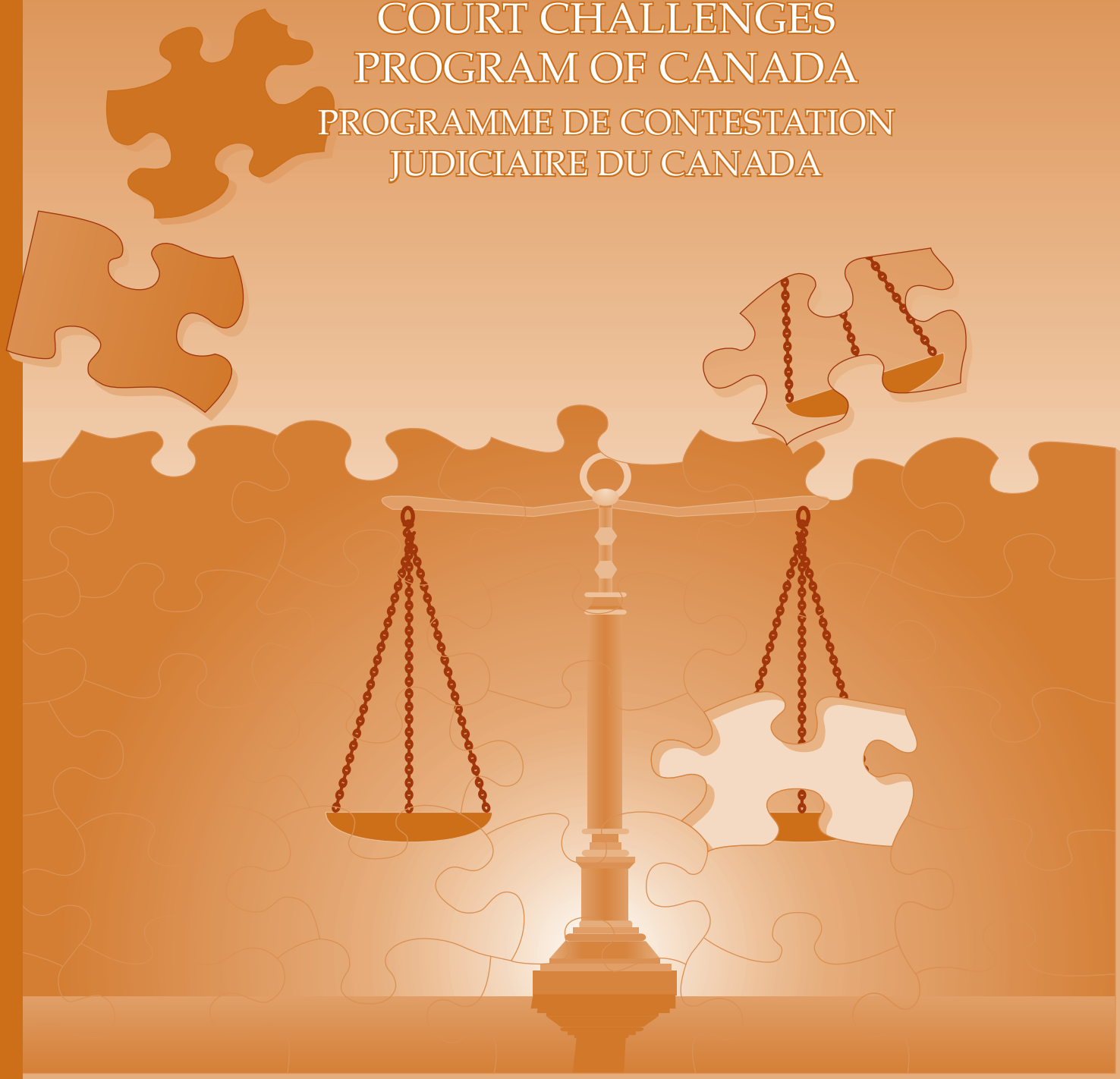


Annual Report
2003–2004



COURT CHALLENGES
PROGRAM OF CANADA
PROGRAMME DE CONTESTATION
JUDICIAIRE DU CANADA



Annual Report

2003–2004



COURT CHALLENGES PROGRAM OF CANADA

PROGRAMME DE CONTESTATION JUDICIAIRE DU CANADA

The Court Challenges Program of Canada's vision is that the equality rights of historically disadvantaged groups and the language rights of official language minorities in Canada are recognized and are implemented so that all Canadians can actively and equally participate in Canadian society.

To realize this vision, the CCPC's mission is to promote the full recognition and implementation of the language rights of Canada's official language minorities and of the equality rights of historically disadvantaged groups by providing dynamic support to strategic and innovative test-case litigation.

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

the Department of Canadian Heritage of the Government of Canada.

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Message from the Chair

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

This report contains an overview of the activities undertaken and funded by the Court Challenges Program over the past year. As you will see, this small organization has once again been able to make a large contribution to the ongoing project of recognizing and implementing the language rights of official language minorities and the equality rights of historically disadvantaged groups in Canada. The work reflected in this report is a tribute to all of the individuals and organizations that comprise our program and receive our funding and support.

Over the past year, the Board has worked hard towards securing financial security through renewal of the contribution agreement with Heritage Canada. Two years ago, the Board decided that program renewal at the same level of funding would have serious negative long-term consequences for the Program. We decided to seek a funding increase that would, at a minimum, enable us to cover increased administrative costs. To this end, the program worked closely with Heritage Canada to establish a strong case for a funding increase to present to Treasury Board. Unfortunately, because our application did not reach Treasury Board before the Federal election, we are currently operating with another budget extension. The Board and the Program would like to express their appreciation to Heritage Canada for the work done on our behalf, and the support given to renewal with a budget increase. The regular communication and cooperative work between the Board and Heritage Canada have been greatly appreciated.

Board and Program members have been frustrated by the lack of progress on mandate expansion created by the delays in achieving stable funding. At a time when the real life situations of many of our members continue to deteriorate, (both those seeking to advance claims of social and economic rights and those seeking increased language services and facilities from provinces), we have had to put mandate expansion on hold. Unfortunately, our funding will not permit us to use program funds to advance mandate expansion, and we have realized it is simply too big a project to be attempted on a volunteer basis. Over the past year, the Program has developed a proposal seeking modest funding which will permit us to hire a Mandate Expansion coordinator. We are now looking to large law firms and legal organizations committed to the ideals and work of the Program for funding. We hope that the new position will permit us to harness the considerable resources of the membership and friends of the program to make Mandate expansion a reality.

As always, the Court Challenges Program stands at the forefront of the work for minority language rights and equality rights. In these difficult times, with many legal setbacks, the importance of the program cannot be overstated. The need for a vital Court Challenges Program, with increased funding and a fully expanded mandate is obvious.

I would like to recognize and express my continuing gratitude to members of the Board, the staff, the Panels, the Advisory Committees and all other committees for their hard work, dedication and support. The care and commitment reflected in contribution of volunteer time, together with the work of our committed and talented staff is, as always, truly inspirational.



Chantal Tie

Chair of the Board of Directors

Message from the Executive Director

This is the Court Challenges Program of Canada's (CCPC) 10th Annual Report since the signing of the first Contribution Agreement with the Department of Canadian Heritage in 1994, wherein the CCPC was entrusted with the administration of the Court Challenges Program/ Programme de contestation judiciaire (CCP/PCJ).

As in 2002/2003, the Court Challenges Program of Canada was faced with a few further personnel challenges and was required to undertake additional tasks during the 2003/2004 fiscal year. The decision to extend the 1998-2003 Contribution Agreement to the end of March 2004 meant that CCPC's funding level remained static. As a result, the Board had to implement cost-cutting measures that had significant implications for the Program's outreach efforts.

Despite these restraints, the CCPC was able to coordinate an important luncheon in partnership with the Manitoba Human Rights Commission, the Canadian Human Rights Commission and the City of Winnipeg for Mrs. Mary Robinson, former United Nations' High Commissioner for Human Rights, who was in Winnipeg to receive an honorary doctorate from the University of Winnipeg. This unique event brought together several representatives from equality rights and language rights seeking groups. Mrs. Robinson commended the Court Challenges Program as a good example of a government's commitment to providing access to justice to a country's most disadvantaged.

The Program's importance was also recognized on March 30, 2004, during the 3rd session of the 37th Parliament of the Debates of the Senate where, in response to a question by the Honourable Jean-Robert Gauthier, the Honourable Jack Austin noted that the Court Challenges Program was one of the best government programs. Senator Austin further noted the government's intention to renew the CCP for an additional five years.

The Program's importance and its uniqueness and impact have been noted. I am very privileged to be a part of this critical program and look forward to seeking ways to stabilize the Program's funding as well as expand its mandate.

In closing, I would like to extend my continued gratitude to the members of the Board, Panels and all Committee members, as well as staff for their empathy and understanding during these uncertain times.



Noël A. J. Badiou

Executive Director

Administration

Program Structure and Composition

The Court Challenges Program of Canada is a national not-for-profit corporation mandated 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.

The management of the Court Challenges Program (the Program) is overseen by a national Board of Directors whose members serve on a volunteer basis. 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 Program's main function 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 four categories of members: Equality Members, Language Members, Director Members and Associate 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 provide information on Program-related issues of interest to their members and advise the Board on policy issues throughout 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 these individuals makes towards carrying out the mandate of the Program.

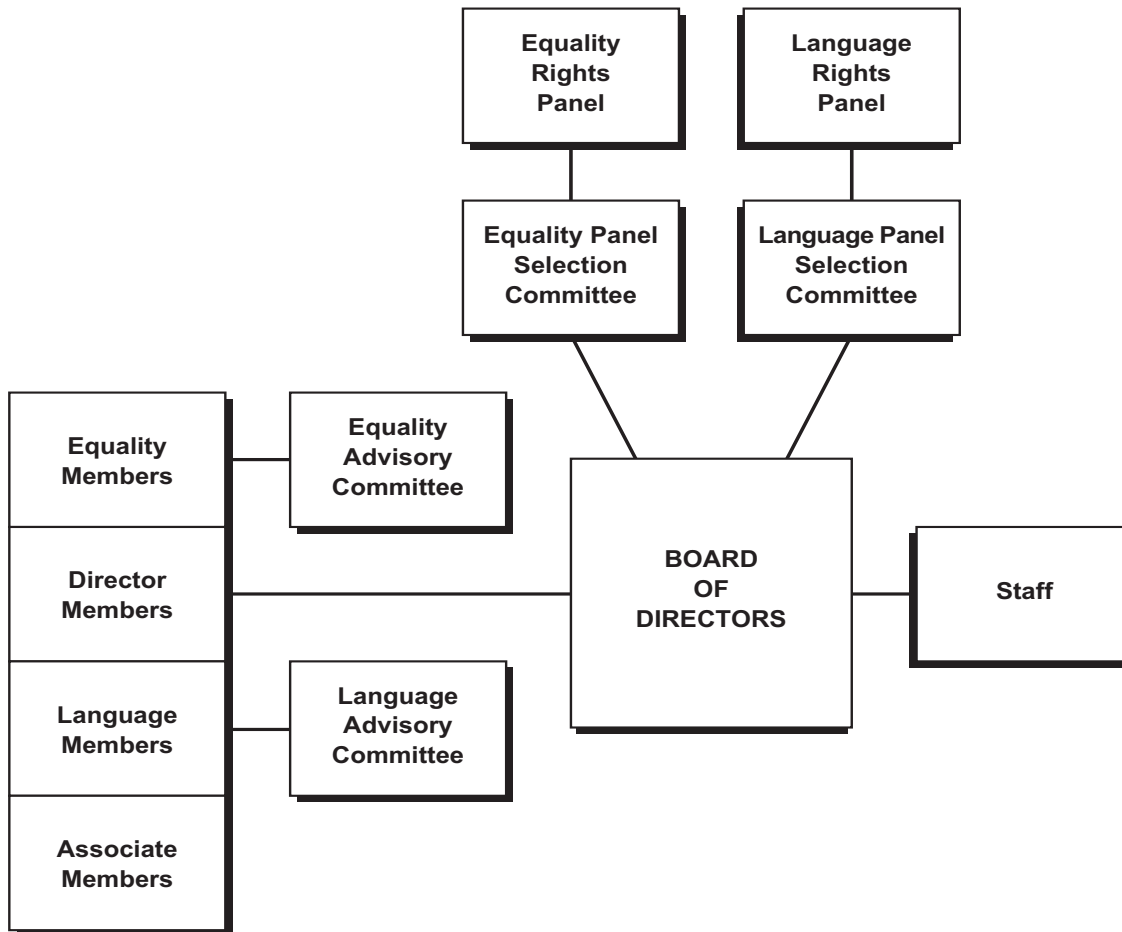
Board of Directors

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 2003-2004 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 – **Leslie MacLeod**;
- Vice-Chair and Co-Chair of the Language Panel – (April–November) **Ronald Bisson** and (November–March) **Kathleen Tansey**;
- Treasurer 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 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 (CCPI);
- Representative of the Language Members (January–March) – **Guy Matte** (Ontario) former Managing Director of the Association des enseignantes et enseignants franco-ontariens (AEFO).

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 PANEL SELECTION COMMITTEE

In 2003-2004, 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) – (April–January) Former Managing Director of the Association des enseignantes et enseignants franco-ontariens;
- **Raymond Poirier** (Manitoba) – Director of the Association des municipalités bilingues du Manitoba;
- **Eric Sutton** (Québec) – lawyer in private practice with the firm Girouard, Peris, Goldenberg, Pappas and Sutton.

THE EQUALITY PANEL SELECTION COMMITTEE

In 2003-2004, 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 a Montréal;
- **Amy Go** (Ontario) – activist with racial minority and women’s communities in Toronto.

Panels

THE LANGUAGE 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 2003-2004, the Language Panel was composed of the following individuals:

- **Ronald Bisson**, Co-Chair (April–November) (Ontario) – a private management consultant who has worked with various French-language minority communities outside of Québec as Director General of the Fédération des jeunes canadiens-français and as a teacher in Manitoba's French language schools (April–November);
- **Kathleen Tansey**, Co-Chair (November–March) (Québec) – a practicing lawyer in the areas of Labour and Administration Law and a former teacher in Montreal;
- **André Braën** (Ontario) – a lawyer and professor with the University of Ottawa with 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
- **Léo Robert** (Manitoba) – the former Executive Director with the Division scolaire francophone du Manitoba and community activist in the francophone community (December–March).

The Court Challenges Program received 31 applications for support for language-related cases and projects during this fiscal year. In 2003-2004, the Language Panel granted funding for 26 applications in the following categories:

Language Rights	% of Total	Number of Cases	Amount of Money Granted
Case Development	15.4	4	\$19,996
Case Funding	53.9	14	\$430,483
Impact Studies	11.5	3	\$19,845
Program, Promotion & Access and Negotiation	19.2	5	\$54,676
Total	100.0	26	\$525,000

(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 of previous fiscal years where a portion of the funds granted were not used.)

THE EQUALITY 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 2003-2004, the Equality Panel was composed of the following individuals:

- **Sharryn Aiken**, Co-Chair (Ontario) – lawyer and Professor of Law (Faculty of Law, Queens University) and author of numerous articles on Canadian refugee policies, racism and human rights;
- **Leslie MacLeod**, Co-chair (Newfoundland) – adult educator, community development worker, social researcher, technical writer, consultant, advocate, community and board member in the disability and women's movements;
- **Patrick Case** (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;
- **Robert Saint-Louis** (Québec) – lawyer and consultant on unemployment and disabilities issues. Me Saint-Louis also taught law classes at the Université de Québec à Montréal (UQAM) and was responsible for l'UQAM's legal clinic;
- **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;
- **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 106 applications for equality-related cases and projects during this fiscal year. In 2003-2004, the Panel granted funding for 79 applications in the following categories:

Equality Rights	% of Total	Number of Cases	Amount of Money Granted
Case Development	13.9	11	\$89,048
Case Funding	48.1	38	\$1,111,300
Impact Studies	5.1	4	\$36,528
Program, Promotion & Access and Negotiation	32.9	26	\$311,016
Total	100.0	79	\$1,547,892

(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 of previous fiscal years where a portion of the funds granted were not used.)

The Membership

On April 1, 2004, the Court Challenges Program's membership was composed of 17 Language Members, 69 Equality Members and 5 Associate Members. During the 2003-2004 fiscal year, the following organizations became new members:

NEW LANGUAGE MEMBERS

There were no new language members in the 2003-2004 fiscal year.

NEW EQUALITY MEMBERS

- African Canadian Disability Community Association (Inc.)
- Women's Legal Education and Action Fund (Manitoba)

NEW ASSOCIATE MEMBERS

There were no new Associate members in the 2003-2004 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.

LANGUAGE ADVISORY COMMITTEE

In 2003-2004, the Language Advisory Committee consisted of the following organizations and individuals:

- Alliance Québec – No representative named
- Commission nationale des parents francophones – **Murielle Gagné-Ouellette**
- Fédération des associations de juristes d'expression française de common law – **Alain Laurencelle**
- Fédération des communautés francophones et acadienne du Canada – **Michel Chartier**
- Québec Community Groups Networks – **Deborah Hook**

EQUALITY ADVISORY COMMITTEE

In 2003-2004, the Equality Advisory Committee consisted of the following organizations and persons:

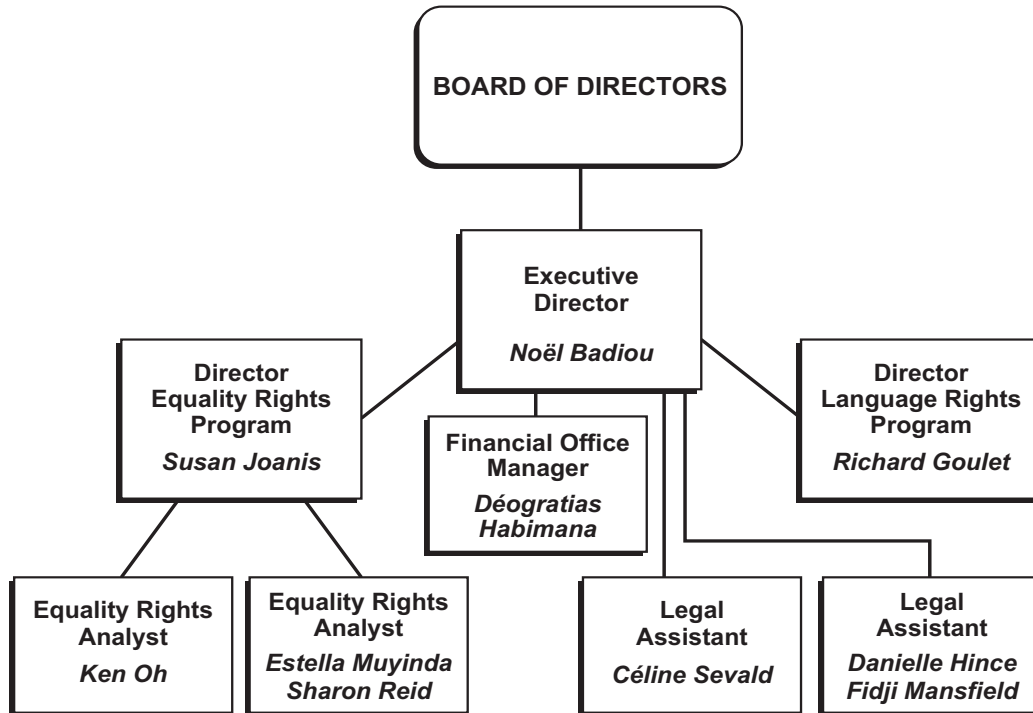
- Action Committee of People with Disabilities – **Joanne Neubauer**
- African Canadian Legal Clinic – **Margaret Parsons**
- Association multiculturelle francophone de l'Alberta – **Igor César**
- Canadian Institute of Islamic Studies – **Dr. Yaqoob Khan**
- Charter Committee on Poverty Issues – **Bonnie Morton**
- Equality for Gays and Lesbians Everywhere – **John Fisher / Gilles Marchildon**
- 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** (Trans/Action withdrew from this committee in September 2003)
- Women's Legal Education and Action Fund – **Gillian Calder**

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:

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

Staff

In 2003-2004, the Court Challenges Program employed eight individuals. There were some staff changes with two staff members, Richard Goulet, Director, Language Rights Program, and Danielle Hince, Legal Assistant, both beginning parental leaves, both beginning in September. Ferroudja Mansfield was hired on a term basis to fill the Legal Assistant vacancy, and the CCPC contracted with Sylvie Léger to prepare the analyses for presentation to the Language Rights Panel in Richard’s absence. In addition, one of the Legal Analysts, Estella Muyinda, commenced a one-year leave beginning in January of 2004. Sharon Reid was hired on a term basis to fill the vacancy. Several employees took on additional duties during these transitional times, and their dedication and effort is acknowledged and very much appreciated.



Annual General Meeting

The National Consultation and Annual General Meeting were held in Winnipeg, October 24–26, 2003, with over 100 individuals participating in these meetings.

The 2003 National Consultation focused on the 25th anniversary of the Court Challenges Program. There was a presentation on racial profiling and emerging equality issues at Canada’s borders in the current immigration and refugee system. There was also a presentation on the issue of who are the ‘right holders’ of minority language education rights under section 23 of the *Charter*. In addition, there was a plenary on the topic of how to get the remedies needed in equality and language rights cases. These presentations and the plenary led to productive discussions that will assist Program members in their work.

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

One of the main topics for discussion at the 2003 Annual General Meeting was the lengthy process involved in renewing the CCP's funding agreement and its impact on the Program's budget. Of particular concern was the impact of the delay on mandate expansion plans. It was explained that one of the reasons for the one-year delay was to provide the CCPC with an opportunity to present a case for an increase in the funding. Without an increase, the very core activity of the Program in administering the funding applications would be negatively impacted. Therefore, it was generally agreed that the CCPC's efforts should be concentrated on the renewal efforts, with the mandate expansion plans moving ahead, albeit at a slower pace. It was expected that the Program would be renewed shortly after the March 31st year-end, and the CCPC could once again concentrate efforts on the development of a fund to stabilise the long-term existence of the Program, as well as expand its mandate.

During this 2003 Annual General Meeting, there were no elections to the Board despite the expiry of one of the Representatives of the Language Members' terms.

Finally, there was tribute made for departing Board member Ronald Bisson. The Program would also like to recognize the dedicated work and efforts of departing Equality Advisory Committee member Caroline White. The Program is very appreciative of each of these volunteer's efforts and dedication and wishes each of them the best of luck in their future endeavours.

Program Priorities and Planning

During the 2003-2004 year, the Court Challenges Program continued to work on the five priority areas identified during its 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 priority for improving assistance to applicants this past year was met through a review and revisions to the information relating to requests for reimbursements by applicants. An information sheet and sample invoice were drafted for distribution to new and existing applicants. 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 and existing 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 during 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, more progress was made in establishing the Factum bank through our website. A members-only page was created, and the Program is in the process of obtaining the necessary licensing agreements to post several facta, by topic, on this page. It is hoped that this tool will be available to members in the coming year.

OUTREACH FOR APPLICATIONS

In view of the budgetary restrictions faced by the Court Challenges Program during the 2003-2004 fiscal year, there were few opportunities to make presentations or meet with new organisations. Nevertheless, the Program's staff, Panel and Board members managed to make presentations to about ten equality-seeking and official language minority groups in various locations across Canada. The highlight of the outreach activities involved a brunch with Mrs. Mary Robinson, the former United Nations High Commissioner for Human Rights. The brunch brought together several Equality and Language Rights members to hear Mrs. Robinson's presentation on human rights in a global context. The CCPC coordinated the activity with a regularly scheduled Board meeting and partnered with the City of Winnipeg, the Manitoba Human Rights Commission and the Canadian Human Rights Commission to ensure that the CCPC stayed within its limited budget, while enabling such a unique and worthwhile event. Mrs. Robinson commended the Court Challenges Program and the Canadian Government in setting up such an important program that provides access to justice for Canada's historically disadvantaged groups and minority language rights groups. She further noted that this program could serve as an example in our global community of helping eliminate inequality amongst our fellow global citizens.

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

As noted above, during the past year, the Program was preoccupied with the renewal efforts for the Court Challenges Program. The renewal is taking much longer than had been anticipated; however, it was decided that the mandate expansion efforts would be revisited and moved along, albeit at a slower pace until the renewal of the Program is completed.

ORGANISATIONAL 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 460 active equality files and over 90 active language files and fulfilling reporting requirements to Canadian Heritage and so on. An additional task in the past year was the ongoing negotiations and conference calls with Canadian Heritage for the renewal of the Court Challenges Program.

Audited Financial Statements

The following are the Program's audited financial statements for the year that ended March 31, 2004. 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 expenses for the Program's administrative monies.



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May 21, 2004

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, 2004 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, 2004 and the results of its operations for the year then ended in accordance with Canadian generally accepted accounting principles.

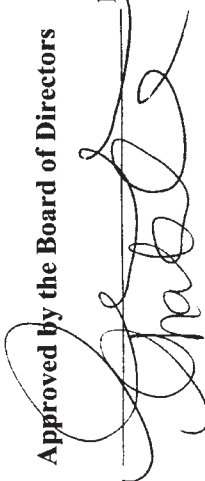
Chartered Accountants


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

Balance Sheet
As at March 31, 2004

	Program Promotion and				2004	2003
	Operating Fund \$	Litigation Fund \$	Access and Negotiation Fund \$	Case Development Fund \$	Impact Studies Fund \$	Total \$
Assets						
Cash	109,558	279,762	99,068	184,090	109,569	359,268
Accounts receivable	7,986	25,407	2,805	869	200	45,801
Prepaid expenses	5,502	-	-	-	-	4,771
	123,046	305,169	101,873	184,959	109,769	409,840
Capital assets (note 3)	15,907	-	-	-	-	23,838
	138,953	305,169	101,873	184,959	109,769	433,678
Liabilities						
Accounts payable and accrued liabilities	35,249	64,202	17,400	-	-	26,831
	-	240,967	84,473	184,959	109,769	296,568
Fund Balances						
Externally restricted (note 4)	15,907	-	-	-	-	23,838
Invested in capital assets	87,797	-	-	-	-	86,441
Unrestricted	103,704	240,967	84,473	184,959	109,769	406,847
	138,953	305,169	101,873	184,959	109,769	433,678

Approved by the Board of Directors

 Director


 Director

**Court Challenges Program of Canada -
Programme de contestation judiciaire du Canada**
Statement of Operations and Fund Balances
For the year ended March 31, 2004

	Operating Fund			Restricted Funds				
	2004 Total \$	2003 Total \$	Litigation Fund \$	Program Promotion and Access and Negotiation Fund \$	Case Development Fund \$	Impact Studies Fund \$	2004 Total \$	2003 Total \$
Revenue								
Contributions								
Government of Canada, Canadian Heritage	650,000	650,000	1,498,755	329,080	218,000	101,000	2,146,835	1,750,415
Interest and other income	18,214	12,890	-	-	-	-	-	-
Human resource development	3,119	4,004	-	-	-	-	-	-
	671,333	666,894	1,498,755	329,080	218,000	101,000	2,146,835	1,750,415
Expenses								
Operating (Schedule)	677,908	670,002	-	-	-	-	-	-
Program delivery	-	-	1,467,000	283,323	58,660	14,252	1,823,235	2,202,701
	677,908	670,002	1,467,000	283,323	58,660	14,252	1,823,235	2,202,701
Excess of revenue over expenses (expenses over revenue) for the year	(6,575)	(3,108)	31,755	45,757	159,340	86,748	323,600	(452,286)
Fund balance - Beginning of year	110,279	113,387	209,212	38,716	25,619	23,021	296,568	748,854
Fund balance - End of year	103,704	110,279	240,967	84,473	184,959	109,769	620,168	296,568

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

Notes to Financial Statements
March 31, 2004

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. This agreement has been amended to extend the effective period to June 30, 2004. The Corporation is currently in negotiations with the Government to finalize a five year contribution agreement.

The Corporation is a registered charity under the provisions of the Income Tax Act of Canada.

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.

(1)

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

Notes to Financial Statements
March 31, 2004

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.

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, 2004

3 Capital assets

	<u>2004</u>		<u>2003</u>	
	Cost \$	Accumulated amortization \$	Net \$	Net \$
Computer equipment	86,253	76,018	10,235	15,937
Furniture and equipment	50,694	45,022	5,672	7,901
	<u>136,947</u>	<u>121,040</u>	<u>15,907</u>	<u>23,838</u>

4 Externally restricted fund balances

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

					<u>2004</u>	<u>2003</u>
	Litigation Fund \$	Program Promotion and Access and Negotiation Fund \$	Case Development Fund \$	Impact Studies Fund \$	Total \$	Total \$
Equality rights	157,963	55,309	99,676	60,503	373,451	144,046
Language rights	83,004	29,164	85,283	49,266	246,717	152,522
	<u>240,967</u>	<u>84,473</u>	<u>184,959</u>	<u>109,769</u>	<u>620,168</u>	<u>296,568</u>

(3)

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

Notes to Financial Statements
March 31, 2004

5 Commitments

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

			<u>2004</u>	<u>2003</u>
	Equality rights \$	Language rights \$	Total \$	Total \$
Commitments approved by Panels of externally restricted funds				
Litigation	1,111,300	430,483	1,541,783	2,154,290
Program Promotion and Access and Negotiation	311,016	54,676	365,692	392,002
Case Development	89,048	19,996	109,044	88,948
Impact Studies	36,528	19,845	56,373	45,487
	<u>1,547,892</u>	<u>525,000</u>	2,072,892	2,680,727
Disbursements paid			<u>1,823,236</u>	<u>2,202,701</u>
Less: Cash of externally restricted funds			249,656	478,026
			<u>(672,489)</u>	<u>(254,546)</u>
Commitments to be funded by future contributions			-	<u>223,480</u>

The Corporation has an operating lease commitment for office premises at an annual cost of \$26,873 for a term that expires on June 30, 2004.

(4)

Court Challenges Program of Canada -
Schedule of Operating Expenses
For the year ended March 31, 2004

	2004	2003
	\$	\$
Advertising	178	5,069
Amortization	7,931	10,437
Annual meeting	19,460	14,676
Audit fees	5,662	5,677
Bank charges	537	1,158
Board members' lost wages	-	750
Facilities	27,969	33,430
Insurance	4,765	3,995
Legal fees	30	548
Office equipment and maintenance	3,761	3,015
Panel members' fees	19,875	17,864
Photocopying and printing	8,550	11,558
Postage	8,486	8,716
Public relations and outreach	1,187	3,759
Research material	8,368	6,755
Salaries and benefits	470,443	438,877
Supplies	4,503	3,240
Telephone and fax	12,483	12,902
Translation and interpretation	16,170	23,125
Travel and meetings	57,550	64,451
	<u>677,908</u>	<u>670,002</u>

Equality Rights Program Highlights

Equality Rights Test Cases

In this section, the Program offers updates on significant test cases. It has supported, through funding grants, litigants or advocacy groups who intervene to argue for a substantive interpretation to section 15, the provision that guarantees equality rights in Canada. The following brief summaries illustrate once again a tremendous variety in the issues, circumstances, and groups affected, with the dynamics of discrimination meanwhile staying unrelentingly the same.

In keeping with the Program's obligation to respect the confidentiality of all applicants, these summaries include public information only, and even this is provided only with the explicit permission of the applicants involved.

Aboriginal

Ardoch Algonquin First Nation v. Canada (Attorney General)

Federal Court of Appeal

[Update from last year (Misquadis)]

The respondents had challenged Human Resources Development Canada's (HRDC) refusal to enter into Aboriginal Human Resources Development agreements with organizations in the respondents' communities. The government had refused on the basis that the respondents were Aboriginal individuals and organizations who were not recognized as band communities.

The trial judge held that HRDC's refusal was discriminatory and ordered it to provide the respondents with community control over their labour training programs.

The Federal Court of Appeal dismissed the Crown's appeal. The Court applied the *Law* test, the current judicial tool for interpreting section 15, finding that the respondents were subject to differential treatment because they were Indians who did not live on reserves. The second step of the *Law* test – whether the differential treatment was based on an enumerated or analogous ground of discrimination – was clearly met since *Corbiere* established that "Aboriginality-residence" is an analogous ground. The final stage of the *Law* test – the human dignity analysis – was also satisfied, and HRDC failed to show that its policy minimally impaired the applicants' rights. Consequently, the violation of the respondents' equality rights was not justified under section 1.

Criminal

Canadian Foundation for Children, Youth and the Law v. Canada (Attorney General)

Supreme Court of Canada

This was a challenge to section 43 of the *Criminal Code*, which permits the use of reasonable force by parents and teachers for the correction of children for educative or corrective purposes. The impugned provision was challenged on the grounds that it infringed children's section 7 (life, liberty and security of the person) and section 15 (equality) *Charter* rights. On both grounds, the Supreme Court of Canada held that section 43 was constitutional.

According to the Court, section 43 did not violate the principles of fundamental justice protected under section 7 because it only authorized force for an educative or corrective purpose. Moreover, the force was required to be reasonable in light of the circumstances of the discipline, social consensus, expert evidence and judicial interpretation.

The Court also held that section 43 also did not violate section 15(1). Its position was that the section respects a child's human dignity by striking a balance between a child's need for a safe environment and the disruption to

family unity caused by criminalizing disciplinary force. Moreover, a child's dignity is safeguarded by *Criminal Code* provisions prohibiting abusive or harmful conduct.

Justice Binnie, in a separate opinion, held that section 43 violated a child's equality rights. In his view, the majority incorrectly incorporated a section 1-style balancing exercise into the section 15(1) analysis. However, he would have upheld section 43 under section 1.

R v. Brown

Ontario Court of Appeal

Mr Brown was convicted of driving "over 80" contrary to section 253(b) of the *Criminal Code*. Mr Brown argued that he was the subject of racial profiling, i.e., a conscious or unconscious determination of criminal behaviour based on racism. The issue at trial was whether the police officer had stopped Mr Brown because he was speeding or because he was a young, black male driving an expensive car.

During the trial, the judge interrupted and criticized defense counsel, questioned the seriousness of the allegations, and suggested that Mr Brown apologize to the officer. Mr Brown appealed his conviction to the Ontario Court of Appeal. In a unanimous judgment, the Court set aside the conviction and ordered a new trial, holding that the trial judge's conduct gave rise to a reasonable apprehension of bias. In an important statement, the Court also held that there was substantial social science evidence showing that racial profiling existed and evidence that Mr Brown's detention was based on racial profiling.

The Court Challenges Program funded an intervention by the African Canadian Legal Clinic.

R v. Hamilton

Ontario Court of Appeal

Ms Hamilton and Ms Mason, both black, single mothers of three children, traveled to Jamaica, where they swallowed pellets of cocaine before returning to Canada. After their arrest, both women pled guilty to the unlawful importing of cocaine.

During sentencing, Judge Hill considered numerous factors unique to the conditions of women and minorities in society and in prison, including: the rates of incarceration of men and women; the types of offences women tend to commit; the low cost of incarcerating women relative to incarcerating men; the risk of women re-offending; the over-representation of Black people in the criminal justice system and Black women as drug couriers; and the general ineffectiveness of punishing drug couriers as a method of ending the supply of drugs and as a tool of specific deterrence. Those factors, when combined with the principles in sections 7 and 15(1) of the *Charter*, led Judge Hill to favour more lenient sentences in the circumstances. Accordingly, he sentenced Ms Hamilton to a 20-month in-home conditional imprisonment and Ms Mason to a 24 months less one day in-home conditional imprisonment.

The Crown appealed the sentencing judge's decision, and Justice Doherty, writing a unanimous judgment in the Ontario Court of Appeal, agreed that the conditional sentences were inappropriate. According to the Court, the sentencing judge had gone beyond his role as an adjudicator to become an advocate for the two women. The social science evidence that Judge Hill relied on pertained to the typical drug courier, rather than to the particular offenders in this case. Moreover, it held that Judge Hill put too much emphasis on the experiences of the women, and not enough on the seriousness of their crime. Finally, the Court took the position that Hill's conclusions about the women's characteristics were unsupported by the evidence, noting that Ms Hamilton, for example, had offered no evidence about her involvement in the crime, the compensation she received, or how she planned to spend the money. The court ruled that while systemic racism and financial need may be mitigating factors, they do not justify a conditional sentence for a serious crime.

The Court Challenges Program funded interventions by the African Canadian Legal Clinic and the Native Women's Association of Canada.

Social and Economic Benefits

Rollason v. Canada

Employment Insurance Umpire

Immediately after Mr Rollason's daughter, Mary, was born, she was diagnosed with Down Syndrome and various life-threatening cardiac problems. She underwent several operations and remained in hospital for nearly a year. Even after she arrived home, Mary had serious health problems and needed constant supervision and care.

Following the recommendation of medical officials, Mr Rollason and his wife, Gail MacAulay, delayed taking leave from work until Mary was home so they would be available to provide her with the care she needed. Eleven days after Mary was discharged from the hospital, Mr Rollason applied for 15 weeks of parental benefits under the *Employment Insurance Act*. His application was denied, however, because benefit claims were limited under the Act to 52 weeks after a child's birth. Since Mary was not discharged until 48 weeks after she was born, Mr Rollason was granted only 4 weeks of parental benefits.

The Board of Referees upheld the decision that Mr Rollason was not entitled to receive full parental benefits. On appeal before an Umpire, Mr Rollason argued that the 52-week time limit violated section 15(1) of the *Charter* since it differentiated between parents who brought their children home shortly after birth and those whose children had hospital stays. This, he said, implicated several prohibited grounds of discrimination, including age (the age at which Mary came home made her father ineligible to receive full benefits) and family status (if Mary had been adopted, her father would have been fully eligible). The Umpire agreed, finding that Mr Rollason's right to equality was unjustifiably violated.

In a separate decision concerning the remedy, the Umpire followed Supreme Court of Canada authority and applied a section 52 remedy, giving Mr Rollason the parental benefits he would have received absent any discrimination. The Umpire also awarded solicitor-client costs. The Crown has initiated an appeal on the sole issue of costs.

Li v. Minister of Human Resources Development Canada

Canada Pension Plan Review Tribunal

Ms Eva Li and her husband immigrated to Canada from Hong Kong in 1991. Ms Li's husband worked in Canada from 1991 until his death in 1999, and contributed to the Canada Pension Plan (CPP) in each of those years. After her husband's death, Ms Li applied for pension benefits, but her application was denied on the basis that her husband had not contributed to the fund for the minimum number of years. Under the CPP, a person must contribute for 1/3 of the years in the contributory period, which starts at age 18 and continues to death. Ms Li's husband was required by the CPP to contribute in ten years, but was only able to contribute in nine because that was the number of years he was in Canada.

Ms Li challenged the qualifying sections of the *Canada Pension Plan Act* before the Canada Pension Plan Review Tribunal. She argued that the sections violated her section 15(1) right to equality by discriminating against either:

- 1) her husband, based on national origin;
- 2) herself, based on her husband's national origin;
- 3) herself, based on her status as an immigrant woman of colour; or
- 4) her son, based on his father's national origin.

The majority of the review tribunal's members found that there was no discrimination. The first ground of discrimination failed because some people who immigrate to Canada were entitled to benefits, while some Canadians were not entitled to benefits. Furthermore, the CPP did not single out a "discrete and insular" group that

had suffered historical disadvantage. The tribunal went on to rule that a claim under the second, third or fourth ground of discrimination depended on a successful claim under the first. Since the husband had not suffered discrimination based on national origin, every other claim of discrimination consequently failed.

The dissent found that the applicant's husband did suffer discrimination. Any person in the position of the applicant and her husband could reasonably feel that they were treated as less worthy of consideration and respect than persons born in Canada. The dissent also found that the discrimination could not be saved by section 1 of the *Charter*, the provision that renders section 15 protections subject to "such reasonable limits...as can be demonstrably justified in a free and democratic society".

Egale Canada Inc. v. Canada (Attorney General)

British Columbia Court of Appeal

[update from last year's report]

The appellants, as same-sex couples, were denied marriage licenses because the common law defined marriage as the "voluntary union for life of one man and one woman". At trial, the judge held that the definition could only be changed through constitutional amendment since it was entrenched in the *Constitution Act, 1867*. The trial judge went on to rule that, even if he was incorrect with respect to the constitutional status of the definition of marriage and section 15(1) was violated, the definition could nonetheless be saved by section 1.

The B.C. Court of Appeal disagreed with the trial judge that the definition of marriage was fixed in 1867. The Court then concluded that the common law bar to same-sex marriage violated section 15(1) of the *Charter*. The definition led to differential treatment on an analogous ground. Such treatment harmed human dignity because it tended "to perpetuate the stereotypical and frequently critical community view of gays and lesbians". In its section 1 analysis, the Court's key finding was that the traditional emphasis on procreation as the core of marriage did not account for contemporary views about the value and meaning of marriage. As a result, the Court reformulated the definition to include same-sex couples. The declaration was suspended until July 12, 2004.

Power v. Canada (Attorney General)

Newfoundland and Labrador Court of Appeal

When they were laid off due to fish plant closures, the appellants qualified for income support benefits based on the number of weeks they had worked. The appellants argued that the benefit plan discriminated against them because they were unable to work the number of weeks required to receive the maximum benefits due to physical disability, marital status and sex.

Applying the *Law* test, Judge Welsh ruled for a majority of the Newfoundland and Labrador Court of Appeal that the appellants had chosen an inappropriate comparator group (recipients of benefits who were not disabled). The better comparator group, according to the judge, would have been recipients of benefits who were unable to work for any reason. That finding led the Court to conclude that there was no differential treatment, since all recipients who were unable to work were treated equally. Consequently, there was no breach of section 15(1). Furthermore, even if there was differential treatment, the appellants had not proved that the treatment was discriminatory.

Application for leave to appeal to the Supreme Court of Canada was refused.

UPDATES FROM LAST YEAR'S REPORT:

Bear v. Canada – Rose Bear, who had lost her case at the Federal Court of Appeal, was denied leave to appeal to the Supreme Court of Canada.

Périgny c. Canada – Ms Périgny, who also lost at the Federal Court of Appeal level, decided not to apply for leave to appeal from the Supreme Court, based on strategic legal considerations.

Poverty

Canada Mortgage and Housing Corporation v. Iness

Ontario Court of Appeal

Through the *National Housing Act*, the Canada Mortgage and Housing Corporation (CMHC) entered into agreements to provide funding to Ontario housing co-operatives. As a condition of funding, the CMHC required the calculation of rent to depend on whether a person was on social assistance. Co-op members who were not on social assistance paid rent equal to 25 per cent of their income. Members on social assistance paid the greater of either 25 per cent of their income or the shelter component of their benefit.

Ms Iness was a member of the co-op and was receiving social assistance. The shelter component of her benefit exceeded 25 per cent of her income, and she was charged rent accordingly. Ms Iness argued that she was discriminated against on the basis of receiving social assistance contrary to the Ontario *Human Rights Code*.

The Board of Inquiry of the Ontario Human Rights Commission determined that the CMHC was subject to the *Human Rights Code*. Consequently, the CMHC was prevented from charging higher rent to social assistance-recipients.

The Divisional Court overturned the Board's decision, and the Ontario Court of Appeal dismissed a further appeal. It held that the agreements between the CMHC and the housing co-operatives were a valid exercise of the federal government's spending power under section 91(A) of the *Constitution Act, 1867*. Provincial legislation, including the *Human Rights Code*, cannot determine conditions or impose terms on federal spending. To do so would, in the Court's opinion, infringe on Parliament's exclusive authority to spend federal money. As a result, the *Human Rights Code* does not apply to the funding agreements.

The Court Challenges Program supported Ms Iness at both the trial and appeal level. She has now applied for leave to appeal to the Supreme Court of Canada.

Front Commun des Personnes Assistées Sociales du Québec v. Canada (Conseil de la radiodiffusion et des télécommunications canadiennes)

Federal Court of Appeal

The Front Commun des Personnes Assistées Sociales du Québec (the appellant) argued that a program aired by Télévision Quatre Saisons promoted prejudice to persons receiving social assistance, contrary to section 5(1)(b) of the 1987 *Broadcasting Regulations*, which forbids the broadcast of comments or pictures that are likely to expose an individual or group to hatred or contempt on the basis of race, national or ethnic origin, colour, religion, sex, sexual orientation, age or physical or mental deficiency.

The appellant urged the Federal Court of Appeal to "read in" the ground of social condition to section 5(1)(b). The appellant's argument consisted of two stages. First, it argued that "social condition" was an analogous ground of discrimination under section 15(1) of the *Charter*. Second, section 5(1)(b) of the *Broadcasting Regulations* allegedly violated section 15(1) because it did not prohibit broadcasts that demean people on the basis of "social condition".

The Court declined to consider the appellant's argument that social condition is an analogous ground. It held there was insufficient evidence to determine the issue, especially given the importance of a complete factual foundation in *Charter* cases. Furthermore, because the *Broadcasting Regulations* imposes criminal sanctions, the Court held that it would be inappropriate to create a new offence or impose criminal sanctions retroactively. The appeal was dismissed.

Program Promotion and Access Projects

The Equality Rights Program also provides financial assistance for promotion and access projects, negotiations, and impact studies that assist equality-seeking communities develop their capacity to seek redress for equality rights violations within the Program's mandate. The summary of one such initiative that was completed in the last year follows:

DISABLED WOMEN'S NETWORK – LITIGATION STRATEGY DISCUSSION PAPER

The DisAbled Women's Network (DAWN) built on its experience with equality rights litigation to prepare a discussion paper examining the status of equality rights of women with disabilities and to develop a unique litigation strategy that reflects the challenges faced by women with disabilities.

Among other obstacles, women with disabilities are confronted with a problematic version of feminist essentialism that posits a single, monolithic "women's experience" independent of other factors such as class, race, and sexual orientation. According to DAWN, women with disabilities should confront this problem by demanding a distinct place in the feminist agenda while maintaining control over the interpretation and application of the analyses applied to their lives. DAWN went on to examine its own place in the equality-seeking community and drew several important conclusions about how it can better address gendered disability discrimination.

List of Authorities

Ardoch Algonquin First Nation v. Canada (Attorney General), [2004] 2 F.C.R. 108.

Canadian Foundation for Children, Youth and the Law v. Canada (Attorney General), [2004] S.C.J. No. 6.

Canada Mortgage and Housing Corporation v. Iness, [2004] O.J. No. 771.

Egale Canada Inc. v. Canada, [2003] B.C.J. No. 994.

Front Commun des Personnes Assistées Sociales du Québec v. Canada (Conseil de la radiodiffusion et des télécommunications canadiennes), [2003] A.C.F. no. 1609.

Li v. Minister of Human Resources Development Canada, Canada Pension Plan Review Tribunal, September 23, 2003.

Power v. Canada (Attorney General), [2003] N.J. No. 104.

R. v. Brown, [2003] O.J. No. 1251.

R. v. Hamilton, [2003] O.J. No. 532.

Rollason v. Canada, C.U.B. 56478.

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 2003-2004 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. The unwritten principle related to the protection of minorities
7. 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.

TRIAL COURT'S RIGHT TO RETAIN JURISDICTION

Previous annual reports made reference to funding awarded to the **Fédération des parents acadiens de la Nouvelle-Écosse** and to interveners in *Doucet-Boudreau v. Nova Scotia (Minister of Education)* that went on to the Supreme Court of Canada. We are pleased to report that a favourable decision for the appellant was rendered in November 2003. It is a significant decision that will undoubtedly have a broad impact on the advancement of language rights in Canada.

This case dealt with a trial court's right to retain jurisdiction and the nature of remedies granted under section

24(1) of the *Charter*, to help ensure compliance with educational rights under section 23. In a 5-4 majority decision, the Supreme Court identified some important principles that can be summarized as follows:

- Courts must issue effective and responsive remedies that guarantee full and meaningful protection of *Charter* rights and freedoms.
- “While the rights [under section 23] are granted to individuals, they apply only if the “numbers warrant”. For every school year that governments do not meet their obligations under section 23, there is an increased likelihood of assimilation which carries the risk that numbers might cease to “warrant”. If delay is tolerated, governments could potentially avoid the duties imposed upon them by section 23. The affirmative promise contained in section 23 and the critical need for timely compliance will sometimes require courts to order affirmative remedies to guarantee that language rights are meaningfully, and therefore, necessarily promptly, protected.”
- The Court identified broad considerations that judges should bear in mind in evaluating the appropriateness and justice of a potential remedy:

“An appropriate and just remedy in the circumstances of a Charter claim is one that meaningfully vindicates the rights and freedoms of the claimants and employs means that are legitimate within the framework of our constitutional democracy. It is a judicial one which vindicates the right while invoking the function and powers of a court. An appropriate and just remedy is also fair to the party against whom the order is made. Since section 24 is part of a constitutional scheme for the vindication of fundamental rights and freedoms enshrined in the Charter, the judicial approach to remedies must remain flexible and responsive to the needs of a given case. The meaningful protection of Charter rights, and in particular the enforcement of section 23 rights, may thus in some cases require the introduction of novel remedies. Lastly, the remedial power in section 24(1) cannot be strictly limited by statutes or rules of the common law. However, insofar as the statutory provisions or common law rules express principles that are relevant to determining what is ‘appropriate and just in the circumstances’, they may be helpful to a court choosing a remedy under section 24(1).”

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 *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.

This year, the Program has granted funding to the **Association des parents ayants droit de Yellowknife** to help it commence court proceedings to ensure that school facilities comply with section 23 requirements. At this time, the physical layout of the school does not meet the students’ needs and is of inferior quality to those provided to the official language majority. These circumstances do not merely hinder the recruitment of new students, but also cause a loss of students, such as pre-school children and those who complete the elementary level. In addition, the school has never been able to provide a full secondary level educational program.

Funding was also granted to **Keith Coughlan** and to the **Comité d’accès à la surtaxe scolaire**, which represents parents and other members of the official language minority of Greater Halifax, to help ensure that schools in this region are funded according to the principle of substantive equality.

At this time, the Greater Halifax municipality collects an additional tax to finance the education of its citizens. However, these taxes are entirely allocated to the English language public schools grouped under the Halifax Regional School Board, even though there are three French language public schools in this region.

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”.

Edwidge Casimir v. Attorney General of Quebec

The Program granted funding to **Edwidge Casimir** for a case, now before the Supreme Court of Canada, that aims to clarify the scope of this right. Ms. Casimir applied to the Department of Education for a certificate of eligibility, under the *Charter of French Language*. The certificate would have allowed her children to attend English language public schools in Quebec. Her request was denied on the ground that the instruction previously received by her children did not constitute a “major part” of the elementary and secondary education they had received in Canada – a requirement of subsection 73(2) of the *Charter*. Ms. Casimir is challenging the constitutional validity of this requirement, since subsection 23(2) of the *Canadian Charter* is silent on the issue of the required period of time during which the instruction must be provided before the right comes into force.

The Program also granted funding to the **Fédération nationale des conseillers francophones** and to the **Commission nationale des parents francophones**, to intervene in this case.

The Program has awarded funding to Edwidge Casimir, and to **Ikechukwu Okwuobi** and **Consuelo Zorilla** to appeal three decisions handed down by the Quebec Court of Appeal, before the Supreme Court of Canada.

The appellants, all Canadian citizens, wished to enrol their children in English language public schools. The Quebec Department of Education denied their requests on the grounds that the children in question had not received the major part of their instruction in the English language, as required under subsection 73(2) of the *Charter of the French Language*. They submitted claims before the Superior Court, seeking a declaratory judgment stating that this provision is contrary to subsection 23(2) of the *Canadian Charter of Rights and Freedoms*.

In the first two cases, the Superior Court agreed that the *Tribunal administratif du Québec* had exclusive jurisdiction and allowed the Attorney General’s motion to dismiss. In the *Zorilla* case, the Tribunal denied a similar motion. These three decisions were appealed with the Quebec Court of Appeal upholding the first two decisions and overruling the third one. The claimants argue that it is important to access the judiciary, since in their opinion the administrative process is too lengthy and less efficient.

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.

LINGUISTIC OBLIGATIONS OF AGENCIES OF THE FEDERAL GOVERNMENT

The scope of section 20 and the right to services in both official languages remains ambiguous. During the last fiscal year, the Program granted funding to the **Société des Acadiens et Acadiennes du Nouveau-Brunswick** to intervene at the Federal Court of Appeal level in the case of *Forum des maires de la péninsule acadienne v. Canadian Food Inspection Agency*.

The appellant in this case challenged the fact that the Canadian Food Inspection Agency had transferred four seasonal food inspector positions from its Shippagan office, located in the Acadian peninsula of New Brunswick, to its Shediac office, which is in the south-eastern part of the province. In October 1999, the **Forum des maires de la péninsule acadienne** complained to the Commissioner of Official Languages that this administrative re-organization had been carried out to the detriment of the north-eastern Francophone area of the province. The appellant also contended that, through this decision, the federal government did not meet its obligations with regard to the delivery of services to the public and contravened the provisions of Part VII of the *Official Languages Act*, which relate to the advancement of both official languages.

The intervention planned by the **Société des Acadiens et Acadiennes du Nouveau-Brunswick** (SAANB) will advance constitutional points supporting a reading of Part VII of the *Official Languages Act* that leads to the conclusion that the provisions in question impose legal obligations.

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 2003-2004 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.

In *Beaulac*, Bastarache J. commented on the way to respond to a person exercising this choice:

[...] in the context of institutional bilingualism, an application for service in the language of the official minority language group must not be treated as though there was one primary official language and a duty to accommodate with regard to the use of the other official language. The governing principle is that of the equality of both official languages.

This right is the focus of *Whelton v. Mercier*, a challenge taking place in New Brunswick. The appellant, John Whelton, had appealed a decision rendered by the Court of Queen's Bench of New Brunswick. During the trial, the appellant was denied the right to proceed in French, the official language of his choice, even though he had previ-

ously filed an affidavit in French, which clearly indicated his wish. Furthermore, the originating process filed by the appellant also indicated his choice of official language as being French.

Despite his documents clearly stating his choice of language and his counsel's insistence during the hearing of the motion to proceed in French, the judge refused to allow the appellant to do so.

The Program granted financial assistance to the **Association des juristes d'expression française du Nouveau-Brunswick** to intervene in this case. They will argue that the appellant had the right to proceed in the official language of his choice, relying on such factors as the nature of language rights, the requirements related to substantive equality and the purpose of section 19(2) of the *Charter*.

During the last fiscal year, the Program has also granted funding to Ms. **Nicole MacKenzie**, a Francophone from Nova Scotia, so she could launch an appeal of her conviction by the Provincial Court, before the Supreme Court of Nova Scotia. She had been arrested for speeding under a provision of the *Motor Vehicle Act* of Nova Scotia. When she appeared before the Provincial Court, the judge had not advised her of her right to a trial in French, under section 530 of the *Criminal Code*, which applies to provincial offences punishable on summary convictions under section 7 of the *Summary Proceedings Act*.

Ms. MacKenzie appealed the decision before the Supreme Court of Nova Scotia, asking for the Court to overturn the conviction and to order a verdict of acquittal be registered on record, under section 24 of the *Canadian Charter of Rights and Freedoms*.

In April 2003, the Supreme Court of Nova Scotia ordered a stay of proceedings, which it considered to be the appropriate remedy under the circumstances. According to the Court, to order a new trial would merely reproduce the consequences of a violation of the appellant's *Charter* rights. It further noted that:

[...] a new trial would not sufficiently deter future breaches involving other members of the linguistic minority. The seriousness of this breach and the potential for future breaches trumps the public interest in having this charge decided on its merits.

The Program granted new funding to Nicole Mackenzie when the Crown decided to appeal this decision.

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 2003-2004 fiscal year, the Program has received no application for funding regarding legislative bilingualism.

The unwritten principle related to the protection of minorities

The unwritten and underlying principle related to the protection of minorities stated in *Reference re. Secession of Quebec*, and further clarified by the Court of Appeal for Ontario in *Montfort*, still contributes to the advancement of language rights. The Court of Appeal for Ontario had indicated that even in the absence of a violation of a written constitutional guarantee, "unwritten constitutional norms may, in certain circumstances, provide a basis for judicial review of discretionary decisions". One such decision was made by the Health Services Restructuring Commission when it directed Montfort Hospital to reduce its health services. This constitutional principle comes into force when circumstances involve serious implications for the minority in question. According to the Court,

Even if the text of the Constitution falls short of creating a specific constitutionally enforceable right, the values of the Constitution must be considered in assessing the validity or legality of actions taken by government.

The Program continues to support cases that help clarify this principle. It granted funding to M. **David Tremblay** and to the group **S.O.S. Église**. This group consists of French-speaking citizens of Lakeshore, a municipality close to Windsor in Ontario, who are attempting to halt the demolition of a church building located in the village of Saint-Joachim. The group had asked the municipal council to designate the church, pursuant to the *Ontario Heritage Act*, in order to protect the building as a symbol of linguistic and cultural heritage.

The municipality had issued a demolition permit without considering the consequences on the official language minority. When it examined this matter, the municipality based its review on the sole issue of whether the Saint-Joachim church had been designated under the *Ontario Heritage Act*.

The claimants argue that municipalities cannot avoid the constitutional obligations, which are imposed upon them by unwritten constitutional principles, and that they must therefore consider the impact of the demolition of the church on the minority language community. In a November 2003 decision, the Divisional Court for Ontario allowed the constitutional argument brought forward by the claimant and concluded that these principles do apply to municipalities in the exercise of their discretionary powers.

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

Fédération des associations de juristes d'expression française de common law – This group planned workshops on language rights during the Annual Conference of the Canadian Bar Association, held in Winnipeg in August 2004.

Fédération des associations de juristes d'expression française de common law – The organization held a national conference on the issues that might have an impact on the French-speaking minority following *Solski (Casimir) c. Procureure générale du Québec* (decision of the Quebec Court of Appeal).

IMPACT STUDIES

Fédération des associations de juristes d'expression française de common law – *Solski (Casimir) c. Procureure générale du Québec* (decision of the Quebec Court of Appeal) – This study will examine the potential consequences of this case on the educational system within the Francophone minority.

Fédération nationale des conseillères et conseillers scolaires francophones – *Doucet-Boudreau v. Nova Scotia (Minister of Education)* – This study will review the potential impacts of this case on the French-speaking minority.

NEGOTIATIONS

Conseil scolaire du sud de l'Alberta – The school board was granted financial support in order to commence negotiations with the government of Alberta. The process aims to secure school facilities that comply with section 23 requirements and to the principle of equivalence for the minority language communities of Lethbridge and Medicine Hat.

List of Authorities

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

Lalonde v. Ontario (Health Services Restructuring Commission), [2002] O. J. No. 388.

Mahé v. Alberta, [1990] 1 S.C.R. 342.

Moncton (City of) v. Charlebois, [2001] A.N.-B. No. 480.

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

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

Statistical Highlights

Equality Program

Table 1 – Breakdown of Equality Applications Received
October 24, 1994 – March 31, 2004

Province/ Territory	% of Canada's Pop.		1994/95		1995/96		1996/97		1997/98		1998/99		1999/00		2000/01		2001/02		2002/03		2003/04		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	Total	% 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	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	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	1	0.9	4	0.3	
British Columbia	12.9	16	28.1	14	15.9	17	15.0	16	11.5	17	13.6	15	11.4	9	6.0	19.0	14.1	15	10.1	10	9.4	148	12.4	
Alberta	9.3	5	8.8	7	8.0	8	7.1	13	9.4	10	8.0	15	11.4	12	8.1	15.0	11.1	7	4.7	4	3.8	96	8.0	
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	3.3	2	1.9	42	3.5	
Manitoba	3.8	7	12.3	15	17.0	11	9.7	25	18.0	24	19.2	25	18.9	16	10.7	14.0	10.4	27	18.1	11	10.4	175	14.7	
Ontario	37.6	19	33.3	29	33.0	45	39.8	54	38.8	49	39.2	52	39.4	63	42.3	49.0	36.3	61	40.9	49	46.2	470	39.4	
Québec	24.7	3	5.2	5	5.7	15	13.2	13	9.4	16	12.8	10	7.5	27	18.1	22.0	16.3	21	14.1	22	20.8	154	12.9	
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	0	0.0	18	1.5	
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	10	6.7	4	3.8	59	4.9	
Prince Edward Island	0.5	0	0.0	4	4.5	1	1.0	0	0.0	0	0.0	0	0.0	2	1.3	0.0	0.0	1	0.7	1	0.9	9	0.8	
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	2	1.9	13	1.1	
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	0	0.0	3	0.3	
Total	100%	57	100%	88	100%	113	100%	139	100%	125	100%	132	100%	149	100%	135	100%	149	100%	106	100%	1193	100%	

¹ Nunavut became a Territory in April 1999.

² Any location outside of Canada.

STATISTICAL HIGHLIGHTS

Table 2 – Breakdown of Equality Applications Received
October 24, 1994 – March 31, 2004

	1994/95	1995/96	1996/97	1997/98	1998/99	1999/00	2000/01	2001/02	2002/03	2003/04	Total
Aboriginal	9	19	21	32	15	39	29	26	29	19	238
Age	2	0	5	5	3	5	7	3	2	2	34
Citizenship	2	2	1	4	4	2	5	0	4	3	27
Colour/Race/Ethnicity/ Nationality											
Colour	0	7	6	4	0	0	0	0	0	0	17
Race	0	0	2	9	17	16	24	23	12	10	113
National Origin	2	1	3	2	1	0	0	2	0	0	11
Ethnicity	2	1	6	4	9	2	7	3	9	0	43
General ¹	2	5	9	3	3	0	0	0	0	0	22
Disability	7	12	10	19	17	13	17	16	24	12	147
Family/Marital/Parental	3	6	6	4	6	5	7	3	8	3	51
Geography	0	0	2	1	0	2	2	1	0	1	9
Language	0	2	1	1	0	0	0	2	1	1	8
Poverty	4	6	5	6	10	6	12	10	15	8	82
Prisoner/Criminal Record	5	2	3	3	6	9	6	3	4	5	46
Refugee	0	0	0	0	0	0	1	2	1	0	4
Religion	2	1	0	0	0	0	1	0	0	0	4
Section 15 General	3	2	8	9	2	2	1	0	0	0	27
Sex	3	6	9	16	18	15	11	17	11	13	119
Sexual Orientation	6	10	10	9	6	7	8	10	9	17	92
Transgendered	0	1	1	1	4	0	2	1	0	0	10
Unknown ²	0	1	2	0	0	0	0	0	0	0	3
Other ³	5	4	3	6	5	9	9	13	20	12	86
Total	57	88	113	138	126	132	149	135	149	106	1193

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, 2004**

	Decision Pending	Panel/Admin Rejection	Applicant Withdrawn	Panel Granted	Total
Aboriginal	11	44	14	169	238
Age	2	8	3	21	34
Citizenship	2	10	3	12	27
Colour/Race/Ethnicity/ Nationality					
Colour	0	5	2	10	17
Race	7	19	7	80	113
National Origin	0	4	2	5	11
Ethnicity	1	13	2	27	43
General ¹	0	1	2	19	22
Disability	9	37	9	92	147
Family/Marital/Parental	2	28	4	17	51
Geography	0	7	1	1	9
Language	0	3	0	5	8
Poverty	6	18	4	54	82
Prisoner/Criminal Record	1	11	3	31	46
Refugee	2	0	0	2	4
Religion	0	4	0	0	4
Section 15 General	0	1	2	24	27
Sex	8	26	5	81	120
Sexual Orientation	3	16	4	69	92
Transgendered	1	2	1	5	9
Unknown ²	0	2	1	0	3
Other ³	11	40	7	28	86
Total	66	299 ⁴	76	752 ⁵	1193

Acceptance Rate = 71.5%

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.

STATISTICAL HIGHLIGHTS

**Table 4 – Breakdown of Types of Funding by the Equality Rights Panel
October 24, 1994 – March 31, 2004**

	Case Development	Case Funding	Impact Study	Program Promotion & Access and Negotiation	Total
Aboriginal	53	90	7	19	169
Age	5	14	0	2	21
Citizenship	2	8	0	2	12
Colour/Race/Ethnicity/ Nationality					
Colour	2	6	0	2	10
Race	13	22	3	42	80
National Origin	2	3	0	0	5
Ethnicity	6	11	0	10	27
General ¹	5	5	0	9	19
Disability	25	47	5	15	92
Family/Marital/Parental	4	13	0	0	17
Geography	0	0	0	1	1
Language	1	3	0	1	5
Poverty	13	21	2	18	54
Prisoner/Criminal Record	9	17	1	4	31
Refugee	0	2	0	0	2
Religion	0	0	0	0	0
Section 15 General	1	6	0	17	24
Sex	14	37	4	26	81
Sexual Orientation	7	35	4	23	69
Transgendered	1	0	0	4	5
Unknown ²	0	0	0	0	0
Other ³	0	2	6	20	28
Total	163	342 ⁴	32	215	752

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.

STATISTICAL HIGHLIGHTS

**Table 5 – Breakdown of Unsuccessful Equality Rights Applications
October 24, 1994 – March 31, 2004**

	No Federal Link ¹	Not a Test Case ²	Duplication ³	Canadian Human Rights Act ⁴	Total
Aboriginal	9	24	10	1	44
Age	3	3	2	0	8
Citizenship	2	7	1	0	10
Colour/Race/Ethnicity/ Nationality					
Colour	4	1	0	0	5
Race	8	8	3	0	19
National Origin	2	1	0	1	4
Ethnicity	3	8	1	1	13
General ⁵	1	0	0	0	1
Disability	19	14	4	0	37
Family/Marital/Parental	8	18	1	1	28
Geography	1	6	0	0	7
Language	3	0	0	0	3
Poverty	13	2	3	0	18
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	8	15	3	0	26
Sexual Orientation	0	10	6	0	16
Transgendered	0	1	0	1	2
Unknown ⁶	2	0	0	0	2
Other ⁷	22	18	0	0	40
Total	115	145	34	5	299

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.

STATISTICAL HIGHLIGHTS

**Table 6 – Breakdown of Case Funding Granted by the Equality Rights Panel
October 24, 1994 – March 31, 2004**

	First Instance	Appeal	Supreme Court of Canada	Total
Aboriginal	66 (6 interventions)	12 (4 interventions)	12 (8 interventions)	90
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	10 (2 interventions)	5 (2 interventions)	7 (5 interventions)	22
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	17 (1 intervention)	18 (7 interventions)	12 (6 interventions)	47
Family/Marital/Parental	7	4 (1 intervention)	2 (1 intervention)	13
Geography	0	0	0	0
Language	3 (1 intervention)	0	0	3
Poverty	11	5 (2 interventions)	5 (5 interventions)	21
Prisoner/Criminal Record	4	6 (5 interventions)	7 (6 interventions)	17
Refugee	1	0	1 (1 intervention)	2
Religion	0	0	0	0
Section 15 General	1	0	5 (4 interventions)	6
Sex	15 (2 interventions)	11 (6 interventions)	11 (8 interventions)	37
Sexual Orientation	15 (3 interventions)	12 (7 interventions)	8 (7 interventions)	35
Transgendered	0	0	0	0
Unknown ²	0	0	0	0
Other ³	1	1 (1 intervention)	0	2
Total	175	85	82	342

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, 2004

Province/ Territory	% of Canada's Pop.		1994/95		1995/96		1996/97		1997/98		1998/99		1999/00		2000/01		2001/02		2002/03		2003/04		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	Total	% 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	2.3	2	4.6	0	0.0	8	2.4	
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	2.3	0	0.0	2	0.6	
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	2	6.5	14	4.3	
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	2.3	0	0.0	0	0.0	8	2.4	
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	2	4.5	1	3.2	17	5.2	
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	9.3	6	13.6	1	3.2	15	4.6	
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	23.3	10	22.7	12	38.7	73	22.2	
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	16.3	6	13.6	8	25.8	60	18.2	
Québec	24.7	1	7.1	5	21.7	6	24.0	6	22.2	2	3.9	7	17.4	8	16.0	5	11.6	2	4.6	1	3.2	43	13.1	
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	25.6	7	15.9	4	12.9	53	16.1	
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	7.0	7	15.9	2	6.5	22	6.7	
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	2.3	1	2.3	0	0.0	8	2.4	
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	0	0.0	6	1.8	
Total	100%	14	100%	23	100%	25	100%	27	100%	29	100%	43	100%	50	100%	43	100%	44	100%	31	100%	329	100%	

¹ Nunavut became a Territory in April 1999.

STATISTICAL HIGHLIGHTS

Table 8 – Breakdown of Language Applications Received
October 24, 1994 – March 31, 2004

	1994/95	1995/96	1996/97	1997/98	1998/99	1999/00	2000/01	2001/02	2002/03	2003/04	Total
Education Rights	11	11	14	19	14	16	26	20	22	15	168
Judicial Rights	1	3	2	1	2	5	0	5	9	5	33
Language of Work, Communication & Service	1	6	6	6	3	9	13	13	6	4	67
Legislative Bilingualism	1	2	2	0	2	1	1	0	2	1	12
Other	0	1	1	1	8	12	10	5	5	6	49
Total	14	23	25	27	29	43	50	43	44	31	329

Table 9 – Breakdown of Decisions Made by the Language Rights Panel
October 24, 1994 – March 31, 2004

	Decision Pending	Panel/Admin Rejection	Applicant Withdrawn	Panel Granted	Total
Education Rights	12	20	3	133	168
Judicial Rights	2	5	3	23	33
Language of Work, Communication & Service	5	12	0	50	67
Legislative Bilingualism	0	6	0	6	12
Other	3	9	0	37	49
Total	22	52¹	6	249²	329

Acceptance Rate = 75.7%

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, 2004

	Case Development	Case Funding	Impact Study	Program Promotion & Access and Negotiation	Total
Education Rights	20	74	9	30	133
Judicial Rights	6	13	2	2	23
Language of Work, Communication & Service	17	25	2	6	50
Legislative Bilingualism	1	4	1	0	6
Other	6	8	9	14	37
Total	50	124¹	23	52	249

¹ See Table 12 for a further breakdown.

STATISTICAL HIGHLIGHTS

Table 11 - Breakdown of Unsuccessful Language Rights Applications
October 24, 1994 – March 31, 2004

	No Constitutional Link ¹	Not a Test Case ²	Duplication ³	Other ⁴	Total
Education Rights	3	7	6	4	20
Judicial Rights	2	2	0	1	5
Language of Work, Communication & Service	5	5	0	2	12
Legislative Bilingualism	1	2	0	3	6
Other	2	5	1	1	9
Total	13	21	9	9	52

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, 2004

	First Instance	Appeal	Supreme Court of Canada	Total
Education Rights	50 (10 interventions)	11 (8 interventions)	13 (10 interventions)	74
Judicial Rights	4	8 (4 interventions)	1 (1 intervention)	13
Language of Work, Communication & Service	18 (2 interventions)	7 (3 intervention)	0	25
Legislative Bilingualism	1	1 (1 intervention)	2 (1 intervention)	4
Other	2	5 (3 interventions)	1	8
Total	75	32	17	124

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.

2002/03 Annual Report – Court Challenges Program of Canada – *a report of the activities undertaken by the Program from April 1, 2002 to March 31, 2003.*

ISBN #1-896894-16-X

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.

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 booklet explaining 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.

CCPC Web Site continued...

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.