

March 10, 2017

Hon. Melanie Joly
Minister of Canadian Heritage
House of Commons
Ottawa, Ontario K1A 0A6

Dear Minister Joly:

Re: Reinstatement of the Court Challenges Program

We commend your government's decision to restore funding to the Court Challenges Program (CCP). We applaud your commitment to "work continuously to make Canada more diverse, inclusive and equitable." And we share the Minister of Justice's expectation that reinstatement of the CCP "will increase access to justice for vulnerable groups and official-language communities."

Since its inception, the mandate of the CCP has been to protect and advance substantive equality and access to justice for disadvantaged groups and official-language minority communities. Expanding the CCP to include a wider range of language rights, particularly the provisions of Part VII of the *Official Languages Act* supporting the development of official-language communities, is fully consistent with the CCP's historic objective.

However, in expanding the human rights focus of the CCP to include claims under sections 2, 3, 7, and 27 of the *Charter*, without any requirement for an equality rights focus except in relation to section 27, your government appears to have abandoned a key commitment to protecting and advancing substantive equality and access to justice for disadvantaged groups and official-language minority communities.

We are gravely concerned that forfeiting the CCP's historic mandate leaves open the prospect of funding being sought and granted for *Charter* claims that could seriously undermine, rather than reinforce, your government and our shared objective of a more diverse, inclusive and equitable Canada.

In particular, in the absence of such a mandate, CCP funding could be used to support challenges to restrictions on hate speech, official-language minority protections, political and election spending limits, safeguards for sexual assault victims within the criminal justice system, LGBTQ rights, women's reproductive choice, affirmative action measures, the single-payer publicly funded health care system, and many other hard-fought gains for disadvantaged individuals and groups within Canadian society.

We are also deeply disappointed that the CCP's internationally recognized community-based accountability framework has been eliminated, with no alternative governance structure put in place to ensure that the Program and the Panels' decisions protect and advance substantive equality and access to justice for disadvantaged groups and official-language minority communities or to ensure the participation of those groups in decision-making about the use of their *Charter* rights.

We are especially troubled that a crucial requirement of the CCP: that Panel membership and expertise reflect and represent the diversity and experience of disadvantaged and official-language minority communities, no longer applies. Panel members will now be chosen by a government-appointed Selection Committee. The Panels will be composed of "key figures from the legal field such as former judges" who will simply "report to" the organization selected to manage the CPP, with no assurance of accountability to the affected communities.

Your government has recognized that lack of diversity within the Canadian judiciary is a serious access to justice issue. Yet former judges, who by definition sever any community connection upon their appointment to the bench, are identified as the type of panel member best positioned to make CCP funding decisions. This conception of the requisite independence and expertise of Panel members reflects a serious disregard for, and further compounds the loss of CCP accountability to, disadvantaged groups and official-language minority communities.

No proposal was put forward and no support was expressed for such a fundamental reorientation of the CPP, either during the extensive consultations carried out by your Department or in the hearings before the Standing Committee on Justice and Human Rights. In fact, the overwhelming message to your government was the need to modernize and expand the CCP in a manner that more effectively protects and advances substantive equality and access to justice for the most marginalized individuals and groups in Canadian society.

In reinstating the CCP, we are therefore calling upon you and your government to reaffirm that the mandate of the CCP remains to protect and advance substantive equality and access to justice for historically disadvantaged groups and official-language minority communities.

In particular, we call upon you to ensure that 1) the members of the Selection Committee for the Official Language Rights and Human Rights Panels; 2) the persons appointed to the Official Language Rights and Human Rights Panels, and; 3) the independent organization selected to manage and implement the CCP, all possess not only proven expertise but a demonstrated record of commitment to the goal of protecting and advancing substantive equality and access to justice for disadvantaged groups and official-language minority communities.

We further call upon you to ensure that the Contribution Agreement between your government and the independent organization chosen to manage and implement the CPP includes as an explicit condition that the mandate of the CCP is to protect and advance substantive equality and access to justice for disadvantaged groups and official-language minority communities, and that this mandate be explicit in all government documents and descriptions of the CCP.

Finally, we wish to express our collective support for the Indigenous Bar Association's call for section 35 (Aboriginal and Treaty) rights to be included in the reinstated CCP.

We look forward to your response and to the opportunity to meet with you at your earliest convenience with a view to continuing a positive dialogue and progress towards our shared goal of a robust, effective and revitalized Court Challenges Program.

Yours sincerely,

Martha Jackman, Co-Chair, National Steering Committee

National Association of Women and the Law

Anne Levesque, Chair, Human Rights Committee

Council of Canadians with Disabilities

On behalf of,

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c.c. Hon. Jody Wilson-Raybould; Hon. Carolyn Bennett, Rt. Hon. Justin Trudeau