

either a legal information and research centre or outreach mechanisms for the disadvantaged groups that the program was designed to assist.

The functioning of the Court Challenges Program since <sup>the</sup> 25 September 1985 has been governed by an agreement between the Secretary of State and Minister of Justice of Canada, as the funding agencies, and the Canadian Council on Social Development as the administrator. The agreement was to run to 31 March 1990. Its main elements specified the government's financial contribution to the program, which was separated into two parts. The first of these sets out an ascending scale of yearly amounts for administration. The second established the fund to pay for the legal costs of approved applicants (\$1 million for 1985-1986 and \$2 million for subsequent years). Of this fund, not less than \$300,000 per year was for court challenges concerning language rights. Schedule I of the agreement set out the means for appointing the chairperson and members of the panel that would decide on applications for assistance. The agreement provided that the panel would, in essence, function as two separate entities — one for equality rights and one for language rights. The agreement also set out criteria for the selection of cases and set the limit for assistance at \$35,000 each for the trial, appeal and Supreme Court levels. (For the full text of the agreement see Appendix B.)

A few items in this agreement are particularly noteworthy. First, the arm's length nature of the operation of the Court Challenges Program was modified by a condition in Schedule I that CCSD's appointments to the panel were "subject to the approval of the Secretary of State and the Minister of Justice". Second, there was a condition that "In general, because interveners do not have carriage of the action, they should not be funded." Third, there was a condition that "funding should normally be denied where a case raises an issue that falls within the jurisdiction of the Canadian Human Rights Commission. Only where existing procedures for redress before the Commission have been exhausted, and no final determination of the issue has taken place, will funding be considered." Finally, in setting out the financial terms of the contribution agreement, no provision was made for the establishment of a legal research centre specifically to collect information pertinent to the program's mandate or for outreach to the groups targeted for funding from the program.

## V. COURT CHALLENGES — THE ADMINISTRATIVE PROCESS

From October 1985 to March 1986, the CCSD designed and implemented the program and consulted with national organizations concerned with equality and language rights. Two panels were established: an eight-person panel to deal with equality rights applications and a five-member group to assess language rights requests. The panel members were appointed for two-year terms, renewable by decision of the CCSD Board of Governors. The CCSD expected panel membership to be a voluntary effort but did undertake to ensure that no suitable individual was excluded from the panel on the basis of financial hardship. In addition,