



***On Implementing the Right of Victims of Racial Discrimination
To Be Assured an Access to Effective Remedies***

Recommendations Presented to the
United Nations Committee on the Elimination of Racial Discrimination,
at its 70th Session, on the Occasion of its Examination of the Periodic Report of Canada

By the

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The present recommendations deal exclusively with the obligation of the States parties to the *International Convention on the Elimination of All Forms of Racial Discrimination*, under section 6, assure to everyone within their jurisdiction effective remedies, through the competent national tribunals and other State institutions, against any acts of racial discrimination, as well as the right to seek from such tribunals just and adequate reparation.

In the documentⁱⁱ containing the 17th and 18th periodic reports of Canada, at paragraph 80, Canada claims, under the heading “Article 6: “Effective protection and remedies”, that the Department of Canadian Heritage funds the Court Challenges Program (CCP). The program is described as follows:

the CCP assists official language minorities and disadvantaged individuals and groups who would not otherwise be able to pursue their Constitutional and Charter rights in relation to language and equality rights. An evaluation of the CCP in 2003 found that it has been successful in supporting important court cases that have a direct impact on the implementation of rights and freedoms covered by the Program. The individuals and groups benefiting from the CCP are located in all regions of the country and generally come from official language communities or disadvantaged groups, such as Aboriginal people, women, racial minorities, gays and lesbians, etc. The Program has also contributed to strengthening both language and equality-seeking groups' networks.

The *Ligue des droits et libertés* agrees with this description of the importance of the program, as did the *United Nations Committee on Economic, Social and Cultural Rights* (CESCR), which recommended in May 2006 that Canada extend the Court Challenges Programme to permit funding of challenges with respect to provincial and territorial legislation and policies.ⁱⁱⁱ

However, contrary to what is stated in the document presented by Canada to the *Committee on the Elimination of Racial Discrimination* (CERD) to the effect that the CCP has been extended to March 31st, 2009, the members of the CERD must be made aware that the CCP has in fact been abolished in September 2006.^{iv}

The CCP is a vital instrument in the promotion of a balance between the State and its citizens who try to contest the validity of statutes, regulations or government actions which they deem contrary to the fundamental rights spelled out in the *Canadian Charter of Rights and Freedoms*, more specifically the equality rights and the linguistic rights. More particularly, the abolition of this program jeopardises the capacity of the groups more susceptible to being the victims of racial discrimination, to defend their fundamental rights before the judicial authorities, since these groups are often faced with insuperable financial obstacles.

In addition, since the abolition of the CCP, the Supreme Court of Canada has pronounced a judgment on the obligation of the State to provide advance costs in order to facilitate the access to justice for plaintiffs without financial resources, in cases having a special interest for the broader community.^v The majority of a divided court has refused to broaden the access to such a financing.

In order to respect one of the obligations spelled out in article 6 of the *International Convention on the Elimination of All Forms of Racial Discrimination*, Canada must not only restore the CCP

but must also improve it. In particular, in the context of the examination by the CERD of the 17th and 18th periodic reports of Canada, the *Ligue des droits et libertés* of Québec recommends:

- **That Canada immediately reinstate the Court Challenges Program (CCP) as it was before its abolition in September 2006.**
- **That Canada broaden the CCP to include the financing of contestations linked to the provincial and territorial statutes and policies.**
- **That Canada make an evaluation of the resources necessary for the carrying out of the mandate of the CCP as a whole and that it improve it accordingly.**

ⁱ The *Ligue des droits et libertés* is an independent, non-partisan non-profit organization founded in 1963. Its objectives are to defend and promote the rights recognized in the *International Bill of Human Rights*, which it defends as universal and indivisible. The *Ligue des droits et libertés* is a member of the *International Federation for Human Rights* (FIDH — Website: www.fidh.org). It is one of the oldest human rights' organizations in the Americas.

ⁱⁱ CERD/C/CAN/18, April 5th 2006, paragraph 80.

ⁱⁱⁱ E/C.12/CAN/CO/4, E/C.12/CAN/CO/5, 22 May 2006, paragraph 42.

^{iv} Note: the activities of the CCP are temporarily maintained with regard to the management of its existing commitments.

^v *Little Sisters Book and Art Emporium v. Canada (Commissioner of Customs and Revenue)*, 2007 SCC 2. On the Web: <http://www.canlii.org/ca/cas/scc/2007/2007scc2.html>