where liberty or security interests are at stake and the legal issues complex and serious. In that instance, the province should have provided state-funded counsel where a custodial parent was facing proceedings for the removal of children from the home (*J.G.*). These kinds of subjects -- provincial human rights codes, the administration of justice, and the apprehension of children at risk -- are ones that ordinarily fall within provincial jurisdiction. But provinces are now expected to live up to the national standards established by the Charter as the fundamental law. The Charter, in other words, mandates not only negative, but some positive integration. The degree to which courts will tolerate deviation from these standards remains to be seen; in other words, there may yet be some room to manouevre for provincial governments.

Government Action

One option for provincial governments may be simply not to act. According to the Supreme Court of Canada, the Charter applies to government action and delegated authority (like administrative agencies) over which the government has some control. Can governments escape responsibility under the Charter simply by refusing to enact statutory protections?

The spectre of a provincial government repealing its human rights code so as to avoid Charter application arose recently in Alberta. Premier Ralph Klein responded to Justice Anne Russell's trial decision in the *Vriend* case by floating the idea that Alberta would do away entirely with its human rights regime. Albertans would be left with the Charter as their sole rights-protecting instrument. The Charter, the Premier suggested, would do all of the work necessary to promote human rights in Alberta. But this could not be true. Without a government connection, the Charter does not ordinarily apply to market-place acts of discrimination. In fact, the Supreme Court of Canada has developed this doctrine -- that the Charter does not ordinarily apply to "private conduct" -- partly relying on the fact that every province has some statutory regime in place to address human rights in the market (*Dolphin Delivery*).

Justice Major's dissent in regard to remedy in the *Vriend* case expressly invited the government of Alberta to choose the option of doing away with the provincial human rights code. This would have placed Canada, argues Bruce Porter, "in clear violation of virtually *every* international human rights treaty we have ratified" (Porter 1998: 81). It may be, as Porter suggests, that the Charter requires the presence of provincial human rights codes -- that it mandates positive measures even in the absence of government action (Porter 1998: 79). In the cases of *Vriend* and *Eldridge*, however, it was not the case that government had not acted -- a human rights code was at issue in one and the definition of health care benefits in the other -- it was just that, having acted, they failed to live up to the Charter's requirements.

Aboriginal and Treaty Rights

National norms also are being established as regards "existing Aboriginal and treaty rights," those rights recognized in section 35 of the 1982 Constitution. These guaranteed rights are found in a part of the constitution different from that of the Charter. As a result, the Charter's notwithstanding clause is not available to governments, though the Supreme Court of Canada has held that these rights can be limited where a government can prove the limitation is justifiable: the law must further a "compelling and substantial objective" and must be "consistent with the special fiduciary relationship between the Crown and Aboriginal peoples"(*Sparrow* and