

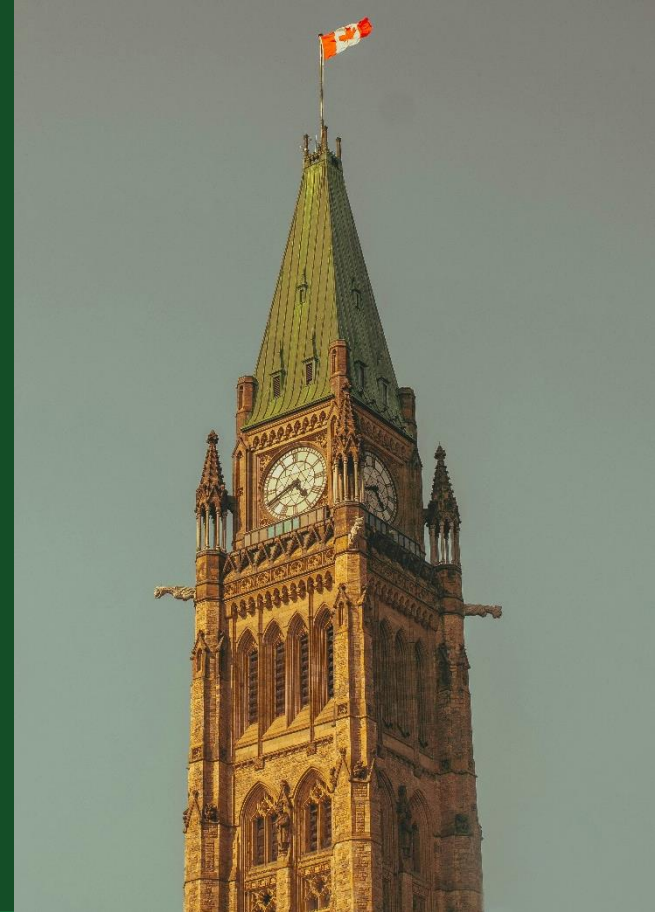


Evaluation of Charter Statements FINAL REPORT

June 2024

Evaluation Branch

Internal Audit and Evaluation Sector



Department of Justice
Canada

Ministère de la Justice
Canada

Canada

ACKNOWLEDGMENT



The Chief Audit and Evaluation Executive would like to thank the Evaluation Working Group, evaluation team and individuals who contributed insights and input to this evaluation. Evaluation participants included employees from the Department of Justice Canada, the Library of Parliament, and non-parliamentary stakeholders who engaged with parliamentary committees.

TABLE OF CONTENTS

• 05

Introduction

• 08

Overview

• 13

Relevance

• 18

Design and Delivery

• 23

Effectiveness

• 29

Efficiency

• 31

Conclusions and
Recommendations

• 33

Appendix



ABBREVIATIONS AND ACRONYMS

- **ADM** Assistant Deputy Minister
- **CPAU** Cabinet and Parliamentary Affairs Unit
- **FYs** Fiscal Years
- **GBA** Gender-Based Analysis
- **HRLS** Human Rights Law Section
- **Justice** Department of Justice Canada
- **MAID** Medical Assistance in Dying
- **LSB** Legislative Services Branch
- **LSU** Legal Services Unit
- **OLAD** Official Languages Directorate
- **PLLSS** Public Law and Legislative Services Sector



INTRODUCTION • CHARTER STATEMENTS

An evaluation of Charter Statements was conducted, covering the period from fiscal years (FYs) 2019-2020 to 2023-2024. It examined the implementation of the Charter Statement legislative requirement, along with its continued relevance, effectiveness, and efficiency. This report provides an overview of the main findings as well as conclusions and recommendations.

INTRODUCTION

Purpose of the evaluation

This report presents the key findings and recommendations for the Evaluation of Charter Statements. The evaluation was undertaken as per the Department of Justice Canada's (Justice) 2021-2022 to 2025-2026 Integrated Audit and Evaluation Plan and was conducted in accordance with the Treasury Board's *Policy on Results* (2016).

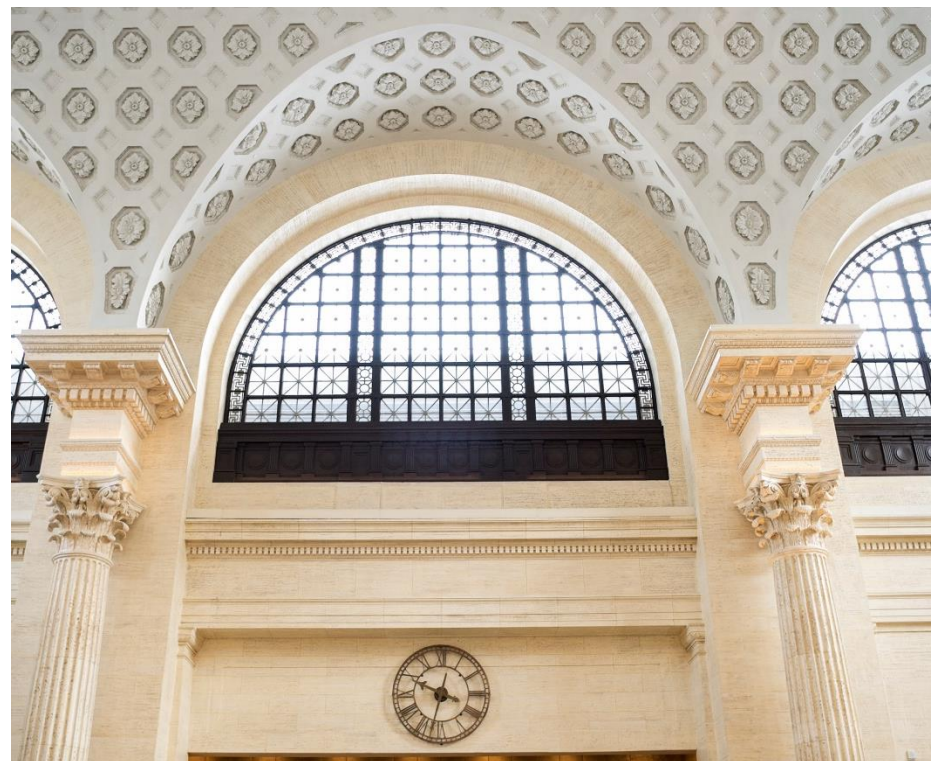
Evaluation scope

The evaluation covered a period of five FYs, from 2019-2020 to 2023-2024. The scope of the evaluation was informed by a review of available information, as well as consultations with senior officials regarding key issues and questions of interest.

Given this is the first evaluation of Charter Statements, the implementation of this new legislative requirement was examined to provide evidence-based findings on the experience to date in tabling Charter Statements for every government bill, including successes and challenges. As such, the evaluation examined:

- The relevance of Charter Statements, particularly the range of needs they are expected to address;
- How the delivery of Charter Statements has been operationalized (e.g., roles and responsibilities, processes, collaborations, etc.);
- The effectiveness and efficiency as it relates to the achievement of results in an efficient manner.

Since Justice's Human Rights Law Section (HRLS) leads the development of Charter Statements, the activities undertaken by this group were the main focus of the evaluation. The work and contribution of other groups within Justice, such as the Legislative Services Branch or the Legal Services Units, were also considered.



EVALUATION APPROACH

Approach

The evaluation was designed to collect both quantitative and qualitative information supporting a comprehensive assessment of the process used to draft and coordinate Charter Statements, along with information on how they are used as part of public and Parliamentary debate on federal legislative initiatives. Gender-based analysis (GBA) plus considerations were also included in the design of the evaluation.

Methods

The following methods were used to address the evaluation questions:

- Document review
- Administrative data analysis
- Content analysis of parliamentary Hansard
- Interviews with internal and external stakeholders (n=33)
- Survey of non-parliamentarians (n=111, response rate of 18%)
- Case studies on three bills:
 1. Medical assistance in dying (C14, C-7, C-39),
 2. Administrative segregation (C-83)
 3. Changes to the *Broadcasting Act* (C-10, C-11)



See Appendix A for more information on the methodology

? Evaluation Questions

Relevance

1. What continued need do Charter Statements address?
2. How does the development of Charter Statements align with government and departmental priorities?

Design and Delivery

3. To what extent is the design and delivery of Charter Statements working effectively?

Effectiveness

4. To what extent have Charter Statements contributed to the openness and transparency of how the proposed government legislation engages rights and freedoms?
5. To what extent have Charter Statements increased parliamentarians' ability to consider the potential effects of the Charter when debating government bills?
6. To what extent have Charter Statements encouraged greater awareness of human rights at all stages of the policy development process?

Efficiency

7. To what extent has Justice developed Charter Statements in an efficient manner? Are there alternatives that would improve efficiency?

OVERVIEW • CHARTER STATEMENTS

In accordance with the *Department of Justice Act*, the Minister of Justice is responsible for tabling a Charter Statement for every government bill introduced in Parliament. Since this legislative requirement came into force in December 2019, over 110 Charter Statements have been tabled, which are intended to identify potential effects that a bill may have on Charter rights and freedoms.

Overview of Charter Statements

What Charter Statements are

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.

What Charter Statements are not

While Charter Statements provide legal information, **they are not legal opinions on the constitutionality of a bill**. As such, they do not provide a legal risk assessment of the proposed legislative provisions. Rather, they describe the key considerations that support the constitutionality of a proposed bill, recognizing that the courts have the final say on the constitutionality of any legislative provision.

Each Charter Statement is based on the provisions of a bill at the time that it was introduced in Parliament. While amendments to a bill may be introduced, **Charter Statements are not required to be updated**.

Starting in 2016, the federal government began to table Charter Statements on a voluntary basis. The *Department of Justice Act* was modified and the obligation to table these statements came into force in December 2019. **As of October 2023, 140 Charter Statements had been tabled** in Parliament, including 26 that were published on a voluntary basis (prior to December 2019).

Department of Justice Act (R.S.C., 1985, c. J-2)



Charter Statement

4.2 (1) The Minister shall, for every Bill introduced in or presented to either House of Parliament by a minister or other representative of the Crown, cause to be tabled, in the House in which the Bill originates, a statement that sets out potential effects of the Bill on the rights and freedoms that are guaranteed by the Canadian Charter of Rights and Freedoms.



Charter Statements as part of the parliamentary process

The *Department of Justice Act* provides limited guidance on what Charter Statements must contain, or when they must be tabled in Parliament. Essentially, they must be drafted and tabled in a manner that is consistent with their intended purpose, which is to “*inform members of the Senate and the House of Commons as well as the public*” of a bill’s potential impact on Charter rights and freedoms.

- On that basis, Justice has established an operational goal to have a draft Charter Statement ready for the Minister of Justice to consider around the time that the associated bill is tabled in Parliament for first reading.
- Justice (CPAU) assists the Minister in having it tabled in Parliament around the time the second reading process is initiated.
- Following opening statements and debate on the general scope and principle of the bill, if the bill passes second reading, it will be sent to parliamentary committees for review, debate, and potential amendments.



Completion of the third reading signals the end of the process in one house of Parliament (House of Commons or Senate), and the beginning of the same process in the other house.

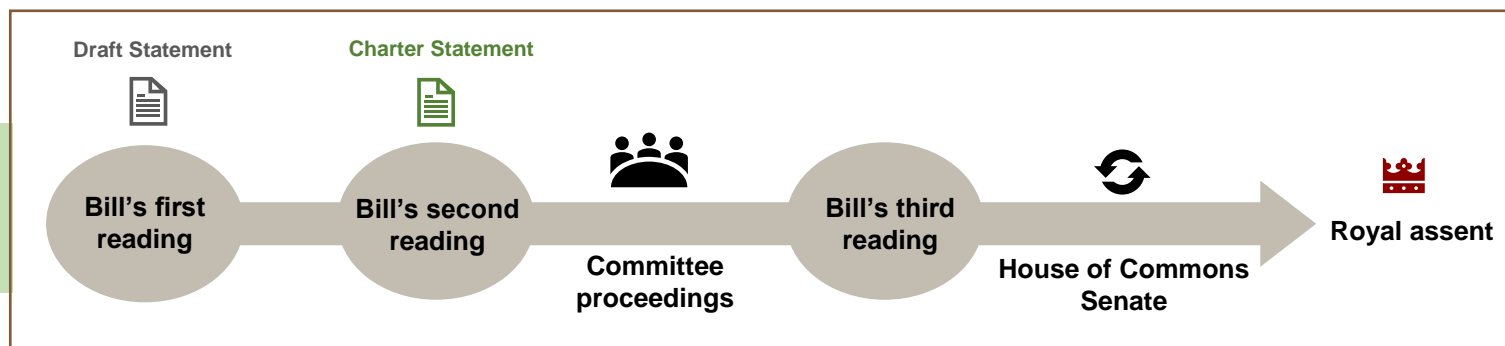


Once all three readings are completed in both houses, the bill is submitted to the Governor General for royal assent.

While the parliamentary process is somewhat linear, it may in fact take various forms, and unfold in many different ways. With the consent of the members of Parliament, a bill may complete all three readings in both houses in one or two days, essentially skipping any parliamentary committee proceedings. At the other end of the spectrum, a bill may take months to complete the process in both houses, due to its complexity, the approach adopted by parliamentary committees, or the schedule of Parliament as a whole. Some bills will end up being dropped, while some proposed bills, along with the draft Charter Statement, will not even be tabled for first reading.

In fulfilling its legislative obligation to table Charter Statements, **Justice must therefore adapt and respond to this range of scenarios.**

Figure 1: Charter Statements as part of the parliamentary process to adopt new legislation

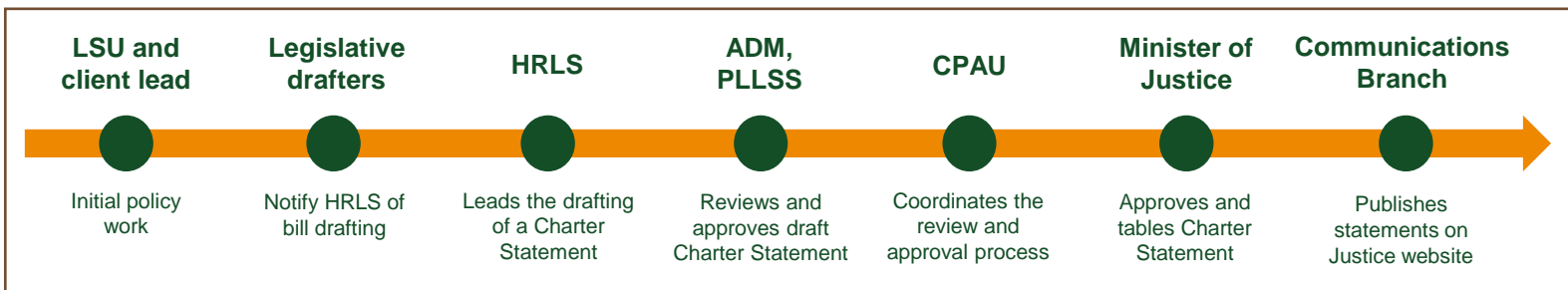


The process of developing Charter Statements

As illustrated in Figure 2, several stakeholders contribute to the development of Charter Statements. The following provides a brief description of their key roles in the process.

- **Legal Service Units (LSU) and client lead:** As they explore policy options that may require legislative work, legal counsel from LSUs and their client department or agency may reach out to HRLS for legal advice, or to inform them of their intention to proceed with a bill.
- **Legislative drafters:** As they initiate the work on a draft bill, legislative drafters systematically inform HRLS that a new bill is being drafted, for which HRLS will begin developing a Charter Statement.
- **HRLS:** Legal counsel from HRLS, in consultation with relevant stakeholders such as legal counsel from LSUs, undertake the development of a draft statement.
- **Assistant Deputy Minister (ADM) of the Public Law and Legislative Services Sector (PLLSS):** The ADM, PLLSS reviews and approves the draft Charter Statement.
- **Cabinet and Parliamentary Affairs Unit (CPAU):** Justice's CPAU coordinates the review and approval process with the office of the Deputy Minister, and the office of the Minister.
- **Minister of Justice:** It is the responsibility of the Minister of Justice to approve and table the final draft of the Charter Statement.
- **Communications Branch:** Justice's Communications Branch is responsible for readily publishing any new Charter Statement on the dedicated [website](#) once the statement has been tabled in Parliament.

Figure 2: Key milestones in the development of Charter Statements

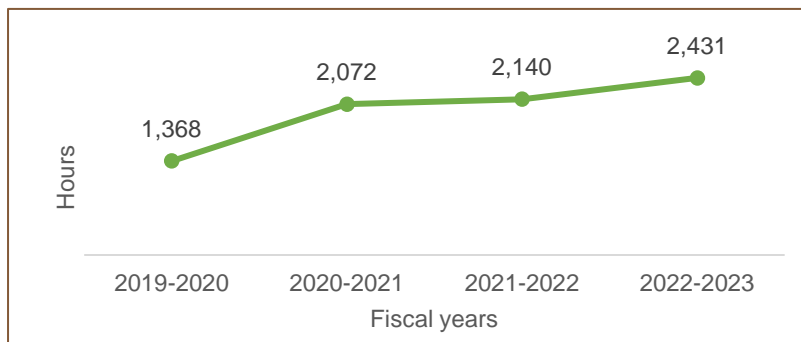


Level of effort

During the first four FYs of the period covered by the evaluation (2019-2020 to 2022-2023), **the level of effort associated to Charter Statements has steadily increased** (see Figure 3). The sharp increase from 2019-2020 to 2020-2021 reflects the transition towards the requirement for Charter Statements for every government bill tabled in Parliament. The number and complexity of bills also have a direct impact on the level of effort required by Charter Statements.

Figure 3: Number of recorded hours, per FY

Source: Integrated Financial and Material System (IFMS)/PeopleSoft

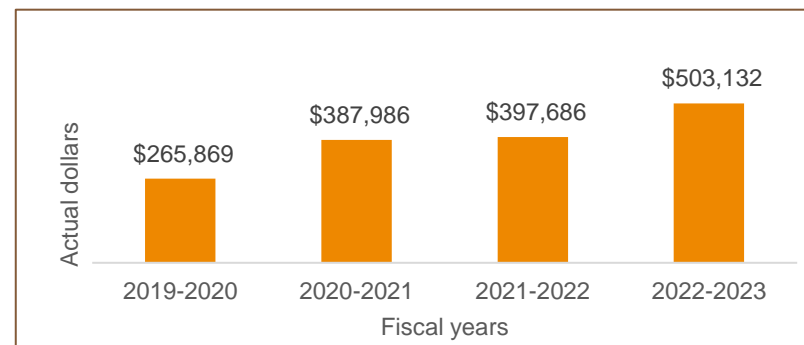


Financial resources

During the same four FYs, **the level of resources allocated to Charter Statements has reflected the increasing level of effort required to produce these statements** (see Figure 4).

Figure 4: Financial resources, per FY

Source: IFMS



The data included in Figure 3 and Figure 4 reflects the drafting and coordination work conducted by HRLS, along with the work undertaken by legislative drafters, jurilinguists and legistic revisors in the Legislative Services Branch (LSB), as well as the assistance provided by the Official Languages Directorate (OLAD) and the Constitutional, Administrative, and International Law Section (CAILS). Of note, 97% of the hours are associated to HRLS. The data does not reflect the work completed by other groups within Justice, such as legal counsel in LSUs. In addition, the data for FY 2019-2020 commences in December 2019, as this is the date Charter Statements came into force. Given only partial data was available for FY 2023-2024 this information has not been reflected in Figure 3 or Figure 4.

RELEVANCE • CHARTER STATEMENTS

Charter Statements align with the federal government's priorities related to upholding Charter rights and freedoms, and ensuring greater transparency in the manner in which new legislation may engage these rights. While the purpose of Charter Statements is fairly well understood, there is a need for further clarification.

ALIGNMENT WITH GOVERNMENT PRIORITIES

Charter Statements continue to reflect the government's priority on openness and transparency, and the respect of Charter rights and freedoms.

The first Charter Statement tabled in Parliament on a voluntary basis related to Bill C-14, introduced in April 2016, that dealt with the legal framework to be applied to medical assistance in dying (MAID). In this particular case, the Charter Statement, referred to as a "Statement of Potential Charter Impacts", was included in a broader [reference document](#) that had been prepared on this sensitive issue.

Following this first instance, Charter Statements were tabled upon the discretion of the federal government and its Minister of Justice. **The fundamental purpose of amending the Department of Justice Act was to remove the arbitrary nature of this process**, therefore adding a predictable component to the legislative process where all key stakeholders could assume that such an analysis would be provided to support the debate on a proposed bill.

Evaluation findings indicate that **enhancing awareness on how a proposed bill may engage Charter rights and freedoms remains a government priority**, as it raises the profile of Charter rights and freedoms and allows for a better understanding of how government initiatives may proceed in accordance with these rights, including cases where such rights are justifiably restricted.

“

“Charter Statements are not legal opinions, but they detail where the charter is potentially engaged by a piece of legislation that the government is putting forward. It provides a window into how government decisions are made or the thought processes that government went through in terms of putting forward a piece of legislation. This is something that has not been done before. This is something that is contained within Bill C-51. With the coming into force of that bill, the Charter Statements will be applicable to all pieces of government legislation.”

- Minister of Justice, Debate on Bill C-51 establishing the requirement to table Charter Statements, June 2017

THE CONTINUED NEED FOR CHARTER STATEMENTS

There is a continued need for Charter Statements to fulfil the legal obligation under the *Department of Justice Act*. While the purpose of these statements is fairly well understood, there is a need to further clarify their intended purpose.

As they result from a legislative requirement, the need for Charter Statements is, in one sense, self-evident.

The added value of Charter Statements

The broader question is whether Charter Statements are needed insofar as they are a valued addition to the legislative process. Evaluation findings point to 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. This, in fact, points to an enduring lack of understanding of the intended purpose of these statements, more than four years after they became mandatory.

As previously noted, Charter Statements are expected “to inform” members of Parliament and the public on the “potential effects of the bill” on Charter rights and freedoms. **Informing about the potential legal effects of a bill without providing a legal opinion** has created some confusion and contributed to the persisting ambiguity about the purpose of these statements.

Section 4.1 and 4.2 of the *Department of Justice Act*

To understand the persisting ambiguity about the purpose of Charter Statements, it is helpful to contextualize them within the broader obligation vested upon the Minister of Justice (as per section 4.2 of the *Department of Justice Act*), to formally examine any new government bill for potential inconsistency with the Charter (as per section 4.1 of the *Act*).

Under section 4.1 of the *Act*, the Minister of Justice must proceed with a legal analysis of every new government bill to ensure that they are not inconsistent with Charter rights and freedoms. This work is done internally, based on legal advice, and only if an inconsistency with the Charter is identified and the Minister agrees is the Minister obligated to report it to Parliament (which has never occurred).

Department of Justice Act (R.S.C., 1985, c. J-2)

4.1 (1) (...) the Minister shall (...) examine every (...) Bill introduced in or presented to the House of Commons by a minister of the Crown, in order to ascertain whether any of the provisions thereof are inconsistent with the purposes and provisions of the *Canadian Charter of Rights and Freedoms* and the Minister shall report any such inconsistency to the House of Commons at the first convenient opportunity.



THE CONTINUED NEED FOR CHARTER STATEMENTS

While not disclosing the legal advice prepared in accordance with section 4.1, **Charter Statements do articulate the main considerations that informed the Minister of Justice's conclusion that a proposed bill is not inconsistent with the Charter.**

Stakeholders should therefore use these statements accordingly, understanding that they will never identify an inconsistency with the Charter, as this would be done through the process under section 4.1 (1). Along the same lines, Charter Statements do not *guarantee* that a proposed bill is constitutional, as this can only be settled by the courts.

Clarifying the purpose of Charter Statements

In light of these findings, while the overall nature of Charter Statements is fairly well understood, it would serve the interest of all stakeholders to bring further clarity on their intended purpose. Instead of being presented as essentially describing the potential effects that a bill may have on Charter rights and freedoms, **it would appear preferable to emphasize the fact that these statements also articulate the key considerations that support the position of the federal government on the constitutionality of a proposed bill.**

This would address concerns that Charter Statements are biased toward the government, or that they ignore other points of view. When it comes to constitutional law, there will always be varying perspectives, and Charter Statements present one such perspective, namely the position of the federal government.



THE CONTINUED NEED FOR CHARTER STATEMENTS

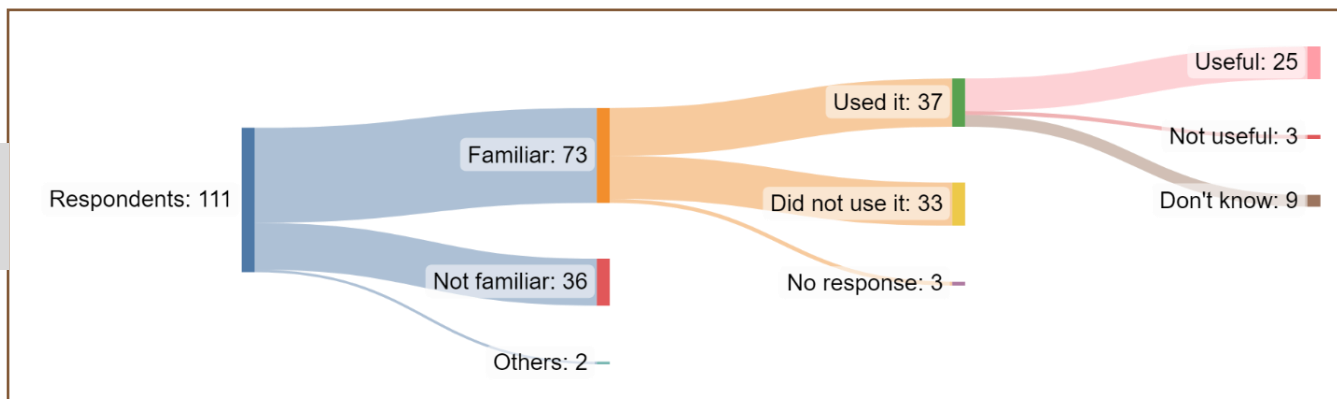
A niche in the legislative process

Evaluation findings indicate that **Charter Statements have found a niche in the legislative process**. A review of parliamentary Hansard has found references to these statements during parliamentary proceedings, especially parliamentary committee hearings.

In addition, and as illustrated in Figure 5, the survey of non-parliamentary stakeholders who engaged in parliamentary committees indicates that **respondents were aware of Charter Statements, and most of those who used them found them useful** (most respondents who did not use them indicated that their participation in a parliamentary committee did not involve a discussion of Charter rights and freedoms).

Finally, evaluation findings indicate that **the courts are also turning to Charter Statements to confirm how a legislative provision may engage Charter rights and freedoms**. This has particularly been the case for court decisions dealing with provisions of the *Criminal Code*. Courts from all levels, including the Supreme Court of Canada, have made reference to these statements in a manner consistent with their purpose.

Figure 5: Extent to which survey respondents have found Charter Statements useful



DESIGN AND DELIVERY • CHARTER STATEMENTS

Justice has established efficient processes and protocols to support the development of Charter Statements. The parliamentary process to adopt new bills can vary greatly and this can affect the timeliness of Charter Statement tabling. Content included within statements can support gender-based analyses by providing insights on how rights and freedoms of Canadians may be engaged by a legislative initiative.

PROCESSES AND PROTOCOLS

Clear and effective processes and protocols have been established to facilitate the drafting and coordination of Charter Statements. Expanding reference documents and templates would further enhance this process.

As section 4.2 of the *Department of Justice Act* provides limited guidance on the form and content of Charter Statements, HRLS in collaboration with other relevant groups within Justice, has incrementally developed the processes and protocols to support a consistent approach to drafting Charter Statements.

As part of this process, **HRLS has developed templates, guidance, and reference documents** that have successfully supported legal counsel assigned to draft Charter Statements.

In addition, **HRLS has assigned a coordinator of Charter Statements, who is supported by a paralegal**, with the responsibility of overseeing and facilitating the various steps and milestones that Charter Statements must successfully complete before they are being tabled in Parliament and released on the website.

Building on these achievements, evaluation findings indicate that **it would be helpful to further expand the reference documents and templates** used by legal counsel drafting Charter Statements. In particular, there is a variety of reference documents on Charter rights and freedoms that are constantly used when identifying the rights engaged by a proposed bill. Further increasing the range of reference documents and templates that can be systematically used when developing the statements is expected to have a direct impact on the effectiveness and efficiency of the process.

ROLES AND RESPONSIBILITIES

Roles and responsibilities for developing Charter Statements are generally well defined and understood. Ensuring that all key stakeholders are aware of their expected contribution requires ongoing attention.

Evaluation findings indicate that the roles and responsibilities of key stakeholders involved in Charter Statements are well defined and understood. This is particularly the case for all those within HRLS, and the legislative drafters from the Legislative Services Branch, who are well aware of the requirement for these statements, and the need to have the process initiated as promptly as possible.

Where some challenges remain is within the LSUs. The extent to which legal counsel working in LSUs engage in legislative initiatives varies greatly. As such, there are some legal counsel who may never participate in a Charter Statement process or may do so sporadically. Yet, early indications to HRLS of possible legislative initiatives greatly support an efficient planning of this process. When legal advice is sought early from HRLS, this automatically signals the potential need for a Charter Statement. However, when no such legal advice is required or sought, and no information is shared on an emerging legislative initiative, this may create more challenges in ensuring that resources are available when the drafting process is initiated, and the Charter Statement must be developed.

During interviews, **it was suggested that ongoing training and awareness activities** would ensure that new and existing legal counsel in LSUs are sufficiently knowledgeable about the process, and of their role as part of it.

TIMELINESS OF CHARTER STATEMENTS

The legislative process used for adopting new bills in Parliament varies greatly, which can affect the timeliness of Charter Statements. Additional factors external to the HRLS may also contribute to issues related to timeliness.

Experience to date

As noted in the description of Charter Statements, Justice has set an operational goal to table statements around the time the second reading process is initiated, to meaningfully inform the ensuing debate. This is in line with the practice in Australia to have statements of the same nature tabled in Parliament.

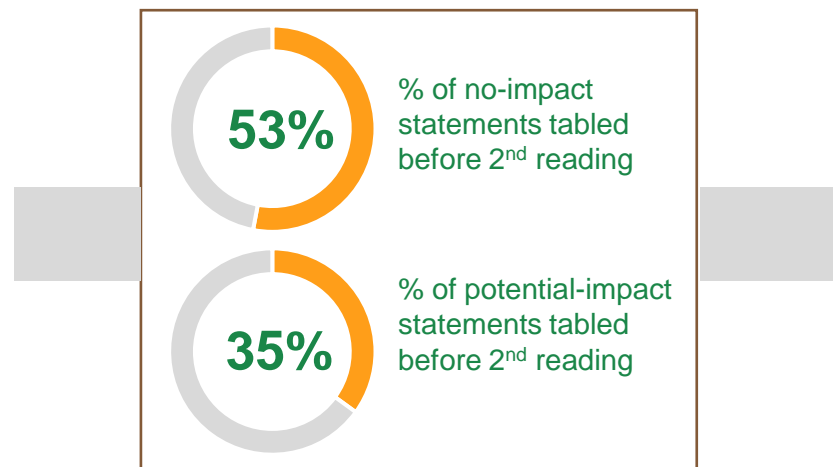
Charter of Human Rights and Responsibilities Act (Australia)



“28 (2) A member of Parliament who introduces a Bill into a House of Parliament, or another member acting on the member's behalf, must cause the statement of compatibility prepared under subsection (1) to be laid before the House of Parliament into which the Bill is introduced before giving the member's second reading speech on the Bill.”

During the period covered by the evaluation, 42% of Charter Statements were tabled before or on the day that the second reading process was initiated. As illustrated in Figure 6, Charter Statements that concluded that a proposed bill had no impact on Charter rights and freedoms tended to be tabled more promptly than those statements indicating potential impacts. This reflects the fact that the latter group typically involves more complex legislative initiatives.

Figure 6: Proportion of Charter Statements tabled before the start of the 2nd reading process (n=106)



Looking at those statements tabled after the start of the second reading process, the median delay was 12 days.

Key factors affecting timeliness

Several factors contribute to the timeliness of Charter Statements, including:

- Complexity of the associated bill;
- Extent to which HRLS was engaged in a timely manner;
- The strategy adopted by Parliament to adopt the bill, recognizing that some bills will pass all three readings the same day, while others will take months to be adopted;
- The tabling process which is outside the control of the Department.

TIMELINESS OF CHARTER STATEMENTS

Findings regarding timeliness of Charter Statements

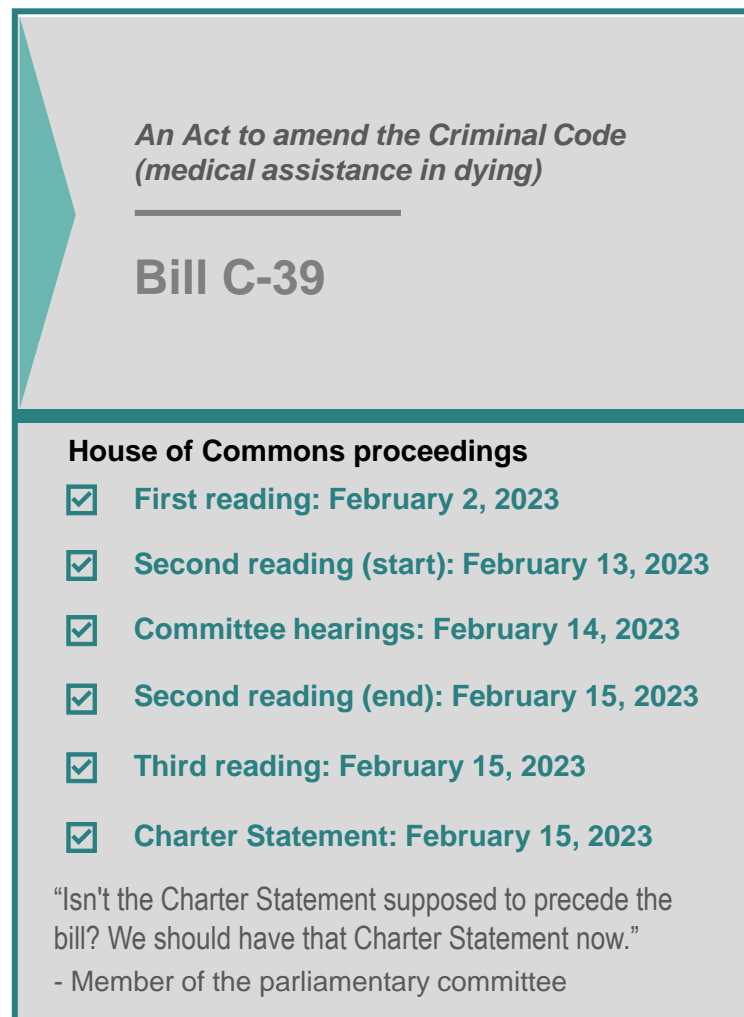
While the majority of Charter Statements were tabled after the start of the second reading process, **evaluation findings indicates that the timeliness of Charter Statements has not been identified a significant concern.**

Looking at the survey of non-parliamentarian stakeholders, 88% of respondents who had used Charter Statements and offered an opinion on their timeliness indicated that they were available in a timely manner some or all the time.

As for parliamentarians, the analysis of their work (as recorded in the Parliament Hansard) indicates that concerns expressed in both houses of Parliament or during parliamentary proceedings tended to address other aspects of the Charter Statement process, such as whether they should be updated following proposed amendments to the bill, or the level of analysis contained in these statements.

This is not to say that the timeliness of a Charter Statement has not been raised during parliamentary debates. The process around Bill C-39 on MAID provides a good illustration of the challenges that may emerge in aligning a Charter Statement with the parliamentary process (see Figure 7). In that case, House of Commons parliamentary committee work was limited to one session held on the evening of February 14, 2023, one day after the start of the second reading process. The bill completed the second and third reading the following day, February 15, 2023, and the Charter Statement was produced on that same day. As such, the statement was essentially in place for the work done in Senate, which began on February 16, and ended on March 9, 2023, but it did not inform the work of the House of Commons committee.

Figure 7: Key Milestones for Bill C-39



GENDER-BASED ANALYSIS PLUS

While a GBA Plus is not undertaken when developing Charter Statements, the previous assessment conducted as part of the policy development process is considered.

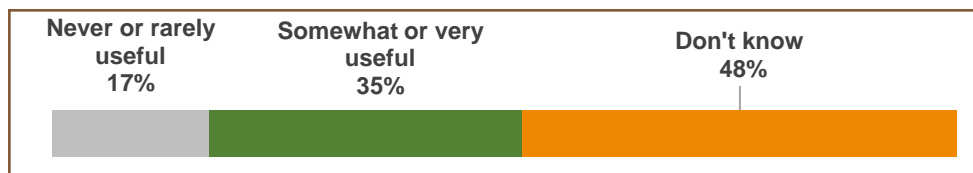
Evaluation findings confirm that Justice does not undertake a GBA Plus when developing Charter Statements. However, HRLS legal counsel may review the GBA Plus that was undertaken as part of the policy development process that led to the applicable memorandum to cabinet (which is a mandatory analysis). As this analysis emphasizes how different groups of Canadians could be impacted by a new bill, it may provide, in turn, **insights on which groups of Canadians may see their rights and freedoms engaged by the proposed bill.**

Some of the stakeholders consulted suggested that it would be helpful for Charter Statements to more readily bridge the information they contain with GBA Plus considerations, as applicable.

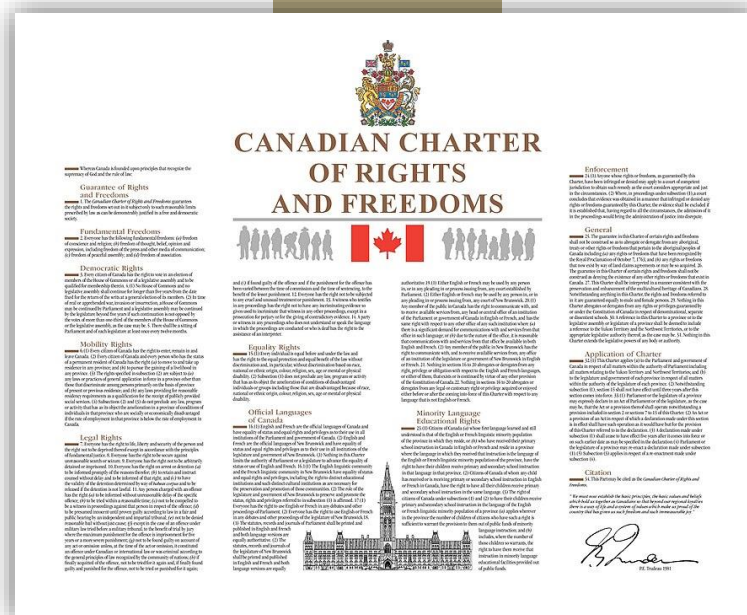
Finally, 35% of respondents from the non-parliamentarian stakeholder survey indicated that Charter Statements had been somewhat or very useful in identifying potential GBA Plus implications of proposed government bills (see Figure 8).

Figure 8: How useful Charter Statements are in identifying potential GBA Plus implications of government bills?

Source: Survey of non-parliamentarian stakeholders (n=75)



GBA PLUS
GENDER-BASED ANALYSIS PLUS



EFFECTIVENESS • CHARTER STATEMENTS

Charter Statements have become an established component of the federal legislative process. They are used by members of parliament, non-parliamentarian stakeholders, and the courts. They inform the legislative process and raise awareness of Charter rights and freedoms. Increasing the awareness of Charter Statements would enhance their contribution and use.

THE USE OF CHARTER STATEMENTS

Charter Statements have established themselves as a component of the parliamentary legislative process. They also serve as reference documents for stakeholders, and for the courts. However, the full extent of their use is unknown.

There are limitations to measuring the extent to which Charter Statements are used. In particular, they may be consulted by a wide range of stakeholders who will not directly reference them in their written documents or when testifying in front of a parliamentary committee. Keeping these limitations in mind, **there is evidence that these statements are used in a variety of ways.**

Who are using Charter Statements

As they are expected to inform parliamentary proceedings related to proposed bills, the primary audience of Charter Statements are the members of Parliament, and the non-parliamentarian stakeholders who engage in this process.

Evaluation findings indicate that these **parliamentarian and non-parliamentarian stakeholders do use Charter Statements, although they rarely make a direct reference to them during parliamentary debates or committees.** The analysis of Parliamentary Hansard concerning 45 government bills tabled in Parliament between December 2015 to September 2023 indicates that :

- 64% of these bills had five or fewer mentions of Charter Statements included in their associated speeches and debates in both the House of Commons and the Senate;
- 85% of the mentions of Charter Statements came from members of parliament;

- 10% of the mentions came from representatives of federal departments and agencies appearing in front of parliamentary committees;
- 5% of the mentions came from non-parliamentarian stakeholders appearing in front of parliamentary committees.

Interestingly, and as illustrated in Figure 5 (page 17), approximately half of the respondents from the survey of non-parliamentarian stakeholders who were familiar with Charter Statements used them, without necessarily making direct references to them.

Courts, at all levels and including the Supreme Court of Canada, are also using Charter statements, primarily to describe how new provisions engage Charter rights and freedoms.

Finally, there are a wide range of other users who consult the website where all Charter Statements are made available.

Between December 2020 and August 2023, over 1 million visits were registered on that website, with an annual average of more than 300,000 unique visitors.

On average, more than 300,000 unique visitors consult the Charter Statements website yearly, the vast majority of whom are from outside the federal government.

THE USE OF CHARTER STATEMENTS

How are Charter Statements used in Parliament?

As previously noted, members of Parliament are the ones who most often make direct references to Charter Statements in their speeches, or during parliamentary committee hearings. Because of the nature of parliamentary debates, **comments made in relation to Charter Statements tend to be divided along partisan lines**, with opposition parties questioning these statements, and the governing party supporting them.

During the period covered by the evaluation, the proposed changes to the *Broadcasting Act* dealing with streaming platforms, and the legislative initiatives on MAID triggered more than half of all references to Charter Statements in the parliamentary Hansard.

In the case of the changes to the *Broadcasting Act*, it is the issue of **whether Charter Statements should be updated that became a focal point of debate**. Following a proposed amendment to the bill (Bill C-10), there were persistent demands from opposition parties to update the Charter Statement. Ultimately, the federal government tabled an “explanatory document” that contained further details on the analysis included in the original Charter Statement. In addition, the Minister of Justice and the Deputy Minister of Justice, agreed to appear in front of the of parliamentary committee to discuss the Charter Statement and its explanatory document.

Having an explanatory document issued or having the Minister appearing with the Deputy Minister to discuss a Charter Statement, have proven to be exceptional cases.

In the case of MAID, the Charter Statement prepared for Bill C-7 was particularly used during parliamentary discussions on the bill's proposed exclusion of individuals whose sole medical condition was a mental illness. Whether there was agreement or not with the analysis contained, **there is evidence that the statement directly informed these discussions**. When the government decided to extend this exclusion through Bill C-39, it is the absence of a Charter Statement during parliamentary hearings that was noted (see Figure 7 on page 21).

As for the debates on other bills, references to Charter Statements have tended to be of a descriptive nature, essentially referencing them to note that a proposed bill is potentially engaging a Charter right or freedom and, in some cases, questioning the analysis they contain.

“

“There are going to be legal experts who say there isn't enough in the Charter Statement to say that the bill is completely in conformity with the Charter, and that's never the case with any Charter Statement. There will be different legal opinions, depending on the weight any particular legal scholar, commentator or lawyer puts on any particular factor. I leave it to the lawyers, legal scholars and other experts to do that weighing in the public sphere.”

- Minister of Justice, Debate on Bill C-10 amending the *Broadcasting Act*, May 2021

THE USE OF CHARTER STATEMENTS

Other uses of Charter Statements

Even if they rarely make direct references to them, **non-parliamentarian stakeholders use Charter Statements for their own internal analysis**. As illustrated in Figure 9, survey respondents who used these statements found them generally useful in determining which provisions of a proposed bill may engage Charter rights and freedoms, the potential impact that may result, and the considerations behind the government's position that the proposed bill is not inconsistent with these rights.

Along the same lines, representatives from Justice who were consulted indicated that **Charter Statements are used for internal processes**, such as developing briefing notes, preparing appearances in front of parliamentary committees, responding to questions raised by client departments and agencies.

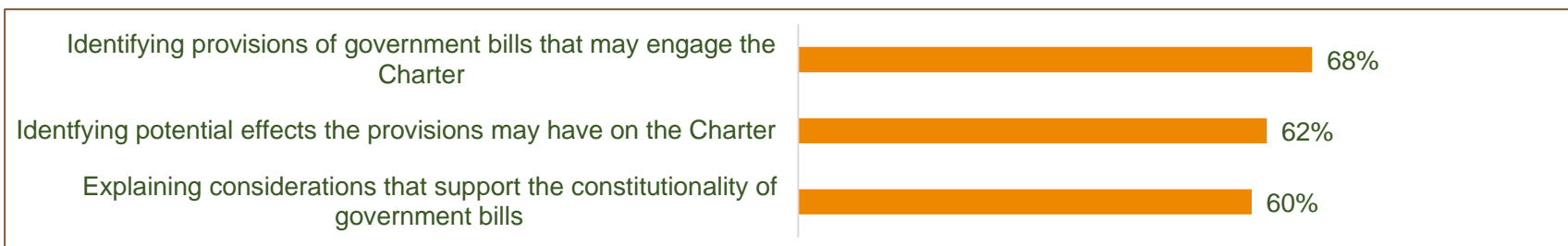
A review of published court decisions between 2019 and 2023 identified 23 instances where Charter Statements were cited.

Courts have largely used the applicable statement as references to describe how new provisions, typically in the Criminal Code, engage Charter rights and freedoms. Courts have been careful to not equate these statements as communicating the ultimate intent of the legislator, recognizing that they are instead provided to inform the legislative debate, and that the new provisions may vary from the original bill upon which the statement is based.

Finally, **Charter Statements have found their way into peer-reviewed publications and grey literature** addressing Charter rights and freedoms. Here again, they are used either in a descriptive fashion, or their content is challenged by authors offering diverging views.

Figure 9: Of those survey respondents who used Charter Statements, the following percentages found them useful for:

Source: Survey of non-parliamentarian stakeholders (n=37)



CONTRIBUTION TO OPENNESS AND TRANSPARENCY

Charter Statements contribute to the openness and transparency of the legislative process by facilitating the debate on proposed legislative initiatives. Increasing the awareness of these statements would enhance their contribution.

No impact without awareness

Evaluation findings confirm that Charter Statements have become an established component of the federal legislative process. Parliamentarians have made references to them, and most non-parliamentarian stakeholders who knew about these statements and used them have found them helpful.

While statistics on the Charter Statements website indicate a fair amount of ongoing traffic, **evaluation findings indicate that having more sustained efforts to make these statements known would be beneficial**. As noted during interviews, Justice used to be more proactive in informing the public about new Charter Statements, through posts on social media for instance. At the time of the evaluation, there were no such efforts in place. Simply expecting stakeholders, particularly those outside Parliament, to follow the activities in Parliament, or to systematically consult the dedicated website, is not seen as sufficient.

Current structure and format

Varying views have been expressed on the extent to which the current structure and format of Charter Statements support the achievement of their intended purpose. While some stakeholders are satisfied with the current approach, others are calling for more detailed analyses to be included.

A closer examination of the views offered indicates that they are largely shaped by the initial expectations associated with these documents. For those seeking a formal legal advice, with assessments of legal risks, the current structure and format are necessarily falling short. For those who wish to better understand how Charter rights and freedoms are engaged by a bill, and what key considerations were used by the federal government to conclude that a bill is not inconsistent with the Charter, the current structure and format tend to be satisfactory.

On that basis, evaluation findings indicate that further clarifying the purpose of Charter Statements will, in turn, help to manage expectations about their structure and format.

Should Charter Statements be updated?

As previously noted, a large portion of parliamentary debates related to Charter Statements focused on whether they should be updated when significant amendments are made to a bill. While having Charter Statements that constantly reflect the content of a proposed bill, including its amendments, may be the subject of parliamentary debates, this falls outside Justice's mandate.

Amendments to a bill that are proposed by Parliament are Parliament's responsibility. If further information regarding potential effects of amendments is wanted, this could be obtained through Parliamentary resources (e.g. law clerks). Ultimately, Justice's mandate is not to provide legal support to Parliament, including parliamentary committees, but to support the Minister as part of the Government of Canada.

CONTRIBUTION TO OPENNESS AND TRANSPARENCY

Are Charter Statements informing parliamentary and public debate?

As noted during interviews, Charter Statements are tied to a parliamentary process that is complex, hardly predictable, and entrenched along partisan lines.

While evidence confirms that Charter Statements are informing some of this debate, their impact can only be assessed in this broader context where some stakeholders will systematically question these statements, while others will systematically support them. **Put simply, it is challenging to obtain views that are entirely free of vested interests when it comes to assessing the contribution of Charter Statements.**

Ultimately, however, in the absence of the Charter Statements requirement, **stakeholders would have no alternative means by which they could be systematically advised of the key considerations that informed the Minister of Justice's view that a bill is not inconsistent with the Charter.**

Removing the Charter Statements requirement would only leave the obligation found in section 4.1 of the *Department of Justice Act* to examine any new bill for its inconsistency with the Charter, a process that is purely internal and protected by solicitor-client privilege.



EFFICIENCY • CHARTER STATEMENTS

Justice established an efficient operational framework to support the development of Charter Statements. However, since no additional financial resources have been allocated to support this work, there is a need to monitor the demand that this places on HRLS to ensure that Charter Statements continue to be provided in a manner consistent with their purpose.

EFFICIENCY OF THE PROCESS

Justice has established an efficient process for supporting the development of Charter Statements. While no additional resources were allocated for this process, the department has successfully met the demand placed by this requirement.

Processes and protocols in place

As previously noted, **Justice has incrementally built an efficient process to support the implementation of the Charter Statements legislative requirement.** At the time of the evaluation, the Department had successfully developed over 140 Charter Statements prepared by HRLS legal counsel, with the support of a dedicated coordination team, and of other groups within Justice.

Having HRLS systematically informed of any emerging legislative initiative is seen as particularly critical to ensure that resources are available for the purpose of developing these statements. As was noted during interviews, this work represents only a portion of the mandate of HRLS, which must provide ongoing legal advice on Charter-related issues.

Evaluation findings indicate that the current communications between legislative drafters and HRLS are working well and contribute greatly to the efficiency of the process. **Ensuring the legal counsel in all LSUs are also aware of the need to engage HRLS early in any new legislative initiative is one area that could be further strengthened.**

Financial resources

Figures 3 and 4 (page 12) confirm that the level of effort dedicated to Charter Statements has steadily increased over the first four years of the evaluation period. Yet, **no new resources were allocated to Justice to support this process.** Since HRLS is largely responsible for developing these statements, the Section has had to redirect resources for this work.

During interviews, it was noted that HRLS, already facing high levels of demand for its services, finds itself under considerable pressure at times to ensure that Charter Statements are ready in a timely manner for the Minister.

While the experience acquired to date has allowed the Department to fine-tune its processes, **ongoing monitoring would provide the necessary information to help ensure Justice has the required resources to prepare Charter Statements in a timely manner, so that they can continue to serve their intended purpose.**

CONCLUSIONS AND RECOMMENDATIONS • CHARTER STATEMENTS



CONCLUSIONS

As a requirement under the *Department of Justice Act*, Charter Statements have become a routine component of the federal legislative process. Justice has supported the Minister of Justice to ensure that he can successfully fulfil his legal obligation.

The experience gained to date with Charter Statements indicates that there is still some ambiguity regarding the exact nature of these documents. While not legal advice, they are nonetheless describing legal considerations regarding the ways in which a bill may engage Charter rights and freedoms, and the key considerations that support their constitutionality. In this context, the evaluation points to the need to further clarify the intended purpose of Charter Statements.

Justice has established an efficient process for the development of Charter Statements. Expanding the reference documents and templates available for those involved in preparing them will further support the efficiency of this process.

Other Justice groups, notably LSUs, play an important role in supporting the work of HRLS in drafting Charter Statements. Having legal counsel in LSUs maintain a high level of awareness and understanding of the Charter Statements requirement and their role in the drafting process is key to fulfilling this obligation.

While they may find themselves at the centre of parliamentary debates, Charter Statements have added new considerations that have helped to inform discussions on Charter rights and freedoms and potential effects. Non-parliamentarian stakeholders have also turned to these statements to inform their work, and the courts have considered them in examining new legislative provisions.

As considerable efforts are put into these Charter Statements, ongoing efforts are required to ensure that stakeholders are aware of them for all new bills, and that these statements are used in accordance with their intended purpose.

RECOMMENDATIONS

Based on the findings described in the report, the following recommendations are made:

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.
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.
3. The Public Law and Legislative Services 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.
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.

APPENDICES • CHARTER STATEMENTS



APPENDIX A - METHODOLOGY

The evaluation questions identified for the purpose of this evaluation were addressed through the following six methods

Document review



The document review covered both documents internal to Justice, such as the Performance Information Profile for Advisory Services, and documents produced by HRLS to support the development of Charter Statements, along with other relevant sources, such as peer-reviewed publications and grey literature addressing Charter Statements. This task also included a review of court decisions that referred to Charter Statements. A thematic analysis was completed to summarize relevant findings.

Administrative data review



The administrative data review included data obtained from Justice's Departmental Business Analytics System (Explore). Data was extracted from Explore's Data Warehouse via Tableau, which included data from iCase, LEX, the Integrated Financial and Material System (IFMS), and the Human Resources Management System (HRMS). iCase and LEX data were extracted as of September 2023. Additional administrative data included the Charter Statement tracker in Excel used by HRLS, Justice website analytics and other relevant data as available.

Content analysis



A content analysis was undertaken, and it included a review of parliamentary debates and testimonies in front of parliamentary committees studying proposed bills to identify references to Charter Statements. With the support of Justice's Business Analytics Centre, a total of 669 mentions were gathered. These were analyzed and categorized based on predetermined criteria, including purely descriptive statements (e.g., "we are tabling the Charter Statement for Bill X"), statements about the process (e.g., inquiring about the expected date for the tabling of a Charter Statements, or asking for a new Charter Statement), and discussions about the content of a Charter Statement (e.g., supporting or challenging the conclusions of a Charter Statement).

Key informant interviews



A total of 33 semi-structured interviews were conducted. They included 8 interviews with representatives from HRLS (managers, legal counsel, paralegal), 13 interviews with legal counsel assigned to LSUs, 8 interviews with representatives from the Library of Parliament, and 5 interviews with other Justice groups (e.g., centres of expertise). A thematic analysis was performed on the findings from the interview, using the evaluation questions and indicators as the overall analytical framework. The analytical process was performed using the NVivo software.

APPENDIX A - METHODOLOGY

Electronic survey



A survey of non-parliamentary stakeholders was conducted. The list of respondents included individuals who appeared in front of a parliamentary committee studying a new bill within the previous five FYs. This included a range of stakeholders such as representatives from non-profit organizations, corporate organizations, expert witnesses and unions. The survey was administered electronically in both English and French. It included mainly close-ended questions, with one open ended-question. A total of 111 individuals completed the survey questionnaires, for a response rate of 18%. Results from the survey were analyzed based on the categories of key informants. The main purpose of the survey was to obtain insights from the public on how Charter Statements are used when they engage in the parliamentary process.

Case studies



A total of three case studies were conducted, each addressing a specific legislative initiative. The goal was to select cases that had identified potential effects on Charter rights and freedoms, and where Charter Statements attracted higher levels of attention. The three initiatives selected were medical assistance in dying (bills C-14, C-7, and C-39), administrative segregation (Bill C-83), and changes to the *Broadcasting Act*, (bills C-10 and C-11). In each case, relevant findings from the interviews, the document review, the content analysis, and other publicly available information were used to provide a more detailed understanding of Charter Statements and the impact they had.

Limitations and mitigation strategies

Administrative data

The administrative data provided important information on the level of effort that Justice is dedicating to Charter Statements. However, it did not include the contribution of all Justice groups, nor did it provide a file-specific data (e.g., level of effort per Charter Statement). This limitation was mitigated through the evidence collected through other lines of evidence, particularly through interviews.

Insights from key stakeholders

Charter Statements are expected to enhance the awareness related to human rights and freedoms among key stakeholders involved in parliamentary proceedings related to legislative initiatives, including members of parliament, non-parliamentary stakeholders, and the public. The evaluation gathered perceptions and opinions of a number of these stakeholders, but not all. In particular, no direct consultations were held with members of parliament, and a portion of non-parliamentarian stakeholders were consulted. This limitation was largely mitigated by the document review and the content analysis.