



**HOUSE OF COMMONS  
CANADA**

# **WOMEN AND THE COURT CHALLENGES PROGRAM**

## **Report of the Standing Committee on the Status of Women**

**Yasmin Ratansi, MP  
Chair**

**FEBRUARY 2008  
39th PARLIAMENT, 2nd SESSION**



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# **THE STANDING COMMITTEE ON THE STATUS OF WOMEN**

has the honour to present its

## **SECOND REPORT**

Pursuant to its mandate under Standing Order 108(2), and the motion adopted by the Committee on November 26, 2007, the Committee has studied Women and the Court Challenges Program and has agreed to report the following:





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**WORKING DOCUMENT**  
**WOMEN AND THE COURT CHALLENGES PROGRAM**

**CONTEXT**

The Court Challenges Program (CCP) is a funding program that was instituted in 1978. The initial objective of the CCP was to provide funding to citizens and groups in order to assist them in bringing important linguistic challenges to the attention of the courts. The Department of the Secretary of State was initially responsible for the Program and its delivery. With the adoption of the *Canadian Charter of Rights and Freedoms* in 1982, the Program was expanded to include language rights covered by the Charter. In 1985, the Program was again expanded to include challenges to federal legislation, policies, and practices related to equality rights under Section 15 of the Charter.<sup>1</sup> The Program was abolished in 1992 and then reinstated in the fall of 1994 within the newly formed Department of Canadian Heritage.<sup>2</sup> In September 2006, the Government of Canada announced that it will cancel funding to the Court Challenges Program.<sup>3</sup>

During the 2<sup>nd</sup> Session of the 39<sup>th</sup> Parliament, the Standing Committee on the Status of Women undertook a study on the effects the cancellation of funding has had on women and more particularly on minority and Aboriginal women. The Committee held two meetings on December 4 and December 11, 2007 with individuals and organizations. During these meetings, Committee members heard testimony on the benefits and importance of the CCP and the impact that the loss of funding has had on women and on groups of women.

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<sup>1</sup> Section 15 of the *Canadian Charter of Rights and Freedoms* states the following:

(1) 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.

(2) Subsection (1) does not preclude any law, program or activity that has as its object the amelioration of conditions of disadvantaged individuals or groups including those that are disadvantaged because of race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

<sup>2</sup> Canadian Heritage, *Summative Evaluation of the Court Challenges Program*, 26 February 2003, available at: [http://www.pch.gc.ca/progs/em-cr/eval/2003/2003\\_02/tdm\\_e.cfm](http://www.pch.gc.ca/progs/em-cr/eval/2003/2003_02/tdm_e.cfm).

<sup>3</sup> However, pre-existing grants of funding will be honoured and the Program will continue to process requests for reimbursement under these existing grants. See Court Challenges Program of Canada website: <http://www.ceppcj.ca/e/ccp.shtml>.

## THE COURT CHALLENGES PROGRAM

### 1. OBJECTIVES

The Court Challenges Program is a funding program providing for “the clarification of [...] constitutional rights and freedoms [...] thus achieving a better understanding, respect for, and enjoyment of human rights.”<sup>4</sup> To achieve this objective, the CCP provides financial assistance for “test cases of national significance” involving the following constitutional rights:

**Table 1 – Constitutional Rights and Freedoms Covered by the Court Challenges Program**

Provision	Description	
	<i>Constitution Act, 1867</i>	
Section 93	Protects rights and privileges regarding denominational schools.	
	<i>Manitoba Act, 1870</i>	
Section 23	Establishes English and French as the two languages to be used in the Manitoba Legislature, and for the publication of the laws adopted by the Legislature.	
	<i>Charter of Rights and Freedoms, 1982</i>	
Language rights	Sections 16 to 23	Sections 16 to 22 establish English and French as the two official languages of Canada and New Brunswick. These sections address issues related to Parliamentary proceedings, publication of statutes and records, courts and tribunals, and communication with the public. Section 23 establishes minority language education rights, including the right of linguistic minorities to manage their schools.
	Section 2	Protects the freedom of expression (eligible cases defined by CCP mandate).
	Section 15	Protects equality rights (equal benefit of the law without discrimination).
Equality rights	Section 28	Protects the equality of men and women.
	Section 2 or 27	Protects fundamental freedoms (Section 2) and multiculturalism (Section 27) (eligible cases defined by CCP mandate).

Source: Contribution Agreement between the Department of Canadian Heritage and the Court Challenges Program, 2004.

<sup>4</sup> Contribution Agreement between the Department of Canadian Heritage and the Court Challenges Program, November 2004, Clause 1.

A "test case" is initiated when an individual, or an organization representing this individual, challenges the constitutional validity of a law, legislation, policy, or practice, on the basis that it violates one of the rights described in Table 1. On this point, the Program makes an important distinction between language and equality test cases:

- For language test cases: the law, legislation, policy or practice may be that of any level of government, as long as the test case involves one of the rights described in Table 1 under "Linguistic".
- For equality cases: the law, legislation, policy or practice must be that of the federal government and the challenge must be based on one of the rights described in Table 1 under "Equality".<sup>5</sup>

## 2. ACTIVITIES

The CCP funds four types of activities that are expected to contribute to attaining the Program's objectives. These include:

- **Program promotion, access and negotiation:** Recipients may obtain funding to carry out activities providing information on participation in the CCP and to defray the cost of consultation with community representatives and jurists on specific cases. Recipients may also obtain funding for negotiation or recourse to recognized dispute resolution methods in order to avoid court proceedings.
- **Case development:** The CCP may provide funding for activities exploring potential cases. Such activities may include a review of the case law, consultation of the appropriate individuals and organizations and other research activities.
- **Case funding:** The CCP may provide financial assistance for activities undertaken in connection with legal proceedings based on a provision in the *Constitution Act* listed in Table 1.
- **Impact studies:** The CCP may provide financial assistance to offset costs incurred by recipients for the preparation of impact studies regarding important court decisions on matters defended by the CCP. These studies are released to the general public.

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<sup>5</sup> Canadian Heritage, *Summative Evaluation of the Court Challenges Program*, 26 February 2003, available at: [http://www.pch.gc.ca/progs/em-cr/eval/2003/2003\\_02/tdm\\_e.cfm](http://www.pch.gc.ca/progs/em-cr/eval/2003/2003_02/tdm_e.cfm).

### **3. APPLICATIONS**

Two panels of independent experts make decisions regarding funding: the Language Panel and the Equality Panel. These two panels are independent from the CCP Board of Directors and use their exclusive expertise for their sector of activity only. The members of these two panels are appointed for three-year terms. The language panel reviews funding applications and makes all decisions regarding case and project funding related to language rights test cases. The equality panel reviews funding applications and makes all decisions regarding case and project funding that involve equality rights test cases.<sup>(6)</sup>

According to the CCP's Annual Report for 2005-2006, "the majority of applications for equality rights funding have fallen into four main grounds of historical disadvantage: Aboriginal, race, disability and sex. These four grounds at 18.87%, 17.30%, 12.98% and 10.35% respectively, account for 59.5% of all applications for equality rights funding received by the CCPC."<sup>(7)</sup> (See Appendix A for Breakdown of Types of Funding by the Equality Rights Panel).

### **THE IMPORTANCE OF THE PROGRAM: SERVING THE BROADER PUBLIC INTEREST**

The majority of the witnesses highlighted the significance of the Program and how it served all members of society including women (as individuals and as members of groups). They emphasized the Program's uniqueness both domestically and internationally and its contribution to Canada's international reputation. During the meetings, witnesses pointed out that the Program advanced the broader public interest and discussed how specific groups of women including Aboriginal women, minority women and women with disabilities benefited from the Program. One of the witnesses described the CCP as "an affirmative action program ... for the disadvantaged in our country."<sup>8</sup> Some of the benefits that were highlighted by the witnesses are included below.

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<sup>6</sup> Court Challenges Program of Canada, *2005-2006 Annual Report*, p. 8, available at: <http://www.ccppcj.ca/e/resources/resources.shtml>.

<sup>7</sup> *Ibid*, p. 5.

<sup>8</sup> Kathleen Mahoney, Professor, Faculty of Law, University of Calgary, Evidence, December 11, 2007. (11:40)

- The CCP assisted women in challenging unconstitutional federal legislation as well as government inaction.

There needs to be an accountability mechanism for challenges to unconstitutional federal legislation: not only government action, but more importantly government inaction. Much of the charter litigation undertaken by women's groups is not to challenge unconstitutional laws, but to challenge inaction in areas of violence, racism, poverty, child care, and employment equity, among others.<sup>9</sup>

- The CCP provided a process for those who are marginalized to challenge discriminatory practices, to guarantee their equality rights and to assert their human rights.

Contrary to the argument that funding the Court Challenges Program is about government wasting money in challenging itself, such funding reflects a process that allows the marginalized to highlight laws and practices that are discriminatory, and to do so in a manner that respects their rights. It's about a country that is willing to be a world leader in its commitment to human rights and equality rights by using a process that suggests that government is accountable and transparent in how it makes justice for all.<sup>10</sup>

It breathed life into the inert language of the *Canadian Charter of Rights and Freedoms*. In Canada, as you all know, bringing court challenges is the principal means by which ordinary Canadians can challenge government action that infringes on their human rights. Dismantling the Court Challenges Program has undermined the fragile system by which access to that simple remedy was made available to ordinary Canadians.<sup>11</sup>

- The CCP provided an “orderly and law-abiding approach to social change.”

It gives access to the rule of law to people who do not have advantage and who do not have the means to access law through their own resources. It is thereby accomplishing something that supports the very infrastructure of our democracy. ... the various activities of the Court Challenges Program have actually served to complement rather than displace the legislative activity of the Canadian Parliament.<sup>12</sup>

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<sup>9</sup> Martha Jackman, Member, National Steering Committee, National Association of Women and the Law, Evidence, December 4, 2007 (11:20)

<sup>10</sup> Estella Muyinda, Executive Director, National Anti-Racism Council of Canada, Evidence, December 11, 2007. (11:55)

<sup>11</sup> Doris Buss, Chair, Law Program Committee, Women's Legal Education and Action Fund, Evidence, December 4, 2007 (11:30)

<sup>12</sup> Mary Eberts, Legal Counsel, Native Women's Association of Canada, Evidence, December 11, 2007 (1215).

- The CCP's eligibility requirements ensured that the court challenges benefited a large number of people rather than individuals.

Court challenges funding is not given unless the litigation affects large numbers of people. It's not an individual-based type of litigation fund like legal aid. It's designed to deal with people who are suffering under the impacts of law in a broad manner.<sup>13</sup>

During the hearings, the Committee also heard specific examples of how the CCP was successful in addressing women's equality and human rights.

Because of funding received through CCP, organizations like LEAF were able to bring cases for Canadians on a range of issues. We were able to work to uphold the rights of pregnant women. We were able to work to ensure that trials for rape would be fair and would not rely on harmful stereotypes about women's sexuality, that women would be treated fairly in divorce proceedings and settlements, that defendants in rape cases would not be allowed to troll through the private documents of victims.<sup>14</sup>

A number of major cases have been decided that were influenced by charter decisions taken after the court had the benefit of hearing from various intervenors. It affected provincial legislation interpretation. I'm thinking, for example, of cases to do with pregnancy discrimination, sexual harassment, and hate speech at the provincial level. If the Court Challenges Program hadn't existed and those cases hadn't been dealt with under the charter, we might not have had those kinds of decisions at the provincial level.<sup>15</sup>

... the financial assistance provided under the Court Challenges Program has made it possible to defend the regime introduced into the *Criminal Code* whereby an accused does not have automatic, unlimited access to the victim's personal file. It's important to remember that the regime that protects the rights of sexual assault victims places the rights of the victim and the accused on an equal footing. If this protection regime had not been fiercely defended, it is quite probable that many victims would not have availed themselves of their right to lay charges, for fear that the details of their private life would be laid out for all to see during the trial or for fear of having to terminate their psychological support, because of the possibility that content could automatically be used by the defence.<sup>16</sup>

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<sup>13</sup> Kathleen Mahoney, Professor, Faculty of Law, University of Calgary, Evidence, December 11, 2007 (12:35).

<sup>14</sup> Doris Buss, Chair, Law Program Committee, Women's Legal Education and Action Fund, Evidence, December 4, 2007 (11:30).

<sup>15</sup> Kathleen Mahoney, Professor, Faculty of Law, University of Calgary, Evidence, December 11, 2007 (12:35).

<sup>16</sup> Carole Tremblay, Liaison Officer, Regroupement québécois des Centres d'aide et de lutte contre les agressions à caractère sexuel, Evidence, December 11, 2007 (12:00).



... the Court Challenges Program is particularly important because it provided funding to community organizations, civil society organizations devoted to the advancement of human rights. These organizations have played a critical role in ensuring that the needs and interests of individuals from socially disadvantaged groups are represented and reinforced in their struggles to seek justice through the legal system. In my view, government support for these organizations is fundamental to ensuring a robust public infrastructure for advancing human rights.<sup>17</sup>

## **1. BENEFITS TO ABORIGINAL WOMEN**

The Native Women's Association of Canada identified the ways in which the Court Challenges Program has assisted Aboriginal women. Witnesses underlined the Program's usefulness in providing a venue for bringing forth Aboriginal women's experiences, in challenging the federal government's legislation and policies, and its significance as a vehicle for correcting discriminatory legislation towards Aboriginal women and girls and in providing Aboriginal women and girls with access to justice. In particular, the witnesses noted that the "*Indian Act* and INAC policies ... disadvantage aboriginal people in general, and specifically disadvantage aboriginal women and girls."<sup>18</sup>

The Court Challenges Program also provided an opportunity for the experiences of women to be brought to bear on government legislation and policies. This is beneficial, as those who create such legislation and policies do not generally have direct or personal experiences of the reality of aboriginal communities or of aboriginal women's specific realities in our communities, nor the understanding of the intersecting issues related to the colonialism, racism, and misogyny that continue to oppress aboriginal women today.<sup>19</sup>

The Court Challenges Program provided a venue in which aboriginal women could challenge bad legislation and poor policies, and it provided support they could not obtain elsewhere. The program provided aboriginal women with a portion of the financial assistance needed to confront the otherwise overwhelming size and resources of the federal government.<sup>20</sup>

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<sup>17</sup> Colleen Sheppard, Associate Professor, Faculty of Law, McGill University, Evidence, December 11, 2007 (11:45).

<sup>18</sup> Beverley Jacobs, President, Native Women's Association of Canada, Evidence, December 11, 2007 (12:10-12:15).

<sup>19</sup> Ibid.

<sup>20</sup> Ibid (12:10)

While the assistance provided by the Court Challenges Program is in no way leveling the playing field, it at least provided some indication to oppressed aboriginal women that a challenge could be possible, that it was supported, and that maybe occasionally it could be successful.<sup>21</sup>

The witnesses also highlighted the program's contribution in assisting Aboriginal women advocate against domestic violence and in creating the Sisters in Spirit program.

The Native Women's Association of Canada has received funding from Court Challenges on more than one occasion to advocate on behalf of aboriginal women victims of violence. Indeed, research funding from Court Challenges was instrumental in getting the Sisters in Spirit program launched. The key research that was done for that was funded by the Court Challenges Program.<sup>22</sup>

Witnesses informed the Committee that the Native Women's Association of Canada would not have succeeded in bringing to the public's attention the problem of family property provisions on Indian reserves had it not been for funding of the Court Challenges Program. Furthermore, witnesses pointed to the impact that the program has had in bringing other challenges forward in relation to Aboriginal women's equality.<sup>23</sup>

The *[Indian] Act* itself has been challenged by women as a denial of women's equality. It was challenged by Jeannette Corbiere-Lavell. It was challenged by Senator Sandra Lovelace Nicholas. It has been challenged by Sharon McIvor. It's challenged by a Mohawk family from Ontario called the Perrons. There are now over 35 challenges to the Indian Act that are being brought by women, primarily in the area of Indian registration. The Court Challenges Program has had a tremendous amount to do with those challenges.<sup>24</sup>

## **2. BENEFITS TO MINORITY AND RACIALIZED WOMEN**

The National Anti-Racism Council of Canada discussed the value of the CCP in assisting minority and racialized women in challenging discriminatory legislation and in addressing "gaps" in the legislation. They noted that minority and racialized women continue to face discriminatory practices in areas such as employment and immigration and access to the justice system:

Due to where racialized women are situated, there's a keen interest in having the Court Challenges Program continue to exist, because it helped fund challenges to

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<sup>21</sup> Beverley Jacobs, President, Native Women's Association of Canada, Evidence, December 11, 2007 (12:10).

<sup>22</sup> Mary Eberts, Legal Counsel, Native Women's Association of Canada, Evidence, December 11, 2007 (12:55).

<sup>23</sup> Ibid, (12:15)

<sup>24</sup> Ibid, (12:45)

legislation that excluded them. It helped correct gaps in legislation and supported challenges to government policies and practices that were applied in a discriminatory manner.<sup>25</sup>

Witnesses identified the benefits that accrue from the Program's funding of case development applications, research and consultations. This funding contributes to challenging and revealing discriminatory practices experienced by minority and racialized women and men, particularly when such practices intersect with other "enumerated grounds"<sup>26</sup> such as disability. The Program's funding also helped highlight the need for race-based data collection and the effects of the practice of racial profiling on equality rights.

The program also funded case development applications for racialized women wishing to develop a case about visible minority hiring and promotion in the civil service or senior management positions; and funded racialized women wishing to develop case challenges on issues concerning employment insurance eligibility and their failure to access available benefits due to the confluence of poverty and race.<sup>27</sup>

Research was also funded on the intersection of race and other enumerated grounds. For instance, research on race and disability provided an insight into the issues that various racialized group members with disabilities face. Research and consultation on racial profiling paved the way for discussion of the relevance and the need for race-based data collection. These activities helped highlight the prevalence of racial profiling by law enforcement agencies and border crossing officials. You can see this in the cases of Richards and Decovan Brown.<sup>28</sup>

The CCP funded consultations which revealed how minority women who spoke French and who came from racialized groups faced prejudices and barriers.

The consultation that reflected the two parts of the Court Challenges Program, language rights and equality rights, addressed the barriers faced by the racialized immigrant women who speak French—a minority within the racialized group. The women wished to gather to speak about and identify issues related to the multiple layers of prejudice and barriers they face in trying to access services. They also wished to learn about the charter's equality rights, as they were related to their struggles for housing and employment.<sup>29</sup>

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<sup>25</sup> Estella Muyinda, Executive Director, National Anti-Racism Council of Canada, Evidence, December 11, 2007 (11:55).

<sup>26</sup> Under Section 15 of the Charter of Rights and Freedoms, the enumerated grounds are "race, national or ethnic origin, colour, religion, sex, age or mental or physical disability."

<sup>27</sup> Estella Muyinda, Executive Director, National Anti-Racism Council of Canada, Evidence, December 11, 2007 (11:55).

<sup>28</sup> Ibid.

<sup>29</sup> Ibid.

### **3. BENEFITS TO WOMEN WITH DISABILITIES**

The DisAbleD Women's Network of Canada discussed the ways in which the Program benefited women with disabilities, a group that continues to be “underrepresented” and “non-existent in the development of government policy and program delivery.” With the assistance of the CCP, women with disabilities were able to correct unjust policies that had a negative impact on their lives.

The equality interests of women with disabilities continue to be underrepresented—or in many cases non-existent—in the development of government policy and program delivery. Likewise, there are very few equality test cases that deal with the many levels of discrimination experienced by women with disabilities. Therefore, DAWN Canada and its affiliates must continue to use every opportunity to continue to seek equality rights for women with disabilities.<sup>30</sup>

Court challenges programs were successful in nine out of the twelve cases DAWN has participated in, suggesting that this program was meaningful and relevant for assisting disabled women to achieve justice in policies that had unintended negative consequences for their lives.<sup>31</sup>

### **4. CANADA’S INTERNATIONAL REPUTATION**

Witnesses frequently observed that the CCP enhanced Canada’s international reputation and its “human rights machinery.” They noted that the Program was a vehicle for complying with Canada’s international obligations.

... it has enhanced Canada's reputation beyond measure in terms of our relationships with other countries, because it's such a democratic concept to enable those in society who are the most disadvantaged to challenge government.<sup>32</sup>

The Court Challenges Program has been recognized repeatedly by international treaty bodies as a mainstay, a central component of Canada's human rights machinery, and a way in which we comply with those international human rights commitments. It's been recognized by the Committee on Economic, Social and

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<sup>30</sup> Carmela Hutchison, President, DisAbleD Women's Network of Canada, Evidence, December 4, 2007 (11:10).

<sup>31</sup> Ibid. (11:10)

<sup>32</sup> Kathleen Mahoney, Professor, Faculty of Law, University of Calgary, Evidence, December 11, 2007 (11:40).

Cultural Rights in 1998 and 2006, by the Committee on the Elimination of Discrimination Against Women in 2003, and by the Human Rights Committee in 2005.<sup>33</sup>

The need for such a program is supported at the highest levels of the international community. The United Nations committee on the elimination of racial discrimination and the United Nations Committee on Human Rights have both directed Canada to better ensure the efficiency and accessibility of the complaint systems related to racial discrimination and to enhance the legal system so that all victims of discrimination have full access to effective remedies.<sup>34</sup>

## **THE EFFECTS OF CANCELLING FUNDING**

During the meetings, all the witnesses but one indicated that with the cancellation of the Program's funding, women have "lost a key equality rights accountability mechanism." They pointed out that without such funding, "equality rights in Canada exist only for the rich." Furthermore, witnesses underlined the fact that the CCP was the only mechanism that helped guarantee the charter rights of all Canadians. The Committee heard that the Court Challenges Program was a relatively inexpensive program but a highly effective one at just under \$3 million a year.<sup>35</sup>

Women have lost a key equality rights accountability mechanism that's fundamentally necessary within our parliamentary democracy.<sup>36</sup>

By de-funding the Court Challenges Program, we have essentially made equality rights in Canada exist only for the rich. For the people who are disadvantaged in this country, women among them, we now do not have access to the constitutional rights we fought so hard to get in 1982 and were so proud of when they were put into the Constitution.<sup>37</sup>

The Court Challenges Program was cut, even though women and minority groups are still not treated with equality under the law. I ask you this: What other mechanism exists that facilitates court challenges to guarantee the charter rights of all?<sup>38</sup>

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<sup>33</sup> Shelagh Day, Chair, Human Rights Committee, Canadian Feminist Alliance for International Action, Evidence, December 4, 2007 (11:05).

<sup>34</sup> Beverley Jacobs, President, Native Women's Association of Canada, Evidence, December 11, 2007 (12:10).

<sup>35</sup> Doris Buss, Law Program Committee, Women's Legal Education and Action Fund, Evidence, December 4, 2007.

<sup>36</sup> Martha Jackman, Member, National Steering Committee, National Association of Women and the Law, Evidence, December 4, 2007 (11:20).

<sup>37</sup> Shelagh Day, Chair, Human Rights Committee, Canadian Feminist Alliance for International Action, Evidence, December 4, 2007 (11:05).

<sup>38</sup> Captain Jennifer Lynn Purdy, As an Individual, Evidence, December 11, 2007 (12:05).

The Committee heard how the Program's cancellation of funding had an impact on a specific case. Initially, Sharon McIver, with funding from the CCP, was able to legally challenge the discriminatory manner in which Indian status is determined under the *Indian Act*. Even though British Columbia's Supreme Court has recently ruled in her favour, this ruling is being appealed by the federal government.<sup>39</sup> The Committee noted that Ms. McIver did not have the resources to defend the decision made by the B.C. Supreme Court.

The B.C. Court of Appeal is going to cost about \$120,000. I do not have \$120,000. My family does not have \$120,000. ... I have no resources, and lack of resources means we cannot mount a defence of this excellent decision ... they've stripped from me the access to the resources I might have had to defend my excellent decision. This is a mechanism I cannot overcome. If I cannot mount a defence, the decision will be lost.<sup>40</sup>

Witnesses told the Committee that Aboriginal women were left with "no defence" against the discriminatory effects of the *Indian Act*. They also noted that Aboriginal communities will no longer have a mechanism to challenge future rulings made in the area of matrimonial property rights.

Without means like the Court Challenges Program, women who are subject to the discrimination in the *Indian Act* have no defence against an influence on their lives that begins before they are born and lasts until after they die.<sup>41</sup>

There will be two significant issues in the coming years, or perhaps in the coming months, on which the federal government will have to take a position. I will only talk about one of them. For example, how will the termination of matrimonial regimes in the Aboriginal communities play out? Lawmakers are likely to take a position on this. This is something that we will need to follow. Because the Court Challenges Program no longer exists, we will have to see whether what the federal government puts in place is deemed appropriate by the 11 Aboriginal communities in Canada. We will have to follow that issue very closely.<sup>42</sup>

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<sup>39</sup> For more information, see *McIvor v. Canada (Registrar, Indian and Northern Affairs)*, [2007] 3 C.N.L.R. 72 (B.C.S.C.), <http://www.courts.gov.bc.ca/Jdb-txt/SC/07/08/2007BCSC0827.htm>.

<sup>40</sup> Sharon MacIver, As an Individual, Evidence, December 4, 2007.

<sup>41</sup> Mary Eberts, Legal Counsel, Native Women's Association of Canada, Evidence, December 11, 2007 (12:20).

<sup>42</sup> Carole Tremblay, Liaison Officer, Regroupement québécois des Centres d'aide et de lutte contre les agressions à caractère sexuel, Evidence, December 11, 2007 (13:00).

The Committee heard that for minority and racialized women, the funding cuts were a “regressive move.” They also highlighted the fact that minority women who also speak French “are losing both ways.”

To racialized women, cutting funding appears to be a regressive move by government in relation to the advancement of equality and language rights.<sup>43</sup>

The program funded equality and language rights, and we shouldn't forget the language rights piece of it. In this regard, I would bring up the racialized women from that group who are losing both ways: they're losing with respect to language rights and they're losing with respect to equality rights.<sup>44</sup>

In addition, witnesses pointed to the negative effects the cancellation of funding has on Canada's international reputation. In particular, they were concerned with Canada's ability to comply with international treaty obligations and its ability to “speak and act on the global level.”

Though the Court Challenges Program has been pointed to in part as a means of compliance with international human rights committees, there is no indication of how we might continue such compliance in the absence of the Court Challenges Program. Will this measure send a message to our international partners that we in Canada no longer care and, worse, also send a message at home and abroad that continued discrimination might be acceptable?<sup>45</sup>

When we start to de-fund programs like that, we are feeding into a larger degeneration of our authority to speak and act on the global stage.<sup>46</sup>

### **THE WAY FORWARD: WHAT CAN BE DONE?**

The majority of the witnesses emphasized the need for reinstating, maintaining and expanding the Court Challenges Program noting that “The federal government should not fear scrutiny of fair and equitable legislation and policies using this program.”<sup>47</sup>

However, one witness supported the Program's cancellation and noted the need for greater accountability.

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<sup>43</sup> Estella Muyinda, Executive Director, National Anti-Racism Council of Canada, Evidence, December 11, 2007 (11:55).

<sup>44</sup> Ibid. (13:00)

<sup>45</sup> Carmela Hutchinson, President, DisAbled Women's Network of Canada, Evidence, December 4, 2007 (11:10).

<sup>46</sup> Doris Buss, Chair, Law Program Committee, Women's Legal Education and Action Fund, Evidence, December 4, 2007 (12:15).

<sup>47</sup> Beverley Jacobs, President, Native Women's Association of Canada, Evidence, December 11, 2007 (12:10-12:15).

The Court Challenges Program is an example of government corruption and taxpayer abuse. This conclusion is based on the fact that the program, although entirely funded by the taxpayer, was unaccountable to the public for its financial and other decisions because it is not subject to the *Access to Information Act* and did not report to Parliament. As a result, the directors of the program used it to promote an ideological, left-wing agenda to the detriment of all those holding a different perspective.<sup>48</sup>

Many witnesses indicated that the CCP was a program that advanced the broader public interest and helped Canada address problems of racism and sexism. They pointed to the need to expand the Program's equality rights to the provincial and territorial levels as recommended by the United Nations Committee on Economic, Social and Cultural Rights in 2006.<sup>49</sup>

The court challenges definitely is a very good program. It would be better if it were broader based, if it were based in such a way that provincial legislation, for example, could be argued to be either upheld, struck down, or interpreted in ways that were more inclusive and protective of human rights.<sup>50</sup>

The Committee heard that in addition to the Court Challenges Program, there was a need to ensure legal aid is "widely available to impoverished people in pursuit of their rights" and in assisting individuals in completing relevant documentation.<sup>51</sup>

The Committee took particular note that without the financial assistance of the CCP, individuals who wish to pursue court challenges have few avenues for raising money. Witnesses also emphasized that raising money for litigation was "extremely difficult" and required individuals who were "highly, highly committed."<sup>52</sup> Witnesses informed the Committee that "litigation is not a charitable activity."

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<sup>48</sup> Gwendolyn Landolt, National Vice-President, REAL Women of Canada, Evidence, December 4, 2007 (11:20).

<sup>49</sup> Shelagh Day, Chair, Human Rights Committee, Canadian Feminist Alliance for International Action, Evidence, December 4, 2007 (12:20); Beverley Jacobs, President, Native Women's Association of Canada, Evidence, December 11, 2007 (12:10).

<sup>50</sup> Kathleen Mahoney, Professor, Faculty of Law, University of Calgary, Evidence, December 11, 2007 (12:35).

<sup>51</sup> Carmela Hutchinson, President, DisAbled Women's Network of Canada, Evidence, December 4, 2007 (11:15).

<sup>52</sup> Elizabeth Atcheson, Lawyer, As an Individual, Evidence, December 4, 2007 (12:45).



The charitable tax laws currently say that litigation is not a charitable activity. That means under our current tax laws you cannot raise money to support a piece of litigation. So you cannot get a tax receipt if you're raising money for a particular piece of litigation that is not a charitable activity. When we lose the Court Challenges Program, we cannot go directly, under our current tax laws, to raise money privately with any advantage.<sup>53</sup>

The Committee heard that there were multiple areas of federal jurisdiction involving equality issues. The witnesses reminded the Committee of “how critical many of them are to the lives of Aboriginal women and women from racialized communities.” These include:

- immigration and refugee law
- situation of domestic workers
- spousal sponsorship
- domestic violence and refugee determinations
- human trafficking and the sex trade
- citizenship preferences in civil service
- survivor pensions and elderly women
- the treatment of aboriginal women in federal penitentiaries
- family property on first nations reserve lands
- treatment of racialized women in the criminal justice system
- exclusion of precarious workers from various government benefit schemes<sup>54</sup>

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<sup>53</sup> Shelagh Day, Chair, Human Rights Committee, Canadian Feminist Alliance for International Action, Evidence, December 4, 2007 (12:30).

<sup>54</sup> Colleen Sheppard, Associate Professor, Faculty of Law, McGill University, Evidence, December 11, 2007. (11:45)



## **RECOMMENDATION OPTIONS**

The following section provides a list of optional recommendations brought forward by the witnesses.

### **RECOMMENDATION 1**

**The Standing Committee on the Status of Women recommends that the federal government resume funding of the Court Challenges Program to at least the fiscal 2005-2006 level.**

### **RECOMMENDATION 2**

**The Standing Committee on the Status of Women recommends that the federal government resume the Court Challenges Program with at least the same language and equality rights mandate as existed at the date of its cancellation.**

### **RECOMMENDATION 3**

**The Standing Committee on the Status of Women recommends that the federal government expand the financial assistance available under the Court Challenges Program to fund Canadian Charter challenges with respect to the laws, legislation, policy or practices of any level of government.**

### **RECOMMENDATION 4**

**The Standing Committee on the Status of Women recommends that an accountability framework be clearly established for the Court Challenge Program.**

- **The framework should include a five year plan with clear, measurable objectives, a process for accountability and regular evaluation, and an annual report to Parliament on outcomes.**



## APPENDIX A

### BREAKDOWN OF TYPES OF FUNDING BY THE EQUALITY RIGHTS PANEL OCTOBER 24, 1994 – MARCH 31, 2006

Source: Court Challenges Program of Canada, *2005-2006 Annual Report*, p. 41, available at:

<http://www.ccppcj.ca/e/resources/resources.shtml>.

	Case Development	Case Funding	Impact Study	Program Promotion & Access and Negotiation	Total
Aboriginal	58	96	7	24	185
Age	8	17	2	4	31
Citizenship	4	14	0	2	20
<b>Colour/Race/Ethnicity/ Nationality</b>					
Colour	2	6	0	2	10
Race	15	29	5	49	98
National Origin	4	3	0	0	7
Ethnicity	6	11	0	10	27
General <sup>2</sup>	6	5	0	13	24
Disability	27	59	5	20	111
Family/Marital/Parental	5	17	0	0	22
Geography	0	0	0	1	1
Language	1	3	0	1	5
Poverty	13	28	3	22	66
Prisoner/Criminal Record	9	18	1	4	32
Refugee	0	5	0	0	5
Religion	0	2	0	4	6
Section 15 General	1	8	0	21	30
Sex	18	41	5	36	100
Sexual Orientation	8	44	4	23	79
Transgendered	1	0	0	6	7
Unknown <sup>3</sup>	0	0	0	0	0
Other <sup>4</sup>	1	2	7	19	29
<b>Total</b>	<b>187</b>	<b>408 <sup>5</sup></b>	<b>39</b>	<b>261</b>	<b>895</b>

<sup>1</sup> Please note that several applications include more than one ground of discrimination, but only the most dominant ground is listed in this table.

<sup>2</sup> Applications involving all of the following grounds of discrimination: colour, race, national origin and ethnic origin.

<sup>3</sup> Applications involving no known ground of discrimination.

<sup>4</sup> Applications involving a ground of discrimination other than those listed in this table.

<sup>5</sup> See Table 6 for a further breakdown.



## APPENDIX B LIST OF WITNESSES

Organizations and Individuals	Date	Meeting
<b>As individuals</b>	2007/12/04	7
Elizabeth Atcheson, Lawyer		
Sharon McIvor, Lawyer		
<b>As an individual</b>	2007/12/11	10
Capt Jennifer Lynn Purdy		
<b>Canadian Feminist Alliance for International Action</b>	2007/12/04	7
Shelagh Day, Chair, Human Rights Committee		
<b>DisAbled Women's Network of Canada</b>	2007/12/04	7
Carmela Hutchison, President		
<b>McGill University</b>	2007/12/11	10
Colleen Sheppard, Associate Professor, Faculty of Law		
<b>National Anti-Racism Council of Canada</b>	2007/12/11	10
Estella Muyinda, Executive Director		
<b>National Association of Women and the Law</b>	2007/12/04	7
Martha Jackman, Member, National Steering Committee		
<b>Native Women's Association of Canada</b>	2007/12/11	10
Mary Eberts, Legal Counsel		
Beverley Jacobs, President		
<b>REAL Women of Canada</b>	2007/12/04	7
Gwendolyn Landolt, National Vice-President		
<b>Regroupement québécois des Centres d'aide et de lutte contre les agressions à caractère sexuel</b>	2007/12/11	10
Carole Tremblay, Liaison Officer		
<b>University of Calgary</b>	2007/12/11	10
Kathleen Mahoney, Professor, Faculty of Law		
<b>Women's Legal Education and Action Fund</b>	2007/12/04	7
Doris Buss, Chair, Law Program Committee		





## **APPENDIX C LIST OF BRIEFS**

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### **Organizations and individuals**

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**National Association of Women and the Law**

**Velvet LeClair (As an individual)**



# MINUTES OF PROCEEDINGS

A copy of the relevant Minutes of Proceedings ([Meetings Nos. 7, 10, 12, 13 and 14](#)) is tabled.

Respectfully submitted,

Yasmin Ratansi, MP  
Chair



**SUPPLEMENTARY OPINION**  
**Conservative Party of Canada**

The following report is the Conservative Members of the Standing Committee on Status of Women's dissenting opinion on the committee's study of *Women and the Court Challenges Program*.

It is important to note that the Court Challenges Program is presently before the courts, and it is inappropriate to comment on this issue. The report contains arguments, opinions and conclusions that goes against this principle.

We would like to remind you that, as announced, the Government of Canada will respect all of its commitments taken regarding the Court Challenges Program up until September 25, 2006, and this, until the exhaustion of available resources, including appeals brought before the Supreme Court of Canada.

In Budget 2006, our government promised to review ineffective programs to ensure each taxpayer dollar was well spent, and this is exactly what we have done. Our government believes that it is important for the federal government to respect its obligations. Unlike the opposition members who refused to consider other options concerning the protection of women's rights, we have taken the following steps, which are only examples amongst many others.

We have increased the budget of the Women's Program to \$20 million – an increase of 76%, its highest level ever.

Since January 2006, our government has helped Aboriginal women with matrimonial property rights after divorce and has reinvested 5 million dollars for initiatives that go directly to helping women in their community (e.g. financing homes for vulnerable women and their children.)

Our government has also done a lot in combating violence against women. There is still much to do, but here are some examples on concrete investments:

- \$7 million per year for the Family Violence Initiative;
- 34 of 60 projects from the Women's Community Fund concern violence against women;
- \$56 million for 5 years has been allocated for prevention programs and services for violence in the reserves;
- Last Fall, we approved \$179 000 in funding to l'AFÉAS for the *Pour contrer la violence faite aux femmes : comprendre, s'organiser et agir* project.

Last October, 60 projects were approved under the Women's Community Fund. These projects, which are all very diverse and different, will have a direct impact on the lives of women. For example, the Women's Equality Society project will offer the chance to 50 women that are either African, Aboriginal, a member of a visible minority or an immigrant to participate in a community economic development initiative based on women, which will enrich the community's future. The mentoring and training guide for this project will be used as a model to women from other rural areas in Canada, and will help them to integrate in the active population of their region.

Our government chooses to play a proactive role. We will move forward in supporting concrete projects that make a direct difference in Canadian women's lives. As previously mentioned, we have taken the necessary measures to help women overcome challenges that they face: economic insecurity, lack of training and violence against them.