

CHAPTER 1

COURT CHALLENGES: HISTORY OF THE PROGRAM

I. ESTABLISHMENT

The original Court Challenges Program began on 10 March 1978 when the Secretary of State, the Hon. John Roberts, and the Minister of Justice, the Hon. Ron Basford, announced the establishment of a fund to provide financial assistance for the legal expenses of certain litigants. The program was to aid those who sought court rulings to clarify the scope of protection afforded official language minorities under either section 93 or section 133 of the *British North America Act* (now the *Constitution Act, 1867*). Section 93 of the *Act* provides protection for minorities in the area of education and denominational schools, and section 133 relates to the use of English and French at the federal level and in the courts and legislatures of Quebec.¹

When the original court challenge funding program was established, the protection of linguistic minorities was being questioned. The Quebec Superior Court had recently held that the the Quebec Charter of the French Language was in conflict with section 133, and that decision was under appeal. In Manitoba, the courts were considering a case, *Forest v. Attorney General of Manitoba* which dealt with the issue of whether the restrictions on French language rights imposed in 1890 infringed on rights constitutionally protected by section 23 of the *Manitoba Act*, the counterpart of section 133 of the *British North America Act* for that province.²

Although the courts had decided sixty years earlier with regard to education in Ontario, that Section 93 provides denominational rights but no language guarantees, the highest courts had not determined the same issue for Quebec. Some members of Quebec's English-speaking minority claimed that their rights under section 93 respecting denominational schools were infringed by Bill 101.

The federal government established its litigation fund in 1978 because it considered it was very important to obtain legal definitions of the extent to which the Constitution protected official language minorities. It decided to offer assistance to Mr. Georges Forest to enable him to continue the litigation that he had begun in Manitoba and to provide assistance in the future to an individual or group that decided to commence an action challenging the education provisions of Quebec's Bill 101 on the grounds that these infringed on section 93 of the *B.N.A. Act*.

In part, the government made this money available because of a decision in October 1977 not to proceed by means of a direct reference of these items to the Supreme Court. As a result, the government decided to recognize that this litigation by private individuals or groups