

## **Canadian Evaluation Society**

### **Evaluation Case Competition 2003**

#### **Case for the Preliminary Round February 15, 2003**

#### **"Court Challenges Program"**

The Student Evaluation Case Competition is organised by the National Capital Chapter of the Canadian Evaluation Society.

The organising committee gratefully acknowledges the Department of Canadian Heritage for providing the information that underlies this case. The material is a combination of actual and hypothetical documents, and has been assembled for educational purposes only.

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February 15, 2003

Dear CES Team 2003,

The National Federation of Aboriginal Peoples (NFAP) has been awarded funding to challenge recently passed rezoning laws, under a federal initiative called the Court Challenges Program. These laws are having a direct impact on land that is considered sacred based on the beliefs of the Kouchibouguac Aboriginal people. The Federation would like to unite as many Aboriginal people as possible in their approach to this challenge.

NFAP has hired your team to evaluate the efficiency and effectiveness of the Court Challenges Program. The Federation wants to work with as many other Aboriginal community groups (urban, rural, remote) as possible in carrying out this evaluation, including speaking with communities who were unsuccessful in applying for funding under this program.

Attached is the first part of an evaluation framework developed for the Court Challenges Program. The evaluation framework simply introduces the program and sets out a program logic model. The NFAP has hired you to complete the evaluation strategy, focusing on the following key components:

- What evaluation issues/questions may be relevant to the community?
- What steps would you take to gather information to answer these issues/questions, given the remoteness of some communities and the need to be inclusive?
- Can you think of anything else that the evaluation should address (i.e. cultural, land, language) given the political and social context of Aboriginal communities?
- Identify the long-range effects/outcomes of the Court Challenges Program and how you would assess these effects?

We look forward to receiving your submission by email later today.

Good luck!

François, Amna, Lisa, Mary Kay, Lisa, and Afroditi  
The 2003 CES Student Evaluation Case Competition Organising Committee

**COURT CHALLENGES PROGRAM  
EVALUATION FRAMEWORK**

March 2002

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## 1.0 Introduction

In 1998, the Department of Canadian Heritage and the Court Challenges Program of Canada (CCPC) signed a five-year Contribution Agreement for the Court Challenges Program (CCP). This Agreement ends March 31, 2003. Section 17.1 of the Agreement commits the parties to complete an evaluation of the CCP:

**The Contribution Agreement commits the parties to complete an evaluation of the CCP prior to September 2002.**

*17.1 An evaluation of the Program to assess its overall effectiveness in achieving its objectives and its continuing need will be conducted by the Minister in consultation with the Corporation [the CCPC] and the user groups in 2001-2002 and completed, if possible, prior to September 2002.*

In preparation for the evaluation process, Canadian Heritage contracted Prairie Research Associates (PRA) Inc. to develop an evaluation framework for the CCP, to include the following components:

- ▶ a logic model, including a description of the CCP components
- ▶ a set of evaluation issues and questions
- ▶ a description of the proposed methodology, including a rationale for each of the key components, estimated costs, and proposed time lines for the execution of the evaluation.

To design this framework, we reviewed all the relevant documentation provided to us and interviewed representatives from Canadian Heritage and the CCP (staff and board members). In addition, we reviewed CCPC's information management system to assess the nature and format of the data and information gathered by the organization on its activities related to the CCP.<sup>1</sup>

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<sup>1</sup>Please note that no individual file was accessed or reviewed during this process.

This report is divided into five sections, including this introduction. Section 2 provides a summary profile of the CCP. A detailed profile of this program is already contained in the 1997 evaluation of the CCP. Section 3 presents the logic model, including a description of its various components. The evaluation strategy is included in Section 4, where we describe the proposed evaluation issues and questions, methodology, time frame and budget, and Section 5 concludes the report.

## 2.0 Profile of the Court Challenges Program

### 2.1 Historical context

The CCP is a program with over 20 years of history, during which time its mandate and administrative structure have changed, and the Program has been canceled and reinstated.

**Both the CCP's mandate and administrative structure have changed over the Program's 24 years of history.**

- ▶ Launched in 1978, under the Secretary of State, the Program initially funded cases relating to federal and provincial language rights protected under the *Constitution Act of 1867*.
- ▶ With the adoption of the *Canadian Charter of Rights and Freedoms* in 1982, the Program was expanded to include language rights contained in the *Charter*.
- ▶ Equality provisions included in the *Canadian Charter of Rights and Freedoms* came into effect in 1985, at which time the Program was expanded again to include these provisions. That same year, the Canadian Council on Social Development began to administer the Program.
- ▶ In 1990, the Program moved to the Human Rights Research and Education Centre at the University of Ottawa.
- ▶ In February 1992, the federal government canceled the Program as part of a deficit reduction effort. It was reinstated in October 1994, when a first Contribution Agreement was signed between Canadian Heritage and a newly created corporation, the CCPC.
- ▶ A second Contribution Agreement was signed between the minister of Canadian Heritage and the CCPC on March 31, 1998.

## 2.2 The CCP current status

### 2.2.1 The distinction between the CCP and the CCPC

It is important to make a distinction between the Program itself, the CCP, and the structure responsible for its administration, currently the CCPC.

**The focus of the evaluation is the Program itself, the effectiveness of the CCPC in managing it, and the effectiveness of the Department's overall coordination.**

Technically, the Program could be administered by another organization, which has happened at various points throughout the Program's history. Also, the CCPC (the corporation) could carry out activities other than the ones included in the Contribution Agreement. The CCPC could, in theory, operate without the Contribution Agreement or any funding from the federal government. It is a non-profit entity, incorporated under the *Canada Corporations Act*.

In practical terms, however, the distinction between the CCP and the CCPC is moot. At this point, the CCPC's only funding source is the Contribution Agreement, and as a result, the CCPC's activities are limited to administering the CCP, as described in the Contribution Agreement. Regardless, the distinction remains relevant, particularly as it relates to the evaluation process.

The object of the evaluation is the Program itself, with an emphasis on the activities covered in the Contribution Agreement ending March 31, 2003. Through the issues of design/delivery, the evaluation will also assess the effectiveness of the CCPC in managing the program and the effectiveness of the Department of Canadian Heritage's overall coordination.



## 2.2.2 Status of the Contribution Agreement

The Contribution Agreement providing funding to the CCP is a “transfer payment,” as defined by the Treasury Board Secretariat’s *Policy on Transfer Payments (2000)*.<sup>2</sup> Section 2.1 of the *Policy* defines a transfer payment:

*2.1 Transfer payments are transfers of money, goods, services or assets made from an appropriation to individuals, organizations or other levels of government, without the federal government directly receiving goods or services in return.*

**The Contribution Agreement being evaluated is subject to the provisions contained in the Treasury Board Secretariat’s *Policy on Transfer Payments*.**

Section 8.4.3 of the *Policy* allows departments (in this case Canadian Heritage) to sign contribution agreements with organizations (in this case the CCPC) that, in turn, become responsible for further distributing the payments to targeted beneficiaries (in this case the CCP recipients):

*8.4.3 Departments may provide a contribution to a recipient that in turn further distributes payments to ultimate beneficiaries. This is the case when initial recipients have considerable independence on their choice of final recipients with minimal guidance from departments (e.g. a university association which distributes funds to researchers based on a peer review process).*

The *Policy* stipulates that any renewal of a grant or contribution agreement requires the development of a Results-based Management Accountability Framework (RMAF), “including performance indicators, expected results and outcomes, methods for the reporting on performance, and evaluation criteria to be used in the assessment of the effectiveness of the transfer payments.”<sup>3</sup> This evaluation framework and the evaluation itself will contribute significantly to the development of an RMAF.

## 2.3 The objective of the Program

Clause 1 of the Contribution Agreement states that the primary objective of the CCP is to clarify constitutional provisions relating to linguistic and equality rights. As stated in Clause 1, “*this objective is to be achieved through the provision of financial assistance for test cases of national significance put forward by or*

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<sup>2</sup>See Treasury Board Secretariat. (2000). *Policy on Transfer Payments*.

<sup>3</sup>Ibid, section 8.1.1 (xv).

*on behalf of those individuals described in Clause 7 of this Agreement”* (official language minority groups or individuals, as well as disadvantaged groups or individuals). This objective is also reflected in the 1994 Treasury Board submission relating to the CCP.

Table 1 describes the constitutional provisions that are to be clarified through test cases.

<b>Table 1: Constitutional rights and freedoms covered by the CCP</b>		
<b>Provisions</b>	<b>Description</b>	
<b>Linguistic</b>	<b><i>Constitution Act, 1867</i></b>	
	Section 93	Protects rights and privileges regarding denominational schools.
	Section 133	Establishes English and French as the two languages to be used in Parliament and in the Québec Legislature, and for the publication of the laws adopted by these two institutions.
	<b><i>Manitoba Act, 1870</i></b>	
	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.
	<b><i>Canadian Charter of Rights and Freedoms, 1982</i></b>	
	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 relating to parliamentary proceedings, publication of statutes and records, courts and tribunals, and communication with the public. Section 23 establishes minority language educational rights, including the right for linguistic minorities to manage their schools.
Section 2	Protects the freedom of expression (eligible cases defined by CCP mandate).	
<b>Equality</b>	Section 15	Protects equality rights (equal benefit of the law without discrimination).
	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).

Test cases relating to language rights may involve provincial or federal legislation, policies, and practices, while test cases relating to equality rights may only involve federal legislation, policies, and practices.

The 1994 Treasury Board Submission concerning the CCP specifies that the Program is to be administered by a non-profit agency that is to be determined by the Minister of Canadian Heritage and that operates at arm's length from the government. The Submission also establishes parameters for the provision of funding:

- ▶ Test cases must raise new Charter issues of national significance.
- ▶ Financial need has to be demonstrated.
- ▶ The resolution of a case has to be encouraged by means other than litigation.

Our consultations indicate that the CCPC's Board of Directors views clarifying constitutional rights and freedoms as primary, but it also perceives the Program as pursuing other important objectives:

- ▶ According to key informants, the CCP is ensuring *access* to the justice system for the minority and disadvantaged groups and individuals whose rights are constitutionally protected. The perception is that, without the CCP, it is doubtful that these groups and individuals would have the capacity to exercise these rights.
- ▶ Key informants also indicated that the CCP is acting as an ongoing protection against measures that could be adopted by governments and that could violate these constitutional rights and freedoms. They emphasize that it is difficult to predict the actions of governments, and as such, the constitutional rights and freedoms listed in Table 1 are in constant evolution.

## 2.4 Key activities and resources allocated

As stated earlier, the CCP's key purpose is to fund test cases of national significance. In order to do this, Canadian Heritage and the CCPC have agreed to a number of terms and conditions that govern the administration of the Program. Table 2 describes the key activities agreed upon by the parties and funded through the Contribution Agreement.

<b>Table 2: CCP key activities</b>		
<b>Activities</b>	<b>Description</b>	
Program administration	Activities associated with the processing of applications and the maintenance and operations of an office.	
Program promotion and access	Activities promoting the awareness of, access to, or capacity to use the CCP. It may also include consultations on specific litigation within the mandate of the CCP.	
Negotiation	Activities initiated for the purpose of negotiating or employing other recognized forms of alternative dispute resolution in order to attempt to resolve a dispute. The remedy sought through a negotiation must meet the objective of the Program.	
Test cases	Case development	Activities initiated to explore a potential case. This type of activity may include a review of current jurisprudence, consultations with relevant individuals and groups, and other similar research activities.
	Litigation	Activities carried out as part of a court litigation based on a constitutional provision described in Table 1. It includes activities associated with an action or application taken in pursuit of remedies awarded in an equality or language rights case that received CCP financial assistance. Under some conditions, financial support may also be provided to interveners.
	Impact studies	Research activities undertaken to study important court decisions relevant to the CCP. These studies are distributed to the users of the Program and the public at large.
Source: 1998 Contribution Agreement and key informant interviews		

Table 3 describes the allocation of financial resources, as specified in the Contribution Agreement, for each of these activities. The amounts included in the table are the maximum amounts that may be allocated in one year. Under some conditions, uncommitted amounts at the end of a fiscal year may be carried over into a new fiscal year.<sup>4</sup>

<b>Table 3: Maximum contribution per activity area, per year</b>				
<b>Activity areas</b>		<b>Equality rights</b>	<b>Linguistic rights</b>	<b>Total</b>
Program promotion and access / Negotiation		\$ 165,000	\$ 55,000	\$ 220,000
Test cases	Case development	\$ 191,250	\$ 63,750	\$ 255,000
	Litigation	\$ 1,200,000	\$ 400,000	\$ 1,600,000
	Impact studies	\$ 18,750	\$ 6,250	\$ 25,000
Subtotal		\$ 1,575,000	\$ 525,000	\$ 2,100,000
Program administration				\$ 650,000
Total				\$ 2,750,000
Source: 1998 Contribution Agreement				

In total, Canadian Heritage will be investing an amount of up to \$13.7 million over five years in the CCP.<sup>5</sup>

<b>Table 4: Total investment over five years</b>		
<b>Activities</b>	<b>1998/99 to 2002/03</b>	
Program promotion and access / Negotiation	\$ 1,100,000.00	
Test cases	Case development	\$ 1,275,000.00
	Litigation	\$ 8,000,000.00
	Impact studies	\$ 125,000.00
Program administration	\$ 3,250,000.00	
Total	\$ 13,750,000.00	
Source: 1998 Contribution Agreement		

Finally, Table 5 indicates the number of activities funded during the first three years of the current Contribution Agreement.<sup>6</sup>

**Table 5: Number of activities funded (first three years)**

<sup>4</sup>For details, see Clause 3 of the 1998 Contribution Agreement.

<sup>5</sup>Any surplus or carry-over amount of funds remaining uncommitted at the end of the current Contribution Agreement is to be returned to Canadian Heritage.

<sup>6</sup>It is possible that one test case be the object of several funded activities. The same test case may have been explored through “case development” activities, brought before the courts through “litigation,” and studied through “impact studies.”

<b>Activities</b>	<b>1998/99</b>	<b>1999/00</b>	<b>2000/01</b>	<b>Total</b>
<b>Program promotion and access</b>				
- Equality rights	19	22	33	74
- Linguistic rights	1	9	11	21
- <i>Subtotal</i>	20	31	44	95
<b>Case development</b>				
- Equality rights	18	19	20	57
- Linguistic rights	7	4	13	24
- <i>Subtotal</i>	25	23	33	81
<b>Litigation</b>				
- Equality rights	30	47	48	125
- Linguistic rights	16	14	20	50
- <i>Subtotal</i>	46	61	68	175
<b>Impact studies</b>				
- Equality rights	0	14	4	18
- Linguistic rights	3	2	9	14
- <i>Subtotal</i>	3	16	13	32
<b>Total cases or activities</b>	94	131	158	383
Source: Court Challenges Annual Reports				

## 2.5 Organizational structure

As noted in Section 2.2, a non-profit corporation, the CCPC, administers the Program. The CCPC's organizational structure resembles that of many non-profit organizations. It has a membership (in this case non-profit organizations involved in official languages and equality issues) whose representatives gather annually to, among other things, elect a Board of Directors. It also has an Executive Committee, a series of committees, and a staff working in CCPC's offices located in Winnipeg.<sup>7</sup>

A distinctive characteristic of the CCPC's organizational structure is the presence of two panels: the Equality Panel and the Language Panel. These two structures play a central role, as they are responsible for making final decisions regarding applications for funding of equality or language cases or activities.<sup>8</sup> The establishment of the two panels is a requirement under Clause 8 of the Contribution Agreement.

The CCPC operates at arm's length from the federal government, and as such, no representative of Canadian Heritage or any other department sits on any of the CCPC's structures.

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<sup>7</sup>For a detailed description of the CCPC's organizational structure, see the *Court Challenges Program of Canada Annual Report*.

<sup>8</sup>The CCPC staff do a preliminary screening of funding applications to determine whether they meet the basic eligibility requirements. Funding applications that do not meet these requirements are not reviewed by the two panels.

### 3.0 The CCP logic model

This section presents the CCP's logic model. Its purpose is to illustrate the results chain consisting of:

- ▶ activities that flow from CCP's objectives, as defined in the Contribution Agreement
- ▶ outputs produced as a direct consequence of these activities
- ▶ the intermediate outcomes that can reasonably be expected to result from the outputs of the Program
- ▶ the final outcome, which is supported by the outputs of the Program, but which is substantially influenced by broader social, economic, and political trends.

This logic model reflects both the considerations included in the Contribution Agreement and the objectives pursued by the CCPC:

- ▶ ***Activities / Outputs:*** The key activities and outputs are those related to the funding of test cases. These activities are largely complementary, as financial assistance provided to explore potential cases will typically produce information that can be integrated during the litigation process. Along the same logic, the research activities funded by the Program allow court decisions to be better understood by interested parties, and this knowledge may help to decide on future litigations.

The financial assistance provided to negotiate a settlement or to use alternative dispute resolution processes is expected to lead to settlements that further protect or clarify rights or freedoms. In this sense, the benefits of a specific settlement should go beyond the negotiating parties. It should result in a change or a clarification in policy or legislation, and therefore, it contributes to the expected outcomes of the Program.



Finally, the CCPC undertakes consultations and promotional activities that inform stakeholders about services offered through the CCP and allow them to discuss emerging issues related to the Program's objectives.

- ▶ **Outcomes:** Ultimately, the CCP's activities are expected to assist in clarifying constitutional rights and freedoms, and in facilitating access to courts for linguistic and disadvantaged groups/individuals. In relation to test cases, it should be noted that the expected outcomes are not that minority or disadvantaged groups and individuals will "*win*" their cases. Rather, the Program's purpose is to assist both citizens and their governments to fully understand the scope of protected rights and freedoms and to act accordingly.

Figure 1 (next page) presents the logic model for the CCP.

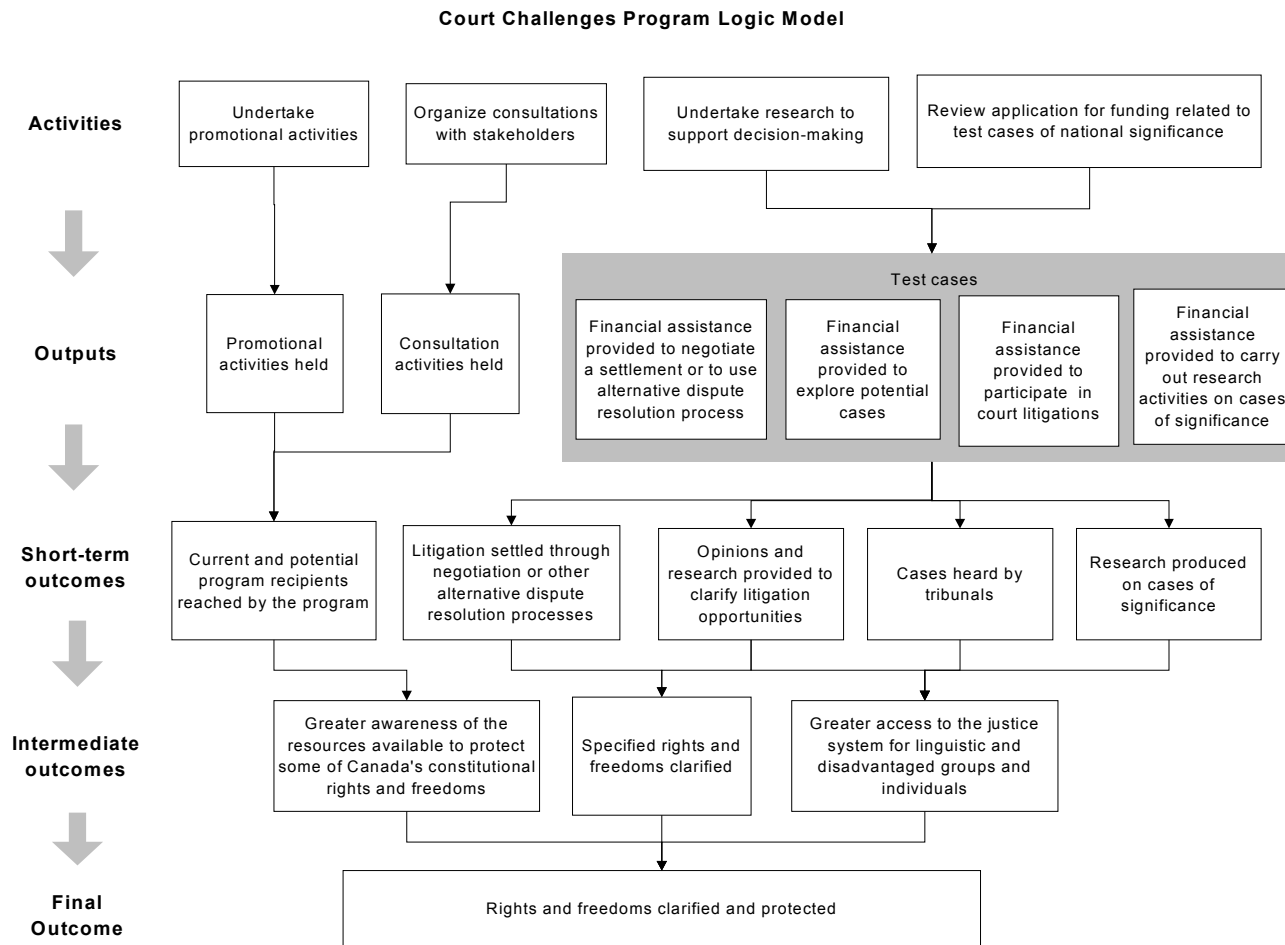


Figure 1