

In Canada, the law's primary purpose is to help ensure a safe and peaceful society. For the law to fulfill this objective, it must meet the challenges of our ever evolving society; old laws must be changed to reflect the current social and political climate and new laws must be created to better address societal issues. An integral part of reforming the law to be more representative of Canadian needs, capacities, and circumstances is to give a voice to underrepresented and marginalized Canadians who have had their Charter rights infringed upon by a political decision. To achieve this goal, the Court Challenges Program was created to provide Canadians an opportunity to mount a legal challenge against a law they believe infringes on their Charter-protected rights. The Court Challenges Program gives Canadians power to keep the government in check and protects Charter-protected rights regardless of the will of the majority or those in power.

The Court Challenges Program enables Canadians to remedy the laws that infringe on their Charter rights, making Canadian law more reflective of Canada's beliefs and values. The conventional means of encouraging a law to be refined is through appealing the relevant case to the Supreme Court of Canada. However, underrepresented and marginalized groups do not have the resources to support a case being appealed to the SCC - they require external support to help them throughout the entire legal proceedings whose cost can sometimes amount to \$2.5 million. *Halpern v. Canada* was a case, partly funded by the Court Challenges Program, that redefined marriage by reformulating the phrasing to "the voluntary union for life between two persons to the exclusion of all others". *Halpern v. Canada* was the last in a long line of cases that were supported by the Court Challenges Program, decidedly giving outcast groups a place in Canada as fully-fledged citizens. Without the funding program, LGBTQ+ groups would not have had the capacity to continue their legal battles. Moreover, they would have lost the momentum that was so critical in

ensuring the protection of the inherent rights of LGBTQ+ groups, leaving a section of the population, already tormented by discrimination, no recourse.

The Charter guides sensible laws regarding the fundamental rights of Canadians. While the Charter sets out basic rights that must be honoured, the Court Challenges Program gives Canadians a practical fighting chance to protect their Charter-protected rights.

The Court Challenges Program provides Canadians the ability to engage in a nuanced legal debate about the legitimacy of a law created by the state. In Canada, this ability ensures government accountability, which is a fundamental objective of the program. By granting Canadians, in part, the funding to mount a reasonable legal challenge, the program is creating an added incentive for the legislative branch to ensure that the laws they create and any of their foreseeable effects are consistent with the Charter and would not infringe on Charter rights - it's better for the legislative branch to think thoroughly about their laws instead of facing potential backlash. Although foreseeing all the effects a law will have is almost impossible, the Court Challenges Program ensures that the government has an opportunity to review laws and policies.

Although the Court Challenges Program has merit in theory, it has not been effectively translated into practice without fault. The version of the program before it was terminated in 2006 was wrought with issues with selectivity: many members of the program's governing committee were from groups that had received funding from the program, groups such as LEAF or Egale, which is a serious conflict of interest. Moreover, the program initially covered language rights and then grew to cover equality rights, but by only supporting cases that involve language and equality rights, Parliament is effectively valuing those rights over the other rights in the Charter, which contradicts the principle of the equality of Charter rights. In addition to issues with transparency with selectivity, the program had issues with

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financial transparency, and a loose system for allocating funds to those who truly need the money. The most troublesome issue with the Court Challenges Program is its efficacy: the program has never covered the full cost of litigation, and the money offered to qualifying litigants is inappreciable compared to the full costs of robust constitutional litigation.

Following its reinstatement in 2017, in an effort to address the issues that plagued its predecessor, the government has claimed that the selections will be made more transparently, and that the program will now include more sections of the Charter. Although these initiatives are a step in the right direction, the program needs an enhanced, accountable selection process that will appoint disinterested members, but the funding allocated to the program, \$5 million annually and at least \$1.5 million of that to clarify language rights, is insufficient for supporting the number of cases in which a law would infringe on one or more of the Charter rights now included in the program's scope. This disparity between the amount of money each individual case requires and the amount of money granted to the entire program makes the program less effective for more cases.

During its short lifetime, the Court Challenges Program funded 575 cases, and lead to landmark cases in which it gave a voice to Canadians who would have otherwise had no recourse against unjust laws that infringe on Charter rights and the people who exploit such laws. The program is critical to advancing the rights of marginalized Canadians and improving the defence of rights set out by the Charter against the unlimited resources of the Crown. The program's merit of refining the law so that it is more reflective of Canadian needs, capacities, and circumstances, and that its power helps to ensure government accountability is met equally with its drawbacks of biased selection in its governing committee, and that its efficacy is challenged by its inability to appreciably support individuals and groups trying to advance their rights. However, the program's reinstatement carries with it its mission to give underrepresented and marginalized Canadians a voice in

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the legal system, and we must support its reinstatement to contribute to the well functioning of our legal system.

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