

## RECOMMENDATION

12. That the new contribution agreement explicitly set up a separate fund to pay for case development proposals approved by the panels in order that the funds available for litigation not be reduced. This case development fund should constitute up to 30 per cent of the possible annual amount in the litigation fund. This case development fund should be administered on two levels: funding granted for exploratory research, and funding granted to assist preparation for a specific case. In granting funds for any application to finance litigation under the Court Challenges Program, the panel should decide what prior case development work funded by the program applies to an application being considered and deduct this from subsequent litigation funding.

## RESPONSE

The Government of Canada recognizes that case development funding can be beneficial in determining whether a case should properly be put before the courts. Case development funding has made the Charter's equality rights accessible to disadvantaged groups by providing funds (up to \$5,000) to "allow preliminary development work to be done on potential Charter challenges within the Program's mandate".<sup>3</sup> Pre-litigation research may help a group to convert information into solid arguments that can be used efficiently in court. Therefore, pre-funding can be of help to groups and individuals.

However, any financial support provided to an organization or an individual must respect the program's criteria. "Exploratory" activities which cannot be related to a specific case nor be assessed against the Program's criteria may, in many instances, have alternate sources of funding.

The memorandum of agreement could be worded as follows:

The Program may grant funding of up to \$5,000 for the development of a case. This amount will be deducted from the ceiling if funding is granted at a later date. Each year, the Program will not exceed development funding for 30 cases.

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<sup>3</sup> Annual Report, 1988/1989: "Equality Rights Taking Shape", page 9.