

Trudeau's left-wing Court Challenges Program fleeces all taxpayers

By Conrad Black



Sculpture of Lady Justice is seen on the steps of the Supreme Court of Canada. PHOTO BY ADAM HURAS/PARLIAMENT HILL

The Court Challenges Program, under which people who claim to have a legitimate grievance against the operation of laws may be publicly subsidized to challenge the wording or implementation of those laws, is on its face an enlightened measure and a commendable recognition by the Canadian federal government that it and other governments in Canada could have inadvertently failed to see damage that could potentially result from ostensibly

well-intended legislation and regulation. In principle, any admission by government of its potential fallibility is a good thing that would seem to moderate what Shakespeare called "the

insolence of office:" the blank authoritarian inhumanity with which governments frequently dictate people's conduct and exact taxes and submission from them. Unfortunately, the appearance of a becoming humility helping to shape government conduct can be deceiving and in this case everything depends on the causes that the Court Challenges Program actually supports.

For this reason, the Harper government discontinued the Court Challenges Program in 2006, shortly after it entered office and because it considered that its generosity was excessively channeled towards left-wing causes. The Trudeau government revived it in 2017 presumably because it agreed with the Harper government's analysis but thought those leftist goals were desirable and that all of the taxpayers should pay to vary government conduct even if large numbers of the taxpayers were not in sympathy with the causes pursued by those subsidized under the Court Challenges Program. From the mid-1980s to 2006, one of the principal beneficiaries of this program was the Legal and Education Action Fund (LEAF), a militant feminist and a thoroughly socialistic advocacy group that very astutely managed to get public taxpayer funding for many of their specialist complaints and causes.

These included, [according to](#) John Carpay of the Justice Centre For Constitutional Freedoms, support of the claim that "people are entitled to collect welfare regardless of the income earned by a common-law spouse residing in the same home (Falkner v. Ontario)"; the right of non-citizens to become ineligible for deportation no matter their conduct, if they give birth to a child in Canada (Francis v. Minister of citizenship and immigration); the right of a pregnant woman to "continue to harm her wanted unborn child by sniffing glue (Winnipeg child and family services v. D.F.G.)"; "that more tax dollars should be spent on health services for non-citizens (Irshad v. Ontario)"; "that physical fitness standards for firefighters should be lowered to accommodate

women (Meiorin)"; "that freedom of political speech should be restricted in the name of 'equality' and 'Canadian values' (Kane v. Alberta Report)"; "that EI benefits should be extended to people having worked less than 700 hours in the preceding one-year qualifying period (Lesiak v. Attorney General of Canada)"; and "that legally owned guns play a significant role in perpetrating violence against women and children (Reference re: Firearms Act)".

Other causes that have benefited from the resuscitated Court Challenges Program, Carpay writes, include the right of prisoners convicted of serious crimes to vote (Sauvé v. Canada). I personally agree with granting that right, as someone who was once convicted and sent to prison in the United States (for offences that it has now been well established that I did not commit). I was in a low-security prison where most of the inmates were non-violent first offenders and I don't believe that there is any good reason to deny them the right to vote. Another case subsidized through the Court Challenges Program was the attempt to establish welfare payments as a constitutional right (Gosselin v. Quebec). (They are a statutory right under defined conditions and are not entrenched in the Constitution.) The program was also used to support "Canada Elections Act restrictions on citizens' free speech and advocacy that is independent of political parties (Harper v. Canada)." It was also utilized to promote the theory that "it should be a criminal offence for parents to spank their children (Canadian Foundation for Children, Youth and the Law v. Canada)." This is absurd and unenforceable and is a first step to wrenching child-rearing away from parents and handing it to the state.

Obviously, inflicting excessive physical pain on children should be a crime and in the English-imitative day and boarding schools that my parents sent me to, there was far too much and too severe corporal punishment and it was administered with instruments much more sinister than a human

hand. For these reasons, I was a complete wash-out as a parent-disciplinarian, but my children were almost never rude to me, though they were frequently refreshingly insubordinate. Sadistic treatment of children, whether one's own or not, is and should be a crime. But within reasonable limits parents have to be free to maintain order in their families as they see fit and taxpayer money should never be channeled into this cause. Parents have to be allowed to bring up their children and no one who has ever dealt with a seriously misbehaving child could dispute that what my mother used to refer to as "a good spanking" is sometimes useful for both parties.

The Court Challenges Program has supported the theory that "persons convicted of importing large quantities of cocaine into Canada should receive a lighter sentence if they are black single mothers (R. v. Hamilton and R. v. Spencer)," Carpay writes. This too is nonsense: the sentence has to be determined by the judge who must be required to blend justice with equity. It may be that such defendants deserve reduced sentences, but that is not something to be legislated in advance. Another questionable argument made under the program was that a "Guatemalan citizen with a criminal record, deemed to be a danger to the public, should have an automatic right to appeal a deportation decision (Solis v. Canada)." In general, such decisions should be appealable and if the denial of that right was not reasonable it should have been possible to appeal but if we get into the business of denying courts and quasi-judicial panels the right to decide whether to accept an appeal the entire justice system will be flooded with frivolous and vexatious litigation.

The issue here is whether taxpayers have to contribute to supporting public policy that they disagree with or opposing what they approve. What would the LEAF supporters think of public grants to assist pro-life groups? The concept of governments being subject to rejection by the voters as well as to being overruled by the courts is essential to democracy.

Providing legal assistance to worthy applicants for review of official decisions is also completely reasonable. However, except in rare cases which would have to be very carefully identified, it is best that those seeking relief from government actions, as long as they are honest and sane, should be assisted in attaining charitable status and doing their own fundraising. Laying these costs on the taxpayers and assuring that only left-wing causes will be the chief beneficiaries is a subversion of and not a supplement to democratic government.

Note: Because I mentioned in this column two weeks ago the excellent book *Grave Error*, about the Indigenous children's unmarked graves controversy, for which I was asked to write a foreword, I must advise readers that in one place in my foreword the word "instruction" mysteriously appears in place of "destruction." More seriously, completely inexplicably, it is stated that the native peoples and their institutions have been promised \$4.7 trillion of damages and reparations. The real figure is the still egregious total of \$4.7 billion. Neither the authors nor I have any idea how these mistakes appeared but I accept responsibility for them and unreservedly apologize for my carelessness. The errors do not alter or weaken the points I was making.

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