

ANNUAL REPORT



COURT CHALLENGES
PROGRAM OF CANADA
PROGRAMME DE CONTESTATION
JUDICIAIRE DU CANADA

2002-2003

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COURT CHALLENGES PROGRAM OF CANADA

PROGRAMME DE CONTESTATION JUDICIAIRE DU CANADA

The year 2003 marks the 25th anniversary of the Court Challenges Program. The Program was created in 1978 initially to fund the costs incurred by individuals wishing to apply to the courts to clarify the extent of their language rights under sections 93 and 133 of the *Constitution Act, 1867*.

In 1982 language rights were further clarified and elaborated in *The Canadian Charter of Rights and Freedoms*. *The Charter* also contained many important new provisions guaranteeing and protecting certain fundamental rights for Canadians. Following the full implementation of these provisions in 1985, the Court Challenges Program was expanded to include the funding of costs incurred by individuals wishing to apply to the courts to clarify their equality rights as guaranteed and protected in section 15 of *The Charter*.

In each of the years since the Court Challenges Program's creation, except for the two years following the Program's temporary discontinuance in 1992, it has funded many important language and equality cases. These cases assisted greatly in the clarification and evolution of fundamental language and equality rights. The program is unique in nature – no other country has a similar program to assist its citizens in gaining legal clarification of their rights – a fact that has been noted internationally.

Canadians live in a country where language and equality rights are vigorously promoted and defended. With the help of the Court Challenges Program, we can continue to ensure that these fundamental rights are protected. Canadians can be very proud of the fact that Canadian language and equality rights cases are cited by many courts throughout the world as being at the forefront of human rights case law.

The Court Challenges Program of Canada/
Programme de contestation judiciaire du Canada
is funded by

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MESSAGE FROM THE CHAIR

On behalf of the Board of Directors, I am very pleased to present the ninth annual report of the Court Challenges Program of Canada.

This Report provides an overview of the activities undertaken and funded by the Court Challenges Program over the past year. As you will see, the number of cases funded by the Program leveled off this year, after a pattern of steady annual increases. For the past few years, rising administrative costs, fees, and disbursements have meant that the Program's costs have exceeded the money it received under its current agreement with the federal government by twenty per cent. The program has covered those costs with monies carried forward from its first contribution agreement. Unfortunately, we have exhausted these monies, leaving us with an annual operating budget that will be approximately twenty percent lower next year. When combined with the pressure from rising costs, our ability to deliver services and fund cases over the next few years will be seriously affected, unless we can secure increased funding as part of the renewal of the contribution agreement for the Program.

The Board, in recognition of the diminished resources that will be available if the Program is renewed at the current level of funding, made a request to Canadian Heritage for a short-term, one-year renewal of the contribution agreement for the Program, pending a decision on our request for increased funding. The renewal has been granted, and the Board met with the Minister's staff and made detailed written submissions to the Minister in support of an increase in funding for the long-term renewal of the contribution agreement for the Program.

The Board remains hopeful the increase will be granted, particularly in light of Heritage Canada's evaluation of the Program, completed in February by Prairie Research and Associates. The report recognizes the unique and important contribution the Program makes to our understanding of Constitutional and *Charter* rights and concludes that we are a sound, well-

run organization that is a worthy recipient of Canadian Heritage funds. Over this past year, Program staff, together with our members and supporters, made a special effort to ensure the researchers understood the work of the Program and the importance of that work for minority language and disadvantaged communities. This input is clearly reflected in the final report which I encourage all Canadians to review. The report and its recommendations can be found at (http://www.pch.gc.ca/progs/em-cr/eval/2003/2003_02/index_e.cfm).

Canadian Heritage responded positively to the report, committing itself to a five-year agreement to be implemented in April of 2004, with only a few administrative adjustments. What remains to be seen is whether our request for an increase in funds, which was not supported by the evaluation, will be granted. The Board has made a strong case for a minimum twenty percent increase, which would allow us to continue funding cases at current levels.

While program evaluation and the contribution agreement renewal presented serious challenges during the past year, the Board hopes to move forward with mandate expansion and the endowment fund during the next five-year term.

I would like to recognize and express my gratitude to the members of the Board, staff, Panels, and Advisory Committees for their continued hard work, dedication and support. I am continually inspired by the commitment of all those associated with the Program. Together with our dedicated and talented staff, we have built an organization of which we can be proud: an organization that works for social justice through the full recognition and implementation of equality and language rights in Canada.



Chantal Tie

Chair of the Board of Directors

MESSAGE FROM THE EXECUTIVE DIRECTOR

This is Le Programme de contestation judiciaire du Canada/The Court Challenges Program of Canada's (CCPC/PcjC) 9th Annual Report since the signing of the 1994 Contribution Agreement with the Department of Canadian Heritage, that entrusted the CCPC/PcjC with the administration of the Court Challenges Program/ Programme de contestation judiciaire (CCP/Pcj).

During the 2002/2003 fiscal year, the Court Challenges Program of Canada faced numerous challenges in terms of personnel changes and additional tasks to be undertaken. In addition, orientation had to be provided to newly appointed Board and Panel members. As noted in last year's annual report, static funding, rising administrative costs and increased numbers of funding applications placed greater budgetary constraints on the CCPC.

The independent firm Prairie Research & Associates evaluated the CCP, as the 1998-2003 Contribution Agreement was set to expire on March 31, 2003. The CCPC staff and Board devoted a great deal of time and energy to providing the necessary information to the evaluators. This included the seeking of proper authorisations from certain applicants.

The evaluation took much longer than had been anticipated with the final report not being completed and approved until February 2003. As a result, discussions

regarding the renewal of the contribution agreement for the Program could not commence in earnest until March 2003. As the term of the Contribution Agreement was fast approaching, Canadian Heritage agreed to extend the current Contribution Agreement to March of 2004. This will permit a full discussion of the evaluation report and its recommendations in regards to the renewal of the contribution agreement for the CCP.

Overall, the evaluation report was positive and recommended that the contribution agreement for the CCP be renewed. In terms of renewal, the CCPC will be seeking an increase in its funding from Canadian Heritage to meet the rising administrative costs and to respond to the increase in the number of applications received by the CCPC over the last several years.

In closing, I would like to express my gratitude to the members of the Board of Directors, the Panels and the Advisory Committees as well as staff for their continued support. In particular, I am indebted to Chantal for her always wise and reasoned counsel.



Noël A. J. Badiou
Executive Director

ADMINISTRATION

Program Structure and Composition

The Court Challenges Program of Canada is a national not-for-profit corporation with a mandate to clarify and advance constitutional rights and freedoms related to equality and minority official language rights by providing financial assistance for test cases of national significance.

A national Board of Directors whose members serve on a volunteer basis oversees the management of the Court Challenges Program (“Program”). In view of the importance of the mandate and the diversity in the communities that the Program serves, the Board has established a number of committees to assist it in carrying out its functions.

The main function of the Program is to consider applications for funding and provide funding to successful applicants. Two independent panels of experts, the Language Rights Panel and the Equality Rights Panel, make the funding decisions. Two independent panel selection committees whose members are appointed by the Board, select members for each of the Panels respectively.

There are three categories of Court Challenges Program of Canada corporation members: Equality Members, Language Members, and Director Members. The membership meets at the Annual General Meeting to conduct the Program's corporate business, including the election of Board members. The membership groups have established an Equality Advisory Committee and a Language Advisory Committee. These committees serve to provide information on program-related issues of interest to their members and provide advice to the Board on policy issues throughout the course of the year.

Staff, located at the Court Challenges Program of Canada's office in Winnipeg, supports the work of the Board, the panels, and the committees.

The following sections set out the composition of each of these committees and our staff and briefly describe their activities. This is also an opportunity to recognize the important contribution that each of our volunteers make towards carrying out the mandate of the Program.

Board of Directors

The Board of Directors is responsible for the administration of the Court Challenges Program, including the budget, the human resources management, the establishment of policies, and the long and short-term plans for the effective operation of the Program.

There are seven positions on the Board of Directors. Two Directors are elected by the Equality members; two Directors are elected by the Language Members; one Director is nominated by the Law Faculties and Bar Associations across Canada; and one co-chairperson of each of the Equality Panel and the Language Panel is appointed a Director. At the Annual General Meeting, the Program members confirm the appointments of the Directors. Directors hold office for three years or until their successors are appointed and confirmed.

The 2002-2003 Board of Directors consisted of:

- Chair and Representative of Equality Members, **Chantal Tie** (Ontario), Executive Director of South Ottawa Community Legal Services; adjunct professor of immigration and refugee law; and member of various equality-seeking groups;
- Vice-Chair and Co-Chair of the Equality Panel – (April-November) **Pat Case** and (November-March) **Leslie MacLeod**;
- Vice-Chair and Co-Chair of the Language Panel – **Ronald Bisson**;
- Treasurer (April-November) and Representative of the Language Members – **Louise Somers** (New Brunswick) a lawyer and notary in private practice in Saint Quentin and past president of the Association des juristes d'expression française du Nouveau Brunswick;
- Treasurer (December-March) and Representative of the Law Faculties/Bar Associations – **Ken Norman** (Saskatchewan), professor with the University of Saskatchewan in Saskatoon and author of various reports on human rights, labour relations, administrative and constitutional law;
- Representative of Language Members – **Michael Bergman** (Québec), lawyer in private practice with

ADMINISTRATION

Bergman and Associates in Montréal with expertise in minority language issues particularly as they relate to Québec;

- Representative of Equality Members – **Bonnie Morton** (Saskatchewan) with the *Charter* Committee on Poverty Issues; and
- Representative of the Language Members (January-March) – **Marianne Rivoalen** (Manitoba), a lawyer and notary in private practice in Winnipeg and past president of the Association des juristes d'expression française du Manitoba.

Panel Selection Committees

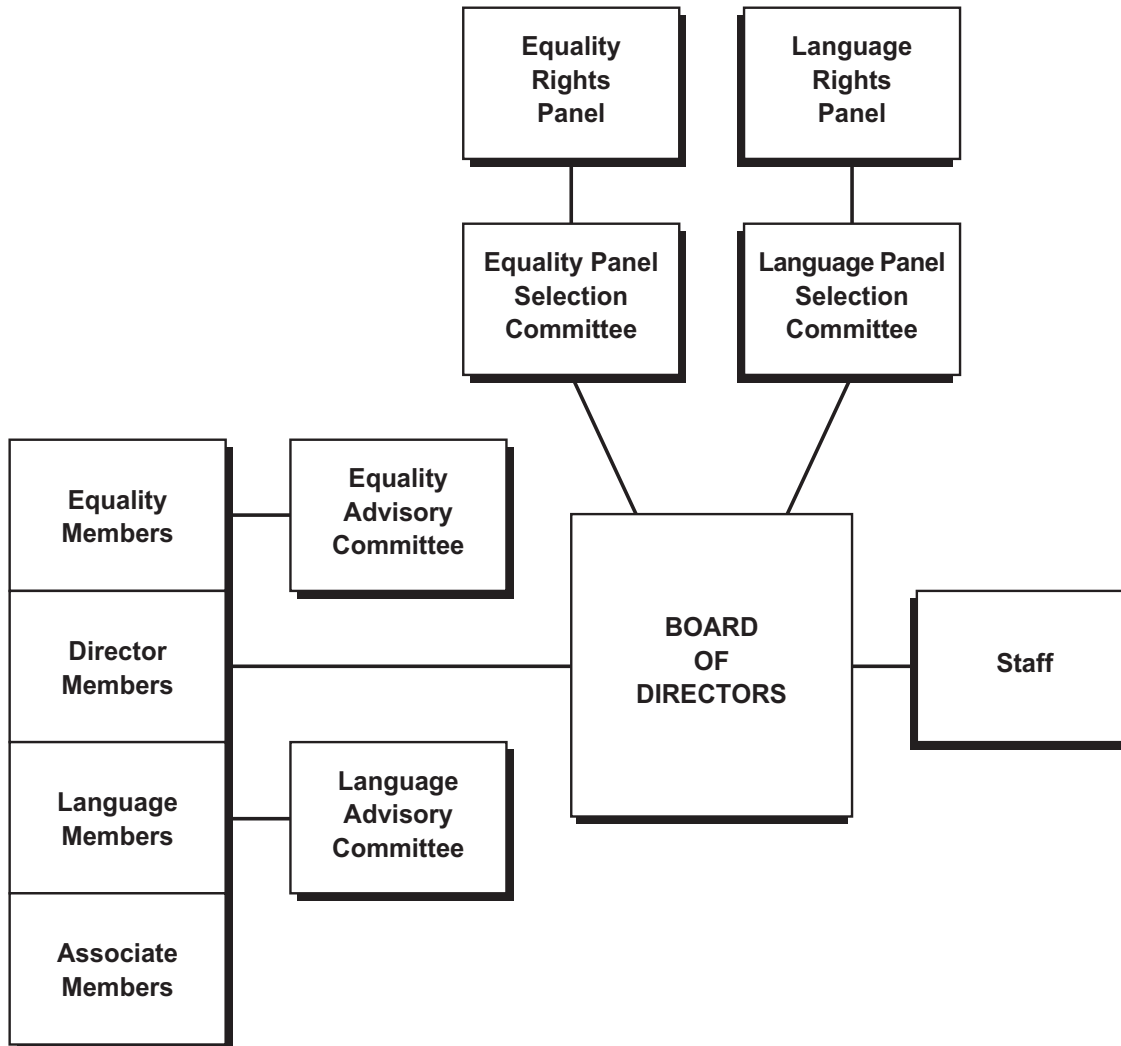
The Program solicits nominations for new Panel members from its members and other community groups. An Equality Panel Selection Committee reviews nominations and appoints members to the Equality Panel.

Similarly, a Language Panel Selection Committee selects Language Panel members.

THE LANGUAGE RIGHTS PANEL SELECTION COMMITTEE

In 2002-2003, the Language Panel Selection Committee was composed of the following persons:

- **Marc Cousineau** (Ontario) – Professor of Law at the University of Ottawa (Common Law Section) and Director of the Canadian Centre for Linguistic Rights;
- **Gérard Lévesque** (Ontario) – lawyer and member of the Association de juristes d'expression française de l'Ontario;
- **Guy Matte** (Ontario) – Executive Director of the Association des enseignants et enseignantes franco-ontariens;



- **Raymond Poirier** (Manitoba) – Director of the Association des municipalités bilingues du Manitoba; and
- **Eric Sutton** (Québec) – lawyer in private practice with the firm Girouard, Peris, Goldenberg, Pappas and Sutton.

THE EQUALITY RIGHTS PANEL SELECTION COMMITTEE

In 2002-2003, the Equality Panel Selection Committee was composed of the following persons:

- **Akua Benjamin** (Ontario) – Professor of Social Work at Ryerson Polytechnic University;
- **William Black** (British Columbia) – Professor of Law at the University of British Columbia;
- **Nitya Iyer** (British Columbia) – Associate Professor of Law at the University of British Columbia and former Member of the British Columbia Human Rights Tribunal;
- **Lucie Lamarche** (Québec) – Professor of Law at the Université de Québec à Montréal; and
- **Amy Go** (Ontario) – activist with racial minority and women's communities in Toronto (February-March).

Panels

THE LANGUAGE RIGHTS PANEL

The Language Panel reviews funding applications and makes all decisions regarding case and project funding related to language rights test cases. Its five members have expertise in language rights and official language minority communities in Canada and bring to the Panel expertise in language rights issues as well as considerable experience with a broad range of language rights groups.

In 2002-2003, the Language Panel was composed of the following individuals:

- **Ronald Bisson**, Co-Chair (Ontario) – a private management consultant who has worked with various French-language minority communities outside of Québec as Director General of the Federation des jeunes canadiens-français and as a teacher in Manitoba's French language schools;
- **André Braën** (Ontario) – a lawyer and professor with the University of Ottawa who has extensive

knowledge, experience, and expertise with language rights;

- **Micheline Gleixner** (New Brunswick) – a lawyer with McInnes Cooper in Moncton who has a particular interest in language rights;
- **André Ouellette** (Alberta) – a lawyer with Ouellette Rice in Calgary who has an interest in language rights; and
- **Kathleen Tansey** (Québec) – a practicing lawyer and member of Alliance Québec and a former teacher in Montreal.

The Court Challenges Program received 42 applications for support for language-related cases and projects during this fiscal year. In 2002-2003, the Language Panel granted funding for 24 applications in the following categories:

Language Rights	% of Total	Number of Cases	Amount of Money Granted
Case Development	12.5	3	\$7,718
Case Funding	50.0	12	\$832,729
Impact Studies	4.2	1	\$<3,461>
Program, Promotion & Access and Negotiation	33.3	8	\$82,002

(Note: The figures noted above represent the total amount of funds granted in this fiscal year including funds granted to applications received in previous fiscal years but dealt with in this fiscal year. The total amount granted in each category also includes funds withdrawn from files where a portion of monies granted were not used.)

THE EQUALITY RIGHTS PANEL

The Equality Panel reviews funding applications and makes all decisions regarding case and project funding that involve equality rights test cases. Each of its seven members brings to the Panel expertise in equality and human rights issues as well as considerable experience with a broad range of equality-seeking groups.

In 2002-2003, the Equality Panel was composed of the following individuals:

- **Leslie MacLeod**, Co-chair (Newfoundland) - adult educator, community development worker, social researcher, technical writer, consultant, advocate,

ADMINISTRATION

community and board member in the disability, mental health and women's movements;

- **Patrick Case**, Co-Chair (April-November) (Ontario) – lawyer and Director of the University of Guelph's Human Rights and Equity Centre, with extensive experience in family, refugee, and immigration law and knowledge about equity, human rights, and personal harassment matters;
- **Sharryn Aiken**, Co-Chair (December-March) (Ontario) – lawyer and Professor of Law (Faculty of Law, Queens University) and author of numerous articles on Canadian refugee policies, racism, and human rights (July-March);
- **Claudyne Bienvenu** (Québec) – legal analyst for the Québec Human Rights Tribunal and author of numerous studies on human rights, young offenders and refugees (April-November);
- **Robert Saint-Louis** (Québec) – lawyer and consultant on unemployment and disabilities issues. Mr. Saint-Louis also taught law classes at the Université de Québec à Montréal and was responsible for l'UQAM's legal clinic (December-March);
- **Theresa Tait-Day** (British Columbia) – consultant on legal issues affecting Aboriginal peoples through community advocacy and consulting work for various levels of government in Vancouver;
- **Martha Jackman** (Ontario) – Professor of Law (French Common Law Section) at the University of Ottawa and author of numerous studies on constitutional rights issues with a particular focus on social rights, poverty and women's equality;
- **Yvonne Peters** (Manitoba) – lawyer and consultant for governments, community groups, labour unions and corporations on the impact of human rights legislation, the *Charter*, and the advancement of human rights (April-May); and
- **Dianne Pothier** (Nova Scotia) – Professor of Law (Dalhousie Law School) at the Dalhousie University and author of numerous articles in the areas of labour law, human rights and equality rights, with specific emphasis on gender, disability, and their intersections.

The Court Challenges Program received a total of 148 applications for equality-related cases and projects during this fiscal year. This is an increase of 14 applications or 10.4 percent over the previous year. In 2002-

2003, the Panel granted funding for 106 applications in the following categories:

Equality Rights	% of Total	Number of Cases	Amount of Money Granted
Case Development	14.1	15	\$81,230
Case Funding	46.2	49	\$1,321,561
Impact Studies	5.7	6	\$48,948
Program, Promotion & Access and Negotiation	34.0	36	\$310,000

(Note: The figures noted above represent the total amount of funds granted in this fiscal year including funds granted to applications received in previous fiscal years but dealt with in this fiscal year. The total amount granted in each category also includes funds withdrawn from files where a portion of monies granted were not used.)

The Membership

On April 1, 2003, the Court Challenges Program's membership was composed of **17** Language Members, **66** Equality Members, and **4** Associate Members. During the 2002-2003 fiscal year, the following organizations became new members:

NEW LANGUAGE MEMBERS

There were no new language members in the 2002-2003 fiscal year.

NEW EQUALITY MEMBERS

- Indian Council of First Nations Inc.
- South Asian Legal Clinic (SALCO)

NEW ASSOCIATE MEMBERS

There were no new Associate members in the 2002-2003 fiscal year.

Advisory Committees

The two categories of members have each established an Advisory Committee. The Advisory Committees meet on an as needed basis to discuss issues of mutual interest related to the Program and to provide information and assist the Board of Directors. Up until November of 2002, a representative of each Advisory Committee participated in meetings of the Board of Directors in a non-voting capacity. During the Annual General Meeting in November of 2002, the Court Challenges Program's membership as a whole agreed that it was not necessary for representatives of the Advisory Committees to participate at all of the Board meetings.

LANGUAGE ADVISORY COMMITTEE

In 2002-2003, the Language Advisory Committee consisted of the following organizations and individuals:

Alliance Québec – Stephen Schenke

Commission nationale des parents francophones – Murielle Gagné-Ouellette

Fédération des associations de juristes d'expression française de common law – Jean-Paul Boily / Rénaud Rémillard

Fédération des communautés francophones et acadienne du Canada – François Boileau

Québec Community Groups Networks – Deborah Hook (mandate began in November 2002)

Murielle Gagné-Ouellette represented the Language Advisory Committee at meetings of the Board of Directors until November 2002.

EQUALITY ADVISORY COMMITTEE

In 2002-2003, the Equality Advisory Committee consisted of the following organizations and persons:

Action Committee of People with Disabilities – Joanne Neubauer (mandate began in November 2002)

African Canadian Legal Clinic – Margaret Parsons / Josephine Grey

Association multiculturelle francophone de l'Alberta – Igor César

Canadian Association of Elizabeth Fry Societies – Natalie Duhamel (mandate expired in November 2002)

Canadian Institute of Islamic Studies – Dr. Yaqoob Khan

Charter Committee on Poverty Issues – Bonnie Morton

Equality for Gays and Lesbians Everywhere – John Fisher

Minority Advocacy and Rights Council – Indra Singh

National Association of Women and the Law – Kim Brooks

PEI Council of the Disabled – Barry Schmidl

Québec Native Women's Association – Debbie Thomas

Trans/Action – Caroline White

Women's Legal Education and Action Fund – Sondra Gibbons/Gillian Calder

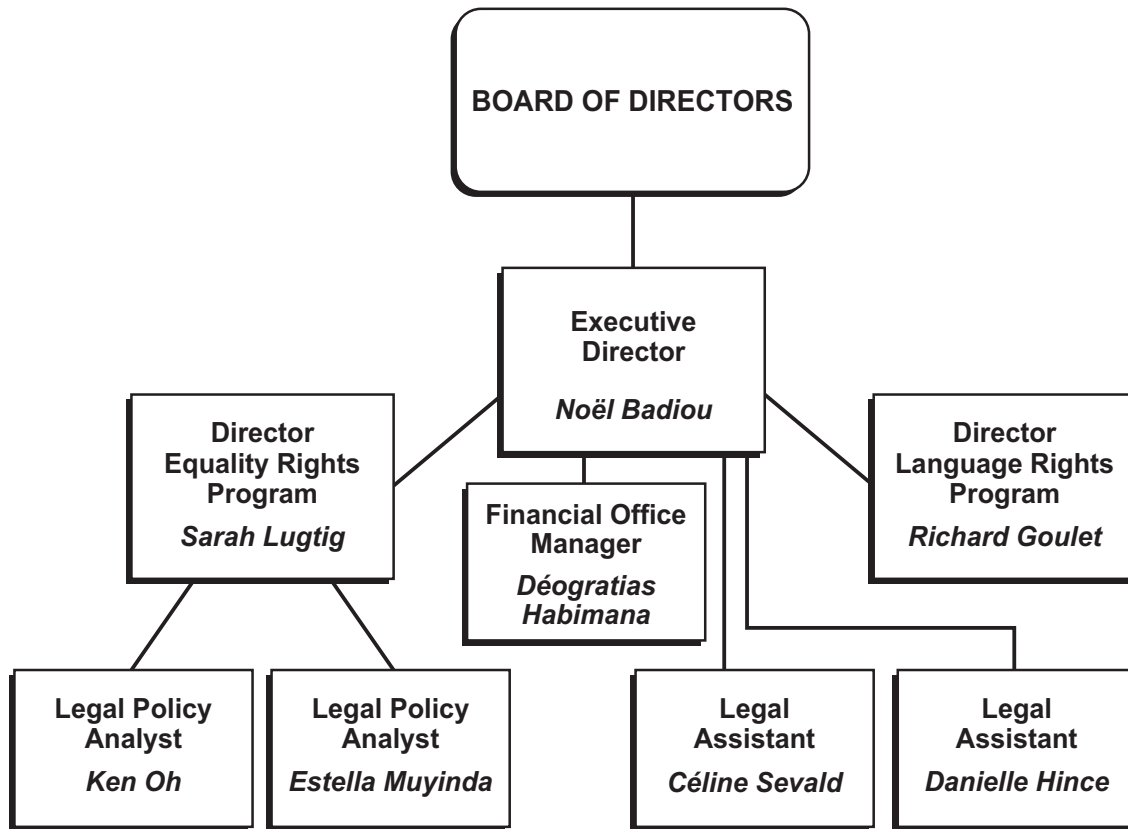
John Fisher represented the Equality Advisory Committee at meetings of the Board of Directors until November 2002.

The Equality Advisory Committee has established a number of sub-committees to work on specific issues. The following sub-committees were active in the past fiscal year:

- Information Insert Sub-Committee
- Poverty Issues Sub-Committee
- Race Issues Sub-Committee
- Working with Lawyers Sub-Committee
- Ad-hoc Committee on Transgender Issues

Staff

In 2002-2003, the Court Challenges Program employed eight individuals. There were some staff changes with the resignation of Mariel Venzky in August of 2002. In September of 2002, the Program hired Déogratias Habimana as the new Director of Finances. In January of 2003, Sarah Lugtig gave her resignation effective February 16, 2003. Sarah accepted a position as a senior policy analyst with the Manitoba government. Sarah will be missed by staff as well as the Program's members, Board and Panels. The new Director of Equality Rights Program, Susan Joanis, began her full time position in July of 2003. Several employees took on additional duties during these transitional times and their dedication and effort was very much appreciated.



Annual General Meeting

Over 80 individuals participated in The National Consultation and Annual General Meeting held in Winnipeg, November 22-24, 2002.

The 2002 National Consultation focused on the 20th anniversary of the *Charter* and the future of *Charter* litigation. The presentations regarding the issue of unwritten principles in the Constitution and the workshops on the sharing of resources for *Charter* litigation led to productive discussions that will assist Program members in their work.

The National Consultation served as an excellent forum to reach out to organizations that are new to the Program, providing them with an orientation that will assist them in developing funding applications.

The Board, Panels, and Advisory Committees reported to the membership about the previous year's activities during the consultation weekend.

Main topics for discussion at the 2002 Annual General Meeting included the evaluation of the Court

Challenges Program, the renewal of the Contribution Agreement for the Program, and the budgetary challenges facing the Program. It was noted that the evaluation seemed to be going well and that once the evaluation was complete, the Board would be requesting an increase in funding in the next Contribution Agreement with the Canadian Heritage.

During this 2002 Annual General Meeting, there were no elections to the Board despite the expiry of one of the Representatives of the Language Members' terms.

Finally, a number of tributes were made for departing Board member Louise Somers and departing Equality Panel members Claudyne Bienvenu and Yvonne Peters. The Program would also like to recognise the dedicated work and efforts of departing Equality Advisory Committee members Sondra Gibbons, Margaret Parsons and Natalie Duhamel; and the departing Language Advisory Committee members Stephen Schenke, Jean-Paul Boily and François Boileau. The Program is very appreciative of each of these volunteers' efforts and dedication and wishes each of them the best of luck in their future endeavours.

Program Priorities and Planning

During the 2002-2003 year, the Court Challenges Program continued to work on the five priority areas identified during our strategic planning process:

- Assisting applicants
- Encouraging strategic litigation and information-sharing
- Outreach for applications
- Developing public, political and financial support for long-term funding and mandate expansion
- Organizational support and development.

Progress in each of these areas is a shared responsibility among the Program's committees, panels and staff. The following provides an overview of progress made in each of these areas over the past year.

ASSISTING APPLICANTS

The new information kit developed last year, designed to assist members of the public in making applications to the Program, was distributed to applicants this year. The Program is continuing to look at its current methods and practices with a view to making the application process more user-friendly for new applicants.

ENCOURAGING STRATEGIC LITIGATION AND INFORMATION-SHARING

The Program's main opportunities for encouraging strategic litigation and information-sharing occur during its national consultation and through meetings with members and other groups throughout the year.

The Program continues to review other potential mechanisms for achieving this objective. During the past year, some progress was made in establishing a factum bank through our website. However, certain legal questions over copyright necessitated that the Program seek a legal opinion. The legal opinion has since been received and it is expected that the **Factum Bank** will be launched during the next fiscal year. In addition, further work has been made in developing an accessible electronic communication tool for sharing information relevant to strategic litigation.

Finally, the sub-committee of the Equality Advisory Committee continued to work on a handbook to assist lawyers and community groups who wish to work

together on equality rights litigation. It is hoped that the handbook will be finalised in the next fiscal year.

OUTREACH FOR APPLICATIONS

In 2002-2003, the Court Challenges Program staff, Panel, and Board members made presentations to about 20 equality-seeking and official language minority groups in various locations across Canada. The number of outreach activities was substantially reduced in view of the overall budgetary constraints.

Staff developed a speaker's kit to facilitate presentations about the Program's work by Panel and Board members for presentations on equality rights. It is expected that a language rights version will be finalised in 2003.

DEVELOPING PUBLIC, POLITICAL AND FINANCIAL SUPPORT FOR LONG-TERM FUNDING AND MANDATE EXPANSION

During the past year, the Program was preoccupied with the evaluation of the Court Challenges Program, which took much longer than had been anticipated. This delay resulted in the tabling of the mandate expansion efforts until the renewal of the Contribution Agreement for the Program was completed. In the interim, the existing Contribution Agreement was extended for one year pending the renewal discussions. The mandate expansion efforts will be renewed once the new Contribution Agreement is signed.

ORGANIZATIONAL SUPPORT AND DEVELOPMENT

The vast majority of the Program's functions relate to the day-to-day work of facilitating the application process, ensuring timely consideration of applications, managing over 457 active equality files and over 88 active language files, and fulfilling reporting requirements to Canadian Heritage. An additional task in the past year was the co-ordination of the evaluation of the Court Challenges Program.

Financial Statements

The following are the Program's audited financial statements for the year ending March 31, 2003. The statements consist of four main items:

- 1. The Balance Sheet** – contains a breakdown of each fund.
- 2. The Statement of Operations and Fund Balances** – provides a detailed list of monies received, transferred and disbursed in each funding category.
- 3. Notes to the Financial Statements**
 - Note 1 includes information about the incorporation of the Program and its Contribution Agreement.
 - Note 2 explains each of the funds, how they are accounted for and how the revenue is allocated between restricted and unrestricted funds.
 - Note 3 explains how capital assets are recorded.
 - Note 4 provides the breakdown between equality and language rights in each of the funds.
 - Note 5 shows the Program's commitments, which includes Panel commitments and the Program's lease commitment.
- 4. Schedule of Operating Expenses** – shows the revenue and the expenses for the Program's administrative monies.



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March 16, 2003

Auditors' Report

**To the Board of Directors of
 Court Challenges Program of Canada -
 Programme de contestation judiciaire du Canada**

We have audited the balance sheet of **Court Challenges Program of Canada - Programme de contestation judiciaire du Canada** as at March 31, 2003 and the statement of operations and fund balances for the year then ended. These financial statements are the responsibility of management. Our responsibility is to express an opinion on these financial statements based on our audit.

We conducted our audit in accordance with Canadian generally accepted auditing standards. Those standards require that we plan and perform an audit to obtain reasonable assurance whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation.

In our opinion, these financial statements present fairly, in all material respects, the financial position of Court Challenges Program of Canada - Programme de contestation judiciaire du Canada as at March 31, 2003 and the results of its operations for the year then ended in accordance with Canadian generally accepted accounting principles.

Chartered Accountants

PricewaterhouseCoopers refers to the Canadian firm of PricewaterhouseCoopers LLP and the other member firms of PricewaterhouseCoopers International Limited, each of which is a separate and independent legal entity.

**Court Challenges Program of Canada -
Programme de contestation judiciaire du Canada**

Balance Sheet
As at March 31, 2003

	2003					2002	
	Operating Fund \$	Litigation Fund \$	Program Promotion and Access and Negotiation Fund \$	Case Development Fund \$	Impact Studies Fund \$	Total \$	Total \$
Assets							
Cash	104,722	173,676	34,262	23,874	22,734	359,268	663,520
Accounts receivable	3,779	35,536	4,454	1,745	287	45,801	189,569
Prepaid expenses	4,771	-	-	-	-	4,771	7,310
	113,272	209,212	38,716	25,619	23,021	409,840	860,399
Capital assets (note 3)	23,838	-	-	-	-	23,838	33,482
	137,110	209,212	38,716	25,619	23,021	433,678	893,881
Liabilities							
Accounts payable and accrued liabilities	26,831	-	-	-	-	26,831	31,640
Fund Balances							
Externally restricted (note 4)	-	209,212	38,716	25,619	23,021	296,568	748,854
Invested in capital assets	23,838	-	-	-	-	23,838	33,482
Unrestricted	86,441	-	-	-	-	86,441	79,905
	110,279	209,212	38,716	25,619	23,021	406,847	862,241
	137,110	209,212	38,716	25,619	23,021	433,678	893,881

Approved by the Board of Directors



Director

Ran Norman
Director

**Court Challenges Program of Canada -
Programme de contestation judiciaire du Canada**
Statement of Operations and Fund Balances
For the year ended March 31, 2003

	Operating Fund			Restricted Funds			
	2003 Total \$	2002 Total \$	Litigation Fund \$	Program Promotion and Access and Negotiation Fund \$	Case Development Fund \$	Impact Studies Fund \$	2002 Total \$
Revenue							
Contributions Government of Canada, Canadian Heritage	650,000	650,000	1,457,713	220,113	26,000	46,589	2,141,029
Interest and other income	12,890	21,610	-	-	-	-	-
Human resource development	4,004	3,609	-	-	-	-	-
	666,894	675,219	1,457,713	220,113	26,000	46,589	2,141,029
Expenses							
Operating (Schedule)	670,002	629,735	-	-	-	-	-
Program delivery	-	-	1,769,586	278,760	108,479	45,876	1,914,467
	670,002	629,735	1,769,586	278,760	108,479	45,876	1,914,467
Excess of revenue over expenses (expenses over revenue) for the year	(3,108)	45,484	(311,873)	(58,647)	(82,479)	713	226,562
Interfund transfers	-	(20,265)	-	-	-	-	20,265
Fund balance - Beginning of year	113,387	88,168	521,085	97,363	108,098	22,308	502,027
Fund balance - End of year	110,279	113,387	209,212	38,716	25,619	23,021	748,854

Court Challenges Program of Canada - Programme de contestation judiciaire du Canada

Notes to Financial Statements

March 31, 2003

1 Incorporation and contribution agreement

Court Challenges Program of Canada - Programme de contestation judiciaire du Canada (the Corporation) is a corporation incorporated without share capital under Part II of the Canada Corporations Act. The Corporation's objective is to clarify the constitutional rights and freedoms related to equality rights and official language rights by providing financial assistance for test cases of national significance. The Corporation is non-taxable under Section 149 of the Income Tax Act.

The Corporation entered into a contribution agreement with the Government of Canada on March 31, 1998 which sets out terms and conditions governing the administration of the Corporation for the period April 1, 1998 to March 31, 2003.

During fiscal 2001, the Corporation was granted registered charity status retroactive to April 1, 2000.

2 Significant accounting policies

Fund accounting

The Corporation follows the restricted method of accounting for contributions.

Operating Fund

The Operating Fund accounts for the Corporation's administrative activities and reports unrestricted resources and operating grants.

Litigation Fund

The Litigation Fund reports restricted resources that are to be used to provide financial assistance for litigation expenses incurred for language and equality cases of potential national significance.

Program Promotion and Access and Negotiation Fund

The Program Promotion and Access and Negotiation Fund reports restricted resources that are to be used for activities which promote awareness of, access to, or capacity to use the Program and provide financial assistance to individuals or organizations for negotiating expenses incurred to resolve disputes.

Case Development Fund

The Case Development Fund reports restricted resources that are to be used to provide financial assistance to develop potential language or equality test cases.

(1)

Court Challenges Program of Canada - Programme de contestation judiciaire du Canada

Notes to Financial Statements

March 31, 2003

Impact Studies Fund

The Impact Studies Fund reports restricted resources that are to be used to provide financial assistance for the preparation of impact studies of important court decisions relevant to litigation under the Program.

Revenue recognition

Restricted contributions related to general operations are recognized as revenue of the Operating Fund in the year the expenses are incurred. All other restricted contributions are recognized as revenue of the appropriate restricted fund.

Unrestricted contributions are recognized as revenue of the Operating Fund in the year received or receivable if the amount to be received can be reasonably estimated and collection is reasonably assured.

Investment income is recognized on an accrual basis as revenue of the Operating Fund.

Capital assets

Capital assets are recorded at cost. Amortization is provided over the estimated useful lives of the related assets, using the following methods and rates:

Computer equipment	5 year straight-line, no residual value
Furniture and equipment	5 year straight-line, no residual value

Accounts payable

The Corporation accrues program delivery costs as expenses once the invoices have been approved for payment by the applicant.

Cash flows

A statement of cash flows has not been included as it would not provide any additional meaningful information.

(2)

Court Challenges Program of Canada - Programme de contestation judiciaire du Canada

Notes to Financial Statements
March 31, 2003

3 Capital assets

			2003	2002
	Cost \$	Accumulated amortization \$	Net \$	Net \$
Computer equipment	88,253	72,316	15,937	23,007
Furniture and equipment	50,694	42,793	7,901	10,475
	<u>138,947</u>	<u>115,109</u>	<u>23,838</u>	<u>33,482</u>

4 Externally restricted fund balances

Categories of externally imposed restrictions on net assets are allocated as follows:

					2003	2002
	Litigation Fund \$	Program Promotion and Access and Negotiation Fund \$	Case Development Fund \$	Impact Studies Fund \$	Total \$	Total \$
Equality rights	88,526	25,114	16,028	14,378	144,046	307,734
Language rights	120,686	13,602	9,591	8,643	152,522	441,120
	<u>209,212</u>	<u>38,716</u>	<u>25,619</u>	<u>23,021</u>	<u>296,568</u>	<u>748,854</u>

(3)

Court Challenges Program of Canada - Programme de contestation judiciaire du Canada

Notes to Financial Statements
March 31, 2003

5 Commitments

The Corporation's Equality and Language Rights Panels have approved commitments as follows:

			<u>2003</u>	<u>2002</u>
	Equality rights \$	Language rights \$	Total \$	Total \$
Commitments approved by Panels of externally restricted funds				
Litigation	1,321,561	832,729	2,154,290	1,943,302
Program Promotion and Access and Negotiation	310,000	82,002	392,002	315,946
Case Development	81,230	7,718	88,948	138,241
Impact Studies	48,948	(3,461)	45,487	65,308
	<u>1,761,739</u>	<u>918,988</u>	2,680,727	2,462,797
Disbursements paid			<u>2,202,701</u>	1,914,467
Less: Cash of externally restricted funds			478,026	548,330
			<u>(254,546)</u>	<u>(727,837)</u>
Commitments to be funded by future contributions			<u>223,480</u>	<u>(179,507)</u>

The Corporation has an operating lease commitment for office premises at an annual cost of \$26,873 for a term that expires on April 15, 2004.

(4)

**Court Challenges Program of Canada -
Programme de contestation judiciaire du Canada**

Schedule of Operating Expenses
For the year ended March 31, 2003

	2003 \$	2002 \$
Advertising	5,069	1,984
Annual meeting	14,676	10,788
Audit fees	5,677	5,616
Bank charges	1,158	810
Board members' lost wages	750	800
Depreciation	10,437	6,189
Facilities	33,430	28,069
Insurance	3,995	4,328
Legal fees	548	30
Office equipment and maintenance	3,015	6,737
Panel members' fees	17,864	10,625
Photocopying and printing	11,558	9,517
Postage	8,716	6,797
Public relations and outreach	3,759	9,462
Research material	6,755	6,496
Salaries and benefits	438,877	416,904
Supplies	3,240	4,217
Telephone and fax	12,902	12,157
Translation and interpretation	23,125	19,178
Travel and meetings	64,451	69,031
	<u>670,002</u>	<u>629,735</u>

EQUALITY RIGHTS PROGRAM HIGHLIGHTS

Introduction Equality Rights Test Cases

This section provides an update on cases with which the Court Challenges Program has been involved, either with the parties directly or with interveners. As always, a sampling of the year's cases demonstrates a tremendous variety in the issues, the circumstances in which they arise and the groups affected. In reviewing the decisions that were made this year on CCP-funded cases however, one theme clearly emerges – the struggle to gain access to underinclusive benefit programs.

A number of the cases involved challenges to the exclusionary rules that govern various benefit schemes. The eligibility rules for such programs tend to be, on the surface, neutral or even specially designed to be helpful to disadvantaged people, and their discriminatory elements are usually not readily apparent. In practice, however, these rules can result in a denial of benefits to certain groups of people. The people affected are often linked by their membership in a disadvantaged group that is protected from discrimination by the *Charter*. In these challenging cases, equality seekers must present complex equality rights analysis and substantive equality principles in order to persuade judges of their merits.

Court Challenges Program takes great care to honour its obligations with respect to applicants' confidentiality. The summaries below only include public information, and even then we have obtained special permission from the applicants involved to highlight their cases in this way.

Social and Economic Benefits

Collins v. Canada

Federal Court of Canada - Court of Appeal

Mary Collins brought a section 15 challenge to provisions of the *Old Age Security Act (OAS)* that exclude separated spouses from the allowance given to spouses of OAS recipients. The action was dismissed at the trial level, where the judge decided that the provision discriminated against separated spouses on the basis of marital status, but was justified under section 1 of the *Charter*.

The Federal Court of Appeal upheld the trial judge's decision. Both levels of court found it permissible to target only cohabiting spouses for such benefits. In concluding that the government had adequately justified the discrimination, the courts referred to the extensive cost to the government of extending the allowance beyond cohabiting couples. The Supreme Court of Canada has denied leave to appeal.

Misquadis v. Canada

Federal Court of Canada - Trial Division

This case raised the issue of whether Human Resources Development Canada (HRDC) violated section 15 of the *Charter* by excluding some Aboriginal communities from the Aboriginal Human Resources Development Agreements (AHRDAs). The AHRDAs were established to allow HRDC to partner with various Aboriginal organizations to design and implement employment training programs and to ensure job stability once jobs were secured. The applicants claim that they were treated differently than reserve-based First Nations and Métis organizations because they were denied participation in labour market programming initiatives delivered through these agreements.

The AHRDAs did not allow off-reserve rural and urban Aboriginal communities to exercise local community control over the services and the funding that the program provided. Accordingly, the court found that their section 15 *Charter* rights were violated on the analogous ground of aboriginality/residence. This violation was not justified under section 1 as the federal government had not proven that there was no consensus as to which political groups represent these communities for the purposes of labour market funding and programs, nor that there are no sufficiently cohesive communities to deliver the program compared to the Bands on reserves. The Court ordered the federal government to negotiate agreements with the excluded groups.

The federal government has appealed to the Federal Court of Appeal.

Gosselin v. Quebec (Attorney General)

Supreme Court of Canada

This was a section 15 and section 7 challenge to a conditional social assistance regulation in Québec that

resulted in many young adults under 30 receiving only \$170 per month due to their inability to participate in a workfare program. Chief Justice McLachlin, writing for a five-to-four majority, found that the appellant had not proven that young people's dignity had been negatively affected by this program, which differentiated on the basis of age. She noted that the youth were not disadvantaged vis-à-vis older social assistance recipients and that age distinctions are generally acceptable in social benefit programs. More importantly, in her view, the scheme was designed to meet young people's needs and to reintegrate them into the labour market. If they received less assistance per month, it was due to their own choice not to participate in the work programs.

The majority also found that Ms. Gosselin had failed to prove that the scheme violated her right to life, liberty or personal security as protected by section 7 of the *Charter*, given that young people could access sufficient assistance provided they participated in the workfare program. The majority did not, however, close the door to section 7 protecting some type of right to have one's basic needs (e.g., for housing, food, etc.) met.

Four dissenting judges rejected the majority's conclusions under section 15, finding that the regime did stigmatize younger recipients, was based on false assumptions about their experiences in the labour market, and failed to recognize their disadvantaged status within the labour market. They also concluded that these findings meant that the regime could not be justified under section 1. Two Justices, Arbour and L'Heureux-Dubé, also found that the regime violated section 7 of the *Charter* and was not justifiable under section 1. In a strongly worded dissent, Justice Arbour found that the wording and structure of the *Charter*, along with Canada's international human rights commitments, mandate that the *Charter* protect positive social and economic rights, such as the right to adequate food, clothing and shelter.

The Court Challenges Program funded Ms. Gosselin and two intervenors: the National Association of Women and the Law and the Charter Committee on Poverty Issues. The Program also granted funding to the Women's Legal Education and Action Fund to conduct an impact study following the Supreme Court's ruling.

Lesiuk v. Canada

Federal Court of Appeal

When Ms. Lesiuk, a mother and a part-time nurse, tried to claim Employment Insurance benefits, the Employment Insurance Commission turned down her claim because the hours she had worked fell slightly below the 700 hours she required. Under the weeks-worked system of the previous legislation, she would have qualified for benefits. Under the hours-based system in the new law however, Ms. Lesiuk, who worked part-time due to her unpaid time spent caring for her children, had not worked enough hours to qualify.

In a March 2001 decision, Umpire Salhany found that the new provisions that set out this hours-based threshold discriminate against women in that women are more likely to be employed part-time than men, due to women's greater contribution to child care and household responsibilities. He concluded that women are therefore less likely to be able to meet the threshold number of hours. The umpire refused to apply the new law and ordered that Ms. Lesiuk's claim be reconsidered using the old *Act's* provisions.

The Federal Court of Appeal reversed this decision on January 8, 2003. Letourneau J.A. wrote that Ms. Lesiuk had not proven the negative impact of the legislative change on mothers in general, but held that it was sufficient for her to show that it had a negative impact on her as an individual mother of young children. He also agreed with the umpire's finding that sex and parental status constituted intersecting analogous and enumerated grounds. However, when he considered the contextual factors outlined in *Law* and applied in *Gosselin*, he found that a) she had not proven that women had suffered pre-existing disadvantage in the EI regime; b) her evidence showed if anything that the hours-based regime was meant to correspond with her and other women's needs as opposed to ignoring them; c) the legislation was generally ameliorative even if it were true that she was not a "more advantaged person" challenging a targeted ameliorative program; and finally, d) the impact of the denial of benefits was not localized.

The Court went on to consider section 1 in the event that it was incorrect on section 15. It found that the main objective of the hours threshold was to encourage labour force attachment (and discourage part-time employment), that this objective was pressing and substantial, and that it is a rational choice by govern-

ment to use the hours threshold to pursue this objective. It noted other objectives of the changes made to the EI system, such as better meeting the needs of the changing labour market. When considering the question of minimal impairment, the Court held that courts should defer to government when it tries to set eligibility thresholds for complex social benefits schemes. Finally, it found that the negative impact on the relatively few people who were not accessing benefits under the new scheme was outweighed by the positive impact of the scheme as a whole. Consequently, the Court upheld the legislation as constitutional.

The Supreme Court of Canada has denied leave to appeal this decision. Court Challenges Program supported Ms. Lesiuk and also the Women's Legal Education and Action Fund as an intervenor.

Bear v. Canada (Attorney General) (T.D.)
[update from last year's report]

Federal Court of Appeal

Rose Bear, a 61-year old Status Indian, had worked for the Brokenhead Ojibway First Nation since 1966. As a Status Indian employed on a reserve, she was prohibited from participating in the Canada Pension Plan, until the Plan was amended in 1988. Status Indians had not been allowed to participate because the Plan was based on income tax and Bear was exempt from taxation because she worked on a reserve. Bear's employer opted into the program in 1988, and Bear applied to Revenue Canada to contribute to the Plan retroactively to 1966. Her request was denied because there was no provision in the Plan to allow for retroactive CPP contributions.

Bear applied for judicial review of the decision by the Minister of National Revenue, claiming that the decision was discriminatory under section 15 of the *Canadian Charter of Rights and Freedoms* and subsection 1(b) of the *Canadian Bill of Rights*. Her application was allowed, and the applications judge found that excluding Status Indians from the Plan was discriminatory under both the *Charter* and the *Canadian Bill of Rights*.

The Crown appealed the decision to the Federal Court of Appeal. That court held that the legislation was not discriminatory and did not negatively impact upon Bear's dignity. Ms. Bear is currently applying for leave from the Supreme Court of Canada.

Périgny c. Canada [update from last year's report]
Quebec Court of Appeal

Lyne Périgny worked as a teacher for many years. After the birth of her child, she moved to join her spouse and was not employed for one year while she took care of the baby. When she attempted to re-enter the labour force, she could only find short-term employment that failed to qualify her for employment benefits under the concept of "new entrant or re-entrant" under the (now amended) *Unemployment Insurance Act*.

The applicant unsuccessfully challenged the "new entrant or re-entrant" eligibility requirement in the UI Act before the Umpire. The Umpire's decision was appealed to the Federal Court of Appeal but the appeal was dismissed. In a decision dated February 21 2003, Mr. Justice Decary, relying heavily on *Lesiuk*, found that the old UI provisions created a distinction based on the analogous ground of "women in parental status," but that the section 15 claim failed on the third branch of the Law test because the provisions do not harm a woman in parental status' essential dignity.

Immigration

Suresh v. Canada (Minister of Citizenship and Immigration)

Supreme Court of Canada

Mr. Suresh was a refugee who had applied for permanent residence in Canada. In 1995, the Canadian government started deportation proceedings against Mr. Suresh, on the grounds that he was a security risk. It based its decision on the opinion of the Canadian Security Intelligence Service (CSIS) that Mr. Suresh was a member and fundraiser for the Liberation Tigers of Tamil Eelam, an organization alleged to be engaged in terrorist activity in Sri Lanka. Based on an Immigration Officer's memorandum, the Minister of Immigration then concluded that Mr. Suresh should be deported.

Mr. Suresh, who was not given an opportunity to review or respond to the Officer's memorandum, asked the courts to review the decision and the process by which it had been reached on a number of grounds. He noted that members or suspected members of the Liberation Tigers of Tamil Eelam are known to be subject to torture in Sri Lanka.

Of particular interest is the Court's analysis of section 7 of the *Charter*, which guarantees the right to principles of fundamental justice being followed whenever there may be interference with one's life, liberty and/or security of the person. The Court found that the legislation itself did not violate section 7. While the court recognized that deporting a refugee to face torture abroad could engage that person's *Charter* rights under section 7, it concluded that the provision achieved fundamental justice by balancing the impact of such deportations on refugees' rights with the government's legitimate interest in combating terrorism.

The Court did find, however, that failing to let Mr. Suresh view and respond to the opinion upon which the Minister based her decision violated his right to a just process. As a result, the Court ordered that he be given such an opportunity and that the Minister revisit the deportation decision. Court Challenges Program funded an intervention by the Canadian Council on Refugees to argue that the principles of section 7 should be considered in accordance with those of section 15.

Chesters v. Canada (Minister of Citizenship and Immigration)

Federal Court of Canada - Trial Division

Angela Chesters, a German citizen with multiple sclerosis, was denied permanent residence status in Canada based on subsection 19(1)(a)(ii) of the *Immigration Act*, which denies such status to people expected to create "excessive demands" on health or social services. She argued that the legislation singled out people with disabilities and therefore, violated section 15 of the *Charter*. She also claimed that the criterion of "excessive demands" was too vague, therefore violating section 7 of the *Charter*. She further argued that the process was procedurally flawed in that it failed to take her individual circumstances, i.e., employability, into account.

The Court disagreed with Mrs. Chesters' assertion that she should be allowed entry as the spouse of a Canadian citizen and dismissed her action, indicating that she had been subject to the same medical screening as any other potential immigrant. Subsection 19(1)(a)(ii) was not found in contravention of either section 7 or section 15 of the *Charter*. Specifically, the judge indicated that the differential treatment was not based on disability but on the creation of excessive

demands, which is not an enumerated or analogous ground of discrimination and consequently, fails the second branch of the *Law* test for an equality rights violation.

The legislation has since been changed so that medical inadmissibility no longer applies to spouses.

Mack v. Canada [update from last year's report]

Ontario Court of Appeal

This was an appeal by Mr. Mack and others after unsuccessfully seeking government redress of the inequality caused by Chinese immigration legislation (the infamous "head tax" requirement) in effect from the 1880s to the late 1940s. The appellants wanted head tax monies returned to them and also sought damages for pain and suffering.

The Court of Appeal confirmed an earlier finding that the *Charter* claim could not succeed because the *Charter* could not be retroactively applied to the time when the legislation was in place. The Court of Appeal also agreed that conventional international law did not prohibit the legislation when it was in place, and went on to consider the impact of customary international law prohibiting racial discrimination at the time in question. The Court concluded that, even if such law existed, it would have been overridden by Canadian law, specifically the Chinese exclusion and head tax legislation itself. Furthermore, the Court of Appeal agreed with the first judge that if the challenge to the legislation could not succeed on *Charter* grounds or on international law, it could not be said to meet the test for unjust enrichment. Accordingly, the appeal was dismissed and the previous decision was affirmed. The Supreme Court of Canada has denied the appellants leave to appeal.

Federal Taxation

Kroeker v. Minister of National Revenue

Federal Court of Appeal

Anna Kroeker appealed a Tax Court of Canada's ruling that her "chief source of income" was not a combination of farming and other work and that she could not, for this reason, deduct business losses from the farm against her employment income. She wanted to raise section 15 arguments to demonstrate that the courts

and Revenue Canada have exhibited a longstanding gender bias when it comes to how women's involvement in farming is characterized for tax purposes.

While the Court of Appeal had struck Ms. Kroeker's section 15 arguments from her appeal at an earlier proceeding, she was eventually successful in her tax appeal. The Federal Court of Appeal recognized her contribution to the farm and allowed her the deductions.

Religion

Taylor v. Canada (Attorney General)

Federal Court of Appeal

Justice Whealy of the Ontario Superior Court refused to allow the plaintiff, a Muslim, to remain in the courtroom as a member of the public while he was wearing a kufi (a special head covering that he wore for religious reasons). In a complaint made to the Canadian Judicial Council, the plaintiff expressed his concern about Justice Whealy's fitness to continue to hold judicial office.

Although the Chairperson of the Committee found that the exclusion from the trial was improper and inappropriate, he did not agree with the plaintiff that the seriousness of the conduct merited a formal investigation by the Council. The plaintiff's application to the Trial Division of the Federal Court for judicial review of the Chairperson's decision was dismissed.

The Court of Appeal found that the Chairperson had satisfied the applicable standard of review, which is one of patent unreasonableness, that there was no reasonable apprehension that the Chairperson was biased, and that closing the complaint file did not constitute a breach of the Plaintiff's *Charter* rights. The appeal was therefore dismissed.

The Court Challenges Program funded Mr. Taylor at the trial level.

Federal Elections

Sauvé v. Canada (Chief Electoral Officer)

[update from last year's report]

Supreme Court of Canada

Subsection 51(e) of the *Canada Elections Act* denies the right to vote to those serving prison sentences of two years or more. The Court found that this constitutes a breach of section 3 of the *Charter*.

The majority of the Court found that the section 3 breach is not justified under section 1. The majority emphasized that parliamentary deference is not an appropriate consideration because the right to vote is fundamental to Canadian democracy. Since the majority found a section 3 breach, it did not consider section 15.

The dissenting judges found that the breach of section 3 was justified under section 1 of the *Charter*. In doing so, they placed a great deal of weight on parliamentary deference since the *Charter* justifications presented to the court were "philosophical, political and social considerations" which are not capable of "scientific proof".

In considering whether the section constituted a breach of section 15, the dissenting judges found that prisoners do not constitute a group protected by analogous or enumerated grounds under section 15. They reasoned that being incarcerated does not arise from the "stereotypical application of a presumed group characteristic" and "is brought about by the past commission of serious criminal offences committed by the individual themselves".

The dissent also rejected the argument that imprisonment should be recognized as an analogous ground because Aboriginal peoples make up a disproportionate percentage of prisoners, holding that the number of Aboriginal people affected does not lead to a conclusion that the law is de facto aimed at Aboriginal peoples.

Projects, Negotiations, and Impact Studies

The Equality Rights Program also provides financial assistance for promotion and access projects, negotiations, and impact studies that assist equality-seeking communities in developing their capacity to seek redress for equality rights violations within the Program's mandate. Following is a summary of some of the initiatives that were completed and reported to the Program in the last year.

Program Promotion and Access Projects

Ligue des noirs du Québec – Regional Strategic Consultation

The Black Coalition of Quebec held a conference in Montreal to examine the effects of racism on unemployment rates within the Black community in Quebec. Addressing the reasons why unemployment rates among Blacks are consistently and significantly higher than the general population, consultation participants concluded that systemic racism, an ongoing legacy from the days of slavery, constitutes the single most important factor causing this employment differential. A focus of the consultation was the potential role that section 15 of the *Charter* plays in remedying this inequality.

Ligue des noirs du Québec – Discussion paper

The Black Coalition of Quebec drafted a discussion paper examining *Charter* section 15 issues arising in relation to federal law and racial profiling. Amongst other themes, the paper explored (i) the roles played by the various parts of the justice system in the practice of racial profiling, including the police, the Crown, and the judiciary; (ii) the potential for a section 15 challenge to racial profiling by the Royal Canadian Mounted Police and/or other federal government officials; (iii) how section 15 might be used by judges when interpreting the *Criminal Code* or exercising discretion pursuant to the *Criminal Code* so as to address the problem of racial profiling by police; and (iv) the *Charter* remedies available in these section 15 challenges involving federal laws or practices and their potential to improve conditions for members of the Black community who are targeted by racial profiling.

National Association of Women and the Law – National Strategic Consultation

This women's advocacy organization based in Ottawa hosted a biennial conference entitled "Women, the Family and the State." Conference topics zeroed in on the impact that globalization and inequality has had on women and other disadvantaged groups such as children living in poverty, Aboriginal peoples, the homeless, single mothers who are on social assistance, immigrants and refugees. The goal of the conference was to provide mutual education in order to maximize efforts on a national and international front to fight inequality and promote social and economic rights.

Impact Studies

Lambert c. Québec (Procureur général)

Cour d'appel du Québec

This was a challenge to sections 23 and 24 of *An Act Respecting Income Security*. Pursuant to the Act, a retraining program was established for persons in receipt of social assistance. While enrolled in the program, the plaintiff was paid less than minimum wage. The Quebec Human Rights Tribunal found that the program was not a skills development program that upgraded the plaintiff's skills but was simply integrating him into a job. For this reason, it ruled that the plaintiff was discriminated against because of his status as a social assistance recipient. The tribunal found that the sections were invalid and awarded the plaintiff \$362.06, \$181.03 for the difference between what he had been paid and minimum wage, and \$181.03 for moral damages.

The Tribunal's decision was reversed on appeal. The Court of Appeal found that the program was a skills development program and that although the plaintiff was paid less than minimum wage, he was not discriminated against, and there was no violation of human dignity.

Court Challenges Program has funded the Front Commun des Personnes Assistées Sociales du Québec to conduct an impact study on the Federal Court of Appeal's decision.

List of Authorities

- Bear v. Canada (Attorney General)*, 2003 F.C.A. 40.
- Chesters v. Canada (Minister of Citizenship and Immigration)*, [2003] 1 F.C. 361.
- Collins v. Canada*, 2002 F.C.A. 82, [2002] S.C.C.A. No. 198.
- Gosselin v. Quebec (Attorney General)*, [2002] S.C.J. No. 85.
- Kroeker v. Canada*, [2002] F.C.A. 392.
- Lambert v. Québec (Attorney General)*, [2002] J.Q. no 364 (C.A.).
- Lesiuk v. Canada*, 2003 F.C.A. 3.
- Mack v. Canada*, [2002] O.J. No. 3488 (C.A.).
- Misquadis v. Canada*, 2002 F.C.T. 1058.
- Périgny c. Canada (Attorney General)*, [2003] F.C.J. No. 295 (C.A.).
- Sauvé v. Canada (Chief Electoral Officer)*, 2002 S.C.C. 68.
- Suresh v. Canada (Minister of Citizenship and Immigration)*, [2002] S.C.R. No. 3.
- Taylor v. Canada (Attorney General)*, 2003 F.C.A. 55.

LANGUAGE RIGHTS PROGRAM HIGHLIGHTS

Introduction

This section of the annual report deals with the main cases granted funding by the Language Rights Panel during the 2002-2003 fiscal year, as well as the major court decisions that had an impact on language rights.

This section is divided into the following categories:

1. Minority language education rights
2. Language of work, communication and service delivery
3. Linguistic rights and freedom of expression
4. Judicial rights
5. Legislative bilingualism
6. Projects, negotiations and impact studies

Minority language education rights

Section 23 of the *Canadian Charter of Rights and Freedoms* confers a scale of progressive rights to parents belonging to an official language minority group. At the low end of the scale, parents are granted the general right to have their children educated in the official language of the minority group to which they belong, provided that the number of children warrants it. Where the number of children is sufficient, section 23 also bestows the right to have these children educated in minority language education facilities. The Supreme Court of Canada has also recognized a higher level of rights in *Mahé v. Alberta* – the right of parents belonging to an official language minority group to govern minority language education facilities. This right to school governance can range from a guarantee of minority parent representation on a mixed school board, to absolute control of all cultural and linguistic aspects of their children's education, to setting up an independent school board for the linguistic minority.

Over the past 20 years it has become clear that section 23 of the *Canadian Charter of Rights and Freedoms* has played a significant role in the development of official language minorities. In *Arsenault-Cameron*, the Supreme Court of Canada underlined the importance of this section by accepting expert testimony that “a school is the single most important institution for the

survival of the official language minority”. Considering the importance of education rights in the protection of linguistic minorities in Canada, it makes sense that education rights is the category under which the Program funds the most language cases.

This year, the Program granted funding in cases involving several important issues for official language minorities. The following pages highlight a few of these cases.

RIGHT TO GOVERNANCE

One of the most important aspects of the rights set out in Section 23 of the *Charter* is the exclusive right to governance conferred to school boards of official language minorities over matters related to language and culture.

This year, the Program granted funding to the *Conseil scolaire francophone provincial de Terre-Neuve et Labrador*, to allow it to challenge the provincial government in court. The challenge aims to amend the current certification process, which does not meet the needs of the official language minority, and also to confirm its right to governance in this area. Because of requirements imposed on teachers and other educational professionals, the school board finds it difficult to recruit and retain qualified personnel. The most significant problem arises from the provision requiring that vocational counsellors and school psychologists hold a teaching permit if they work in the province's schools, even if the individuals do not teach in a classroom. This requirement does not exist for vocational counsellors and school psychologists in Québec or New Brunswick, two provinces from where the school board recruits a majority of its teachers and professionals.

These factors create barriers to recruiting adequate personnel and hinder efficient operations of French-language schools in Newfoundland and Labrador. Many qualified candidates are not willing to take on a position with the school board, as their classification and remuneration would be inferior to those they could obtain in other provinces.

In the area of education, legislation plays a crucial role

in the implementation of rights set out in section 23 of the *Canadian Charter*. In *Mahé*, the Supreme Court discussed the legislative schemes that provinces and territories should put in place in order to implement the rights provided under section 23. Although this is not a right to a specific legislative scheme, “section 23 of the *Charter* imposes on provincial legislatures the positive obligation of enacting precise legislative schemes” in order to comply with their obligations under section 23.

The Program granted funding to the *Association franco-yukonnaise* for a challenge to the Yukon Education Act. This challenge relates to management and powers that should be granted to the official language minority for the purpose of meeting the specific needs of the French-speaking community in the Yukon; it also involves the remedial object of section 23. The current scheme does not guarantee exclusive governance in matters of language and culture, particularly in the areas identified in *Mahé*.

Last year’s annual report referred to funding granted to the *Comité des parents du Nouveau-Brunswick* for a challenge to certain parts of the *Education Act*, which were problematic in terms of exclusive governance over issues related to language and culture. This year, the Program awarded funding to the *Société des Acadiens et Acadiennes du Nouveau-Brunswick* to allow this group to intervene in the case.

ADEQUATE FUNDING AND EDUCATIONAL FACILITIES

As early as its first decision involving a reading of section 23, the Supreme Court of Canada indicated that official language minorities have the constitutional right to an education that is equivalent to that offered to the linguistic majority. In *Mahé*, the Supreme Court commented as follows: “the quality of education provided to the minority language group should in principle be on a basis of reasonable equality with the majority”. In order to meet this objective, the Court stated that:

... funds allocated for the minority language schools must be at least equivalent on a per student basis to the funds allocated to the majority schools. Special circumstances may warrant an allocation for minority language schools that exceeds the per capita allocation for majority schools.

In *Arsenault-Cameron v. Prince Edward Island*, the Supreme Court further added that:

Section 23 is premised on the fact that substantive equality requires that official language minorities be treated differently, if necessary, according to their particular circumstances and needs, in order to provide them with a standard of education equivalent to that of the official language majority.

Considering the vast territories they must cover and the fewer number of students they serve, linguistic minority school boards face a number of challenges that the majority boards do not have to deal with. Funding to minority schools is a persistent problem. Generally, the same formula is used for funding all schools, not taking into account the additional costs of managing the linguistic minority.

The Program granted funding to the *Conseil scolaire Fransaskois* for a court challenge seeking to ensure that the education funding provided to the linguistic minority in Saskatchewan is consistent with the requirements of section 23 of the *Canadian Charter*. As is the case in many other provinces, the Saskatchewan Education Department uses the same formula when allocating operating and capital funds to the majority and the minority language school divisions. As a result, the operating and capital funding formulas do not meet the needs of the minority language school boards. The Saskatchewan formula does not consider the additional costs incurred by full-time pre-school and kindergarten programs that are put in place to ensure French-speaking children are adequately integrated within a homogeneous Francophone educational system. Other costs include the price of transportation, which is higher than it is for the linguistic majority, since French-speaking students are not concentrated within a limited area.

The issue of equivalency also arises in relation to educational facilities for linguistic minorities, which must be suitable to ensure an equivalent level of education to that of the majority. In *Moose Jaw*, the French-language school is currently located in a basement of a facility it shares with a unilingual English-speaking school. It has many physical defects that make it not equal to the schools provided to the linguistic majority. This environment has a negative impact, not only on the quality of instruction, but also on the recruit-

ment and enrolment of children. The provincial government refuses to provide a distinct facility for the linguistic minority school. In an attempt to resolve this problem, the Program has granted funding to the *Conseil scolaire fransaskois* for a court challenge to require the province to establish a facility for the linguistic minority in Moose Jaw that is of equal quality to those facilities now provided to the linguistic majority.

The Program has also granted funding to Ms Hélène Lavigne, whose challenge aims to compel the province of Nova Scotia to establish an educational facility for the linguistic minority in the Annapolis Valley that would meet the constitutional requirements set out in section 23. The current school, which serves children from kindergarten to grade 12, has many drawbacks related to the facility itself and to its equipment. As in Saskatchewan and elsewhere in the country, many Francophone parents take their children out of French language schools and enrol them in English language establishments that are more modern and likely to provide better quality instruction. Moreover, when compared to the majority, the linguistic minority lacks suitable and modern facilities which leads to an increase in the rate of assimilation among Francophones.

CONTINUITY OF LANGUAGE OF INSTRUCTION

Subsection 23(2) of the *Canadian Charter* includes a provision guaranteeing continuity of language of instruction where certain requirements are met. It states that: "Citizens of Canada of whom any child has received or is receiving primary or secondary school instruction in English or French in Canada, have the right to have all their children receive primary and secondary school instruction in the same language".

The Program has granted funding to Ms Judith Bolduc for a court challenge aiming to clarify the scope of that right. Ms Bolduc, a Francophone residing in Québec, was asking that her children be admitted to an English-language school as her oldest child had received a major part of her instruction in Québec in the English language. The child had attended a public French-language school for three months and a private English-language school for a period of six months. Section 73 of the *Charte de la langue française* of Québec provides that: "The following children, at the

request of one of their parents, may receive instruction in English: ... a child whose father or mother is a Canadian citizen and who has received or is receiving elementary or secondary instruction in English in Canada, and the brothers and sisters of that child, provided that that instruction constitutes the major part of the elementary or secondary instruction received by the child in Canada".

In an application for judicial review, the Education Minister attempted to reverse the decision of the Administrative Tribunal of Québec, which had ruled that Ms Bolduc's children had the right to receive their instruction in the English language. Ms Bolduc then submitted a motion before the Superior Court of Québec to have her right to send her children to an English-language school recognized under subsection 23(2) of the *Canadian Charter*. In June 2002, the Superior Court of Québec rejected the Education Minister's application for judicial review and confirmed the Administrative Tribunal's decision.

THE TRIAL COURT'S RIGHT TO RETAIN JURISDICTION

Last year's annual report referred to funding that was granted to the *Fédération des parents acadiens de la Nouvelle-Écosse* for the organization to intervene in *Doucet-Boudreau v. Nova Scotia (Education Minister)* before the Supreme Court of Canada. This case involved the trial judge's decision to retain jurisdiction in the matter at hand, in order to ensure compliance with his orders.

The Program recognizes the national importance of this issue, not only as it relates to education rights, but also to language rights in general. Funding was therefore granted this year to the *Commission nationale des parents francophones* to intervene in support of the *Fédération des parents acadiens de la Nouvelle-Écosse*.

Language of work, communication and service delivery

Paragraph 16(1) of the *Charter* stipulates that French and English are the official languages of Canada and have equality of status and equal rights and privileges as to their use in all institutions of the Parliament and government of Canada. Paragraph 16(2) has similar provisions regarding the institutions, legislature and

government of New Brunswick, while paragraph 16(3) confirms the authority of Parliament and the legislatures to advance the equality of status or use of English and French.

Section 16.1 of the *Charter* is unique in that it enshrines the equality of New Brunswick's two official language communities in the Constitution.

Section 20 of the *Charter* confers to individuals the right to use their language of choice to communicate with, or to receive services from, any head or central office of an institution of Parliament or of the Government of Canada and the legislature or government of New Brunswick. Except for head or central offices, the aforementioned right to receive services in the official language of one's choice is subject to discretion based on whether there is a significant demand or the nature of the office.

THE RCMP'S LINGUISTIC OBLIGATIONS

The scope of linguistic obligations of the Royal Canadian Mounted Police (RCMP) is an issue that remains unresolved. Last year, the Program agreed to fund Ms Paulin-Kairé in a case attempting to clarify the RCMP's obligations relative to services it provides in New Brunswick. This year the Program supported a similar case by granting funding to Mr. Donnie Doucet, a resident of Nova Scotia, allowing him to challenge a speeding ticket. In this matter, the officer who issued the ticket could not speak French and therefore could not communicate with Mr. Doucet.

This case once again raises the issue of the RCMP's nature as an institution. The specific question is whether it is an institution of the Government of Canada, therefore required to conform with the linguistic obligations of sections 16 and 20 of the *Canadian Charter* when it enforces a provincial law in a province that is not subject to these linguistic obligations.

TERRITORIAL GOVERNMENTS' LINGUISTIC OBLIGATIONS

The scope of linguistic obligations within the three Territories remains ambiguous. This year the Program granted funding to the *Association franco-yukonnaise* in order to clarify the scope of section 20 of the *Canadian Charter* and the right to health services pro-

vided in the language of the minority in the Yukon. Subsequent to the devolution of the Whitehorse General Hospital to the territorial government in 1993 and the transfer of health programs and services to the Yukon government in 1998, the *Association franco-yukonnaise* does not believe the community is receiving services it is entitled to under the *Canadian Charter*. Since the transfers have been completed, the federal Health Department acknowledges no residual responsibility towards the French-speaking community. This case will also raise the issue of "significant demand", one of the criteria of section 20 for the provision of services by governments.

SECTION 16.1 OF THE CANADIAN CHARTER AND THE EQUALITY RIGHTS OF BOTH LINGUISTIC COMMUNITIES IN NEW BRUNSWICK

This year, the Program has granted funding to l'*Association des juristes d'expression française du Nouveau-Brunswick* (AJEFNB), so they could intervene in *Mario Charlebois v. Saint John (City)*, a case that is currently before the New Brunswick Court of Appeal. This case involves Mr. Charlebois' claim for an order requiring that the City of Saint John provide its services in both official languages.

The intervention by the AJEFNB will allow for the submission of arguments based on subsection 16(2) of the *Canadian Charter*, which guarantees equality of status to both official languages, as well as section 16.1 of the *Charter*, which guarantees equality of these two communities in terms of government institutions.

Linguistic rights and freedom of expression

Some of the basic rights contained in the *Canadian Charter of Rights and Freedoms* have a linguistic component. The most obvious example of this type of right is the freedom of expression guaranteed under section 2. The Supreme Court of Canada has already ruled on the link between language and freedom of expression in cases raised in Québec, especially regarding language in commercial signs.

The Program's Contribution Agreement with the federal government allows for the Language Rights Panel to

grant funding to cases dealing with freedom of expression guaranteed under paragraph 2b) of the *Charter*, provided that these cases are directly tied to the language rights of an official language minority.

During the 2002-2003 fiscal year, the Program received no applications for funding regarding the language components of freedom of expression.

Judicial rights

In judicial matters, language rights are guaranteed under section 133 of the *Constitution Act, 1867*, section 23 of the *Manitoba Act, 1870* and section 19 of the *Charter*. These provisions allow French and English to be used in any trial by courts established by the Parliament of Canada and by some provinces, namely Québec, New Brunswick and Manitoba.

In the judicial sphere, language rights relate mainly to the choice of language in the proceedings and the right to address the court in the official language of one's choice.

This right was central to a court challenge initiated by Mr. Scott MacFarlane and Ms France Vienneau. This year, the Program granted them financial assistance in a case involving their right to a hearing in French, presided over by a bilingual judge in New Brunswick, under the provisions of section 16.1 and subsection 19(2) of the *Canadian Charter*.

The applicants, whose first language is French, were appearing before the Small Claims Court in the judicial district of Miramichi and had indicated on the forms provided to the Court that they intended to proceed in French. Despite this choice, they had to appear before a unilingual judge who was unable to understand them.

The Program granted funding to Ms Nicole McKenzie, a Francophone residing in Nova Scotia, to allow for an appeal before the Supreme Court of Nova Scotia. The appeal relates to a conviction by the Provincial Court. Ms. McKenzie was stopped for speeding, under the *Motor Vehicle Act* of Nova Scotia. When she appeared before the Provincial Court, the judge did not advise her of her right to a hearing in the French language, under section 530 of the *Criminal Code*. This provision applies to provincial offences indictable by summary conviction, under section 7 of the *Summary Proceedings Act*. Ms McKenzie is asking for the trial

decision to be reversed and for an order to stay the proceedings, under section 24 of the *Canadian Charter*.

The Program awarded funding to the *Association des juristes d'expression française de l'Ontario* (AJEFO), so they could intervene on appeal in *The Queen v. Boutin et. al.*, a file that the Panel had funded during the preceding fiscal year. This case raises the issues of the language used in documents called "information" and of equal access to courts. An "information" is a document marking the beginning of the criminal trial process, informing the accused of the charges against him or her and setting out the conditions of the trial. The *Criminal Code* is silent on whether an accused individual has the right to receive an information in his or her official language.

The trial judge concluded that an accused had the right to receive an information in his or her official language. In doing so, he laid the obligation with the State to communicate with the accused in the language chosen for the trial. He thus declared informations that are not written in the official language of an accused void and of no effect. One year later, the Superior Court of Justice reversed the trial decision. This case is now before the Court of Appeal for Ontario.

Legislative bilingualism

The Program may contribute financially to cases seeking clarification of the linguistic obligations of the Parliament of Canada, the legislatures of New Brunswick and Manitoba and the Québec National Assembly. Section 17 of the *Charter* protects the right to use French and English in debates and other proceedings of Parliament and the New Brunswick legislature. Section 18 requires that all documents emanating from these two institutions be printed and published in both official languages.

Section 133 of the *Constitution Act, 1867* and section 23 of the *Manitoba Act, 1870*, which both preceded the *Charter*, impose similar duties on Parliament, the Manitoba Legislature and Québec's National Assembly.

During the 2002-2003 fiscal year, the Program has received no application for funding regarding legislative bilingualism.

Projects, negotiations and impact studies

The Language Rights Panel also grants funding to projects regarding program promotion and access, negotiations and impact studies. These projects help language rights groups develop their capacity to resolve their claims in cases where their language rights are violated and where their claims could represent test cases, within the Program's mandate. A summary describing some of the initiatives that were either funded or completed during the past year follows.

Projects – Program Promotion and Access

La Fédération nationale des conseillères et conseillers scolaires francophones – This group held a national meeting to discuss an impact study about the possible consequences of the *Reference re Secession of Québec* on the federal government's obligations relative to education of the Francophone minority under section 23 of the *Canadian Charter*.

L'Institut Joseph-Dubuc – This group held a national conference for French-speaking jurists, on the issue of legal constitutional rights where discussions focused on the impact of particular decisions on legal rights, namely *R. v. Beaulac*, *Reference re Secession of Québec*, *Lalonde v. Commission de restructuration* and *Charlebois v. Moncton*.

La Fédération nationale des conseillères et conseillers scolaires francophones – This organization was granted funding for a national conference and for the preparation of a strategic discussion paper related to the concept of remedy, under section 24 of the *Canadian Charter*, in relation to the rights set out in section 23 of the *Charter*.

L'Institut Joseph-Dubuc – This group was granted funding for the production of two information kits about constitutional linguistic rights and education rights.

Impact Studies

La Fédération nationale des conseillères et conseillers scolaires francophones – *Reference re Secession of Québec* – This study reviews the possible consequences of the reference on governments' financial constitutional obligations deriving from section 23 of the *Canadian Charter*, with regards to the education system of the French-speaking minority.

L'Association des juristes d'expression française de la Saskatchewan – This study will review the following decisions: *R. v. Beaulac*, *Reference re Secession of Québec*, *Arsenault-Cameron v. Prince Edward Island* and the *Montfort Hospital* case and their impact on linguistic rights in Saskatchewan.

L'Institut Joseph-Dubuc - *R. v. Beaulac*, *Reference re Secession of Québec*, *Lalonde v. Commission de restructuration* and *Charlebois v. Moncton* – This study will review these decisions and their impact on legal rights provided under the Canadian constitution.

Negotiations

L'Association des francophones du Nunavut – This group has undertaken negotiations with the government of Nunavut, aiming to ensure that the new *Education Act* is consistent with section 23 of the *Canadian Charter*.

List of Authorities

Arsenault-Cameron et al. v. the Government of Prince Edward Island, [2000] 1 S.C.R. 3

R. v. Boutin et al.,

Lalonde v. Ontario (Commission de restructuration des services de santé) [2002] O.J. No. 388

Mahé v. Alberta, [1990] 1 S.C.R. 342

Moncton (City) v. Charlebois [2001] N.B.J. No. 480

R. v. Beaulac [1999] 1 S.C.R. 768

Reference re Secession of Québec, [1998] 2 S.C.R. 217

STATISTICAL HIGHLIGHTS

Equality Program

Table 1 – Breakdown of Equality Applications Received
October 24, 1994 – March 31, 2003

Province/ Territory	% of Canada's Pop.	1994/95		1995/96		1996/97		1997/98		1998/99		1999/00		2000/01		2001/02		2002/03		Total	
		% of Applications	% of Applications	% of Applications	% of Applications	% of Applications	% of Applications	% of Applications	% of Applications	% of Applications	% of Applications	% of Applications	% of Applications	% of Applications	% of Applications	% of Applications	% of Applications	% of Applications	% of Applications	% of Applications	% of Applications
Yukon	0.1	0	0.0	0	0.0	0	0.0	1	0.7	0	0.0	0	0.0	1	0.7	0.0	0.0	0	0.0	2	0.2
Nunavut ¹	0.1	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0.0	0.0	0	0.0	0	0.0
Northwest Territories	0.1	0	0.0	2	2.3	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	1.0	0.7	0	0.0	3	0.3
British Columbia	12.9	16	28.1	14	15.9	17	15.0	16	11.5	17	13.6	15	11.5	9	6.0	19.0	14.1	15	10.2	138	12.7
Alberta	9.3	5	8.8	7	8.0	8	7.1	13	9.4	10	8.0	15	11.5	12	8.0	15.0	11.1	6	4.1	91	8.4
Saskatchewan	3.4	2	3.5	9	10.2	3	2.6	10	7.1	1	0.8	3	2.3	4	2.7	3.0	2.2	5	3.4	40	3.7
Manitoba	3.8	7	12.3	15	17.0	11	9.7	25	18.0	24	19.2	24	18.3	17	11.3	14.0	10.4	27	18.3	164	15.1
Ontario	37.6	19	33.3	29	33.0	45	39.8	54	38.8	49	39.2	52	39.7	63	42.0	49.0	36.3	61	41.5	421	38.8
Québec	24.7	3	5.2	5	5.7	15	13.2	13	9.4	16	12.8	10	7.6	27	18.0	22.0	16.3	21	14.3	132	12.2
New Brunswick	2.5	3	5.2	0	0.0	6	5.3	1	0.7	0	0.0	0	0.0	3	2.0	4.0	3.0	1	0.7	18	1.6
Nova Scotia	3.1	1	1.8	3	3.4	4	3.5	4	2.9	7	5.6	11	8.3	7	4.7	8.0	5.9	9	6.1	54	5.0
Prince Edward Island	0.5	0	0.0	4	4.5	1	1.0	0	0.0	0	0.0	0	0.0	2	1.2	0.0	0.0	1	0.7	8	0.7
Newfoundland Labrador	1.9	0	0.0	0	0.0	2	1.8	2	1.5	1	0.8	1	0.8	4	2.7	0.0	0.0	1	0.7	11	1.0
Other ²		1	1.8	0	0.0	1	1.0	0	0.0	0	0.0	0	0.0	1	0.7	0.0	0.0	0	0.0	3	0.3
Total	100%	57	100%	88	100%	113	100%	139	100%	125	100%	131	100%	150	100%	135	100%	147	100%	1085	100%

¹ Nunavut became a Territory in April 1999.

² Any location outside of Canada.

**Table 2 – Breakdown of Equality Applications Received
October 24, 1994 – March 31, 2003**

	1994/95	1995/96	1996/97	1997/98	1998/99	1999/00	2000/01	2001/02	2002/03	Total
Aboriginal	9	19	21	32	15	39	29	26	28	218
Age	2	0	5	5	3	5	7	3	2	32
Citizenship	2	2	1	4	4	2	5	0	4	24
Colour/Race/Ethnicity/ Nationality										
Colour	0	7	6	4	0	0	0	0	0	17
Race	0	0	2	9	17	16	24	23	11	102
National Origin	2	1	3	2	1	0	0	2	0	11
Ethnicity	2	1	6	4	9	2	7	3	8	42
General ¹	2	5	9	3	3	0	0	0	0	22
Disability	7	12	10	19	17	13	17	16	24	135
Family/Marital/Parental	3	6	6	4	6	5	7	3	8	48
Geography	0	0	2	1	0	2	2	1	0	8
Language	0	2	1	1	0	0	0	2	1	7
Poverty	4	6	5	6	10	6	12	10	16	75
Prisoner/Criminal Record	5	2	3	3	6	9	6	3	4	41
Refugee	0	0	0	0	0	0	1	2	1	4
Religion	2	1	0	0	0	0	1	0	0	4
Section 15 General	3	2	8	9	2	2	1	0	0	27
Sex	3	6	9	16	18	14	13	17	11	107
Sexual Orientation	6	10	10	9	6	7	8	10	9	75
Transgendered	0	1	1	1	4	0	1	1	0	9
Unknown ²	0	1	2	0	0	0	0	0	0	3
Other ³	5	4	3	6	5	9	9	13	20	74
Total	57	88	113	138	126	131	150	135	147	1085

¹ Applications involving all of the following grounds of discrimination: colour, race, national origin and ethnic origin.

² Applications involving no known ground of discrimination.

³ Applications involving a ground of discrimination other than those listed in this table.

STATISTICAL HIGHLIGHTS

**Table 3 – Breakdown of Decisions Made by the Equality Rights Panel
October 24, 1994 – March 31, 2003**

	Decision Pending	Panel/Admin Rejection	Applicant Withdrawn	Panel Granted	Total
Aboriginal	13	39	11	155	218
Age	1	8	2	21	32
Citizenship	1	8	3	12	24
Colour/Race/Ethnicity/ Nationality					
Colour	0	5	2	10	17
Race	6	18	6	72	102
National Origin	0	4	2	5	11
Ethnicity	1	13	2	26	42
General ¹	0	1	2	19	22
Disability	12	33	7	83	135
Family/Marital/Parental	3	24	4	17	48
Geography	0	6	1	1	8
Language	0	3	0	4	7
Poverty	2	17	4	52	75
Prisoner/Criminal Record	1	11	2	27	41
Refugee	2	0	0	2	4
Religion	0	4	0	0	4
Section 15 General	1	1	1	24	27
Sex	6	23	5	73	107
Sexual Orientation	1	9	4	61	75
Transgendered	1	2	1	5	9
Unknown ²	0	2	1	0	3
Other ³	6	36	6	26	74
Total	57	267 ⁴	66	695 ⁵	1085

Acceptance Rate = 72.2%

¹ Applications involving all of the following grounds of discrimination: colour, race, national origin and ethnic origin.

² Applications involving no known ground of discrimination.

³ Applications involving a ground of discrimination other than those listed in this table.

⁴ See Table 5 for a further breakdown.

⁵ See Table 4 for a further breakdown.

**Table 4 – Breakdown of Types of Funding by the Equality Rights Panel
October 24, 1994 – March 31, 2003**

	Case Development	Case Funding	Impact Study	Program Promotion & Access and Negotiation	Total
Aboriginal	48	84	7	16	155
Age	5	14	0	2	21
Citizenship	2	8	0	2	12
Colour/Race/Ethnicity/ Nationality					
Colour	2	6	0	2	10
Race	13	20	2	37	72
National Origin	2	3	0	0	5
Ethnicity	6	11	0	9	26
General ¹	5	5	0	9	19
Disability	25	40	5	13	83
Family/Marital/Parental	4	13	0	0	17
Geography	0	0	0	1	1
Language	1	3	0	0	4
Poverty	13	18	2	19	52
Prisoner/Criminal Record	9	14	1	3	27
Refugee	0	2	0	0	2
Religion	0	0	0	0	0
Section 15 General	1	6	0	17	24
Sex	10	36	4	23	73
Sexual Orientation	7	28	4	22	61
Transgendered	1	0	0	4	5
Unknown ²	0	0	0	0	0
Other ³	0	2	6	18	26
Total	154	313 ⁴	31	197	695

¹ Applications involving all of the following grounds of discrimination: colour, race, national origin and ethnic origin.

² Applications involving no known ground of discrimination.

³ Applications involving a ground of discrimination other than those listed in this table.

⁴ See Table 6 for a further breakdown.

**Table 5 – Breakdown of Unsuccessful Equality Rights Applications
October 24, 1994 – March 31, 2003**

	No Federal Link ¹	Not a Test Case ²	Duplication ³	Canadian Human Rights Act ⁴	Total
Aboriginal	9	19	10	1	39
Age	3	3	2	0	8
Citizenship	2	5	1	0	8
Colour/Race/Ethnicity/ Nationality					
Colour	4	1	0	0	5
Race	7	8	3	0	18
National Origin	2	1	0	1	4
Ethnicity	3	8	1	1	13
General ⁵	1	0	0	0	1
Disability	17	12	4	0	33
Family/Marital/Parental	7	15	1	1	24
Geography	1	5	0	0	6
Language	3	0	0	0	3
Poverty	13	2	2	0	17
Prisoner/Criminal Record	4	7	0	0	11
Refugee	0	0	0	0	0
Religion	3	1	0	0	4
Section 15 General	0	1	0	0	1
Sex	7	13	3	0	23
Sexual Orientation	0	3	6	0	9
Transgendered	0	1	0	1	2
Unknown ⁶	2	0	0	0	2
Other ⁷	22	14	0	0	36
Total	110	119	33	5	267

¹ The Program's Contribution Agreement states that cases which receive funding must challenge a Federal law, policy or practice and cannot challenge a provincial or territorial law, policy or practice. These applications did not receive funding because they did not meet this requirement. Either they challenged provincial government action or they did not challenge government action at all.

² A “test case” is a legal case which deals with a problem or raises an argument that has not already been decided by the courts and has the potential to stop discrimination or improve the way the law works for members of a disadvantaged group or groups in Canada. These are applications where the Equality Rights Panel found that the proposed challenge was not a strong test case based on section 15 of the *Canadian Charter of Rights and Freedoms*. Common reasons leading to such a decision by the Panel are: the case, if successful, will benefit only the individual involved as opposed to a broader group of equality seekers; the case does not provide the opportunity to advance equality for an historically disadvantaged group; and/or the equality issue in the case has already been determined by the courts.

³ These applications covered legal issues already funded by the Program or already before the courts. The Program's Contribution Agreement does not allow it to fund such “duplicate” cases.

⁴ These applications involved complaints under the *Canadian Human Rights Act*. The Program's Contribution Agreement prevents it from funding such cases.

⁵ Applications involving all of the following grounds of discrimination: colour, race, national origin and ethnic origin.

⁶ Applications involving no known ground of discrimination.

⁷ Applications involving a ground of discrimination other than those listed in this table.

**Table 6 – Breakdown of Case Funding Granted by the Equality Rights Panel
October 24, 1994 – March 31, 2003**

	First Instance	Appeal	Supreme Court of Canada	Total
Aboriginal	63 (6 interventions)	10 (2 interventions)	11 (8 interventions)	84
Age	7	3	4 (1 intervention)	14
Citizenship	3	2	3 (1 intervention)	8
Colour/Race/Ethnicity/ Nationality				
Colour	2	1	3 (2 interventions)	6
Race	9 (2 interventions)	4 (2 interventions)	7 (5 interventions)	20
National Origin	3	0	0	3
Ethnicity	7 (2 interventions)	3 (2 interventions)	1 (1 intervention)	11
General ¹	2 (1 intervention)	2 (1 intervention)	1	5
Disability	14 (1 intervention)	15 (6 interventions)	11 (6 interventions)	40
Family/Marital/Parental	7	4 (1 intervention)	2 (1 intervention)	13
Geography	0	0	0	0
Language	3 (1 intervention)	0	0	3
Poverty	9	5 (2 interventions)	4 (4 interventions)	18
Prisoner/Criminal Record	4	3 (2 interventions)	7 (6 interventions)	14
Refugee	1	0	1 (1 intervention)	2
Religion	0	0	0	0
Section 15 General	1	0	5 (4 interventions)	6
Sex	14 (2 interventions)	11 (6 interventions)	11 (8 interventions)	36
Sexual Orientation	13 (2 interventions)	11 (6 interventions)	4 (3 interventions)	28
Transgendered	0	0	0	0
Unknown ²	0	0	0	0
Other ³	1	1 (1 intervention)	0	2
Total	163	75	75	313

¹ Applications involving all of the following grounds of discrimination: colour, race, national origin and ethnic origin.

² Applications involving no known ground of discrimination.

³ Applications involving a ground of discrimination other than those listed in this table.

Language Rights

**Table 7 – Breakdown of Language Applications Received
October 24, 1994 – March 31, 2003**

Province/ Territory	% of Canada's Pop.	1994/95		1995/96		1996/97		1997/98		1998/99		1999/00		2000/01		2001/02		2002/03		Total	
		0	% of Applications	0	% of Applications	1	% of Applications	0	% of Applications	0	% of Applications	3	% of Applications	1	% of Applications	1	% of Applications	2	% of Applications	8	% of Applications
Yukon	0.1	0	0.0	0	0.0	1	4.0	0	0.0	0	0.0	3	6.5	1	2.0	1	2.4	2	4.7	8	2.7
Nunavut ¹	0.1	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	1	2.4	0	0.0	0	0.0	1	2.4	2	0.8
Northwest Territories	0.1	1	7.1	1	4.3	1	4.0	0	0.0	0	0.0	2	4.3	5	10.0	0	0.0	0	0.0	10	3.4
British Columbia	12.9	1	7.1	3	13.1	1	4.0	1	3.7	0	0.0	1	2.4	0	0.0	1	2.4	0	0.0	8	2.7
Alberta	9.3	0	0.0	3	13.1	0	0.0	0	0.0	3	11.5	5	10.7	3	6.0	0	0.0	1	2.4	15	5.1
Saskatchewan	3.4	0	0.0	1	4.3	0	0.0	2	7.4	1	3.9	0	0.0	0	0.0	4	9.5	6	14.3	14	4.7
Manitoba	3.8	2	14.3	4	17.5	6	24.0	1	3.7	7	23.1	11	26.1	10	20.0	10	23.8	10	23.8	61	20.7
Ontario	37.6	7	50.1	1	4.3	1	4.0	9	33.3	8	27.0	4	10.7	7	14.0	7	16.7	6	14.3	50	16.9
Québec	24.7	1	7.1	5	21.7	6	24.0	6	22.2	2	3.9	7	17.4	8	16.0	4	9.5	2	4.7	41	13.9
New Brunswick	2.5	2	14.3	2	8.7	3	12.0	8	29.7	1	3.9	6	13.0	11	22.0	11	26.2	7	16.7	51	17.3
Nova Scotia	3.1	0	0.0	0	0.0	3	12.0	0	0.0	2	7.6	3	6.5	2	4.0	3	7.1	6	14.3	19	6.4
Prince Edward Island	0.5	0	0.0	2	8.7	1	4.0	0	0.0	3	11.5	0	0.0	0	0.0	1	2.4	1	2.4	8	2.7
Newfoundland Labrador	1.9	0	0.0	1	4.3	2	8.0	0	0.0	2	7.6	0	0.0	3	6.0	0	0.0	0	0.0	8	2.7
Total	100%	14	100%	23	100%	25	100%	27	100%	29	100%	43	100%	50	100%	42	100%	42	100%	295	100%

¹ Nunavut became a Territory in April 1999.

Table 8 – Breakdown of Language Applications Received
October 24, 1994 – March 31, 2003

	1994/95	1995/96	1996/97	1997/98	1998/99	1999/00	2000/01	2001/02	2002/03	Total
Education Rights	11	11	14	19	14	16	26	20	20	151
Judicial Rights	1	3	2	1	2	5	0	5	9	28
Language of Work, Communication & Service	1	6	6	6	3	9	13	12	6	62
Legislative Bilingualism	1	2	2	0	2	1	1	0	2	11
Other	0	1	1	1	8	12	10	5	5	43
Total	14	23	25	27	29	43	50	42	42	295

Table 9 – Breakdown of Decisions Made by the Language Rights Panel
October 24, 1994 – March 31, 2003

	Decision Pending	Panel/Admin Rejection	Applicant Withdrawn	Panel Granted	Total
Education Rights	12	17	5	116	150
Judicial Rights	2	6	3	18	29
Language of Work, Communication & Service	3	12	2	45	62
Legislative Bilingualism	0	6	1	6	13
Other	1	8	0	32	41
Total	18	49 ¹	11	217 ²	295

Acceptance Rate = 73.6%

¹ See Table 11 for a further breakdown.

² See Table 10 for a further breakdown.

Table 10 – Breakdown of Type of Funding Granted by the Language Rights Panel
October 24, 1994 – March 31, 2003

	Case Development	Case Funding	Impact Study	Program Promotion & Access and Negotiation	Total
Education Rights	19	66	6	25	116
Judicial Rights	4	11	2	1	18
Language of Work, Communication & Service	15	22	2	6	45
Legislative Bilingualism	1	4	1	0	6
Other	4	7	8	13	32
Total	43	110 (1)	19	45	217

¹ See Table 12 for a further breakdown.

Table 11 - Breakdown of Unsuccessful Language Rights Applications
October 24, 1994 – March 31, 2003

	No Constitutional Link ¹	Not a Test Case ²	Duplication ³	Other ⁴	Total
Education Rights	5	5	3	4	17
Judicial Rights	2	3	0	1	6
Language of Work, Communication & Service	6	4	2	0	12
Legislative Bilingualism	1	4	0	1	6
Other	3	4	1	0	8
Total	17	20	6	6	49

- ¹ The Program's Contribution Agreement states that cases which receive funding must advance official language minority rights as guaranteed by the interpretation or application of section 93 or 133 of the *Constitution Act, 1867*, or as guaranteed in section 23 of the *Manitoba Act, 1870*, sections 16 to 23 of the *Constitution Act, 1982* or parallel constitutional provisions.
- ² A “test case” is a legal case which deals with a problem or raises an argument for the resolution of a linguistic rights issue. These are applications where the Language Rights Panel found that the proposed challenge was not a strong test case. Common reasons leading to such a decision by the Panel are: the case, if successful, will benefit only the individual involved as opposed to a broader group of official language minorities; the case does not provide the opportunity to advance the linguistic rights of the official language minority; and/or the language issue in the case has already been determined by the courts.
- ³ These applications covered legal issues already funded by the Program or already before the courts. The Program's Contribution Agreement does not allow it to fund such “duplicate” cases.
- ⁴ Applications involving a reason other than those listed in this table.

Table 12 – Breakdown of Case Funding Granted by the Language Rights Panel
October 24, 1994 – March 31, 2003

	First Instance	Appeal	Supreme Court of Canada	Total
Education Rights	43 (10 interventions)	13 (8 interventions)	10 (8 interventions)	66
Judicial Rights	3	7 (5 interventions)	1 (1 intervention)	11
Language of Work, Communication & Service	17 (3 interventions)	5 (1 intervention)	0	22
Legislative Bilingualism	1	1 (1 intervention)	2 (1 intervention)	4
Other	1	5 (3 interventions)	1	7
Total	65	31	14	110

RESOURCES

The Court Challenges Program has developed various information materials to promote the Program and its objectives. The following documents are available to the public for free upon request.

Annual Reports

1994/1995 Annual Report – Court Challenges Program of Canada – a report of the activities undertaken by the Program from the time of its reinstatement to March 31, 1995.

Available in English, French, and on computer diskette.

1995/96 Annual Report – Court Challenges Program of Canada – a report of the activities undertaken by the Program from April 1, 1995 to March 31, 1996.

ISBN #1-896894-00-3

Available in English, French, and on computer diskette.

1996/97 Annual Report – Court Challenges Program of Canada – a report of the activities undertaken by the Program from April 1, 1996 to March 31, 1997.

ISBN #1-896894-02-X

Available in English, French, and on computer diskette.

1997/98 Annual Report – Court Challenges Program of Canada – a report of the activities undertaken by the Program from April 1, 1997 to March 31, 1998.

ISBN #1-896894-04-6

Available in English, French, and on computer diskette.

1998/99 Annual Report – Court Challenges Program of Canada – a report of the activities undertaken by the Program from April 1, 1998 to March 31, 1999.

ISBN #1-896894-06-2

Available in English, French, and on computer diskette.

1999/00 Annual Report – Court Challenges Program of Canada – a report of the activities undertaken by the Program from April 1, 1999 to March 31, 2000.

ISBN #1-896894-06-2

Available in English, French, and on computer diskette.

2000/01 Annual Report – Court Challenges Program of Canada – a report of the activities undertaken by the Program from April 1, 2000 to March 31, 2001.

ISBN #1-896894-10-0

Available in English, French, and on computer diskette.

2001/02 Annual Report – Court Challenges Program of Canada – a report of the activities undertaken by the Program from April 1, 2001 to March 31, 2002.

ISBN #1-896894-14-3

Available in English, French, and on computer diskette.

Brochures

Court Challenges Program of Canada – a brochure on the mandate and the different types of funding available from the Program.

Available in English, French, audiotape, large print, braille, or on computer diskette.

RESOURCES

Your Right to Equality – a brochure on equality rights and the Court Challenges Program.

Available in English, French, audiotape, large print, braille, or on computer diskette.

Information Kit – Court Challenges Program of Canada – a series of information sheets which explain how to apply for funding from the Court Challenges Program.

Available in English, French, audiotape, large print, braille, or on computer diskette.

Papers

Charter Litigating for Racial Equality, Nitya Iyer, February 1996 – *The paper discusses the comparative absence of Charter section 15 cases of racial inequality.*

Available in French and English.

Court Challenges: Law, Sheilah Martin, May 2002 – *an impact study of the Supreme Court of Canada's decision in Law v. Canada, with particular emphasis on the notions of dignity and social justice.*

Available in French and English.

L'article 23 et les défis de l'éducation pour la minorité linguistique francophone : Frondeurs et Tyrans, Jean Pierre Dubé, Novembre 1999 – *The paper reviews the state of education for French-language minorities and outlines the challenges to be overcome in the area of French-language education for minority francophone communities.*

Available in French.

L'Entente sur l'union sociale et ses conséquences sur les communautés minoritaires de langue officielle, François Boileau, November 1999 – *Mr. Boileau gives a brief description of the Social Union Framework Agreement and explains the effects of federal spending on official language minority communities.*

Available in French.

Le bilan des droits linguistiques au Canada, Benoît Pelletier, Août 1995 – *The study examines the state of language rights in Canada to August 1995.*

Available in French.

Les changements économiques et les communautés minoritaires de langue française, Jean Guy Vienneau, November 1999 – *This paper describes the current economic situation of Canada's French-language minority communities and proposes a variety of solutions that would enable these communities to meet future economic challenges.*

Available in French.

Les éléments essentiels pour avoir des communautés minoritaires vibrantes de langue officielle, Rodrigue Landry, PhD, November 1999 – *Using a theoretical model and concrete examples, Dr. Landry lists and explains the political, demographic, cultural, and economic factors that are needed to sustain healthy minority linguistic communities.*

Available in French.

Les transformations gouvernementales et les communautés minoritaires de langues officielle, Linda Cardinal, Political Science Department, University of Ottawa, November 1999 – *This paper summarizes the Savoie and Fontaine reports on the impact of government transformations on official language minority communities and sets out some implementation strategies that might be pursued.*

Available in French.

Official-Language Minorities: Demographic Trends, Charles Castonguay, Professor, Department of Mathematics and Statistics, University of Ottawa, July 20, 1999 – *The paper discusses the demographic trends in official language minority communities and the need to adopt a strategy to counter the effects of assimilation.*

Available in French and English.

Remedial Consensus and Challenge in Equality Rights and Minority Language Cases, Kent Roach (October 2001). Available in French and English.

Section 15 Challenges to Bill C-31: Litigation Strategies and Remedies, Kimberly Murray and Kent Roach (July 2002).

Available in French and English.

Section 15 in the New Millennium: The Recognition of Human Dignity and Substantive Equality, Norma Won, August 1999 – *This paper analyzes the Law v. Canada (Minister of Employment and Immigration) decision and discusses its current and future impact for equality-seeking communities.*

Available in French and English.

Sections 16, 20 and 23 of the Canadian Charter of Rights and Freedoms: Unanswered Questions, Richard L. Tardif, Director, Legal Services, Office of the Commissioner of Official Languages, August 1999 – *Mr. Tardif reviews unanswered questions arising out of Sections 16, 20 and 23 of the Canadian Charter of Rights and Freedoms*

Available in French and English.

The Equality Guarantee of the Charter in the 1990's, Gwen Brodsky, April 19, 1996 – *This paper provides an overview of equality rights litigation issues, concentrating on developments subsequent to 1992 when the original Court Challenges Program was cancelled.*

Available in French and English.

Transcending Language, Transforming Context: Reclaiming Charter(ed) Territory, Norma Won, August 1998 – *Ms Won discusses the strengths and limitations of the interpretation of equality under Section 15 of the Canadian Charter of Rights and Freedoms.*

Available in French and English.

Transformations technologiques et l'évolution des communautés minoritaires de langue officielle, Sylvio Boudreau, Fondation Concept Art Multimedia, November 1999 – *Mr. Boudreau takes a look at current technological changes and discusses how francophone minorities are making use of the Internet.*

Available in French.

Working Together Across Our Differences, Avvy Go and John Fisher, August 1998 – *This paper discusses various experiences and lessons learned when community groups participate in coalition-building, participatory litigation and strategic litigation.*

Available in French and English.

The Court Challenges Web Site

The Program has also developed a Web Site at <http://www.ccppcj.ca>. Information contained on the site includes the following materials:

- the Program's organizational chart,
- the Program's general brochure,
- *Your Right to Equality* brochure,
- the information kit,
- biographies of Board members, Panel members and staff, and
- information about the Program's logo.

In addition to the on-going collection of Program materials, links to other web sites and other information is available in the library. The library also contains an alphabetical listing of key words and can be searched for words or phrases. The site also contains a discussion area called "Law Talk/Parlons droit". Interested people can contribute to the dialogue or catch up on a discussion about equality and language rights in Canada.