill, by explaining how certain Charter rights and freedoms may be engaged, including the possibility of how a bill may limit these rights and freedoms in a manner that is demonstrably justifiable in a free and democratic society.

Charter Statements are developed by the Human Rights Law Section (HRLS), in consultation with Justice policy leads (for Justice bills) or the Legal Services Unit (LSU) of the lead policy client department. They are tabled after the introduction of the bill in Parliament and are subsequently published on the Justice website.

WHAT WAS FOUND

- There is a continued need for Charter Statements to fulfil the legal obligation under the Act.
- Charter Statements continue to reflect the government's priority on openness and transparency, and the respect of Charter rights and freedoms.
- There continues to be a lack of understanding regarding the purpose of Charter Statements among those intended to use them (i.e. parliamentarians and the public). There are diverging opinions, including some views that criticize the lack of legal analysis contained in these statements, while others praise the perceived assurance they provide about the constitutionality of a proposed bill. However, the assertions on which these views were based are inaccurate and are evidence of the confusion and persisting ambiguity.
- Effective processes and protocols have been established to facilitate the drafting and coordination of Charter Statements. Templates, guidance, and reference documents have supported a consistent approach to drafting them. Expanding these would have a direct impact on the effectiveness and efficiency of the drafting process.
- While the roles and responsibilities for developing Charter Statements are well defined and generally understood, some challenges remain within LSUs. This is partly due to the varying extent to which LSU legal counsel are involved in legislative initiatives which has

an effect on their awareness of the Charter Statement requirement.

- Justice set an operational goal to table statements by the initiation of the second reading process. During the period covered by the evaluation, only 42% met this goal. The legislative process used for adopting new bills in Parliament varies greatly, which can affect the timeliness of Charter Statements. Additional factors may also contribute to issues related to timeliness (e.g. complexity of the associated bill, extent HRLS was engaged in a timely manner, etc.).
- Although the full extent of their use is unknown, Charter Statements do contribute to the transparency of the legislative process by facilitating the debate on proposed legislation. Increasing the awareness of these statements through more sustained efforts, would enhance their contribution.

RECOMMENDATIONS

Recommendation 1: The Public Law and Legislative Services Sector, in consultation with appropriate parties, should clarify that in addition to their primary purpose of identifying the potential effects of government bills on Charter rights and freedoms, Charter Statements also describe key considerations that support the position of the federal government on the constitutionality of a proposed bill.

Recommendation 2: The Human Rights Law Section should further expand the range of reference documents and templates available to support the efficient and consistent development of new Charter Statements.

Recommendation 3: The Public Law and Legislative Sector, in consultation with appropriate parties, should take measures to increase legal counsel from LSUs' awareness and understanding of the Charter Statement requirement and of their role in the drafting process.

Recommendation 4: The Public Law and Legislative Services Sector, in consultation with appropriate parties, should identify ways to increase external stakeholders' awareness of Charter Statements associated with new bills.

ABOUT THE EVALUATION: The Evaluation of Charter Statements was conducted by the Department of Justice Canada's Evaluation Branch and covered fiscal years 2019-20 to 2023-24. It examined the implementation of the new Charter Statement requirement along with continued relevance, effectiveness, and efficiency, in accordance with the Treasury Board's *Policy on Results* (2016).

