



# Annual Report 2018–2019



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THE COURT CHALLENGES PROGRAM

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# Foreword by the President of the University of Ottawa

Dear Friends and Colleagues,

Canadians have the right – indeed I would say that we have the responsibility – to bring before the courts test cases of national significance in order to assert our constitutional and quasi-constitutional official language rights and human rights.

And yet as we all know, going to court is expensive, and the more complex and significant the case, the more expensive it gets. That is why Canada's new Court Challenges Program is so important, and why I am so thrilled to celebrate the successful conclusion of the first year of this vital funding program, which has now begun financially supporting dozens of test cases.

Canada is already a global leader in defining and upholding these rights. With the support of the CCP I am confident that in future our fundamental rights will become even more clearly defined and more consistently upheld, to the benefit of all Canadians.

I would like to thank the CCP team for their hard work in getting the program up and running, and to congratulate all Canadians on the successful launch of this vital democratic institution.

–Jacques Frémont



uOttawa



## Message from the Director

The Court Challenges Program (CCP) is proud to present its first annual report. The beginnings of the new CCP go back to 2016, when the Government of Canada committed to reinstating and modernizing the CCP, and in 2017 the University of Ottawa was chosen as the independent organization charged with setting up and administering the new program. In 2018 the CCP's governance structure was established, with a University of Ottawa management committee to oversee the running of the program in accordance with the terms of a contribution agreement between the government and the University of Ottawa.

The CCP was set up and launched during the 2018-2019 year. On November 20, 2018, the members of the two expert panels responsible for funding decisions were appointed by the Government of Canada. The Expert Panel on Human Rights and the Expert Panel on Official Languages diligently hastened to meet in December 2018 to work with staff to establish the CCP funding application process. The expert panels drew up the eligibility criteria for the program's two components, the human rights component and the official language component, ensuring that cases for which funding would be granted should both be of national significance and have the potential to clarify rights.

Once the eligibility criteria had been established by the expert panels, CCP staff completed the setup of the program and the CCP website was launched on January 14, 2019. Canadians were quick to seek funding: the CCP received 61 applications for the 2018-2019 financial year ending on March 31, 2019. The Expert Panel on Human Rights approved 14 of 34 applications for funding concerning human rights and the Expert Panel on Official Languages approved 17 of 27 applications concerning official languages.

The CCP was launched a few weeks prior to the end of its 2018-2019 financial year and, thanks to outstanding work from the management committee, the staff and the expert panels, Canadians have access to funding from the CCP to assert their rights and have them clarified!

Geneviève Boudreau





## Message from the President of the Expert Panel on Human Rights

The Human Rights Expert Panel was relaunched in 2018 coinciding with the 70th anniversary of the *Universal Declaration of Human Rights*. It is the *Declaration* that informed the *Canadian Charter of Rights and Freedoms* and provides the ethical centre informing our work. The Court Challenges Program provides a conduit to the courts for the advancement of the rights of vulnerable and marginalized persons in Canadian society.

The previous program funded over 575 equality rights cases from 1994 to 2006. Cases can now also be brought on freedom of religion, expression, association and assembly; democratic rights; and the right to life, liberty and security of the person. Issues of discrimination on equality rights grounds persist. Issues of gender discrimination and sexual violence; racism, ageism, and discrimination against persons with disabilities require redress. The shifting global context has heightened attention to the vulnerabilities of immigrants and refugees whose status requires protection from abuse of power by state actors.

The period between 2006 and today has seen an expansion in our understanding of rights

and heightened challenges on a domestic and global scale. Gender identity, expression, and discrimination based on genetic characteristics have been recognized under the *Canadian Human Rights Act*. Social media's promise of open access is increasingly warped to foster hate and enable the victimization of women and other vulnerable communities and individuals. Canada's acknowledgement of its obligations and accountability to indigenous peoples has made meaningful progress. The Court Challenges Program has a role to play in the actualization of the promise contained in the Truth and Reconciliation Process.

Civil society is at the heart of what makes our work effective. It was their diligent pursuit that led to the reinstatement of the program. It is their ongoing engagement with the program that ensures that we will have a meaningful impact on our society. We are hopeful that the fulfillment of our mandate underscores Canadian identity as a tri-juridical, multicultural and social justice grounded community.

—Joanne St. Lewis



## Message from the President of the Expert Panel on Official Languages

The Court Challenges Program is an important means of ensuring that fundamental rights in Canadian society, particularly the rights of official language minorities, are respected. Through the program, citizens throughout Canada can obtain financial support to help them assert their language rights before the courts. The CCP represents a significant development in Canadian identity and the values that our society wishes to promote. During its first year of operation, the program has funded a number of cases to be taken to court in various fields of education and administration of government programs. Without this financial support, many legal issues in the field of language rights could not be brought to light.

One factor in the CCP's success is the contribution of the members of the program's Expert Panel on Official Languages: their professionalism and commitment have been vital to the effectiveness of the program's work. Their collegiate approach has enabled them to discuss funding applications and the duties of the panel. My thanks go to all members of the panel for their excellent work. But this could not have been achieved without the support of program staff, who guided the members of the panel with professionalism and expertise. I thank them for their fine work.

Canadians in every corner of the country must be encouraged to submit funding applications so that official language minorities can live on equal terms with the majority in their province or territory. This commitment to promoting fundamental rights will help ensure that all Canadians can fully enjoy their lawful rights and freedoms.

—Gilles Levasseur



# Mandate of the CCP

## MISSION

- The CCP provides financial support to persons in Canada to help them bring test cases of national significance before the courts.
- The CCP helps persons assert and clarify certain constitutional and quasi-constitutional official language rights and human rights in Canada.
- The CCP provides a simple and equitable application process through a modern, accessible website.





# Mandate of the CCP

## VISION

- The CCP provides vital support for the assertion and clarification of constitutional and quasi-constitutional official language rights and human rights in Canada.



# Mandate of the CCP

## VALUES

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



# The CCP Provides Financial Support for the Purpose of Asserting and Clarifying the Following 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 “*Charter*”)
- any parallel constitutional provision
- the language aspect of freedom of expression in section 2 of the *Charter* when invoked in a case involving official language minorities

## THE JUSTICIABLE PARTS OF THE *OFFICIAL LANGUAGES ACT*, PARTICULARLY:

- 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)

## HUMAN RIGHTS PROTECTED BY THE *CANADIAN CHARTER OF RIGHTS AND FREEDOMS* UNDER:

- 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) – in support of arguments based on equality rights
- section 28 (equality of the sexes)

## Communication Activities of the CCP

- A branding coordination program was set up, including a log, a website and a distinctive CCP brand.
- The CCP's services were actively promoted through an advertising campaign on Google. Top-of-page ads on the search engine are designed to promote the website's visibility. Since the start of the campaign, we have received 251 clicks and 15,320 impressions. The most important keywords are "rights and freedoms funding" and "financement des droits et libertés."
- A newsletter was sent out to the CCP's target communities to inform them of the website launch and deadlines for submitting applications. The mailing, via MailChimp, went to 606 email addresses.
- A newsletter was sent to national and local Canadian press to announce the date of the website launch. The information was announced by Radio-Canada Alberta, Gatineau and Winnipeg.
- Since the CCP website went live, 7,654 sessions and 5,117 users have been recorded.





## Examples of Cases Funded

In the Court Challenges Program's first year of operation, the two expert panels (on official languages and human rights) have received and examined 61 funding applications in the three fields financed: test case development, trial and appeal court trials, and interventions. Funding was granted to 31 of these applications, addressing a wide variety of issues among the rights covered by the CCP. The following summaries provide examples of cases whose recipients have authorized the CCP to disclose certain facts for the purposes of this report.

# Official Languages Cases

## 1

The Expert Panel on Official Languages funded the development of a test case on an education rights issue involving the situation of homogeneous French-language schools in a region of Ontario where francophones are a small minority that accept children whose parents are not right-holders under section 23 of the *Canadian Charter of Rights and Freedoms* (the “Charter”) and who do not have a sufficient command of French. The recipient in this case claims that this situation compromises the homogeneous character of French-language schools in their region, virtually transforming these schools into immersion institutions, which runs counter to the aim of defence against assimilation of the minority implicit in section 23 of the *Charter*.

## 2

In the context of the anglophone minority of Québec, the Expert Panel on Official Languages granted funding for a challenge to the Québec government’s *Regulation respecting the language of commerce and business*, which restricts the use of languages other than French on commercial signage in some contexts. The recipient seeks to assert that, under the right of freedom of expression guaranteed by paragraph 2(b) of the *Charter*, they have a right to receive public commercial information in English, and that the *Regulation* represents an unconstitutional restriction of the use of English and other languages.

## 3

The Expert Panel also funded an appeal against a decision by the Court of Queen’s Bench of New Brunswick involving education rights. This case concerns the closure of a French-language kindergarten to 8th-grade school in a small community in southeast New Brunswick, which had 64 pupils in 2016. At the trial, the recipients claimed that the decision by the District Education Council and the Minister of Education ran counter to the right guaranteed by sections 16 and 23 of the *Charter*. In May 2018, the Court of Queen’s Bench rendered a decision in favour of the beneficiary. The provincial department appealed the decision before the Court of Appeal of New Brunswick. Funding was granted in the context of the appeal process.



# Human Rights Cases

## 1

The Expert Panel on Human Rights funded the litigation of a test case that relates to the government's classification system of Indigenous communities as either "status" or "non-status" First Nation communities and the subsequent regulation of land and services. The funding recipient is bringing a challenge to the *Indian Act* and the ways in which the government maintains control over what bands are registered within the meaning of the *Indian Act*. Since registered Indigenous persons (those with "status") living on-reserve (and sometimes those living off-reserve) have access to health and social programs that are not available to others who do not live on-reserve, groups like the recipient who cannot access land or status do not have access to these benefits available to other registered First Nations. The funding recipient is bringing the challenge on the basis that the denial of access to programs and services available only to status bands with reserves, as well as the continued denial to a reserve or land territory, to non-status First Nation communities is discriminatory and contrary to section 15 of the *Charter*.

## 2

The Expert Panel on Human Rights also funded an appeal that challenged the Minimum Necessary Income, as set out in paragraph 133(1)(j) of the *Immigration and Refugee Protection Regulations*, which sets out the minimum income requirements needed by Canadian citizens and permanent residents to sponsor parents and grandparents. The funding recipient sought to establish that this requirement created a burden that disproportionately affected people of colour, women, and people with disabilities, resulting in adverse effect discrimination, contrary to the principle of substantive equality protected by section 15 of the *Charter*.

## Human Rights Cases

### 3

The federal government offers the Interim Federal Health Program, which is a program that provides basic coverage that is similar to the provincial health plans, for certain classes of individuals who are not yet eligible for healthcare under provincial health plans, including protected persons, refugees, and, at times, those awaiting approval of refugee status. The Expert Panel on Human Rights funded an appeal that raised the question as to whether the Interim Federal Health Program was being administered in accordance with sections 7 and 15 of the *Charter*, since its eligibility criteria do not include irregular migrants. These individuals therefore do not have access to public health care and are required to pay for healthcare out of pocket. The funding recipient is seeking to put forward to the Supreme Court of Canada that the application and interpretation of the rights protected by the *Charter* must be done in accordance with Canada's international legal obligations, as a signatory to various international covenants, and with international human rights norms.

### 4

In the context of democratic rights, the Expert Panel on Human Rights funded a legal intervention in a case regarding the limits on donations and loans an electoral candidate or political party can receive to support their campaign, as set out in sections 367 and 373 of the *Canada Elections Act*. The funding recipient is seeking to provide guidance to the court regarding the consequences of striking down these sections, in an attempt to protect the democratic and equality rights of Canadians as protected by sections 3 and 15 of the *Charter*.

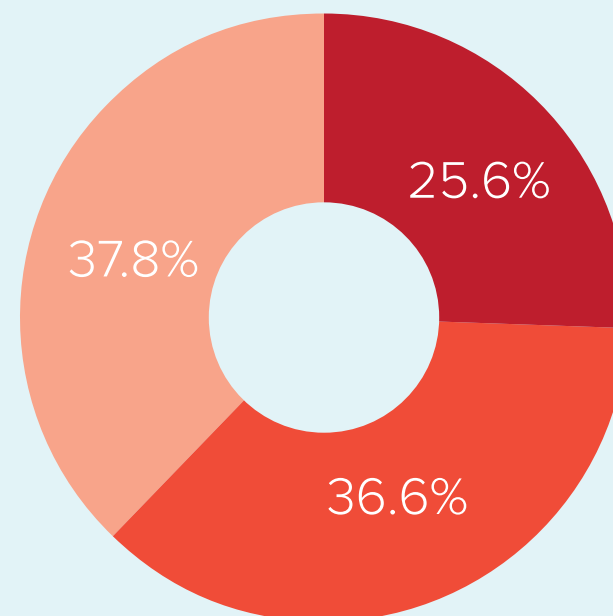


# Statement of Revenues and Expenses

YEAR ENDED MARCH 31, 2019

<b>REVENUES</b>	<b>4 907 234 \$</b>
Contribution from the Department of Canadian Heritage	4 907 234 \$
<b>EXPENSES</b>	<b>3 116 494 \$</b>
Administration ●	797 319
Legal remedies – Official Languages Rights* ●	1 142 087
Legal remedies – Human Rights* ●	1 177 088
<b>SURPLUS</b>	<b>1 790 740 \$</b>

*Includes new applications funded in 2018-2019 and payments of transferred records from the former CCP.*



# Expenses by Financing Category

## APPLICATIONS FUNDED IN 2018–2019

### LEGAL REMEDIES – OFFICIAL LANGUAGES RIGHTS

Development of test case	60 000 \$
Trial	875 000 \$
Appeal	160 000 \$
Intervention	100 000 \$

### LEGAL REMEDIES – HUMAN RIGHTS

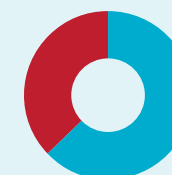
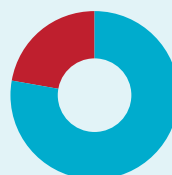
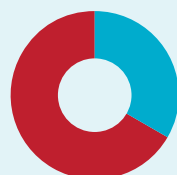
Development of test case	65 000 \$
Trial	800 000 \$
Appeal	14 808 \$
Intervention	46 000 \$

# Funding Granted in 2018-2019

## OFFICIAL LANGUAGES RIGHTS COMPONENT

	Development of test case	Trial	Appeal	Intervention	Total
<b>Number of applications received*</b>	<b>12</b>	<b>9</b>	<b>4</b>	<b>2</b>	<b>27</b>
<b>Number of applications funded</b>	<b>4</b>	<b>7</b>	<b>4</b>	<b>2</b>	<b>17</b>

\* Applications received means applications received and processed by the Expert Panel.





# Number of Applications Funded

## BY CATEGORY OF RIGHTS COVERED BY THE CCP

*(Note that the table total is higher than the total of 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
Development of test case	1	0	3	0	0
Trial	4	0	2	0	1
Appeal**	2	0	2	1	0
Intervention***	1	0	1	1	0

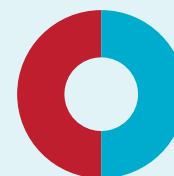
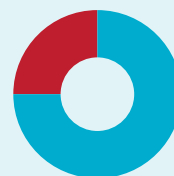
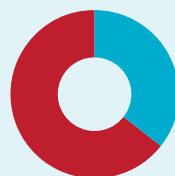
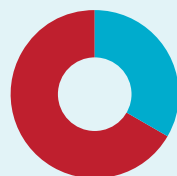
*\*\*Applications for an appeal may include applications for a motion for leave to appeal. \*\*\*Applications for intervention may include applications for leave to intervene.*

# Funding Granted in 2018-2019

## HUMAN RIGHTS COMPONENT

	Development of test case	Trial	Appeal	Intervention	Total
<b>Number of applications received*</b>	<b>12</b>	<b>14</b>	<b>4</b>	<b>4</b>	<b>34</b>
<b>Number of applications funded</b>	<b>4</b>	<b>5</b>	<b>3</b>	<b>2</b>	<b>14</b>

\* Applications received means applications received and processed by the Expert Panel.



# Number of Applications Funded

## BY CATEGORY OF RIGHTS COVERED BY THE CCP

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

	Fundamental freedoms	Democratic rights	Right to life, liberty and security of person	Right to equality	Multiculturalism	Equality of the sexes
Development of test case	0	0	3	4	0	1
Trial	0	0	3	4	0	0
Appeal**	0	0	2	3	0	0
Intervention***	0	1	0	2	0	0

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