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BACKGROUND PAPER

The Role of the Courts in the Recognition of Language Rights

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Marie-Ève Hudon

Legal and Legislative Affairs Division
Parliamentary Information and Research Service

The Role of the Courts in the Recognition of Language Rights
(Background Paper)

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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 analysing 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

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* (OLA).

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 (section 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.[4] 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.[5]

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, a law professor and lawyer specializing in linguistic rights, 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."[6]

The Supreme Court of Canada has been generous in its interpretation of language rights in recent years. For example:

- The decision in *Mahe*[7] 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*[8] 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*[9] 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 *Lavigne*[10] recognized the quasi-constitutional status of the OLA. The Court indicated that this Act reflects some basic goals of our society and therefore takes precedence over other federal legislation.
- The decision in *DesRochers*[11] 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),[12] 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.

In Alberta, the Court of Appeal of that province agreed in November 2010 to hear *Caron*.[13] The Court of Appeal ruling will be of major importance for the Francophone communities of Alberta and Saskatchewan:

> The repercussions of a favourable decision for Mr. Caron by the Court of last resort would therefore have the effect of rendering all laws published only in English null to the extent that they are not consistent with the province's constitutional obligations to publish in both languages, as they existed at the moment of transferring its territory to Canada in 1870. These conclusions would also extend to the laws of Saskatchewan.[14]

Judgments like these show that language rights must ultimately contribute to the growth and development of official language minority communities. Language rights are based on the principle of substantive equality, which means equal access to services of equal quality for members of both official language communities in Canada. They must be interpreted in context, bearing in mind the specific situation of each community and the specific linguistic dynamic of each province and territory.

3 FEDERAL GOVERNMENT SUPPORT FOR THE RECOGNITION OF LANGUAGE RIGHTS

3.1 THE COURT CHALLENGES PROGRAM

In the late 1970s, the federal government introduced the Court Challenges Program (CCP), 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*[15] 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*[16] 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 CCP 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 CCP 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 CCP 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 CCP 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. Administration of the CCP 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 CCP 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 CCP 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.
	Section 133	Protects the use of English and French during parliamentary debates, before the courts and in the printing and publication of the laws adopted by the Parliament of Canada and the Quebec legislature.
	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 (s. 2) and multiculturalism (s. 27) (eligible cases defined by CCP mandate).

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

Starting in 1994, the CCP 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 million 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*; and
- public education, community development, lobbying or political advocacy.[17]

In the early 2000s, there was talk of broadening the mandate of the CCP. 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."[18] However, the contribution agreement effective from 2004 to 2006 did not provide for any such measure.

The CCP 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 reached the following conclusion:

> The 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.[19]

However, acknowledging the government's right to govern, the Commissioner did not make any particular recommendation regarding the re-establishment of the CCP. 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.[20]

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 CCP funding. The Standing Committee on Canadian Heritage[21] and the Standing Committee on Official Languages[22] both supported re-establishment of the CCP.

3.2 THE LANGUAGE RIGHTS SUPPORT PROGRAM

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 (LRSP). The LRSP, which came into being in December 2009, only covers test cases[23] that focus on linguistic rights. It focuses "on awareness and alternative dispute resolution, yet allowing support for litigation."[24] It is administered by the University of Ottawa.[25] As shown in Table 2, the LRSP has four components relating to four specific objectives.

Table 2 – Components and Objectives of the Language Rights Support Program

Component	Description	Objective
Information and promotion	This component funds information and promotion initiatives or impact studies related to constitutional language rights and those that serve to inform or educate the Canadian public.	To promote awareness of language rights through public education.
Alternative dispute resolution (ADR)	This component involves the use of non-judicial means to resolve disputes (e.g., mediation, arbitration, negotiation, the opinion of an expert chosen by both parties, mini-trial or any other legitimate ADR process).	To offer access to alternative dispute resolution processes to settle disputes out of court.
Legal remedies	This component provides funding for trial proceedings, authorizations for appeal, and appeals.	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.
Exploratory study (since April 2012)	This component provides funding to prepare an applicant's file (through an exploratory study) in support of the ADR process.	Support the applicant in his or her decision to engage in an ADR process.

Sources: Canadian Heritage, *Language Rights Support Program*; and LRSP, "Making an Application," *Applying for Funding*.

The last contribution agreement between the Government of Canada and the University of Ottawa ran from 2009 to 2012. It provided a budget of $1.1 million for 2009–2010 and $1.5 million for the two remaining fiscal years.[26] In February 2012, the Minister of Canadian Heritage and Official Languages announced that LRSP's funding has been renewed until 2017, a total investment of $7.5 million over five years.[27] The LRSP funding terms were modified following this announcement and include a new exploratory study component.[28] The new contribution agreement runs from 2012 to 2017.

The rights targeted by the LRSP are the same as those shown in Table 1, except for equality rights. The application may not pertain to challenges that occur in the following circumstances:

- Under the *Official Languages Act of Canada*;
- Through appeals or judicial review of actions or measures taken by the Office of the Commissioner of Official Languages of Canada or by the Commissioner;
- Pursuant to any provincial or territorial legislation pertaining to the protection of official language rights;

- Against provincial or territorial act, policy or practice other than those sections [pertaining to the official languages]; or
- Based on sections of the Canadian constitution other than those sections [pertaining to official languages].[29]

3.3 OVERVIEW OF THE SITUATION

As regards the number of remedies funded, data collection and compilation methods have changed slightly over years. It is possible, however, to provide a general overview of the situation. From 1978 to 2012, the CCP and the LRSP funded some 300 language rights remedies:[30] 95 between 1978 and 1992,[31] 160 between 1994 and 2006,[32] and 41 between 2009 and 2012.[33]

Tables 3 and 4 show that remedies involving education rights received the most financial support from the CCP between 1985 and 2006.[34] Further, most of the remedies that received funding were heard by a trial court.

Table 3 – Breakdown by Category of Language Rights Remedies Funded by the Court Challenges Program, 1985–2006

	Number of Remedies Funded	Percent (%)
Education rights (s. 23 of the Charter)	128	54.0
Judicial rights (s. 19 of the Charter; s. 133 of the *Constitution Act, 1867*; and s. 23 of the *Manitoba Act, 1870*)	36	15.2
Language of work, communication and service (ss. 16 and 20 of the Charter)	36	15.2
Legislative bilingualism (ss. 17 and 18 of the Charter; s. 133 of the *Constitution Act, 1867*; and s. 23 of the *Manitoba Act, 1870*)	18	7.6
Other	19	8.0
Total	237	100.0

Sources: Court Challenges Program of Canada, *Annual Report 2006–2007*, 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, Nos. 2–3, 2000, pp. 43–64.

Table 4 – Breakdown by Level of Court of Language Rights Remedies Funded by the Court Challenges Program, 1985–2006

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

Sources: Court Challenges Program of Canada, *Annual Report 2006–2007*, 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, Nos. 2–3, 2000, pp. 43–64.

Table 5 presents data on approved applications funded by the LRSP between 2009 and 2012 as regards trial, appeal, leave to intervene and intervention. Once again, education rights received a large part of the funding, as did legislative and judicial rights.

Table 5 – Breakdown by Category of Applications Approved by the Language Rights Support Program, 2009–2010 and 2011–2012

	Number of Applications Approved	Percent (%)
Education rights (s. 23 of the Charter)	20	48.8
Legislative and judicial rights (ss. 17 and 19 of the Charter; s. 133 of the *Constitution Act, 1867*; and s. 23 of the *Manitoba Act, 1870*)	14	34.1
Linguistic equality and the language in which members of the public communicate with government and receive government services (ss. 16 and 20 of the Charter)	7	17.1
Other	0	0
Total	41	100.0

Sources: Language Rights Support Program, *2009–2010 Annual Report*, 2010, pp. 33–34; and Language Rights Support Program, *2010–2011 Annual Report*, 2011, p. 17; Language Rights Support Program, *2011–2012 Annual Report*, 2012, p. 17.

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.[35]

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.[36] 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.[37]

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.[38]

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.[39]

Commissioner Graham Fraser is of the same view:

> While there is no doubt that the courts will continue to play a key role in implementing language rights, we must remember that all these decisions, which have further advanced the equality of English and French, are the result of determined individuals and official language communities, who have invested a lot of time and money, in addition to the difficulties and efforts required in presenting a unified voice. While seeking a court remedy is sometimes necessary, even inevitable, our hope is that the courts will encourage governments to demonstrate more leadership and further engage its citizens in dialogue. It is through such a dialogue that the true equality of English and French can be best achieved.[40]

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

An important language rights issue is the interpretation of Part VII of the Act. In force since 1988, section 41 sets out the following commitment:

> The Government of Canada is committed to (*a*) enhancing the vitality of the English and French linguistic minority communities in Canada and supporting and assisting their development; and (*b*) fostering the full recognition and use of both English and French in Canadian society.

Since 1988, the Act has been amended only once, in 2005, further to the enactment of *An Act to amend the Official Languages Act*.[41] Three amendments were made to the Act to strengthen the binding nature of federal institutions' responsibilities under Part VII of the Act:

- Federal institutions must take positive measures to implement the commitment set out in 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 advice of Cabinet) 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.

Although Part VII of the Act was the subject of extensive debate and various interpretations between 1988 and 2005, the scope of Part VII as amended in 2005 has been interpreted in only a very summary fashion by the courts.

When the government made the decision to abolish the CCP in September 2006, official language minority communities immediately turned to the Commissioner of Official Languages and to the courts to call for the CCP's re-establishment. The complainants submitted that the abolition of the CCP ran counter to the Government of Canada's commitment under Part VII of the *Official Languages Act*.

The remedy application made by the FCFA before the Federal Court of Canada in October 2006 was the first opportunity for the courts to determine the scope of the newly reinforced Part VII. An out-of-court settlement between the FCFA and the Government of Canada prevented the courts from ruling on the scope of this part of the Act. An examination of the briefs filed in this remedy reveals conflicting interpretations. Table 6 presents the interveners' positions as they appear in the briefs filed in *Fédération des communautés francophones et acadienne du Canada* v. *The Queen*.[42]

Table 6 – Interpretation of Part VII of the *Official Languages Act* in *Fédération des communautés francophones et acadienne du Canada v. The Queen*

FCFA	Attorney General of Canada	Commissioner of Official Languages
Part VII requires federal institutions to change their decision-making processes to consider the needs of official language minority communities. The commitment set out in section 41 of the Act is enforceable and includes a firm requirement for consultation. Parliament's intent in 2005 was to make Part VII enforceable.	Part VII does not impose specific obligations on federal institutions. The amendments to the Act in 2005 did not change the nature of this part of the Act. The government has broad discretion in the measures and methods it uses to implement the commitment set out in section 41 of the Act. The courts must consider all the government's actions relating to official languages without evaluating the specific measures taken by each federal institution. Part VII does not force the government to consult and evaluate each time a specific decision is made.	Part VII includes an obligation not to interfere with the development of official language minority communities and to take concrete steps to support their vitality. This requires federal institutions to take the specific needs and interests of these communities into consideration, to evaluate the impact of their decisions on community vitality and to consider measures to offset a potential negative impact. It is not enough for the courts to evaluate all the government's actions relating to official languages, since Parliament's intent in 2005 was precisely to restrict the government's discretionary power in the implementation of Part VII.

Source: Brief of the applicant, Brief of the respondent and Memorandum of Fact and Law of the Intervener, the Commissioner of Official Languages, in *Fédération des communautés francophones et acadienne du Canada v. The Queen*, Federal Court of Canada, T-622-07.

Since then, only three decisions pertaining to Part VII have been rendered by trial courts.[43] None of those decisions were appealed. Consequently, there appears to be no clear indication as to the interpretation that should be given to these obligations imposed on federal institutions. Other court rulings will probably be needed before the scope of Part VII of the Act is clarified.

In a report published in June 2010, the Standing Senate Committee on Official Languages identified three guiding principles in taking positive measures:

- Federal institutions must consider the needs of official language minority communities and the promotion of linguistic duality in developing their programs and policies.
- Federal institutions must take steps to learn about the needs and interests of official language minority communities through consultation or other similar mechanisms.
- Federal institutions must demonstrate that they have evaluated the linguistic impact of their decisions.[44]

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.[45]

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, Nos. 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. *Official Languages Act*, R.S.C. 1985, c. 31 (4th Supp.).

5. 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*.

6. André Braën, "Le recours judiciaire et la gouvernance linguistique," in *La gouvernance linguistique : le Canada en perspective*, ed. Jean-Pierre Wallot, University of Ottawa Press, Ottawa, 2005, p. 131 [translation].

7. *Mahe v. Alberta*, [1990] 1 S.C.R. 342.

8. *R. v. Beaulac*, [1999] 1 S.C.R. 768.

9. *Reference re Secession of Quebec*, [1998] 2 S.C.R. 217.

10. *Lavigne v. Canada*, [2002] 2 S.C.R. 773.

11. *DesRochers v. Canada (Industry)*, [2009] SCC 8.

12. *Lalonde v. Ontario (Commission de restructuration des soins de santé)*, [2001] 56 O.R. (3rd) 577.

13. Part of this case was referred to the country's highest court to seek interim costs for the plaintiff to fund his defence, a request that the Supreme Court allowed, *R. v. Caron*, [2011] SCC 5. It is the first language rights case in which a court issued an order for interim costs. For further information on this case, see *La Cause pour l'avenir du français en Alberta* (Caron Cause).

14. Language Rights Support Program [LRSP], *Case Summary:* R. *vs.* Caron*, 2011 CSC 5*.

15. *A.G. Quebec v. Blaikie*, [1979] 2 S.C.R. 1016.

16. *A.G. Manitoba v. Forest*, [1979] 2 S.C.R. 1032.

17. Court Challenges Program [CCP], *Funding: Language Rights Cases*.

18. 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.

19. Office of the Commissioner of Official Languages, *Investigation of Complaints Concerning the Federal Government's 2006 Expenditure Review*, Final Investigation Report, October 2007.

20. Ibid.

21. House of Commons, Standing Committee on Canadian Heritage, *Court Challenges Program*, Fourteenth Report, 1st Session, 39th Parliament, February 2007.

22. House of Commons, 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; House of Commons, Standing Committee on Official Languages, *Protection of Language Rights Under the Court Challenges Program*, Second Report, 2nd Session, 39th Parliament, December 2007.

23. Under the LRSP, a test case is (1) a case that involves an issue or raises an argument that the courts have not yet addressed; (2) a case involving an issue on which the lower courts have issued a decision that is being appealed and is likely to be taken farther; or (3) a case that raises an issue on which contradictory decisions have been handed down in Canada. LRSP, *2009–2010 Annual Report*, 2010, p. 9.

24. Canadian Heritage, *Language Rights Support Program*.

25. The LRSP is managed through a partnership between the University of Ottawa Faculty of Law and the Official Languages and Bilingualism Institute.

26. The maximum amounts for legal remedies are $125,000 for the funding of trials, $10,000 for funding requests for leave to appeal and $35,000 for the funding of appeals. Principal parties may apply for a maximum reimbursement of $10,000, while interveners are entitled to $40,000. LRSP, "Legal Remedies – Federal," *Applying for Funding*.

27. LRSP, "Funding for the Language Rights Support Program is Renewed by the Federal Government," Press release, Ottawa, 9 February 2012.

28. LRSP, "Website Reflects New Funding Terms," *Publications and Media Center*.

29. LRSP, "Legal Remedies – Federal," *Applying for Funding*.

30. It should be noted that these figures do not include funding provided to the other sectors covered by the programs (e.g., impact studies, alternative dispute resolution methods, exploratory study). As for LRSP, the numbers include applications approved for funding with respect to both leave to intervene and intervention.

31. 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.

32. CCP, *Annual Report 2006–2007*, 2007, p. 56.

33. LRSP (2010), p. 34; LRSP, *2010–2011 Annual Report*, 2011, p. 17; LRSP, *2011–2012 Annual Report*, 2012, p. 17. Between 2009 and 2012, the LRSP funded nine cases of alternative dispute resolution methods.

34. Data on CCP-funded remedies are not available prior to 1985.

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

36. 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.

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

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

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

40. Office of the Commissioner of Official Languages, "Preface," *Language Rights 2009–2011*, Minister of Public Works and Government Services Canada, Ottawa, 2012, p. ii.

41. *An Act to amend the Official Languages Act (promotion of English and French)*, S.C. 2005, c. 41.

42. *Fédération des communautés francophones et acadienne du Canada v. The Queen*, Federal Court of Canada, T-622-07.

43. *Picard v. Commissioner of Patents and Canadian Intellectual Property Office*, [2010] FC 86; *Fédération des communautés francophones et acadienne du Canada v. Canada (Attorney General)*, [2010] FC 999; *LaRoque v. Société Radio-Canada*, 98 O.R. (3rd) 220 (Ontario Superior Court of Justice).

44. Senate, Standing Senate Committee on Official Languages, *Implementation of Part VII of the* Official Languages Act*: We can still do better*, 3rd Session, 40th Parliament, June 2011, p. 44.

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