

legal remedies. It seems clear, however, that the process envisioned in 1985 is proceeding, and that the Court Challenges Program is providing important assistance to disadvantaged groups in gaining access to *Charter* rights.

## II. LANGUAGE RIGHTS

The language rights component of the Court Challenges Program predates the current program, having been created in 1978 as a program administered by the Department of the Secretary of State. The terms of reference established for the Court Challenges Program in 1985 specified that funding would be continued for language rights cases approved for funding by the previous program and stipulated that not less than \$300,000 per year should be provided for challenges in the area of language rights.

### A. Language of Education Rights Funding

The minority language education rights set out in section 23 of the *Charter* are a major focus of litigation funded by the program. Section 23 establishes, for qualified parents, a constitutional right to have their children educated in the language of the official language minority in the province where they live, where the number of children of qualified parents is deemed to be sufficient. Qualified parents must have either English or French as their first language, or have received their primary school instruction in Canada in one of these languages. Section 23 has been a major source of language rights litigation both because it addresses central concerns of linguistic minorities and because it applies across Canada.

Cases funded by the program have raised issues such as the precise identification of those entitled to the rights established in section 23; the content of these rights and their implementation, including permissible restrictions; and appropriate forms of redress for those whose rights have been infringed.

In 1988, for example, the Fédération Provinciale des Comités de Parents du Manitoba received funding to challenge provisions of the *Manitoba Public Schools Act* requiring a minimum enrollment of 23 pupils within an existing school division before French-language instruction will be provided and restricting minority language of education rights to those residing within a given school division by making the admission of children of those residing outside a school division subject to the discretion of the school board. Included in the challenge are complaints that existing legislation does not address issues such as the need for equality between majority and minority language educational services, the autonomy of French-language schools, and the right of the minority to administer its own educational institutions.

The issue of how many students constitutes a number sufficient to warrant minority language education was involved as well in a 1988 case in Nova Scotia. The Comité pour l'éducation au Cap-Breton received funding to appeal several aspects of a Supreme Court of