

Court File No. T-2225-12

FEDERAL COURT

BETWEEN:

EDGAR SCHMIDT

Plaintiff

And

The ATTORNEY-GENERAL OF CANADA

Defendant



STATEMENT OF CLAIM

1. The plaintiff is a federal public servant serving as general counsel in the Legislative Services Branch of the Department of Justice (Canada) (the "Department") and is a citizen of Canada.
2. The Attorney General of Canada is named as defendant because, under subsection 23(1) of the *Crown Liability and Proceedings Act*, he can be named as defendant on behalf of the state. The particular state actors whose duties and actions are at issue in this action, and on whose behalf the Attorney General is named as defendant, are the Minister of Justice (the "Minister") and the Deputy Minister of Justice (the "Deputy Minister").
3. The duties of the plaintiff have included and continue to include participation in the carrying out, on behalf of or in the name of the Minister and the Deputy Minister, of examinations of proposed legislation under section 3 of the *Canadian Bill of Rights* (the "Bill of Rights"), under section 4.1 of the *Department of Justice Act* (the "DOJ Act"), and under subsections 3(2) and (3) of the *Statutory Instruments Act* (the "SI Act"). (The provisions under the three Acts mentioned will be referred to collectively as the "statutory examination provisions").

4. The plaintiff claims standing in this action both
- as an employee in the federal public administration whose duties include participation in the performance of the obligations under the statutory examination provisions and who seeks the assistance of this Court so that he may perform those duties in accordance with law; and
 - as a citizen of Canada whose human rights and democratic interests are to be protected by due performance of the obligations of the Minister and Deputy Minister under the statutory examination provisions.
5. In 1960, by section 3 of the Bill of Rights, the Minister of Justice was given certain duties related to the examination of proposed regulations and bills in connection with the Bill of Rights. That section, when it was first enacted, read as follows:

Duties of Minister of Justice	Devoirs du ministre de la Justice
3. The Minister of Justice shall, in accordance with such regulations as may be prescribed by the Governor in Council, examine every proposed regulation submitted in draft form to the Clerk of the Privy Council pursuant to the <i>Regulations Act</i> and every Bill introduced in or presented to the House of Commons, in order to ascertain whether any of the provisions thereof are inconsistent with the purposes and provisions of this Part [the Bill of Rights] and he shall report any such inconsistency to the House of Commons at the first convenient opportunity.	3. Le ministre de la Justice doit, en conformité de règlements prescrits par le gouverneur en conseil, examiner toute proposition de règlement soumise, sous forme d'avant-projet, au greffier du Conseil privé, selon la <i>Loi sur les règlements</i>, comme tout projet ou proposition de loi soumis ou présenté à la Chambre des communes, en vue de constater si l'une quelconque de ses dispositions est incompatible avec les fins et dispositions de la présente Partie [la <i>Déclaration canadienne des droits</i>], et il doit signaler toute semblable incompatibilité à la Chambre des communes dès qu'il en a l'occasion.

6. In 1972, the Deputy Minister was, by subsections 3(2) and (3) of the SI Act, given duties related to the examination of proposed regulations in connection with four issues, two of which were set out in paragraphs 3(2)(a) and (c) and concerned statutory authorization for the regulation and its consistency with the Bill of Rights. When first enacted, the subsections read as follows:

Examination	Examen
(2) Upon receipt by the Clerk of the Privy Council of copies of a proposed regulation pursuant to subsection (1), the Clerk of the Privy Council, in consultation with the Deputy Minister of Justice, shall examine the proposed regulation to ensure that (a) it is authorized by the statute pursuant to which it is to be made; ... (c) it does not trespass unduly on existing rights and freedoms and is not, in any case, inconsistent with the purposes and provisions of the <i>Canadian Bill of Rights</i>; and ...	(2) Au reçu des copies d'un projet de règlement en application du paragraphe (1), le greffier du Conseil privé doit, en collaboration avec le sous-ministre de la Justice, examiner le projet de règlement afin de s'assurer a) qu'il est autorisé par la loi en application de laquelle il doit être établi; ... c) qu'il n'empiète pas indûment sur les libertés et les droits existants et n'est, en aucun cas, incompatible avec les fins et les dispositions de la <i>Déclaration canadienne des droits</i>; et ...
Advise regulation-making authority (3) When a proposed regulation has been examined as required by subsection (2), the Clerk of the Privy Council shall advise the regulation-making authority that the proposed regulation has been so examined and shall indicate any matter referred to in paragraph (a), (b), (c) or (d) of that subsection to which, in the opinion of the Deputy Minister of Justice, based on such examination, the attention of the regulation-making authority should be drawn.	Avis à l'autorité réglementante (3) Lorsqu'un projet de règlement a été examiné comme l'exige le paragraphe (2), le greffier du Conseil privé doit aviser l'autorité réglementante que le projet de règlement a été ainsi examiné et indiquer toute question mentionnée aux alinéas a), b), c) ou d) de ce paragraphe sur laquelle il faudrait, de l'avis du sous-ministre de la Justice fondé sur cet examen, attirer l'attention de l'autorité réglementante.

7. In 1985, by section 4.1 of the DOJ Act, the Minister was given certain duties related to the examination of regulations and bills in connection with the *Canadian Charter of Rights and Freedoms* (the “Charter”). That section, when it was first enacted, read as follows:

Duties of Minister of Justice 4.1 (1) Subject to subsection (2), the Minister of Justice shall, in accordance with such regulations as may be prescribed by the Governor in Council; examine every regulation transmitted to the Clerk of the Privy Council for registration pursuant to the <i>Statutory Instruments Act</i> and 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 <i>Canadian Charter of Rights and Freedoms</i> and he shall report any such inconsistency to the House of Commons at the first convenient opportunity. Exception (2) A regulation need not be examined in accordance with subsection (1) if prior to being made it was examined as a proposed regulation in accordance with section 3 of the <i>Statutory Instruments Act</i> to ensure that it was not inconsistent with the purposes and provisions of the <i>Canadian Charter of Rights and Freedoms</i>.	Devoirs du ministre de la Justice 4.1 (1) Sous réserve du paragraphe (2), le ministre de la Justice doit, en conformité de règlements prescrits par le gouverneur en conseil, examiner tout projet de règlement transmis au greffier du Conseil privé pour enregistrement, en application de la <i>Loi sur les textes réglementaires</i>, ainsi que tout projet ou proposition de loi soumis ou présentés à la Chambre des communes par un ministre fédéral en vue de rechercher si l’une quelconque de ses dispositions est incompatible avec les fins et dispositions de la <i>Charte canadienne des droits et libertés</i>, et faire rapport de toute incompatibilité dans les meilleurs délais possible. Exception (2) Il n’est pas nécessaire de procéder à l’examen prévu par le paragraphe (1) si, avant son établissement, le règlement a été examiné, sous forme de projet, en application de l’article 3 de la <i>Loi sur les textes réglementaires</i> afin de vérifier sa compatibilité avec les fins et les dispositions de la <i>Charte canadienne des droits et libertés</i>.
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8. The statutory examination provisions were amended in various ways since their initial enactment, the most significant amendments being

- a. those in 1972 to section 3 of the Bill of Rights to change the scope of examination of regulations under that section from *proposed* regulations to *registered* regulations (the intention being that the examination under the SI Act provisions then enacted of *proposed* regulations would identify any inconsistencies with the Bill of Rights and bring them to the notice of the regulation-making authority so that they might be corrected while the examination under the Bill of Rights would be of the regulations as made and *registered* and would either confirm consistency with the Bill of Rights or result in a report to the House of Commons of any inconsistency); and
 - b. those in 1985 to section 3 of the Bill of Rights which reduced the scope of bills to be examined to government-sponsored bills (formerly all bills, including private members' bills were to be examined) and which made it non-obligatory to examine a regulation under the Bill of Rights if it had been examined under the SI Act (similar to what was enacted in subsection 4.1(2) of the DOJ Act).
9. For convenience of reference, the current texts of the statutory examination provisions and the current texts of the regulations made under section 3 of the Bill of Rights and section 4.1 of the DOJ Act are provided in the Annex to this statement of claim.
10. It is not practical for the Minister and Deputy Minister to personally perform all aspects of their duties under the statutory examination provisions; they must rely on legal counsel employed in the Department to support them in the performance of those duties.
11. Specifically, the Minister's and Deputy Minister's duties
- a. in relation to the examinations under the statutory examination provisions are mostly carried out initially by legislative counsel in the Legislative Services Branch of the Department, with the assistance as

needed of colleagues in the Department, particularly those in the Human Rights Law Section; and

- b. in relation to the signatures of certifications referred to in the regulations made under section 3 of the Bill of Rights and section 4.1 of the DOJ Act, are mostly carried out by the Chief Legislative Counsel under an authorization from the Deputy Minister.

12. Since about 1993, with the knowledge and approval of the Deputy Minister, an interpretation of the statutory examination provisions has been adopted in the Department to the effect that what they require is the formation of an opinion as to whether any provision of the legislative text being examined is *manifestly* or *certainly* inconsistent with the Bill of Rights or the Charter and, in the case of proposed regulations, whether any provision is *manifestly* or *certainly* not authorized by the Act under which the regulation is to be made.

13. Specifically, with regard to its examination under the Bill of Rights, if it is the opinion of counsel in the Department that

- a. a provision is likely or even almost certainly inconsistent with the Bill of Rights — even if the probability of inconsistency is 95% or more —, but
- b. some argument can reasonably be made in favour of its consistency — even if all arguments in favour of consistency have a combined likelihood of success of 5% or less —,

no advice is given to the Minister that he or she — unless he or she forms a different opinion — has a duty to report to the House of Commons about that provision and therefore no report is made to that House.

14. Specifically, with regard to its examination under the DOJ Act in relation to the Charter, if it is the opinion of counsel in the Department that

- a. a provision is likely or even almost certainly inconsistent with the Charter — even if the probability of inconsistency is 95% or more —, but
- b. some argument can reasonably be made in favour of its consistency — even if all arguments in favour of consistency have a combined likelihood of success of 5% or less —,

no advice is given to the Minister that he or she — unless he or she forms a different opinion — has a duty to report to the House of Commons about that provision and therefore no report is made to that House.

15. Specifically, with regard to the examination under the SI Act in relation to the Bill of Rights and the Charter, if it is the opinion of counsel in the Department that

- a. a provision is likely or even almost certainly inconsistent with the Bill of Rights or the Charter, but
- b. some argument can reasonably be made in favour of its consistency — even if all arguments in favour of consistency have only a remotely imaginable likelihood of success —,

no advice is given to the Deputy Minister that he or she — unless he or she forms a different opinion — has a duty to communicate the concern to the Clerk of the Privy Council as a matter to which the attention of the regulation-making authority should be drawn and therefore no report is made to the Clerk and through the Clerk to the regulation-making authority.

16. Specifically, with regard to the examination under the SI Act in relation to the question of whether a proposed regulation is authorized by the Act under which it is to be made, if it is the opinion of counsel in the Department that

- a. a provision is likely or even almost certainly not so authorized, but

- b. some argument can reasonably be made in favour of its being authorized — even if all arguments in favour of it being authorized have only a remotely imaginable likelihood of success —,

no advice is given to the Deputy Minister that he or she — unless he or she forms a different opinion — has a duty to communicate the concern to the Clerk of the Privy Council as a matter to which the attention of the regulation-making authority should be drawn and therefore no report is made to the Clerk and through the Clerk to the regulation-making authority.

17. With the authorization and approval of the Deputy Minister, legal counsel in the Department have been directed to do their work of examination under the statutory examination provisions in accordance with the standard and in the manner described in paragraphs 12 to 16 above.

18. In essence, the interpretation, practice and directions described in paragraphs 12 to 17 above have unlawfully transformed the examinations under the statutory examination provisions. The provisions require an examination whose core question is whether a proposed bill or regulation is consistent with the Bill of Rights and Charter or not and, in the case of regulations examined under the SI Act, whether they are authorized or not. Instead the examinations are now focused on the core question of whether there is any possibility (even if the possibility is very slender) that a proposed bill or regulation is consistent with the Bill of Rights and Charter or not and, in the case of regulations examined under the SI Act, whether there is any possibility (even if the possibility is very slender) that they are authorized or not.

19. The interpretation described in paragraph 12 is in error.

20. The practice described in paragraphs 13 to 16 is inconsistent with the Minister's and Deputy Minister's obligations under the statutory examination provisions and for that reason is unlawful.

21. The directions described in paragraph 17 are contrary to the requirements of the statutory examination provisions and for that reason are unlawful.
22. Because of this, the Minister and Deputy Minister have — since the adoption of the interpretation and practices and the giving of the directions described in those paragraphs — been systematically in default of their lawful duties and continue to be so.
23. The plaintiff pleads and relies on the statutory examination provisions.
24. The plaintiff pleads and relies on section 12 of the *Interpretation Act*.
25. The plaintiff relies on the law relating to legislative interpretation and in particular the oft approved summary of the interpretive task to the effect that the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament.
26. The plaintiff has brought the matters set forth in this claim to the attention of the Deputy Minister (as well as to the attention of the Chief Legislative Counsel and the Associate Deputy Minister to whom the Chief Legislative Counsel reports), but no action has been taken by the Minister or the Deputy Minister to bring the conduct of examinations under the statutory examination provisions into conformity with law.
27. The plaintiff therefore asks this court for the following relief:
- a. a declaration that the interpretation of the statutory examination provisions (as described in paragraph 12) and the practice adopted in the Department (as described in paragraphs 13 to 16) under the authority of the Minister and Deputy Minister are in error;
 - b. a declaration that the directions described in paragraph 17 are contrary to law;

- c. a declaration that examinations that have been conducted in accordance with the interpretation and practice described in paragraphs 12 to 16 and the directions described in paragraph 17 were not conducted in conformity with the statutory examination provisions;
- d. a declaration that section 3 of the Bill of Rights requires at least the following:
 - i. a careful examination of the relevant legislative text;
 - ii. the formation, acting in good faith toward Parliament and the persons whose rights are protected by the Bill of Rights, of a considered opinion as to whether any provision of the relevant legislation is more-likely-than-not inconsistent with the Bill of Rights;
 - iii. a report to the House of Commons that it is the opinion of the Minister of Justice that a provision of the relevant legislation is more-likely-than-not inconsistent with the Bill of Rights in any case where the Minister, acting in good faith as stated above, has formed such an opinion.
- e. a declaration that section 4.1 of the DOJ Act requires at least the following:
 - i. a careful examination of the relevant legislative text;
 - ii. the formation, acting in good faith toward Parliament and the persons whose rights are protected by the Charter, of a considered opinion as to whether any provision of the relevant legislation is more-likely-than-not inconsistent with the Charter;
 - iii. a report to the House of Commons that it is the opinion of the Minister of Justice that a provision of the relevant legislation is

more-likely-than-not inconsistent with the Charter in any case where the Minister, acting in good faith as stated above, has formed such an opinion.

- f. a declaration that subsections 3(2) and (3) of the SI Act require at least the following:
 - i. a careful examination of the relevant proposed regulation;
 - ii. the formation, acting in good faith toward Parliament, of a considered opinion as to whether any provision of the proposed regulation is, more-likely-than-not, not authorized by the enabling legislation under which it is to be made;
 - iii. the formation, acting in good faith toward Parliament and the persons whose rights are protected by the Bill of Rights and the Charter, of a considered opinion as to whether any provision of the proposed regulation is more-likely-than-not inconsistent with the Bill of Rights or the Charter;
 - iv. a communication to the Clerk of the Privy Council — as a matter to which the attention of the regulation-making authority should be drawn — of the fact that the Deputy Minister is of the opinion that a provision of the relevant legislation is more-likely-than-not not authorized by the enabling legislation under which it is to be made or is more-likely-than-not inconsistent with the Bill of Rights or the Charter in every case where the Deputy Minister, acting in good faith as stated above, has formed such an opinion; and

g. Costs on a solicitor and own client basis.

The plaintiff proposes that this action be tried at Ottawa, Ontario.

December 13, 2012

A handwritten signature in black ink, appearing to be 'ES', written over a horizontal line.

(Signature of plaintiff, Edgar Schmidt)

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Annex to Statement of Claim

The Statutory Examination Provisions

Section 3 of the Canadian Bill of Rights	
Duties of Minister of Justice 3. (1) Subject to subsection (2), the Minister of Justice shall, in accordance with such regulations as may be prescribed by the Governor in Council, examine every regulation transmitted to the Clerk of the Privy Council for registration pursuant to the Statutory Instruments Act and 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 this Part and he shall report any such inconsistency to the House of Commons at the first convenient opportunity. Exception (2) A regulation need not be examined in accordance with subsection (1) if prior to being made it was examined as a proposed regulation in accordance with section 3 of the <i>Statutory Instruments Act</i> to ensure that it was not inconsistent with the purposes and provisions of this Part.	Devoirs du ministre de la Justice 3. (1) Sous réserve du paragraphe (2), le ministre de la Justice doit, en conformité de règlements prescrits par le gouverneur en conseil, examiner tout règlement transmis au greffier du Conseil privé pour enregistrement, en application de la Loi sur les textes réglementaires, ainsi que tout projet ou proposition de loi soumis ou présentés à la Chambre des communes par un ministre fédéral en vue de rechercher si l'une quelconque de ses dispositions est incompatible avec les fins et dispositions de la présente Partie, et il doit signaler toute semblable incompatibilité à la Chambre des communes dès qu'il en a l'occasion. Exception (2) Il n'est pas nécessaire de procéder à l'examen prévu par le paragraphe (1) si le projet de règlement a fait l'objet de l'examen prévu à l'article 3 de la Loi sur les textes réglementaires et destiné à vérifier sa compatibilité avec les fins et les dispositions de la présente partie.

Section 4.1 of the Department of Justice Act	
Examination of Bills and regulations 4.1 (1) Subject to subsection (2), the Minister shall, in accordance with such regulations as may be prescribed by the Governor in Council, examine every regulation transmitted to the Clerk of the Privy Council for registration pursuant to the Statutory Instruments Act and 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. Exception (2) A regulation need not be examined in accordance with subsection (1) if prior to being made it was examined as a proposed regulation in accordance with section 3 of the <i>Statutory Instruments Act</i> to ensure that it was not inconsistent with the purposes and provisions of the <i>Canadian Charter of Rights and Freedoms</i>.	Examen de projets de loi et de règlements 4.1 (1) Sous réserve du paragraphe (2), le ministre examine, conformément aux règlements pris par le gouverneur en conseil, les règlements transmis au greffier du Conseil privé pour enregistrement, en application de la Loi sur les textes réglementaires ainsi que les projets ou propositions de loi soumis ou présentés à la Chambre des communes par un ministre fédéral, en vue de vérifier si l'une de leurs dispositions est incompatible avec les fins et dispositions de la Charte canadienne des droits et libertés, et fait rapport de toute incompatibilité à la Chambre des communes dans les meilleurs délais possible. Exception (2) Il n'est pas nécessaire de procéder à l'examen prévu par le paragraphe (1) si le projet de règlement a fait l'objet de l'examen prévu à l'article 3 de la <i>Loi sur les textes réglementaires</i> et destiné à vérifier sa compatibilité avec les fins et les dispositions de la <i>Charte canadienne des droits et libertés</i>.

Subsections 3(2) and (3) of the <i>Statutory Instruments Act</i>	
Examination [3.] (2) On receipt by the Clerk of the Privy Council of copies of a proposed regulation pursuant to subsection (1), the Clerk of the Privy Council, in consultation with the Deputy Minister of Justice, shall examine the proposed regulation to ensure that (a) it is authorized by the statute pursuant to which it is to be made; (b) it does not constitute an unusual or unexpected use of the authority pursuant to which it is to be made; (c) it does not trespass unduly on existing rights and freedoms and is not, in any case, inconsistent with the purposes and provisions of the <i>Canadian Charter of Rights and Freedoms</i> and the <i>Canadian Bill of Rights</i>; and (d) the form and draftsmanship of the proposed regulation are in accordance with established standards. Advise regulation-making authority (3) When a proposed regulation has been examined as required by subsection (2), the Clerk of the Privy Council shall advise the regulation-making authority that the proposed regulation has been so examined and shall indicate any matter referred to in paragraph (2)(a), (b), (c) or (d) to which, in the opinion of the Deputy Minister of Justice, based on that examination, the attention of the regulation-making authority should be drawn.	Examen [3.] (2) À la réception du projet de règlement, le greffier du Conseil privé procède, en consultation avec le sous-ministre de la Justice, à l'examen des points suivants : a) le règlement est pris dans le cadre du pouvoir conféré par sa loi habilitante; b) il ne constitue pas un usage inhabituel ou inattendu du pouvoir ainsi conféré; c) il n'empiète pas indûment sur les droits et libertés existants et, en tout état de cause, n'est pas incompatible avec les fins et les dispositions de la <i>Charte canadienne des droits et libertés</i> et de la <i>Déclaration canadienne des droits</i>; d) sa présentation et sa rédaction sont conformes aux normes établies. Avis à l'autorité réglementante (3) L'examen achevé, le greffier du Conseil privé en avise l'autorité réglementante en lui signalant, parmi les points mentionnés au paragraphe (2), ceux sur lesquels, selon le sous-ministre de la Justice, elle devrait porter son attention.

The Regulations under s. 3 of the Bill of Rights:

Regulations Respecting the Examination of Bills and Regulations Pursuant to the Canadian Bill of Rights SHORT TITLE 1. These Regulations may be cited as the <i>Canadian Bill of Rights Examination Regulations</i>. INTERPRETATION 2. In these Regulations, "Minister" means the Minister of Justice. EXAMINATION OF BILLS 3. In the case of every Bill introduced in or presented to the House of Commons by a Minister of the Crown, the Minister shall, forthwith upon receipt of two copies of the Bill from the Clerk of the House of Commons, (a) examine the Bill in order to determine whether any of the provisions thereof are inconsistent with the purposes and provisions of the <i>Canadian Bill of Rights</i>, and (b) cause to be affixed to each of the copies thereof so received from the Clerk of the House of Commons a certificate, in a form approved by the Minister and signed by the Deputy Minister of Justice, stating that the Bill has been examined as required by the <i>Canadian Bill of Rights</i>, and one each of the copies thereof so certified shall thereupon be transmitted to the Clerk of the House	Règlement concernant l'examen des projets ou propositions de loi et des règlements, en conformité de la Déclaration canadienne des droits TITRE ABRÉGÉ 1. Le présent règlement peut être cité sous le titre : <i>Règlement relatif à l'examen fait conformément à la Déclaration canadienne des droits</i>. INTERPRÉTATION 2. Dans le présent règlement, « ministre » désigne le ministre de la Justice. EXAMEN DES PROJETS OU PROPOSITIONS DE LOI 3. Dans le cas de tout projet ou proposition de loi soumis ou présenté à la Chambre des communes par un ministre fédéral, le ministre dès réception de deux exemplaires du projet ou de la proposition de loi envoyés par le greffier de la Chambre des communes, a) examine le projet ou la proposition de loi en vue de déterminer si l'une quelconque de ses dispositions est incompatible avec les fins et dispositions de la <i>Déclaration canadienne des droits</i>, et b) fait attacher à chaque exemplaire dudit projet ou proposition de loi ainsi envoyé par le greffier de la Chambre des communes un certificat en la forme approuvée par le ministre et revêtu de la signature du sous-ministre de la Justice, portant que le projet ou la proposition de loi ont été examinés ainsi que l'exige la
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of Commons and the Clerk of the Privy Council.

EXAMINATION OF REGULATIONS

4. The Clerk of the Privy Council shall, on receipt of a regulation transmitted to him for registration pursuant to the *Statutory Instruments Act* but not examined as a proposed regulation in accordance with section 3 of that Act, forward a copy thereof to the Minister.

5. The Minister shall, forthwith upon receipt of a copy of a regulation forwarded to him by the Clerk of the Privy Council pursuant to section 4,

(a) examine the regulation in order to determine whether any of the provisions thereof are inconsistent with the purposes and provisions of the *Canadian Bill of Rights*, and

(b) cause to be affixed to the copy thereof so received from the Clerk of the Privy Council a certificate, in a form approved by the Minister and signed by the Deputy Minister of Justice, stating that the regulation has been examined as required by the *Canadian Bill of Rights*,

and the copy so certified shall thereupon be returned to the Clerk of the Privy Council.

REPORT OF THE MINISTER

6. Where any of the provisions of any Bill examined by the Minister pursuant to section 3 or any of the provisions of any regulation examined by him pursuant to section 5 are ascertained

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et chaque exemplaire portant ce certificat est dès lors transmis au greffier de la Chambre des communes et au greffier du Conseil privé.

EXAMEN DES RÈGLEMENTS

4. Le greffier du Conseil privé, sur réception d'un règlement dont copie lui est transmise pour enregistrement en conformité avec la *Loi sur les textes réglementaires* mais qui n'a pas été examiné en tant que projet de règlement conformément à l'article 3 de cette Loi, en envoie un exemplaire au ministre.

5. Dès réception de l'exemplaire visé à l'article 4, le ministre

a) examine le règlement en vue de déterminer si l'une quelconque de ses dispositions est incompatible avec les fins et dispositions de la *Déclaration canadienne des droits*, et

b) fait attacher à l'exemplaire dudit règlement ainsi envoyé par le greffier du Conseil privé un certificat en la forme approuvée par le ministre et revêtu de la signature du sous-ministre de la Justice, portant que le règlement a été examiné ainsi que l'exige la *Déclaration canadienne des droits*,

et l'exemplaire portant ce certificat est dès lors renvoyé au greffier du Conseil privé.

RAPPORT DU MINISTRE

6. Si le ministre juge que l'une quelconque des dispositions de tout projet ou proposition de loi qu'il a examiné conformément à l'article 3 ou l'une quelconque des dispositions de

by the Minister to be inconsistent with the purposes and provisions of the <i>Canadian Bill of Rights</i>, the Minister shall make a report in writing of the inconsistency and shall cause such report to be deposited with the Clerk of the House of Commons in accordance with the Standing Orders of the House of Commons at the earliest convenient opportunity. 7. A copy of every report made by the Minister pursuant to section 6 shall, where such report relates to a regulation, be transmitted to the Clerk of the Privy Council forthwith upon the making thereof.	tout règlement qu'il a examiné conformément à l'article 5 est incompatible avec les fins et dispositions de la <i>Déclaration canadienne des droits</i>, il rend compte par écrit de cette incompatibilité et, dès que la chose est possible, fait déposer son rapport à ce sujet auprès du greffier de la Chambre des communes, conformément au Règlement de la Chambre. 7. Un exemplaire de tout rapport rédigé par le ministre conformément à l'article 6 et qui a trait à un règlement est transmis au greffier du Conseil privé dès que sa rédaction est terminée.
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The Regulations under s. 4.1 of the DOJ Act:

Regulations Respecting the Examination of Bills and Regulations Pursuant to the Department of Justice Act Her Excellency the Governor General in Council, on the recommendation of the Minister of Justice, pursuant to section 4.1 of the <i>Department of Justice Act</i>, is pleased hereby to make the annexed Regulations respecting the examination of Bills and regulations pursuant to the Department of Justice Act. SHORT TITLE 1. These Regulations may be cited as the <i>Canadian Charter of Rights and Freedoms Examination Regulations</i>.	Règlement concernant l'examen des projets de loi et des règlements en conformité avec la loi sur le ministère de la Justice Sur avis conforme du ministre de la Justice et en vertu de l'article 4.1 de la Loi sur le ministère de la Justice, il plaît à Son Excellence le Gouverneur général en conseil de prendre le Règlement concernant l'examen des projets de loi et des règlements en conformité avec la <i>Loi sur le ministère de la Justice</i>, ci-après. TITRE ABRÉGÉ 1. <i>Règlement d'examen de compatibilité avec la Charte canadienne des droits et libertés.</i> DÉFINITION 2. Pour l'application du présent
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INTERPRETATION 2. In these Regulations, "Minister" means the Minister of Justice. EXAMINATION OF BILLS 3. In the case of every Bill introduced in or presented to the House of Commons by a Minister of the Crown, the Minister shall, forthwith on receipt of two copies of the Bill from the Clerk of the House of Commons, (a) examine the Bill in order to determine whether any of the provisions thereof are inconsistent with the purposes and provisions of the <i>Canadian Charter of Rights and Freedoms</i>, and (b) cause to be affixed to each of the copies thereof so received from the Clerk of the House of Commons a certificate, in a form approved by the Minister and signed by the Deputy Minister of Justice, stating that the Bill has been examined as required by section 4.1 of the Department of Justice Act, and one each of the copies thereof so certified shall thereupon be transmitted to the Clerk of the House of Commons and the Clerk of the Privy Council. EXAMINATION OF REGULATIONS 4. The Clerk of the Privy Council shall, on receipt of a regulation transmitted to him for registration pursuant to the <i>Statutory Instruments Act</i> but not	règlement « ministre » s'entend du ministre de la Justice. EXAMEN DES PROJETS OU PROPOSITIONS DE LOI 3. Dans le cas de tout projet ou proposition de loi soumis ou présenté à la Chambre des communes par un ministre fédéral, le ministre, dès réception de deux exemplaires du projet ou de la proposition de loi envoyés par le greffier de la Chambre des communes : a) examine le projet ou la proposition de loi en vue de déterminer si l'une quelconque de ses dispositions est incompatible avec les fins et dispositions de la <i>Charte canadienne des droits et libertés</i>; b) fait attacher à chaque exemplaire du même projet ou proposition de loi ainsi envoyé par le greffier de la Chambre des communes un certificat en la forme approuvée par le ministre et revêtu de la signature du sous-ministre de la Justice, portant que le projet ou la proposition de loi ont été examinés ainsi que l'exige l'article 4.1 de la Loi sur le ministère de la Justice. Chaque exemplaire portant ce certificat est dès lors transmis au greffier de la Chambre des communes et au greffier du Conseil privé. EXAMEN DES RÈGLEMENTS 4. Le greffier du Conseil privé, sur réception d'un règlement dont copie lui est transmise pour enregistrement en conformité avec la <i>Loi sur les textes réglementaires</i> mais qui n'a pas été
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examined as a proposed regulation in accordance with section 3 of that Act, forward a copy thereof to the Minister.

5. The Minister shall, forthwith on receipt of a copy of a regulation forwarded to him by the Clerk of the Privy Council pursuant to section 4,

(a) examine the regulation in order to determine whether any of the provisions thereof are inconsistent with the purposes and provisions of the *Canadian Charter of Rights and Freedoms* and

(b) cause to be affixed to the copy thereof so received from the Clerk of the Privy Council a certificate, in a form approved by the Minister and signed by the Deputy Minister of Justice, stating that the regulation has been examined as required by section 4.1 of the *Department of Justice Act*,

and the copy so certified shall thereupon be returned to the Clerk of the Privy Council.

REPORT OF THE MINISTER

6. Where any of the provisions of any Bill examined by the Minister pursuant to section 3 or any of the provisions of any regulation examined by him pursuant to section 5 are ascertained by the Minister to be inconsistent with the purposes and provisions of the *Canadian Charter of Rights and Freedoms*, the Minister shall make a report in writing of the inconsistency and shall cause such report to be deposited with the Clerk of the House of Commons in accordance with the Standing Orders of the House of

examiné en tant que projet de règlement, conformément à l'article 3 de cette Loi, en envoie un exemplaire au ministre.

5. Dès réception de l'exemplaire qui lui est envoyé par le greffier du Conseil privé conformément à l'article 4, le ministre :

a) examine le règlement en vue de déterminer si l'une quelconque de ses dispositions est incompatible avec les fins et dispositions de la *Charte canadienne des droits et libertés*;

b) fait attacher à l'exemplaire du même règlement ainsi envoyé par le greffier du Conseil privé un certificat en la forme approuvée par le ministre et revêtu de la signature du sous-ministre de la Justice, portant que le règlement a été examiné ainsi que l'exige l'article 4.1 de la *Loi sur le ministère de la Justice*.

L'exemplaire portant ce certificat est dès lors renvoyé au greffier du Conseil privé.

RAPPORT DU MINISTRE

6. Si le ministre juge que l'une quelconque des dispositions de tout projet ou proposition de loi qu'il a examiné conformément à l'article 3 ou l'une quelconque des dispositions de tout règlement qu'il a examiné conformément à l'article 5 est incompatible avec les fins et dispositions de la *Charte canadienne des droits et libertés*, il rend compte par écrit de cette incompatibilité et, dès que la chose est possible, fait déposer son rapport à ce sujet auprès du greffier de la Chambre des

Commons at the earliest convenient opportunity. 7. A copy of every report made by the Minister pursuant to section 6 shall, where such report relates to a regulation, be transmitted to the Clerk of the Privy Council forthwith on the making thereof.	communes, conformément au Règlement de la Chambre. 7. Un exemplaire de tout rapport rédigé par le ministre conformément à l'article 6 et qui a trait à un règlement est transmis au greffier du Conseil privé dès que sa rédaction est terminée.
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