



Annual Report 2022–2023



Foreword

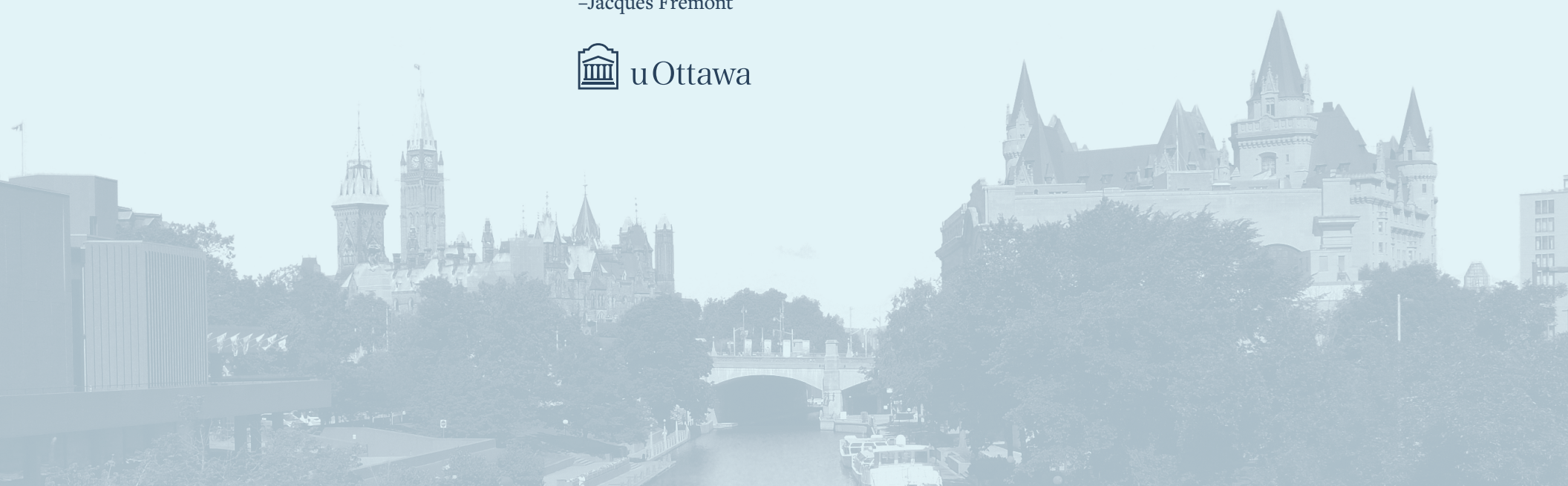
With the publication of this Annual Report, the current iteration of the Court Challenges Program (CCP) completes its first five years. Its track record is impressive and clearly demonstrates the significant needs that this program fulfills. Over the past five years, the Program has allocated more than \$18 million in funding to support of a wide variety of constitutional human rights and language rights challenges.

I am therefore delighted that Parliament has seen fit to enshrine the existence of the Program in legislation as part of its enactment of the new *Official Languages Act*. It is equally commendable that the annual grant to the Program has been increased.

It is also worth mentioning that, as a capstone to these first five years, the CCP's funding agency, Canadian Heritage, has seen fit to carry out an evaluation of the Program in order to learn from its recent past and assess what improvements can be made. This evaluation is currently underway and will pave the way for the CCP's future.

At a time when constitutional and linguistic rights are being given short shrift by some, it is reassuring that a program like the CCP, despite its modest cost, continues to empower the advancement of rights across the country. I would like to thank the CCP staff and the members of the expert panels for their tireless and important work.

–Jacques Frémont



Director's Message

It is with immense pleasure to write at the end of the first five years of the reinstated Court Challenges Program (CCP). Between being reconstituted in 2018 and the end of March 2023, the CCP has funded 275 files at the cutting edge of constitutional human rights and official language rights law, allocating more than \$18 million to the development and litigation of constitutional test cases.

The CCP is, in my view, a truly extraordinary program, providing the tangible means for Canadians to access constitutional justice. For the human rights and official language rights guaranteed in our constitutional documents, including the *Canadian Charter of Rights and Freedoms*, to be able to protect us, Canadians must have the means to hold governments to account when those rights are infringed. And yet for too many, access to the courts and tribunals that can enforce those rights is entirely out of reach. By targeting financial support to those seeking to vindicate those rights, the CCP provides an essential bridge between Canadians and their judicial system. We should all be proud to live in a society where those seeking equality, whether linguistic minorities or other politically marginalized people, are not only able, but actively enabled, to stand up for their constitutional rights.

2022-2023 has seen the beginning of a period of Program evaluation, both externally by our funding agency, the Department of Canadian Heritage, and internally, as we reflect on the successes and challenges of the first five years. The toughest parts of the COVID-19 pandemic, in particular, significantly slowed the CCP's activity as its impacts reverberated in both the operations of the courts and the capacity of civil society to bring cases. But as this Annual Report attests, 2022-2023 has shown a remarkable bounce back: the 74 files funded this year represent an 80% increase over the number funded in 2021-2022. I was particularly pleased to see that, of these 74, 20 were funded at the test case development stage, what I call the "incubator" stage, a sign of fresh growth for constitutional litigation in Canada.

Surveys and consultation done in the course of this evaluation have clarified the challenges ahead for the CCP, principal among them to get the word out to more Canadians that the CCP is here to help and to facilitate their access to the Program. As more Canadians find out about the CCP, we will need to dedicate additional resources to processing more applications and to managing an increased load of files. This work is already well underway, and I believe that, having

come to the end of the launch phase of the reinstated CCP, the next five years promise to be a maturing time, during which the CCP can become even more firmly embedded as part of Canada's constitutional order. Indeed, the CCP's important role is reflected in both of its branches being enshrined in legislation in 2023.

In both the extraordinary work that has been done, and the work ahead, I salute the conscientious and inspiring efforts of the CCP's staff and Expert Panels. It is truly a privilege to work shoulder-to-shoulder with them to help Canadians access the constitutional justice to which we are all entitled.

—Marika Giles Samson



Message from the Chair of the Human Rights Expert Panel

The Human Rights Expert Panel enjoyed a challenging and productive year in 2022-2023. The privilege of having a role in helping ground-breaking cases reach the courts is immensely rewarding. We are now reaching the point where cases we supported almost four years ago, in the early days of the new Court Challenges Program (CCP), are coming to fruition.

This evolution has brought with it new challenges and some new thinking. The pathway for constitutional challenges to reach the Supreme Court of Canada is lengthy. While not all CCP-funded cases are destined for that Court, many litigants seeking constitutional change do aspire to that venue, and it is increasingly clear to us that the CCP will never be able to provide all of the resources that are necessary for that journey. Even beyond financial resources, those bringing forward novel constitutional challenges need patience and personal fortitude, as well as the support of excellent lawyers who also possess those qualities.

As we consider the applications that come before us, and the role of the CCP in the Canadian legal system, we have made some changes. At the simplest level, we have made

modest increases to maximum available funding in several categories. We have also introduced a new category of extraordinary funding for cases that face exceptional obstacles, beyond the extraordinary obstacles faced by any constitutional challenge. It remains the case that the CCP could never cover all the costs of such complex litigation: our goal is to make a decisive difference in allowing these cases to make it to court.

We have also begun talking about some of the realities of constitutional litigation that we see in our work. While courts across Canada have worked steadfastly to make processes easier for self-represented litigants, the reality is that it is almost impossible for a litigant to carry a constitutional challenge on their own. The CCP's focus on test cases also means that we have had to think hard about the role of settlement in this kind of litigation, and about how to ensure that the interests of individuals at the heart of the cases we support remain front and centre in all of our deliberations. Finally, while we aim always to fund cases that bring forward well-grounded novel arguments with the potential to develop Canadians' understanding of constitutional rights, we do not focus on "picking winners". We are also coming to understand through

our work that what counts as a "win" is not always a win on the litigation scoresheet. As the program matures, ensuring a human-centred approach to our decision-making has been an increasingly prominent feature of our deliberations this year.

Speaking of humans, 2022-2023 was also a year of considerable personnel change for the Human Rights panel. We have welcomed two new panel members, as well as two new members of our intrepid staff team. It is a great pleasure to sit around the table with this incredibly dedicated group. This year has also brought us the pleasure of being able to be physically in the same space again, albeit with the benefit of what the pandemic has taught us about long distance connections.

We are looking forward to the coming year and hoping for an ever-expanding number and array of funding applications.

–Catherine Dauvergne



Message from the Chair of the Official Language Rights Expert Panel

Once again this year, the Official Language Rights branch of the Court Challenges Program (CCP) had great success in funding language rights test cases across Canada. The cases were complex and involved points of law that will change the course of language rights in Canada. These proceedings before Canadian courts at national, provincial and territorial levels, in many areas of language rights, demonstrate a commitment and willingness on the part of citizens to the advancement of official language rights and to creating a more comprehensive and varied jurisprudence in this area of law.

Over the years, the CCP has played an important role in developing capacity and expertise in the area of language rights across Canada by supporting court cases at all levels. The Program's interventions have helped to develop language rights in an evolving environment, while supporting the training of a new generation of legal experts in language rights.

The most significant legal evolution for this branch of the Program in the past year, and one that will have repercussions for decades to come, is the modernization of the federal *Official Languages Act*. These legislative changes will advance the equality of both

official languages across Canada and, above all, will create a new vision of that equality. As only one example, the modernization of the *Official Languages Act* has led to the enactment of a new law concerning the use of French within federally-regulated private businesses.

For the CCP, the most significant development is the enshrining of the language rights component of the Program in the *Official Languages Act*. This legislative change aims to preserve the CCP's existence, creating an obligation for the government to justify the partial or complete elimination of the Program and to consider measures to mitigate any potential negative effects of such elimination.

Enshrining the Program into the *Official Languages Act* also increases the ability of official language minorities to defend their rights, and thus better preserve them. Since its reinstatement in 2018, the CCP has funded some 100 test cases on constitutional or quasi-constitutional official language rights, predominantly in the areas of minority-language education, linguistic equality and promotion, and the right to services and communication in one's official language.

The Program's success is a guarantee of greater respect for the substantive equality of English and French in Canada. One of the key elements of this success is the commitment of members of the Expert Panel, who over the years have worked collegially and diligently to review funding applications and approve many that have become test cases of national importance. Members have shown outstanding commitment, and we must thank them for their dedication to this work. Program staff have also shown great professionalism in supporting the analysis of funding applications and the management of the Program.

Our work with the Program is challenging, but deeply rewarding, because we work alongside people who believe in language rights and want to make a difference in Canada. Many thanks to everyone involved in the success of the Program for the quality of your work.

–Gilles LeVasseur



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.



Sabrina Diotte
Legal Counsel



Hardie Rath-Wilson
Legal Counsel



Aminata Nyara Barry
Office Administrator

In 2022–2023, the CCP also benefited from the support of three law student assistants: Émilie Weidl, Yasser Rzaini, and Widad Farah Dimou. Our work was also supported by a communications 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 A recipient of funding from the Human Rights Branch of the Court Challenges Program (CCP) recently completed the development of their test case on the merits of litigation to challenge the constitutionality of the *Criminal Records Act* on the basis of sections 7 and 15 of the *Canadian Charter of Rights and Freedoms*. The recipient sought to confirm that various components of the *Criminal Records Act*, which governs the eligibility guidelines of the Criminal Record Suspension Program, unreasonably limits those who apply for a criminal records suspension. For example, the regime as it currently exists creates barriers such as financial penalties and inordinate delays that impact the security of the person by increasing the risk of unemployment and poverty, which can have a negative impact on one's physical and mental well-being, as well as the health of one's children. With respect to section 15 equality rights, the recipient sought to argue that criminal records disproportionately impact marginalized people, both on enumerated and analogous grounds. Indeed, the recipient's proposed case is complex but, with CCP funding, they were able to develop their arguments and supporting evidence and are in a better position to determine whether they will pursue litigation.

2 CCP human rights funding was allocated to a recipient that enabled them to intervene in a family law case to advance an interpretation of recent amendments to the *Divorce Act* that is consistent with sections 15 and 28 of the *Canadian Charter of Rights and Freedoms*. In doing so, the recipient sought to assert the equality rights of women and children by providing the court with contextual arguments in relation to the interplay between this federal piece of legislation and the *Charter*. The recipient further argued that understanding aspects of family law, such as divorce and relocation, through the lens of sections 15 and 28 is crucial at a time when more light is being shed on the pervasive nature of intimate partner violence.

Human Rights Branch

Examples of Funded Cases

3 In the last year, the Human Rights Expert Panel provided CCP funding for a recipient to mount a challenge to the *Canada Pension Plan* alleging that they and members of their family experienced discrimination on the grounds of their national or ethnic origin. The recipient argued that the denial of certain types of benefits under the *Canada Pension Plan* is contrary to their right to equality under section 15 of the *Canadian Charter of Rights and Freedoms*. The recipient alleged that the pension regime's requirement that a beneficiary make contributions to the regime for a minimum qualifying period was, in their case, discriminatory since it placed them in a different position than other Canadians. The case involves a number of complex issues, such as an administrative tribunal's ability to hear *Charter* arguments, national and international agreements for the harmonization of social benefits, as well as the merits of previous jurisprudence on the intersection of section 15 and social benefits like those made available through the *Canada Pension Plan*.

4 The Human Rights Expert Panel funded an intervention in a recent constitutional reference on whether the *Act Respecting First Nations, Inuit and Métis Children, Youth and Families* was *ultra vires* the jurisdiction of the Parliament of Canada. The Program's funding of this intervention allowed the recipient to provide vital contextual analysis to the Court demonstrating that, while the regime put forward by this piece of federal legislation fell short of what is required to provide substantively equal services to First Nations children as required by sections 7 and 15 of the *Canadian Charter of Rights and Freedoms*, it was inspired by efforts to end discrimination in the provision of child and family services on-reserve and to have the full meaning and scope of *Jordan's Principle* enforced. The recipient's intervention sought to help the Court to better understand the ways in which the interpretation of the jurisdiction issues raised in the case must be informed by a number of factors, including the historical relationship between First Nations and the federal Crown, human rights principles, and sections 7 and 15 of the *Charter*.

Human Rights Branch

FUNDING GRANTED IN 2022–2023

Number of applications	Test Case Development	Trial	Appeal	Intervention	Total
Received*	27	29	11	9	76
Funded	16	15	3	7	41

*This includes those applications received and decided by the Expert Panel in 2022–2023.

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	3	1	10	12	0	3
Trial	1	0	4	9	0	1
Appeal**	0	0	2	3	0	0
Intervention***	1	0	4	6	0	3

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 In fall 2022, the Official Language Rights Expert Panel funded an intervention in a case before the Supreme Court of Canada on the issue of education rights under section 23 of the Canadian *Charter of Rights and Freedoms*. In its intervention, the funding recipient argued that the interests protected by section 23 must be taken into account both individually and collectively in any context where a decision is likely to have an impact on the operation of an institution that affects minority language education rights. This appeal to Canada's highest court also raised the interpretation of the right of official language minorities to use French in court proceedings. In this respect, the beneficiary argued that the courts' previous interpretation of the right to use French before the courts, as well as to be understood by them in the official language of one's choice, was restrictive and required a fresh examination informed by jurisprudential developments on the need to interpret language rights through the prism of substantive equality.

2 Funding from the Court Challenges Program (CCP) was awarded to a recipient to develop a test case concerning the equivalence of English and French elementary schools within an urban centre in Ontario. While much has been written since section 23 came into force, cases involving minority language education rights remain of primary importance, as official language minority communities must continually seek the implementation of the government obligations that flow from it. In this case, the recipient explored the intersection of section 23 and the problem of securing the urban land necessary to ensure that official language minority communities have meaningful access to schools that are located in, and reflect the realities and needs of, their communities. At a time when urban real estate is highly coveted, this issue seems to be one of the next battlegrounds for the struggle to enforce section 23 obligations.

Official Languages Rights Branch

Examples of Funded Matters

3 In the past year, the Official Languages Rights Expert Panel funded litigation under section 16 of the *Canadian Charter of Rights and Freedoms* in relation to the right of litigants to hearings entirely in French before the country's administrative tribunals. With funding from the Court Challenges Program, the beneficiary brought an action claiming that a government's failure to appoint bilingual decision-makers to administrative tribunals constituted a violation of section 16 rights. It is hoped that this case will provide an opportunity to re-examine the scope of section 16 and, more specifically, the implications of subsection 16(3) of the *Charter*.

4 Recently, the Expert Panel has funded a number of cases dealing with the official language obligations of Canadian airport authorities and airlines under the *Official Languages Act* and the *Canadian Charter of Rights and Freedoms*. While the issue is always timely, each of the funded cases takes a different approach to the problem, and cases have become more complex as violations of official language rights persist. As a result, one Court Challenges Program funded appeal focuses on the issue of remedies available under the *Official Languages Act* and the *Charter*. In light of long-standing violations, the objective of this case is to seek reparations that will serve to better deter Canadian airport authorities and airlines from continuing to violate the language rights of travelers.

Official Languages Rights Branch

FUNDING GRANTED IN 2022–2023

Number of applications	Test Case Development	Trial	Appeal	Intervention	Total
Received*	5	20	7	14	46
Funded	4	12	6	11	33

*This includes those applications received and decided by the Expert Panel in 2022–2023.

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	3	1	0	0	0
Trial	5	4	5	3	0
Appeal**	0	1	4	7	0
Intervention***	7	8	6	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 2022–2023

OFFICIAL LANGUAGES RIGHTS	1 920 000 \$
Test Case Development	57 000 \$
Trial	1 283 000 \$
Appeal	240 000 \$
Intervention	340 000 \$
HUMAN RIGHTS	1 820 356 \$
Test Case Development	275 000 \$
Trial	1 245 856 \$
Appeal	150 000 \$
Intervention	149 500 \$

Statement of Revenue and Expenses (Cash Flow)

YEAR ENDED MARCH 31, 2023

REVENUE		7 585 259 \$
Contribution from the Department of Canadian Heritage		4 074 584 \$
Cumulative surplus carried over from 2021–2022		3 510 675 \$
EXPENSES		3 940 200 \$
Administration		896 420 \$
Cases – Official Languages Rights		1 408 865 \$*
Funded Applications	1 920 000 \$	
Less unused funds returned	(511 135 \$)	
Cases – Human Rights*		1 634 915 \$*
Funded Applications	1 820 356 \$	
Less unused funds returned	(185 441 \$)	
CUMULATIVE SURPLUS		3 645 059 \$

**Net figure, which includes new applications funded in 2022–2023 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 2022–2023 fiscal year, the CCP has recovered over \$1,000,000 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 Algonquin people.
We thank the Algonquin people for the privilege of working in this place and honour them as the traditional guardians of these lands.*

COVER PHOTO: “[Supreme Court of Canada in summer](#)”, by Dig deeper, used under license [CC BY 4.0](#)

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