Chapter

11

Complexities of Liberalism in Practice

Is it ever acceptable for a liberal democracy to suspend the rights of a few to protect the common good? Consider the following example:

Sending a Canadian technology consultant to be confined in a gravelike cell and tortured did nothing to make Americans safer. A Syrian-born Canadian citizen, Maher Arar, 36, was returning home from a vacation in September 2002 when US federal agents detained him in New York City on suspicion of ties to terrorism. Rather than send him to his home and our close ally, Canada, for interrogation, the US government sent him to Syria, a nation with a history of engaging in torture. A year later he was released. Three years later a Canadian commission found no evidence that Arar had any terrorist connection. The commission also concluded that he was systematically tortured and held under horrendous conditions.

The Bush Administration refuses to acknowledge any responsibility, instead offering the tepid explanation that Syrian officials assured the US that Arar would not be tortured. These are the same Syrian officials with whom the US government now says it will not negotiate because they are not trustworthy. Maher Arar's case stands as a sad example of how we have been too willing to sacrifice our core principles to overarching government power in the name of security, when doing so only undermines the principles we stand for and makes us less safe.

—Source: Patrick Leahy, "The Time 100 List: Maher Arar."
***Time* magazine, May 3, 2007.**
http://www.time.com/time/specials/2007/time100/article/0,28804,1595326_1615754_1616006,00.html

- To what extent do you think the actions of the US and Syrian governments challenged individual or collective rights?

KEY SKILL

Communicating effectively to express a point of view

KEY CONCEPTS

Evaluating the extent to which governments should promote individual and collective rights

Key Terms

American Bill of Rights
Anti-Terrorism Act
Canadian Charter of Rights and Freedoms
Emergency and security legislation
Illiberal
Language legislation
Québec Charter of Human Rights and Freedoms
Respect for law and order
Terrorism

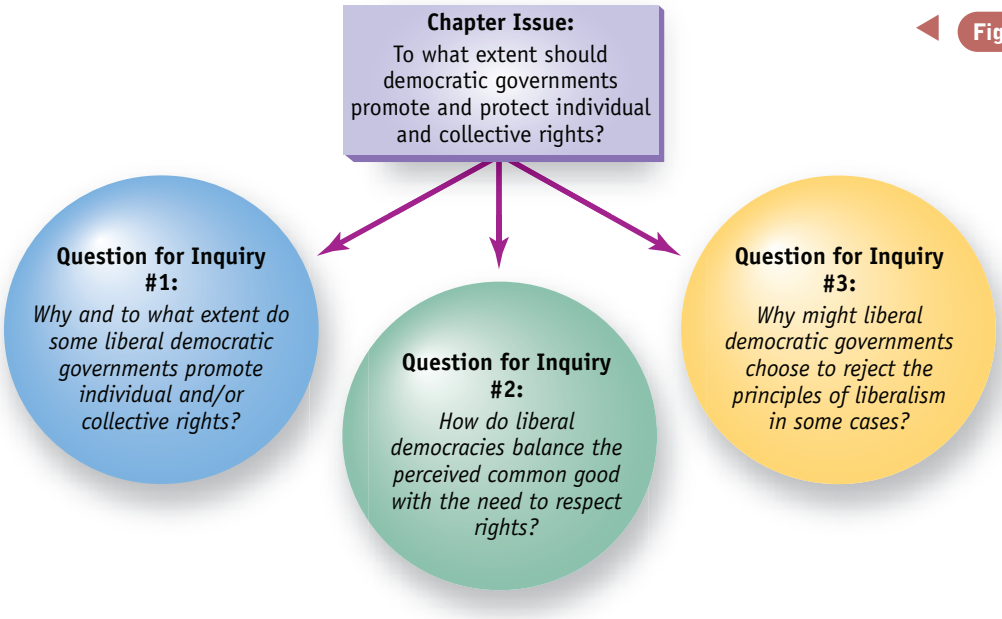
Chapter Issue

Many liberal democracies attempt to reach a consensus over the promotion of individual rights—one of the principles of liberalism—within their state, while at the same time attempting to benefit the common good. Sometimes in their pursuit of the common good, governments ignore the rights of individuals or groups, as the Maher Arar example illustrates. Nonetheless, the struggle for the recognition of individual liberty and collective rights in legislation and the maintenance of the common good is evident in much government legislation. The tension often experienced by governments trying to balance individual and collective rights with the common good highlights the Chapter Issue: ***To what extent should democratic governments promote and protect individual and collective rights?*** By examining traditional and contemporary approaches taken by liberal democratic governments, you will be able to broaden your understanding of the Chapter Issue. In this chapter you will learn about a broad range of legislation, government action, and citizen initiatives that attempt to address this question.

Figure 11-1 ▲

Maher Arar, a Canadian victim of US **rendition** policies, was selected for *Time* magazine's Time 100 Heroes & Pioneers list.

◀ Figure 11-2



You Be the Judge

The Supreme Court of Canada, the country's highest court, has jurisdiction over all areas of the law, including constitutional law, administrative law, criminal law, and civil law.

Read the following summaries of six cases that have come before the Supreme Court since the **Charter of Rights and Freedoms** was passed in 1982. (An additional case is included that turns on a 1988 Supreme Court ruling. It is expected that this case will also go to the Supreme Court.)

Form groups of five. Each group will be assigned a case to discuss. Each student will play the role of a Court judge. After 30 minutes of discussion, a spokesperson acting as chief justice will give the group's verdict and the rationale for its decision. Use the Questions to Guide You for assistance. Bear in mind that these cases often deal with controversial topics that invite a variety of responses. They were not selected because they provide a definitive perspective on an issue but rather, because each verdict established an important legal precedent.

Your teacher will provide detailed summaries of these cases.

Case 1: *R. v. Sparrow*: Aboriginal fishing rights (May 1990)

First Nations people in British Columbia have the right to fish for salmon for food and for ceremonial and social purposes. However, provincial regulations limit the length of nets that are used to catch salmon. Musqueam fisher Ronald Sparrow was charged with violating those regulations. Sparrow took his case to court, arguing that the net restriction was invalid because it violated his Aboriginal rights, as protected by s.35(1) of the Constitution Act, 1982.

Case 2: *R. v. Collins*: evidence obtained by unreasonable search (April 1987)

Section 8 of the Charter protects individuals from unreasonable search or seizure. A police officer conducting surveillance suspected that Ruby Collins was carrying heroin, but had not observed anything which would confirm his suspicions. The officer approached Collins and, using force to restrain her, he identified himself. She was found to be clutching a balloon containing heroin. Collins was charged with possession of heroin for the purpose of trafficking. At issue was the question of whether evidence obtained by a search that is unreasonable should be excluded under s.24(2) if its admission would bring the administration of justice into disrepute.

Case 3: *Ford v. Québec (Attorney General)*: language rights (December 1988)

This case involved several businesses which had been charged with violating sections 58 and 69 of Québec's Charter of the French Language. Sections 58 and 69 state that public signs, posters, and commercial advertising shall be in French only, and that only the French version of a business name may be used. At issue in this case was whether sections 58 and 69 of Québec's Charter of the French Language violated

- the freedom of expression guaranteed by section 2(b) of the Canadian Charter
- the freedom of expression guaranteed by section 3 of the Québec Charter of Human Rights and Freedoms
- the guarantee against discrimination based on language in section 10 of the Québec Charter of Human Rights and Freedoms

Case 4: *R. v. Caron:* language rights (Alberta Provincial Court, July, 2008)

Gilles Caron, a Francophone Albertan, was stopped for a traffic violation and was issued a ticket in English only. Caron admitted to having committed the traffic violation, but pleaded not guilty based on the claim that Alberta's Languages Act (which stipulates that all legislation and regulations are enacted, printed,

and published in English) is a violation of Caron's language rights as protected by section 24(1) of the Canadian Charter.

Case 5: *Vriend v. Alberta:* discrimination based on sexual orientation (April, 1998)

Delwyn Vriend, a laboratory coordinator at a college in Edmonton, was dismissed from his job because of his sexual orientation. When Vriend attempted to file a complaint of discrimination with the Alberta Human Rights Commission, he was advised that the relevant provincial human rights legislation did not include sexual orientation as one of the prohibited grounds of discrimination. At issue in this case was whether or not the provincial human rights legislation violated section 15(1) of the Canadian Charter, which guarantees individual equality and freedom from discrimination before the law.

Case 6: *R. v. Morgentaler:* decriminalizing abortion (January, 1988)

The three parties to the appeal, Dr. Henry Morgentaler, Dr. Leslie Frank Smoling, and Dr. Robert Scott, had been charged with violating Canada's abortion laws, after they had provided abortions to women who had not obtained a certificate from a therapeutic abortion committee of an accredited or approved hospital (as required by section 251(4) of the Criminal Code). Morgentaler, Smoling, and Scott argued that a woman has a right to choose whether or not an abortion is appropriate in her individual circumstances. They argued that section 251(4) of the Crtiminal Code violated sections 2, 7, and 12 of the Canadian Charter.

—Source: adapted from James Stribopoulos, "Top 10 Charter Cases: As Revealed at the Symposium on the 25th Anniversary of the Charter, A Tribute to Chief Justice Roy McMurtry." The Court (Osgoode Hall Law School, York University), April 12, 2007.
http://www.thecourt.ca/2007/04/12/top-10-charter-cases-as-revealed-at-the-symposium-on-the-25th-anniversary-of-the-charter-a-tribute-to-chief-justice-roy-mcmurtry/

After all groups have presented their verdicts, take a few minutes as a class to reflect on the foundational documents (for example, the Charter of Rights and Freedoms) of our liberal democracy, and answer the Questions to Guide You.

Questions to Guide You

1. For each Supreme Court of Canada case, how do the issues highlighted relate to liberalism and government promotion of individual or collective rights?
2. To what extent would the court have to find a balance between contending rights?
3. What complexities about societal issues and different perspectives on the viability of liberalism are revealed in each case? Create a for-and-against chart to show how liberalism in practice must weigh competing opinions on important social and political issues.

Promoting Rights

Question for Inquiry

- **Why and to what extent do some liberal democratic governments promote individual and collective rights?**

As citizens of a liberal democracy, the protesters shown in Figure 11-3 have the individual right to voice their protest over government decisions. They have the right to stage protests to get their message across. To what extent do you feel that individuals should have the right to oppose government policies and practices?

This section will consider the relationship between the principles held by liberal democratic governments and the promotion of individual rights in the pursuit of the betterment of society.

Consider these questions as you read section: Which political system offers the greatest degree of freedom for its citizens? Which political system offers the greatest degree of equality for its citizens? Where does a country fall on the freedom–equality continuum?

Figure 11-3 ▲

In August, 2007, Canadian prime minister Stephen Harper hosted the Security and Prosperity Partnership Summit in Montebello, Québec (near Ottawa), attended by US president George W. Bush and Mexican president Felipe Calderon. This photo shows protesters marching through the streets of Ottawa the day before the summit began.

Protection of Rights in Liberal Democracies

In order to analyze why and to what extent some governments promote individual and collective rights, we will examine fundamental rights. These include the rights to life, liberty, and personal safety. They are considered to be fundamental because, from a philosophical perspective, they are necessary for an individual to enjoy free will or personal autonomy.

In some countries, specific legislation, such as the Canadian Charter of Rights and Freedoms (1982), is employed to entrench these rights. In liberal democratic societies, rights legislation is strongly protected by the law and cannot be modified without extensive consultation with the public and experts in the field, and without substantial multi-party support. This protection ensures that rights legislation cannot be easily overturned, while still allowing a measure of flexibility that allows for the evolution of individual rights and freedoms in light of changing social conditions. The only limit to the fundamental rights proclaimed in the Charter is that they are "subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society." (Source: Canadian Charter of Rights and Freedoms. Department of Justice Canada, http://laws.justice.gc.ca/en/charter/.) In other words, there are limits to individual rights. No individual has the right to infringe on the rights of others. Individual rights can and must be balanced in the interests of preserving the rights of everyone in the community. There can be multiple guarantees of rights in the same country.

The **Québec Charter of Human Rights and Freedoms *(La Charte des droits et libertés de la personne)*** is a statutory bill of rights and human rights code that was passed by the National Assembly of Québec in 1975. The Charter was introduced by the Liberal provincial government of Robert Bourassa. The Charter ranks among other quasi-constitutional Québec laws, such as the Charter of the French Language *(La Charte de la langue française)*. Having precedence over all provincial legislation (including the Charter of the French Language), the Québec Charter stands at the pinnacle of Québec's legal system. Only the Constitution of Canada, including the Canadian Charter of Rights and Freedoms, takes priority over the Québec Charter.

Section 10 of the Québec Charter of Human Rights and Freedoms states the following:

> *Every person has a right to full and equal recognition and exercise of his human rights and freedoms, without distinction, exclusion or preference based on race, colour, sex, pregnancy, sexual orientation, civil status, age except as provided by law, religion, political convictions, language, ethnic or national origin, social condition, a handicap or the use of any means to palliate a handicap.*

One criticism of rights legislation is that it can have unforeseen negative consequences. For example, documents such as the Charter of Rights and Freedoms and the Québec Charter of Human Rights and Freedoms focus almost exclusively on the rights of individuals, possibly at the expense of the rights of the community.

> *One consistent criticism of the liberal creed is its preoccupation with rights. And, in fact, an abstract commitment to rights that is unconnected to a vision of a good society and a just community can be an arid basis for political commitment. But through most of its history, liberalism has fused its commitments to rights with a commitment to social justice and enlightened progress. Rights are not simply a vehicle for empowering individual interests and desires. They are also the basis for a community's commitment to its collective well-being.*
>
> **—Alan Brinkley, "Liberalism and Belief," *Liberalism for a New Century* (Berkeley: University of California Press, 2007), p. 88.**

Grounds for this criticism can be seen in the way society developed during the Industrial Revolution, which you read about in Chapter 4.

Industrialization and laissez-faire capitalism led to a situation in many countries in which individual rights became meaningless for a large group of people. The enormous political and economic gap between industrialists and workers and the widespread poverty of the urban working class called into question the worth of the individual rights approach. Those with more modern liberal values might have asked what good a theoretical right to freedom of expression would do

Get to the Source

The constitution of Cuba contains the following statement in Article 9:

The state…guarantees the liberty and the full dignity of man, the enjoyment of his rights, the exercise and fulfillment of his duties and the integral development of his personality.

—Source: Constitution of the Republic of Cuba, 1992.
www.cubanet.org/ref/dis/const_92_e.htm

for a poverty-stricken person who was denied an education and subjected to dreadful working conditions.

Another criticism of rights legislation states that the words in the documents sometimes have little real power. In some countries, especially those classified as dictatorships or totalitarian countries, individual rights and freedoms have been subjugated to the needs of the state, even though those countries may have a constitution or other documents that resemble the legislation of their democratic counterparts.

Cuba, for example, is a dictatorship. The dictator and the ruling elite control all political and legal power. The government alone determines the interpretation and implementation of the Constitution, including the clause quoted in the Get to the Source feature, and controls any reforms or enlargements to it. The result is little real protection for individual rights and freedoms. The number of political prisoners in Cuba has decreased from 283 at the end of 2006 to 234 at the end of 2007, but human rights abuses continue, according to the Cuban Commission for Human Rights and National Reconciliation. (Source: Andrew Gilmore, "Cuba held fewer political prisoners in 2007: rights group." *Jurist Legal News and Research*, January 16, 2008, http://jurist.law.pitt.edu/paperchase/2008/01/cuba-held-fewerpolitical-prisoners-in.php)

Pause and Reflect

Compare Article 9 of the Constitution of the Republic of Cuba with Section 10 of the Québec Charter of Human Rights and Freedoms. What conclusions about the protection of rights can you draw from this comparison?

While the law in a liberal democracy is founded primarily upon individual rights and fundamental freedoms, groups also seek protection of their collective rights. In a 2002 address, Stéphane Dion, then Canada's Minister of Intergovernmental Affairs, said "…a society includes minorities of different kinds, and these minorities are inclined to believe that constitutions and charters exist not only to protect individuals against the unfettered power of the state, but also to protect minorities against the domination or negligence of the majority." We will explore the following question in the next section: To what extent do governments promote the protection of group or collective rights?

The Canadian Charter of Rights and Freedoms and Individual Rights

The Charter of Rights and Freedoms was enshrined in the Constitution Act of 1982. The Charter outlined how all levels of government should deal with individuals and provided a framework to enable legislators and members of the judicial branch to better serve Canadian citizens. The government ultimately began to contemplate fundamental changes to the fabric of Canadian society to provide Canadians with actual equal individual rights.

One example of such a change is the Civil Marriage Act, which was given royal assent on July 20, 2005. The Act

…codifies a definition of marriage for the first time in Canadian law, expanding on the traditional common-law understanding of civil marriage as an exclusively heterosexual institution. [It] defines civil marriage as "the lawful union of two persons to the exclusion of all others," thus extending civil marriage to conjugal couples of the same sex.

—Source: "Bill C-38: The Civil Marriage Act." LEGISinfo, Parliament of Canada, revised September 14, 2005. http://www.parl.gc.ca/LEGISINFO/index.asp?Language=E&query=4381&Session=13&List=ls#aoverviewtxt

Many Canadians see Bill C-38, in conjunction with the Charter of 1982, as an extension of equality of individual rights to a formerly disadvantaged group; however, not all Canadians agree with this view.

Tom Wappel was a Liberal Member of Parliament who fought against **same-sex marriages** for over 10 years before they became a reality. He outlined his position against Bill C-38 in the House of Commons.

In my view this bill is discriminatory. It has been argued that same-sex marriage is somehow a right. This is not legally accurate. The Supreme Court, in the reference decision, did not declare that permitting same-sex couples to marry was a right. Absolutely no country in the entire world has declared it to be a human right, including the two countries which presently allow same-sex marriages. No one has done that.

How can something be a right when it is not recognized in law by anyone in any country in the world, including the Supreme Court of Canada, as a declared right? Therefore, to say a right is a right in the context of same-sex marriage is legally wrong.

Then we have to turn to section 15 of the Charter of Rights and Freedoms which talks about laws being enacted without discrimination; in this case, without discrimination on the basis of sexual orientation. We have to look at the institution of marriage then.

Figure 11-4 ▲

Michelle Dicinoski and Heather Stewart travelled from Australia to be married at Toronto's City Hall in December 2005. This example demonstrates how governments and citizens face the challenge of addressing the following question: Should all members of society be entitled to the same rights, freedoms, and benefits, or can a liberal democracy place restrictions and limitations on certain members of society and still remain a liberal democracy?

Is the institution of marriage discriminatory? Of course it is, by its very nature. We cannot get married unless we are of a certain age. That is discrimination on the basis of age. We cannot get married if we do not have proper mental capacity. That is discrimination on the basis of disability. We cannot get married unless we are of the proper bloodline [not too closely linked genetically]. That is discrimination on the basis of who our parents are or who our siblings are.

It discriminates against religion because it says we can only have in this country, not in the world but in this country, one spouse: one wife or husband. This is discrimination on the basis of sexual orientation because it says we must marry someone of the opposite sex.

—Tom Wappel, speech in the House of Commons, February 18, 2005.
http://www.tomwappelmp.ca/Speeches/C-38.htm

Mike Boon is a Torontonian who has been maintaining a blog for over five years. On February 1, 2005, he wrote the following:

Earlier today, Justice Minister Irwin Cotler introduced the Liberal government's same-sex marriage bill in the House of Commons. As well as extending the legal capacity to marry for civil purposes to same-sex couples, the package of legislation amends eight other federal acts to extend a variety of marital rights to gay couples, including income tax measures, business and investment benefits and the right to divorce…

At the end of the day, this is still Canada. Because this is Canada, this bill will pass. The Conservative Party will largely vote against it, but the majority of Liberals as well as just about all those from the Bloc Québécois and New Democrat parties will do the right thing. In Canada, all citizens are equal under the law, regardless of skin colour, religion, culture or sexual preference. In Canada, the church and state are indeed separate and our social conscience will remain clear.

I will be a proud Canadian when this bill passes. It's long overdue.

—Mike Boon, "Civil Marriage Act Tabled," February 1, 2005.
http://www.torontomike.com/2005/02/civil_marriage_act_tabled.html

Individual rights are not subject to a public vote; a majority has no right to vote away the rights of a minority; the political function of rights is precisely to protect minorities from oppression by majorities (and the smallest minority on earth is the individual).

—Ayn Rand, *The Virtue of Selfishness* (New York: Signet/New American Library, 1964), p. 121.

Pause and Reflect

Summarize Wappel's arguments in your own words. Why does he feel our government should not promote this right?

1. Examine a copy of the Canadian Charter of Rights and Freedoms. Explain how the different arguments presented with regards to same-sex marriage relate to specific sections of the Charter.
2. Canada became the fourth country to legislate same-sex marriage (after the Netherlands [2001], Belgium [2003], and Spain [2005]). In your view, why are these democratic countries explicitly enshrining into their constitutions the right of same-sex partners to marry?

The Promotion of Collective Rights

One responsibility charged to government is the promotion of collective rights and stability. How do collective rights affect your life? How do they affect the lives of people in other countries? As you proceed through this section special attention will be paid to the impact of both active and passive government policy and its impact on citizens.

Group rights are often achieved only by the extension of individual rights. Governments in pursuit of group or collective rights take a wide variety of actions. In the United States, policies known as "affirmative action" were implemented in the 1960s to address inequalities that minorities and women had historically faced. To improve their employment or educational opportunities, the US government introduced hiring and college admissions practices that gave preferential treatment to minorities and women. While not written into the US Constitution as "collective rights," affirmative action programs recognized that in order for all citizens to effectively enjoy equality of opportunity, members of certain groups need to be treated differently. Affirmative action has been challenged in court by those who see it as "reverse discrimination," and a violation of the individual right to equality.

The most certain test by which we judge whether a country is really free is the amount of security enjoyed by minorities.

—Lord Acton, *The History of Freedom in Antiquity*, 1877.

In the context of the Canadian Charter of Rights and Freedoms, "collective rights" refer primarily to the rights of official language groups (Sections 16–23) and Aboriginal peoples (Section 25), and are included to respect laws passed over the course of Canada's history, and to reflect and affirm Canada's bilingual, pluralistic nature. As Supreme Court Chief Justice Beverley McLachlin noted, "Collective rights are the cornerstone on which Canada was built. Without the guarantees made to groups and minorities, it is unlikely that the peoples of Upper and Lower Canada, so different from one another, would have joined to form a country." (Source: Beverley McLachlin, "Democracy and Rights: A Canadian Perspective," *Canadian Speeches, Issues of the Day*, 14:36–45, January/February 2001. http://www.parl.gc.ca/information/library/PRBpubs/prb019-e.htm)

William Kymlicka, a philosophy professor at Queen's University, is a leading expert on collective rights. In his defence of minority rights, Kymlicka argues

…that there are sound principles of justice which require that the rights of citizenship be dependent on cultural group membership; that is, members

Figure 11-5 ▲

Pierre Elliott Trudeau worked consistently to entrench the rights of Canadian citizens during his many years as prime minister. The culmination of these efforts was the Charter of Rights and Freedoms, enshrined in the Constitution Act of 1982. This Act was designed to entrench individual rights; but, at the same time, it included collective rights for Canada's official language groups and Aboriginal peoples.

of certain groups can only be justly incorporated into the political community if "group-differentiated rights, powers, status or immunities, beyond the common rights of citizenship" are accepted.

—William Kymlicka, quoted in Leighton McDonald, "Regrouping in Defence of Rights: Kymlicka's *Multicultural Citizenship*." *Osgoode Hall Law Journal* 34, 2.
www.ohlj.ca/archive/articles/34_2_mcdonald.pdf

In an address at the Woodrow Wilson International Center for Scholars in Washington, DC, Stéphane Dion, who at the time was president of the Privy Council and Minister of Intergovernmental Affairs in Paul Martin's Liberal government, stated the following:

…collective rights, recognized in the Charter, confirm or establish language rights, Aboriginal rights, and the multicultural character of Canada. The Supreme Court of Canada accords them great importance, to the point that it places respect for minorities among the four fundamental organizing constitutional principles of Canada, alongside federalism, democracy and the rule of law.

Dion went on to say that the inclusion of collective rights was the primary difference between the Canadian Charter of Rights and Freedoms and the American **Bill of Rights**. He also noted that this difference was also due to the time period during which the two documents were written:

The differences between the two texts stem in large part from the fact that they were written in very different historical contexts. In effect, the Bill of Rights is a product of the debates of the Enlightenment, inspired notably by the individual liberalism of John Locke. The Canadian Charter, in contrast, was written in the late 20th century, a time when pure individualism had been modified both by other values and by a more sociological understanding of society. The Canadian Charter was also born in a country that has traditionally heeded the interests of minorities, a tradition grounded in the fundamental political structure of the country.

—Stéphane Dion, "The Canadian Charter of Rights and Freedoms at Twenty: The Ongoing Search for Balance Between Individual and Collective Rights" (speech given at the Woodrow Wilson International Center for Scholars), April 2, 2002.

http://www.pco-bcp.gc.ca/aia/index.asp?lang=eng&Page=archive&Sub=speeches&Doc=20020402_e.htm

Collective rights retain the form of individual rights but they are applied to groups rather than individuals. This is the link between individual and collective rights in Canada.

Recognition of Collective Rights

Including collective rights in the Charter on the one hand and having governments in Canada promote or even recognize these rights on the other hand are, however, two different things. Since the Charter came into being in 1982, some groups in Canada have had to fight to have their collective rights respected. For example, you may have studied the case of Francophone schools in Alberta. In the 1980s, some Francophone parents took legal action that went all the way to the Supreme Court of Canada to have the province of Alberta provide Francophone schools and school boards for their children. This collective right was included in Section 23 of the 1982 Charter of Rights and Freedoms (Minority Language Educational Rights), but it took a 1990 Supreme Court decision in favour of the parents before Alberta allowed Francophone school boards to be established to administer Francophone schools.

A similar example stems from the collective rights in Section 25 of the Charter and Section 35 of the Constitution Act, 1982, which recognize and affirm the aboriginal and treaty rights of Canada's Aboriginal peoples (First Nations, Métis, and Inuit). While these rights are constitutionally guaranteed, it has taken many efforts to have certain Aboriginal rights recognized. In the case of hunting or harvesting rights of Canada's Métis people, there continues to be a struggle to have these rights recognized. In 1993, Steve Powley, an Ontario Métis, and his son hunted and killed a moose, and were charged for hunting without a licence. Ten years later, after the case had been appealed through the Ontario court system, the Supreme Court of Canada ruled 9-0 that the Métis of Powley's community in Sault Ste. Marie, Ontario, did indeed have the aboriginal right to hunt, as do "any Métis who can prove a connection to a stable continuous community".

> *"The highest court of this land has finally done what Parliament and the provincial governments have refused, to deliver justice to the Métis people," said Audrey Poitras, acting president of the Métis National Council.*
>
> **—Source: "Ont. Métis community given right to hunt", CBCnews.ca, September 19, 2003.**
> http://www.cbc.ca/canada/story/2003/09/19/metisrule030919.html

However, despite the sections in the Charter and in the Constitution Act and the 2003 Supreme Court decision, many Métis are still fighting to have their Aboriginal right to hunting and harvesting recognized. In 2004 in Manitoba, Métis hunter Will Goodon was charged for duck hunting without a licence. He did have a Métis "harvester" card issued by the Manitoba Métis Federation, but the province of Manitoba refused to recognize the card. In 2008, the Métis

Pause and Reflect

In Chapter 2 you explored individualism and collectivism and how the values of both underlie, in varying degrees, all ideologies. Individualism favours self-reliance and the protection of individual rights and responsibilities while collectivism favours protecting group goals and the common good. This section of the chapter focuses more closely on the notion of collective rights—those rights claimed by groups to help protect their interests. To what extent do you think collective rights differ from or support the principles of collectivism?

Nation of Alberta took legal action against the Alberta government in order to have the harvesting rights of Alberta's Métis recognized, as charges continued to be laid against Métis hunting without a provincial licence.

As one can see, having collective rights included in the Charter of Rights and Freedoms does not necessarily mean that governments will recognize or promote these rights. What ideological differences might exist that would explain some governments' reluctance to recognize constitutionally guaranteed collective rights?

Explore the Issues

Concept Review

1. Identify and describe three examples from this section of individual and of collective rights protected by government.

Concept Application

2. *You Be the Judge.* Choose from this section an example of an individual or collective right that has been challenged or upheld in a Canadian court, and use the Skill Path to reach a verdict on the issue. Does the issue address how the government is promoting and protecting individual and collective rights?
3. Write a public service announcement (PSA) on behalf of the federal government explaining to all Canadians the differences between individual and collective rights and promoting the importance of these rights and of the role of the Canadian Charter of Rights and Freedoms in Canada. Use clear and effective language and include summaries of a few relevant Charter cases to illustrate your points. You may wish to make your PSA into a short video or multimedia production, a poster including artwork and visuals, or some other format of your choosing.

Balancing Perceived Common Good with Respect for Rights

Question for Inquiry

- **How do liberal democracies balance the perceived common good with the need to respect rights?**

Examine the following newspaper article. What is the relationship between "common good" and "the respect for rights" in the situation described?

Irish pub, French language watchdog battle over vintage signs, service

Sidhartha Banerjee
CP, © 2008 The Canadian Press, 15 February 2008

MONTREAL—It appears a few pints of beer won't be sufficient to douse the latest language tensions brewing in Montreal—this time, Québec's language watchdog is frothing over a popular watering hole cluttered with classic Irish signage and English-only posters.

The wall hangings at McKibbin's Irish Pub include vintage advertisements for Guinness and Harp as well as other traditional fare like Palethorpes Pork Pies.

The owners of the popular hangout say it all just adds to the charm and ambience of the downtown watering hole.

Still, the Office québécois de la langue française says complaints about the English-only signs, an English-only chalkboard menu and English-only service prompted it to send the pub owners a letter wanting answers.

"What we asked them were what measures would be taken to ensure that service would be offered in French because we received two complaints," Office spokesman Gerald Paquette said in an interview Friday.

"If the business says some of those pictures are decorative to give the pub an Irish flavour, it is certain we would exempt them from the charter rules," Paquette said. "But there were other posters also, notably ones about contests and events, that were in English only."

The brewhaha has prompted the pub's co-owners to extend an invite to Premier Jean Charest to stop by for a hearty meal and a pint and inspect the signs himself.

Dean Laderoute and Rick Fon say they'll remove the signs if Charest believes they violate the Québec language law.

"An Irish pub without these decorations is just an empty box," Fon said in an interview. "It's the decor, the pictures, the clutter, it creates the warmth."

Fon also says they have bilingual menus and that his regulars, including a considerable French clientele, all agree the complaints are ridiculous.

"It makes no sense, it's silly," said regular Suzette L'Abbé.

"The staff, if not French-speaking to begin with, get by in French," L'Abbé added.

The pub could face fines as high as $1500 for each infraction.

The pub skirmish is the latest battle over the question of whether there is enough French spoken in downtown Montréal.

The ever-bubbling issue of language has resurfaced in recent months, beginning with a report in Le Journal de Montréal about the ease of obtaining employment downtown with a limited knowledge of French.

Other controversies have included the language of instruction for tots in day care and the use of English on the automated call-answering systems of Québec government departments.

The debate promises to get even more heated next month when the language watchdog releases a study on language trends in the province.

Paquette says McKibbin's has 30 days to come up with answers and if the issue goes further, a legal warning would be sent and Québec's attorney general would decide on penalties and fines.

English-rights activist Gary Shapiro believes the whole language pot started stirring again with the so-called reasonable accommodation debate and has been fuelled since by politicians and a small group of malcontents.

"It's basic harassment," said Shapiro.

"Are they going to come into our homes and our bedrooms next?" Shapiro asked. "Where is it going to end?"

Currently, part of the **language legislation** in Québec requires that "public signs and commercial advertising must be in French. They may be in French and another language provided that French is markedly predominant." According to this requirement, does the Montréal pub seem to be breaking the law?

One of the fundamental freedoms guaranteed to Canadians in the 1982 Charter of Rights and Freedoms is the "freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication." This freedom is not absolute, however. Section 1 of the Charter states that it "guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society." In other words, our rights are limited. In the case of freedom of expression, for example, one must refrain from injuring others' reputations (laws against libel and slander) and from spreading hate against others, which is a crime covered under the Criminal Code of Canada.

But what of language laws in the province of Québec? In 1977, the Québec government passed Bill 101, creating the Charter of the French Language (*La Charte de la langue française*) in order "to make French the common language of Quebecers in all spheres of public life." The Charter of the French language has been challenged and, as a result, amended over the years:

Legislation	Main Provisions	Reactions/Challenges
Bill 101, Charte de la langue française, 1977	*It made French the official language of the state and of the courts in the province of Québec, as well as making it the normal and habitual language of the workplace, of instruction, of communications, of commerce and of business. "Bill 101", The Canadian Encyclopedia.* http://www.canadianencyclopedia.ca/index.cfm?PgNm=TCE&Params=M1ARTA0000744	Court rulings modified this law in order to • allow both French and English in the legislature and courts • allow English-language schooling for students who had begun their education in English elsewhere in Canada • declare that French-only rules for commercial signs were contrary to the right to freedom of expression
Bill 178, an Act to amend the Charte de la langue française, 1988	*It decreed that only French could be used on exterior signs while English would be allowed inside commercial establishments.* Source: CBC Indepth "Bill 101: Language laws in Quebec". CBC News Online, March 30, 2005 http://www.cbc.ca/news/background/bill101/	*In 1993, the United Nations Human Rights Committee ruled that Québec's sign laws broke an international covenant on civil and political rights. "A State may choose one or more official languages," the committee wrote, "but it may not exclude outside the spheres of public life, the freedom to express oneself in a certain language."* Source: CBC Indepth "Bill 101: Language laws in Québec". CBC News Online, March 30, 2005 http://www.cbc.ca/news/background/bill101
Bill 86, an Act to amend the Charte de la langue française, 1993	*Public signs and posters and commercial advertising must be in French. They may also be both in French and in another language provided that French is markedly predominant.* Source: Bill 86, section 58	This bill made the *Charte de la langue française* "constitutionally acceptable as it now complied with the Charter of Rights and Freedoms". Source: "Bill 86", The Canadian Encyclopedia. http://www.thecanadianencyclopedia.com/index.cfm?PgNm=TCE&Params=A1ARTA0009101

For what reason is Québec able to limit people's freedom of expression, as protected by the Canadian Charter of Rights and Freedoms? Primarily, laws protecting and promoting French in Québec are seen to be in the common good of the Francophone majority of that province in order to counter the assimilative forces of English in North America that Francophones in Québec face.

> *Francophones in Québec form a clear majority within their province, but find themselves, along with other Francophones, in a minority within Canada, and are, so to speak, no more than a drop in an Anglophone ocean, when considering the proximity of the American giant. They feel the pressure of English, which exerts a strong attraction, particularly among immigrants.*
>
> **—Stéphane Dion, in a speech delivered at the Symposium on Language Rights, Law Faculty, Université de Moncton, Moncton, New Brunswick, February 15, 2002.**
> http://www.pco-bcp.gc.ca/AIA/index.asp?lang=eng&page=archive&sub=speeches&doc=20020215_e.htm

PAUSE AND REFLECT

To what extent do official language laws in the constitution affirm our Canadian identity?

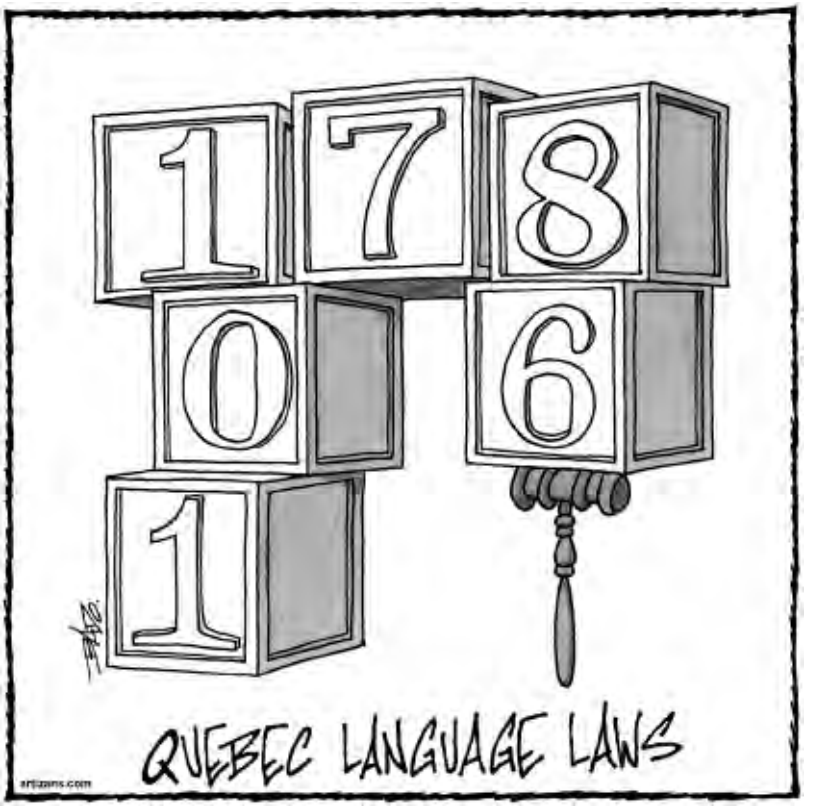


Figure 11-6 ▲

Examine this political cartoon from 1999. What do the numbers on the blocks refer to? What is holding them up? In other words, upon what grounds are laws that protect and promote the French language in Québec based?

When Government Action for the Perceived Common Good Outweighs Collective Rights

Diana Breti wrote an article entitled "Canada's Concentration Camps—The War Measures Act." In the article, she gives the following example concerning government action to promote the common good. As you read, consider whose rights were promoted and whose were undermined by the government.

In 1942, the Federal government decided it wanted 2,240 acres [over 900 hectares] of Indian Reserve land at Stoney Point, in southwestern Ontario, to establish an advanced infantry training base. Apparently the decision to take reserve land for the army base was made to avoid the cost and time involved in expropriating non-Aboriginal lands.

Figure 11-7 ▲

Commissioner Sidney B. Linden carries a copy of the Report of the Ipperwash Inquiry in Forest, Ontario, on the day of its release.

The Stoney Point Reserve comprised over half the Reserve territory of the Chippewas of Kettle & Stoney Point. Under the Indian Act, reserve lands can only be sold by Surrender, which involves a vote by the Band membership. The Band members voted against the Surrender, however the Band realized the importance of the war effort and they were willing to lease the land to the Government. The Government rejected the offer to lease. On April 14, 1942, an Order-in-Council authorizing the appropriation of Stoney Point was passed under the provisions of the War Measures Act. The military was sent in to forcibly remove the residents of Stoney Point. Houses, buildings and the burial ground were bulldozed to establish Camp Ipperwash. By the terms of the Order-in-Council, the Military could use the Reserve lands at Stoney Point only until the end of World War II. However, those lands have not yet been returned. The military base was closed in the early 1950s, and since then the lands have been used for cadet training, weapons training and recreational facilities for military personnel.

—Diana Breti, "Canada's Concentration Camps—The War Measures Act."
The Law Connection, Simon Fraser University, 1998.
http://www.britishcolumbia.com/general/details.asp?id=44
Centre for Education, Law & Society, Simon Fraser University.
www.lawconnections.ca

By 1972, the federal government was well aware of the discontent among the Aazhoodena (Stoney Point First Nation). The Minister of Indian Affairs, Jean Chrétien, wrote to the Minister of National Defence on December 8, 1972:

…They have waited patiently for action. There are signs, however, that they will soon run out of patience. There is bound to be adverse publicity about our seeming apathy and reluctance to make a just settlement. They may well resort

to the same tactics as those employed by the St. Regis [First Nation] at Loon and Stanley Islands in 1970—to occupy the lands they consider to be their own…

—Source: Ipperwash Public Inquiry Transcript, September 8, 2004. The Ipperwash Inquiry.
http://www.attorneygeneral.jus.gov.on.ca/inquiries/ipperwash/transcripts/sep_08_04/text.htm

See the timeline below.

1992	*Stoney Point [Aboriginals] serve army with eviction notice. Stoney Pointers are descendants of the original inhabitants of Stoney Point, who reject attempts to join band with nearby Kettle Point.*
1993	*Family members of former residents, including Dudley George, move into Camp Ipperwash.*
July 29, 1995	*Military moves out of military base.*
Sept. 4, 1995	*About two-dozen Stoney Pointers, including George, walk into Ipperwash park, saying they are protecting sacred burial grounds.*
Sept. 6, 1995	*Dudley George, 38, died when OPP (Ontario Provincial Police) members fired on the protesters.*

—Source: "Ipperwash land returned to Indians", The Toronto Star, December 21, 2007.
http://www.thestar.com:80/News/Canada/article/287702

The Province of Ontario launched an inquiry into the death of Dudley George on November 12, 2003. The Aazhoodena and the George family made the following statement in their official submission to the inquiry:

Where a First Nations group asserts that it is an independent First Nation with an interest in a land claim or assertion of an Aboriginal or treaty right, the Governments of Canada and Ontario should treat these claims as they would any other formal land claims or assertion of an Aboriginal or treaty right, even if the said First Nations group does not have formal status in Canadian law at the time. The Governments of Canada and Ontario should ensure…an effective process for resolving land claims and disputes over Aboriginal and treaty rights…[The process] should protect the interests of the general public; and…should address systemic disincentives that discourage governments from negotiating settlements in a timely manner.

Negotiations between equally resourced parties should be the primary method for resolving disputes between First Nations and the Governments of Canada and Ontario over land claims or the assertions of Aboriginal and/or treaty rights, with access to a fully independent tribunal to assist the negotiation process where impasses arise between the parties.

—Source: "Submissions on behalf of the Aazhoodena and George Family Group", The Ipperwash Inquiry, pp. 13, 14.
http://www.attorneygeneral.jus.gov.on.ca/inquiries/ipperwash/closing_submissions/pdf/AazhoodenaAndGeorgeFamilyGroup_ClosingSubmissions.pdf

Figure 11-8 ▲

1. Could a suspension of the collective rights of Aboriginal peoples occur today, now that the Charter of Rights and Freedoms has recognized the existence of collective rights for Aboriginal peoples?
2. Does the provincial government have an obligation to return the Stoney Point lands to the Aazhoodena?
3. Based on the evidence provided, how do you believe that the federal government and the Aazhoodena would each define "common good"? To what extent did the federal government balance its perceived understanding of the common good with the collective rights of the Aazhoodena?

Efforts to Entrench First Nations, Métis, and Inuit Rights

After centuries of challenges, the struggle of First Nations, Inuit, and Métis peoples for the establishment and recognition of collective rights, equality rights, and governing authority has become a high-profile issue for Canadian governments because First Nations, Métis, and Inuit organizations have conducted campaigns to raise public awareness and pressure governments for these rights. This issue is not confined to Canada. Aboriginal groups from many countries are engaged in the same struggle. Many groups have repeatedly presented cases to the United Nations (UN) for recognition and support while pressuring governments to remedy past wrongs and garner resources to work toward a better future.

Get to the Source

In Canada this process took a big step forward when the Charter of Rights and Freedoms was enacted as Part I of the Constitution Act in 1982. First Nations, Métis, and Inuit peoples participated in the drafting of the Constitution and the Charter, and are largely responsible for Section 25 in the Charter and Section 35 in Part II of the Constitution that recognize and affirm their collective and treaty rights (rev.3).

25: The guarantee in this Charter of certain rights and freedoms shall not be construed so as to abrogate or derogate from any Aboriginal, treaty or other rights or freedoms that pertain to the Aboriginal peoples of Canada including:

a) any rights or freedoms that have been recognized by the Royal Proclamation of October 7, 1763; and

b) any rights or freedoms that now exist by way of land claims agreements or may be so acquired.

35: (1) The existing Aboriginal and treaty rights of the Aboriginal peoples of Canada are hereby recognized and affirmed.

(2) In this Act, "Aboriginal peoples of Canada" includes the Indian, Inuit and Métis peoples of Canada.

(3) For greater certainty, in subsection (1) "treaty rights" includes rights that now exist by way of land claims agreements or may be so acquired.

(4) Notwithstanding any other provision of this Act, the Aboriginal and treaty rights referred to in subsection (1) are guaranteed equally to male and female persons.

—Source: Canadian Charter of Rights and Freedoms. Department of Justice Canada, http://laws.justice.gc.ca/en/charter/.

Pause and Reflect

What do the Charter and the Constitution say about governmental responsibility to preserve the collective rights of these three groups? Is legislating these rights sufficient, or do additional steps need to be taken to implement the law?

The Canadian Government and the UN: Differing Perspectives on Collective Rights

Many Aboriginal peoples around the world, including those from Canada, have taken their cases to the UN, a reflection of the fact that Canadian governments have been slow to respond to First Nations, Métis, and Inuit claims. This situation has been gradually changing. The government of Canada is making some progress on addressing Aboriginal land claims and is attempting to speed up the process.

On June 29, 2006, the Human Rights Council of the UN passed the following resolution. Thirty countries voted in favour of the resolution, two voted against, and twelve countries abstained. Canada was one of the two countries to vote against the declaration.

The United Nations Declaration on the Rights of Indigenous Peoples says Indigenous peoples have the right to the full enjoyment, as a collective or as individuals, of all human rights and fundamental freedoms as recognized in the Charter of the United Nations, the Universal Declaration of Human Rights (UDHR) and international human rights law. Indigenous peoples and individuals are free and equal to all other peoples and individuals and have the right to be free from any kind of discrimination, in the exercise of their rights, in particular that based on their Indigenous origin or identity. Indigenous peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development. Indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their rights to participate fully, if they so choose, in the political, economic, social and cultural life of the State.

—Source: "Human Rights Council adopts the UN Declaration on the Rights of Indigenous Peoples." International Work Group for Indigenous Affairs.
http://www.iwgia.org/sw21486.asp

The Canadian Conservative government voted against the UN declaration for several reasons:

"It contains provisions that are inconsistent with the Canadian charter," Minister of Indian Affairs and Northern Development Jim Prentice said of the deal. "It contains provisions that are inconsistent with the Constitution Act of 1982. It's quite inconsistent with land-claims policies under which Canada negotiates claims."

Prentice said the document would hinder land-claims talks with some aboriginal bands on handing over rights to exploit resources. He said Canada would vote against the document if it remained unchanged.

—Source: "Canada Opposes UN Aboriginal Treaty", CBC.ca, Tuesday, June 20, 2006.
http://www.cbc.ca/world/story/2006/06/20/aboriginal-declaration.html

Regarding the passing of the UN Declaration of the Rights of Indigenous Peoples, Mary Simon made the following statement:

This is a proud day for Inuit and Indigenous peoples around the world. It is also an important day in the progressive evolution of human rights standards for all peoples of the world, indigenous and non-indigenous alike. Today marks the culmination of years of persistent work in achieving this. We celebrate this as a very significant victory for all of humanity.

—Mary Simon, national leader of the Inuit in Canada, on the occasion of the UN Declaration on the Rights of Indigenous Peoples

Figure 11-9 ▲

Aboriginal groups issued statements of intent to negotiate treaties by the British Columbia government. See reference to the Nisga'a, with whom the province in conjunction with the federal government has already negotiated a treaty. Why might the BC government try to play a leadership role in negotiating treaties alongside the federal government, which generally has jurisdiction in these matters?

Aboriginal land claims in Canada fall into two broad categories:

- **comprehensive land claims**, which are based on the Aboriginal rights recognized by section 25 of the Charter and section 35 of the Constitution Act of 1982, and involve territory and issues which are not yet affected by any existing treaty or other legal agreement. Many of the current land claims cases in British Columbia are in this category.
- **specific land claims**, which involve disputes over the fulfilment or administration of existing treaties or other legal agreements, such as the Indian Act or the historical treaties signed between the Canadian government and various First Nations. Specific claims also include Treaty Land Entitlement claims regarding land allegedly promised through existing treaties, but not delivered. (Source: "Settling Land Claims", Library of Parliament, September 1, 1999, http://www.parl.gc.ca/information/library/PRBpubs/prb9917-e.htm).

The government of British Columbia states its reasons for conducting treaties:

The reasons for treaty negotiations in British Columbia generally fall into three categories: moral; economic; and constitutional and legal. These are interconnected and need to be resolved in order for British Columbia to prosper both socially and economically.

The moral issue is self-evident. The quality of life for Aboriginal people is well below that of other British Columbians. Aboriginal people generally die earlier, have poorer health, have lower education and have significantly lower employment and income levels than other British Columbians. This is directly related to the conditions that have evolved in Aboriginal communities, largely as a result of unresolved land and title issues, and an increasing reliance on federal support programs.

As well as the obvious issues of the social and economic conditions of Aboriginal people, the courts have told government repeatedly that Aboriginal rights and title exist, and that these rights have significant impact on the way government does its business.

Uncertainty over ownership of land impedes the development of Aboriginal communities and economies, affects the provincial economy and discourages investment. Government has to take that reality into account as it continues to manage the lands and resources of British Columbia.

In order to maximize opportunities for economic development and job creation for all British Columbians, government has to find a way to reconcile the rights and the interests of First Nations with those of the Crown. Treaty negotiations provide for public input and a method for resolution of these issues.

—Source: British Columbia Ministry of Aboriginal Relations and Reconciliations, "Why We Are Negotiating Treaties."
 www.ipp.gov.bc.ca www.gov.bc.ca/arr/treaty/negotiating/why.html

Despite its opposition to the UN Declaration on the Rights of Indigenous Peoples, the Canadian government is making efforts to improve the land claims process. On June 18, 2008, the Specific Claims Tribunal Act was given royal assent. This Act overhauled Canada's land claims process. The new legislation was intended to provide a faster and fairer process for outstanding land claims. Before the legislation passed, a CTV News article quoted Indian Affairs minister Jim Prentice as saying the following:

"It is…time for the government of Canada to initiate full institutional reform, and create a fully independent land claims tribunal, empowered to adjudicate these difficult historic grievances in a binding way," he told the standing committee on Aboriginal affairs. All Canadians, whether Aboriginal or non-Aboriginal, deserve as much.

—Jim Prentice, quoted in "Ottawa to give more power to land-claims panel." CTV, May 17, 2007. http://toronto.ctv.ca/servlet/an/local/CTVNews/20070517/land_claims_070517?hub=TorontoHome

1. Before approaching this section's readings, had you considered how each level of government could or does impact the promotion of collective rights? identified in the Constitution and Charter and in documents such as the UN Declaration on the Rights of Indigenous Peoples? Can having rights and receiving recognition of those rights sometimes be two different things? Explain.
2. According to the sources you have explored regarding the UN Declaration on the Rights of Indigenous Peoples, section 25 of the Charter of Rights and Freedoms, and Section 35 of the Constitution Act, to what extent can governments in Canada and the United Nations impact the recognition of collective rights for First Nations, Métis, and Inuit peoples? In what ways do the principles of liberalism play a role in government responses to issues of collective rights and land claims in Canada?

Restrictions on Religious Symbolism

In most cases, freedom from discrimination based on religious beliefs is an *individual* right (equality rights, freedom of belief). This right can also be considered a collective right in some countries when a group's freedom of religious practice is in need of protection.

In our globalizing world, you may be quite familiar with symbolism from diverse religious, spiritual, or belief systems. You might openly demonstrate, wear, or share symbols of your own beliefs, culture, spirituality, or religion. Have you ever experienced restrictions on how, when, and where those symbols could be shown, or on your democratic right to freedom of religious expression? Have you ever felt you might be criticized or ostracized for displaying your religious, spiritual, or cultural symbols? To what extent is the individual right to freedom of religious expression important to you and your identity?

As you read in Chapter 3, France became a pioneer of Western democracy when it established itself as a liberal republic in the 18th century following the French Revolution. Although it is one of the oldest liberal democracies, the French government may sometimes act in ways that seem **illiberal**.

In the 1990s, the French government began to restrict the display of religious symbols in public as part of a policy to preserve the secular character of public institutions, including government offices, service desks, and schools. In 2004, the Minister of Education interpreted those restrictions to apply to certain religious symbols, specifically the wearing of hijabs, the headscarves worn by some Muslim women as an expression of modesty, as a symbol of faith, and sometimes as a sign of their commitment to Islamic movements or groups, whether social or political. According to some Muslim scholars, the hijab is mandatory. Under the new interpretation of French law, students who wore a hijab faced expulsion from school. The restrictions expanded to include turbans worn by Sikh males, yarmulkes (skull caps worn by Jewish men), and large Christian crosses.

Figure 11-10 ▲

The hijab is worn by women in many countries, including Canada. How might restrictions on religious and cultural symbols change how people view the relationship between government and individuals?

> *Taliban forced women to wear hijab and France forced women to remove it; what is the difference as far as the issue of human rights is concerned?… Muslim women in Arab and Muslim states are criticized for staying at home. The French ban is designed to force French Muslim women [to stay] at home.*
>
> **—Cennet Doganay (a French Muslim student in Strasbourg, France, who was isolated from fellow students for wearing a hijab in 2004), quoted in Hadi Yahmid, "Skin-head Muslim Student Grills France."** ***Islam Online*****, October 12, 2004.**
> http://www.islamonline.net/English/News/2004-10/12/article02.shtml

Get to the Source

On September 2, 2004, France's *Loi sur laïcité* (law on secularism) took effect in all state schools. This law reads in pertinent part:

Dans les écoles, les collèges et les lycées publics, le port de signes ou tenues par lesquels les élèves manifestent ostensiblement une appartenance religieuse est interdit.

[Translation:]

In public [primary and secondary schools], the wearing of symbols or clothing through which the pupils ostensibly manifest a religious appearance [or "affiliation"] is prohibited.

The ban on all symbols or clothing that create a religious appearance means that students cannot wear yarmulkes, large crucifixes, Sikh turbans, or of course Islamic headscarves…The word "ostensibly," however, allows pupils to continue the traditional French practice of wearing small Christian crucifixes.

—Source: "France—Banning Religious Attire—United Sikhs", The Becket Fund for Religious Liberty.
http://www.becketfund.org/index.php/case/96.html

If there is a protest one day, there will be a counter-protest the next.

—Nicolas Sarkozy (French Interior Minister at the time of this quote, elected the president of France in 2007, shrugging off further debate on the laws), quoted in "World Protests Against French Hijab Ban." *Islam Online*, January 17, 2004
http://www.islamonline.net/English/News/2004-01/17/article09.shtml

In Britain we are comfortable with the expression of religion.

—Mike O'Brien (British foreign office minister, providing the British government's response to the French law), quoted in "O'Brien Proud of Britain's Multiculturalism." January 16, 2004.
http://www.fco.gov.uk/resources/en/pressrelease/2004/01/fco_npr_170104_obrienreligion

In response to the law, protests were held in France and many countries. Some female students expelled for wearing hijabs and males expelled for wearing turbans sued the French government and were reinstated to their schools. Yet the laws are still in effect, and other countries followed France's lead. The Belgian city of Antwerp passed a law in 2007 that bans the use of "visible symbols of philosophical, religious, political or other opinions" for civil servants who work with the public. (Source: Eva Vergaelen, "City of Fashion Bans the Hijab." *Islam Online*, http://www.islamonline.net/servlet/Satellite?c=Article_C&cid=1177156198981&pagename=Zone-English-Euro_Muslims%2FEMELayout.)

Pause and Reflect

Why do you think the French government, as a liberal democracy, would restrict the wearing of religious symbols?

Figure 11-11 ▲

In Canada, the wearing of religious headgear by Sikhs is protected by the Canadian Charter of Rights and Freedoms. If it was Passport Canada's policy to reject applications from Sikhs wearing religious head coverings, would this mean that the government was limiting these Canadians' religious freedom?

Veils, hijabs, and other religious and political symbols are forbidden for nurses, cleaning staff in public buildings, teachers, and clerks, as the people positioned in these roles are to appear "neutral."

France's governmental policies and actions strongly affect its own citizens and also affect people in other countries. How do the restrictions placed on religious symbolism affect the rights of French citizens and those in other liberal democracies?

In a similar vein, some Canadians have been concerned by restrictions placed upon the wearing of certain clothing or headgear during the passport application process:

> *Passport Canada has upset a British Columbia–based Sikh family by denying its children's passport applications. Passport Canada stated that the religious headgear the children wore in their photos was unacceptable. The children's faces were clearly visible in the photographs.*
>
> **—Source: adapted from "Sikh passport photos rejected because of headgear." CBC News, August 17, 2007.**
> http://www.cbc.ca/canada/british-columbia/story/2007/08/17/bc-sikhpassports.html

For security reasons, Passport Canada was trying to impose a certain order on these young citizens that infringed on their freedom of religious expression as protected by the Canadian Charter of Rights and Freedoms. Can you think of other examples where Canadian government agencies have tried to impose order in a situation that threatened to limit citizens' Charter rights?

Explore the Issues

Concept Review

1. Review the examples in this section of the chapter. Create a chart to explain how each example responds to the Question for Inquiry: How do liberal democracies balance the perceived common good with the need to respect rights?

Concept Application

2. *You Be the Judge.* Consider the Supreme Court case *Société des Acadiens et Acadiennes du Nouveau-Brunswick Inc. v. Canada*, about language rights in New Brunswick. Your teacher will provide you with a summary of the case. Use the Skill Path to help you assess to what extent RCMP officers should be required to provide service in both official languages in Canada. If officers are unable to provide service in one of the official languages, is this an infringement of a citizen's official language rights in the Charter?
3. After centuries of being denied basic human rights and the control of their land and government, some First Nations and Métis leaders have advocated violent protests to have their individual human rights and collective Aboriginal rights respected. Research the economic status of First Nations and Métis communities. According to your research, what percentage of the population is experiencing higher, middle, and lower socioeconomic status? Is there a relationship among: economic standing; public education and health; the perception of individual rights and freedoms; and the use of violence? To what extent are the collective rights of Aboriginal peoples under Section 35 of the Constitution being affirmed and recognized in Canada?

Rejecting the Principles of Liberalism

Question for Inquiry

- **Why might governments choose to reject the principles of liberalism in some cases?**

The Anti-Smoking movement is promoting the exclusion of 5 000 000 Canadians who consume a legal product and who contribute a significant amount of Tax Revenues to this nation and its provinces. People are being harassed and assaulted by Anti-Smokers and these people seem to feel that they are entitled to do so because the government is backing them.

Our elected representatives do nothing to protect the rights of 20 percent of the population who smoke and who also vote. We feel that this has to stop and that Smokers should be recognized as a Visible Minority in Canada and subject to the same rights and freedoms as other Visible Minorities, most importantly the protection from Hate Crimes and abuse.

—Source: "Stop Hate Crimes and Social Exclusion of Smokers"(online petition to end government bans on smoking).
http://www.ipetitions.com/petition/CanadianSmokersRights/

Tobacco users in Canada have found themselves increasingly restricted as to where, when, and how they can use tobacco products legally in Canada. While the purchase of tobacco is legal for adults, its use in public places is not. The rights of smokers and non-smokers have come into competition, with the latter having greater support from both governments and the majority of citizens.

Is it possible to reconcile the rights of smokers with the rights of non-smokers? Should the government favour one side over the other? On what grounds would it do so?

Throughout this section you will have several opportunities to examine historical and contemporary cases where non-liberal government practices have been questioned. You will also explore the reasoning, context, and informational bias of governments at the time of their actions. This information will help you address the following issue: ***To what extent should democratic governments promote and protect individual and collective rights?***

Figure 11-12 ▲

Should Liberal Democracies Always Adhere to the Principles of Liberalism?

In what situations is a government justified in imposing secrecy and censorship? Is it ever justified?

In February, 2008, Canadian soldiers fighting in Afghanistan were urged to use caution when using popular websites such as Facebook when communicating with family and friends back home. They were warned to not share photos of themselves in uniform or of the battlefront. According to the Defence Department, "the insurgents could use this information to determine their success or their lack of it…and determine better ways to attack us." However, defence analyst Sunil Ram suggested that "what we're really talking about is censorship more than anything else." He went on to say, "This is the military's attempt to control the imagery of what is actually happening on the ground." Journalists covering the activities of Canada's armed forces in Afghanistan have often been held back from going to the site of direct conflict, or their requests for information are denied or delayed. Is this for their own safety, or for the protection of information related to military operations?

- Why might the Canadian government place restrictions on the type and amount of information that Canadian soldiers shared with their family members?
- How might governments handle dilemmas that involve the disclosure of information (other than with openness and truthfulness) during times of war, crisis, or emergency?

One controversial example of a liberal democratic government seemingly violating liberal principles is the US Army's "stop-loss" provision. Between 2002 and 2008, it is estimated that 70 500 soldiers were issued stop-loss orders by the US military. The controversial stop-loss policy can force soldiers to involuntarily extend their terms of service for their enlistment in the army for up to 15 extra months. There are many different perspectives regarding this policy, such as those of: army officials, who generally feel that the policy is necessary to maintain leadership by experienced soldiers; and some "stop-lossed" soldiers, who wish for the army to honour its original agreements. (Source: Julian E. Barnes, "Army 'stop-loss' orders up dramatically over last year", *Los Angeles Times*, May 09, 2008, p. A-16. http://articles.latimes.com/2008/may/09/nation/na-stoploss9.)

- To what extent do democratic governments have a responsibility to adhere to the principles of liberalism during times of conflict?

PAUSE AND REFLECT

If the federal government were to remove any of your rights for the perceived common good, what individual or collective rights would you be most concerned about losing? What individual rights or collective rights would you be most willing to temporarily suspend for the perceived common good? To what extent would your beliefs and values be conflicted during your decision making?

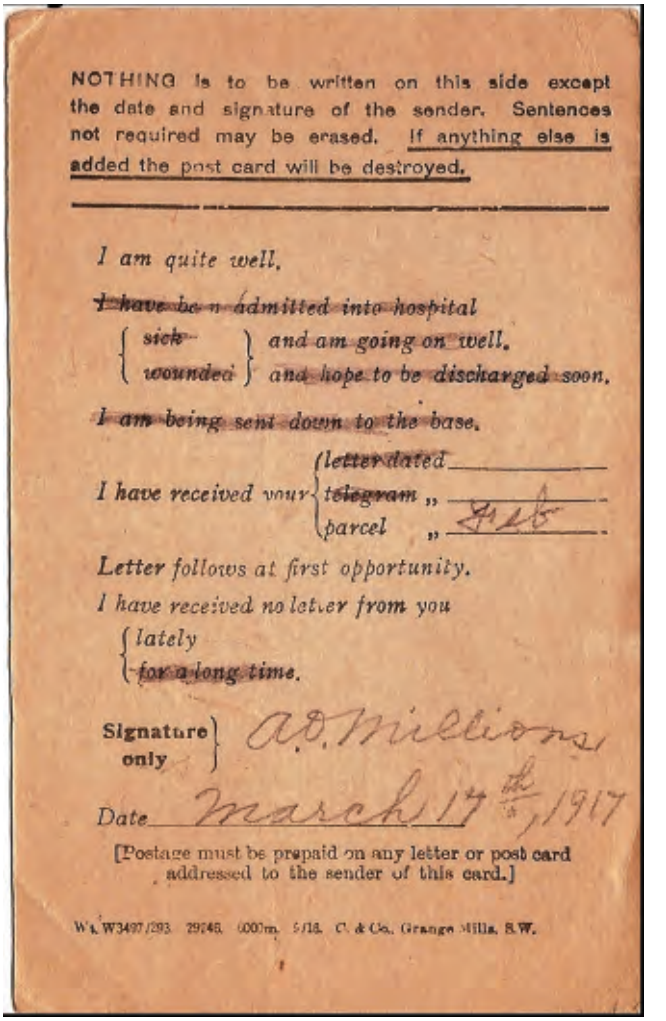
Liberal democracies face myriad situations in which their adherence to the principles of liberalism is tested. During times of war, emergency, and environmental crisis, liberal democracies have restricted people's movement, controlled people's access to information, and limited people's rights, freedoms, and choices. While these actions are often short term, some illiberal policies have remained in effect for years or even decades after they were implemented in an emergency situation. Furthermore, illiberal policies are often not universally applied to citizens; rather, certain groups or individuals receive differential treatment.

The War Measures Act

The **War Measures Act** was first passed in 1914 in response to Canada's involvement in the First World War. It has been invoked only three times in Canada's history. The actions that were taken by the Canadian government when it invoked the Act were atypical of the day-to-day actions of governments in liberal democracies. In each case, the federal government stated reasons for its actions to suspend, restrict, and limit rights, freedoms, and the basic principles of liberalism. The following reasons have been given in the past to justify the Act's use:

- It was necessary for the overall good of society.
- It was justified because of the threat or severe nature of the situation.
- It was essential to protect, retain, or secure other principles of liberalism.

The War Measures Act gave the federal cabinet emergency powers for circumstances where it determined that the existence of war, invasion, or insurrection, real or apprehended, existed. The real distinction of this Act was that it allowed the cabinet to govern by decree rather than through discussion and debate in Parliament. The federal government had increased powers under this Act: powers that could be used immediately once the Act was invoked. The following sections outline the circumstances and repercussions of using the War Measures Act. Which instances of its use, if any, do you consider to be necessary, justified, and essential?



NOTHING is to be written on this side except the date and signature of the sender. Sentences not required may be erased. If anything else is added the post card will be destroyed.

I am quite well.

~~I have been admitted into hospital~~
{ sick / wounded } and am going on well.
and hope to be discharged soon.

~~I am being sent down to the base.~~

I have received your { letter dated ____ / telegram „ ____ / parcel „ ____ }.

Letter follows at first opportunity.

I have received no letter from you { lately / ~~for a long time~~ }.

Signature only A.O. Millions

Date March 14th, 1917

[Postage must be prepaid on any letter or post card addressed to the sender of this card.]

W. W3497/293. 29/48. 600m. 5/18. C. & Co., Grange Mills, S.W.

Figure 11-13 ▲

During times of war, governments might introduce the illiberal practice of censorship for concerns related to safety and security. This postcard is from a First World War soldier to his family in Saskatchewan. All correspondence home was subject to being opened and read by censors to make sure no additional information was being added.

INVESTIGATION

Canada's Anti-Terrorism Act

Something to Think About: Canada is known for its Charter of Rights and Freedoms; specifically, civil liberties that every Canadian citizen is entitled to, such as the legal rights

- not to be arbitrarily detained and imprisoned
- to be informed of the reasons of arrest or detention
- to be released if the detention is found not to be justified

However, in the aftermath of the terrorist attacks on September 11, 2001, the federal government in Canada quickly fast-tracked the Anti-Terrorism Act (Bills C-36 and C-42), which defined what **terrorism** is and made it a punishable offence in Canada's Criminal Code. The Act created much controversy in Parliament as some questioned if this legislation had adequate debate in the House of Commons. The Anti-Terrorism Act became part of the Criminal Code on December 18, 2001, and gave police new powers, including the ability to arrest people and withhold them without charge for up to 72 hours if they are suspected of planning a terrorist act. As well, police can make preventative arrests, and can now more easily access electronic surveillance during their investigations.

Figure 11-14 ▲

Abdullah Almalki at a news conference on Parliament Hill in Ottawa, December, 2006.

When this legislation was introduced in 2001, many Canadians felt that the government was taking basic civil liberties away. Today that is still the case. Others, however, argue that the legislation is needed to protect and ensure security for Canadian citizens from the threat of terrorism.

An Example: Abdullah Almalki, a Syrian-born Canadian from Ottawa, was at the centre of an RCMP national security investigation. He ran a company as a supplier to an electronics manufacturer in Pakistan, and often traveled throughout Asia and the Middle East. He came under suspicion of the RCMP and The Canadian Security Intelligence Service (CSIS), partly because of his business travel to places such as Pakistan and Afghanistan. The RCMP raided his home in Ottawa in early 2002, looking for evidence to his connection to terrorism. While on a trip to visit his mother in Syria in April 2002, he was detained by the Syrian police at the airport, and spent the next 22 months in a Syrian jail. He was beaten and tortured. He was told by the prison's chief interrogator that agents from the RCMP and CSIS wanted information about Canadian Muslim men, and thought that he had collaborated with terrorist organizations. He was released and sent back to Canada in August 2004, and was cleared by a Syrian judge of a being a terrorist threat for lack of evidence.

There are questions that remain unanswered, however, such as the role Canadian intelligence played in his detention in Syria, and whether his torture was part of an unwritten Canadian policy to send terrorist

suspects to Syria for interrogation. As well, there was the issue of why he did not receive any Canadian consular help in prison.

Many believe that Abdullah Almalki's arrest and detention in Syria is connected to Canada's Anti-Terrorism Act, as it gave sweeping powers to the RCMP and CSIS to extensively search and investigate Almalki in an effort to identify evidence tying him to terrorist activities. Moreover, because of the legislation, Almalki—and other Canadian citizens who have been detained overseas on suspicion of terrorism—have yet to find out why they were targeted by the RCMP and CSIS because information can be withheld in confidentiality by the government.

Many feel that the Anti-Terrorism Act gives too much power to organizations like CSIS and the RCMP, and that it takes away certain civil rights. It operates on the assumption that a person is guilty, and the due course of process to individual freedoms is overruled by the need for security.

Questions for Reflection

1. Is the Anti-Terrorism Act a rejection of liberal principles?
2. To what extent is the Anti-Terrorism Act placing the perceived common good of citizens above individual rights?
3. Do you believe this is appropriate or inappropriate? Explain your position.

The First World War and Enemy Aliens

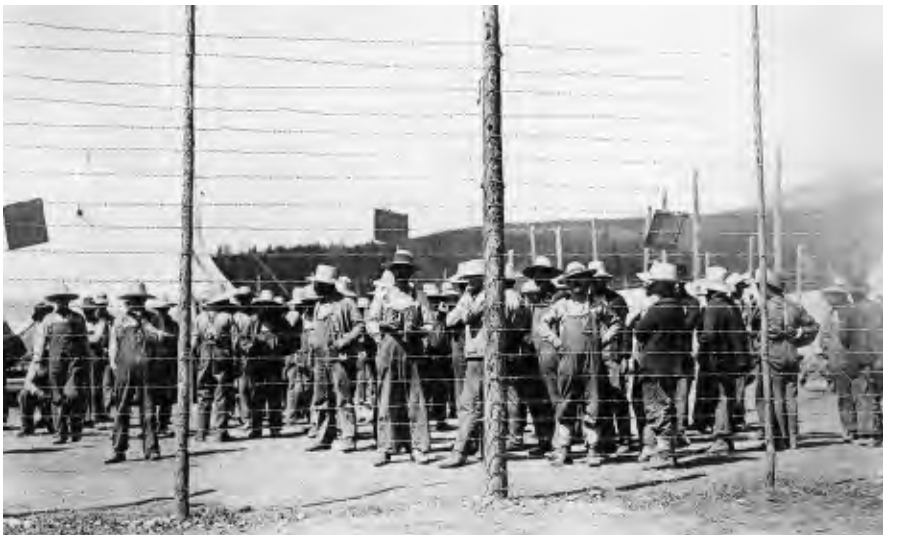
The first use of the War Measures Act in Canada came during the First World War. Canada and Newfoundland were part of the British Empire at the time, and Britain and the Allied Powers were at war against the Central Powers: Germany, Austria-Hungary (which included parts of Ukraine), and the Ottoman Empire. Under the War Measures Act (1914) immigrants from these countries already residing in Canada were considered **enemy aliens**.

As a result, all enemy aliens were required to register with the Canadian government and carry their government-issued ID cards at all times. In addition, they were not permitted to publish or read anything in a language other than English or French, to leave the country without exit permits, to possess firearms, or to join any group the government deemed inappropriate, dangerous, or seditious.

Several thousand enemy aliens were deported or sent to **internment** camps (Figure 11-16 shows one of these camps). Their property was confiscated and often went missing during their internment or was not returned afterwards. The internment camps did

Figure 11-15

Ukrainian and other internees at the Castle Mountain Alberta internment camp in 1915. Over 5000 Ukrainian immigrants were interned and 80 000 were required to register as "enemy aliens." Those in internment camps were used as forced labourers in the building of national parks, logging industries, steel mills, and mines. What words or descriptions come to mind when viewing this photograph? Which of those words are consistent with the principles of liberalism?



First Session, Thirty-eighth Parliament,
53-54 Elizabeth II, 2004-2005

STATUTES OF CANADA 2005

CHAPTER 52

An Act to acknowledge that persons of Ukranian origin were interned in Canada during the First World War and to provide for recognition of this event

ASSENTED TO

25th November, 2005

BILL C-331

Figure 11-16

Bill C-331, which was passed into law in 2005, awarding 10 million dollars to Ukrainian Canadians for use towards public education and commemorations regarding internment during the First World War

not close until 1920—two years after the end of the First World War. The released internees often had no possessions or property. At that time, the federal government did not offer an apology or compensation to the people who were interned.

The Second World War and Japanese Internment

During the Second World War, the Canadian government invoked the War Measures Act to intern individuals and place restrictions on the freedoms of Japanese-Canadians. Nearly 23 000 Japanese-Canadians—the vast majority of whom were naturalized or native-born Canadians from the Pacific Coast—were placed in internment camps in early 1942.

Even though public fears of disloyalty, clandestine actions, and sabotage by Japanese-Canadians were dismissed by the Royal Canadian Mounted Police and military officials as groundless, strong anti-Japanese public sentiment and its own policies surrounding national security in times of war caused the federal government to undertake the relocation process. Through an Order in Council, Ottawa declared a 160-kilometre–wide strip along the west coast a "protected area." All persons of Japanese racial origin were told to each pack a single suitcase and were taken to temporary holding areas. Every male Japanese-Canadian between the ages of 18 and 45 was separated from his family, relocated, and placed in a work camp. Women and children were sent to the British Columbia interior to live in poorly constructed communal buildings. Internees received care packages from Japan through the Red Cross because conditions were so poor. The federal government sanctioned seizure and sale of Japanese-Canadian property. Items were sold for a fraction of their value, and the original owners received no compensation.

PAUSE AND REFLECT

Why do you think the government took these extreme measures? Why might a government continue to use such actions after the war had ended?

Figure 11-17

Women and children in the community kitchen in Greenwood, British Columbia, 1943. What are the potential effects on individuals when government actions deny them basic rights such as freedom of movement and ownership of property?

NOTICE TO ALL JAPANESE PERSONS AND PERSONS OF JAPANESE RACIAL ORIGIN

TAKE NOTICE that under Orders Nos. 21, 22, 23 and 24 of the British Columbia Security Commission, the following areas were made prohibited areas to all persons of the Japanese race:—

LULU ISLAND (including Steveston)
SEA ISLAND
EBURNE
MARPOLE
DISTRICT OF QUEENSBOROUGH
CITY OF NEW WESTMINSTER
SAPPERTON
BURQUITLAM
PORT MOODY
IOCO
PORT COQUITLAM
MAILLARDVILLE
FRASER MILLS

AND FURTHER TAKE NOTICE that any person of the Japanese race found within any of the said prohibited areas without a written permit from the British Columbia Security Commission or the Royal Canadian Mounted Police shall be liable to the penalties provided under Order in Council P.C. 1665.

AUSTIN C. TAYLOR,
Chairman,
British Columbia Security Commission

Figure 11-18

Although this message is addressed to a certain group, how might other members of Canadian society have reacted to it? How could the Canadian government have better protected Japanese-Canadians' rights during this period?

At the conclusion of the Second World War, the federal government decided that all Japanese-Canadians should be removed from British Columbia. Japanese-Canadians were given the choice between deportation to Japan or relocation east of the Rocky Mountains. Although 4000 Japanese-Canadians chose to leave the country, the majority opted to move to the prairies, Ontario, or Québec. Japanese-Canadians could return to British Columbia in 1949, as they had regained the right to live anywhere in Canada, but most had already chosen to live elsewhere.

In the 1980s some Japanese-Canadians and their families sought redress for the actions of the Canadian government. Although not all Japanese-Canadians supported this action, the action challenged the federal government to act on its commitment to a multicultural society and the new Charter of Rights and Freedoms. In 1988, Prime Minister Brian Mulroney publicly acknowledged the unjust actions and the Canadian government awarded compensation packages of $21 000 for each individual directly wronged.

> *The War Measures Act is a heinous piece of legislation because it's easy to guarantee all kinds of rights and freedoms when times are good, but those guarantees only matter when times are difficult. That's what men and women fought and died to protect, but when put to a serious test by World War II, Canada failed miserably.*
>
> **—David Suzuki (author, scientist, and advocate whose family was interned during the Second World War), "An Erratic Journey through Science and Society."** ***AmeriQuests*** **3, 2 (2006).**
> http://ejournals.library.vanderbilt.edu/ameriquests/viewarticle.php?id=84

The point of view presented here illustrates one of the perspectives on the internment of Japanese-Canadians.

Why do you think the Canadian government failed to protect the rights of Japanese-Canadians during the Second World War?

Pause and Reflect

In your opinion, what were the most important factors in the decision to invoke the War Measures Act in 1942?

Pause and Reflect

How would you respond today if such actions occurred in Canada? Why might governments choose to reject the principles of liberalism in some cases?

October Crisis, 1970

The third and final time the War Measures Act was invoked was in October 1970. Canada and the world underwent significant political, social, and cultural changes during the 1960s. Many reforms were prompted by individuals and groups seeking less government control, greater freedoms, and increased power over decisions affecting their lives. Examples include the women's liberation movement, the anti-war movement, and pressures to end poverty, discrimination, and abuses of power.

Some Francophone Québécois strongly desired greater protection of their language and culture and wanted equal opportunities for participation in the economy of Québec, which was dominated by an Anglophone minority. The **Quiet Revolution (*la Révolution tranquille*)** was a time of rapid social, economic, and political modernization in Québec: a revolution without violence, force, or direct conflict, aimed at enhancing opportunities for Francophone Québécois within Québec society.

Some people felt the pace of change was too slow, however. These people supported the use of violence, terrorism, or other illegal means to achieve their goals. *The Front de libération du Québec* (the FLQ, or the Quebec Liberation Front), founded in 1963, and committed to the independence of Québec, was a group that was willing to resort to terrorism.

During the 1960s, the FLQ used a series of bombings and armed robberies to further its goals. On October 5, 1970, the FLQ abducted British trade commissioner James Cross, an act that shocked Canadians. Ransom demands were made, most of which were not met. On October 10, 1970, the kidnapping and subsequent murder of Pierre Laporte, a popular Québec cabinet minister, generated strong reactions from Canadians as well as citizens of other countries. Within days, the Canadian Armed Forces were sent to protect politicians in Ottawa. Québec premier Robert Bourassa requested that troops be sent to support local police. The military and police presence was either disquieting or reassuring to Canadians, depending on their points of view.

Prime Minister Trudeau invoked the War Measures Act on October 16, 1970, explaining that a state of "apprehended insurrection" existed in Québec. Civil liberties were suspended, and the FLQ was formally outlawed. Anyone attending an FLQ meeting or speaking favourably of the organization was presumed to be a member. Nearly 500 people were arrested without warrants for expressing their pro-FLQ views and could be held in prison for up to 90 days; many of the people arrested were artists, journalists, unionists, teachers, and other supporters of **Québécois nationalism**.

The actions of the federal government during the October Crisis raised a great deal of controversy. Although an overwhelming number of Canadians supported the government's actions, many Québec

We deplore that recourse... was made to the War Measures Act; in its possible applications, it far exceeds the scope of the problem that the authorities faced... However, we can only reaffirm the right of a democracy to defend itself and the obligation that it has to judge severly and to put down those that unjustly threaten the freedom and the life of their fellow citizens.

—Claude Ryan, "The War Measures Act: Three Questions", editorial in *Le Devoir*, October 17, 1970.
http://faculty.marianopolis.edu/c.belanger/quebechistory/docs/october/ryan.htm

nationalists and advocates of civil rights criticized the use of the War Measures Act as excessive and too broad, especially for a case involving two kidnappings and a murder, issues that would normally be dealt with by the police and existing laws. One major criticism was that the government acted on limited information and treated all separatist supporters as potential terrorists.

There are a lot of bleeding hearts around who just don't like to see people with helmets and guns. All I can say is go and bleed…It is more important to keep law and order in society than to be worried about weak-kneed people…Society must take every means at its disposal to defend itself against the emergence of a parallel power which defies the elected power.

—Pierre Elliott Trudeau, impromptu interview with Tim Ralfe of the CBC and Peter Reilly of CJON-TV, October 13, 1970.

The actions of the federal government during the October Crisis can appear very different to us today than it did to Canadians at the time.

- Under the circumstances in October 1970, do you believe the federal government's actions were appropriate?
- What other alternatives could Trudeau have used to deal with the FLQ without rejecting the principles of liberalism during this crisis?

Figure 11-19 ▲

How does the presence of troops in a Canadian city affect the citizens? What possible responses are there to such government actions?

Emergencies and Security Legislation Today

Following the introduction of the Canadian Charter of Rights and Freedoms in 1982, the Canadian government introduced a new law, the Emergencies Act, in 1988, in order to harmonize this law with the articles of the Charter.

The Emergencies Act includes more safeguards protecting the rights of Canadians. First, the Emergencies Act clearly defines an emergency situation:

A public welfare emergency is defined as one that is caused by real or imminent:

- *natural catastrophe*
- *disease in humans, animals or plants*
- *accident or pollution*

resulting in danger to life or property, social disruption or a breakdown in the flow of essential goods, services or resources so serious as to constitute a national emergency.

—Source: Government of Canada, Emergencies Act.
http://dsp-psd.tpsgc.gc.ca/Collection-R/LoPBdP/BP/prb0114-e.htm#A. Preamble(txt)

Second, the Emergencies Act limits the powers of the government during the time of the crisis. Any measures implemented under the Emergencies Act are subject to the approval of Parliament. Under the new Emergencies

Pause and Reflect

To what extent does the Emergencies Act respect the principles of liberalism?

Act, the government is obliged to specify to which part or parts of Canada the emergency measures apply, if it is not a national issue.

Third, any temporary emergency measures taken under the Emergencies Act must take into account the rights of Canadians, as outlined in the Charter of Rights and Freedoms. The Emergencies Act even includes a section requiring the government to award compensation to anyone who has suffered injury or damages as a result of the Act's application.

In addition to the Emergencies Act, the Parliament of Canada passed the Anti-Terrorism Act in 2001 to deal with perceived security threats, and is "aimed at disabling and dismantling the activities of terrorists groups and those who support them." Similar to the Emergencies Act, the Anti-Terrorism Act (about which you read in the Investigations feature on pages. 396–397) allows the government to impose limits to Canadians' freedoms in order to ensure security during times of crisis or perceived threat.

Restricting Freedoms in Subtle Ways

Following the events of 9/11 (the terrorist attacks on the United States, September 11, 2001), governments, individuals, and groups have developed a different understanding of security, terrorism, and mobility. Your own experiences with travel, especially through airports and border crossings, are different from those of Canadians prior to 9/11. Yet many people raise concerns about the appropriateness as well as the effectiveness of increased security measures in Canada and around the world. Supporters of increased security often point out that the restrictions are minor and certainly not as serious as the potentially devastating consequences.

The USA PATRIOT Act

The United States government has responded to the need for increased security by introducing the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act (USA PATRIOT **Act,** 2001). This act's preamble states that its purpose is to "deter and punish terrorist acts in the United States and around the world, to enhance law enforcement investigatory tools, and for other purposes." (Source: USA PATRIOT Act, October 24, 2001. Electronic Privacy Information Center, http://www.epic.org/privacy/terrorism/hr3162.html.)

Negative reaction to this legislation quickly emerged. Groups as diverse as the American Civil Liberties Union (ACLU) and Utah's conservative *Deseret News* openly opposed the USA PATRIOT Act because of its potential threat to personal liberties. Many groups have lobbied the government, posted websites, and employed the media to raise public awareness of their perceptions of the intended and unintended consequences of this centralization of government power.

Jeff Stahler: © Columbus Dispatch/Dist. by Newspaper Enterprise Association, Inc.

Figure 11-20

What does the cartoonist suggest regarding the balance between security and freedom?

In addition, in September 2004, the ACLU challenged the federal government's power to issue National Security Letters, a provision of the USA PATRIOT Act, and won in court. National Security Letters permitted the government to obtain sensitive customer records from Internet service providers and other businesses without first obtaining a search warrant from a judge. The court ruled that this was an unconstitutional limit to the freedom from unreasonable searches. The court also ruled against the so-called gag provisions of the USA PATRIOT Act that allowed the government to censor protestors' complaints against the Act as "unconstitutional prior restraint" on free speech. (Source: "ACLU Case, Federal Court Strikes Down Patriot Act Surveillance Power As Unconstitutional." American Civil Liberties Union, http://www.aclu.org/safefree/spying/18589prs20040929.html, September 29, 2004.)

The intention of the USA PATRIOT Act was to protect the security of the American people from acts of terrorism. However, some feel that the act undermines the civil liberties of the American people and subverts the rights of minorities, especially those who share the same ethnic heritage as those who perpetrated the 9/11 attacks.

PAUSE AND REFLECT

What is your reaction to legislation such as the USA PATRIOT Act? Why do you think the courts ruled that some aspects of the act were unconstitutional? Is there a better way to address the need for national security that does not involve actions that infringe on individual rights?

Canada's No-Fly List

One of the increased security measures in Canada is a **no-fly list** called Transport Canada's "Specified Persons" list. This is a list of people the government has identified as potentially posing an immediate threat to aviation security. People on the list are barred from flying on domestic flights in Canada (see Investigation, pages 396–397). Figure 11-21 lists the criteria for determining who may be placed on the list. Canada's initiative is modelled after a similar one created in the United States. The US list has been highly criticized because of its extent (it contains more than 44 000 names) and for the arbitrary way in which people are placed on the list. While it is believed that the Canadian list contains fewer than 1000 names, it is not publicly available, so many people on the list will not know that they have been barred from flying until they try to do so. What is known about the list is included in the chart in Figure 11-21. To what additional information would you like to have access in order to better understand and evaluate the list's appropriateness?

Maher Arar, whom you read about in the chapter opener, is one Canadian who has been affected by the American no-fly list. Arar arrived in New York on a stopover during his return to Canada from Tunisia. American officials detained Arar, claiming he had links to al Qaeda. Arar was questioned, held, and eventually deported to Syria, even though he was carrying a Canadian passport. He was tortured and held in Syria until October 2003.

PAUSE AND REFLECT

How would you deal with this issue if you were the government minister responsible for safety, security, and transportation? Do you think a no-fly list is the best or only solution?

Figure 11-21 ▶

Do you think the rules for who may be placed on the no-fly list are fair and adequate? Are they too vague, leaving room for innocent people to be wrongly placed on the list? Are they too limited, meaning that some potential terrorists will not be listed?

—Source: information from "Passenger Protect program now in effect," Transport Canada. http://www.passengerprotect.gc.ca/

Who may be placed on Transport Canada's Specified Persons list:
• An individual who has been involved in a terrorist group and who, it can reasonably be suspected, will endanger the security of any aircraft or aerodrome, or the safety of the public, passengers, or crew members.
• An individual who has been convicted of one or more serious and life-threatening crimes against aviation security.
• An individual who has been convicted of one or more serious and life-threatening offences and who may attack or harm an air carrier, passengers, or crew members.

Maher Arar questioned the actions of the Canadian and American governments in his deportation. Should individuals expect governments to respect the principles of liberalism under all circumstances? Does Arar's case prove that the no-fly list is doing more damage than good?

Arar sought redress for the actions of Canadian and American officials. Among other criticisms, he accused American officials of knowing that Syria practises torture, and of endangering his life by deporting him. The Canadian inquiry resulted in Arar being vindicated by the federal government and compensated financially. However, Arar remains on the US no-fly list.

The Canadian government's post-9/11 security measures are less intrusive and restrictive than the examples from Canada's history when the War Measures Act was invoked. The restrictions still constrain people's freedoms and challenge the principles of liberalism, however, although in less obvious ways. Despite this subtlety, the new policies are clearly illiberal measures.

Explore the Issues

Concept Review

1. a) Identify and describe five examples from this section of situations where the government chose to reject principles of liberalism.
   b) For each of the examples, identify the specific liberal principle or individual or collective right that was violated.

Concept Application

2. *You Be the Judge*. In a group of five, analyze the issue in *United States V. Brown* and its relevance to Section 7 of the Charter. Your teacher will provide you with the case. Research it and simulate a Supreme Court of Canada judges' deliberation. Discuss the extent to which the government in your case either promoted or protected individual or collective rights or rejected the principles of liberalism. Produce a written verdict on the case, and have your chosen Chief Justice read it to the class.
3. Write a letter to your Member of Parliament explaining your views on how the government has rejected the principles of liberalism in a specific situation that you have read about in the news. Assess the manner in which the government dealt with the situation and how the government might better protect citizens' individual or collective rights in the future.

Reflect and Analyze

In this chapter you have seen how complex it can be to apply the values of liberalism to many real-life situations. Often, promoting an individual's or a group's rights can mean minimizing or infringing on another individual's or group's rights. We have started to explore the interplay between government and citizens, which will give you some insight into the Chapter Issue: ***To what extent should democratic governments promote and protect individual and collective rights?***

Respond to Ideas

1. In groups of at least six people, research one of the current or classic precedent-setting Charter cases provided by your teacher. Discuss and debate the judges' verdict, their reasons for the verdict and relevant legislation involved, and different perspectives on the ruling. Simulate a Supreme Court of Canada courtroom proceeding to demonstrate your group's position on the verdict, providing evidence during the proceeding and in the judgement to support agreement or disagreement with the Court's actual ruling.

   Current Cases:

   - *R. v. D.B.*: Reverse onus provisions and Section 7 of the Charter
   - *R. v. White:* Publication Ban Upheld
   - *R v. Kapp:* Supreme Court Approves Affirmative Action Program
   - *Canada (Attorney General) v. Lameman:* Papaschase Land Claim Resolved
   - *R. v. Ferguson:* Supreme Court Upholds Mandatory Minimum Sentence and Refuses to Grant Constitutional Exemption
   - *Morrow v. Zhang:* Alberta Court Strikes Down Damages Cap

   Classic Cases:

   - *R. v. Oakes:* The Oakes Test
   - *R. v. Sparrow:* Aboriginal Rights
   - *Law v. Canada:* Equality Rights
   - *R. v. Morgentaler:* Women's Rights
   - *Re B.C. Motor Vehicle Act:* The Right to Not be Arbitrarily Detained
   - *Vriend v. Alberta:* Equality Rights (sexual orientation)
   - *Hunter v. Southam Inc.:* Government Use of Search Warrants
   - *Andrews v. Law Society of British Columbia:* Equality Rights
   - *R. v. Collins:* The Collins Test
   - *R. v. Stinchcombe:* Burden of Proof
   - *R. v. Askov:* Trial in a Timely Manner

   Case law summaries can be found at the University of Alberta's Centre for Constitutional Law website. Cases and verdicts can be found at the Supreme Court of Canada's website.

   Bear in mind that these cases often deal with controversial topics that invite a variety of responses. They were not selected because they provide a definitive perspective on an issue but rather, because each verdict established an important legal precedent.

2. Create a short poem, prose piece, photo essay, or video to illustrate the challenges governments face in promoting individual and collective rights—"liberalism in practice"—in society.

Recognize Relationships among Concepts, Issues, and Citizenship

3. In groups of five, examine the Charter of Rights and Freedoms. Create a report card for the current federal or Alberta government on how well it has promoted and protected individual and collective rights as outlined in the Charter. As this activity will require a fair bit of research, your teacher might divide the 34 statutes of the Charter among groups.