



# Annual Report 2020–2021



# Foreword

I am, once again, pleased to introduce the Annual Report of the Court Challenges Program (CCP) in my capacity both as Chair of the CCP's Management Board and President of the University of Ottawa. The CCP, like all of us, navigated significant turbulence over the period from April 2020 to March 2021 but, as this Annual Report indicates, it has continued to deliver on its mission to fund test case of national importance in human rights and official language rights, for the benefit of all Canadians.

Over the course of the last year, I have had occasion to reflect on the reasons that underlie the University of Ottawa's decision to host the CCP. I would like to take this opportunity to share a few of my thoughts.

First of all, prior to welcoming the CCP in 2018, the University of Ottawa had already served as host to one of the CCP's predecessors, the Language Rights Support Program (LRSP). The LRSP was an excellent fit for the public mission of the University's Official Languages and Bilingualism Institute (OLBI), and indeed, the broader institutional identity of the University as a proudly bilingual institution. Indeed, having these programs located at the University of Ottawa has allowed their staff to work and deliver services in a fluently bilingual environment. And both the LRSP and the CCP's mission to support cases that probe the

boundaries and seek clarity for certain areas of Canadian constitutional law very much resonates with the University's research mission.

Secondly, for the CCP to be able to operate efficiently, effectively, and independently, it needs an institutional partner that can provide a solid administrative infrastructure. Being hosted by the University of Ottawa gives the CCP access to the University's established accounting, human resources, facilities management, and information technology (IT) services. This allows the CCP's staff and Expert Panels to focus on the core of the Program's work: evaluating the applications of Canadians seeking funding to bring test cases of national importance. This same administrative infrastructure also helps ensure that the Program remains accountable for the public funds that it spends by respecting the Contribution Agreement with the Government of Canada.

Finally, and most importantly, the partnership with the University of Ottawa helps preserve the CCP's independence: neither the Government of Canada nor the University of Ottawa has any influence over who is funded by the CCP. Those decisions are the exclusive responsibility of the CCP's two Expert Panels and only they, and the staff who carry out their decisions, know who has applied to the CCP and who has been funded. The Government and the University both understand

that if—and only if—the CCP is independent, can it play its important role in upholding Canada's constitutional democracy, funding cases that hold governments to account for their constitutional commitments.

The University of Ottawa is now, as ever, proud to host the Court Challenges Program and to support its crucial work.

—Jacques Frémont



## Director's Message

It is with immense pride that we present the 2020-2021 Annual Report for the Court Challenges Program (CCP). It has been an extraordinary year in the life of the CCP, as it has been for all Canadians. In March 2020, when the world locked down in response to the COVID-19 pandemic, the CCP had to pivot quickly to shift to work online, including for the meetings of the Expert Panels who decide which applications are selected for funding. I cannot express the full extent of my gratitude for the grace, good cheer, and spirit of accommodation that everyone associated with the Program exhibited during the transition and since, all focused on ensuring that the work of the CCP continued.

While applications declined in the first few months of the pandemic as many potential applicants, the legal profession, and the courts themselves adapted to new ways of working, the numbers of applications have been steadily increasing in recent months. Indeed, these “unprecedented times” have exposed a host of social pressures and legal issues, providing fertile ground for innovative legal approaches. It is also worth noting that the applications received were of high quality: the percentage of applications selected for funding rose from an average of 42% in 2019-2020 to 62% in 2020-2021.

Perhaps at no other time has the CCP benefited more from being hosted by the University of Ottawa, and we are grateful for the support that this provides. The University's IT services facilitated a smooth transition to remote work. Accounting systems were adapted. Public health directives were put into place and communicated. Wellness resources were made available for staff. Our relationship with the University of Ottawa is one that the CCP values as it provides the administrative support and infrastructure that we need for CCP staff to concentrate on the core work of the Program: helping the public prepare applications for funding and ensuring that, where granted, CCP funds are properly used to pursue constitutional cases of national significance.

In turn, CCP staff support the crucial work of the Human Rights and Official Languages Expert Panels. These Panels, and each of their members, operate entirely independently of both the government and the University. They exercise their expert judgment impartially and judiciously, examining every application according to the Terms of Reference that each Panel has set for itself, selecting those applications with the greatest potential to clarify the law in a particular area for the benefit of all Canadians. The Expert Panels and the staff are constantly inspired by the creativity, intelligence, and hard work that goes into the applications that we read and the cases that emerge from

them. As the sample cases described in this Annual Report exemplify, the Court Challenges Program continues to support the *avant-garde* of Canadian constitutional human rights and official language rights law.

Three years since it was reinstated in 2018, the Program is demonstrably delivering on its promise: 160 files have been funded, 85% of which were from representatives of equality-seeking groups, whether historically disadvantaged people under the Human Rights branch or official language minority communities under the Official Language Rights branch. In this, the CCP plays a crucial role in making real the promise of the *Canadian Charter of Rights and Freedoms* itself: that, in Canada, every person is equal in dignity and entitled to be treated fairly and, where government fails to live up to its constitutional commitment to do so, that failure can be challenged and vindicated in the courts.

—Marika Giles Samson





# Message from the Interim Chair of the Human Rights Expert Panel

I am delighted to have this opportunity to share a few thoughts on the exciting and inspiring work of the Human Rights Expert Panel of the Court Challenges Program (CCP) over the course of the 2020-2021 year.

2020-2021 was a year of rapid change for all of us, as we adapted not only to online work but navigated the many and varied competing challenges occasioned by the pandemic and its lockdowns, whether disruptions to school and work, additional care responsibilities, social isolation, or the general atmosphere of anxiety. I am in awe of how gracefully my colleagues on the Expert Panel navigated this new reality and I am proud of how our deliberative work continued, uninterrupted and undeterred, with the same deep sense of commitment and collegiality that we have had from the beginning.

We are grateful to the staff of the CCP, who pivoted quickly and seamlessly to move our work online. Their efforts in assisting potential applicants navigate the application process, facilitating our Expert Panel meetings and supporting our deliberative work, and communicating and carrying out the decisions that we make, have been invaluable. We know that they, in turn, benefit from the steadfast support of our arms' length host institution, the University of Ottawa.

As mentioned in the Director's Message, there was a decrease in the number of funding applications to the CCP in the first few months of the pandemic, although the applications that did come in were of a high quality. We were particularly gratified to see so many "graduating" applications, test cases that were initially funded at the case development stage that came back for litigation funding. We are acutely aware of the challenges that so many community organizations and the legal profession faced in the pandemic as normal operations were shut down and court processes disrupted. We are inspired by their tenacity and curious how many of the social and legal issues raised by the pandemic—whether the inequities that COVID has exposed or the impacts on civil liberties—play out in future applications. We hope that the upward trend in the number of applications that we saw in the latter part of 2020-2021 will continue and we always welcome more applications for funding in all areas covered by the Human Rights Branch of the CCP.

This has been a year of evolution for the membership of the Human Rights Expert Panel: our former Chair, Professor Joanne St-Lewis, stepped down from the Panel in June 2020; another of our members, Professor Larry Chartrand, retired in March 2021. Professor Adelle Blackett chaired our panel through the majority of this reporting period and stepped down in June 2021 to lead the federal government's *Employment Equity Act* Review Task

Force. While we sorely miss our former colleagues, we are already welcoming new members to our Expert Panel and look forward to welcoming more in the coming months.

It has been a hard year, but a good year. I think I can speak for Panel colleagues when I say that, in the midst of chaos and change, the work that we do for the CCP has been particularly meaningful. It remains a pleasure and privilege to serve Canadians by supporting the work of those trying to realize the full promise of the *Canadian Charter of Rights and Freedoms*.

—Catherine Dauvergne



# Message from the Chair of the Official Languages Expert Panel

Once again, the Official Language Rights Expert Panel (the Panel) of the Court Challenges Program (CCP) can, despite the pandemic, celebrate the success of the CCP for the 2020-2021 fiscal year. While the way in which the CCP works has been somewhat affected, the work of the Panel and the monitoring of cases has continued unhindered. The CCP is essential to the vitality of official language minority communities as it, by facilitating their access to justice, supports the recognition and advancement of their fundamental language rights. We know that without CCP funding, many language rights cases would never have seen the light of day in Canada.

CCP support has allowed the development of new jurisprudence articulating and clarifying official language rights, without which the flourishing of official language minority communities would have been greatly limited. Applications for funding address a wide variety of language rights, demonstrating both the interest and the need for such protection in many aspects of Canadians' lives. As Canada evolves, it is our duty to ensure that language rights are respected so that the ongoing vitality of our official language minority communities can be ensured.

A cornerstone of the Program's success is its independence. That is why, according to the agreement that establishes the CCP, the organization is separate and independent from government. The Program's independence ensures that Panel members can make decisions free from influence and based solely on the facts and the law. The appointment of Panel members results from an independent recruitment process with clearly articulated criteria and a public call for applications. This has resulted in the Panel having members who represent all parts of Canada. However, there is currently a vacancy in representation from the English-speaking community in Quebec, and it is essential that this vacancy be filled in the coming months to ensure that both official language communities are represented on the Panel.

The Panel would also like to see the official languages rights component of the CCP enshrined in Part VII of the *Official Languages Act*, as proposed in Bill C-32. This would strengthen the right of Canadians to bring test cases of national significance before the courts to enforce and clarify constitutional and quasi-constitutional language rights.

I am very proud of the work done by the Panel members and the CCP staff. Their professionalism demonstrates a strong commitment to the respect and promotion of the language rights of official language minority communities in Canada, as well as to the objectives and independence of the CCP.

The Court Challenges Program remains essential to a Canadian future that is respectful of our two official languages.

–Gilles LeVasseur



## CCP Staff

CCP staff, working closely with the Director, are on the front lines of the Program. Tasked with the day-to-day administration of the Program, the staff ensure the efficient operation of the CCP and the independence of its decision-making process. Every day, staff field questions from potential funding applicants about the application process, coordinate the receipt of funding applications, support the Expert Panels in their selection process and communicate their decisions, and ensure the disbursement and proper management of CCP funds. Our staff are the primary point of contact for those who seek to access and engage with the Program at all stages of the funding process.



Eric Cormier  
Legal Counsel



Geneviève Colverson  
Legal Counsel



Aminata Nyara Barry  
Office Administrator



## MISSION

- The CCP supports test cases of national importance seeking to affirm and clarify certain constitutional and quasi-constitutional official language rights and human rights in Canada.
- By providing financial support, the CCP aims to help Canadians access the justice system in order to assert their constitutional rights.
- The CCP provides a simple and equitable application process through a modern, accessible website.

## VISION

- The CCP provides vital financial support to test cases of national importance seeking to clarify and affirm official language rights and human rights in Canada. In doing so, the CCP not only helps Canadians to assert their rights, it supports the evolution of constitutional rights jurisprudence, reaffirms the rule of law, and contributes to making Canada a fairer and more equal country.





## VALUES

- Independence in our decision making.
- Accessibility of our services.
- Quality services in both official languages.
- Fairness and respect in all our interactions.

# Human Rights Branch

**The CCP provides financial support to cases aimed at affirming and clarifying the following rights guaranteed by the *Canadian Charter of Rights and Freedoms*:**

- section 2 (fundamental freedoms, including freedom of religion, expression, peaceful assembly and association)
- section 3 (democratic rights)
- section 7 (right to life, liberty and security of person)
- section 15 (equality rights)
- section 27 (multiculturalism) – in support of arguments based on equality rights
- section 28 (equality of the sexes)



# Human Rights Branch

## Examples of Funded Cases

**1** Under the Human Rights Branch of the CCP, the beneficiary was granted test case development funding for a challenge to federal legislation and approaches that violate section 15 of the *Charter* by discriminating against genderqueer and non-binary persons. At the foundation of their proposed case, the funding recipient intends to establish before the courts that gender identity and expression are analogous grounds of discrimination protected under section 15 of the *Charter*. As part of this case, the funding recipient explores the federal *Policy Direction to Modernize the Government of Canada's Sex and Gender Information Practices*, a policy meant to reduce the risk that the Government of Canada may infringe on the human rights of gender diverse people. The proposed challenge is focused on the harms caused to gender diverse people by the inconsistent implementation of this policy.

**2** The Human Rights Expert Panel granted test case development funding for a legal challenge regarding the federal government's responsibility for the abuse faced by Indigenous children in government sanctioned residential schools that were provincially-owned, Church-owned, privately-owned, publicly-owned, or sanatorium-operated. The crux of the funding recipient's argument is that, since the institutions in question were established, funded, controlled, and managed by Canada, the federal government was directly involved in *Charter* violations by these institutions, by virtue of its agents' actions. To do so, they seek to establish that the federal government, by way of its fiduciary duty towards Indigenous persons and its mandating of the residential school system more broadly, is responsible for the *Charter* breaches against the children they removed from their families. In essence, the funding recipient seeks to demonstrate that the ultimate responsibility for the *Charter* breaches committed in residential schools, even where those institutions were not directly run or operated by Canada, lies with the federal government due to its mandating and supervision of those institutions.



## Human Rights Branch

### Examples of Funded Cases

**3** The Human Rights Expert Panel granted test case development funding for a challenge to the federal government's financial response to the COVID-19 pandemic and the disparate impact of this response on persons with disabilities. The challenge considers whether the disparity between the assistance available for persons with disabilities and that made available by the federal government to able-bodied persons impacted by the pandemic is discriminatory. The funding recipient's principal argument is that the federal government's approach to financial relief for persons with disabilities during the pandemic violates the section 7 and 15 *Charter* rights of persons with disabilities. The matter was fully developed using CCP test case development funding and was subsequently granted litigation funding to enable the beneficiary to pursue the case before the courts.

**4** Under the Human Rights Branch of the CCP, litigation funding was granted for a test case brought to challenge the restrictive movement routines in federal penitentiaries. Specifically, this challenge is brought against Correctional Service Canada's use of Structured Intervention Units, a practice that the beneficiary argues infringes the residual liberty rights of prisoners in their custody, beyond what is provided for in legislation and without the accordance of procedural fairness rights. The funding recipient takes issue with the restrictive movement routine and both the overuse and overly restrictive implementation of lockdown procedures in federal institutions, arguing that they essentially amount to the practice of solitary confinement where inmates are restricted to their cells for most of the day. They assert that the *Corrections and Conditional Release Act* and its regulations, which permit the implementation of institution-specific directives and the Structured Intervention Units, therefore violate sections 7 and 15 of the *Charter*.

# Human Rights Branch

## FUNDING GRANTED IN 2020–2021

Number of applications	Test Case Development	Trial	Appeal	Intervention	Total
<b>Received*</b>	<b>24</b>	<b>28</b>	<b>4</b>	<b>10</b>	<b>66</b>
<b>Funded</b>	<b>14</b>	<b>13</b>	<b>3</b>	<b>8</b>	<b>38</b>

*\*This includes those applications received and decided by the Expert Panel.*

## NUMBER OF APPLICATIONS FUNDED BY CATEGORY OF RIGHTS COVERED BY THE CCP

*(Note that the table total is higher than the total applications funded because some cases involve more than one category of rights.)*

	Fundamental freedoms	Democratic rights	Right to life, liberty and security of person	Equality rights	Multiculturalism	Equality of the sexes
<b>Test Case Development</b>	<b>2</b>	<b>2</b>	<b>10</b>	<b>13</b>	<b>3</b>	<b>3</b>
<b>Trial</b>	<b>1</b>	<b>1</b>	<b>8</b>	<b>13</b>	<b>2</b>	<b>0</b>
<b>Appeal**</b>	<b>0</b>	<b>0</b>	<b>3</b>	<b>2</b>	<b>0</b>	<b>0</b>
<b>Intervention***</b>	<b>0</b>	<b>0</b>	<b>6</b>	<b>7</b>	<b>0</b>	<b>1</b>

*\*\*Applications for an appeal may include applications for a motion for leave to appeal. \*\*\*Applications for intervention may include applications for leave to intervene.*

# Official Languages Rights Branch

The CCP provides financial support to cases aimed at affirming and clarifying the following rights:

## OFFICIAL LANGUAGE RIGHTS ENSHRINED IN:

- Sections 93 and 133 of the *Constitution Act, 1867*
- Section 23 of the *Manitoba Act, 1870*
- Sections 16 to 23 of the *Canadian Charter of Rights and Freedoms* (the “*Charter*”)
- Any parallel constitutional provision
- The language aspect of freedom of expression in section 2 of the *Charter* when invoked in a case involving official language minorities

## THE JUSTICIABLE PARTS OF THE *OFFICIAL LANGUAGES ACT*:

- Part I, section 4 (Proceedings of Parliament)
- Part II, sections 5 to 7 and 10 to 13 (Legislative and Other Instruments)
- Part IV (Communications with and Services to the Public)
- Part V (Language of Work)
- Part VII (Advancement of English and French)
- Section 91 (Staffing)



# Official Languages Rights Branch

## Examples of Funded Cases

**1** The Official Language Rights Expert Panel approved litigation funding for a recipient who alleges that the province of British Columbia has failed to fulfill its obligation to upgrade or provide new French-language schools that are substantively equivalent to the majority English-language schools in the province of British Columbia. In doing so, the recipient relies on the Supreme Court of Canada's recent interpretation of Section 23 of the *Charter* in *Association des parents de l'école Rose-des-vents v. British Columbia (Education)* and *Conseil scolaire francophone de la Colombie-Britannique v. British Columbia*. The beneficiary argues that the province has not acted diligently and has unduly delayed fulfilling their positive obligation to fund and create substantively equivalent minority language schools by failing to take concrete actions to do so for more than a decade. Consequently, the recipient is seeking the intervention of the court to force a prompt implementation of the Supreme Court of Canada's previous judgments, as well as damages to compensate for the province's continued *Charter* violations.

**2** In 2020, under the Official Language Branch, the CCP funded proceedings before the Federal Court in which the beneficiary alleges that the Minister of Canadian Heritage (PCH) violated his obligations regarding the development and vitality of minority Francophone communities by failing to adopt positive measures to promote French-language production outside of Québec in its agreement with Netflix. Moreover, the beneficiary alleges that PCH did not adopt positive measures in the agreement to promote the full recognition and use of French and English in Canadian society, in addition to claiming that the sum of \$25 million (out of a total investment of \$500 million) is insufficient for French-language content. According to the beneficiary, these are significant violations of Parts VI and VII of the *Official Languages Act*. Having been able to benefit from the assistance of counsel using CCP funds, the beneficiary has recently filed a motion with the Court in order to amend his submissions to the Court to present an argument centered on PCH's specific obligations under the *Official Languages Act*, and to clarify the requested remedies. Additionally, the beneficiary seeks to file new evidence that highlights the negative impact on official language minority communities resulting from PCH's decision to accept Netflix's investment in its present form.

# Official Languages Rights Branch

## Examples of Funded Cases

**3** Under the Official Languages Branch of the CCP, the recipient received test case development funding to determine whether the Department of Immigration, Refugees and Citizenship Canada (IRCC) breached its obligations under sections 16 and 16.1 of the *Charter* and Part VII of the *Official Languages Act* by not putting in place fixed means of achieving the targets established for Francophone immigration in minority Francophone communities. According to the recipient, while the targets set by IRCC for Francophone immigration would maintain and contribute to the vitality of linguistic minority communities in Canada, the actual number of Francophone immigrants fall well below these targets. Consequently, the beneficiary will be developing the argument that growth in Francophone minority community populations makes a significant contribution to the vitality and development of Francophone minorities in Canada, and that the IRCC's lack of a concrete Francophone immigration plan is detrimental to this growth. According to the beneficiary, the absence of a plan to achieve its targets should be considered a breach of the government's positive obligations under the *Charter* and the *Official Languages Act*.

**4** The Official Language Rights Expert Panel approved funding for a possible intervention before the Supreme Court of Canada in *Good Spirit School Division No. 204 v. Government of Saskatchewan, et al.* In this case, the beneficiary was trying to obtain intervenor status in order to argue that the outcome of this decision could have a significant impact on the underfunding of certain French-language public schools in minority settings. To that end, the beneficiary would have advanced the argument that the duplication of French-language public and Catholic schools in a small community can have a detrimental effect on the constitutional rights of parents to have their children educated in a minority language non-denominational educational institution of high quality, particularly in the context where Catholic schools admit non-Catholic students. The beneficiary intended to propose to the Court that the issues raised in this case are particularly relevant in the context of small communities where resources are limited. However, this intervention was not able to go forward as the Supreme Court of Canada dismissed the application for leave to appeal the Saskatchewan Court of Appeal's judgement.

# Official Languages Rights Branch

## FUNDING GRANTED IN 2020–2021

Number of applications	Test Case Development	Trial	Appeal	Intervention	Total
<b>Received*</b>	<b>6</b>	<b>15</b>	<b>2</b>	<b>3</b>	<b>26</b>
<b>Funded</b>	<b>5</b>	<b>10</b>	<b>2</b>	<b>2</b>	<b>19</b>

*\*This includes those applications received and decided by the Expert Panel.*

## NUMBER OF APPLICATIONS FUNDED BY CATEGORY OF RIGHTS COVERED BY THE CCP

*(Note that the table total is higher than the total applications funded because some cases involve more than one category of rights.)*

	Education rights	Legislative and legal rights	Equality and linguistic advancement	Right to services and communication	Right to freedom of expression
<b>Test Case Development</b>	<b>2</b>	<b>1</b>	<b>2</b>	<b>0</b>	<b>0</b>
<b>Trial</b>	<b>5</b>	<b>0</b>	<b>5</b>	<b>1</b>	<b>0</b>
<b>Appeal**</b>	<b>2</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>Intervention***</b>	<b>1</b>	<b>0</b>	<b>1</b>	<b>0</b>	<b>0</b>

*\*\*Applications for an appeal may include applications for a motion for leave to appeal. \*\*\*Applications for intervention may include applications for leave to intervene.*



# Expenses by Branch

## APPLICATIONS FUNDED IN 2020–2021

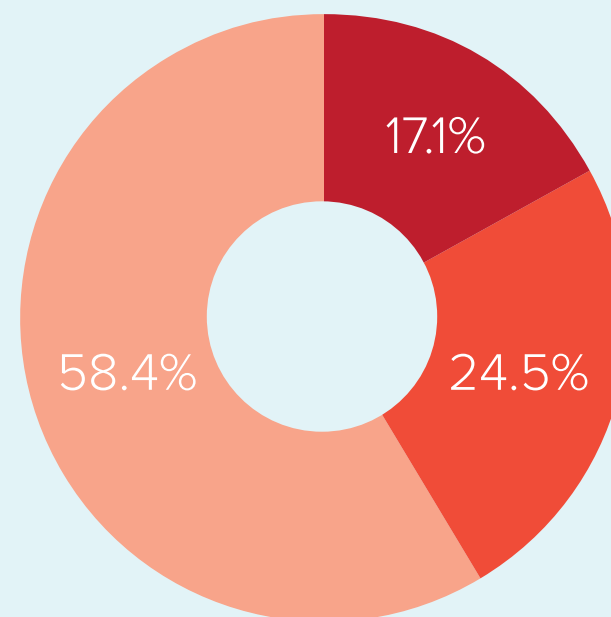
<b>CASES – OFFICIAL LANGUAGES RIGHTS</b>	<b>1 433 000 \$</b>
Test Case Development	73 000 \$
Trial	1 225 000 \$
Appeal	35 000 \$
Intervention	100 000 \$
<b>CASES – HUMAN RIGHTS</b>	<b>3 109 576 \$</b>
Test Case Development	214 745 \$
Trial	2 490 841 \$
Appeal	150 000 \$
Intervention	253 990 \$

# Statement of Revenues and Expenses (Cash Flow)

YEAR ENDED MARCH 31, 2021

<b>REVENUES</b>	<b>6 713 281 \$</b>
Contribution from the Department of Canadian Heritage	4 979 734 \$
Surplus carried over from 2019–2020	1 733 547 \$
<b>EXPENSES</b>	<b>4 817 723 \$</b>
Administration ●	824 647 \$
Cases – Official Languages Rights* ●	1 181 755 \$
Cases – Human Rights* ●	2 811 321 \$
<b>SURPLUS</b>	<b>1 895 558 \$</b>

*\*Net figure, which includes new applications funded in 2020–2021 as well as unused funds returned at the conclusion of previously funded cases (including under the former CCP and the LRSP). Indeed, between the reinstatement of the CCP in 2018 and the end of 2020–2021 fiscal year, the CCP recovered almost \$600,000 in unused funds from files approved under predecessor programs.*



**FOLLOW US**



[pcjccp.ca](https://pcjccp.ca)

THE COURT CHALLENGES PROGRAM

1 NICHOLAS STREET, SUITE 1507, OTTAWA (ONTARIO) K1N 7B7

613-562-5702 • [INFOPCJ.CCP@UOTTAWA.CA](mailto:INFOPCJ.CCP@UOTTAWA.CA)

COVER PHOTO: “[Supreme Court of Canada in summer](#)”, by Dig deeper, used under license [CC BY 4.0](#)

LAYOUT DESIGN: [pulpandpixel.ca](https://pulpandpixel.ca)