



Annual Report 2023–2024



Foreword

The publication of this Annual Report marks both the end of a chapter for the Court Challenges Program (CCP) and the beginning of a new era. An evaluation report on the first five years of the CCP produced by independent evaluators attesting to the relevance, effectiveness and efficiency of the CCP, as well as highlighting its success, has just been published by Canadian Heritage.

The University of Ottawa is proud of the key role it has played in administering the Program since its reinstatement in 2018. The foundations of the Program in its current form are now well established, and we can look forward to a bright future. What's more, we can only hope that in the years to come the CCP's existence and work will lead to greater respect for the constitutional rights of the communities it serves.

Building on the strength of these significant results, the Program welcomed the substantial increase in its budget announced in 2023.

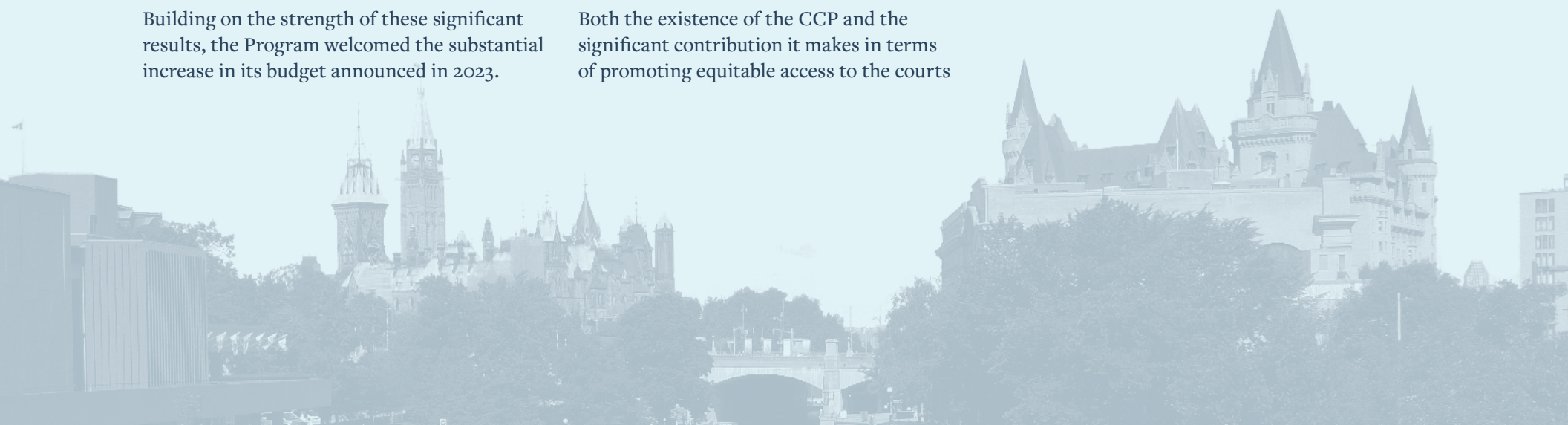
Thanks to this increase, more applicants who are ready to bring cases that will have a significant impact on the human rights and official language rights of all Canadians to the courts can now be supported by the CCP.

I would also like to point out that, for the first time since 2018, the CCP's Annual Report includes a list of completed cases funded by the Program and their outcomes. With this addition, it will be easier for the public to appreciate the concrete impact of the CCP's contribution to Canadian society. These completed cases represent an array of voices who, without the support of the CCP, would most likely not have been heard by the courts. These cases have also provided important opportunities for the courts to rule on a range of constitutional issues affecting official language rights and human rights.

Both the existence of the CCP and the significant contribution it makes in terms of promoting equitable access to the courts

are important, especially in the context of the unprecedented upheavals the world is currently experiencing. I would particularly like to thank the Program staff and the members of the Expert Panels for their dedication and for the invaluable work they do on a daily basis to support the realization of our constitutional rights.

–Jacques Frémont,
President of the University of Ottawa and
Chair of the CCP's Management Committee



Director's Message

The Court Challenges Program (CCP) has two principal objectives: to enable access to justice for those seeking to vindicate their constitutional official language rights and human rights and, by doing so, to provide courts with an opportunity to continue to define the meaning and scope of those rights. I am pleased to report that 2023-2024 was a year that not only met but exceeded the CCP's hopes for the achievement of both of those objectives.

On the access to justice side: in 2023-2024 the CCP received 135 applications, once again demonstrating the widespread need for this program. Indeed, in a survey of funding applicants conducted in 2023, $\frac{3}{4}$ of respondents who had received funding said that they would not have been able to proceed without CCP support. Of those 135 applications, just over half of them were funded, for a total investment of almost \$4.2 million in constitutional test cases, from the earliest stages through to hearings before the Supreme Court of Canada.

As I write this, the CCP has over 170 active funded files, at all stages of development and litigation, including many files in which we have funded intervenors so that they can provide diverse perspectives in important cases. In the five years since the Expert

Panels first met to review application and distribute funding, the CCP's investment in the constitutional justice sector has been considerable and continues to enable hugely important work.

And this investment is reaping jurisprudential returns, with 2023-2024 seeing a record 29 judicial decisions rendered in CCP-funded files. Constitutional litigation often takes a very long time to come to fruition – even longer when a pandemic intervenes to slow things down – but we are really starting to see our funded cases bear fruit. And while these cases attest to a return on the CCP's investment in constitutional justice, far more importantly, they are a testament to the courage and tenacity of the litigants and their lawyers who have pursued these cases, often over many years, to stand up for the rights of minorities and historically disadvantaged people.

As CCP-funded cases are starting to come to fruition, we are now in a position, for the first time since the full CCP's reinstatement in 2018, to include a list of completed cases in this year's Annual Report. While we cannot report on every file that we have closed (funding recipients have an ongoing right to litigation privilege until all avenues of legal recourse are exhausted), we are

delighted to have this opportunity to demonstrate, in a concrete way, the impact that CCP funding has been able to have. And while not all cases result in a clear win, there is nonetheless enormous value in people being able to make their voices heard in court. It has been said that a right without a remedy is no right at all. Five years on, we believe that the CCP has played a significant role in making rights in Canada feel more real, and be more fully realized.

Finally, the CCP was delighted to learn, in early 2023, that our annual funding would be increased. To support the ongoing growth of the Program, the CCP team has grown as well, adding capacity on both the legal side as we manage an ever increasing case load, but also on the communications side, to bolster our outreach efforts. And it's a good thing that we staffed up when we did: while this report may be focused on 2023-2024, in the first half of 2024-2025 the CCP received 85 applications, funding 54 of them, and there is every indication that it will be our biggest year yet. Onward!

–Marika Giles Samson



Message from the Chair of the Human Rights Expert Panel

2023-2024 has been a remarkable year for the Human Rights Expert Panel. We continued to see growth in the number of applications that we reviewed and, along with our staff team and our Official Language Rights Panel colleagues, we have been doing quite a lot of thinking about how the Court Challenges Program (CCP) might evolve. One highlight of the year was our meeting, in September 2023, at the Canadian Museum for Human Rights in Winnipeg. The prairies are at their most awe-inspiring on a riverbank in autumn and the Museum itself is deeply memorable. It was truly a fitting backdrop to our deliberations and our trip to Winnipeg also provided the occasion for the first joint meeting of the two Expert Panels to compare experiences and offer our perspective on the CCP's future.

The significant new financial commitment to the Program is a heartening endorsement of the crucial work being done by the recipients of these monies, and our role as Expert Panel decision makers is to ensure that we develop guidelines and make decisions that honour this work in the best ways possible.

We have taken several steps this year to pursue this goal. Perhaps the most obvious

is that we have reviewed the funding limits across the various categories of litigation support and have made some modest increases. We made these decisions after an analysis of the financial reporting we have received from our funding recipients, and careful reflection on where the most significant funding gaps have occurred over the past five years.

We have also considered steps that the CCP can take to ensure that the application process is not overly onerous, that the Program is better known and understood by the public, and that new applicants are well supported. As Panel members, we are very grateful to our excellent CCP staff for the time that they devote to working with funding applicants. While staff cannot, of course, complete applications or shape legal arguments, they devote many hours to ensuring that applicants and their counsel have meaningful access to the Program. The CCP has also taken steps this year to increase its public profile and we welcome suggestions at any time about what further work would be useful here.

One part of the work of strengthening the Program to better serve people across the

country is to pay close attention to what we have learned from the recently completed 2018-2023 program evaluation by the Department of Canadian Heritage. The opportunity to have an arms' length review of the Program was especially valuable, and it was gratifying to see such positive results. Current and former colleagues were consulted by the evaluators, along with funding recipients, their counsel, and CCP staff members. The strong results from the review have taken the guesswork out of much of our thinking around what works and what does not. We are grateful to Canadian Heritage for the time and resources devoted to this important project and the resulting report provides us with a roadmap for the next five years of the Court Challenges Program.

–Catherine Dauvergne



Message from the Chair of the Official Language Rights Expert Panel

After several successful years presided by my esteemed former colleague Gilles LeVasseur, it is my great pleasure to share, for the first time, my reflections as the Chair of the Court Challenges Program's (CCP) Official Language Rights Expert Panel.

With a view to advancing fairness, diversity and access to justice, the CCP was reinstated in 2018 to enable Canadians to assert their constitutional rights. While continuing to build momentum, it's clear that the CCP is already fulfilling the mandate entrusted to it by the Government of Canada efficiently and effectively. As the CCP's recent external evaluation reveals, the University of Ottawa, the Program's host institution, has effectively maintained the CCP's independence from the federal government, which makes the Program credible to the public it serves. Furthermore, the high degree of professionalism of its staff and the commitment of its Expert Panel members has allowed the CCP to process an impressive number of funding applications in its first five years and this, despite the challenges caused by the global COVID-19 pandemic.

The evaluation report also confirms that the CCP is more relevant than ever. Many individuals and organizations seek

to assert or clarify their most fundamental rights, but constitutional cases, and certainly those involving language rights, are complex and time-consuming. The costs of bringing them to a successful conclusion are therefore exorbitant and beyond the reach of most people. Without access to CCP funding, many of Canada's landmark official language judgments would never have seen the light of day. For official language minority communities, the CCP remains an essential resource. It gives them the means to fight and, in doing so, to survive and to flourish.

The Official Language Rights Expert Panel therefore wholeheartedly welcomes the doubling of the CCP's annual budget, which responds to Program recipients' urgent need for access to justice. As a result, the CCP will now be able to fund a larger number of cases and cover a larger share of litigants' legal costs, ensuring that more of our fellow citizens can reach the courts and access remedies when their rights are violated. The budget increase also further levels the playing field between governments and official language minority communities: knowing that the latter can turn to the CCP, governments are on notice that they must ensure that they respect their constitutional obligations.

To the best of my knowledge, the CCP is unique in the world; no other national government has set up this kind of program — one that empowers its citizens to seek justice when they feel their rights and freedoms have been infringed. The CCP can thus serve as a model for any society wishing to improve its accountability in terms of respect for the rule of law and human rights. Indeed, the CCP has been a real agent of constitutional change in Canada over the decades. Without the Program's financial support for cases that have established jurisprudence and led to important policy changes, the language rights enshrined in our constitution might have remained a dead letter. Long live the CCP!

—Emmanuelle Richez



CCP Staff

CCP staff, working closely with the Director, are on the front lines of the Program. Tasked with the day-to-day administration of the CCP, the staff ensure the efficient operation of the CCP and the independence of its decision-making process. Every day, staff field questions from potential funding applicants about the application process, coordinate the receipt of these applications, support the Expert Panels in their selection process and communicate the Panels' decisions, and ensure the disbursement and proper management of CCP funds. Our staff are the primary point of contact for those seeking to understand and access the Program at all stages of the funding process.



Catherine Thibault
Legal Counsel



Maggie Bellerose
Legal Counsel



Hardie Rath-Wilson
Legal Counsel



Pascale Castonguay
Communication Advisor



Aminata Nyara Barry
Office Administrator



Alexandre Virc
Legal Assistant

In 2023-2024, the CCP also benefited from the support of two law students: Anne-Clara Sanon and Nicole Jowett. Our work was also supported by a communication intern, Daniel Torres.

MISSION

- The CCP supports test cases of national significance seeking to affirm and clarify certain constitutional and quasi-constitutional official language rights and human rights in Canada.
- By providing financial support, the CCP aims to help Canadians access the justice system in order to assert their constitutional rights.
- The CCP provides a simple and fair application process through a modern, accessible website.



VISION

- The CCP provides vital financial support to test cases of national significance seeking to clarify and affirm official language rights and human rights in Canada. In doing so, the CCP not only helps Canadians to assert their rights, it supports the evolution of constitutional rights jurisprudence, reaffirms the rule of law, and contributes to making Canada a fairer and more equal country.



VALUES

- Independence in our decision making.
- Accessibility of our services.
- Quality services in both official languages.
- Fairness and respect in all our interactions.



Human Rights Branch

The CCP provides financial support to cases aimed at affirming and clarifying the following human rights guaranteed by the *Canadian Charter of Rights and Freedoms*:

- section 2 (fundamental freedoms, including freedom of religion, expression, peaceful assembly and association)
- section 3 (democratic rights)
- section 7 (right to life, liberty and security of person)
- section 15 (equality rights)
- section 27 (multiculturalism)
- section 28 (equality of the sexes)



Human Rights Branch

Examples of Funded Matters

1 The CCP recently provided funding for the development of two test cases dealing with accessibility issues based on section 15(1) of the *Canadian Charter of Rights and Freedoms*. These cases raise unique and pressing questions that courts have seldom addressed. One funding recipient seeks to determine whether the inaccessibility of video remote interpreting (VRI) for in-person services provided by the Government of Canada or federally-regulated entities amounts to under-inclusiveness in violation of s.15's guarantee of substantive equality. They argue that the inability of deaf and hard of hearing people to access services at their first point of contact is an unacceptable inconvenience not experienced by people who do not live with a disability. In the second test case development, the funding recipient seeks to contest the Canadian Radio-television and Telecommunications Commission (CRTC)'s *Broadcasting Regulatory Policy* on standard requirements for on-demand services. They contend that the policy's failure to require on-demand services to provide described video (DV) amounts to discrimination, creating a distinction based on disability between visually impaired clients and non-visually impaired clients as well as a distinction between visually impaired clients and deaf or hard-of-hearing clients, as the latter have had access to closed captioning for all programming, including on-demand services, since 2007. Should the recipients decide to proceed to litigation, both proposed cases could set important precedents for accessibility across Canada, especially in the context of changing technology.

2 The CCP Human Rights Expert Panel funded an intervention in a recent case seeking clarity on whether the Canadian government possessed absolute immunity from civil liability for legislation deemed unconstitutional. The funding recipient sought to contextualize the legal issues in the case through the example of continuing discrimination under the *Indian Act*. They argued that *Charter* rights, especially the right to substantive equality under section 15(1) of the *Canadian Charter of Rights and Freedoms*, must be protected through the use of effective remedies. In this respect, they contended that remedies available under section 52(1) of the *Constitution Act, 1982* are not always adequate for addressing harms, such as those resulting from the *Indian Act*, that are continuous and have significant adverse impacts. Rather, this intervenor argued, damages under section 24(1) for legislation later declared unconstitutional should be available to those who suffered harm due to provisions found to be discriminatory. Through its intervention, the funding recipient was able to invite the Supreme Court of Canada to approach the issues before them from a different perspective to better understand the full ramifications of its decision.

Human Rights Branch

Examples of Funded Cases

3 The Human Rights Expert Panel funded an appeal to the Supreme Court of Canada (SCC) in a challenge to the constitutionality of the regime implementing the *Safe Third Country Agreement (STCA)* between Canada and the United States. The *STCA* requires asylum-seekers to claim asylum in the first country in which they land. The main issue in the appeal was whether the *STCA* violated the right to liberty and security of the person of asylum seekers coming to Canada from the US contrary to section 7 of the *Canadian Charter of Rights and Freedoms*, notably given the risk of detention in poor conditions as well as the risk of *refoulement* from the US. In its lengthy decision, the SCC found that section 7 protections are engaged, but that the *STCA* could operate in accordance with the principles of fundamental justice, given the existence of certain “safety valves”.

At trial, it had also been argued that the *STCA* had a disproportionate impact on women seeking asylum on the basis of a fear of gender-based persecution, in violation of their section 15 equality rights. However, the trial judge, having decided the case on section 7 grounds, opted not to render a decision on the section 15 claim, citing judicial restraint. In the appeal, the SCC was asked to remit the section 15 claim back to the Federal Court for determination, which it did, pointing out that judicial restraint must be balanced with various factors and that there is no hierarchy of *Charter* rights.

4 Having previously supported test case development, the Human Rights Expert Panel funded litigation challenging ineligibility periods and exclusionary factors that, the funding recipient argued, create barriers to obtaining a Criminal Record Suspension (CRS) as a violation of section 7 of the *Canadian Charter of Rights and Freedoms*. It seeks to demonstrate that the lack of access to CRS, meant to facilitate re-entry into society and to confirm that a person is no longer at risk of re-offending, violates the guarantees of liberty and security of the person. In particular, the funding recipient argues that the lack of access to employment due to an existing criminal record prevents individuals from fully engaging in society and making essential life choices autonomously, undermining their liberty interests. It also leads to physical and psychological implications, especially for parents, impacting their right to security of the person.

Human Rights Branch

Examples of Funded Cases

5 The Human Rights Branch of the CCP funded a case arguing that section 3(3)(a) of the *Citizenship Act*, which bars Canadian citizens born outside Canada from transmitting their citizenship to their children born overseas (the so-called “second-generation cut-off”), contravened sections 7 and 15 of the *Canadian Charter of Rights and Freedoms*. In its judgment, the Ontario Superior Court of Justice did not find a section 7 breach but did find that section 15(1) was engaged, in that that section 3(3)(a) created a distinction based on national origin, which it interpreted to include a person’s country of birth. Canadians born abroad who obtained their citizenship by descent were treated differently from those born in Canada. They could not transmit their citizenship to their children born overseas and could not automatically return with them to Canada. The Court also accepted the intersectional analysis advanced by the funding recipients, finding that first generation born abroad women felt the impact of the second-generation cut-off more keenly than their counterparts. Having considered the legislative and political history of Canada’s citizenship acts and the policy goals behind the second-generation cut-off, the Court concluded that section 3(3)(a) perpetuates the stereotype that the first generation born abroad and their children are “Canadians of convenience”. Moreover, it exacerbates the historical disadvantages faced by women, as during pregnancy they might be forced to make a choice between their career, health and financial stability, and their ability to pass on their citizenship.



Human Rights Branch

Concluded Cases

Constitutional litigation is complex and takes a long time. For the first time this year, the new CCP is in a position to report on funded cases that concluded between 2018 and 2024. However, we should explain what we mean by “concluded”: these are cases funded by the CCP that achieved a final judgment or settlement by 31 March 2024, in which all avenues of legal recourse have been exhausted or the case has been abandoned. This definition reflects the scope of litigation privilege to which all CCP funding recipients are legally entitled and, until all legal recourse has been exhausted, information about a funded case remains covered by litigation privilege and cannot be disclosed by the CCP. As a result, more recent cases cannot yet be listed. In addition to the concluded cases listed below, 43 completed test case development files and 12 litigation files funded by the Human Rights Branch of the CCP were closed but cannot yet be disclosed due to potential or ongoing legal proceedings.

Case in which funding recipient was a party	Outcome	Province/ Territory
<i>Begum v Canada (Minister of Citizenship and Immigration)</i> , 2018 FCA 181	Federal Court of Appeal decision dismissing the appeal	Federal
<i>Saju Begum v Minister of Citizenship and Immigration</i> , 2019 CanLII 32863 (SCC)	Supreme Court of Canada decision denying leave to appeal	Federal
<i>Stensia Tampambwa et al. v Minister of Citizenship and Immigration</i> , 2019 CanLII 62557 (SCC)	Supreme Court of Canada decision denying leave to appeal	Federal
<i>Seklani v Canada</i> , 2020 FC 778	Federal Court decision dismissing the application for judicial review	Federal
<i>Caron v Attorney General of Canada</i> , 2020 QCCS 2700	Quebec Superior Court decision granting the application	Québec
Canadian Transportation Agency Decision No. 110-AT-A-2021	Tribunal decision dismissing the case	Federal
As case not pursued, no case name or citation available.	Funding recipients opted not to pursue the proposed case alleging violations of sections 7 and 15 of the <i>Charter</i> .	Québec
<i>Pittman v Ashcroft First Nation</i> , 2022 FC 1380	Federal Court decision granting the application for judicial review in part	Federal

Case in which funding recipient intervened	Outcome	Province/ Territory
<i>O’Leary v Canada (Attorney General)</i> , 2019 ONSC 6057	Decision of Ontario Superior Court denying leave to intervene	Ontario
<i>R v Sullivan</i> , 2020 ONCA 333	Intervention at Ontario Court of Appeal	Ontario
<i>R v Sharma</i> , 2020 ONCA 478	Intervention at Ontario Court of Appeal	Ontario

Case in which funding recipient intervened	Outcome	Province/ Territory
<i>Michel v Graydon</i> , 2020 SCC 24	Intervention at Supreme Court of Canada	British Columbia
<i>Reference re Greenhouse Gas Pollution Pricing Act</i> , 2021 SCC 11	Intervention at Supreme Court of Canada	Saskatchewan/ Ontario/ Alberta
<i>Reference re Greenhouse Gas Pollution Pricing Act</i> , 2021 SCC 11	Intervention at Supreme Court of Canada	Saskatchewan/ Ontario/ Alberta
<i>R v C.P.</i> , 2021 SCC 19	Intervention at Supreme Court of Canada	Ontario
<i>Colucci v Colucci</i> , 2021 SCC 24	Intervention at Supreme Court of Canada	Ontario
<i>Southwind v Canada</i> , 2021 SCC 28	Intervention at Supreme Court of Canada	Federal
<i>R v Edgar</i> , 2021 QCCA 1521	Decision of Quebec Court of Appeal denying leave to intervene	Québec
<i>Canadian Council for Refugees v Minister of Citizenship and Immigration et al</i> , 2021 FCA 13	Decision of Federal Court of Appeal denying leave to intervene	Federal
<i>R v Sullivan</i> , 2022 SCC 19	Intervention at Supreme Court of Canada	Ontario
<i>Gordillo v Canada (Attorney General)</i> , 2022 FCA 23	Intervention at Federal Court of Appeal	Federal
<i>Alliance for Equality of Blind Canadians v Canada (Attorney General)</i> , 2022 FCA 131	Leave to intervene at Federal Court of Appeal granted, but scope of intervention was limited to non- <i>Charter</i> issues. As a result, intervention funding was not used and returned.	Federal
<i>Reference to the Court of Appeal of Quebec in relation with the Act respecting First Nations, Inuit and Métis children, youth and families</i> , 2022 QCCA 185	Intervention at the Québec Court of Appeal	Québec
<i>R v N.S.</i> , 2022 ONCA 160	Intervention at Ontario Court of Appeal	Ontario
<i>R. v J.J.</i> , 2022 SCC 28	Intervention at Supreme Court of Canada	Ontario
<i>R v Sharma</i> , 2022 SCC 39	Intervention at Supreme Court of Canada	Ontario
<i>Friesen v Friesen</i> , 2023 SKCA 60	Intervention at Saskatchewan Court of Appeal	Saskatchewan

Note: The CCP sometimes funds multiple intervenors providing different perspectives in the same case, especially in particularly significant cases.

Human Rights Branch

FUNDING GRANTED IN 2023–2024

Number of applications	Test Case Development	Trial	Appeal	Intervention	Total
Received*	40	31	9	9	89
Funded	17	15	7	9	48

*This includes applications received and decided by the Expert Panel in 2023-2024.

NUMBER OF APPLICATIONS FUNDED BY CATEGORY OF RIGHTS COVERED BY THE CCP

(Note that the table totals may be higher than the total applications funded because some cases involve more than one category of rights.)

	Fundamental freedoms	Democratic rights	Right to life, liberty and security of person	Equality rights	Multiculturalism	Equality of the sexes
Test Case Development	1	2	9	14	0	1
Trial	0	1	8	12	1	2
Appeal**	2	0	3	6	1	0
Intervention***	4	0	6	7	0	0

Applications for appeal funding may include applications for a motion for leave to appeal. *Applications for intervention funding may include applications for leave to intervene.

Official Language Rights Branch

The CCP provides financial support to cases aimed at affirming and clarifying the following official language rights:

OFFICIAL LANGUAGE RIGHTS ENSHRINED IN:

- Sections 93 and 133 of the *Constitution Act, 1867*
- Section 23 of the *Manitoba Act, 1870*
- Sections 16 to 23 of the *Canadian Charter of Rights and Freedoms*
- The language aspect of freedom of expression in section 2 of the *Charter* when invoked in a case involving official language minorities
- Any parallel constitutional provision

THE JUSTICIABLE PARTS OF THE *OFFICIAL LANGUAGES ACT*:

- Part I, section 4 (proceedings of Parliament)
- Part II, sections 5 to 7 and 10 to 13 (legislative and other instruments)
- Part IV (communications with and services to the public)
- Part V (language of work)
- Part VII (advancement of English and French)
- Section 91 (staffing)



Official Languages Rights Branch

Examples of Funded Cases

1 The Court Challenges Program funded litigation against the Public Health Agency of Canada and the Minister of Health Canada alleging violations of Part IV of the *Official Languages Act* and subsection 20(1) of the *Charter*. In this case, the funding recipient challenged the unilingual English-language offering of federal government services through the ArriveCAN mobile application, which represented a significant issue for Canadians wishing to interact with the Government of Canada in French. This case was resolved through a confidential out-of-court settlement, which included a non-confidential letter of apology to the funding recipient. As a result of this case being pursued by the funding recipient, several improvements were made to the ArriveCAN app to ensure that users are aware of how to change the app's language.

2 The Expert Panel funded an intervention in a case concerning the admission of children of non-section 23 rights holders to minority language schools. In this case, a child born in Canada whose parents are immigrants, and therefore non-rights holders, sought to attend a French-language school. Their enrolment did not ultimately happen because the minister responsible exercised their discretionary power to reject the application for admission, despite the minority language school and the minority language school board wanting to admit them. The CCP's funding recipient intervened in this case at the Supreme Court of Canada to ask that the Court apply the remedial threefold purpose of section 23 of the *Charter*. The Supreme Court of Canada concluded in its decision that in exercising ministerial discretion, it was not enough to consider whether section 23 of the *Charter* directly applied but that the Minister must proportionately balance the values reflected in the threefold purpose of section 23, on the one hand, and the interests of the government, on the other. Furthermore, given the remedial nature of section 23, educational needs had to be given greater weight than other factors in the decision-making process.

Official Languages Rights Branch

Examples of Funded Cases

3 This year, the Expert Panel granted funding to litigation arising from a test case development file funded by the CCP, which seeks to clarify the obligations under Section 23 of the *Charter* regarding the infrastructure adjacent to minority-language public schools. In this case, the funding recipient plans to sue the municipality to require it to plan for and fund infrastructure surrounding schools intended for the minority language community on the same basis as infrastructure surrounding schools for the majority language community. This case could provide an opportunity for the courts to consider the as-yet undecided question of municipal responsibility under Section 23, as well as to clarify the positive obligations of the provinces and territories to create an institutional structure and framework adapted to the particular needs and challenges of the linguistic minority.



Official Language Rights Branch

Concluded Cases

Constitutional litigation is complex and takes a long time. For the first time this year, the CCP is able to report on funded cases that concluded between 2018 and 2024. However, we should explain what we mean by “concluded”: these are cases funded by the CCP that achieved a final judgment or settlement by 31 March 2024, in which all avenues of legal recourse have been exhausted or the case has been abandoned. This definition reflects the scope of litigation privilege to which all CCP funding recipients are legally entitled and, until all legal recourse has been exhausted, information about a funded case remains covered by litigation privilege and cannot be disclosed by the CCP. As a result, more recent cases cannot yet be listed. In addition to the concluded cases listed below, 16 completed test case development files and 12 litigation files funded by the Official Language Rights Branch of the CCP were closed but cannot yet be disclosed due to potential or ongoing legal proceedings.

Case in which recipient was a party	Outcome	Province/ Territory
<i>Her Majesty the Queen in Right of the Province of New Brunswick, as represented by the Minister of Education and Early Childhood Development v Henrie et al.</i> , 2018 NBCA 69	New Brunswick Court of Appeal decision granting the government's appeal	New Brunswick
<i>Besette v British Columbia (Attorney General)</i> , 2019 SCC 31	Supreme Court of Canada decision granting the appellant's appeal	British Columbia
<i>A.B., Commission scolaire francophone v Minister of Education</i> , 2019 NWTSC 25. cor1	Supreme Court of the Northwest Territories decision granting the application for judicial review	Northwest Territories
<i>Commission scolaire francophone, A.B., F.A., T.B., J.J. and E.S. v Minister of Education</i> , 2020 NWTSC 28	Supreme Court of the Northwest Territories decision granting the applications for judicial review	Northwest Territories
As case not pursued, no case name or citation available.	The proposed case was not pursued in light of an agreement between Canada and Ontario on funding for the Université de l'Ontario français.	Ontario
<i>In the Matter of the Companies' Creditors Arrangement Act, RSC 1985, c C-36, as amended; And in the Matter of a Plan of Compromise or Arrangement of Laurentian University of Sudbury</i>	Out-of-court settlement confirmed by a Consent Order of the Ontario Superior Court of Justice dated 22 April 2021.	Ontario
<i>A.B. v Northwest Territories (Minister of Education, Culture and Employment)</i> , 2021 NWTCA 8	Northwest Territories Court of Appeal decision granting the government's appeal	Northwest Territories
<i>Commission scolaire francophone des Territoires du Nord-Ouest et al. v Northwest Territories (Minister of Education, Culture and Employment)</i> , 2021 NWTCA 8	Northwest Territories Court of Appeal decision granting the government's appeal	Northwest Territories

Case in which recipient was a party	Outcome	Province/ Territory
<i>André Dionne v Office of the Superintendent of Financial Institutions</i> , 2021 FCA 159	Federal Court of Appeal decision granting the appellant's appeal	Federal
As case not pursued, no case name or citation available.	The proposed case was not pursued when the Minister of Education appointed a bilingual arbitrator to the Board of Reference.	Alberta
<i>François Choquette v Department of Canadian Heritage</i>	Funding recipient chose to withdraw proceedings filed pursuant to Part VII of the <i>Official Languages Act</i> .	Federal
As case not pursued, no case name or citation available.	The proposed case was not pursued due to a change in the government's approach to funding French-language educational institutions.	Manitoba
As case not pursued, no case name or citation available.	Funding recipient opted not to pursue the proposed case upon determining that it would be too expensive to gather the necessary evidence.	Ontario
As case not pursued, no case name or citation available.	The proposed case was not pursued when the funding recipient was unable to identify a co-litigant willing to join the case.	New Brunswick
As case not pursued, no case name or citation available.	The proposed challenge to exemption of the Supreme Court of Canada from section 16(1) of the <i>Official Languages Act</i> became moot when Bill C-13 received Royal Assent.	Federal
<i>Commission scolaire francophone des Territoires du Nord-Ouest v Northwest Territories (Education, Culture and Employment)</i> , 2023 SCC 31	Supreme Court of Canada decision granting appellants' appeal	Northwest Territories
Case in which funding recipient intervened	Outcome	Province/ Territory
<i>Saskatchewan v Good Spirit School Division No. 204</i> , 2020 SKCA 34	Intervention at the Saskatchewan Court of Appeal	Saskatchewan
<i>Conseil scolaire francophone de la Colombie-Britannique v British Columbia</i> , 2020 SCC 13	Intervention at the Supreme Court of Canada	British Columbia
<i>Conseil scolaire francophone de la Colombie-Britannique v British Columbia</i> , 2020 SCC 13	Intervention at the Supreme Court of Canada	British Columbia
<i>Conseil scolaire francophone de la Colombie-Britannique v British Columbia</i> , 2020 SCC 13	Intervention at the Supreme Court of Canada	British Columbia

Case in which funding recipient intervened	Outcome	Province/ Territory
<i>Conseil scolaire francophone de la Colombie-Britannique v British Columbia</i> , 2020 SCC 13	Intervention at the Supreme Court of Canada	British Columbia
<i>R. v Arsenault</i> , 2020 ONCA 118	Intervention at the Ontario Court of Appeal	Ontario
<i>Attorney General of Canada v British Columbia Civil Liberties Association, et al.</i> , 2020 CanLII 10501 (SCC)	The funded intervention became moot when the appellant withdrew their appeal to the Supreme Court of Canada.	British Columbia
<i>Saskatchewan v Good Spirit School Division No. 204</i> , 2021 CanLII 13276 (SCC)	The funded intervention became moot when the appellant's application for leave to appeal to the Supreme Court of Canada was denied.	Saskatchewan
<i>Saskatchewan v Good Spirit School Division No. 204</i> , 2021 CanLII 13276 (SCC)	The funded intervention became moot when the appellant's application for leave to appeal to the Supreme Court of Canada was denied.	Saskatchewan
<i>Canada (Commissioner of Official Languages) v Canada (Employment and Social Development)</i> , 2022 FCA 14	Intervention at the Federal Court of Appeal	Federal
<i>Canada (Commissioner of Official Languages) v Canada (Employment and Social Development)</i> , 2022 FCA 14	Intervention at the Federal Court of Appeal	Federal
<i>Commission scolaire francophone des Territoires du Nord-Ouest v Northwest Territories (Education, Culture and Employment)</i> : decision on applications for leave to intervene dated November 10, 2022	Application for leave to intervene denied	Northwest Territories
<i>Commission scolaire francophone des Territoires du Nord-Ouest v Northwest Territories (Education, Culture and Employment)</i> : decision on applications for leave to intervene dated November 10, 2022	Application for leave to intervene denied	Northwest Territories
<i>Commission scolaire francophone des Territoires du Nord-Ouest v Northwest Territories (Education, Culture and Employment)</i> : decision on applications for leave to intervene dated November 10, 2022	Application for leave to intervene denied	Northwest Territories
<i>Commission scolaire francophone des Territoires du Nord-Ouest v Northwest Territories (Education, Culture and Employment)</i> , 2023 SCC 31	Intervention at the Supreme Court of Canada	Northwest Territories
<i>Commission scolaire francophone des Territoires du Nord-Ouest v Northwest Territories (Education, Culture and Employment)</i> , 2023 SCC 31	Intervention at the Supreme Court of Canada	Northwest Territories

Note: The CCP sometimes funds multiple intervenors providing different perspectives in the same case, especially in particularly significant cases.

Official Language Rights Branch

FUNDING GRANTED IN 2023–2024

Number of applications	Test Case Development	Trial	Appeal	Intervention	Total
Received*	6	35	4	1	46
Funded	6	14	1	1	22

**This includes applications received and decided by the Expert Panel in 2023-2024.*

NUMBER OF APPLICATIONS FUNDED BY CATEGORY OF RIGHTS COVERED BY THE CCP

(Note that the table totals may be higher than the total applications funded because some cases involve more than one category of rights.)

	Education rights	Legislative and legal rights	Equality and linguistic advancement	Right to services and communication	Right to freedom of expression
Test Case Development	6	0	0	0	0
Trial	10	0	8	4	1
Appeal**	1	0	0	0	0
Intervention***	1	0	0	0	0

***Applications for appeal funding may include applications for leave to appeal. ***Applications for intervention funding may include applications for leave to intervene.*

Spending by Branch

APPLICATIONS FUNDED IN 2023–2024

OFFICIAL LANGUAGE RIGHTS	1 710 000 \$
Test Case Development	120 000 \$
Trial	1 490 000 \$
Appeal	50 000 \$
Intervention	50 000 \$
HUMAN RIGHTS	2 467 120 \$
Test Case Development	340 000 \$
Trial	1 499 170 \$
Appeal	277 950 \$
Intervention	350 000 \$

Statement of Revenue and Expenses (Cash Flow)

YEAR ENDED MARCH 31, 2024

REVENUE		6 183 841 \$
Contribution from the Department of Canadian Heritage		6 183 841 \$
EXPENSES		4 217 860 \$
Administration		1 168 889 \$
Cases – Official Language Rights		932 234 \$*
Funded Applications	1 710 000 \$	
Less unused funds returned	(777 766 \$)	
Cases – Human Rights*		2 116 737 \$*
Funded Applications	2 467 120 \$	
Less unused funds returned	(350 383 \$)	
SURPLUS		1 965 981 \$

**Net figure, which includes new applications funded in 2023-2024 as well as unused funds returned at the conclusion of previously funded cases (including under the former CCP and the LRSP). Indeed, between the reinstatement of the CCP in 2018 and the end of the 2023-2024 fiscal year, the CCP has recovered over \$1.1 million in unused funds from files approved under predecessor programs.*

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The Court Challenges Program recognizes that it has its offices and does most of its work on the unceded territory of the Anishinaabeg people. We thank the Anishinaabeg people for the privilege of working in this place and honour them as the traditional guardians of these lands.

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