House of Commons
Canada

PAYING TOO DEARLY

REPORT OF THE STANDING COMMITTEE ON HUMAN RIGHTS AND THE STATUS OF DISABLED PERSONS

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Bruce Halliday, M.P.
Chairman

June 1992

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HOUSE OF COMMONS

Issue No. 23

Thursday, June 11, 1992

Chairperson: Bruce Halliday

CHAMBRE DES COMMUNES

Fascicule nº 23

Le jeudi 11 juin 1992

Président: Bruce Halliday

Minutes of Proceedings and Evidence of the Standing Committee on

Human Rights and the Status of Disabled Persons

Procès-verbaux et témoignages du Comité permanent des

Droits de la personne et de la condition des personnes handicapées

RESPECTING:

Pursuant to Standing Order 108(3)(b), consideration of the announcement to cancel the Court Challenges Program

INCLUDING:

First Report to the House

CONCERNANT:

Conformément à l'article 108(3)b) du Règlement, étude concernant l'annonce de l'annulation du Programme de contestation judiciaire

Y COMPRIS:

Le Premier rapport à la Chambre

Third Session of the Thirty-fourth Parliament, 1991-92

Troisième session de la trente-quatrième législature, 1991-1992

25057-1

STANDING COMMITTEE ON HUMAN RIGHTS AND THE STATUS OF DISABLED PERSONS

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The Standing Committee on Human Rights and the Status of Disabled Persons

has the honour to present its

FIRST REPORT

In accordance with its mandate under Standing Order 108(3)(*b*), your Committee examined the announcement to cancel the Court Challenges Program, and has agreed to report the following:

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PAYING TOO DEARLY

Justice is such a fine thing that we cannot pay too dearly for it.

(Alain René Lesage, *Crispin rival de son maître*, IX.)

INTRODUCTION

When we tabled our report to Parliament on the Court Challenges Program on 11 December 1989, we believed that the need for parliamentary scrutiny of this Program had been met until 1994. When the government cancelled the Program on 27 February of this year, however, an immediate and urgent review of this decision became necessary.

For us, as Members of the Standing Committee on Human Rights and the Status of Disabled Persons, our recent hearings on the Court Challenges Program have produced a sense of *déjà vu*. We confronted our task of reviewing the government's decision to cancel the Program with no great enthusiasm. It is sad that the time and effort that we spent assessing, evaluating and reporting on the Court Challenges Program in 1989 appears not to have been taken seriously enough.

The arguments and information that we use in preparing our recommendations to Parliament are brought to us by witnesses who spend a great deal of time and energy in preparing analyses for us. Often they must travel — at considerable inconvenience — from all parts of Canada to respond to our inquiries. Committees of Parliament are indebted to these people for their contribution and, as we concluded in our 1990 report, *Unanswered Questions*:

> We think the government should appreciate that contribution too, because it puts ministers in direct contact with realities that are all too easily distorted or filtered out by the departmental policy process (p. 3).

There are two issues at stake here. The first and most obvious is the fate of the Court Challenges Program and its role in ensuring that minority language groups and equality-seeking groups have an opportunity to influence the interpretation and advancement of Canada's laws, in particular, the *Canadian Charter of Rights and Freedoms*. The second — and to this Standing Committee of the House of Commons, equally basic — is the treatment of reports presented by committees of the House of Commons. We have reflected upon this issue before. In *Unanswered Questions*, we pointed out that:

> The capacity of standing committees to give citizens a voice in government relies. . . on the willingness of government to listen, and to give evidence of having heard. Responses to committee reports must reflect this willingness, or they can undermine the effectiveness of Parliament and, in the long term, of government (p. 2).

In preparing a response to the present report, we expect the government to keep an open mind because this will ultimately bolster the credibility of Parliament, of parliamentary committees and of government itself. We also hope that the government is prepared to recognize that bureaucratic imperatives and political considerations are not always congruent.

OUR 1989 REPORT

From 8 June until 22 November 1989, the Standing Committee on Human Rights and the Status of Disabled Persons carried out an intensive study of the Court Challenges Program. For us, the value of the Court Challenges Program has been definitively set out and was made abundantly plain in the report that we tabled in the House of Commons on 11 December 1989. That report, which contains both the results of our intensive study and our unanimous recommendations, we feel, still reflects the beneficial value of the Court Challenges Program. Even with the passage of time, our findings need little amplification or modification.

Some of our considerations, however, bear repeating. The Court Challenges Program, originally established in 1978, has provided financial assistance to linguistic minorities in clarifying and asserting their constitutional rights through the courts and, since 1982, has included the language protections set out in sections 16 to 23 of the *Canadian Charter of Rights and Freedoms*. Since 1985, when the Program became independent of government, it has also supported individuals and groups challenging federal legislation, practices and policies in test cases based on section 15 of the Charter, dealing with equality rights, as well as section 27 (multiculturalism) and section 28 (equality of the sexes).

The Program funds test cases of national importance. By funding individuals and groups, it addresses broad issues that affect a significant portion of this country's people. It is not a general legal aid program.

To ensure unbiased decisions about which court challenges were funded, in 1985 the Program was removed from the direct control of government departments and placed under the auspices of an independent body. To ensure even greater fairness, the arm's length agency that administered the Program was required to set up two panels of experts who respectively adjudicated applications and approved the funding for each equality rights or language rights case.

Since its inception, the Program has remained unique to Canada and the subject of international admiration. It provides a recognition that by themselves, codified rights do not guarantee very much unless a means is available to ensure that these rights can be exercised by those who they are intended to protect.

Thirty months ago, our unanimous agreement reflected the virtually unanimous verdict of our witnesses and we recommended that the Court Challenges Program should be renewed until 31 March 2000. We also recommended further parliamentary reviews in 1993-1994 and 1998-1999 (Recommendation 2).

THE GOVERNMENT'S RESPONSE

In the 10 May 1990 Response to the Standing Committee's report, the Minister of State for Multiculturalism and Citizenship agreed, on behalf of the government, to renew the Court Challenges Program for five years until 1995 (For a summary of our recommendations and the Response see Appendix A).

The Response also recognized the inherent conflict of interest for the government to decide which court cases to fund. In dealing with our recommendation that the Program remain independent (Recommendation 3), the Response stated that "The Government of Canada views the continuation of an arm's length relationship to be one of the Program's positive features as it allows decisions to be transparent and made independently of the government."

With regard to the ongoing need for the Program, the government Response stated that "given that there are still significant areas of language and equality rights which require clarification, the Government of Canada believes that it is currently preferable to retain the Program's objective."

The Response also accepted our other contention that the mandate of the Court Challenges Program and the jurisdiction of the Canadian Human Rights Commission cover separate areas in view of the fact that the *Canadian Human Rights Act* contains its own remedial mechanisms.

COURT CHALLENGES PROGRAM 1989-1992

Even with the government's commitment two years ago to renew the Court Challenges Program, the road has remained bumpy. In June 1990, the Standing Committee held an *in camera* meeting to hear from the administrators of the Court Challenges Program who explained that delays in working out arrangements to renew the Program were compromising its effectiveness. These delays would result in staff lay offs if a decision about who would administer the Program were not forthcoming in the immediate future. The Standing Committee then expressed its concern to the Under Secretary of State and urged the government to ensure that its decision to renew the Program was carried out expeditiously. In retrospect, this puzzling little episode casts considerable light on the way that the Program has been dealt with.

Politically, it makes sense to protect ministers from the firing line and from decisions about which Charter challenges will be funded. That is what this Committee recommended in its previous report. We do, however, recognize that this situation leaves departmental officials responsible for an item in the *Estimates* that they cannot control and, in a sense, for decisions that they do not take. We cannot help but wonder whether this arm's length arrangement has lessened departmental commitment and lowered the place of the Program in departmental priorities.

The Court Challenges Program's future appeared to be assured, however, when the University of Ottawa assumed responsibility for its administration in August 1990. The terms under which the University has been administering the Program were set out in a Contribution Agreement (Appendix B). Since that time, the Human Rights Research and Education Centre, as the agent of the University, has supervised the administration of the Program. Both the Program's Equality Rights Panel and the Language Rights Panel have met regularly to make funding decisions about applications for support that were submitted to the Program.

Two new features were added to the Progam by the Human Rights Centre:

1. an appointments committee was established to ensure a fair and independent appointment process to the Equality and Language Rights Panels which adjudicate the applications for funds from the Program; and

2. the Human Rights Centre had committed itself to devote 80% of the University's share of the Centre's budget to provide research and library services that support both the Program itself and the users of the Program.

CANCELLATION OF THE PROGRAM

When the cancellation of the Court Challenges Program was announced on 27 February 1992, there were two reasons given:

1. a solid body of jurisprudence has been established by the Program and consequently, there is no reason to continue it; and

2. the contention that, during a period of fiscal restraint there are cheaper ways to manage the funding of Charter challenges, in particular; a department of government (i.e. the Department of Justice) could undertake this role on an *ad hoc* basis.

ASSESSMENT OF THE REASONS FOR CANCELLATION

A. The State of Jurisprudence

There can be no doubt that Charter litigation will continue as long as there is a *Charter of Rights and Freedoms* and as long as there is a government that is passing new laws. For example, in the United States, two hundred years after the enactment of the *American Bill of Rights*, major constitutional cases are still coming before the Supreme Court.

The argument that Charter litigation is no longer needed makes two particularly unwarranted assumptions. It rests on the mistaken belief that all language and equality rights issues have been settled once and for all. Yet, some of these issues have not even been raised before the courts. It is also based on the erroneous contention that the Canadian Charter will remain unchanged. In the present circumstances, this assumption cannot justify the conclusion. This country is confronting a time when constitutional provisions — current or proposed — will be tested in the courts.

In fact, the most serious criticism of the Charter has been that it is out of reach of the average Canadian. The Court Challenges Program provides access to justice for those individuals who wish to defend their language and equality rights. It gives them a real stake in the Constitution of our country. This Program has made a critical difference in bringing constitutional rights within the reach of francophone parents, aboriginal women and persons with disabilities — to name but a few.

Funding from the Court Challenges Program has enabled disadvantaged groups such as these to have their day in court — their opportunity to persuade the judiciary that the Charter can be interpreted in ways that would remove disadvantage. Without a program such as Court Challenges, access to the remedies available under the Charter will probably only be assured to groups and individuals in Canadian society that already have financial and political advantages. Many of the Charter decisions that have had wide implications for our society have relied on the persuasive arguments by litigants or intervenors supported by the Court Challenges Program. The administrator of the Court Challenges Program presented statistics that clearly demonstrate the ongoing — and future — value of the Program in clarifying the language and equality rights of all Canadians.

1. Equality Rights

The administrator and panel Chairs of the Court Challenges Program argued that major equality issues remain to be litigated. The Equality Rights Panel of the Program was to hold a meeting at the end of March to decide on funding for about 35 applications. Among these was the Canadian Disability Rights Council which had applied for funding on a case involving access to bus transportation for people with disabilities. Another case is that of a native woman who is a federal prisoner and who is trying to prevent the incarceration of native women at the Prison for Women in Kingston.

Since 1985, the Program has received 951 applications for funding in relation to equality rights. It has funded 175 court challenges, 124 proposals for case development and 11 impact studies. The majority of these cases (125) were presented before a trial court. Twenty six went before a court of appeal and the Supreme Court of Canada heard 24. Among the cases funded by the Program, 47 concerned sex discrimination, 36 dealt with the rights of persons with disabilities, 23 involved discrimination on the basis of racial or ethnic origin and 18 clarified the equality rights of aboriginal persons. Currently, 85 test cases funded by the Program are, or soon will be before the courts. Of these, 72 will be in a trial court, 6 in a court of appeal and 7 in the Supreme Court of Canada.

2. Language Rights

From the time that the Program became independent of the government in 1985, it has received 171 applications for funding in relation to language rights. It has funded 77 court challenges, 13 case development proposals and 4 impact studies. Of these cases, 39 concerned education rights, 14 involved legislative bilingualism and 13 dealt with legal rights.

Again, the vast majority of these cases (35) will only have been heard by a court at the trial level, the lowest level of court. Of the others, 23 went to a court of appeal and 19 to the Supreme Court of Canada.

At the time of the Program's cancellation, 20 test cases were before the courts (16 in a trial court, 1 in an appeal court and 3 in the Supreme Court of Canada).

3. Commentary

The Administrator of the Program provided the Committee with statistics showing that judgments have been rendered in 104 cases in which the Program has funded either a party or an intervenor (48 cases dealing with equality rights and 56 with language rights). Most of these judgments were delivered by a trial court (27 equality rights and 12 language rights cases) or a court of appeal (15 and 18 respectively). It is only reasonable to expect that some of these cases are worthy of appeal to the Supreme Court of Canada.

If the cancellation of the Program remains in effect, disadvantaged groups may not be able to secure definitive judgments in the higher courts. The situation is particularly serious since the vast majority of cases funded by the Program are still at the trial stage. If the groups lose these cases, there will be no money available to commence the expensive process of appealing these cases. Given its mandate, the Program has only funded "test" cases where a definitive judgment can only be expected either from a court of appeal or the Supreme Court of Canada.

We share the concern of our witnesses that because of the slow moving nature of the judicial process and the dilatory tactics that are often employed by those who oppose equality and language rights challenges, unfavourable decisions rendered in test cases brought by

those funded by from the Court Challenges Program will probably not receive a definitive court ruling. In turn, it is highly likely that if a decision of a lower court is not pleasing to the government, the Department of Justice will appeal it. The private litigant, already functioning from a position of disadvantage, will be left with attempting to raise funds to defend the appeal. Canada may yet again prove the adage "You can't fight City Hall!"

Numerous experts who have no direct association with the Program have provided this Committee with glowing evaluations of the Program's worth in establishing jurisprudence. In a letter that was tabled with us, former Justice Bertha Wilson of the Supreme Court of Canada commented that "it is totally illusory to confer rights on people who do not have the means to enforce them and I assumed that the expansion of the Court Challenges Program following the advent of the *Charter of Rights and Freedoms* was an effort to address this problem. . . I saw for myself when I was a member of the Supreme Court how invaluable this Program has been to minority groups and to the disadvantaged. It has clearly been well and efficiently administered and has resulted in an excellent input into many very significant 'test' cases."[1] J.C. MacPherson, Dean of Osgoode Hall Law School, commented that "a good deal of the excellent Charter jurisprudence that now exists in Canada would not have developed without the Court Challenges Program."[2]

The jurisprudence that has been established with the assistance of funding from the Court Challenges Program is not always in opposition to government positions. With respect to the recent Supreme Court of Canada decision in *R. v. Butler*, for example, a case that interpreted the law of obscenity in a way that represents an important and acceptable balance of conflicting viewpoints, the Dean of Law at the University of Manitoba pointed out that the Program should "be seen by the Government of Canada as being of very great assistance to it in the resolution of complex and controversial issues."

During his appearance before our Committee, the Deputy Minister of Justice, Mr. John Tait, concurred that the Court Challenges Program has been "an excellent help" in establishing jurisprudence. On the other hand, he pointed out that "this program in the scheme of things against the other priorities of the government is not as necessary as it once was to play its role in building the jurisprudence" (Issue 16, p. 10).

As for the future, John Benesh, Chief Executive Officer of the Canadian Bar Association, put it another way. In terms of jurisprudence, he told us that:

> We have perhaps covered the first ten steps of a voyage lasting 100 kilometers. It is also through the miracle of legislation that in a democratic society new rights are constantly found. Twenty years ago, there were things that we didn't think were

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[1] Letter from Bertha Wilson to the Honourable Kim Campbell, minister of Justice and Attorney General of Canada, March 4, 1992 (*see Appendix C*).

[2] Letter from J.C. MacPherson to the Honourable Gerry Weiner, Minister of Multiculturalism and Citizenship, March 8, 1992 (*see Appendix C*).

> unfair, but now we know they are. Consequently, even if we correct all wrongs as we see them now, I am sure that tomorrow we will see clearly inequities that are now overlooked (Issue 12, p. 13).

B. The Question of Money

While the benefits of the Court Challenges Program in terms of jurisprudence are clear, the saving that might be achieved by cancelling it remains murky. Obviously, one could start by asking: What price can we place on justice? But this begs the question almost as much as hiding the costs and benefits of a publicly–funded program behind the cloak of the secrecy of budget deliberations. A debate of this nature resolves nothing.

This Committee has stated its position on the need for dialogue about policy in our earlier report, *Unanswered Questions*:

> Arguments that weigh and compare alternatives can only be responded to by arguments that do the same thing. To respond to arguments with unelaborated announcements is to ignore the arguments—or at least give that appearance (p. 3).

Throughout our hearings on the cancellation of the Court Challenges Program we repeatedly sought enlightenment on the question of costs versus benefits.

1. A Balance Sheet

In the interest of stimulating a constructive discussion over the issue of money, we have put together a few considerations to help in drawing up a rough balance sheet.

a. Much of the money that will continue to be paid out of the Court Challenges Program for cases at the trial level will be wasted. This situation will arise because many of those who initiate a case using Program funding will not be able to raise the money necessary to appeal an adverse decision or to counter an appeal by the government. Cases funded by the Court Challenges Program were selected as "test cases" with the expectation that a definitive decision on the matter would not be reached until they had gone to a court of appeal or the Supreme Court of Canada.

b. It is important to remember that the Court Challenges Program has been a line item in the *Estimates* of the Department of Multiculturalism and Citizenship and therefore quite visible. If the Department of Justice, or any other department of government, were to undertake funding of Charter challenges on an *ad hoc* basis, the amount would be hidden in the *Estimates* and there is no reason to believe that it would be less.

c. Salaries of lawyers working for the Court Challenges Program are far lower than those of lawyers with the Department of Justice who possess similar qualifications.

d. To retain even a semblance of an arm's length relationship and avoid an unacceptable conflict of interest, the government would still have to maintain some type of independent assessment process to adjudicate requests for the funding of Charter challenges. This assessment process would incur many of the same costs that currently apply to the Language Rights and Equality Rights Panels of the Court Challenges Program.

e. There would be no immediate, measurable decrease in the case funding expenditures of the Court Challenges Program because the money that is currently being released and will be released in the next year or two has already been committed. This delay is due to the slowness of the court process and the fact that any significant payment to lawyers who work on cases funded by the Court Challenges Program is only authorized after a court has rendered judgment on that case. Any major saving to the government is potentially several years down the road and, in fact, the odds are that payments from the public purse for legal bills will increase in the next two years.

f. According to evidence to date, funding litigation through a government department has historically led to considerably higher costs per case than challenges funded by the Court Challenges Program. This has been the situation with the Department of Indian Affairs and Northern Development which itself still funds court challenges to clarify aboriginal rights.

2. Commentary

The evidence that was produced for this Committee's investigation points to the fact that the Program has been efficiently administered. For example, the Contribution Agreement that was signed between the University of Ottawa and the Minister of State (Multiculturalism and Citizenship) in July 1990, substantially reduced the administrative overhead of the Court Challenges Program. The last year that the Program was run by the Canadian Council on Social Development (1989-1990), the Program's overhead was in excess of $180,000. In 1991-1992, the University of Ottawa had reduced the overhead cost to $99,000 (this includes some direct costs such as the cost of the selection committees and the library and research services). In addition, the University of Ottawa has absorbed the cost of some general services that were provided to the Program.

Independent experts have confirmed that the Program's costs have been well spent. Former Supreme Court Justice Bertha Wilson noted that "I believe that I can say with complete confidence that the public has unquestionably received full value for its money on

this particular Program."[3] Dean Penner of the University of Manitoba Faculty of Law stated that "by no stretch of the imagination can it be said that the program is either extravagant in terms of the amount of money spent on any particular case or unfocused, or unimportant."[4]

In our 1989 report on the Court Challenges Program, our evidence overwhelmingly led us to conclude that it was not making lawyers rich. In fact, one of the organizations that received money from the Program indicated that voluntary efforts by its members and *pro bono* work by lawyers working on Charter challenges amounted to between $2 and $4 for every dollar spent by the Court Challenges Program (p. 50). We have no reason to believe that this situation has changed. Dean Lynn Smith of the Faculty of Law at the University of British Columbia pointed out in a letter that was tabled with us that "the [Court Challenges funding] tended to be devoted very substantially to the costs and expenses of bringing cases forward, and not to legal fees — in short, there were huge donations of free legal work by reputable lawyers across the country which the Program made possible."[5] John Benesh of the Canadian Bar Association told us that "it is my understanding that the amount of money given [by lawyers] to each particular case in this program is certainly insufficient for most of the legal fees and that approximately half of all the legal work is just given to the program."

We are left with the conclusion that the Program's cost was not weighed against its benefits and that the cost of cancelling the Program was not considered in the light of the need for fiscal restraint. In short, we were neither provided with convincing proof that the government's action resulted from the compilation and consideration of adequate information — nor that any saving of public money will occur in the foreseeable future.

PAYING TOO DEARLY

When all is said and done, perhaps we really still must decide if justice is such a fine thing, can we pay too dearly for it. Certainly, most of the witnesses that we heard and the representations that we received answered us with a resounding "No".

The represesentations that this Committee has received since the cancellation of the Program have shown us how greatly the people of Canada value the principle of access to the courts. During the whole of this 34th Parliament, our Committee has never received as many unsolicited submissions on any single issue. The comments that have been submitted to us have come not only from a former Justice of the Supreme Court of Canada and from municipalities like the City of Ottawa but from organizations such as Rural Dignity of Canada, the Shelter for Abused Women and their Children, the Centre for Spanish-Speaking People, and the Inuit Women's Association (For a full list see Appendix E).

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[3] See footnote 1.

[4] Letter from Roland Penner to the Honourable Gerry Weiner, Minister of Multiculturalism and Citizenship, March 5, 1992 (*see Appendix C*).

[5] Letter from Lynn Smith to the Honourable Gerry Weiner, Minister of Multiculturalism and Citizenship, March 4, 1992 (*see Appendix C*).

In speculating about the relevance of the Court Challenges Program, John Benesh of the Canadian Bar Association told us:

> Maybe, if 100 years ago, we had implemented fully the equality rights and the language rights that we are struggling with. . . we would not have the problems that we have now. I don't know if you can do it in terms of the immediate dollars and cents of going to court. You can certainly do it on the cost to society of the continual aggravation and degradation of individuals who do not have their rights (Issue 12, p. 10).

During the current constitutional negotiations, it is obvious that people and governments in this country are striving for inclusiveness and fairness — the best Canadian virtues. As John Benesh put it plainly:

> What's the real purpose of law? To try to ease the terms of interaction in society. It is not to punish. . . Law is the grease that makes the social contract work. As such this program has opened the eyes of people to their freedoms and, if I can use a legal term, has crystalized rights we always had but may not have know we could have claimed (Issue 12, p. 5).
>
> . . .the brilliance of this program is that it tries to take the individual rights and deal with collective issues so that a large group of people benefit. The benefits are not just for the individual in the wheelchair; the benefits are to the society as a whole. . . (Issue 12, p. 12).

We are left with repeating the conclusion from our 1989 report:

> In the Committee's unanimous view, the Court Challenges Program ranks as a distinctive Canadian achievement in the area of human rights (p. 26).

When we tabled our earlier recommendations to Parliament, we also stated that:

> If the value of public access to Charter rights that underlay the launching of the Court Challenges Program is accepted, then there are really only two arguments that could justify termination of the program. . . It could be argued that the program has achieved what it was intended to achieve and is now dispensable, or that it has not (and cannot) fulfill the intentions of its originators and should be allowed to lapse because of ineffectiveness (p. 26).

Two years ago we rejected these possibilities and we reject them still.

We support the reinstatement of the Court Challenges Program. It is necessary both that the critically important work of the Program shall be maintained and that its independence shall be ensured. We would like to protect the Program from the vagaries of the fiscal and financial imperatives of any government in the future.

Harking back to our 1989 report, we also seek to find a means of implementing our recommendations that the Court Challenges Program might be expanded to cover challenges to provincial legislation (Recommendations 6 and 7). At the same time, we wish to emphasize

that the Court Challenges Program must remain a national program. Although the argument has been made that a continuation of the Program's objectives could be given to the provinces, we believe that this approach would foster a patchwork of provincial schemes across the country. It is conceivable that larger provinces would develop more elaborate programs and that smaller provinces could not afford any program at all. This result would only serve to perpetuate the very inequalities that the present Court Challenges Program is struggling to eliminate. If the matter of court challenges were left to the provinces, we are concerned that only provincial laws would be tested in the courts. This would leave a huge gap if federal legislation were exempt.

We cannot over-emphasize the value of collaboration and cooperation, particularly in the fundamental task of assisting all Canadians to gain access to *their* Constitution and to *their* Charter. The depth of their desire for this leapt from the pages of the letters and submissions that we have received over the past few months. In this time of constitutional uncertainty, the continuation of the Court Challenges Program would provide a rallying point for those who believe that access to justice is a cause common to all Canadians. The Court Challenges Program must be the property of us all — a cooperative venture which encompasses the contributions of the federal government, the provincial governments, the legal profession and the Canadian community as a whole.

RECOMMENDATION

The Standing Committee on Human Rights and the Status of Disabled Persons recommends that the Court Challenges Program be maintained.

The Committee further recommends that the Program be restructured, without an interruption in its activities, as a non-profit Court Challenges Foundation that would continue to be administered by the Human Rights Research and Education Centre of the University of Ottawa. The start-up costs of the Foundation could be financed by a one-time contribution from the federal government which would provide it with an adequate endowment (up to $10 million). The federal government should immediately undertake negotiations with provincial governments to establish voluntary, proportional contributions. The federal government should explore a way to allow the Canadian legal profession, notably the Canadian and provincial bar associations, to contribute to the Court Challenges Foundation by such means as providing *pro bono* work. The federal government should also explore a method of seeking contributions to the Foundation from the various equality-seeking and language-rights groups and from other individuals or associations.

This Committee further recommends that the existing form of the Court Challenges Program should continue receiving government funds until the Foundation begins operation. In any event, the federal government should establish the Foundation no later than 1 November 1992.

Notwithstanding the request attached to this report for a comprehensive response within 150 days, the Standing Committee on Human Rights and the Status of Disabled Persons recommends that the government make a public statement of its intentions as soon as possible and no later than 60 calendar days from the date of tabling.

Appendix A

Minister of State
Multiculturalism
and Citizenship

CANADA

Ministre d'État
Multiculturalisme
et Citoyenneté

Dr. Bruce Halliday
Chairperson
Standing Committee on Human Rights
and the Status of Disabled Persons
House of Commons
West Block, Room 350
Ottawa, Ontario
K1A 0A6

Dear Dr. Halliday:

I am pleased to attach the Government's response to the First Report of the Standing Committee on Human Rights and the Status of Disabled Persons on the Court Challenges Program.

I commend you and the Committee members for your thorough review of the Court Challenges Program.

Yours sincerely,

Gerry Weiner

Ottawa, Canada K1A 0M5

RESPONSE

to the

First Report of the Standing Committee

on Human Rights and the

Status of Disabled Persons

COURT CHALLENGES

PROGRAM

RESPONSE TO THE FIRST REPORT OF THE STANDING COMMITTEE ON HUMAN RIGHTS AND THE STATUS OF DISABLED PERSONS

RECOMMENDATION

1. That the Government of Canada increase the $2.4 million recently committed to meet Court Challenges Program billings arriving after 31 March 1990 to the amount of $3 million, and that this increase be announced as soon as possible or, in any event, by 31 December 1989.

RESPONSE

Following discussions with Canadian Council on Social Development, it was agreed to reprofile $2.4 million to 1990/1991.

On February 22, 1990, the Minister of State for Multiculturalism and Citizenship sought the cooperation of the Canadian Council on Social Development to continue administering the Court Challenges Program for a period of four months, beginning April 1, 1990 to July 31, 1990. It was agreed that the commitments made by the members of the linguistic and equality rights review panels during this four-month period should not exceed $667,000. A sum in the amount of $250,000 was made available to the Canadian Council on Social Development for the Program's administration. This extension allows the Program to continue operating without interruption and ensures that court cases proceed as usual.

RECOMMENDATION

2. That the Court Challenges Program be renewed for a period extending from 1 April 1990 to 31 March 2000, and that reviews by a parliamentary committee with a mandate in the area of human rights be conducted in 1993-1994 and in 1998-1999. The issue of the Program's renewal should be resolved by 31 March 1999 in order to facilitate litigation planning by clients of the Program.

RESPONSE

The Government of Canada is prepared to renew the Court Challenges Program for a five-year period. The Program and its environment, it has been noted, evolve rapidly. Consequently, the Government of Canada considers that a five-year period is optimal for the renewal of a program. It allows adequate time to periodically assess the Program's effectiveness and relevance in light of societal changes and government priorities.

It is estimated that court cases take up to three years to proceed through a given court level of the judicial system. An added three-year period after the five-year period has been built into the Program's financial framework to avoid past problems related to payments of outstanding accounts.

RECOMMENDATION

3. That any modifications made to the Court Challenges Program upon its renewal maintain administrative independence from government.

RESPONSE

Maintaining administrative independence was considered by all the witnesses who appeared before the Standing Committee as an important element of the Court Challenges Program. The Government of Canada views the continuation of an arm's-length relationship to be one of the Program's positive features as it allows decisions to be transparent and made independently of the government.

RECOMMENDATION

4. That a statement of program objectives be included, immediately preceding the case funding criteria, in the contribution agreement for a renewed Court Challenges Program. Such a statement could read as follows: "The objective of the Court Challenges Program is to provide financial assistance related to significant test cases asserting minority language rights, equality rights of disadvantaged groups, and aboriginal rights in order to ensure that the needs of linguistic minorities, disadvantaged groups and aboriginal peoples are taken fully into account by the courts as they clarify the constitutional rights of Canadians."

RESPONSE

The Government of Canada concurs with the Standing Committee's recommendation that a statement of Program objectives be included in the memorandum of agreement upon the renewal of the Court Challenges Program.

Given that there are still significant areas of language and equality rights which require clarification, the Government of Canada believes that it is currently preferable to retain the Program's objective.

To be consistent with the original purpose of the Program, the Government of Canada will incorporate the following objective into the memorandum of agreement:

> **"The purpose of this contribution agreement is to set out the terms and conditions governing the administration of the Court Challenges Program whose objective is the clarification of the official language rights guaranteed in sections 93 or 133 of the Constitution Act, 1867, or in sections 23 of the Manitoba Act, 1870, or in sections 16 to 23 of the Constitution Act, 1982, and the equality rights guaranteed in sections 15 and 28 of the Canadian Charter of Rights and Freedoms, or in which an argument based on section 27, is made in support of arguments based on section 15; this objective being achieved through the provision of financial assistance for test cases of national significance put forward by or on behalf of disadvantaged groups or individuals."**

RECOMMENDATION

5. That the funding criteria be amended so as to permit the acceptance of applications relating to cases that centrally concern the amelioration of a disadvantage experienced by a group characterized by one of the grounds set out in section 15(2) (or by analogous grounds), when for valid technical reasons the case is based on a section of the *Charter* other than sections 15, 27 or 28.

RESPONSE

The extension of support to challenges covering other sections of the Charter would make it difficult for the Panel to set priorities in funding decisions without a significantly increased budget. Given the country's present economic situation, the Government of Canada has opted to retain the original Program objectives. The Program should continue to concentrate on section 15 since clarification of the section is far from complete. Without an increase in funds, focus on section 15 would be lost and stringent priorities would be required to judge the numerous applications which are likely to be submitted under an expanded Program.

RECOMMENDATION

6. That the current restriction "federal legislation, policies and practices" in the equality rights funding panel mandate be removed, and that the panel be given a mandate to fund equality rights cases having national importance for disadvantaged groups.

RESPONSE

According to the Program criteria, cases are limited to issues of discrimination of concern to federal areas of jurisdiction. The expansion of the Court Challenges Program to include such issues would generate numerous applications challenging provincial laws, policies and practices, in areas such as education, health, housing, welfare, transportation, social services, natural resources, environment, etc.

The increase in the number of applications would tax the administrative resources of the Program and make it more difficult for the panels to take decisions on cases. Also, as a result, a smaller percentage of applications could be funded.

For these reasons, the Government of Canada has chosen to retain the Program's original scope and structure.

RECOMMENDATION

7. That the Government of Canada, in consultation with minority language rights groups, explore options (including that of a broadened Court Challenges Program) relating to the enhanced recognition and implementation of minority language rights across Canada.

RESPONSE

The Government of Canada is proud of the work it has accomplished to promote the "recognition and implementation of minority language rights across Canada". Part VII of the new Official Languages Act underlines the Canadian government's commitment to enhance the vitality of the English and French linguistic minority communities in Canada and support their development.

In 1988, both the Official Languages in Education and the Promotion of Official Languages Programs of Secretary of State were renewed for five years with increased allocations. Through these programs, the Department of the Secretary of State provides financial assistance to a number of organizations representing English and French minority communities to enable them to pursue their activities.

The Department of the Secretary of State has also been collaborating, since 1970, with all the provinces and territories in the area of minority language education and second language instruction. This cooperation has been extended to the fields of justice, health, social services and culture. In the last few years, the Government of Canada has concluded important agreements with many provinces for the provision of provincial services in the minority language.

Recognizing the importance of all federal institutions in the development of minority language communities, the Act gives the Secretary of State the mandate to foster a coordinated approach. The Secretary of State has, in collaboration with his colleagues, taken important steps "to enhance the vitality of the English and French linguistic minority communities in Canada and to foster the full recognition and use of both English and French in Canadian Society."

These realizations speak eloquently on behalf of the government and its commitment to promote the advancement of official languages. The Government of Canada will continue to work with the organizations, the provinces, the territories, other federal institutions, and the private and voluntary sectors to attain these objectives.

RECOMMENDATION

8. That the funding criterion precluding duplication be amended to read: "The funding of duplicate cases should be avoided, but panels may fund duplicate cases in exceptional circumstances when it is believed that this will maximize the benefits to disadvantaged minorities from Program funding."

RESPONSE

The Government of Canada maintains that, in a program tailored to effect the systematic clarification of the Charter, duplicating cases standing before the courts should be avoided. Duplication of cases does not maximize the use of the Court Challenges Program's resources in terms of its contribution to clarifying certain rights in the Constitution.

RECOMMENDATION

9. That the funding criterion relating to interventions be amended to read: "Up to three interventions may be funded where the rights of a disadvantaged group or linguistic minority will be affected significantly by the outcome of a case or by the interpretations of *Charter* provisions raised by it."

RESPONSE

It is recognized and accepted by the courts that valid arguments, not raised by the parties responsible for carrying a case, should be heard, since an intervention can have a significant impact on a case. But the Government of Canada considers, along with the Standing Committee, that the number of interventions and the funds spent on a given case should be limited.

Based on this premise, the funding criteria forming part of the memorandum of agreement could be worded as follows:

> **Intervenors may be funded under the Program when all the following criteria are met:**
>
> 1. **their intervention meets the Program criteria;**
>
> 2. **their intervention raises important and legally meritorious arguments for the resolution of the linguistic or equality rights issue(s) raised in the case;**
>
> 3. **the arguments raised in their intervention are not covered in substance by the parties or other intervenors in the case; and**
>
> 4. **intervenors must represent a disadvantaged group or linguistic minority that is directly affected by the outcome of the case.**

RECOMMENDATION

10. That applications which qualify for Court Challenges Program funding, but that also fall under the jurisdiction of the Canadian Human Rights Commission receive Court Challenges Program funding only after consultation with the Canadian Human Rights Commission.

RESPONSE

The Government of Canada believes that extending the Court Challenges Program to cases within the jurisdiction of the Canadian Human Rights Commission is not justified. In the first place, the Canadian Human Rights Act includes its own remedial mechanisms. Moreover, as the Program is essentially limited to certain provisions under the Constitution, expanding it to this Act would change the nature of the Program and raise the question of why other acts of Parliament should not be included.

RECOMMENDATION

11. That the mandate of the existing equality rights panel be broadened to create an equality and aboriginal rights panel, authorized to fund challenges based on sections 25 and 35 of the Constitution in addition to those proposed elsewhere in this report, and:

    -1- that an annual amount of $500,000, additional to amounts provided for the renewal of other elements of the Court Challenges Program, be provided by the government for the funding of aboriginal rights litigation;

    -2- that the government review the mandate of the Native Test Case Funding Program, administered by the Department of Indian and Northern Affairs, to ensure that it does not overlap with the mandate of the proposed equality and aboriginal rights funding panel and reallocate funds accordingly; and

    -3- that at least two members of the proposed equality and aboriginal rights funding panel (assuming it remains an eight-member panel) be representatives of Canada's aboriginal peoples.

RESPONSE

The expansion of the Program, first, to include sections 25 and 35 of the Constitution with an additional $500,000 annually for litigation of Aboriginal rights and, second, to establish a new panel to process the applications pertaining to equality and Aboriginal rights, would require a major restructuring of the Program. This is unrealistic in the current economic situation, which dictates that the Government of Canada maintain the Court Challenges Program's present scope and structure.

Nevertheless, it should be noted that, under the previous Program, the funding has specifically contributed to the advancement of the Federation of Newfoundland Indians, the Batchewana Band and the Arlene Talbourdet cases. The Equality Rights Panel has also funded, to quote the CCSD's 1988/1989 annual report: "three aboriginal organizations — the New Status Indian Association, the Native Council of Canada, and the Native Council of Canada (Alberta) — to seek intervenor status in the Twinn case now before the Federal Court of Canada".[1] The report on equality rights continues: "The third largest group of cases funded were those dealing with equality for aboriginal peoples (eight cases)"[2].

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[1] Annual Report, 1988/1989: "Equality Rights Taking Shape", page 13.

[2] Ibid., p. 13.

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".[3] 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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[3] Annual Report, 1988/1989: "Equality Rights Taking Shape", page 9.

When a proposal of case development is submitted to the Court Challenges Program for financial assistance, the Program will require from the applicant the following items:

(1) **A synopsis of the jurisprudence that will be used in support of the case identified for development;**

(2) **A full description of any legislative provisions, regulations or practices that apply to the case;**

(3) **An explanation of why the case warrants review in the courts;**

(4) **An explanation of the legal remedy that will be sought;**

(5) **The identity of the plaintiff who will bring the case before the courts or a description of the type of plaintiff and circumstances that should be used;**

(6) **A full description of the facts pertaining to the plaintiff, or potential plaintiff, that are relevant to the case;**

(7) **A general description of the type and number of expert witnesses that will testify at the trial of the case and the nature of the evidence they will submit;**

(8) **Any explanation by the successful applicant, after she or he has completed the case development work, as to why the case should not be pursued in the courts.**

RECOMMENDATION

13. That the government consider how to provide funds to establish one or more legal resource centres to serve minority language, equality seeking and aboriginal groups. This funding could come from the appropriate programs in the Department of the Secretary of State and the Department of Justice. Once the centre is established with appropriate data bases of case law, etc., it could assist in, among other things, legal research and case development for successful applicants to the Court Challenges Program. It could recover part of its expenses by charging fees for its services.

RESPONSE

The Government of Canada recognizes the value of funding legal research and has done so in the past by funding such projects, under the auspices of the Human Rights Law Fund of the Department of Justice and the Human Rights Program of the Department of the Secretary of State. Numerous research projects funded under these programs have been conducted by university researchers as well as non-governmental organizations like the Canadian Human Rights Foundation and the Canadian Federation of Rights and Liberties. Law faculties have also received funding in order to develop computerized research capabilities accessible electronically across Canada.

Plus, there are other sources of government funding available for legal research. Interest groups may apply for funding to these programs if they want to conduct research not related to specific cases.

RECOMMENDATION

14. That the mandate of the Court Challenges Program be altered to allow the program to sponsor national meetings of, and consultations with, its client groups by inserting "national meetings" under the list of approved budgetary expenses in the contribution agreement. These funds should be tied specifically to the exchange of information regarding litigation that falls within the mandate of the Court Challenges Program. If this entails an increase in the administrative budget of the Court Challenges Program, these funds should be provided from the appropriate programs in the Department of the Secretary of State that carry out duplicate funding of information activities.

RESPONSE

The Court Challenges Program's objective is the clarification of linguistic and equality rights under the Constitution. The Government of Canada wishes to preserve the Program's initial scope and structure and avoid the overlapping of programs.

However, the Government of Canada recognizes the benefits that interest groups derive in exchanging information regarding litigation that falls within the mandate of the Court Challenges Program. It will consider providing funding for such activities through existing programs.

RECOMMENDATION

15. That a Court Challenges Funding Panel Appointments Committee be established, such committee to consist of nominees of each of the three major political parties and the chairperson of the funding panel for which an appointment is being considered; and that this committee be entitled to recommend funding panel appointments to the Secretary of State whenever agreement is achieved among 3 of its 4 members.

RESPONSE

The Government of Canada supports an appointment process which is open to suggestions from a wide variety of groups and organizations. As the Standing Committee's report did not find any significant problems with the current system, the Government is committed to maintaining the existing appointment process.

RECOMMENDATION

16. That panel members be appointed for three-year terms renewable once. The terms should be structured so that one-third of the appointments to each panel lapse in each year. Members should be remunerated at a rate of $250 per diem.

RESPONSE

The Government of Canada agrees with this recommendation and it will be reflected in the memorandum of agreement.

RECOMMENDATION

17. That the next memorandum of agreement should prohibit the use of money from the litigation fund for the internal legal research costs of the Court Challenges program.

RESPONSE

The Government of Canada agrees with the recommendation and it will be reflected in the memorandum of agreement.

RECOMMENDATION

18. That the Secretary of State for Canada seek proposals to administer the Court Challenges Program. These proposals should be evaluated by a committee composed of outside experts, representatives of the panels of the Court Challenges Program, and the government. When a selection has been agreed upon, the Secretary of State and representatives of the selected organization should appear before this Committee no later than 31 March 1990.

RESPONSE

Since there are very few organizations which are qualified to administer the Court Challenges Program, it would be difficult to implement the Standing Committee's recommendation to seek proposals.

The Minister of State for Multiculturalism and Citizenship, who is accountable for the administration of the Program before the House, will make the final selection and advise the Standing Committee accordingly.

RECOMMENDATION

19. That the contribution agreement be amended to give the Language Rights Panel and the Equality Rights Panel greater discretion in the following manner:

-1- There should be a regular, periodic review of the program's funding limit for court cases. These reviews should bear in mind that the program's mandate should continue to allow the panel to override the funding limit in exceptional circumstances.

-2- The requirement in the contribution agreement that all accounts be taxed should be replaced by a stipulation that all accounts be reviewed by the clients and by the staff of the Court Challenges Program and then approved by the appropriate panel. The agreement should also include a provision that either the client or the panel may request adjudication or taxation of a lawyer's account.

-3- The agreement should provide for either the Language Rights Panel or Equality Rights Panel to make a funding commitment for the required number of levels of court. This commitment should also be seen as an expenditure in the fiscal year of the funding decision to ensure that funds are available throughout the whole court process. The panel should review its decision at every level of court and have the capacity to decide to withdraw a funding commitment at any level.

-4- The Department of Justice should conduct a review of its approach to litigation under section 15 and report to this Committee by June 30, 1990 on its policies with regard to the Department's litigation strategy, particularly its approach to procedural issues in section 15 cases.

RESPONSE TO 19-1-

The Court Challenges Program was not designed to pay for all legal fees and expenses incurred by groups applying for funds. The Government of Canada regards the $35,000 limit for each court level as a reasonable contribution in support of a test case. It should be noted that the memorandum of agreement provides for payments in excess of $35,000 in very special occasions. The memorandum of agreement will provide proper guidelines.

RESPONSE TO 19-2-

There is a general consensus among all parties involved with the Court Challenges Program that the taxation criteria is a stumbling block. The Standing Committee's recommendation is well taken. The memorandum of agreement will ensure the abolishment of automatic taxation and could be worded as follows:

> **Payment of accounts for legal expenditures will be subject to prior taxation... when requested by the funded group, the Program or the Department.**

RESPONSE TO 19-3-

Experience shows that cases take several years to proceed through all court levels. It is difficult to forecast which cases will reach the Supreme Court level. As well, cases evolve as they move through the courts and at each level the Panels must ensure that the cases still meet the funding criteria. However, the memorandum of agreement will invite the panels to give prior consideration to cases which have already been funded by the Program at a given court level.

RESPONSE TO 19-4-

The Department of Justice's approach to litigation under section 15 brings into play the dual roles of the Minister of Justice and the Attorney General of Canada in the administration of justice in Canada. The Attorney General is responsible for the actual application of the law, represents the Crown in all litigation where rights of a public nature of concern to federal government are in issue, and must at all time uphold the rule of law. Equally, the Minister of Justice is concerned with the policy considerations underlying the law and must ensure that federal laws are fair and in compliance with our constitutional principles.

Moreover, concerned government departments and central agencies must be consulted on litigation decisions, particularly where the outcome of a case will impact not only on the government program in issue in the case, but also on other government programs. This impact can range from the legal/precedential value of the case, to the fiscal/financial burden that can result from a particular outcome. The legal, social, economic and policy concerns of other departments and agencies in relation to a particular section 15 case can be of crucial importance to the Department's decisions governing the case, including the determination of whether a case should be appealed. The Department's litigation strategy in a particular section 15 case can also be governed by the specific facts and circumstances of the case. These influencing factors are not of course peculiar to section 15 litigation, but are often part and parcel of the litigation process generally.

It may be worth commenting on the interplay between the Court Challenges Program and the Department of Justice's conduct of section 15 litigation. Even though the Court Challenges Program is aimed at clarifying certain provisions of the Constitution, it nevertheless remains a funding program. It permits disadvantaged groups and individuals to bring test cases before the courts to clarify section 15 rights. Yet, the object of clarifying provisions of the Constitution through the funding of test cases cannot displace the normal course of litigation, including the resolution of procedural issues that are a necessary incident of the proper conduct of the Government's defense of a case or settlements between the parties. It would be inappropriate through conditions imposed by the Court Challenges Program to influence the normal course of this litigation generally or to interfere with litigants' ability to manage or settle their cases.

It should be noted that the Department of Justice has senior-level committees that are responsible for superintending the conduct of important litigation, and whose role is, among other things, to ensure coherence in the approach taken by Departmental lawyers to Charter cases.

Appendix B

CONTRIBUTION AGREEMENT

This Agreement made this 17th day of July 1990.

BETWEEN: HER MAJESTY IN RIGHT OF CANADA, represented herein by the Minister of State (Multiculturalism and Citizenship), (hereinafter referred to as the "Minister")

AND: THE UNIVERSITY OF OTTAWA, a corporation incorporated under The University of Ottawa Act, 1965, chapter 137, Statutes of Ontario, 1965, located in the City of Ottawa, Province of Ontario, acting by and through the Human Rights Research and Education Centre, (hereinafter referred to as the "Centre").

WHEREAS the Government of Canada has established the Court Challenges Program (hereinafter referred to as the "Program") whose objective is stated in Clause 1 of this Agreement;

WHEREAS the Centre is committed to the attainment of the objective of the Program;

NOW THEREFORE THIS AGREEMENT WITNESSES that, in consideration of the mutual covenants herein, the parties agree as follows:

1. OBJECTIVE OF THE PROGRAM

1.1. The objective of the Program is the clarification of the official language rights guaranteed in section 93 or 133 of the Constitution Act, 1867, or in section 23 of the Manitoba Act, 1870, or in sections 16 to 23 of the Constitution Act, 1982, or parallel constitutional provisions, and the equality rights guaranteed in sections 15 and 28 of the Canadian Charter of Rights and Freedoms, or in which an argument based on section 27 is made in support of arguments based on section 15; this objective being achieved through the provision of financial assistance for test cases of national significance put forward by or on behalf of linguistic minority groups or disadvantaged groups or individuals.

2. PURPOSE OF AGREEMENT

2.1 The purpose of this Agreement is to set out the terms and conditions governing the administration of the Program.

2.2 The Centre shall administer the Program in accordance with the objective described in Clause 1 and with the terms and conditions of this Agreement.

2.3 In addition, the Centre agrees to continue administering, in accordance with the terms and conditions of this Agreement, activities arising out of the Program before August 1st, 1990.

3. ELIGIBILITY CRITERIA FOR FINANCIAL ASSISTANCE

3.1 Test cases

The Centre may provide financial assistance for test cases that meet the objective of the Program as set out in Clause 1, and are in accordance with the following criteria:

a) For language cases:

The case shall directly test language rights based on section 93 or 133 of the Constitution Act, 1867, or on section 23 of the Manitoba Act, 1870, or on sections 16 to 23 of the Constitution Act, 1982, or parallel constitutional provisions;

b) For equality cases:

Financial assistance shall apply to federal legislation, policies and practices only and the case shall directly test equality rights based on sections 15 (equality) and 28 (equality of the sexes), or in which an argument based on section 27 (multiculturalism) is made in support of arguments based on section 15 of the Canadian Charter of Rights and Freedoms;

c) Duplication shall be avoided. Thus, when a legal issue is before the courts, another person espousing substantially the same legal issue in the same or another case shall not receive financial assistance under the Program;

d) The case must have legal merit and have consequences for a significant number of people;

e) Applications for financial assistance shall not be considered for:

i) complaints filed under the Canadian Human Rights Act, and proceedings taken under that Act, or applications for judicial review or appeals of decisions of the Canadian Human Rights Commission or Canadian Human Rights Tribunals; or

ii) complaints filed under the Official Languages Act, and proceedings taken under that Act, or applications for judicial review or appeals in respect of actions and measures taken by the Commissioner of Official Languages.

3.2 Case development

a) Subject to the receipt of the information referred to in Clauses 3.2 (d) and (e), the Centre may provide financial assistance up to $5,000 for reasonable costs incurred in developing a case that could reasonably have the potential to meet the objective of the Program referred to in Clause 1 and the criteria set out in Clause 3.1.

b) The Centre shall deduct the amount provided for case development under Clause 3.2 (a) from the maximum amount set out in Clause 5.1, if financial assistance is subsequently granted under the Program, for the pursuance of the case.

c) The Centre shall ensure that normally, per fiscal year, no more than 30 applications for financial assistance for case development, and in any event no more than 150 of such applications over the five fiscal years covered by this Agreement, are approved by the panels referred to in Clause 4.

d) Where a proposal for case development is submitted to the Program for financial assistance, the Centre shall obtain from the applicant the following information:

i) a general description of the case to be developed;

ii) an explanation of why the case would warrant review in the courts;

iii) a general explanation of the legal remedy that might be sought;

iv) a description of the type of potential plaintiff or the actual plaintiff who might bring the case before the courts; and

v) other potential sources of financial assistance to support the applicant in bringing the case.

e) The Centre shall impose as a condition of financial assistance that the successful applicant provide, upon completion of the case development,:

i) a synopsis of the jurisprudence that will be used in support of the case; and

ii) a full description of any legislative provisions, regulations or practices that apply to the case; and

iii) a detailed explanation of the legal remedy that will be sought; and

iv) the identity of the plaintiff or a detailed description of the type of plaintiff who will bring the case before the court; and

v) a general description of the type and number of expert witnesses that will testify at the trial of the case and the nature of the evidence they will submit; or

vi) a detailed explanation setting out the reasons for not pursuing the case in the courts, where the applicant decides, after completing the case development work, not to pursue the case in the courts.

3.3 **Recipients of financial assistance**

The Centre may provide financial assistance in accordance with this Agreement to:

a) linguistic minority groups or individuals and disadvantaged groups or individuals, or non-profit organizations representing them; and

b) intervenors whose intervention in a test case meets the criteria set out in Clause 3.1 and the following additional conditions:

i) their intervention raises important and legally meritorious arguments for the resolution of the linguistic or equality rights issue(s) raised in the case;

ii) the arguments raised in their intervention are not covered in substance by the parties or other intervenors in the case; and

iii) they are, or are representative of, disadvantaged groups or individuals or linguistic minority groups or individuals that are directly affected by the outcome of the case.

3.4 Impact Studies

The Centre may commission, at the request of either panel, impact studies of important court decisions relevant to litigation under the Program, up to a maximum of $25,000 per fiscal year, for dissemination to users of the Program and to the public, when the panel believes that such research would assist users in conducting litigation under the Program and would provide for a more efficient and effective administration of the Program.

4. PANELS

4.1 In order to ensure independence in the selection of cases, the Centre shall establish two panels, one for language rights, the other for equality rights, which solely will be responsible for approving the cases that warrant financial assistance and determining the amount of financial assistance.

4.2 Subject to the approval of the Minister, the Centre shall appoint the panel members, including designated chairpersons, on the basis of their recognized standing and competence in the field of equality or language rights as the case may be.

4.3 Each panel shall be composed of not less than five, and not more than seven members.

4.4 Chairpersons shall establish the agenda and the frequency of the meetings.

4.5 Panel members shall be appointed for a term of a maximum of three years, renewable once. The appointments shall be made so as to ensure, as far as possible, the expiration in any one fiscal year of the terms of not more than two members.

4.6 In addition to reimbursement for reasonable travel and accommodation expenses according to the Treasury Board Travel Directive, the Centre may remunerate panel members at a rate of $250 a day for the days during which the panel is convened.

5. CEILINGS ON AMOUNT OF FINANCIAL ASSISTANCE

5.1 The Centre may provide financial assistance for each stage of litigation up to the following maximum amount:

Trial	$35,000	(including $5,000 for case development, if any)
Appeal	$35,000	
Supreme Court	$35,000	

5.2 In exceptional circumstances, where a panel determines that a case is of such an urgent or complex nature as to warrant the provision of additional financial assistance, the Centre may provide additional financial assistance up to $ 25,000 at each stage of litigation.

5.3 Where a panel determines that a case warrants the additional financial assistance referred to in Clause 5.2, the Centre shall require the taxation, or a similar procedure, of the account for all legal expenses for the level of court for which the additional financial assistance is provided. The Centre shall also notify and provide the Minister with the reasons and supporting documentation for such additional financial assistance.

5.4 The Centre shall ensure that an amount of not less than $500,000 is available per fiscal year for commitments for language cases, if there is a sufficient number of such cases that warrant financial assistance.

5.5 Where a panel determines that a case involves only in part issues concerning language or equality rights, the Centre may provide partial financial assistance proportionate to the importance of the linguistic or equality issues to the entire case, provided that the part of the case to receive financial assistance meets the objective in Clause 1 and the criteria set out in Clause 3.1.

6. MAXIMUM AMOUNT OF COMMITMENT

6.1 For the purposes of this Agreement, funds are committed for a case at the time that a panel, referred to in Clause 4, approves a case.

6.2 The Centre shall ensure that the funds committed for cases, including impact studies, during each fiscal year do not exceed $2,000,000, except in circumstances described in Clause 6.3.

6.3 Funds committed for cases, including impact studies, may exceed $2,000,000 per fiscal year only if funds are transferred from the "administration" category of expenses to the "cases" category of expenses.

7. MAXIMUM AMOUNT OF CONTRIBUTION

7.1 Contribution

Subject to the appropriation of funds by Parliament, to the maintenance of current and forecasted program budget and to the terms and conditions of this Agreement, the Minister agrees to pay a contribution for the allowable expenditures incurred for cases approved for financial assistance, including impact studies, and the administration of the Program.

7.2 Annual budget

The maximum contribution payable per fiscal year by the Minister to the Centre shall be set out in an annual budget referred to in Clause 8, which is subject to the prior approval of the Minister for each fiscal year of the Agreement. Once approved by the Minister, the annual budget shall constitute an integral part of the Agreement.

8. APPROVED ANNUAL BUDGET

8.1 For the purposes of this Agreement:

a) the annual budget refers to the detailed budgeted expenses for the administration of the Program and the forecasted expenses for financial assistance to cases, including impact studies;

b) a fiscal year shall begin on April 1st and end on March 31st, except for the first fiscal year which shall begin on August 1st, 1990 and end on March 31st, 1991.

8.2 For the purposes of Clauses 7.2 and 9.2(a), the Centre agrees to submit to the Minister the annual budget four months before the beginning of each fiscal year, commencing with the fiscal year 1991-1992.

8.3 The Centre agrees that the contribution referred to in Clause 7 shall be applied only to the following categories of expenses:

a) expenses related to cases approved for financial assistance under Clause 3, including expenses for impact studies as contemplated in Clause 3.4; and

b) administration expenses including:

salaries and benefits
travel and meetings
contracts
audit
facilities (rent, taxes, utilities, communications)
insurance
data processing
translation and interpretation
office expenses and supplies
panel members fees
indirect costs.

8.4 The Centre may transfer funds from the "administration" category of expenses referred to in Clause 8.3 (b) to the "cases" category of expenses referred to in Clause 8.3 (a), but the Centre shall not transfer funds from the "cases" category of expenses referred to in Clause 8.3 (a) to the "administration" category of expenses referred to in Clause 8.3 (b).

8.5 Accounts for legal expenses will be subject to taxation, or a similar procedure, prior to payment when requested by the funded group or by the individual receiving financial assistance or by the Centre.

9. **PAYMENT**

Subject to Clause 7, the Minister agrees to pay the contribution for the Program to the Centre as follows:

9.1 **1990-91**

a) The first advance payment, representing the Centre's cash requirements for the month of August 1990, shall be made after the signing of this Agreement and upon receipt and acceptance by the Minister of the Centre's annual budget and monthly cash flow forecast statement for the period August 1st, 1990 to March 31st, 1991;

b) The second advance payment, representing the Centre's cash requirements for the month of September 1990, shall be made after the receipt and acceptance by the Minister of the Centre's overall budget for the period April 1st, 1991 to March 31st, 1992, provided that the requirements for the release of the previous payment have been met in a manner which is satisfactory to the Minister. This information shall be provided by the Centre before August 15th, 1990;

c) The fifth and eighth advance payments shall be paid as follows:

i) the fifth advance payment, representing the Centre's cash requirements for the month of December 1990, shall be made after the receipt and acceptance by the Minister of the Centre's financial statements and activity report for the two months ended September 30th, 1990, plus revised annual budget and revised monthly cash flow forecast statement for the period October 1st, 1990 to March 31st, 1991, copies of each of which shall be provided by the Centre before November 1st, 1990;

ii) the eighth advance payment, representing the Centre's cash requirements for the month of March 1991, shall be made after the receipt and acceptance by the Minister of the Centre's financial statements and activity report for the four months ended November 30th, 1990, copies of each of which shall be provided by the Centre before February 1st, 1991;

d) The third, fourth, sixth and seventh advance payments, representing respectively the Centre's cash requirements for the months of October, November 1990 and January and February 1991, shall be made on or about the first day of each of these months provided that the requirements for the release of the previous payments have been met in a manner which is satisfactory to the Minister.

9.2 **1991-1992 and subsequent fiscal years**

a) The first advance payment, representing the Centre's cash requirements for the month of April, shall be made on or about April 1st after the receipt and acceptance by the Minister of the Centre's annual budget and monthly cash flow forecast statement for the period April 1st to March 31st of the current fiscal year. The Centre shall provide these documents four months before the beginning of the current fiscal year;

b) The fourth, seventh and tenth advance payments shall be paid as follows:

i) the fourth advance payment, representing the Centre's cash requirements for the month of July, shall be made after the receipt and acceptance by the Minister of the Centre's financial statements and activity report for the month of April of the current fiscal year, copies of each of which the Centre shall provide before June 1st of the current fiscal year;

ii) the seventh advance payment, representing the Centre's cash requirements for the month of October, shall be made after the receipt and acceptance by the Minister of the following documents which the Centre shall provide before September 1st of the current fiscal year:

A. audited financial statements and the annual report for the previous fiscal year;

B. financial statements and a supporting activity report for the four months ended July 31st of the current fiscal year; and

C. an overall budget for the period April 1st to March 31st of the next fiscal year;

iii) the tenth advance payment, representing the Centre's cash requirements for the month of January, shall be made after the receipt and acceptance by the Minister of the following documents which the Centre shall provide before December 1st of the current fiscal year:

A. financial statements and a supporting activity report for the seven months ended October 31st of the current fiscal year; and

B. a revised annual budget and a revised monthly cash flow forecast statement for the period November 1st to March 31st of the current fiscal year;

c) The second, third, fifth, sixth, eighth, ninth, eleventh and twelfth advance payments, representing respectively the Centre's cash requirements for the months of May, June, August, September, November, December, February and March, shall be made on or about the first day of each of these months provided that the requirements for the release of the previous payments have been met in a manner which is satisfactory to the Minister.

9.3 Where advance payments are payable by the Minister under this Agreement, they shall be made to the Centre within 30 working days following the receipt of the documentation described in Clauses 9.1 and 9.2, provided that the data reflected in said documentation are in compliance with the terms and conditions of the Agreement and that the Centre has effectively addressed the issues, if any, name by the Minister.

9.4 The Centre's cash requirements referred to in Clauses 9.1 and 9.2 shall be determined on the basis of the accepted monthly cash flow forecast statements.

10. RECORDS AND REPORTS

10.1 The Centre agrees:

a) to maintain separate accounting books and records for the Program;

b) to report separately in its periodic financial statements and in its audited financial statements required pursuant to Clause 9, all costs associated with the administration of the Program;

c) to set up a computer-based case-tracking system through all stages from application for financial assistance to final decision on the case in the court system, and to give the Minister full and ready access to the data collected in the system, except where these data would constitute personal information or information protected by the solicitor/client privilege;

d) to provide the Minister with:

i) reports indicating that requirements of Clauses 3.2 (c), 5.3, 5.4 and 6.2 have been met. These reports shall be submitted five months after the end of each fiscal year;

ii) a summary of cases approved for financial assistance and of cases denied financial assistance as soon as possible after the panels have made such decisions including the name of the applicants, except for the name of an individual where financial assistance is denied. No information will be required on panel deliberations;

iii) bi-annual updated descriptions of ongoing cases including information such as parties involved, level of court, issues, intervenors, impact studies, and summary of cases receiving financial assistance; such information shall also be provided as soon as possible upon request by the Minister;

iv) copies of all court decisions, whether interim or final, issued in cases receiving financial assistance as soon as possible after their issuance;

v) an annual report, as required pursuant to Clause 9.2 (b) (ii) (A), which would include a summary of cases approved for financial assistance, the level of court of cases receiving financial assistance, a summary of decisions rendered in cases receiving financial assistance and frequency of meetings of panels; and

vi) a summary report of all cases receiving and having received financial assistance as of March 31st, 1994.

10.2 Upon the termination of this Agreement on March 31st, 1995, the Centre shall transfer to the Minister, upon his request, all data and documents collected for the administration of the Program, as provided in Clauses 2.2 and 2.3.

10.3 The Minister and the Centre agree not to jeopardize the solicitor/client privilege of users of the Program.

11. FINANCIAL STATEMENTS AND ACTIVITY REPORTS

11.1 For purposes of this Agreement, the financial statements referred to in Clause 9 of this Agreement mean a detailed statement of all sources of revenue and items of expenditure incurred by the Centre for the activities funded through this Agreement.

11.2 For purposes of this Agreement, the activity reports referred to in Clause 9 of this Agreement mean a brief written description of the Centre's activities for each sub-category of expenses referred to in the annual budget approved by the Minister.

12. AUDITED FINANCIAL STATEMENTS

12.1 In addition to the financial statements mentioned in Clause 9, the Centre shall submit audited financial statements to the Minister within five months following the end of each fiscal year covered by the Agreement. These statements must disclose all the sources of revenue and items of expenditure for the activities funded under this Agreement. The audit shall be conducted by independent practising public accountants, licensed, if required, by the laws in force where the Centre has its main place of business, or otherwise appropriately qualified. The audited financial statements shall include the Auditors' management letter.

13. PUBLIC ACKNOWLEDGMENT

13.1 In any promotion programs, advertising and publicity for the activities funded under this Agreement, the Centre shall acknowledge, in both official languages, the funding of this Program by the Government of Canada.

14. NOTICES AND COMMUNICATIONS

14.1 All notices and communications concerning this Agreement shall be addressed as follows:

a) for the Minister:

Director
Human Rights Directorate
Multiculturalism and Citizenship Canada
Ottawa (Ontario)
K1A 0M5

b) for the Centre:

Director
Human Rights Research and Education Centre
University of Ottawa
57 Louis Pasteur
Ottawa (Ontario)
K1N 6N5

15. DURATION

15.1 Under and subject to this Agreement, the Minister shall only pay to the Centre the contribution referred to in Clause 7 in relation to:

a) activities conducted and expenditures incurred for cases approved by the panels, including impact studies commissioned by the Centre, prior to April 1st, 1995; and

b) activities conducted and expenditures incurred for the administration of the Program during each fiscal year of the period August 1st, 1990 - March 31st, 1995.

15.2 In compliance with the terms and conditions of this Agreement, the Minister will be responsible for the payment of allowable expenses incurred for activities conducted between April 1st, 1995 and March 31st, 1998 for cases approved for financial assistance by the panels, including impact studies commissioned by the Centre, before April 1st, 1995.

15.3 The Minister will give reasonable notice to the Centre with respect to the possible continuation of the Program after March 31st, 1995 and, if possible, such notice should be given before September 30th, 1994.

16. GENERAL CONDITIONS

16.1 The document entitled "General Conditions-Contributions", which is attached hereto, is an integral part of this Agreement. In case of divergence between the Clauses of the General Conditions and Clauses 1 to 15.3 of this Agreement, the latter Clauses shall prevail.

16.2 Where the potential recipient of financial assistance under the Program is an official or employee of the Government of Canada, Clause 8 of the General Conditions does not apply.

IN WITNESS WHEREOF the parties have executed this Agreement on the day first written above.

HER MAJESTY
IN RIGHT OF CANADA

Gerry Weiner
Minister of State
(Multiculturalism and
Citizenship)

André Bujold
Witness

(Name in print)

HAROLD BUJOLD
(Name in print)

UNIVERSITY OF OTTAWA

Jean Farrall
(Signature)

JEAN FARRALL
Director
Research Services
University of Ottawa

(Name in print)

(SEAL)

(Signature)

(Name in print)

THE CENTRE

William W Black
(Signature)

William Black
(Name in print)

Michelle Boivin
(Signature)

Michelle Boivin
(Name in print)

Ivana Caccia
Witness

Ivana Caccia
(name in print)

Suzanne Bergeron
Witness

Suzanne Bergeron
(name in print)

Appendix C

UNIVERSITY OF OTTAWA
FACULTY OF LAW

March 4, 1992

The Honourable Kim Campbell
Minister of Justice and
Attorney General of Canada
Department of Justice
Justice Building
Ottawa, Ontario
K1A 0H8

Dear Minister:

I am writing to express my dismay and distress over the recent cancellation of the Court Challenges Program.

I have on numerous occasions publicly expressed the view that it is totally illusory to confer rights on people who do not have the means to enforce them and I assumed that the expansion of the Court Challenges Program following the advent of the Charter of Rights and Freedoms was an effort to address this problem.

I fully appreciate, of course, that all governments are currently in a period of financial restraint but I must say that I have difficulty with a policy that places the burden of that restraint on those who can least afford to bear it.

I saw for myself when I was a member of the Supreme Court how invaluable this Program has been to minority groups and to the disadvantaged. It has clearly been well and efficiently administered and has resulted in an excellent input into many very significant "test" cases. I am sure that my former colleagues on the Court, if asked, would confirm that view. Indeed, I believe that I can say with complete confidence that the public has unquestionably received full value for its money on this particular Program.

If there is any possibility that the Government's decision on the Court Challenges Program might be reversed, may I respectfully add my voice to what I am sure is a chorus of disapproval of the cancellation of this very imaginative and worthwhile program.

I remain,

Yours very sincerely,

Bertha Wilson

YORK UNIVERSITY
OSGOODE HALL LAW SCHOOL

March 8, 1992

The Honourable Gerry Weiner
Minister of Multiculturalism and Citizenship
House of Commons
Room 533 Confederation Building
Ottawa, Ontario
K1A 0A6

Dear Mr. Weiner:

I am writing to express my surprise and disappointment that the Court Challenges Program was cancelled last week. As a strong supporter of the Canadian Charter of Rights and Freedoms, and as a visible and identifiable (often in the media) supporter of many of the efforts that your Government has made on a wide range of constitutional issues, I find it difficult to believe that your Ministry would cancel a superb program without any notice or, as I understand it, any consultations with those who administer the program and those who are affected by it.

Your Government has a good record on many civil rights issues. Moreover, your Government has a solid record of trying to implement the Charter in a fair way. One of the most creative and important components of your track record in this regard was the Court Challenges Program which enabled many poor people and the groups supporting them to bring important issues before the Canadian courts. A good deal of the excellent Charter jurisprudence that now exists in Canada would not have developed without the Court Challenges Program.

I know that in times of financial restraint difficult decisions need to be made. However, one would hope that these decisions would be made after some open consultation with individuals and groups who might be affected. I understand that your Ministry engaged in no discussions with anybody about the sudden termination of this viable program. Accordingly, I join with others across the country in asking you to reconsider the decision taken by your Ministry last week.

Your sincerely,

J.C. MacPherson
Dean

JCM/ms

c: The Hon. Kim Campbell, Minister of Justice.

THE UNIVERSITY OF MANITOBA
FACULTY OF LAW

March 5, 1992.

The Honourable Gerry Weiner
Minister of Multiculturalism and Citizenship
House of Commons
Room 533 Confederation Building
Ottawa, Ontario
K1A 0A6

My Dear Minister:

Speaking for myself and many of my colleagues at the Faculty of Law, University of Manitoba, I wish to express my deep disappointment at the decision to cancel the Court Challenges Program. This innovative and internationally-respected program has to raise crucial issues of public policy in what is often the only forum open to them in any meaningful way. I would have thought that with decisions such as that of the Supreme Court of Canada in *Butler* (focusing the law of obscenity in a way which represents an important and acceptable balance of conflicting interests) the program would be seen by the Government of Canada as being of very great assistance to it in the resolution of complex and controversial issues. One can make the same point with virtually every decision of the Court in which the Court Challenges Program has played a significant role. I note in this respect, particularly, the role of the program and the courts in resolving in an acceptable way some delicate and difficult minority language issues. With respect it seems to me that by no stretch of the imagination can it be said that the program is either extravagant in terms of the amount of money spent on any particular case or unfocused, or unimportant.

May I strongly urge you to take every possible step to restore a program which has, as I have noted, won international as well as national praise, and deservedly so.

Yours sincerely,

Roland Penner
Dean.

RP: clh.

c: The Hon. Kim Campbell, Minister of Justice.
bc: William W. Black.

THE UNIVERSITY OF BRITISH COLUMBIA
FACULTY OF LAW

March 4, 1992

The Honourable Gerry Weiner
Minister of Multiculturalism and Citizenship
11th Floor, Jules Leger Building
15 Eddy Street
Hull, Quebec
K1A 0J9

Dear Mr. Weiner:

This is to express my shock and disappointment at the announcement of the termination of the Court Challenges Program. As an academic who has worked in the area of equality rights, and as a past President of the Women's Legal Education and Action Fund, I am convinced that the Court Challenges Program has provided an essential service, and in a highly cost-effective way.

Cynicism about government, courts and the Charter is already high. The existence of the Court Challenges Program gave some answer to those who argued that the Charter was a hollow promise, no more than words on paper which the elected representatives had no stake in implementing, and the courts had no legitimacy in enforcing. The Court Challenges program ensured that there was a chance that cases could be brought, and arguments presented, by disavantaged groups in our society. It also represented a concrete commitment by government to the norms and values stated in the Charter. Its sudden termination will give, I fear, great support to the cynic's position.

Having indicated why I think the Court Challenges Program is essential, let me also say why it think it is cost effective. With reference to the LEAF cases, and I believe these comments would also apply to others, the funding tended to be devoted very substantially to the costs and expenses of bringing cases forward, and not to legal fees — in short, there were huge donations of free legal work by reputable lawyers across the country which the Program made possible. The value of the legal work may be measured by the impact it has had on judicial decisions, as in the *Andrews* case and, more recently, *Butler*. In fact, I would suggest obtaining an evaluation as to whether organizations funded under the Court Challenges Program made useful or important contributions to Supreme Court of Canada decisions, from retired Justices of the Court, such as the Right Honourable Brian Dickson or the Honourable Bertha Wilson.

Understanding as I do the government's desire to reduce expenditures, I urge you to reconsider this decision. I think that termination of the Program will do serious damage not only to the prospects of sound Jurisprudence in equality and language rights areas, but also to the public perception of government and of the rule of law.

I have spoken with Peter Leask, Q.C., the Treasurer of the Law Society of British Columbia, and Wendy Baker, Q.C., the President of the British Columbia Branch of the Canadian Bar Association. The three of us would appreciate the chance to meet with you to discuss this issue, as soon as possible at your convenlence.

Yours very truly,

Lynn Smith
Dean

Appendix D

List of Witnesses

Associations and Individuals	Issue	Date
Advisory Committee of the Equality-Seeking Groups: Lise Corbeil-Vincent, Charter Committee on Poverty Issues; Christie Jefferson, Women's Legal and Education Action Fund; Jérôme DiGiovanni, Canadian Disability Rights Council; Reverend Ohanaka, National Black Caucus.	11	Tuesday, March 10, 1992
Advisory Committee of the Language Rights Groups: Marc Godbout, Fédération des communautés francophones et acadiennes du Canada; François Dumaine, Fédération des communautés francophones et acadiennes du Canada; Allan Hilton, Alliance Quebec; Paul Charbonneau, Commission nationale des parents francophones.	11	Tuesday, March 10, 1992
Canadian Bar Association: John M. Benesh, Chief Executive Officer; Melina Buckley, Associate Director, Legislation and Law Reform.	12	Tuesday, March 17, 1992
Canadian Human Rights Commission: Maxwell Yalden, Chief Commissioner; William Pentney, General Counsel.	13	Tuesday, March 24, 1992
Court Challenges Program: William W. Black, Human Rights Research and Education Centre, University of Ottawa; Andrée Côté, Director of the Program; Kathleen Ruff, Chair of the Equality Rights Panel; Gérard Bertrand, Chair of the Language Rights Panel.	11	Tuesday, March 10, 1992

Associations and Individuals	Issue	Date
Court Challenges Program: Andrée Côté, Director; Mary Hurley, Legal Analyst; Luc Martin, Legal Analyst.	17	Thursday, April 2, 1992
Department of Multiculturalism and Citizenship: Mary Gusella, Deputy Minister; Richard Nolan, Director General, National Litteracy Secretariat.	14	Tuesday, March 24, 1992
Department of Justice: John C. Tait, QC Deputy Minister; John Scratch, Senior General Counsel.	16	Tuesday, March 31, 1992

Appendix E

Written Submissions Received

Action Éducation Femmes du Nouveau-Brunswick

Action travail des femmes

Advisory Committee of Equality Seeking Groups to
The Court Challenges Program

Alberta Committee of Citizens with Disabilities

Alliance Quebec

Association canadienne d'éducation de langue française

Association canadienne-française de l'Alberta

Association canadienne-française de l'Ontario

Association des enseignantes et des enseignants franco-ontariens

Association des femmes collaboratrices

Association française des conseils scolaires de l'Ontario

Association francophone de la Vallée de Comox

Association franco-Yukonnaise

Association des juristes d'expression française du Nouveau-Brunswick

Association des juristes d'expression française de l'Ontario

Association of Lesbians and Gays of Ottawa

Association multiculturelle francophone de l'Alberta

Balfour Moss, Barristers-Solicitors

B.C. Coalition of People with Disabilities

B.C. Public Interest Advocacy Centre

Beresh, DePoe, Cunningham-Barristers

Blown, Mary, Barrister-Solicitor

Brodsky, Gwen, Barrister-Solicitor

Canadian Advisory Council of the Status of Women

Canadian Association for Community Living

Canadian Association of the Deaf

Canadian Bar Association

Canadian Congress for Learning Opportunity for Women

Canadian Council for Refugees

Canadian Disability Rights Council

Canadian Hard of Hearing Association:

Sister M. Albert
L.A. Baldock
M. Baldock
S. Baldock
N. Bionne
E. B. Barlow
A.F. Bowden, President
H. M. Campbell
A. Dahtstrom
M. Duvander
A. Fuller
C. Gordon
I.D. Graham
S. Guernier
V. Hopper
G.M. Head
K. King
J. Kozak
A. Matson
A. Mennie
O. Menzie
M. Nelson
L. Nikolaieff
D.M. Stevenson
A. Webster

Canadian Research Institute for the Advancement of Women (CRIAW)

Canadian Rights & Liberties Federation

Carasio, E.

Cardozo, L. Andrew

Carter-Whitney, Maureen

Centre for Spanish-Speaking People

Charter Committee on Poverty Issues

Chinese Canadian National Council

Coalition of Provincial Organizations of the Handicapped (COPOH)

Collectif Femmes et Justice

Community Legal Assistance Society

Concerned Friends of Ontario Citizens in Care Facilities

Consumer Organization of Disabled People of Newfoundland and Labrador

Cook, Duke, Cox — Barristers-Solicitors

Cranbrook Women's Resource Society

Criminal Trial Lawyers Association

Dalhousie Legal Aid Service

Dalhousie Law School

DAWN Canada: Disabled Women's Network Canada

Ellison, Dr. Earl

Equality for Gays and Lesbians Everywhere (EGALE)

Fédération des franco-colombiens

Fédération Nationale des Associations de consommateurs du Québec

Fédération des parents francophones de l'Alberta

Women's Legal Education and Action Fund (LEAF)

Fontaine, Yvon (University of Moncton)

Funk, Ray, M.P.

Gowling, Strathy & Henderson, Barristers-Solicitors

Health Sciences Association, British Columbia

Healy, Veronica

Human Life International in Canada Inc.

Human Rights Institute of Canada

Indian & Inuit Nurses

Inuit Women's Association

Janvier, Ronald

Jewitt & Allen, Barristers-Solicitors

Johnston, Darlene (University of Ottawa)

Kinahan, Blake (Metro Councillor — Lakeshore-Queensway)

Ligue des Droits et Libertés

Lynk, Engesmann & Gottheil, Barristers-Solicitors

MacAdam Philip M., Barrister-Solicitor

Mahoney, Kathleen E. (University of Calgary)

Manitoba Association for Rights and Liberties

Marshall, Mary A.

McNeil, Dr. Kent (Osgode Hall Law School)

MDAC — PSAC Members with disabilities

Metro Tenants Legal Services

Montgomery-Bowler, Marjorie

Moro, Gabriella

Morrissey, Chris

Morton, F.L. (University of Calgary)

Mouvement Action chômage de Montréal

National Action Committee on the Status of Women

National Anti-Poverty Organization

National Association of Women and the Law

National People First

National Watch on Images of Women in the Media Inc.

Native Women's Association of Canada

North Shore Community Services

Pady, Sandra J.

Parkdale Community Legal Services Inc.

Ottawa City Council

Philp & Leginsky, Barristers-Solicitors

REAL Women

Réseau national d'action éducation femmes

Rexdale Community Information and Legal Services

Rhéaume, Denise (University of Toronto)

Ridington, Robin

Rodgers, Sanda (University of Ottawa)

Rose, Jeff

Ruby & Edward — Barristers

Rural Dignity of Canada

Salter, Liora (York University)

Saskatchewan Voice of the Handicapped

Scarborough Community Legal Services

Schulze, David

Scott, Craig (University of Toronto)

Shaw, Erin

Shelter for Abused Women and their Children

Sheppard, Colleen (McGill University)

Smith, Captain Colin

Social Planning Council of Metropolitan Toronto

Société des Acadiens et Acadiennes du Nouveau-Brunswick (SAANB)

Société Franco-Manitobaine

Société Saint-Thomas d'Aquin — Société Acadienne de l'Île-du-Prince-Édouard

Stalker, Anne (University of Calgary)

Strangers ... and Friends

Styles, Lloyd

Townshippers' Association

University of British Columbia

University of Toronto

University of Saskatchewan

University of Western Ontario

Weinrib, Lorraine E. (University of Toronto)

Werner-Wilde, Karl

West Scarborough Community Legal Services

White, Tim

Women's Network

Women's Research Centre

Women's Resource Centre

Zweibel, Ellen B. (University of Ottawa)

Request for a Government Response

Your Committee requests that the Government table a comprehensive response to this Report within 150 days of its tabling, in accordance with the provisions of Standing Order 109.

A copy of the relevant Minutes of Proceedings and Evidence (*Issues Nos. 11, 12, 13, 14, 16, 17 and 23 which includes this report*) is tabled.

Respectfully submitted,

BRUCE HALLIDAY, M.P.
Chairman.

Minutes of Proceedings

THURSDAY, JUNE 11, 1992
(38)

[*Text*]

The Standing Committee on Human Rights and the Status of Disabled Persons met *in camera* at 3:38 o'clock p.m. this day, in Room 536, Wellington Bldg., the Chairman, Bruce Halliday, presiding.

Members of the Committee present: Bruce Halliday and Neil Young.

Acting Members present: John Bosley for Louise Feltham, Sheila Finestone for Beth Phinney, Barbara Greene for Jean–Luc Joncas and Bob Hicks for Allan Koury.

In attendance: From the Research Branch of the Library of Parliament: Nancy Holmes and William Young, Research Officers.

In accordance with its mandate under Standing Order 108(3)(b), the Committee resumed consideration of the announcement to cancel the Court Challenges Program. (*See Minutes of Proceedings and Evidence, dated March 10, 1992, Issue No. 11*).

The Committee proceeded to the consideration of its draft report.

It was agreed,—That the draft report, as amended, be adopted as the Committee's First Report to the House and that the Chairman present it to the House.

It was agreed,—That the Chairman be authorized to make such grammatical and editorial changes to the Report as may be necessary without changing the substance of the Report.

It was agreed,—That, pursuant to Standing Order 109, the Committee request the Government to table a comprehensive response to the Report within 150 days.

It was agreed,—That, in addition to the 550 copies printed by the House, the Committee print 2,800 copies of its Report in tumble format.

At 4:20 o'clock p.m., the Committee adjourned to the call of the Chair.

Lise Laramée
Clerk of the Committee