Background Paper

The Role of the Courts in the Recognition of Language Rights

Publication No. 05-57-E
Revised 4 March 2010

Marie-Ève Hudon

Legal and Legislative Affairs Division
Parliamentary Information and Research Service

Library of Parliament Bibliothèque du Parlement

THE ROLE OF THE COURTS IN THE RECOGNITION OF LANGUAGE RIGHTS

(Background Paper)

HTML and PDF versions of this publication are available on Intraparl (the parliamentary intranet) and on the Parliament of Canada website.

In the electronic versions, a number of the endnote entries contain hyperlinks to referenced resources.

Ce document est également publié en français.

Library of Parliament ***Background Papers*** present and analyze various aspects of current issues in an objective, impartial manner. They are prepared by the Parliamentary Information and Research Service, which carries out research for and provides information and analysis to parliamentarians and Senate and House of Commons committees and parliamentary associations.

Publication No. 05-57-E
Ottawa, Canada, Library of Parliament (2010)

CONTENTS

1 THE ADOPTION OF THE *CANADIAN CHARTER OF RIGHTS AND FREEDOMS* AND ITS JUDICIAL IMPLICATIONS 1

2 RECOGNITION OF LANGUAGE RIGHTS BY THE COURTS AND AMENDMENTS MADE TO THE *OFFICIAL LANGUAGES ACT* 2

3 FEDERAL GOVERNMENT SUPPORT FOR THE RECOGNITION OF LANGUAGE RIGHTS 4

4 POLITICAL AND JUDICIAL RECOGNITION 7

5 HOW TO INTERPRET PART VII OF THE *OFFICIAL LANGUAGES ACT* 8

6 CONCLUSION 10

THE ROLE OF THE COURTS IN THE RECOGNITION OF LANGUAGE RIGHTS*

1 THE ADOPTION OF THE *CANADIAN CHARTER OF RIGHTS AND FREEDOMS* AND ITS JUDICIAL IMPLICATIONS

The role of the courts in Canada has changed a great deal over the years. From Confederation to the 1960s, the courts played a minor role in the protection of individual rights. Their primary interest in those years was the constitutional separation of powers; in the name of parliamentary supremacy, they left it to the legislators to protect and ensure respect for civil freedoms. After the *Canadian Human Rights Bill* was adopted in 1960, the government assigned to the courts responsibility for guaranteeing a number of individual rights in areas of federal jurisdiction.

Following the adoption of the *Canadian Charter of Rights and Freedoms* in 1982, constitutional rights and human rights became more widely recognized in Canadian courts. Section 24 of the Charter states that anyone whose guaranteed rights have been infringed or denied may apply to a court of competent jurisdiction to obtain remedy. As a result of that provision, the courts became more active in ensuring that government policies and actions respect the rights set out in the Charter.

That rise in judicial activism has had an impact on the way the Canadian federation works. The courts play a bigger role in the decision-making process by acting as overseers of the action or inaction of governments. They can declare laws invalid, clarify their meaning, determine how they should be applied or even reword them.[1] The federal government, meanwhile, through the Minister of Justice, is required to examine every bill tabled in the House of Commons "in order to ascertain whether any of the provisions thereof are inconsistent with the purposes and provisions of the *Canadian Charter of Rights and Freedoms*."[2]

Opinion is divided when it comes to analyzing the evolution of the role of the courts. For some observers, the changes have been positive because the courts have been given the authority to remedy injustices and protect the rights of individuals and minorities who feel their rights have been violated. For others, the changes have been negative because they have put policy making in the hands of the courts, thereby diminishing the authority of Parliament to the benefit of lobby groups and the judicial system. Moreover, the time, energy and high cost associated with court actions can be obstacles to effective recognition of rights by the courts.

2 RECOGNITION OF LANGUAGE RIGHTS BY THE COURTS AND AMENDMENTS MADE TO THE *OFFICIAL LANGUAGES ACT*

The legal protection of English and French is rooted in the *British North America Act*. Section 133 of this Act allowed for the use of English and French in parliamentary debates and court proceedings, and in the printing and publications of laws by the Parliament of Canada and the Legislature of Quebec. In 1969, the federal government established a more formal framework for the use of English and French in its very first *Official Languages Act*.

Language provisions were included in the Charter in 1982. They pertain to the equality of status of the two official languages (s. 16), the right to use either language in any debates of Parliament (s. 17) or in courts (s. 19), the printing and publication of Acts of Parliament in both languages (s. 18), the right of members of the public to be served in the language of their choice based on the criteria of "significant demand" and "nature of the office" (s. 20), and the right to education in the language of the minority "where numbers warrant" (s. 23).[3]

In 1988, a revised version of the *Official Languages Act* was passed. The current Act takes into account the new constitutional order imposed by the Charter and adds provisions pertaining to language of work in federal institutions, the vitality and development of the official language minority communities, and the advancement of English and French in Canadian society. It also provides a remedy that allows any complainant to appeal to the Federal Court to ensure that his or her language rights are respected.[4]

The adoption of these constitutional and legislative measures gave official language minority communities new tools with which to affirm their rights in court. Since 1982, hundreds of judgments have clarified the scope of language rights. According to André Braën, court action in language matters falls under two main headings: "First, judicial recourse may be needed to clarify a language right; second, it may be needed to effectively implement a language right."[5]

The Supreme Court of Canada has been generous in its interpretation of language rights in recent years. For example, the decision in *Mahe*[6] confirmed the constitutional right of parents in an official-language community in a minority setting to manage and control their own schools. The decision in *Beaulac*[7] recognized that language rights must be interpreted purposively and liberally by the courts. These rights create obligations for the Crown and require the implementation of government measures to ensure the preservation and growth of official-language communities. The decision in *Reference re Secession of Quebec*[8] recognized the principle of protection of minority rights, which, according to the Supreme Court, is an "underlying principle" or "constitutional value" that must be taken into account in exercising constitutional and political authority. In the case of official language communities, the interpretation of such a principle has often implied the importance

of protecting community institutions, which contribute to the preservation and development of those communities. The decision in *Desrochers*[9] held that the government must take the necessary steps to ensure that Francophones and Anglophones contribute equally to the definition and delivery of services. In other words, federal services must be provided in both official languages, and they must be of equal quality.

Judgments by courts at other levels have also been favourable to official language minority communities. In the action to preserve the Montfort Hospital (in Ottawa),[10] the Ontario Court of Appeal acknowledged that the hospital is an institution essential to the survival and growth of the Franco-Ontarian community. The decision by the Health Services Restructuring Commission to reduce on a massive scale the health care services provided by the hospital violated the unwritten constitutional principle of respect for minority rights. The ruling has repercussions nationwide, because the conclusions are being used more and more to support the importance of the preservation of community institutions to the growth and development of official-language communities in a minority setting.

Judgments like these show that language rights must ultimately contribute to the growth and development of official language minority communities. Language rights must be interpreted in context, bearing in mind the specific situation of each community and the specific linguistic dynamic of each province and territory.

Part VII of the *Official Languages Act* sets out, in section 41, the federal government's commitment to "enhancing the vitality of the English and French linguistic minority communities in Canada and supporting and assisting their development and fostering the full recognition and use of both English and French in Canadian society." This section of the Act has been the subject of considerable debate and interpretation since 1988. In 2005, a revised version of the *Official Languages Act* was passed. Three amendments were made to the Act. The intention was to strengthen the binding nature of federal institutions' responsibilities under Part VII of the Act:

- Federal institutions must take positive measures to implement section 41 in order to strengthen and give practical effect to this commitment. This implementation must be in accordance with the provinces' areas of jurisdiction.
- The Governor in Council (i.e., the Governor General on the cabinet's advice) may make regulations stipulating how federal institutions shall fulfil their obligations under Part VII.
- The obligations set out in Part VII are subject to legal remedy.

3 FEDERAL GOVERNMENT SUPPORT FOR THE RECOGNITION OF LANGUAGE RIGHTS

In the late 1970s, the federal government introduced the Court Challenges Program, the objective of which was to help official language minority communities to take legal action to clarify and affirm their language rights. The program came about in a context where the protection of language rights was being challenged in two cases. In *Blaikie*[11] in Quebec, the courts were being asked to determine whether the *Charter of the French Language* prejudiced the application of sections 93 and 133 of the Constitution. And in *Forest*[12] in Manitoba, the issue was whether the restrictions on the use of French imposed by the province in 1890 violated the rights protected by the Constitution under section 23 of the *Manitoba Act, 1870*. The federal government decided to provide financial support to the applicants in these two cases in order to clarify the degree to which the Constitution protected official language minority communities. The program was at that time managed jointly by the Department of Justice and the Department of the Secretary of State.

In 1982, the federal government renewed its support for the Court Challenges Program for an additional three years. The program was updated and its budget increased in order to broaden the scope of its funding to include cases dealing with the language rights newly entrenched in sections 16 to 23 of the Charter.

In 1985, the program was again expanded to provide financial support for individuals and groups wishing to challenge statutes and government policies and practices related to the equality rights newly added to the Charter. To avoid any conflict of interest, it was decided that the program would in future be administered by an independent body, the Canadian Council on Social Development. Under an agreement with the council, the government provided funding for court challenges by a growing number of individuals and groups, thus giving them increased access to the judicial system. Program administration was transferred to the University of Ottawa's Human Rights Research and Education Centre in August 1990.

When the February 1992 budget was tabled, the government announced the cancellation of the program and gave two reasons for its decision. First, the program no longer had a purpose, since it had supported the establishment of a solid body of case law pertaining to Charter rights. Second, in a period of budget cuts, there were cheaper ways of managing funding for court challenges. The Department of Justice would now have to fund court challenges on a case-by-case basis.

Following a storm of protest, the government reinstated the Court Challenges Program in October 1994. Table 1 shows rights covered by the program.

Table 1 – Rights Covered by the Court Challenges Program, 1994–2006

Provision	Description	
Language rights	***Constitution Act, 1867***	
	Section 93	Protects the rights and privileges of denominational schools.
	Manitoba Act, 1870	
	Section 23	Establishes English and French as the two languages to be used in the Manitoba legislature, and in the publication of the laws adopted by the legislature.
	Charter of Rights and Freedoms, 1982	
	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 freedom of expression (eligible cases defined by CCP mandate).
Equality rights	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).

Source: Table prepared by the author using data obtained from *Contribution Agreement between the Department of Canadian Heritage and the Court Challenges Program*, 2004.

Starting in 1994, the program had been managed by a not-for-profit organization independent of the government to which the Department of Canadian Heritage transferred $2.85 million annually through a contribution agreement. The funding provided under that agreement broke down as follows: $525,000 for language rights, $1,575,000 for equality rights and $750,000 for program administration.

The funding provided for language rights was available only to individuals, groups and not-for-profit organizations representing an official language minority community that sought to defend a nationally significant case. The funds were not intended to support:

- challenges to provincial law, policy or practice;
- any case that covers an issue already funded by the program or currently before the courts;
- complaints under the *Official Languages Act*;
- public education, community development, lobbying or political advocacy.[13]

There has been talk in recent years of broadening the mandate of the Court Challenges Program. Some observers expressed the desire that the funding provided by the program apply to provincial law, policy or practice or complaints under the *Official Languages Act*. The logic behind this position was that: "Rights are meaningless without real and accessible remedies."[14] However, the contribution agreement effective from 2004 to 2006 did not provide for any such measure.

The program was cancelled again in September 2006, as part of an expenditure review. The following month, the Commissioner of Official Languages received 118 complaints with respect to that cancellation. The Commissioner conducted an investigation, in which he concluded that "[t]he 2006 expenditure review did not conform to the Government of Canada's commitments expressed in Part VII of the *Official Languages Act* or, with one exception, to the duty of federal institutions to take positive measures."[15] However, acknowledging the government's right to govern, the Commissioner did not make any particular recommendation regarding the program's re-establishment. The Commissioner did recognize the following:

> Despite the significant body of jurisprudence on language rights developed in Canada over the years, there remain a large number of unresolved issues. … The Court Challenges Program directly and significantly assisted in the advancement of language rights in Canada and, in doing so, contributed to the vitality and development of our official language minority communities.[16]

In October 2006, the Fédération des communautés francophones et acadienne du Canada (FCFA), supported by other community organizations, made an application to the Federal Court to declare null and void the federal government's decision to cancel the program's funding. The Standing Committee on Canadian Heritage[17] and the Standing Committee on Official Languages[18] both supported the program's re-establishment.

Following an out-of-court settlement between the FCFA and the Government of Canada, the latter announced the creation of the new Language Rights Support Program. The program, which came into being in December 2009, only covers test cases that focus on linguistic rights. It focuses "on awareness and alternative dispute resolution, yet allowing support for litigation."[19] Canadian Heritage will invest $1.5 million annually to support the new program. Its implementation will be entrusted to a third party represented by a recognized institution serving the public (e.g., a university). It will be associated with Canadian Heritage through a contribution agreement. The program has three objectives:

- to promote awareness of language rights through public education;
- to offer access to alternative dispute resolution processes to settle disputes out of court;
- to support litigation that helps to advance and clarify constitutional language rights when test cases are involved and dispute resolution efforts have not resolved matters.[20]

From 1978 to 2006, the program funded 255 language rights cases:[21] 95 between 1978 and 1992[22] and 160 between 1994 and 2006.[23] An evaluation report produced in 2003 for the Department of Canadian Heritage showed that "many of

these courts cases would never have been brought to the attention of the Courts without the [Court Challenges Program]."[24] Not every request related to language rights received funding from the program,[25] but the program was an additional incentive for official language minority communities to make greater use of the courts to affirm their rights.

The following tables show that cases involving education rights have received the most financial support from the Court Challenges Program since 1985.[26] Further, most of the cases that received funding were heard by a trial court.

Table 2 – Breakdown by Category of Language Rights Cases Funded by the Court Challenges Program, 1985 to 2006

	Number of Cases Funded	Percentage (%)
Education rights (s. 23)	128	54.0
Judicial rights (s. 19)	36	15.2
Language of work, communication and service (s. 20)	36	15.2
Legislative bilingualism (s. 18)	18	7.6
Other	19	8.0
Total	237	100.0

Table 3 – Breakdown by Level of Court of Language Rights Cases Funded by the Court Challenges Program, 1985 to 2006

	Number of Cases Funded	Percentage (%)
Trial court	127	53.6
Court of Appeal	68	28.7
Supreme Court of Canada	42	17.7
Total	237	100.0

4 POLITICAL AND JUDICIAL RECOGNITION

As indicated earlier, litigation has been a means of promoting language rights that has benefited official language minority communities. In some cases, "court action has made it possible to reorient government action that had not always been favourable to minorities or to compel government action outright. … Court action has also made it possible to overcome the political weakness of linguistic minorities in their relations with both the majority and the government."[27]

Court action does not, however, solve all of the problems encountered by these communities. A study released in 2001 by the Office of the Commissioner of Official Languages found that 12 years after the decision in *Mahe*, a significant proportion of Francophone children were not attending French schools, which erodes the vitality of Francophone communities in a minority setting.[28] This is an indication that the development of official language minority communities does not depend on the judicial system alone.

Litigation takes time, energy and money and may or may not lead to government action in the end. In the absence of governments' clear expression of political will to further minority rights, it would appear to serve little purpose for courts to offer an interpretation of those rights. The former minister responsible for official languages, the Honourable Stéphane Dion, made the point that it takes both judicial action and political responsibility to provide optimum protection for official language rights. In his words:

> Legal battles consume resources, wear down litigants, and sometimes create divisions within communities. … Until governments themselves assume their constitutional and legal responsibilities for Canadian bilingualism, citizens and communities will be justified in turning to the courts. At the same time, it is important that court remedy be used advisedly. It must stimulate and encourage governments to move in the right direction, and do nothing that would dissuade them from doing so.[29]

Since the Charter came into force, official languages commissioners have maintained that the recognition of language rights is a responsibility shared by governments and the courts. In his 1985 annual report, Commissioner D'Iberville Fortier wrote:

> Litigation is a lengthy and very costly business, and its outcome is far from sure. It often exacerbates already tense relations between government and governed. However, in seeking to exercise their rights, the minority communities are sometimes left with no alternative. More often than not, they turn to the courts only when their approaches to the political powers have not produced the desired results or have been humiliatingly rebuffed.[30]

In the same vein, Commissioner Dyane Adam stated:

> Although the courts have an essential part to play in clarifying the language rights guaranteed, our parliamentary representatives have the primary responsibility for acting when an ambiguity in legislation leads to inaction by the governmental and administrative structure. This responsibility results from the constitutional undertaking by Parliament and provincial legislatures to promote progress towards equal status and use of English and French.[31]

Commissioner Graham Fraser is of the same view:

> While the courts have increasingly helped to define the scope of language rights and to clarify their implementation, the equality of English and French cannot depend on them alone. Key progress in language reform over the past 40 years has coincided with periods of strong leadership, and thanks to the efforts of a great many people … and to the investments of resources, significant progress has been made. However, there still remains much to be done before the equality of status of Canada's two official languages is achieved.[32]

5 HOW TO INTERPRET PART VII OF THE *OFFICIAL LANGUAGES ACT*

When the government made the decision to cancel the Court Challenges Program in September 2006, official language minority communities immediately turned to the courts and the Commissioner of Official Languages to call for the program's

re-establishment. The complainants submitted that its cancellation was inconsistent with the Government of Canada's commitment under Part VII of the *Official Languages Act*.

The introduction of Part VII of the Act was a milestone in the establishment of language rights and the protection of linguistic minorities in Canada. The interpretation and scope of section 41, the key element of this Part of the Act, have since been the subject of much debate. Before the adoption of Bill S-3 in 2005, An Act to amend the Official Languages Act, the government had taken the stance that section 41 was a political statement that did not create any legal or binding obligations for the government with regard to the protection of linguistic minorities. The parliamentarians' intention, in amending Part VII of the Act, was to make the commitment set out in section 41 binding in law. In other words, this was a way to recognize that federal institutions have a duty to act in implementing this commitment and that a breach of duty would result in legal consequences. The remedy application made by the FCFA before the Federal Court of Canada in October 2006, further to the Court Challenges Program cancellation, was the first opportunity for the courts to determine the scope of the newly reinforced Part VII. The FCFA gave the following reasons for challenging the program cancellation:

- The decision contravenes the 2004 contribution agreement between the Department of Canadian Heritage and the Court Challenges Program, and accordingly eliminates the program's only source of funds;
- The decision contravenes the constitutional principle of respect for minority rights;
- The decision contravenes Part VII of the *Official Languages Act* and was taken without consultation;
- The decision contravenes the federal government's fiduciary responsibility toward official-language communities in a minority setting;
- The decision contravenes section 16 of the *Canadian Charter of Rights and Freedoms*.[33]

In its brief, the FCFA stated that Part VII of the Act required federal institutions to change their decision-making processes, in order to take into consideration the interests of official language minority communities.[34] It said that federal institutions were obliged to take positive measures to foster the development of these communities and that the government's commitment was mandatory and included a firm requirement for consultation.

In its brief, the Attorney General of Canada acknowledged that the Court Challenges Program contributed to the vitality of the official language minority communities.[35] However, he was of the opinion that the decision to end the funding for the program did not deprive the communities of access to justice. The Attorney General of Canada mentioned that the commitment expressed in Part VII of the Act "essentially provides for permanent, but general action on the part of the federal government, as opposed to specific obligations to be fulfilled in particular circumstances."[36] The Attorney

General stated that the government must decide how it wants to give effect to this commitment. In other words, Part VII of the Act does not require the government to hold a consultation every time a decision that may affect the communities is made. According to the Attorney General:

> Part VII does not set out a series of considerations to be taken into account when making ad hoc governmental decisions. It does not impose a duty on federal institutions to change their decision-making processes. … Rather, this part of the Act expresses an ongoing commitment on the part of the federal government. Positive measures, at the government's discretion, are to be taken to bring it into force. … Moreover, the type and extent of these measures, and the amounts that must be spent to implement them, are issues that the state may resolve at its discretion. Part VII does not force the government to engage in consultations and to carry out assessments every time an ad hoc decision is made. Neither does it prevent the government from terminating particular initiatives if it deems such action to be appropriate.[37]

In early 2010, the Federal Court of Canada ruled for the first time on the scope of the new Part VII. In *Picard*,[38] the Court found that obligations arising from Part VII had been breached. It found the Attorney General's interpretation invalid, ruling that the courts must limit themselves to the factual circumstances of a given decision rather than reviewing the government's entire language policy every time a case comes before them based on Part VII. It stated that the courts are simply not equipped to evaluate the government's language policy as a whole, adding that such an evaluation is by its very nature a political matter.[39] The Court said that Parliament's intention must be enforced: deciding that the courts do not have the power to make orders requiring the government to take specific measures to rectify failures to meet its obligations under Part VII would nullify Parliament's choice to "put teeth" into Part VII by making it justiciable.[40]

In a progress report published in June 2008, the Standing Senate Committee on Official Languages recalled that: "beyond those arguments on the legal scope of Part VII, the onus is on the Department of Canadian Heritage, in its capacity as coordinator, to play a leadership role in implementing the government's policy for this part of the Act."[41]

6 CONCLUSION

The courts have contributed much to the recognition of language rights in Canada. A good example of their contribution is the progress made by official-language communities in a minority setting with regard to minority-language education. However, long, complex court cases can be very costly and time-consuming. Moreover, systematic use of the courts can create a culture of confrontation where the parties lock horns more than they communicate and work together.

Official-language communities in a minority setting cannot make any real headway without a clear commitment from governments to the advancement of their rights. Political action cannot be, and must never be, brushed aside. Further, it is important always to bear in mind the important role communities must play in their own

development. The only way communities can ensure their development is to take matters into their own hands and exercise power in practical terms. According to Michael Mandel, "the ability to take advantage of some rights, to make use of them, depends on social power. … Certain rights are not only of little use without social power; their very meaning is different."[42]

NOTES

* The original version of this document was prepared by Marie-Ève Hudon and Marion Ménard.

1. Bernard Fournier and José Woehrling, "Judiciarisation et pouvoir politique," *Politique et Sociétés*, Vol. 19, No. 2–3, 2000, pp. 3–8 [translation].
2. *Department of Justice Act*, R.S. 1985, c. J-2, s. 4.1(1).
3. Note in passing that ss. 16–20 of the Charter apply to both the Parliament of Canada and the Legislature of New Brunswick.
4. Court remedy is made possible in respect of a right under ss. 4–7 and 10–13, parts IV, V and VII, and s. 91 of the *Official Languages Act*.
5. André Braën, "Le recours judiciaire et la gouvernance linguistique," in Jean-Pierre Wallot, ed., *La gouvernance linguistique : le Canada en perspective*, University of Ottawa Press, Ottawa, 2005, p. 131 [translation].
6. *Mahe* v. *Alberta*, [1990] 1 S.C.R. 342.
7. *R*. v. *Beaulac*, [1999] 1 S.C.R. 768.
8. *Reference re Secession of Quebec*, [1998] 2 S.C.R. 217.
9. *Deroschers* v. *Canada (Industry)*, [2009] SCC 8.
10. *Lalonde* v. *Ontario (Commission de restructuration des soins de santé)*, [2001] 56 O.R. (3d) 577.
11. *A.G. Quebec* v. *Blaikie*, [1979] 2 S.C.R. 1016.
12. *A.G. Manitoba* v. *Forest*, [1979] 2 S.C.R. 1032.
13. Website of the Court Challenges Program, "Funding: Language Rights Cases."
14. Arne Peltz, *Deep Discount Justice: The Challenge of Going to Court with a Charter Claim and No Money*, document prepared for the Court Challenges Program, November 1997.
15. Office of the Commissioner of Official Languages, *Investigation of Complaints Concerning the Federal Government's 2006 Expenditure Review*, Final Investigation Report, October 2007.
16. Ibid.
17. Standing Committee on Canadian Heritage, *Court Challenges Program*, Fourteenth Report, 1st Session, 39th Parliament, February 2007.
18. Standing Committee on Official Languages, *Communities Speak Out: Hear Our Voice. The Vitality of Official Language Minority Communities*, Seventh Report, 1st Session, 39th Parliament, May 2007; Standing Committee on Official Languages, *Protection of Language Rights Under the Court Challenges Program*, Second Report, 2nd Session, 39th Parliament, December 2007.

19. Canadian Heritage, "Language Rights Support Program."

20. Ibid.

21. It should be noted that these figures do not include funding provided to the other sectors covered by the program, that is, case development, impact studies, promotion, program access and negotiation. Financial assistance for those sectors accounts for almost half of the program's budget.

22. Richard Goreham, *Language Rights and the Court Challenges Program: A Review of its Accomplishments and Impact of its Abolition*, Report to the Commissioner of Official Languages, Ottawa, 1992, p. 6.

23. Court Challenges Program of Canada, *Annual Report 2006–2007*, 2007, p. 56.

24. Prairie Research Associates, *Summative Evaluation of the Court Challenges Program: Final Report*, prepared for the Department of Canadian Heritage, 26 February 2003.

25. The approval rate for applications related to language rights was 75.6% between 1994 and 2006. For more details, see Court Challenges Program of Canada (2007).

26. The data are taken from Court Challenges Program of Canada (2007) and Linda Cardinal, "Le pouvoir exécutif et la judiciarisation de la politique au Canada: Une étude du Programme de contestation judiciaire," *Politique et Sociétés*, Vol. 19, No. 2–3, 2000, pp. 43–64. Similar data are not available prior to 1985.

27. Braën (2005), p. 135 [translation].

28. Angéline Martel, *Rights, Schools and Communities in Minority Contexts: 1986–2002. Toward the Development of French through Education, An Analysis*, Office of the Commissioner of Official Languages, Ottawa, 2001.

29. Stéphane Dion, "The proper use of the law in the area of the official languages," Notes for an address, keynote address to members of the Ontario Bar Association, Toronto, 24 January 2002.

30. Commissioner of Official Languages, Annual Report 1985, Minister of Supply and Services Canada, Ottawa, 1986, pp. 11–12.

31. Office of the Commissioner of Official Languages, *Language Rights 2003–2004*, Minister of Public Works and Government Services Canada, Ottawa, 2005, p. iii.

32. Office of the Commissioner of Official Languages, *Language Rights 2007–2009*, Minister of Public Works and Government Services Canada, Ottawa, 2009, p. 5.

33. Brief of the applicant in the *Fédération des communautés francophones et acadienne du Canada* v. *The Queen* case, Federal Court of Canada, T-622-07.

34. Ibid.

35. Brief of the respondent in the case *Fédération des communautés francophones et acadienne du Canada* v. *The Queen*, Federal Court of Canada, T-622-07.

36. Ibid. [translation].

37. Ibid. [translation].

38. *Picard* c. *Commissaire des brevets et Office de la propriété intellectuelle du Canada*, [2010] FC 86 [currently in French only].

39. Ibid., para. 68.

40. Ibid., para. 76.

41. Standing Senate Committee on Official Languages, *Study on the Implementation of Part VII of the Official Languages Act*, Progress Report, 2nd Session, 39th Parliament, June 2008.

42. Michael Mandel, *The Charter of Rights and the Legalization of Politics in Canada*, Wall and Thompson, Toronto, 1994, p. 176.