

III. EQUALITY RIGHTS AND THE COURT CHALLENGES PROGRAM

On 17 April 1985, section 15 of the *Charter of Rights and Freedoms* came into effect (see Appendix A). This circumstance provoked considerable public interest and led ultimately to the expansion of the Court Challenges Program. In September 1984, the Canadian Council on Social Development proposed that both the Department of the Secretary of State and the Department of Justice grant funds to conduct a survey and to consult with non-governmental organizations on the impact of the *Charter*. The specific aims of this study included developing awareness, understanding and commitment to action regarding *Charter*-related actions in social development. The Council indicated that although certain groups were developing a "legal" capability and increasingly developing interests in the *Charter*, progress was uneven. Also, the Council identified a widespread lack of understanding among concerned organizations as to the positive and negative consequences related to employing the *Charter* for either litigative or non-litigative action.

There was considerable confusion about the future scope and form of public support for *Charter*-related court action. Given the existence of a Court Challenges Program to test language rights as well as litigation funds available in other departments, the obvious question became, if public support is available for *Charter* challenges (beyond the language matters already supported), what would be the vehicle providing support — legal aid programs, an expanded Court Challenges Program, or other alternatives?

In early 1985, the House of Commons set up a forum for discussing these issues when the Parliamentary Committee on Equality Rights (a Sub-committee of the Standing Committee on Justice and Legal Affairs) was established to study federal practices and statutes to ensure their conformity with the letter and spirit of equality and non-discrimination guarantees in the *Charter*. During its sittings, this Sub-committee heard testimony urging that appropriate steps be taken to ensure that the Constitution and the *Charter of Rights and Freedoms* should be known by, and accessible to, the public. In addition, witnesses voiced concern that governmental actions were dependent on the anticipated interpretation that the courts would provide. Some argued that a legalistic interpretation of the *Charter* based on prohibitions against discrimination needed to be supplemented by a broader approach that emphasized the development of rights that needed to be protected by the judicial system. Others noted that the federal government needed to assume responsibilities for specific action assumed by the provinces in designing or implementing actions arising from joint federal/provincial efforts (e.g., provincial eligibility criteria, levels of service, etc. in the Vocational Rehabilitation of Disabled Persons Program, the Canada Assistance Plan and other federal/provincial instruments).

The Sub-committee on Equality Rights also heard testimony that the idea of public access to the Constitution was limited to public support for an individual in meeting the costs involved in litigation. The obverse of this coin was evidence that little emphasis or