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Chair

Ms. Yasmin Ratansi

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● (1140)

[*English*]

The Chair (Ms. Yasmin Ratansi (Don Valley East, Lib.)): Good morning, everyone. It's still morning, isn't it?

To the witnesses, I'm sorry, we have an emergency, and that's what we do—we go out and vote.

Committee members, I'd like to request that we finish this at a quarter to one, because a lot of us have to run to other meetings at one o'clock. Is that agreeable?

I think on your side there are only two of you here today, and both have to go. And I have to go to a meeting at exactly one o'clock.

Mrs. Sylvie Boucher (Beauport—Limoilou, CPC): Yes, I have another meeting.

The Chair: So without much ado, let's start off.

Welcome to all of you here. We're doing the court challenges program.

We have with us, from the National Anti-Racism Council of Canada, Madam Muyinda.

From the Native Women's Association of Canada, we have Beverley Jacobs—welcome, we've heard you before—and Ms. Mary Eberts. Thank you for being here.

And from Regroupement québécois des Centres d'aide et de lutte contre les agressions à caractère sexuel, we have Madam Carole Tremblay.

Ah, *j'ai oublié* Captain Jennifer Lynn Purdy, speaking as an individual.

On teleconference we have Professor Kathleen Mahoney, and McGill University associate professor of law, Colleen Sheppard.

Welcome to everyone. I think we should start off with those who are on the teleconference.

Since we have so many witnesses and so many questions as well, could we ask you to limit your remarks to between five to seven minutes? Would it be possible?

Okay, you said five, thank you. Five minutes is perfect.

We'll start off with Professor Mahoney from the University of Calgary.

Professor Kathleen Mahoney (Professor, Faculty of Law, University of Calgary): Thank you.

The Chair: Since you can't see me, could you time yourself? My gavel won't be heard by you.

Prof. Kathleen Mahoney: I have my watch in front of me. Do you want me to go ahead?

The Chair: Yes, please. Thank you.

Prof. Kathleen Mahoney: Thank you very much.

I really would like to thank the committee for this opportunity to provide some input. I must admit, however, I haven't had too much time to prepare because it was rather sudden. In any event, I wish to give you my thoughts on this, as scattered as they may be. But I think this is so important that you're discussing this, and notwithstanding the fact that I would have liked a bit more preparation time, I still wanted very much to do this.

In terms of my overview of the court challenges program, I see it as having enormous benefit to Canada. In its essence, it's an affirmative action program, you might say, for the disadvantaged in our country. But I think the spinoff benefits are quite profound and I think the committee should think about those benefits as well as the benefits to disadvantaged groups.

First of all, one benefit to Canada is that the court challenges program provided a vehicle whereby our most important laws, our charter, would be interpreted by the court. And as the court challenges program allowed other people to come forward with their views about how laws impact on them, the chances of having the supreme law of our country interpret it in the best possible way, I think, was enormously enhanced because very broad-ranging views about the impacts of laws on people were heard, and the context of the application of the law was able to be much better understood. So that's one benefit.

Another benefit of court challenges, in my view, was the engagement of society that it promoted. I'm a legal academic and I do some practice in the courts. But what I've discovered...and I was very much engaged, as a member of the legal committee of LEAF but also as counsel in a couple of the important cases, in particular the Keegstra case and the Butler case, the "speech" cases. In my experience in doing these cases, I worked with a Calgary law firm and the whole firm got behind this effort in a very good way. People would literally stay all night to help assemble the factums, to help give advice on the arguments, and so on. I think it engaged the legal profession. It also engaged the media to a large extent, academics, and the public generally.

I remember when a lot of those first decisions were coming out of the Supreme Court of Canada on equality. They were front page stories in *The Globe and Mail* and other newspapers, and they engaged the public in what it means to be a Canadian, what does equality mean in our country, what does discrimination mean, how are people being treated and why are they taking these cases. I mean, it generated that kind of national debate, and I think that's a very good thing. I think for many people it was the first time they started to become engaged with their own sense of Canadian identity. So education was also a benefit that overlapped with the engagement of society.

When you think about cases like the Jane Doe case, for example, where the police used a woman as bait in order to solve a rape case, that engaged the public on the difference between good policing, equal policing, policing that respected the dignity of women, and policing that didn't. You can come to the same result—apprehending criminals—but the Jane Doe case underscored how very important it is to keep equality principles in mind in police enforcement.

Similarly, there's education on hate speech. In the Keegstra case, we had a schoolteacher preaching hatred from the front of the classroom. I think that case demonstrated to Canadians that there are huge responsibilities on teachers. There's also huge power there.

The Keegstra case was not only a prosecution of one man by the government, but when equality groups weighed in and when LEAF weighed in on that and started talking about the effects of speech on people, I think it raised awareness in the Canadian public of these very important matters. Those are just a couple of cases, but there were many that would also have that impact.

A fourth benefit is access to justice, of course. We have legal aid in this country, but it's very limited in its application. It's only for people who've committed serious criminal offences, and it doesn't touch any of the jurisprudence that's required to define disadvantage and equality, and what our country means when it says that it's a country that respects human rights. The court challenges filled, to quite a large extent, that void and gave access to justice to many other people who never, ever otherwise would have appear before the courts.

● (1145)

Fifth, I'm just about out of time, but I'll quickly say that I think another enormous benefit—and I've certainly experienced this myself in my travels internationally—is that it has enhanced Canada's reputation beyond measure in terms of our relationships with other countries, because it's such a democratic concept to enable those in society who are the most disadvantaged to challenge government.

You've no doubt heard the expression "speaking truth to power". Court challenges allowed that to happen. Countries around the world recognized that as being hugely creative, courageous, and really putting in action and putting in substance all the lovely rhetoric around human rights that states like to present as being their positions. Canada actually did something about it, and with huge results.

I have much more to say, but my time is up. I'd be very happy to try to answer some of your questions.

The Chair: Thank you very much.

We'll now go to Associate Professor Colleen Sheppard, for five minutes.

Could you please stick within that timeline so we can get in as much as possible? Thank you.

Prof. Colleen Sheppard (Associate Professor, Faculty of Law, McGill University): Thank you.

Thank you for inviting me here. I teach Canadian constitutional law, discrimination and the law, and feminist legal theory. I also work with the McGill Centre for Human Rights and Legal Pluralism.

In the past I have been involved in working on a volunteer basis with the National Association of Women and the Law on a constitutional challenge, the Gosselin case, with the Legal Education and Action Fund. Also, I've worked with the Centre for Research-Action on Race Relations, in the Lavoie case, challenging the citizenship preference, and with the Ontario Métis association.

I have four points I want to raise. As with Professor Mahoney, I didn't have time to do extensive research for this because I was just asked at the end of last week to appear before you.

First of all, let me say that I commend the committee for being concerned. I was asked to look particularly at the impact on women, and in particular, on all diverse communities of women, including aboriginal women and women from racialized communities. I think it's important to remember that gender equality engages us in an inclusive approach that is attentive to how inequality affects the lives of diverse women facing multiple overlapping and intersecting forms of discrimination, including sexism, racism, the ongoing effects of colonialism, poverty, ageism, exclusions linked to disabilities, sexual orientation, and language.

I applaud the committee for its concern with looking at women and discrimination against women from an inclusive and broad perspective. I think it will be important to ensure your deliberations are informed by consultations with a broad range of women from those communities.

The second idea I want to mention is really more of a constitutional point. When you're thinking about the impact of the abolition of the court challenges program, specifically on aboriginal women and women from racialized communities, it's important to be aware of how divisions of power questions affect the issue.

The court challenges program, as you know, funded challenges to federal laws, policies, and programs. While there's no doubt a need to develop the parallel initiatives at the provincial level, a number of areas of federal jurisdiction are of particular significance to aboriginal women and women from racialized communities.

I will name just a few. If you look specifically at the Constitution Act, 1867, the federal government has express jurisdiction over “Indians and land reserved for the Indians”; “Naturalization and aliens”; federal penitentiaries; criminal law; “Marriage and Divorce”; unemployment insurance, which includes maternity and parental benefits; and shared jurisdiction over old-age pension, survivors, and disability benefits.

Now, a simple enumeration of these domains of jurisdiction, I think, makes clear how critical many of them are to the lives of aboriginal women and women from racialized communities.

You heard testimony last week, I believe, from Sharon McIvor and her challenge to the exclusionary provisions of the Indian Act. Other examples of equality issues implicating areas of federal jurisdiction in particular include immigration and refugee law, situation of domestic workers, spousal sponsorship, domestic violence and refugee determinations, human trafficking and the sex trade, citizenship preferences in civil service, survivor pensions and elderly women, the treatment of aboriginal women in federal penitentiaries, family property on first nations reserve lands, questions about how racialized women are treated in the criminal justice system, and exclusion of precarious workers from various government benefit schemes.

I haven't done extensive research on all of the equality cases funded through the court challenges program, but many cases that were funded through that program touched upon some of the issues I've just enumerated. You can go to the annual reports or your researchers can look through the annual reports of the court challenges program to get a full enumeration of the cases.

A third point I want to make is this. I think the court challenges program is particularly important because it provided funding to community organizations, civil society organizations devoted to the advancement of human rights. These organizations have played a critical role in ensuring that the needs and interests of individuals from socially disadvantaged groups are represented and reinforced in their struggles to seek justice through the legal system. In my view, government support for these organizations is fundamental to ensuring a robust public infrastructure for advancing human rights.

● (1150)

In the statutory domain of human rights anti-discrimination law, we have human rights commissions that were established to ensure equitable access to justice for all citizens. But even within this model, community organizations have played a critically important role. Many of you will remember the Action travail des femmes case, one of the biggest systemic discrimination, gender-based cases under the Canadian Human Rights Act, where Action travail des femmes played a critical role in pulling together all the evidence on behalf of the individual women.

In the charter domain, we do not have human rights commissions, and individuals are left to initiate court challenges through the regular litigation process. Such a prospect is an enormous undertaking. For groups and for individuals, particularly if they're from vulnerable and socially disadvantaged groups, it's highly unlikely that they will have the resources or the knowledge to pursue legal action as individuals. Therefore, in my view, the role of organizations and the funding of these organizations through the court challenges program was essential to securing the advancement of equality.

The Chair: Could you wrap up, please?

Prof. Colleen Sheppard: The final point I want to make is that the court challenges program did more than just fund individual test cases. It also funded groups to do research and to engage in conferences and other educational activities around equality rights. Again, the information about the full range of activities of the court challenges program is available.

To conclude, I just want to highlight that although the court challenges program was not a panacea for all the changes that we need to secure a more equitable and just society, in my view the decision to discontinue funding nevertheless has serious negative effects on the lives of women, particularly some of the most vulnerable women in our society.

Thank you very much.

● (1155)

The Chair: Thank you.

I'd like to tell the witnesses that there is the opportunity to do whatever you miss out from your presentation when we ask the questions, because we need to ask questions.

I will now go to Madame Muyinda, for five minutes, please.

Ms. Estella Muyinda (Executive Director, National Anti-Racism Council of Canada): Good morning, and thank you for this opportunity.

I'm speaking on behalf of the National Anti-Racism Council of Canada, a non-partisan Canada-wide non-government organization. NARCC is comprised of approximately 150 national, regional, and local community-based organizations, and 60 associates. Its membership includes aboriginal organizations. Through NARCC, these organizations provide a national voice against racism, racialization, and all forms of related discrimination and intolerance.

So who are we talking about when we talk about racialized women? As you are aware, racialized women are often described in official government terms as members of the visible minority, or the immigrant from non-western countries, or the newcomer from the underdeveloped world, intersecting with other factors such as ethnicity, language, place of origin, place of residence, disability, age, sexual orientation, plus poverty and many other factors. On that basis, cases supported by the court challenges program that interact with any of the enumerated grounds under section 15 of the charter would impact directly or indirectly on racialized women.

Racialized women oftentimes experience marginalization by their association with racialized men. As such, when racialized men are adversely impacted by laws and policies or practices, racialized women also bear the brunt of the adverse impact. In my presentation I will give examples that have as a central figure racialized men—for instance, reported cases of racial profiling—however, with the results impacting on all racialized group members. My presentation, I hope, doesn't take away or detract from my submission with a focus on racialized women.

For racialized group members, inclusion in the notion of equality before and under the law as provided by section 15 of the charter has been an issue of grave concern—for instance, on issues pertaining to employment and immigration. Access to justice continues to be a topic of discussion, and there's ongoing concern about discriminatory policies and practices and the application of such in a discriminatory manner. There's concern in gaps in legislation that is intended to protect racialized women, their children, and partners.

Due to where racialized women are situated, there's a keen interest in having the court challenges program continue to exist, because it helped fund challenges to legislation that excluded them. It helped correct gaps in legislation and supported challenges to government policies and practices that were applied in a discriminatory manner. In this vein, the areas of particular interest, I can repeat, are immigration, customs, employment discrimination with respect to hiring and promotion, racial profiling, sentencing, exclusion from funding—

[*Translation*]

Mrs. Sylvie Boucher: Madam Chair, could you please ask Ms. Muyinda to slow down, please? The interpreters can't follow her.

[*English*]

The Chair: Be a little slower.

Ms. Estella Muyinda: Okay, I'll be slower. Will I still get my extra two minutes?

The Chair: Oh, yes.

Ms. Estella Muyinda: Well, the impact of the cuts to the program on racialized women can be described from the test case on the Chinese head tax and the Chinese Exclusion Act. The case was funded by the program, but it was dismissed on the preliminary motion. However, it opened up some doors to negotiations, as the Chinese Canadian National Council received negotiation funding from the court challenges program. The negotiation strategy helped the impacted community focus on a position that enabled it to present the injustice of the Chinese head tax to the Chrétien, Martin, and Harper governments, resulting in the 2006 parliamentary apology and redress announcement by the current government.

The program also funded case development applications for racialized women wishing to develop a case about visible minority hiring and promotion in the civil service or senior management positions; and funded racialized women wishing to develop case challenges on issues concerning employment insurance eligibility and their failure to access available benefits due to the confluence of poverty and race. Unfortunately, those two kinds of cases can no longer be funded because the program has been cut.

Research was also funded on the intersection of race and other enumerated grounds. For instance, research on race and disability provided an insight into the issues that various racialized group members with disabilities face.

Research and consultation on racial profiling paved the way for discussion of the relevance and the need for race-based data collection. These activities helped highlight the prevalence of racial profiling by law enforcement agencies and border crossing officials. You can see this in the cases of Richards and Decovan Brown.

The consultation that reflected the two parts of the court challenges program, language rights and equality rights, addressed the barriers faced by the racialized immigrant women who speak French—a minority within the racialized group. The women wished to gather to speak about and identify issues related to the multiple layers of prejudice and barriers they face in trying to access services. They also wished to learn about the charter's equality rights, as they were related to their struggles for housing and employment.

The program, therefore, is seen as one of the mediums by which government can ensure checks and balances in the Canadian justice process. For racialized group members, in particular women who come from repressive countries, the transparency, accountability and access to change-of-government laws, policies, and practices through the application of the court challenges program was a welcome relief. It proved that Canada was committed to a democratic system and to adhering to equality rights enshrined in its constitution. To racialized women, cutting funding appears to be a regressive move by government in relation to the advancement of equality and language rights.

Contrary to the argument that funding the court challenges program is about government wasting money in challenging itself, such funding reflects a process that allows the marginalized to highlight laws and practices that are discriminatory, and to do so in a manner that respects their rights. It's about a country that is willing to be a world leader in its commitment to human rights and equality rights by using a process that suggests that government is accountable and transparent in how it makes justice for all.

● (1200)

The Chair: Ms. Muyinda, we have your presentation, so if that's all....

An hon. member: [*Inaudible—Editor*]

The Chair: Oh, I'm the only one with it. I'm sorry, continue on. Bring us to the summary, please.

Ms. Estella Muyinda: Okay, this is the summary.

The cuts to the program mean that the dialogues that are the precursors to the development of strategies to combat racism cannot continue, as there is no funding to sustain them.

The cuts mean the loss of an organization that was flexible in accepting novel arguments or ideas to ensure that the marginalized have access to justice.

We have lost a forum and opportunity to identify gaps through consultation on our case development.

We have lost the locus that focuses on racialized women, including other racialized group members.

The cuts also mean that a number of issues that could have been raised and explored quickly can no longer be. For instance, the issue of reasonable accommodation in Quebec and the impact of that discourse on the racialized community would have been raised by racialized women, and probably would have been funded by the program. Other related issues may have been the discourse about wearing the niqab when voting.

I would conclude by urging that the government restore the funding to the court challenges program because of how it has benefited racialized group members.

The Chair: Thank you very much.

We now go to Madame Tremblay, for *cinq minutes, s'il vous plaît.*

[*Translation*]

Ms. Carole Tremblay (Liaison Officer, Regroupement québécois des Centres d'aide et de lutte contre les agressions à caractère sexuel): I would like to thank you for giving the Regroupement québécois des Centres d'aide et de lutte contre les agressions à caractère sexuel an opportunity to take part in the work of this Committee.

I represent the Regroupement. Our organization includes the vast majority of organizations that assist teenagers and women who are victims of sexual assault in Quebec. We also help the families of those victims. We provide direct assistance to about 8,000 people a year, not including interventions that focus on prevention, where we reach about 11,000 people on a yearly basis, primarily young people.

Today, my presentation will be in two parts. First, I would like to briefly provide some background that shows the positive impact the Court Challenges Program has had on women who are victims of sexual assault. The second part of my presentation will focus on the need to maintain this program in its entirety for the future.

First of all, let's talk about the program's positive effects. The fact that the section of the Criminal Code intended to ban the publication of the victim's name, or any information likely to identify the victim, as part of the criminal trial has not been struck down by the courts is a direct result of the financial assistance provided under the Court Challenges Program to parties who intervened before the Supreme Court of Canada to defend it. It's important to remember that maintaining that section of the Code has encouraged some sexual assault victims to lay charges, by sparing them the trauma of embarrassment and humiliation that are often the consequence of trials on sexual assault charges that attract broad media attention. If that section of the law had not been fiercely defended, there is a very good chance it would have been struck down. The consequence of its removal would have been a lower complaint rate and, consequently, a form of immunity for the perpetrators of this kind of crime.

In addition, the financial assistance provided under the Court Challenges Program has made it possible to defend the regime introduced into the Criminal Code whereby an accused does not have automatic, unlimited access to the victim's personal file. It's important to remember that the regime that protects the rights of sexual assault victims places the rights of the victim and the accused on an equal footing. If this protection regime had not been fiercely defended, it is quite probable that many victims would not have availed themselves of their right to lay charges, for fear that the details of their private life would be laid out for all to see during the trial or for fear of having to terminate their psychological support, because of the possibility that content could automatically be used by the defence.

As for the need to maintain the program in its entirety, we would make the following arguments.

First, despite notable progress, the victims of sexual violence, primarily women and children, continue to be a disadvantaged group in terms of their equality rights, and are still subject to persistent prejudice and stereotyping.

Second, history has shown that unpredictable, repeated attacks are being made on the legal protections currently afforded victims. We saw two examples of that earlier, in my previous comments.

Third, because of the prosecutor's duty of neutrality in criminal matters, it is absolutely critical, in certain situations, that victims have an opportunity to be represented by independent Crown counsel when there is a danger that their rights will be violated.

Finally, and this final argument is probably nothing new, because you have surely heard it before. There is still a great deal to do to ensure better access to the courts and to justice. Continuing the Court Challenges Program means making effective rights currently laid out in written documents.

Thank you.

● (1205)

[*English*]

The Chair: *Merci beaucoup.*

Now we go over to Captain Jennifer Lynn Purdy, for five minutes, please.

Captain Jennifer Lynn Purdy (As an Individual): Ladies and gentlemen of the committee, *merci*.

[*Translation*]

I am a Captain in the Canadian Forces with 13 years' experience. I am in my fourth year of Medical School at the University of Ottawa. In May, I will graduate and be a physician.

[*English*]

In October 1995, l was 22 years old and a second-year officer cadet at the Royal Military College of Canada in Kingston. l was a virgin. One night l went to an RMC party on base. l was drunk, and a third-year officer cadet asked me if l wanted to go for a walk. Unsuspectingly, l agreed and we left the party. Once we were by ourselves he sexually assaulted and raped me. As officer cadets at RMC, we are conditioned not to be weak in any way. l suppose l could not deal with what happened to me, so l suppressed the incident.

Nine years later, in October 2004, l was two months into my first year of medical school. l took a weekend-long self-defence course, something that l had always wanted to do without knowing why. During the course l had my first flashback. l have since been diagnosed with post-traumatic stress disorder, depression, and two sleep disorders.

As soon as l had my flashbacks l researched the Criminal Code and discovered that there was no statute of limitations for sexual assaults. l went to the military police and submitted a complaint. l realize now how naive l was, as it never occurred to me that justice would be inaccessible because of my gender.

Don't get me wrong; l was treated very nicely by the military police, something l should be thankful for, as l've found out that many women get treated like criminals when they make sexual assault complaints, at least to civilian police agencies. However, it was not handled competently by the police or by the lawyers involved. The file was closed because the sexual acts were deemed consensual by both lawyers. In fact, the crown attorney's legal opinion letter stated that because l was on my back and could not get away, consent was not an issue.

While in medical school l have spent a few hundred hours researching my case, learning about the law, and making various complaints about how my case was mishandled. l submitted a redress; the redress was denied. l wrote the Minister of National Defence and the Vice-Chief of the Defence Staff. l submitted a complaint to the military police. Their investigation found that they had done no wrong.

l submitted a complaint to the Military Police Complaints Commission. The result was the same. l have written the federal and provincial attorneys general, my MP, and my MPP, and have heard nothing yet. l have exhausted all my options, except of course the most expensive one—the lawsuit.

If my suit is successful, this will cause police services and attorneys across the country to change how they do business. A woman might have a chance at having her assault investigated professionally, competently, and with integrity, something that does not occur regularly right now. I know that my section 15 charter rights have been violated. A lawsuit will hopefully be the catalyst that will lead to greater protection of women's charter rights, if and when they report sexual assault.

A lawsuit is expensive—so expensive that many now recognize that justice is accessible only to the extremely poor and the rich. Middle-class persons like me have to risk their homes, but I should emphasize that most Canadian women lack my financial resources. I am quite prepared to lose my home, but this would not have been necessary had the court challenges program not been cancelled.

I wish to conclude with three key points.

One, when the court challenges program cuts were announced, Prime Minister Harper suggested that this program only benefited lawyers. If my court challenge succeeds, it will force police and lawyers within the justice system to change how they treat sexual assaults. This would benefit women as a whole; I do not see how it would benefit lawyers.

Two, as a white, able-bodied, upper-middle-class, anglophone, heterosexual man, Prime Minister Harper, along with most of his cabinet, will never understand what it is like to be treated unequally in Canadian society. When he made these cuts he ignored the rights of everyone not lucky enough to share his own particular characteristics.

Finally, in the Canadian Forces we are taught that if an issue exists, one should propose a solution when broaching the issue. The court challenges program was cut, even though women and minority groups are still not treated with equality under the law. What other mechanism exists now that facilitates court challenges to guarantee the charter rights of all?

Thank you.

● (1210)

The Chair: Thank you very much, Captain Purdy.

We will now go to Beverley Jacobs for five minutes.

Welcome again.

Ms. Beverley Jacobs (President, Native Women's Association of Canada): Thank you.

I'm going to introduce myself in my language. It's my usual introduction.

[*Witness speaks in Mohawk*]

I said, “greetings of peace to you”, in my Mohawk language. I'm Mohawk Bear Clan, from the Six Nations Grand River Territory, Haudenosaunee Confederacy. My Mohawk Bear Clan name is Gowehgyuseh, which means “she's visiting”.

I want to thank you for the opportunity to speak today about the impact of eliminating the court challenges program, specifically on aboriginal women and girls.

In the past the court challenges program provided a means, however limited, for aboriginal women who are marginalized in so many ways in Canadian society to fight for equality and fair treatment by using charter challenges. Unfortunately aboriginal women and girls have never been able to depend on the federal government to recognize or look out for their interests. The racism and colonialist discrimination embedded in the lndian Act and INAC policies disadvantage aboriginal people in general, and specifically aboriginal women and girls.

Aboriginal women have appealed decisions that were made under this legislation and these policies by using INAC administrative procedures in many areas. Typically these appeals are unsuccessful, and as a result aboriginal women continue to experience institutionalized and systemic discrimination at the hands of the federal government. For example, aboriginal women have appealed decisions with respect to registration under the lndian Act—both pre- and post-1985 amendments to the Indian Act—that negatively affect women and their children in a manner that is not experienced by aboriginal men. Typically these appeals have not been successful.

Aboriginal women are hampered in their efforts to have these decisions overturned by the further disadvantage that the decisions removing them from registration also mean that first nations governments or band councils are no longer able to assist them because they are no longer entitled to membership. I know that Sharon McIvor made a presentation to the committee. She is an example of that.

The court challenges program provided a venue in which aboriginal women could challenge bad legislation and poor policies, and it provided support they could not obtain elsewhere. The program provided aboriginal women with a portion of the financial assistance needed to confront the otherwise overwhelming size and resources of the federal government.

While the assistance provided by the court challenges program is in no way leveling the playing field, it at least provided some indication to oppressed aboriginal women that a challenge could be possible, that it was supported, and that maybe occasionally it could be successful.

The need for such a program is supported at the highest levels of the international community. The United Nations committee on the elimination of racial discrimination and the United Nations Committee on Human Rights have both directed Canada to better ensure the efficiency and accessibility of the complaint systems related to racial discrimination and to enhance the legal system so that all victims of discrimination have full access to effective remedies.

In addition, the United Nations Committee on Economic, Social and Cultural Rights recommended as recently as 2006 that Canada extend the court challenges program to permit funding of challenges with respect to provincial and territorial legislation and policies.

At a minimum, the Native Women's Association calls upon the federal government to maintain the court challenges program as it existed. The federal government should not fear scrutiny of fair and equitable legislation and policies using this program.

● (1215)

The court challenges program also provided an opportunity for the experiences of women to be brought to bear on government legislation and policies. This is beneficial, as those who create such legislation and policies do not generally have direct or personal experiences of the reality of aboriginal communities or of aboriginal women's specific realities in our communities, nor the understanding of the intersecting issues related to the colonialism, racism, and misogyny that continue to oppress aboriginal women today.

Thank you. *Nia:wen*.

The Chair: Thank you very much.

We'll go to our final speaker, Mary Eberts.

Ms. Mary Eberts (Legal Counsel, Native Women's Association of Canada): Do we have five minutes left?

The Chair: We'll give you five minutes. I think it's important to give five minutes to you.

Ms. Mary Eberts: Thank you.

I speak out of my experience as counsel for the Native Women's Association of Canada since the year 1991, and also as one of the founders of LEAF. But I will concentrate today on the litigation experience of the Native Women's Association that has been made possible by the court challenges program. I want to make two basic points.

My first point is that the court challenges program makes possible an orderly and law-abiding approach to social change. It gives access to the rule of law to people who do not have advantages and who do not have the means to access law through their own resources. It is thereby accomplishing something that supports the very infrastructure of our democracy.

The second point I wish to make is that the various activities of the court challenges program have actually served to complement rather than displace the legislative activity of the Canadian Parliament. I have a few examples for you.

It is not always the case that recipients of court challenges funding use that funding to attack federal legislation. Sometimes it has been the case, as Madame Tremblay has pointed out, that disadvantaged groups have used their court challenges funding to appear in court and defend legislation passed by Parliament that supports their human rights. That is the case with victims of violent crime, for example, who have appeared with court challenges funding to support the safeguards put into the Criminal Code for them.

Sometimes people use court challenges funding to explore new applications of legislation already on the books. The Native Women's Association received court challenges funding specifically to explore the defence of self-defence. This was in the context of an aboriginal woman who had been very poorly served by police services, to the point where she was taught by the state that the only thing she could do when attacked by a man almost twice her size was to respond in kind. She is using existing law and asking that it be interpreted so as to uphold her equality.

Litigation will also be only part of a policy development process. The Native Women's Association of Canada brought a case against the federal government complaining about the total absence of family property provisions with respect to Indian reserves. That situation had started in 1986 with a decision of the Supreme Court. It was not until the Native Women's Association, with court challenges funding, drew this matter to public attention by means of a lawsuit under section 15 that policy development began at all. Up until that time, government—all governments—had said, it is a terrible shame, but we don't know what to do about it. It was only when we took the government to court that they began to develop their policy.

● (1220)

The last point I wish to make is that in an environment like that inhabited by aboriginal women, we find that the women are subject, on a daily basis, to almost total influence and control by legislation of the federal government. The Indian Act is a totalizing control over the lives of the people who are subject to it. Without means like the court challenges program, women who are subject to the discrimination in the Indian Act have no defence against an influence on their lives that begins before they are born and lasts until after they die.

Thank you.

The Chair: Thank you very much.

Being cognizant of everybody's time, I have to apologize to you. I am going to give a first round of five minutes, and then a second round of two minutes, and we'll hit the clock at 1 p.m.

Ms. Minna will start off. You have five minutes.

Hon. Maria Minna (Beaches—East York, Lib.): Thank you, Madam Chair.

I have to say, in all the things I've heard this morning, and of course in other meetings, the sad part for me is that none of it surprises me. I know, and we know, what has been happening, which is why I support the charter challenge. The other thing is that it's devastating to hear the extent to which things are still not, for women, further than they ought to be and need to be.

That said, all of what was said by our guests who are on speakerphone and the ones who are here in the room is riveting, and I think a lot of this stuff will find its way into good recommendations.

I want to ask a couple of specific things, because I don't need to be convinced about all the needs. In all the things that have been said here, I agree.

To Captain Purdy, you said something earlier that I want to be clear about. The lawyers said that because you were on your back, you weren't able to say no; therefore, it had to be a yes. Am I understanding it right?

● (1225)

Capt Jennifer Lynn Purdy: Yes. What happened was that my police investigator made the mistake of showing me the two legal opinions that had been written, one by a Canadian Forces lawyer and one by a crown attorney within the province, and by doing so, waived solicitor-client privilege.

Anyway, in the crown attorney's letter that I was shown that day, the third paragraph read, and I paraphrase, "As then Officer Cadet Purdy herself states, the guy was on top of her and she could not get away, therefore there is no lack of consent."

Basically, it was a fact-finding mission for me that day. Unfortunately, I made the mistake of not asking for a photocopy. So right now I've hired a private investigator to see what he can dig up.

What happened was, two days after that, I wrote the crown attorney naively and said, “I'd like a meeting with you, because I don't understand why my case has been closed. I've read the various Supreme Court decisions, I've read the Criminal Code, and in particular, I don't understand why you wrote...,” and I recited that sentence.

I got a letter back within a day or so, not even addressing what I had said. He recommended that I get support from my commanding officer. But when I went and was finally given access to those two letters, there was a different letter on my file.

But yes, that is what I read; that is what was there.

Hon. Maria Minna: Were they all men, or were there women involved?

Capt Jennifer Lynn Purdy: No, they were all men.

Hon. Maria Minna: Okay. I hadn't understood that comment.

Capt Jennifer Lynn Purdy: No, actually, they were all men.

That crown attorney, I have been told—I've never met him personally—is apparently a bit of a jerk. But what I found interesting was that he does not normally deal with the military police in Ottawa. So if he felt so liberated, possibly, by solicitor-client privilege that he could write something like that in dealing with an organization that he does not normally deal with, that tells me that I would not want to be a woman in, shall we say, Kingston and come forward with a complaint of sexual assault, because if he wrote that about me, then as I wrote in one of my poems, what would he say about somebody who was not able-bodied, white, middle-class, educated, etc.?

Hon. Maria Minna: Thank you.

Capt Jennifer Lynn Purdy: It opened my eyes.

Hon. Maria Minna: And ours, I think, in extension.

I want to go very quickly to Ms. Muyinda, and then to Madam Jacobs, because my time will probably be short.

You gave us quite a long list of cases and areas in government in which racialized women, immigrant women, are affected. I was very involved with visible minority women's issues for some time, and actually was involved with the initial stage of a charter challenge. Are there any action cases right now that ought to be going to court, because of charter challenge, but are not able to, in your area?

Ms. Estella Muyinda: I'll give you two examples of case development. For instance, I'm aware of one about a black woman who wanted to develop a challenge because she is caught in a rut. She wants to get out, and she was representing other women who are trying to get out of poverty, but because they are getting EI or social assistance, the criteria do not allow them to be able to access the other.... The resources are there, but they cannot access any of those benefits.

Hon. Maria Minna: While they're on assistance, they wouldn't be able to access a charter challenge, even if it were still in place.

Ms. Estella Muyinda: If the court challenges program were still in place, they would be able to develop a case that would challenge the fact that they cannot, because of their poverty and because of the regulations and policies, get out of their situation. For instance, they want education, but you cannot get education because of—

Hon. Maria Minna: Right. Actually, that would be a good—

Am I out of time already?

The Chair: Yes, totally.

Madame Demers, cinq minutes, s'il vous plaît.

[*Translation*]

Ms. Nicole Demers (Laval, BQ): Ladies, I want to thank you very much for being with us this morning.

We have heard from a number of witnesses, and I must say I am quite discouraged and upset by everything I have been hearing. But, I would still like to put my question to Ms. Purdy. All the other women have made it clear that in most cases, situations where women's rights had been violated were what made the program so important.

However, I would like to address a question to Ms. Purdy for another reason.

Ms. Purdy, I know that it is very difficult to expose one's vulnerabilities in public. I guess you are at a stage of your life where you are doing this because you see no other possible avenue. You have to talk about those vulnerabilities in front of the entire world, so to speak, in order to explain the problems you have encountered. I also want to put this question to you because you do not seem to be a raging feminist. Yet, last week, we were told the Court Challenges Program only served the purposes of raging feminists.

Ms. Purdy, could you tell me what it could mean for there to be some recognition of what happened to you in your life? You are now studying to become a doctor and you are a member of the Canadian Forces. Was the fact that you applied to the Court Challenges Program in any way detrimental to your military career? Did it cause problems in terms of your relationship with your colleagues? Do you have a family? Has it adversely affected you in that respect as well?

I would like you to tell us these things in order to show the government that raging feminists are not the only ones that avail themselves of this program, and to underline its importance for all women, but also for all men—indeed, for all people who have been injured in one way or another.

● (1230)

Capt Jennifer Lynn Purdy: I will try to answer you in French if I can. As I see it, a feminist is someone who is seeking equality. So, it is not someone who burns her bra in public, the way they used to do in the 1960s.

People may have said of me that I am a raging feminist, but I am a feminist. All I am seeking is equality.

[*English*]

I'm going to continue in English

[*Translation*]

because my French is a bit laboured

[*English*]

and I'd like to try to get some points across.

I am single. I'm 34 years old. My rape definitely took me for a turn, because I suppressed it for nine years. For nine years I never dated, never had a partner, whatever. The reason I'm able to speak more openly about it now is because, number one, I've come to terms with what has happened; and number two, I feel that I am in a good position to speak about it. Most women may not feel comfortable talking about it. Many women from various cultures may not be able to talk about it, because in some cultures it's downright unacceptable. Obviously it's not the woman's fault, but it's still deemed completely unacceptable.

As a future doctor, and as a captain in the forces—who is speaking as an individual, I should add—I feel I might have some credibility when I speak about this issue. For me it's very important that somebody speak out about this, because it's on the rise, although it's hard to find statistics. Sexual assault does occur a lot, way too much in Canada, and I feel that if I and other committed persons do not speak up and address this issue, then it will continue to be basically a silent epidemic.

I don't know if I've answered your question.

[*Translation*]

Are there any other…

Ms. Nicole Demers: I would like to know if this has had a detrimental effect on your military career.

[*English*]

Capt Jennifer Lynn Purdy: I don't know yet, to be honest.

[*Translation*]

I didn't ask the Canadian Forces permission to appear before the Committee today.

Also, I have just started a Web site—www.stoprape.ca—with Velvet LeClair, a friend of mine who is here today. We saw that there was no Web site.

[*English*]

on a national front that addressed the subject.

Basically I don't know how it will affect my career in the forces. As a family doctor, given the chronic shortages both in the forces and in the civilian world, I don't think it's going to be that much of an issue. I may not get a promotion or two. I honestly don't know. But to be honest, on an ethics front I can do a lot more good by talking about this, even if it's a little bit uncomfortable for some persons within my organization. Obviously it's a very easy choice to make. If I were to stay a captain all my life, there'd be no worries.

Thank you.

● (1235)

The Chair: Now we go to Madame Boucher, *cinq minutes, s'il vous plaît*.

[*Translation*]

Mrs. Sylvie Boucher: I want to thank all of you for being here today.

It's very positive to hear different points of view. We heard a lot of things this morning, and some are more troubling than others.

I would like to ask you this. Could the cases funded through the Court Challenges Program, or CCP, have been handled through a different avenue? In terms of the cases we heard about this morning, would it have been possible to launch a challenge through a different avenue? Is there a better way of doing it than the CCP?

Can someone answer that question?

[*English*]

Ms. Mary Eberts: If I may start with that question, as a lawyer with over 30 years of experience, I often find myself looking for ways of raising these questions, of bringing them forward, of trying to get justice for women and for my clients.

It is fairly safe to say that we do not recommend that a major challenge under the Constitution of Canada or the Charte des droits et libertés de la personne du Québec be brought unless there is no other way, because if you can bring a human rights complaint, if you can bring a private law case against an individual, if you can achieve some law reform by lobbying government—if you can do any of those things, it is less difficult than bringing a major case. It is less expensive. These kinds of cases that are funded by the court challenges program are cases of last resort, cases brought when there is no other answer.

When you applied to the court challenges program, one of the questions on the application form was specifically your question: what else have you tried? Unless you could say you had tried everything and thought of everything and nothing else would work, they would not fund you. It's as simple as that.

The Chair: Madame Boucher, maybe we could ask Professor Sheppard and Professor Mahoney to give you some input, because they are experts as well.

Professor Mahoney, could you respond to the question by Madame Boucher?

Prof. Kathleen Mahoney: I'll add to what Mary Eberts just said about the qualifications for funding under the court challenges program, which is important to put on the table. Court challenges funding is not given unless the litigation affects large numbers of people. It's not an individual-based type of litigation fund like legal aid. It's designed to deal with people who are suffering under the impacts of law in a broad manner. So that's one point.

As for whether it could be better, like anything, I'm sure it could. The court challenges definitely is a very good program. It would be better if it were broader based, if it were based in such a way that provincial legislation, for example, could be argued to be either upheld, struck down, or interpreted in ways that were more inclusive and protective of human rights.

A number of major cases have been decided that were influenced by charter decisions taken after the court had the benefit of hearing from various intervenors. It affected provincial legislation interpretation. I'm thinking, for example, of cases to do with pregnancy discrimination, sexual harassment, and hate speech at the provincial level. If the court challenges program hadn't existed and those cases hadn't been dealt with under the charter, we might not have had those kinds of decisions at the provincial level. It's hard to know how many people could benefit or how society could benefit from different kinds of interpretations of provincial legislation through a similar program. But from the cases that were decided that were influenced by charter decisions under court challenges, I think we can see there's huge potential there.

Third, most of the litigation under court challenges was done via interventions, as opposed to starting a legal matter from scratch and bringing that up through all the court levels. Interventions are not the ideal way of doing litigation, because when you intervene at the appeal court level, the Supreme Court of Canada, you're basically stuck with what's been done at the trial level, in terms of the facts that go to the trial judge when the litigants put the case forward.

When one applies to intervene—

● (1240)

The Chair: I have to ask you to wrap up, because you've gone over your time.

Prof. Kathleen Mahoney: You don't get to intervene unless you can demonstrate to the court that your intervention's going to be in the public interest. That's an important point to be considered.

The Chair: Thank you.

Madame Mathyssen is next for five minutes.

Mrs. Irene Mathyssen (London—Fanshawe, NDP): Thank you, Madam Chair.

I have a question, and any of the presenters are invited to answer. I realize my time is limited.

One of the things that have become very clear is that the court challenges program is not expensive. It has an annual pool of about $2.75 million dollars to help individuals who are concerned about violations of language equality rights. Among the recipient groups, as has been mentioned here, are the Chinese Canadians seeking compensation for the head tax. We heard from disabled activists that they also received support in fighting VIA Rail.

Clearly this is not a program that is going to significantly impact budgets. It's a very small part of budgets. The disabled community was able to establish some mobility rights, and the government has already apologized for the Chinese head tax. So when you take all of that into consideration, why on earth would the government cut the court challenges program? What on earth could be the rationale? Why do it?

The Chair: Ms. Eberts, you have 30 seconds to answer, as do Professor Mahoney and Professor Shepherd if they like.

Ms. Mary Eberts: I want to emphasize just how very cost-effective the court challenges program is. There are tight budgetary proceedings. You have to really tell them how you're going to spend every nickel. There is a relatively small amount of money given at each level. If you are successful in court and receive an award of costs, you have to pay them back. They also ask you, when you apply and ask for funding, how much volunteer legal time you already have contributed and how much you are going to expect.

I've been doing these cases for years; they are done on a total shoestring. In my experience, what you get from court challenges is about a third of what it costs me as a lawyer to do this work. It only covers a third of the actual cost.

So all I can say in answer to your question is that I have extremely strong doubts that this is a budgetary measure.

[*Translation*]

The Chair: Thank you.

Ms. Tremblay, you have 30 seconds.

Ms. Carole Tremblay: In fact, the question in our minds is still the same. It's extremely difficult to reconcile. In the last two years, the current Conservative government has shown positive intentions as regards victims of violence, by amending the Criminal Code to help victims. So, it is absolutely incomprehensible that the government would have seen fit to abolish the Court Challenges Program, which has had such a favourable impact in terms of defending the rights of victims.

● (1245)

[*English*]

The Chair: Okay, go ahead.

Mrs. Colleen Sheppard: This is Colleen Sheppard here. I just wanted to add one small point, and that is that I think there is some perception that somehow perhaps the program was biased because it was helping minority-language communities and individuals and groups that were socially or historically disadvantaged. In my view, it's critical to understandings of equality that a program would be precisely directed to those groups who need support because they experience discrimination. So in fact that's not bias; it just makes good sense.

Prof. Kathleen Mahoney: If I could add one further point too, the notion of substantive equality, which is that people are entitled to equality of results, is I think an ideological point that the government took objection to in favour of a more formal equality approach, which is sameness of treatment. The court has already judged the meaning of section 15 to be substantive equality.

So I think there are some miscomprehensions on what equality means in Canada insofar as our supreme law is concerned, and either a lack of understanding or a fundamental disagreement to roll the clock back to a time of formal equality, where people would not be advantaged by having some access to the courts because they do not have what other people have and they live in a situation of disadvantage.

The Chair: Thank you.

I have to give the floor back to Madame Tremblay, because somebody intervened while she was talking.

I'll give you 20 seconds now.

[*Translation*]

Ms. Carole Tremblay: Most people think that in criminal matters, the role of the Crown prosecutor is always to represent the victims and defend their rights. But that is purely theoretical. His or her role is to discover the truth and to show neutrality within the legal system. When victims' rights are under attack—for example, the right to preserve the confidentiality of personal information—the Crown prosecutor should not be involved. That is the work of independent counsel. That is one of the reasons why it is so important to maintain the Court Challenges Program.

[*English*]

The Chair: Thank you.

Now, the second round is going to be very tight, so please maintain time. If you want to leave by one o'clock, you'll have two minutes each.

Ms. Minna, you can ask the question for one minute and have a response for one.

Hon. Maria Minna: Thank you.

I can talk to some of you afterwards, but certainly you've given us great information.

I'll just go very quickly—and this may not be a fair question—to Madam Eberts and Madam Jacobs.

Madam Eberts, you said earlier that the Indian Act is basically a totally controlling piece of legislation when it comes to the lives of native women. We've also been discussing, as a committee, gender budgeting and gender analysis. To your knowledge, has there been a gender analysis done on that act, and if so, can the act itself be challenged in terms of being discriminatory against native women? Maybe it's a bit of a tall order, but maybe to get out of the piecemeal stuff....

Ms. Mary Eberts: The act itself has been challenged by women as a denial of women's equality. It was challenged by Jeannette Corbiere-Lavell. It was challenged by Senator Sandra Lovelace Nicholas. It has been challenged by Sharon McIvor. It's challenged by a Mohawk family from Ontario called the Perrons. There are now over 35 challenges to the Indian Act that are being brought by women, primarily in the area of Indian registration.

The court challenges program has had a tremendous amount to do with those challenges. It brought together on one occasion representatives of all these various cases so that we could share information and, in effect, cut down on our expenses. So yes.

The Chair: Thank you.

Madam Grewal, for two minutes.

Mrs. Nina Grewal (Fleetwood—Port Kells, CPC): Thank you, Madam Chair.

My question is for Ms. Muyinda.

Ms. Muyinda, I would like to know more about the types of cases that have been funded by the court challenges program, and has your organization received any funding? If so, what was the nature of the cases?

● (1250)

Ms. Estella Muyinda: I'll start with the cases that have been funded, but I'll go back a little bit.

When racial profiling used to be called “driving while black”, nobody cared until racialized group members went to the court challenges program and said there was racial profiling, but they did not have anything or anybody to confirm this. The court challenges program granted funding for research on this phenomenon. It also granted money for research for that cause, and it granted funding for a case called Richards, whereby the definition of racial profiling was first given by the court. Then it funded the case of Decovan Brown, which had to do with racial profiling of a person. That cemented it. So the courts now can accept...and people now realize what racial profiling is, and that can be traced back to its roots in the court challenges program.

In terms of funding to NARCC with respect to race, I can say there's been funding for research with respect to race as it intersects with other grounds of the charter, for instance, race and disability, race and sexual orientation, race and gender, and what are the cases with respect to the impact of section 15, the equality rights, on racialized group members and whether they have made advancement after 20 years and where they are.

One thing that is clear is that before nobody was interested, and nobody has ever been interested, in promoting issues of marginalized group members, particularly racialized group members. Through the court challenges program, people have been able to go before the courts. They have been able to go and talk about the intersectionality. They have been able to sit together, to come up with strategies that can assist in dealing with this. For instance, that's where the idea of gathering race-based data collection came from.

The Chair: It's time to cut you off. Finish it, please. Finish your sentence.

Ms. Estella Muyinda: Since 9/11 the face of racial profiling—I'll focus on racial profiling because that's the simplest one, but there are many other parts to this—changed to include people of Arabic descent, as well as Asian descent, as well as people based on their religion. Then there was the impact of the security legislation. NARCC was granted funding as an intervenor in the cases of Charkaoui, Harkat, and Almrei to be able to express the impact of those security measures on racialized group members. I also am aware that funding was granted because when racialized people with disabilities would go through customs after 9/11 they would be singled out.

The question was what is it about the disability and going through the machinery, but guess what, it impacted all other people with disabilities. Now the change had to happen within customs for looking at how they process people with disabilities as they go through this security check.

The Chair: Thank you.

What I would like to do is have each witness think about the one-minute closing statement that they'd like to make, because it will be one minute. We will have some time for you to close off your statements.

We'll go to Madame Thaï Thi Lac, for *deux minutes*.

[*Translation*]

Mrs. Ève-Mary Thaï Thi Lac (Saint-Hyacinthe—Bagot, BQ): Good morning everyone. I want to thank you for being with us today. Your testimony has been very enlightening.

It is often said that individual cases result in significant progress for the community. As regards your struggles, I believe that is very important. We have talked a great deal about rights, but I would also like to talk about protection. We simply can't ignore that rights are connected to protection. In my opinion, in order for that protection to be there, injured parties must have access to programs. It is a well-known fact that in the vast majority of cases, victims of assault are women.

I would like to know whether, in your opinion, the protection of minority groups or women will be threatened as a result of the abolition of the Court Challenges Program. I would also like to know whether you believe there is a violation of equality rights here.

● (1255)

[*English*]

Ms. Mary Eberts: May I begin?

The Chair: You may be the only one able to answer at the moment.

Ms. Mary Eberts: The Native Women's Association of Canada has received funding from the court challenges program on more than one occasion to advocate on behalf of aboriginal women victims of violence. Indeed, research funding from the court challenges program was instrumental in getting the Sisters in Spirit program launched. The key research done for that was funded by the court challenges program.

In this area, as Ms. Jacobs will tell you, we are nowhere near equal. There needs to be a tremendous amount of work done to develop the meaning of the phrase “equal protection and equal benefit of the law”. And we were just starting—just starting with the help of the court challenges program—to develop a program of work to litigate these issues when the funding was cut off.

The Chair: We'll have Ms. Mathyssen for two minutes.

Mrs. Irene Mathyssen: Thank you, Madam Chair.

We've heard from Ms. Muyinda, Ms. Jacobs, Captain Purdy, and Ms. Eberts about how the law treats aboriginal women, racialized women, and women who have been sexually assaulted. My question is whether we all, as a society, suffer when constitutional wrongs go unchecked.

The Chair: Do you want to ask anyone specific?

We'll have Ms. Jacobs and then Ms. Purdy.

Ms. Beverley Jacobs: Thank you for the opportunity.

Yes, I believe that everyone suffers. We've been addressing equality issues, as an organization, for 33 years. The reason the Native Women's Association of Canada exists in the first place is because of the inequality within our own communities. We, as aboriginal people, have been in this country for hundreds and hundreds of years. Now the situation for our women is that they are the marginalized of the marginalized. So if we're to study gaps, if we're to study the impacts of all of the inequalities occurring in this country, I don't understand why this still continues and has actually worsened.

So if it's worsening for us, where is the balance? There's no balance when it comes to aboriginal women and non-aboriginal women, specifically. So everybody suffers. Everybody suffers in our community and in society when society isn't aware of all these discriminatory issues we're talking about. If we were to address it in a positive way, and court challenges helped us to do that, then it would assist everybody. Yes, everybody suffers: our community, our women, and our children.

The Chair: Go ahead, Captain Purdy.

Capt Jennifer Lynn Purdy: Ms. Jacobs has spoken about how people in Canada suffer. A lot of suffering occurs because people are not able to reach their potential.

But I would also add that the country as a whole is held back economically to a certain extent when people who are marginalized are not allowed, for whatever reason, to reach their potential. Whether it's because they belong to a minority group or as women, often they're not treated the same as a white man. If that comes on from the day you're born—because you're governed unfairly by the Indian Act, for example—many roadblocks are put in your path that make it much more difficult to achieve equality in our society.

I was reading up about sexual assault. At the end of the day, Stats Canada suggests, it costs a few billion dollars to the Canadian economy every year in both direct and indirect costs; it's also very hard to enumerate.

That's just sexual assault. If we look at how minority groups are treated, how people such as francophones are treated at times, and how aboriginal persons and women are treated in our society, think about the economic cost. As a politician, I may not vote for something, because a lot of times politicians and people will just look at the money. If you look at the money, there's a very good reason for the court challenges program and a very good reason to continue to push for equality.

● (1300)

The Chair: I'll have to give you half a minute, so please take it. Then we'll wrap up.

[*Translation*]

Ms. Carole Tremblay: Thank you.

Yes, everyone suffers. Women are more likely to be victims of sexual assault and family violence. Their rights have been advanced through their demands. However, the fact remains that everyone benefits, including men and children who are subject to this kind of treatment. When you deprive the women's movement, feminists—whether they are raging feminists or not—of this kind of recourse, everyone suffers. And that includes children and men.

[*English*]

The Chair: Thank you.

What I'd like to do is reverse the order and, if you can take half a minute or one minute to wrap up, have you give us your closing remarks.

Ms. Eberts.

Ms. Mary Eberts: When the charter was first enacted in 1982 and in 1985, when the equality guarantees came into effect, it was the Minister of Justice at the time, Mr. Crosbie, who said that it is much better to get the laws right in the first place so that people don't have to litigate them; but if we have to litigate them, then it is imperative that the people who do not have the means to litigate these incredibly important cases will be given assistance.

That message is as good now as it was then. The court challenges program was cancelled and restored once before. It should be restored once again, because it is essential to the nation.

The Chair: Thank you.

Ms. Jacobs, would you like to say something?

Ms. Beverley Jacobs: Yes. I think the biggest issue here for aboriginal women has to do with the access to justice, and the court challenges program provided access to justice, however limited, to aboriginal women and girls.

On the issue of justice itself, we're dealing, in my opinion, with a legal institution that is based on Eurocentric values and principles and is also based on patriarchy. This is part of the challenge we bring as aboriginal women to those principles.

The Chair: Thank you.

Captain Purdy.

Capt Jennifer Lynn Purdy: I just said that a few billions of dollars annually is the cost of sexual assault in this country. The cost is obviously much amplified when we look at the indirect effects of racism and of being aboriginal in this society, etc. It all has an economic cost.

When you compare billions of dollars to the $2.75 million annual cost for the court challenges program, it's a drop in the bucket. But it was a very important drop in the bucket. There is no other mechanism in place still that will assist women and minority groups to achieve justice and equality. That's my first point.

Number two—my final point—is about what we would do if it were brought back. What I would want to see, if it were re-established, is that there be some mechanism by which, if a court challenge succeeded under the program, there would be a requirement that the legislation that was in error be changed. That would increase the positive effect upon all Canadians.

Thank you.

The Chair: Thank you.

Madam Muyinda, would you like to comment?

Ms. Estella Muyinda: Thank you.

The program funded equality and language rights, and we shouldn't forget the language rights piece of it. In this regard, I would bring up the racialized women from that group who are losing both ways: they're losing with respect to language rights and they're losing with respect to equality rights.

The cases funded by the program raised the profiles of issues of concern to racialized group members, even in the cases where the court challenges were not successful. However, there were advances made, there were negotiations that followed, there were consultations that were supported. This we're missing, because that forum is no longer available to us or to the communities.

The Chair: Thank you.

Go ahead, Madame Tremblay.

[*Translation*]

Ms. Carole Tremblay: There will be two significant issues in the coming years, or perhaps in the coming months, on which the federal government will have to take a position. I will only talk about one of them. For example, how will the termination of matrimonial regimes in the Aboriginal communities play out? Lawmakers are likely to take a position on this. This is something that we will need to follow. Because the Court Challenges Program no longer exists, we will have to see whether what the federal government puts in place is deemed appropriate by the 11 Aboriginal communities in Canada. We will have to follow that issue very closely.

● (1305)

[*English*]

The Chair: Thank you.

Professor Sheppard, are you there?

Mrs. Colleen Sheppard: Yes.

The Chair: You have one minute to wrap up, please.

We'll hear from Professor Sheppard, followed by Professor Mahoney.

Mrs. Colleen Sheppard: Thank you.

I think equality is a widely endorsed ideal in our country, yet its realization remains to be seen. In many ways, we may be seeing problems of inequality worsening with globalization. There is the rise of precarious jobs and continued systemic violence, so there is still very much a problem with inequality.

To finish up, I think that you—you as a committee, you as members of Parliament—have been entrusted by the citizens of Canada to ensure that our rights, our democracy, and our conceptions of citizenship and equality are advanced. I hope that in your deliberations and in your work you can look at this small part of the puzzle, the court challenges program, and think about what it means to the broader objectives and values we hold dear.

The Chair: Thank you.

Go ahead, Professor Mahoney.

Prof. Kathleen Mahoney: Thank you.

In summary, I would say that the court challenges program is very good public policy. It is in the public interest to maintain it and to improve it.

I would conclude by saying that anyone who doubts this statement should look at the history of the cases funded by court challenges. I would defy anyone to say that any one of those results is not in the public interest, because there was enormous progress made for peanuts, as was said earlier. While there was very little investment, the return on investment was huge.

To foolishly destroy this program is not in the public interest and will not benefit Canadians, because racism and sexism and all the other forms of discrimination are not a good thing, and basically the bottom line is that anything that can assist in ridding our country of those negative aspects is a good thing.

The Chair: Thank you very much.

Thank you all for being here. You have been pioneers in your field. You have enough scars to show for it. We're very thankful that you are here, and we apologize for the short time we gave you, but we appreciate your input. As we move forward, you have helped us in developing our response to the cancellation of the court challenges program.

I thank you. Have a merry Christmas and a happy new year, and may blessings be with you.

I adjourn the meeting.

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