

based on other sections had to be rejected even if the proposed cases tested federal law, policy or practice.

The Equality Rights Panel also noted that many *Charter* challenges under section 15 have been brought by members of traditionally advantaged groups — people used to the litigation process — and have either attacked the equality rights of disadvantaged groups or excluded them from the action. In the first years of the Court Challenges Program, equality-seeking groups were not very often the litigants, even though the rights at issue in a case were rights that directly affected them. The Panel therefore felt that it was essential for equality-seeking groups to become interveners in order to ensure that their perspective on how rights that directly affect them should be interpreted is heard and considered by the courts.

In light of these assertions and of the need for this report to assess the history of *Charter* litigation and particularly the use of section 15 since its proclamation in 1985, the Committee heard from Gwen Brodsky and Shelagh Day who summarized the findings of their 1989 study, *Canadian Charter Equality Rights for Women* (published by the Canadian Advisory Council on the Status of Women). They reported that of the 591 court decisions relating to section 15 up to 17 April 1988, only 189 dealt with grounds relating to disadvantage. When criminal matters in which section 15 was argued defensively are excluded, as well as decisions in which arguments concerning disadvantaged persons were made in their absence or contrary to their interests, 91 decisions remain where disadvantaged persons can be said to have initiated litigation. When interlocutory proceedings and appeals of the same case are removed, the number is reduced to 66. Finally, of those 66 cases, only 17 were actually initiated by members of major disadvantaged groups (women, aboriginal peoples, disabled persons and members of national, ethnic or racial minorities). To assess these findings, which essentially demonstrate the difficulty of *Charter* litigation for disadvantaged groups in the period before the Court Challenges Program became fully effective, we will also evaluate the nature of the program's legal impact.