

## ASSESSMENT OF THE REASONS FOR CANCELLATION

### A. The State of Jurisprudence

There can be no doubt that Charter litigation will continue as long as there is a *Charter of Rights and Freedoms* and as long as there is a government that is passing new laws. For example, in the United States, two hundred years after the enactment of the *American Bill of Rights*, major constitutional cases are still coming before the Supreme Court.

The argument that Charter litigation is no longer needed makes two particularly unwarranted assumptions. It rests on the mistaken belief that all language and equality rights issues have been settled once and for all. Yet, some of these issues have not even been raised before the courts. It is also based on the erroneous contention that the Canadian Charter will remain unchanged. In the present circumstances, this assumption cannot justify the conclusion. This country is confronting a time when constitutional provisions — current or proposed — will be tested in the courts.

In fact, the most serious criticism of the Charter has been that it is out of reach of the average Canadian. The Court Challenges Program provides access to justice for those individuals who wish to defend their language and equality rights. It gives them a real stake in the Constitution of our country. This Program has made a critical difference in bringing constitutional rights within the reach of francophone parents, aboriginal women and persons with disabilities — to name but a few.

Funding from the Court Challenges Program has enabled disadvantaged groups such as these to have their day in court — their opportunity to persuade the judiciary that the Charter can be interpreted in ways that would remove disadvantage. Without a program such as Court Challenges, access to the remedies available under the Charter will probably only be assured to groups and individuals in Canadian society that already have financial and political advantages. Many of the Charter decisions that have had wide implications for our society have relied on the persuasive arguments by litigants or intervenors supported by the Court Challenges Program. The administrator of the Court Challenges Program presented statistics that clearly demonstrate the ongoing — and future — value of the Program in clarifying the language and equality rights of all Canadians.

#### 1. Equality Rights

The administrator and panel Chairs of the Court Challenges Program argued that major equality issues remain to be litigated. The Equality Rights Panel of the Program was to hold a meeting at the end of March to decide on funding for about 35 applications. Among these was the Canadian Disability Rights Council which had applied for funding on a case involving access to bus transportation for people with disabilities. Another case is that of a native woman who is a federal prisoner and who is trying to prevent the incarceration of native women at the Prison for Women in Kingston.