



## CONSTITUTIONS AND THE ROLE OF THE COURTS

The breakdown of the island's society accelerates when the boys meet to discuss Sam and Eric's sighting of the beast. As the debate carries on, Jack discounts the role of the conch and then lashes out against all the boys having a voice during assemblies:

*Jack broke in, contemptuously.*

*"You're always scared."*

*"I got the conch—"*

*"Conch! Conch!" shouted Jack, "we don't need the conch any more. We know who ought to say things. What good did Simon do speaking, or Bill, or Walter? It's time some people knew they've got to keep quiet and leave deciding things to the rest of us—" (p. 112)*

It appears that Jack is violating a fundamental rule of island governance: that everybody has the right to be heard when they hold the conch. Essentially, this rule has been entrenched as a fundamental belief of the island's unwritten constitution.

### **WHAT IS A CONSTITUTION?**

A constitution is the highest law in the land. It sets forth the rules and principles about how a government can exercise its power. Canada's highest law is the *Constitution Act, 1982*. It includes the *Canadian Charter of Rights and Freedoms*, a document that enshrines many civil and political rights. The government cannot act in a way that violates these rights.

The government is free, however, to create laws that put reasonable limits on rights. However, the restrictions must be justifiable under the *Charter*.

### **WHAT ARE REASONABLE LIMITS?**

Think back to the discussion in *Freedom and Human Interaction* of how freedoms must be limited. This concept is reflected in the *Charter of Rights and Freedoms*. Even though the Charter enshrines civil and political rights, its preamble states that "The Canadian *Charter of Rights and Freedoms* 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, rights are not absolute: the government may pass a law that limits rights and freedoms, as long as the government can prove they acted in a reasonable and justified way.

### **WHO DETERMINES WHAT IS REASONABLE AND JUSTIFIED?**

In our democracy, it is judges who ultimately interpret and apply laws. This includes determining if the limitations to freedom that laws create are reasonable and justified under the *Charter*.

Because judges must make these judgments on the government, judges must be independent of the government. Independence allows judges to be free to make impartial decisions based on what the law says. Independence means that judges are not subject to popular trends or the whim of the government.

### **BACK TO THE ISLAND**

Because Canadians have an established court system, we have a formal and independent mechanism to determine whether or not the government is respecting the *Constitution* and the *Charter*. On the island, there are no judges. So when Jack restricts the rights of the boys to speak, there is no mechanism to determine whether or not this is consistent with the established rules of the island. Without judges and a court system, the island is missing a check and balance to ensure everyone's rights are respected.

### **CONSIDER**

1. Jack claims that many of the boys are not making helpful contributions at the assembly discussions. Review *Piggy, the Census, and the Importance of Knowledge*.
  - a) What responsibility do people have to be informed when speaking out?
  - b) What makes a person informed?
2. Is Jack's demand that some of the boys be silent a reasonable limit on freedom?
3. Without a system of court and judges on the island, can true rule of law exist?

### **FOR FUTURE READING**

Watch for moments where the boys act in unreasonable and unlawful manners. Do you see a need for an independent court system on the island?