

CHAPTER 2

COURT CHALLENGES: AN OVERVIEW OF RESULTS

The ultimate purpose of the Court Challenges Program is to enable disadvantaged groups and linguistic minorities to benefit fully from Canada's Constitution by funding test cases that clarify language rights or equality rights. The central measures of the impact of the program derive from this fundamental mission. What aspects of the *Charter* rights of Canadians have been clarified? What disadvantaged groups have benefited from such clarifications?

To focus solely on legal decisions responding to cases funded by the program would, however, be misleading for several reasons. First, only a fraction of the cases funded by the program have resulted in definitive judicial decisions, because of the length of time absorbed by the litigation process. The Supreme Court of Canada has made a handful of decisions on language rights cases funded by the program, but no Supreme Court decision interpreting section 23 of the *Charter* has yet emerged (although, as this is written, a decision in the *Mahé* case is imminent). Nor has any case funded by the program yet resulted in a Supreme Court decision interpreting section 15 of the *Charter*, on equality rights. (Significantly, the mandate of the program precluded the funding of interventions in the recent *Andrews* case, which yielded the first Supreme Court decision on section 15.)

Indeed, only about 8% of the equality rights cases funded since the current program's inception in 1985 have resulted to date in decisions at any level by the courts, or by the quasi-judicial governmental boards providing an appropriate first recourse in some cases, and many of these decisions remain subject to appeal. In the case of the language rights component of the program, a higher percentage of funding decisions — just under 40% — have resulted in court decisions, but many of these, like the equality rights decisions, remain subject to appeal and further decisions.

It is important to note, as well, that many of the equality rights funding decisions have not been for the purpose of funding actual cases, but to enable research to explore the applicability of the *Charter* to issues of concern to disadvantaged groups. A number of the groups receiving case development funding have proceeded with legal actions. To our knowledge, however, the addition of a case development phase to the time involved in proceeding with litigation has prevented any of these cases from resulting in decisions.

It is thus impossible to provide a final verdict on the Court Challenges Program based on legal decisions reached thus far. It is possible, however, to provide a broad overview of the use of the program by client groups and individuals, as well as an appreciation of the kinds of issues in relation to which funding has been provided. Where legal decisions have resulted, they belong within this overview as well.