

C. Language Rights Decisions

As of 5 June 1989, the language rights component of the Court Challenges Program had funded 51 cases, which had resulted in 20 judicial decisions. Among these are a number of decisions establishing principles of major importance in clarifying the meaning of the legislation set out in the language rights mandate of the program, and thus of evident significance in the evolution of language rights for Canadians.

1. Language of Education Rights

Cases funded by the Court Challenges Program, both before and after its transfer to the Canadian Council on Social Development, were instrumental in establishing the principle that section 23 of the *Charter* must be given a broad and liberal interpretation by the courts, given that it was framed for the purpose of remedying historical injustices. (See, for example, *Mahé v. The Queen* (1985).)

The *Mahé* (1985) decision also provided an expression of the doctrine that section 23 of the *Charter* represents a compromise between the national protection of minority language groups and the exclusive jurisdiction of the provinces over education. This doctrine has found expression, in some cases, in a reluctance on the part of the courts to employ judicial means to hasten legislative action. (See, for example, *Commission des Ecoles Fransaskoises Inc. et al. v. Government of Saskatchewan* (1988).) Other cases funded by the program have resulted in decisions of a more interventionist bent. In *Marchand v. The Simcoe County Board of Education* (1987) the court ordered education authorities and the Ontario government to construct enhanced facilities at a minority language secondary school in order to equalize the quality of educational services.

Another area of continuing litigation concerns the interpretation of the “where numbers warrant” provision of section 23 and its application to the provision of minority language educational programs, minority language schools, and participation (or control) by minority language groups in such schools. Cases funded by the Court Challenges Program have resulted in a series of decisions in this area. These decisions have contributed to both the emergence of the interpretation of section 23 that recognizes that management of an educational facility, as well as access to a facility or minority language instruction, can be an entitlement and the development of precedents that may provide guidance to future decisions. Since a judgement about the adequacy of numbers varies according to local conditions, it is foreseeable that the development of a consistent regime of judicial decision making on this question will emerge only by gradual degrees in the course of continuing litigation.

A second basic principle that has received unambiguous affirmation in response to cases funded by the program was that instruction in the minority language must be of comparable quality to that provided in the majority language and must not subject the minority language