Should Prisoners Have The Right To Vote?

Introduction

The purpose of this summary is three-fold: one, to give a basic, historical account of when and why inmates received the right to vote. Second, to summarize the findings of Sauvé v. Canada (Chief Electoral Officer), a recent Supreme Court of Canada case that ensured the right of all inmates to vote. And, finally, to suggest why we believe it is crucial that inmates not be denied their right to vote.

Historical Background

Previous to the adoption of the Charter of Rights and Freedoms, the right of inmates to vote in provincial and federal elections was determined by provincial legislatures and Parliament, respectively. Quebec was the first province to recognize the right of inmates to vote when in the 1979 Quebec Elections Act, voting was permitted by all inmates with the exception of those serving time for violations of the Elections Act.

Within three years of this act, Canada adopted the Charter of Rights and Freedoms. Section 3 of the Charter states: "every citizen of Canada has the right to vote in an election of members of the House of Commons or of a legislative assembly and to be qualified for membership therein."

Based on this section, several disenfranchised groups sought the right to vote. This right was soon extended to federal judges, and the mentally disabled. Some provinces followed Quebec's lead, and permitted some inmates to vote. Newfoundland and Manitoba both allowed prisoners to vote in 1985. After a decision of the Supreme Court that found the total ban on prisoners voting to be unconstitutional, in 1993, the Federal Government passed an amendment to the Canada Elections Act that permitted all inmates serving less than two years to vote. The federal governments attempts to restrict the vote of inmates was eventually ruled on by the Supreme Court, in October 2003.

Sauvé v. Canada (Chief Electoral Officer)

In the recent case of Sauvé v The Attorney General of Canada, the Chief Electoral Officer of Canada and the Solicitor General of Canada, Richard Sauvé, an ex-inmate, challenged the section of the Canada Elections Act that prohibited voting by inmates serving a sentence of two years or more.

In this case, the Attorney General of Canada did not dispute that the law infringed upon the right of inmates to vote. However, the government did argued that denying this right was justifiable under the Charter as it served several purposes best determined by Parliament. Those purposes included the goal of promoting civic responsibility and respect for the law and that denial of the vote was a reasonable punishment in addition to that specified by the court. However, in a 5-4 ruling, the Supreme Court ruled against the government.

First, the Court found that as voting was a fundamental right in a democracy, any attempt made to restrict that right had to be made on the basis of a compelling reason that met specific legal tests. In particular the restriction had to be justified on the basis of necessity, could not be arbitrary, and the objectives of the ban could not be met through other measures. In dismissing the arguments put forward by the Government, they rejected the argument that denying the vote will help reach the objective of "promoting civic responsibility and respect for the law." In fact, the Supreme Court found that:

> *Denying penitentiary inmates the right to vote is more likely to send messages that undermine respect for the law and democracy than messages that enhance those values. The legitimacy of the law and the obligation to obey the law flow directly from the right of every citizen to vote. To deny inmates the right to vote is to lose an important means of teaching them democratic values and social responsibility. The government's novel political theory that would permit elected representatives to disenfranchise a segment of the population finds no place in a democracy built upon principles of inclusiveness, equality, and citizen participation.*

Second, the Supreme Court found that denying a fundamental right is arbitrary because it is applied to all offenders regardless of the circumstances relating to the offender or his/her offence. By definition, blanket punitive measures are arbitrary.

Finally, the court said that the negative aspects outweigh the positive benefits that may come from denying this right. According to the court:

> *Denying inmates the right to vote imposes negative costs on inmates and on the penal system. It removes a route to social development and undermines correctional law and policy directed towards rehabilitation and integration. In light of the disproportionate number of Aboriginal people in penitentiaries, the negative effects of (this law) upon inmates have a disproportionate impact on Canada's already disadvantage Aboriginal population.*

In sum, Canada's highest court found that the federal government did not have sufficient reason to deny inmates the right to vote.

Should Inmates Be Allowed To Vote?

The first issue that the Society wanted the Court to recognize was whether Parliament had the authority and the justification to restrict the right to vote. We think that a democracy is premised on the notion that the voters select the politicians, not the politicians who select the voters. Prisoners were the last group to be excluded from the vote. The Society felt that this restriction, in effect, made them lesser citizens and placed them outside of the law that applies to others without there been a demonstrable need to do so. In protecting the rights of prisoners, we feel we protect

the fundamental nature of the right that all citizens enjoy. Governments should not be permitted to abridge the rights of some only because those people are unpopular.

Voting, like other rights, is not a privilege which government grants to citizens. It is something that citizens agree are fundamental to a democratic society and place substantially beyond the reach of politicians to modify. Accordingly, to limit this right, the government must show that allowing prisoners to exercise this right infringes on the rights of others. We did not believe such a case can be made convincingly and, apparently, the Court agreed.

Finally, voting is an act that emphasizes the value of order and the rule of law. By allowing inmates to exercise their right to vote, we allow them to influence law and policy in a constructive manner. In short, allowing inmates to vote includes them in responsible law-making processes rather than leaving them having no stake in it thereby extending the alienation from society that the offender might already feel.