

imposed major financial burdens on them. Such court cases were motivated by strongly held principles and were unlikely to provide any material gain to successful litigants.

In essence, the original Court Challenges Program operated within the constraints imposed by the government, and Department of Justice determined the scope of its legal aid. The original criteria established that the government would provide money for cases where *the government* considered that a ruling would have implications for “a number of members of an official language minority community.” The government itself, i.e., the Department of Justice, considered the legal merit of each case before offering money to the litigants. The two ministers made the point explicitly that the funding of challenges to the *British North America Act* would not alter the policy that the Attorney General of Canada would intervene in appropriate cases involving the interpretation of language rights under the Constitution.

Initially, the government relied on a form of joint administration for the Court Challenges Program: the legal evaluation of applications was handled by the Department of Justice, and the administration and decision-making aspects fell under the Department of the Secretary of State. In the case of the Justice department, the government’s involvement could entail a real or potential conflict of interest. This might arise, for example, when an application for funding was related to a court challenge to federal legislation. Not only would the department’s lawyers be deciding on funding for the challenge, but they would also be charged with the government’s defence in court.

From 1978 to 1982, the Court Challenges Program funded six cases. Three of these involved challenges to Bill 101, the Quebec Charter of the French Language. The program also funded three other cases where French language minorities in Manitoba and Saskatchewan sought to clarify their rights in those two provinces.

II. INITIAL IMPACT OF THE CHARTER OF RIGHTS AND FREEDOMS

Following proclamation of the *Charter of Rights and Freedoms* in 1982, the Secretary of State, the Hon. Serge Joyal, and the Minister of Justice, the Hon. Mark MacGuigan, reaffirmed and updated the Court Challenges Program. In their announcement on 21 December 1982, the ministers included in the mandate of the Court Challenges Program the right to fund cases involving the equal status of official languages in Canada and minority language education rights under the *Charter*. Specifically, the program’s mandate was enlarged to include sections 16 to 23 of the *Charter of Rights and Freedoms*. The ministers also reaffirmed the other parts of the original mandate. (See Appendix A for the full text of the *Charter*.)

In this announcement, the government set out criteria, many of which pertain to the current program. These include the conditions that the issue should be one of substantial