

INTRODUCTION

On 25 September 1985, the Minister of Justice, the Hon. John Crosbie, and the Secretary of State, the Hon. Benoît Bouchard, announced a major revitalization and expansion of the Court Challenges Program. The Program had been in existence since 1978, when it was established in the Department of the Secretary of State to assist linguistic minorities in clarifying and asserting their language rights through the courts and, in 1982, had been given increased funding to support litigation clarifying a broadened range of language rights, including those set out in section 23 of the *Canadian Charter of Rights and Freedoms*.

The 1985 program, to be administered by the Canadian Council on Social Development at arm's length from the government, was broadened to enable support for individuals and groups challenging federal legislation, practices and policies in test cases based on section 15 of the *Charter*, dealing with equality rights, which had just come into effect. Since its inception, the program has remained unique to Canada. It recognizes that codified rights do not, by themselves, guarantee very much unless a means is available to ensure that they will be put into practice on behalf of those they are intended to protect.

The expanded Court Challenges Program of 1985 was given a five-year funding commitment by the government, thus ensuring its life until 31 March 1990. The program is currently under review by the government, and a decision on its renewal is expected early in the new year.

Our awareness of these facts is the central reason for this study. We wanted to give Canadians an opportunity to make their views about the Court Challenges Program known, at a date early enough to be taken into consideration in a decision about its future. We wanted, as well, to look closely at what the program has achieved and at whether improvements might be recommended for the future, assuming the program warranted continuation.

Thus, on 8 June 1989, we instructed our research staff to compile information and analyses during the summer, and we agreed unanimously to proceed with intensive study in the fall. Following the return of Parliament, two days of intensive hearings were held, on 28 September and 3 October. Additional witnesses were heard on 5 October and, as required, during ensuing weeks. In all, we heard 62 witnesses formally and various departmental officials informally and received written briefs from groups from British Columbia to Atlantic Canada. We would like to thank all the contributors to this study for their valuable advice and assistance, a great deal of which they will see reflected in what follows.

This report begins with a short history of the Court Challenges Program, tracing the evolution of the program as it was adapted to changing social, political and constitutional