



Brief Regarding Bill C-13, *An Act to amend the Official Languages Act, to enact the Use of French in Federally Regulated Private Businesses Act and to make related amendments to other Acts*

Dear Chair and Members of the Standing Senate Committee on Official Languages,

As we understand that the Standing Senate Committee is currently studying Bill C-13, *An Act to amend the Official Languages Act, to enact the Use of French in Federally Regulated Private Businesses Act and to make related amendments to other Acts*, we are pleased to share with you the following brief, submitted on behalf of the Court Challenges Program (CCP), in response to an invitation from the House of Commons Standing Committee on Official Languages.

As the Committee likely knows, the CCP is an organization funded by the Department of Canadian Heritage and operated at arm's length by the University of Ottawa that provides funding to Canadians who seek to pursue test cases of national significance in the areas of constitutional human rights and official language rights. Information about the CCP, including the rights covered and the eligibility criteria for applications for funding, can be found on our [website](#).

All decisions about funding applications are made by one of two Expert Panels: the Human Rights Expert Panel and the Official Language Rights Expert Panel, members of which are appointed by the Minister of Canadian Heritage and the Minister of Official Languages respectively. Each Expert Panel, through their Chairs, wrote to this Committee in April 2022 regarding Bill C-13. We are submitting this brief from the CCP on behalf of both Expert Panels and are pleased to share our **joint recommendation** for Bill C-13.

First of all, it is our joint submission that, while we laud the legislation's enshrining of each branch of the CCP through statutory language, we recommend that the Committee clarify this obligation through a simple amendment **mandating that the Minister of Canadian Heritage shall fund each branch of the CCP**. Without clear obligatory language, both Panels fear that the intent of this legislation—to establish the CCP, or a similar program, as a permanent part of Canada's constitutional architecture advancing and protecting key official language rights and human rights—could be undermined by the more permissive existing legislative language of Bill C-13. In our opinion, such an amendment is of crucial importance to ensure a true legislated commitment to the funding of the CCP. The absence of an **obligation** to provide funding, we believe, risks jeopardizing the CCP's long-term survival. These concerns are not hypothetical: the Committee is undoubtedly aware of the CCP's history of having its funding entirely rescinded at various times in its history. Under the current text of Bill C-13, a Heritage Minister of a government unconvinced of the importance of the Program, could decide to reduce or even eliminate the CCP's funding without contravening the legislation.

Secondly, we would also like to see the wording of the relevant provisions amended in two other respects. As currently worded, the relevant provisions limit access to funding to “test” cases of national significance that seek to clarify *and* assert constitutional rights. There have been cases of national significance, particularly with respect to official language rights, that did not necessarily aim to clarify rights *per se*, but which rather sought to assert and to preserve rights whose scope had already been decided by the courts. The funding of such cases is, in our view, vital in promoting a greater understanding of and respect for constitutional and quasi-constitutional rights. For this reason, we would recommend providing an option for the funding of cases of national significance that are

not necessarily “test cases” and indicating that funded cases can clarify *or* assert rights, rather than using the conjunction “and”.

Recommended Amendments:

1. That clause 22(1) of Bill C-13 be amended by removing proposed s.43(1)(c), and adding the following section:

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43 (1.1) To promote a greater understanding of official language rights and advance the equality of status and use of both official languages, the Minister of Canadian Heritage may shall provide funding to an organization, independent of the Government of Canada, responsible for administering a program whose purpose is to provide funding for test cases or other cases of national significance to be brought before the courts to clarify ~~and~~ or assert constitutional and quasi-constitutional official language rights.

2. That clause 52 of Bill C-13 be amended as follows:

52 The Department of Canadian Heritage Act is amended by adding the following after section 7:

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7.1 To promote a greater understanding of human rights, fundamental freedoms and related values, the Minister ~~may shall take measures to~~ provide funding to an organization, independent of the Government of Canada, responsible for administering a program whose purpose is to provide funding for test cases or other cases of national significance to be brought before the courts to clarify ~~and~~ or assert constitutional human rights.


We see the inclusion of the CCP in Bill C-13 as encouraging evidence of the government’s commitment to the Program as a whole and their intention to treat both branches of the Program in an even-handed way. In particular, we hope that Bill C-13’s clear intention to ensure that both branches of the Court Challenges Program are treated equally will be maintained as the Bill makes its way through Parliament’s legislative process.

We thank you for your thoughtful consideration of this brief and our previous correspondence. We remain available to appear before the Committee to answer any questions regarding this brief. To that end, we can be reached through the Director of the Court Challenges Program, Marika Giles Samson, at dirpcj.ccp@uottawa.ca.

Respectfully submitted on 3 November 2022.



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