

Charter Statements

Charter Statements are documents prepared by the Minister of Justice upon the introduction of a new bill. They are a tool designed to reassure the public that the government has considered potential constitutional problems that may arise as a result of its proposed law. A Charter Statement notes the potential constitutional issues that the legislation may present, and how these issues could be justified. However, a Charter Statement itself will not explicitly say if a *Charter* right would be violated by a provision in the bill that is proposed.

Under section 4.1.1 the *Department of Justice Act*, it is the responsibility of the Minister of Justice to ensure that bills introduced into Parliament comply with the *Charter*.^[1] Charter Statements are one way of doing this. Therefore, to ensure that the public is aware that the government has taken its responsibility seriously, it has tabled Bill C-51 - *An Act to Amend the Criminal Code and Department of Justice Act*. This Bill states that Charter Statements will become mandatory for every piece of legislation introduced once it is passed. As stated by the current government, “[r]equiring the introduction of a Charter Statement for every new Government bill represents a new, more open and more transparent way of demonstrating respect for the Charter.”^[2]

The practice of identifying a bill’s constitutionality has manifested in different ways before the introduction of Bill C-51. Before the use of Charter Statements, ministers presenting new bills gave their implicit approval of a new bill’s constitutionality. Academic James Kelly points out that “Charter vetting” has always been a mandatory practice, as “[a] department cannot submit a memorandum to cabinet unless the DOJ [Department of Justice] has assessed the risk of judicial invalidation and must certify its constitutionality.”^[3]

An Example of a Charter Statement: Bill C-45

Charter Statements are a separate document that accompanies a bill upon its introduction to the House of Commons. Every Charter Statement begins with an explanatory note, stating the purpose of a Charter Statement, which is the same for each bill. This note makes clear that the statement is not a comprehensive overview of *Charter* considerations, as bills see a number of amendments from their first reading in the House of Commons to their Royal Assent. It also identifies section 1 of the *Charter* as a balancing mechanism, noting that even though there may be a violation of the *Charter* in the proposed legislation, it may be one that can be justified by the government. Further, each Charter Statement makes a point of including that a Statement “is not a legal opinion on the constitutionality of the Bill.”^[4]

Following this explanatory note is a brief explanation of the bill’s purpose, along with an overview of the *Charter* “engagements” the bill presents. For example, in Bill C-45, the *Cannabis Act*, potential engagements with the *Charter* are categorized by different topics the legislation addresses. Some of these include criminal offences created through the Bill, restrictions on promotion/packaging/labeling, and “ticketable offences and

administrative monetary penalties”. Regarding criminal offences, the Statement identifies that these provisions could engage section 7 of the *Charter*, which deals with life, liberty, and security of person. The statement explains what section 7 of the *Charter* is, and that “[a]ny criminal prohibition that gives rise to the possibility of imprisonment engages the section 7 right[.]”^[5] It also provides considerations that support the consistency of the provisions with the *Charter* that potentially engage section 7, citing case law and explanation. Therefore, the Charter Statement points out that the criminal offences provisions in Bill C-45 may engage section 7 of the *Charter*, letting the public know that this is a possibility, not a certainty. In short the government has, as a matter of its accountability to the public, considered this possibility and nonetheless feels confident in tabling the Bill.

[1]James B. Kelly, “Parliament and the Charter of Rights: An Unfinished Constitutional Revolution” *Policy Options* 1 February 2007, online <http://policyoptions.irpp.org/magazines/the-charter-25/parliament-and-the-charter-of-rights-an-unfinished-constitutional-revolution/>[Parliament and the Charter of Rights]

[2]Department of Justice Canada, “Cleaning up the *Criminal Code*, Clarifying and Strengthening Sexual Assault Law, and Respecting the Charter” *Government of Canada* 07 June 2017, online <https://www.canada.ca/en/department-justice/news/2017/06/cleaning_up_the_criminalcode_clarifyingandstrengtheningsexualassa.html>

[3]*Ibid.*

[4]Department of Justice, “Bill C-45: *An Act respecting cannabis and to amend the Controlled Drugs and Substances Act, the Criminal Code and Other Acts*” *Government of Canada* 29 May 2017, online <<http://www.justice.gc.ca/eng/csjsjc/pl/charter-charte/c45.html>>

[5]*Ibid.*