

A GUIDE TO THE

**C O U R T
C H A L L E N G E S
P R O G R A M
O F C A N A D A**





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Court Challenges Program of Canada

616 - 294 Portage Avenue

Winnipeg, Manitoba R3C 0B9

Telephone: (204) 942-0022

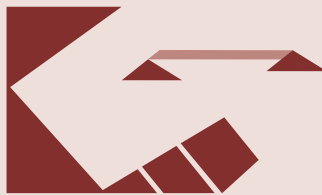
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I. INTRODUCTION

THE CANADIAN CONSTITUTION, INCLUDING ITS *CHARTER OF RIGHTS AND FREEDOMS*, PROVIDES FOR STRONG PROTECTIONS OF EQUALITY RIGHTS AND LANGUAGE RIGHTS. **HOWEVER, RIGHTS IN LAW BOOKS DO NOT AUTOMATICALLY LEAD TO RIGHTS IN REALITY.** Individuals or groups can find themselves in situations where governments refuse to respect their constitutional rights. In those situations people may have to take their governments to court. Courts have the power to force the government to bring its laws, policies and practices into accord with the *Charter*. But court action is expensive, often far too costly for those very individuals or groups whose rights are not being respected.

The role of the **COURT CHALLENGES PROGRAM** is to provide financial support to people who want to use the courts to have those rights respected, but lack the funds to do so on their own. More specifically, it provides financial support to test cases that help to protect and advance the language and equality rights guaranteed under the Canadian Constitution.

Aside from funding such cases, the PROGRAM also funds activities that increase awareness of the constitutional equality rights and language rights which fall under the PROGRAM'S mandate.



II. EQUALITY RIGHTS CASES

FUNDING CRITERIA

The COURT CHALLENGES PROGRAM will consider funding Equality Rights cases if they:

- challenge a law, policy or practice of the federal government;
- advance *Charter* equality rights; and
- are important test cases (test cases are discussed above in Section I).

▶ CHALLENGING FEDERAL LAWS, POLICIES OR PRACTICES

Cases the PROGRAM funds must involve a challenge to a federal law, policy or practice. These are challenges to laws and actions by the Government of Canada.

▶ ADVANCING EQUALITY RIGHTS

Cases must also advance the *Charter* Equality Rights. *The Canadian Charter of Rights and Freedoms* spells out these rights in sections 15 and 28.

Section 15 states that every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

Section 28 states that notwithstanding anything in this Charter, the rights and freedoms referred to in it are guaranteed equally to male and female persons.

In some situations, cases involving the fundamental freedoms of conscience/religion, association, expression, and peaceful assembly in section 2 or multiculturalism in section 27 may be eligible for funding, if those sections are used to support equality arguments under section 15.

Section 15 lists race, national or ethnic origin, colour, religion, sex, age or mental or physical disability, as grounds upon which the government cannot discriminate. These grounds are known as enumerated or listed grounds. However, a person, or a group of persons does not have to belong to a group that appears on that list of enumerated grounds to receive assistance from the COURT CHALLENGES PROGRAM in an Equality Rights case. An individual or a group may qualify for support as a disadvantaged group if it is being discriminated against on grounds that are similar (or analogous) to an enumerated ground. For example, while sexual orientation is not an enumerated ground, the Supreme Court of Canada has determined that it constitutes an analogous ground.

In other words the PROGRAM supports challenges to the actions of the federal government that treat or affect you differently due to one or more personal characteristic(s) or due to your membership in a group identified by personal characteristics. ■■■▶

The PROGRAM provides funding to cases that advance substantive equality as opposed to formal equality. A formal equality approach considers that equality is achieved when individuals or groups are treated the same, even if the impact of a certain policy is not equal. A substantive equality approach, however, requires that a law be examined to determine whether it has a differential impact on individuals or groups. Formal equality exists when medical patients who are deaf are provided with the same services as those who are not deaf. However, a substantive equality approach might require that the medical system provide sign language interpreters to ensure that deaf patients receive a truly equal benefit of funded health care.

► **EXAMPLES OF EQUALITY RIGHTS CASES WE HAVE FUNDED**

The Equality Rights funding has been provided to support a wide range of individuals and organizations. For example we have granted funding for cases involving the following issues:

- First Nations people opposing a section of the *Indian Act* that prohibited them from voting in Band Council elections if they lived off reserve;
- same-sex couples seeking the same rights to certain benefits and deductions under the *Income Tax Act* that are accorded opposite sex couples;
- parents of children with disabilities who were seeking employment insurance for periods when they must be off work to provide care for their children; and
- the legality of the current laws that restrict the courts from admitting evidence of prior sexual activity on the part of sexual assault complainants.

► **WHAT WE CANNOT FUND**

- Any case that covers an issue already funded by the PROGRAM or that is already before the courts;
- challenges to actions taken by provincial governments;
- complaints under the *Canadian Human Rights Act*;
- challenges to provincial laws, policies or practices; and
- public education, community development, lobbying or political advocacy. ◀▶▶▶

III. LANGUAGE RIGHTS CASES

FUNDING CRITERIA

The COURT CHALLENGES PROGRAM will consider funding Language Rights cases if they help to clarify and advance the Language Rights which are protected under the Canadian Constitution as listed below.

▶ ADVANCING LANGUAGE RIGHTS

Cases may be eligible for funding if they advance official language rights protected by:

- sections 16 to 23 of the *Canadian Charter of Rights and Freedoms*;
- sections 93 or 133 of the *Constitution Act, 1867*;
- section 23 of the *Manitoba Act, 1870*; and
- any parallel constitutional provisions to the rights listed above.

All of these sections are detailed below.

The PROGRAM will also fund cases that clarify the linguistic aspects of freedom of expression in section 2 of the *Canadian Charter of Rights and Freedoms* when invoked in an official language minority case.

Sections 16 to 23 of the *Canadian Charter of Rights and Freedoms*

Section 16 states that English and French are the official languages of both Canada and the Province of New Brunswick. It further states that the languages have equality of status and rights for use by all institutions of those two governments.

Section 16.1 states that the English and French linguistic communities in New Brunswick are of equal status and have equal rights and privileges, including the right to those educational institutions needed to preserve and promote those communities. The government of New Brunswick has a legislative role to promote the status, rights and privileges of the two communities.

Section 17 guarantees the right to use French or English in the debates and other proceedings of Parliament and of the Legislature of New Brunswick

Section 18 states that the statutes, records and journals of Parliament and of the legislature of New Brunswick shall be printed and published in English and French.

Section 19 states that either English or French may be used by any person in, or in any pleading in or process issuing from, any court established by Parliament or by any court of New Brunswick.

Section 20 grants the right to use the official language of one's choice in communications with the head or central office of an institution of the Parliament or government of Canada as well as those of the legislature and government of New Brunswick or in obtaining services from these institutions. ■■■▶

Section 21 states that nothing in sections 16 to 20 interferes with or takes away from any other right with respect to the French or English languages, while **section 22** states that nothing in sections 16 to 20 interferes with or takes away from any right with respect to any language that is not French or English.

Section 23 guarantees minority language educational rights to parents belonging to an official language minority, or to citizens whose child has received instruction in English or French in Canada, to have their children educated in the minority official language where numbers warrant. It offers a sliding scale of rights which ranges from the right to instruction in the minority language in the classroom to the right to be taught in minority language schools and ultimately the right to school governance.

Sections 93 or 133 of the *Constitution Act, 1867*

Section 93 protects the right to be taught in either French or English in denominational and religious schools in certain Canadian provinces.

Section 133 guarantees the right to use French or English in the debates and proceedings of Parliament and the Legislature of Québec and in the Courts of Canada and Québec. It also requires that the Acts of the Canadian Parliament and the Québec legislature be printed and published in both these languages.

Section 23 of the *Manitoba Act, 1870*

Section 23 of the Manitoba Act guarantees the right to use either French or English in the debates of the Legislature and in the courts of Manitoba. It also provides that the Acts of the Legislature be printed and published in both languages.

Any other rights in Canada's Constitution (whether existing now or brought in through a future change to the Constitution) which provide similar kinds of protection for the language rights of Official Language minority communities.

► **EXAMPLES OF CASES FUNDED UNDER THE LANGUAGE RIGHTS PROGRAM**

The Language Rights Program has supported a wide range of individuals and organizations. For example we have supported cases where:

french-speaking parents of Summerside, Prince Edward Island, and the organization representing them, requested that their provincial government establish a French-language school in their community;

an English-speaking couple seeking the right to have their children educated in an official language minority school since one of their children had previously been educated in such a school; and

an accused who was denied a court hearing in French.

► **WHAT WE CANNOT FUND**

Any case that covers an issue already funded by the PROGRAM or that is already before the courts;

complaints or proceedings under the *Official Languages Act*;

applications for judicial review or appeals in respect of actions or measures taken by the Commissioner of Official Languages;

complaints or other actions filed pursuant to any provincial or territorial law, policy or practice relating to the protection of official language rights other than those listed above; and

public education, community development, lobbying or political advocacy. ◀▶▶▶

IV. FUNDING CATEGORIES & AMOUNTS

The COURT CHALLENGES PROGRAM has three broad funding categories:

- Test Case Funding
- Impact Study Funding
- Program Promotion and Access Funding

Funding is available for both Language Rights and Equality Rights cases under each of these three categories.

It should be noted that the funding provided by the COURT CHALLENGES PROGRAM does not always cover the full cost of a case or project. Funding is limited to the categories of expenses that are eligible for reimbursement and the maximum amounts allowed under the funding guidelines. This is discussed in greater detail below in Section V, *How to Apply to the COURT CHALLENGES PROGRAM*.

TEST CASE FUNDING (LITIGATION FUNDING)

Within this category there are three sub-categories of funding.

- Case Development Funding
- Case Funding
- Negotiation Funding

▶ 1) CASE DEVELOPMENT FUNDING

Financial assistance can be provided for developing a case which has the potential to meet the objectives of the PROGRAM as referred to above.

Legal research and writing

If you have an idea for a test case but have not yet worked out the details, case development funding allows you to undertake research to further explore and develop the legal issues involved in your case. This will help you to determine whether you have a good test case that meets the PROGRAM'S funding criteria. A maximum of \$5,000 is available for doing legal research and preparing your legal arguments.

Consultation

In some cases, it may be helpful to talk to other people who will be affected by your case and hear what they think. You may also want to consult with lawyers or others with more experience with the issues you wish to explore. An additional \$5,000 in consultation funding may be granted to allow you to talk with people in the community or with experts about your test case idea. ■■■▶

Evidence Development and Coalition Building

Two other special needs sometimes arise. These are:

- the need to develop evidence; and
- the need to build a community coalition or other collaborative partnerships to work together to develop the case.

An additional \$5000 is available to help meet one or the other of these needs.

Evidence Development

While it may be apparent to you and members of your social group that your Charter Rights are not being respected, there may be little or no formal evidence to support your position. It may be necessary to commission a study or research project to provide the evidence you need.

Coalition Building

Your case may affect two or more groups or communities. In such cases, you may want to establish a coalition of community organizations, or take other steps to make sure that these communities' perspectives are taken into account in your approach to the case.

Limits on funding

You can receive up to a total of \$15,000 in case development funding. All amounts received for case development will be deducted from the maximum of \$60,000 available for Case Funding at the trial level or \$35,000 for an intervention or appeal.

► 2) CASE FUNDING

Once your test case is ready to go to court, case funding is available to pay the expenses of the case. Funding is generally used for expenses such as:

- lawyers' fees, photocopying; and
- long distance charges, fax and other costs and taxes on those amounts.

In some cases, you may also be able to use the money for witness fees, travel expenses and other special costs.

The maximum amount of funding available for your case will vary depending on the stage the case has reached in court. If you are the party in the case, you may receive up to \$60,000 for a case that is at the trial level. If a decision has already been made in your case and you (or someone else) have appealed the decision, a maximum of \$35,000 is available for the appeal.

The maximum amount for interveners is \$35,000, whether the case is at the trial or appeal level.

If you receive case development funding for your case and are later granted case funding, the amount of the case development funding is deducted from the maximum available for the case. For example, if you received \$5,000 in case development funding to prepare your arguments for a case at the trial level, you could only receive a further \$55,000 in case funding.

Where a case is extremely difficult to work on or where other special circumstances exist, the PROGRAM may provide extraordinary funding. Extraordinary funding is generally limited to a maximum of up to \$25,000 for each case in which it is granted.

► 3) NEGOTIATION FUNDING

In some situations, it may be possible to resolve a dispute between an individual or group and a government on a constitutional matter covered under the PROGRAM's mandate through negotiations or other forms of alternative dispute resolution. Negotiation funding of up to \$5,000 may be granted to settle a dispute in this manner. ■■■►

IMPACT STUDY FUNDING

When a court makes an important decision in a case involving equality rights or language rights, the decision may affect future cases. Funding may be granted to a qualified person or group to prepare a paper that discusses the decision's impact. The paper should help individuals and groups understand the court decision and prepare for future cases which meet the PROGRAM'S criteria for an equality or language rights test case. Impact study funding is generally limited to \$5,000.

PROGRAM PROMOTION AND ACCESS FUNDING

This category of funding provides support for activities which promote awareness of, access to, or capacity to use the PROGRAM or for consultation on specific litigation within the mandate of the COURT CHALLENGES PROGRAM.

▶ ELIGIBLE PROJECTS

Two types of funding are available under this category. These are:

- Strategic Consultation Projects
- Access Projects

1) Strategic Consultation Projects

Funding is available for consultations on a specific issue which could be eligible for test case funding from the PROGRAM. There are two types of Strategic Consultation Projects:

- Strategic Consultation Meetings
- Strategic Discussion Papers

Strategic Consultation Meetings

Strategic Consultation Meetings involve discussion by a wide-range of community representatives and lawyers about specific litigation issues and court strategies. The meeting must discuss the use of a court case to resolve a rights issue or strategies and arguments that may be used in court. The consultation can either discuss specific litigation or how a court decision would affect a community.

For example, when the new federal *Employment Insurance Act* was passed in 1996, an organization working with unemployed Canadians received Program Promotion and Access Funding for a national strategic consultation. The consultation explored the impact of the new Act on the equality rights of women and disabled persons. It particularly looked at whether these two groups are over-represented among new entrants to the workforce who end up applying for Employment Insurance benefits and who face stricter rules about the number of hours that must have been worked to be eligible.

Funding may be used for:

- organizing the consultation;
- travel expenses for participants and/or speakers;
- preparing a discussion paper or other written material;
- translation or interpretation; and
- preparing a report about the consultation.

A strategic consultation must include people with a variety of experience and knowledge of the issues. ■■■▶

Maximum funding amounts for strategic consultations are as follows:

National Consultation - \$15,000

Regional Consultation - \$7,500 (i.e.: a province or a group of provinces — Saskatchewan, Québec, Maritimes, Prairies)

Local Consultation - \$3,000 (Primarily serving the needs of a particular district.)

Strategic Discussion Papers

The PROGRAM may provide funding of up to \$5,000 for the preparation of a strategic discussion paper on important equality rights or language rights issues. To be eligible for funding, the paper must be one that will assist the PROGRAM, its applicants or members of the public to understand a rights issue that could be eligible for test case funding from the PROGRAM or to pursue rights in court.

Funding may be used for the cost of co-ordinating the project, conducting research and writing the paper, reviewing or field testing the paper, translation or interpretation and printing and other costs for making the paper available to the PROGRAM and others.

2) Access Projects

The COURT CHALLENGES PROGRAM wishes to make sure that those Canadians who have potential Equality or Language Rights cases are aware of the PROGRAM. For this reason it provides funds for Access Projects that promote awareness of, access to, or ability to use the PROGRAM. The two types of access projects that may be funded are:

- Meetings
- Outreach Materials

Meetings

Program Promotion and Access Funding may support meetings intended to promote better understanding of Canadians' language or equality rights in relation to the COURT CHALLENGES PROGRAM. In this way, individuals and organizations will be able to make effective use of the PROGRAM.

These meetings must include people with different experience and knowledge and with different concerns and ideas about the rights being discussed.

Funding may be used for the cost of organizing the meeting, travel expenses for participants and/or speakers, preparing a discussion paper or other material for distribution, translation or interpretation, and preparing a report about the meeting. For example, a provincial native women's organization received funding to hold a workshop on equality rights. The workshop included Board members, community members, lawyers and COURT CHALLENGES PROGRAM representatives. The people at the meeting discussed equality rights as they affect the organization's members and the types of funding available from the PROGRAM.

Maximum funding amounts for meetings are as follows:

National Meeting - \$15,000

Regional Meeting - \$7,500 (i.e.: a province or a group of provinces — Saskatchewan, Québec, Maritimes, Prairies)

Local Meeting - \$3,000 (Primarily serving the needs of a particular district.) ■■■▶

Outreach Materials

Up to \$5,000 is available for preparing, translating and distributing outreach materials about test cases or about the COURT CHALLENGES PROGRAM's mandate. Eligible projects may include pamphlets, brochures, videotapes, radio or television spots or other materials intended for broad audiences.

Funding may be used for:

- co-ordinating the project;
- researching and writing;
- field-testing materials or having them reviewed by focus groups;
- printing or production costs;
- translation or interpretation of materials; and
- distributing the materials.

▶ GENERAL ELIGIBILITY REQUIREMENTS

Aside from promoting community members' ability to make the most successful use of the overall COURT CHALLENGES PROGRAM, proposals to the Program Promotion and Access Fund must be both:

- inclusive
- accessible

Inclusiveness

Projects must involve the people who are affected by the issue under consideration. Proposals should demonstrate that there will be broad participation from the affected communities. The diverse nature of the community affected should be represented in the project's planning stages and among the participants and contributors. A range of perspectives and ideas should be canvassed. It is important to include individuals with community, legal or other expertise and experience as organizers, participants, speakers or resource persons.

Accessibility

Applicants are encouraged to ensure that the meetings and consultations they plan and other aspects of their projects are widely accessible to members of the affected communities.

Strategies to accomplish this may include:

- choosing wheelchair accessible facilities;
- arranging sign language interpretation of meetings;
- translation of project materials into other languages or alternate media;
- simultaneous interpretation of meetings;
- reimbursement of child care expenses; and
- securing the participation of persons who could not otherwise take part in the project. ■■■▶

▶ **FUNDING RESTRICTIONS**

Where possible and appropriate, applicants for Program Promotion and Access funding are expected to seek funding from more than one source for their projects. Such funding will be taken into account when the amount, if any, of PROGRAM funding for the project is determined.

Some portions of your project may be eligible for funding, even though the full project is not. In these cases, the Panel can give partial funding.

Where accessibility costs are high, the PROGRAM may provide additional funding of up to \$5,000 for the project. Applicants are required to make a specific request for this funding and to provide reasons in writing for the request.

▶ **REPORTING REQUIREMENTS**

Once a project supported by the Program Promotion and Access Fund is completed, you must submit a report to the COURT CHALLENGES PROGRAM. The report should detail:

the names of the participants and their involvement;

results of the consultation; and

how the outcome of the consultation would benefit or assist in the development of test case litigation. ◀|||▶

V.

HOW TO APPLY TO THE COURT CHALLENGES PROGRAM

There are four elements to an application for funding from to the COURT CHALLENGES PROGRAM:

- contact information
- details about the case or project
- a work plan
- a draft budget.

We cannot consider your application until you provide the PROGRAM with all four elements in writing. The following sections of this handbook are a guide to preparing the information that you must submit. If you have any questions with regard to these requirements, please contact the COURT CHALLENGES PROGRAM and its staff will be more than pleased to provide you with assistance.

1. CONTACT INFORMATION

Applicant

Applicant's name

Applicant's address

City, Province, Postal Code

Telephone number(s)

Fax number

E-mail address

Lawyer (if you have one)

Lawyer's name

Lawyer's address

City, Province, Postal Code

Telephone number(s)

Fax number

E-mail address

2. DETAILS ABOUT THE CASE OR PROJECT

Please read the following section closely. It outlines the information that we need from you before we can determine if you are eligible for funding. Please provide us with a written document with headings that match those outlined below. Make sure that you provide us with the information that answers as many of the questions as you can that are applicable to your situation. Upon receipt of your application we will carefully review it to ensure that we have all the necessary information. In cases where we have insufficient information, we will ask you to provide additional submissions to ensure that your application is complete and that the PROGRAM has necessary information to determine whether or not it can grant funding. ►►►

► **CASE FUNDING/CASE DEVELOPMENT/NEGOTIATION FUNDING**

If you are applying for Case Funding, Case Development Funding, or Negotiation Funding, please address the following questions.

The Facts

- Who are you?
- What has happened to make you want to go to court or to undertake negotiations?
- What steps have you taken so far to try to fix the problem?

The Law, Policy or Practice

- Describe the government law, policy or practice which you want to address?
- How does it affect you?
- Do you want to challenge it, defend it or apply it in a different way?
(Please give us a copy of the law or policy, if you have one.)
- Which government is responsible for the law, policy or practice that you want to address?
(Federal, provincial, territorial, other level of government?)

Your Case

- Which government department or official do you wish to take to court?
- If you are applying for Negotiation Funding, with which government department or official do you plan to negotiate?
- Before which court or tribunal will you bring your case?
- Describe earlier court decisions in your case if any?
- What right do you have to go to court about this issue?
(What is your "standing" before the court?)
- What experience does your lawyer have with cases like yours? With equality rights / language rights? With the other areas of law involved? With the communities affected by the case?

Your Legal Arguments

- What Charter or other constitutional rights are you relying on?
- What do you hope to say in court about the law, policy or practice you wish to challenge?
- What court decisions, if any, have dealt with a case identical to or similar to your own? What did they say? If you are not sure, how do you plan to find this out?
- What previous court decisions based on these rights are you relying on and how are you using them to help your case? (Please make sure to tell us about the most recent important court decisions here.)
- What previous court decisions might hurt your case? What do you plan to say in your case to deal with this problem?
- What do you think the government will say in their case? How do you plan to respond to their arguments?
- About what issues do you and the government agree and disagree? (for Negotiation Funding)
- Has the government agreed to negotiate with you? (for Negotiation Funding)
- What do you plan to say in your negotiations? (for Negotiation Funding)

Proving your Case (Not applicable to Negotiation Funding)

- What witnesses, if any, will you ask to come to court and what will they say?
Do you need to hire experts in a particular field to make your points? Who? What type?
How do you plan to find the best witnesses?
- What documents or written evidence will you use? If you are not sure, how do you plan to find out what documents will help?
- What other research or consultation would you like to do? How will it help you prove your case? ■■■►

Additional Research (Optional)

- What additional social fact or context evidence do you plan to develop?
How do you plan to develop this evidence? (i.e. social research study, access to information request)

Remedy

- What are you asking the court to do about the law, policy or practice?
- What court decisions support your ability to ask for this solution or remedy?
If you are not sure, how do you plan to find out?
- What are you asking the government to do about the law, policy or practice?
(for Negotiation Funding)
- What power or authority does the official have to bring about this solution?
(for Negotiation Funding)
- How will this remedy help you? How many other people will be helped and in what way? What impact will the remedy have on your life? on their lives?

Community Support & Links

- What other parties or interveners involved in your case support you?
- Which community groups know about your case and what do they think about it?
Are they willing to help and if so, in what way?
- What other groups do you think should be involved in your case to support you?
How do you plan to make this happen?

Coalition Building (Optional)

- Is this an appropriate case for building a coalition of diverse community groups affected by the case? Why?
- What other groups should be involved in the coalition? How do you plan to engage these groups? How will you build the coalition?
- How will you ensure that the coalition shapes the litigation over time?
What decision-making tools will you use? What is/are the role(s) of each coalition partner? How will you decide these issues as they arise?

Impact and Importance of your Case

- Why is this case important to members of disadvantaged groups or official language minority groups?
- What is the impact of the problem you want to fix on your group or community?
How does it affect their everyday lives?
- How will the case help your group or community? What will be the “spin-off” effects of going to court on this issue?

Consultation for Case Funding (optional)

- What other consultation would you like to do? How will it help you build your case?
- Whom do you want to consult? What experience or knowledge can they add?
- Who will organize the consultation?
- How do you plan to conduct the consultation? ■■■▶

► **IMPACT STUDY FUNDING**

If you are applying for Impact Study Funding please address the following questions.

The Case

- What is the name of the decision or decisions you want to study?
What court decided it/them and when? (please attach a copy of the decision.)

The Study

- What questions do you plan to answer about this decision or these decisions?
How do you plan to answer these questions?

The Link to the PROGRAM & Test Case Litigation

- How will your study help others use the PROGRAM more effectively? How will your study help others use their language or equality rights more effectively in court?

Community Links and Support

- Which community groups or organizations think the impact study is important?
- Who will receive a copy of the study when it is done?
- What individuals and/or groups do you plan to consult in writing the study?
What do you hope to learn from them?

► **PROGRAM PROMOTION AND ACCESS FUNDING**

If you are applying for Program Promotion and Access Funding, please address the following questions.

Project Overview

- Provide with an overview of the project you are proposing, making sure to answer the following questions.

The Facts

- Who are you and why are you well-suited to do this project?

What category of project is it?

- Are you proposing an Access Project that is meant to promote awareness of, access to, or capacity to use the PROGRAM to bring equality or language rights cases before the courts?
- Are you proposing a Strategic Consultation project that is meant to allow consultation on specific litigation within the PROGRAM'S mandate?

What type of project is it?

- If you are proposing an Access Project, will it involve a meeting?
outreach materials? both?
- If you are proposing a Strategic Consultation Project, will it involve a meeting?
A discussion paper? both?

What is the purpose of your project?

- If you are proposing an Access Project, how will you promote awareness of, access to, or capacity to use the PROGRAM or the courts more easily? On the part of which group(s) or community(ies)? In which region(s) of Canada?
- If you are proposing a Strategic Consultation Project what are the particular equality rights / language rights issues you wish to explore? ■■■►

How do you plan to achieve this purpose? What activities are involved?

For meetings, please provide us with the following information:

- The agenda or program for the meeting.
- Who will participate?
- Is it local, regional or national and on what basis do you say this?
- Who will be invited as resource people or speakers and why were they chosen?
- The proposed date(s) and location(s).
- Who will co-ordinate the meeting?
- Who will lead or facilitate the meeting?

For papers or outreach materials, please provide us with the following information:

- What questions or issues will be addressed?
- What information will be provided and how will it be presented?
- What research is required and who will do it?
- Who will write or otherwise prepare the materials?
- Who will receive a final copy?

Project Impact

For access projects:

- How does this project promote awareness of, access to, or capacity to use the PROGRAM or the courts?
- Which groups or communities will be helped by this project? In what ways?
- What regions of the country will be reached by this project? How?
- How does this project build on other work you have done, particularly cases or projects which have been funded by the PROGRAM?

For strategic consultation projects:

- How do the legal issues involved come within the PROGRAM'S mandate concerning test cases? (i.e. for equality cases: do they challenge a federal law, policy or practice and rely on section 15 and/or 28 of the Charter; for language cases: do they rely on constitutionally protected language rights)
- Why is this issue important to members of disadvantaged groups or official language minority groups?
- What is the impact on your group or community of the problem you want to fix? How does it affect the everyday lives of your group's or community's members?
- How will the case help your group or community? What will be the "spin-off" effects of going to court on this issue?

Project Planning

- How do you plan to make this project inclusive of those groups or communities affected by the issues or needs addressed?
- How do you plan to ensure that the project is accessible to participants? Do you require additional accessibility funding to meet these needs? ■■■▶

WORK PLAN

Please provide an outline of the important steps to be taken in developing your case or project (including consultation, social evidence gathering, and/or coalition building, if funding is requested for these activities) and, if appropriate taking it to court.

Example:

<u>STEPS</u>	<u>DATE</u>	<u>WHO IS RESPONSIBLE</u>
consultation with community groups	January 2000	Me & X Group
filing my claim	March 2000	My Lawyer

BUDGET

You should complete a “model budget” form that is at the end of this guide in which you estimate the total projected cost of a case or project. A detailed description of each budget category is included in the model budget.

The following information should be included in the “client or pro-bono contribution” column of the budget:

the difference in the PROGRAM’S maximum hourly rates paid and the rates charged by an applicant’s lawyer;

the difference between the PROGRAM’S maximum amount granted and the actual cost of a case or project; and

any in-kind or volunteer work.

This information helps us determine the total cost of a project or case which often surpasses our funding limits. It is also useful in helping us adjust our funding guidelines in the future as well as determining our financial needs when negotiating our next funding agreement with the federal government.

It should be noted that the COURT CHALLENGES PROGRAM does not provide funding for:

press conferences; and

the costs involved in making an application for funding.

CONFIDENTIALITY

We treat all of the information you provide us as confidential including your name and address, what your case or project is about and what you are planning to say in court. We will not release any information without your permission.

If you receive funding, we will send you a form asking for permission to give out certain kinds of information for specific reasons, such as writing our annual report or helping another applicant. You do not have to sign this form. If you choose not to sign it, it will not affect your funding in any way.

Sometimes the PROGRAM will also ask for your permission to give out specific information. Again, your funding will not be affected if you say no.

Finally, the PROGRAM will not give out any information about:

grants of Case Development Funding;

a case when the Court has issued an order that the identity or other information about someone involved in the case cannot be made public; and

your case which, if revealed, could be harmful to you. ◀▶▶▶

VI. DECISION - MAKING

WHO MAKES FUNDING DECISIONS?

Two panels decide which cases will be funded, who will receive funding, how much will be granted and the terms and conditions of funding. The Equality Rights Panel makes all decisions about funding for equality cases, while the Language Rights Panel makes all decisions about funding for language rights cases. These Panels are part of the COURT CHALLENGES PROGRAM but are independent from the Board of Directors.

The Panels ensure that funding is provided for cases and other activities that have the best chance of advancing and protecting equality and language rights in Canada.

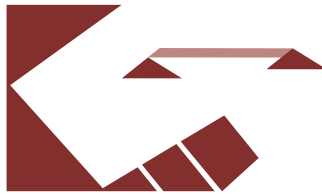
The seven Equality Rights panel members are nominated by organizations involved in equality rights work. They are chosen for their knowledge and understanding of section 15 of the Charter and equality and human rights more generally. Brief biographies of the Panel members are available from the PROGRAM. The Panel meets in person four times each year to consider funding applications.

The five Language Rights Panel members are nominated by organizations involved in language rights work. They are chosen for their knowledge and understanding of constitutionally protected language rights. Brief biographies of the Panel members are available from the PROGRAM. The Panel meets in person three times each year to consider funding applications.

WHAT IS THE DECISION MAKING PROCESS?

After we receive your application we send you an acknowledgement letter confirming that you have applied to the PROGRAM. At this point we may ask that you provide further information in order to help us determine whether your application meets the basic requirements for an eligible test case or project. Once an application is complete it is forwarded to the appropriate panel for consideration at its next meeting.

The Panel's decision regarding your application will be communicated to you by letter following its meeting. If your application is successful we will also send you a funding agreement and the PROGRAM'S Funding Guidelines which describe the conditions attached to funding. If you disagree with a panel decision, you may make a written request that the Panel reconsider its decision. You must provide detailed reasons, in writing, explaining why you believe a different decision ought to be reached. You may also provide us with new information or elaborate on the information previously provided to the PROGRAM. Once you have provided these reasons, the panel will reconsider your proposal. This second decision is final. You may, however, appeal a decision to the PROGRAM'S Board of Directors if you believe that you have been treated unfairly in the application and the decision-making process. You cannot, however, appeal to the Board on the merits of your case. The Board only reviews a decision to ensure that the proper process was followed and that the objectives of the COURT CHALLENGES PROGRAM were carried out in the decision-making process. ■■■



VII. MODEL BUDGET 1

► THIS MODEL BUDGET SHOULD BE USED FOR:

Case Development Funding, Case Funding, Negotiation Funding or Impact Study Funding

Please provide estimates of all hours, fees and disbursements that will be incurred regarding your case or project. An application will not be considered by the Panels, unless a model budget is submitted. The PROGRAM recognizes that it will be unable to cover all of the costs involved in your case or project. It would be appreciated if you could also provide us with an approximate amount of in-kind or

pro-bono contributions that will be made. This might include: the difference in the PROGRAM'S maximum hourly rates paid and the rates charged by an applicant's lawyer; the difference between the PROGRAM'S maximum amount granted and the actual cost of a case or project; and/or any in-kind or volunteer work. This information is helpful to the PROGRAM when it is considering any increases to funding amounts.

LEGAL FEES	BREAKDOWN	IN-KIND/PRO-BONO CONTRIBUTION	TOTAL AMOUNT REQUESTED
LEGAL RESEARCH Researching (including Quick Law), reviewing files and/or other materials. Can be billed by community groups if an employee does the research.	Number of Hours =	\$	\$
	Maximum Hourly Rate \$150.00/hour		
CONSULTATION Consulting (by phone or in-person) with opposing counsel, other lawyers in own law office, academics, applicant (dealing with non-administrative matters) community groups, and receiving faxes and other written materials.	Number of Hours =	\$	\$
	Maximum Hourly Rate \$150.00/hour		
DRAFTING Drafting/revising pleadings, legal memorandums, affidavits or other materials, preparing arguments and writing/revising factum or argument.	Number of Hours =	\$	\$
	Maximum Hourly Rate \$150.00/hour		
ARGUMENT BEFORE COURT Examinations for discovery, cross-examinations on affidavits and otherwise appearing before the court (includes motions).	Number of Hours =	\$	\$
	Maximum Hourly Rate \$150.00/hour		



ADMINISTRATIVE FEES	BREAKDOWN	IN-KIND/PRO-BONO CONTRIBUTION	TOTAL AMOUNT REQUESTED
<p>COMMUNICATION WITH PROGRAM Receiving correspondence from the PROGRAM, communicating with the staff at the PROGRAM (including discussing possible arguments to ensure applicants meet Panel conditions, discussing how to submit invoices, etc.).</p>	<p>Number of Hours =</p> <p>Maximum Hourly Rate \$50.00/hour</p>	<p>\$</p>	<p>\$</p>
<p>COMMUNICATION WITH CLIENT Any discussions with an applicant regarding administrative matters.</p>	<p>Number of Hours =</p> <p>Maximum Hourly Rate \$50.00/hour</p>	<p>\$</p>	<p>\$</p>
<p>PREPARATION OF ACCOUNT Time spent preparing an invoice in accordance with the PROGRAM funding guidelines (ie. ensuring invoice includes: a detail of work performed, broken down to the tenth of the hour, what hourly rate charged, divided into sections according to the approved budget).</p>	<p>Number of Hours =</p> <p>Maximum Hourly Rate \$50.00/hour</p>	<p>\$</p>	<p>\$</p>
<p>COUNSEL TRAVEL TIME Time spent travelling to meet with clients and/or travelling to court. It mostly includes time spent travelling by air or car.</p>	<p>Number of Hours =</p> <p>Maximum Hourly Rate \$50.00/hour</p>	<p>\$</p>	<p>\$</p>
<p>CO-ORDINATION Time for coordinating a case or project. Example, setting up conference calls between coalition members.</p>	<p>Number of Hours =</p> <p>Maximum Hourly Rate \$50.00/hour</p>	<p>\$</p>	<p>\$</p>
<p>SUB-TOTAL Administrative Fees</p>		<p>\$</p>	<p>\$</p>



DISBURSEMENTS	BREAKDOWN	IN-KIND/PRO-BONO CONTRIBUTION	TOTAL AMOUNT REQUESTED
<p>DISBURSEMENTS REQUIRED OR PERMITTED TO BE MADE BY STATUE Costs of court fees for filing papers in court.</p>		\$	\$
<p>WITNESS/EXPERT FEES AND TRAVEL EXPENSES Costs paid to witnesses, including experts who might testify in a case. It could be for the reimbursement of a witness' time and/or the cost of their travel, accommodation and other costs if they are coming from out of town. It could also be for paying to have papers prepared (for example, on social science evidence) that would be submitted as records in court. An applicant must have prior approval by the Panel in order to receive monies for witness fees and travel expenses.</p>		\$	\$
<p>FEES PAYMENT TO A COURT REPORTER FOR TRANSCRIPTS Costs of obtaining transcripts of an applicant's case in order to appeal a decision or to prepare arguments. The PROGRAM will only pay for transcripts if they are necessary for your case.</p>		\$	\$
<p>TRAVEL EXPENSES Costs paid for travel expenses</p>	\$0.30/km or actual cost of economy ground or air travel.	\$	\$



DISBURSEMENTS	BREAKDOWN	IN-KIND/PRO-BONO CONTRIBUTION	TOTAL AMOUNT REQUESTED
<p>COMMUNICATION Costs of long distance telephone charges, long distance fax charges and postage and courier costs. Please note the PROGRAM can only pay for the long distance charges associated with telephone and faxing. We cannot reimburse flat administrative costs for these charges.</p>		\$	\$
<p>FEES AND OUT-OF-POCKET EXPENSES FOR OUT-OF-TOWN AGENTS FOR ROUTINE SERVICES Costs of hiring another law firm in a particular city where the case is being heard. (prior approval required)</p>		\$	\$
<p>PRINTING AND PHOTOCOPYING Costs involved in photocopying and binding materials for a case or project.</p>	Maximum \$0.20/copy	\$	\$
<p>ACCESSIBILITY RELATED COSTS Costs for preparing documents in alternate media, translation or interpretation from or into another language and/or special travel or accommodation arrangements to fully participate.</p>		\$	\$
<p>RESEARCH COSTS Quick Law</p>		\$	\$
<p>OTHER Please specify</p>		\$	\$
<p>SUB-TOTAL Disbursements</p>			\$



TAXES	BREAKDOWN	IN-KIND/PRO-BONO CONTRIBUTION	TOTAL AMOUNT REQUESTED
GST ON LEGAL FEES			\$
GST ON ADMINISTRATIVE FEES			\$
GST ON DISBURSEMENTS			\$
PST			\$
HST			\$
SUB-TOTAL TAXES			\$
GRAND TOTAL			\$

GST REGISTRATION NUMBER:



VIII. MODEL BUDGET 2

► THIS MODEL BUDGET SHOULD BE USED FOR:

PROGRAM Promotion and Access Funding

Please provide estimates of all hours, fees and disbursements that will be incurred regarding your project. An application will not be considered by the Panels, unless a model budget is submitted. The PROGRAM recognizes that it will be unable to cover all of the costs involved in your project. It would be appreciated if you could also provide us with an approximate amount of in-kind or pro-bono

contributions that will be made. This might include: the difference in the PROGRAM's maximum hourly rates paid and the rates charged by a lawyer; the difference between the PROGRAM's maximum amount granted and the actual cost of the project; and/or any in-kind or volunteer work. This information is helpful to the PROGRAM when it is considering any increases to funding amounts.

LEGAL FEES	BREAKDOWN	IN-KIND/PRO-BONO CONTRIBUTION	TOTAL AMOUNT REQUESTED
LEGAL RESEARCH	Number of Hours =	\$	\$
	Maximum Hourly Rate \$150.00/hour		
CONSULTATION	Number of Hours =	\$	\$
	Maximum Hourly Rate \$150.00/hour		
DRAFTING REPORT/PAPERS	Number of Hours =	\$	\$
	Maximum Hourly Rate \$150.00/hour		
OTHER LEGAL WORK Please describe	Number of Hours =	\$	\$
	Maximum Hourly Rate \$150.00/hour		
SUB-TOTAL Legal Fees		\$	\$



ADMINISTRATIVE FEES	BREAKDOWN	IN-KIND/PRO-BONO CONTRIBUTION	TOTAL AMOUNT REQUESTED
COMMUNICATION WITH PROGRAM	Number of Hours = Maximum Hourly Rate \$50.00/hour	\$ 	\$
PREPARATION OF ACCOUNT	Number of Hours = Maximum Hourly Rate \$50.00/hour	\$ 	\$
CO-ORDINATION Time for coordinating a case or project. Example, setting up conference calls between coalition members	Number of Hours = Maximum Hourly Rate \$50.00/hour	\$ 	\$
SUB-TOTAL Administrative Fees		\$	\$



DISBURSEMENTS	BREAKDOWN	IN-KIND/PRO-BONO CONTRIBUTION	TOTAL AMOUNT REQUESTED
<p>TRAVEL EXPENSES For example:</p> <ul style="list-style-type: none"> • accommodations costs • meals • mileage, ground or air travel 	\$0.30/km or actual cost of economy ground or air travel	\$	\$
<p>MEETING COSTS For example:</p> <ul style="list-style-type: none"> • meeting room rental • speaker fees • honourariums • A/V 		\$	\$
<p>COMMUNICATION Costs of long distance telephone charges, long distance fax charges and postage and courier costs. Please note the PROGRAM can only pay for the long distance charges associated with telephone and faxing. We cannot reimburse flat administrative costs for these charges.</p>		\$	\$
<p>PRINTING AND PHOTOCOPYING Costs involved in photocopying and binding materials</p>	Maximum \$0.20/copy	\$	\$



DISBURSEMENTS	BREAKDOWN	IN-KIND/PRO-BONO CONTRIBUTION	TOTAL AMOUNT REQUESTED
ACCESSIBILITY RELATED COSTS Costs for preparing documents in alternate media, translation or interpretation from or into another language and/or special travel or accommodation arrangements to fully participate.		\$	\$
RESEARCH COSTS Quick Law		\$	\$
OTHER Please specify		\$	\$
SUB-TOTAL Disbursements		\$	\$



TAXES	BREAKDOWN	IN-KIND/PRO-BONO CONTRIBUTION	TOTAL AMOUNT REQUESTED
GST ON LEGAL FEES			\$
GST ON ADMINISTRATIVE FEES			\$
GST ON DISBURSEMENTS			\$
PST			\$
HST			\$
SUB-TOTAL TAXES			\$
GRAND TOTAL			\$

GST REGISTRATION NUMBER:



N O T E S :

