

INMATE VOTING RIGHTS

**THE JOHN HOWARD SOCIETY OF ALBERTA
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EXECUTIVE SUMMARY

The democratic right to vote is guaranteed to Canadian citizens by the Canadian Charter of Rights and Freedoms. Incarcerated individuals serving sentences of two years or less have the right to vote in federal elections under the Canada Elections Act. Federal inmates were granted the right to vote in federal elections by the Federal Court of Canada in January, 1996. This ruling is being appealed to the Supreme Court of Canada by the federal government. The right to vote in provincial elections varies by province. Three Canadian provinces and territories, New Brunswick, Nova Scotia and the Yukon Territory, have elected to completely ban inmate voting. In Alberta, the government has passed amendments to the Elections Act which only allows those inmates serving under 10 days, serving for fine default and those convicted but not sentenced to vote in Alberta elections.

Opponents of inmate voting rights argue that inmates should be denied the right to vote as a matter of principle. Other arguments against inmate voting include perceived political naivete among inmates, the potential for election results to be skewed in favour of candidates with lenient criminal justice platforms, cost and administrative inconvenience.

There is no acceptable reason why any inmate should be denied the right to vote. Denying inmates the right to vote violates the Charter, serves no rehabilitative function and is one more form of discrimination against those who are poor and/or belong to a minority group. Contrary to popular belief, many inmates are politically well-informed. Further, conducting polls in institutions is relatively simple, inexpensive and completely non-threatening to the public. Allowing inmates to exercise their democratic right to vote encourages responsible citizenship, states symbolically that offenders are part of society and reduces the inequity caused by the chance timing of an offender's sentence.

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INTRODUCTION

Inmate voting rights is a highly contentious issue. The issue sparked heated debate in both the Alberta and federal elections in 1997. Opponents of inmate voting argue that inmates should be denied the right to vote as a matter of principle. Further, opponents argue that inmates are incapable of making an informed vote and may skew election results in favour of political parties with lenient justice platforms. Cost and administrative inconvenience are further arguments against inmate voting. However, the democratic right to vote is guaranteed by the Canadian Charter of Rights and Freedoms. Allowing inmates to exercise their right to vote promotes responsible citizenship and fosters the development of law-abiding, responsible citizens.

CANADIAN DEMOCRATIC RIGHTS

According to Section 3 of the Canadian Charter of Rights and Freedoms, "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" (Department of the Secretary of State of Canada, 1982, p. 8). As with all rights and freedoms in Canada, however, the democratic right to vote is not absolute and is "subject to such limitations as are shown to be justified in a free and democratic society" (Department of the Secretary of State of Canada, 1982, p. 5). Therefore, minors and some elections officials are barred from voting in elections.

Incarcerated individuals serving sentences of two years or less (provincial inmates) have the right to vote in federal elections under the Canada Elections Act. Federal inmates (those serving over two years) were granted the right to vote in federal elections by the Federal Court of Canada in January, 1996. The right to vote in provincial elections varies by province. Three Canadian provinces (New Brunswick, Nova Scotia and the Yukon Territory) have elected to completely ban inmate voting. Furthermore, British Columbia and the Northwest Territories have limited voting bans that prohibit only inmates serving sentence of two years or more from voting.

Inmate voting rights remains a contentious issue. Provisions relating to inmate voting rights in the Alberta and Canada Elections Acts have been subject to recent court challenges. The section of the Alberta Elections Act which bars inmates from voting in Alberta provincial elections has been challenged in court. On February 28, 1997, an Alberta Court of Queen's Bench justice ruled that a section of the Alberta Elections Act that prohibited prisoners from voting in provincial elections was unconstitutional (Ruling..., 1997). However, on March 1, 1997, the Alberta Court of Appeal issued a stay against the Court of Queen's Bench ruling until an appeal can be heard (Inmates lose right to vote..., 1997). The appeal was heard in April, 1998. The Alberta Court of Appeal also ruled that the law was unconstitutional (Prisoners regain vote..., 1998). However, Justice Cote provided Alberta legislators with guidance as to potential changes to Alberta's law that might be seen by the Court to be a reasonable limitation of this right. In response to this recent decision, and Justice Cote's suggestions, the Alberta government has passed amendments to the Elections Act

which only allow inmates sentenced to 10 days or less, in jail for not paying fines and inmates convicted but awaiting sentencing to vote in Alberta elections. All other inmates in provincial or federal jails will not be allowed to cast ballots. According to Justice Minister Jon Havelock, it is not known at this time when the new legislation will be proclaimed into law. At the federal level, the government has launched an appeal of a 1996 Federal Court ruling which declared a section of the Canada Elections Act denying federal inmates the right to vote unconstitutional (Feds take another stab at ending inmates=right to vote, 1997).

INMATE VOTING RIGHTS

Opponents of inmate voting argue that inmates should be denied the democratic right to vote as a matter of principle. The Government of Canada, the Premier of Alberta and the leader of the Reform Party, to name a few, have openly expressed opposition to inmate voting rights (Klein vows..., 1997, Manning calls for government..., 1997, Feds take another stab at ending inmates=right to vote, 1997). As the following sections will show, however, denying inmates their democratic voting rights further discriminates against and punishes certain offenders. Granting inmates their right to vote can contribute to their rehabilitation and reintegration into society.

Responsible Citizenship

Ideally, the goal of incarceration is to rehabilitate individuals so that they may one day rejoin society to become productive, law abiding citizens. The removal of an inmate's right to vote appears to be at odds with the goal of rehabilitation. Offenders should be encouraged to accept more responsibility for their future roles in the community. Voting promotes a sense of belonging and establishes a link between the offender and the community. Giving inmates the right to vote also demonstrates that as a society, we recognize that incarcerated individuals maintain responsibility and will continue to have responsibilities after their release. Furthermore, voting privileges allow inmates to view themselves as participating members of society and not outcasts from it. After all, people are not sentenced to lack of citizenship. Rights that are not by necessity restricted due to the circumstances of imprisonment should not be removed for punitive purposes.

Marginalized Groups

Certain marginalized groups such as the poor and/or Aboriginal are over-represented in Canadian correctional facilities. Aboriginal people are the single most over-represented group in the Canadian correctional system. The Manitoba Aboriginal Justice Inquiry found that "25% of Aboriginal persons received sentences of incarceration, compared to 10% of non-Aboriginals" (Griffiths & Verdun-Jones, 1994, p. 643). Aboriginal offenders may view the justice system as just another component of the dominant society which excludes and even rejects them. Denying an inmate, especially an Aboriginal inmate, the right to vote can be viewed as a discriminatory practice perpetrated by white, middle-class Canadians.

Informed Vote

A common argument for denying inmates the right to vote is that inmates are politically naive and incapable of making an informed decision. However, modern media has enabled interested inmates to become politically well-informed. We should be looking at this as an opportunity to educate and inform our incarcerated citizens in an effort to encourage and facilitate political awareness and involvement.

Others argue that inmates may skew election results, favouring candidates who hold lenient views on crime and justice (Feds take another stab at ending inmates=right to vote, 1997). Even if this were the case, it is unlikely that inmates will have any appreciable effect on election results. There are about 21.7 million persons of majority age in Canada and on any given day, there are 33,785 incarcerated offenders (Correctional Service of Canada, 1997). Therefore, less than 1% of potentially eligible voters are incarcerated offenders, which is not enough to skew an election, particularly since these votes are spread across all the ridings in Canada.

Timing of Sentence

Denying inmates, particularly provincial inmates, the right to vote unfairly distinguishes between those offenders who are currently incarcerated and those who are not. In 1996-97, the median sentence length of a typical provincial inmate was 60 days (Canadian Centre for Justice Statistics, 1998, p.10). Most provincial sentences are very short, meaning that the vast majority of provincial inmates will return to the community very quickly, where they will be expected to exercise all the rights and responsibilities of citizenship. Furthermore, only those offenders in custody on election day are barred from participation in elections, while those in the community on probation, parole and bail are not. Denying inmates the right to vote creates arbitrary distinctions based on the chance timing of a citizen's brief custodial sentence.

Administrative Considerations

Opponents of inmate voting rights often point out the high cost and administrative inconvenience of institutional polls (Irvine, 1987). However, polling methods such as mail-in ballot, voting by proxy and voting within the institution are relatively simple, inexpensive and easily conducted. Therefore, denying inmates the right to vote for administrative or financial reasons is unjustified.

In federal elections, special voting rules have been established for incarcerated offenders. Incarcerated individuals who are Canadian citizens eligible to vote are given the opportunity to add their names to the Register of Electors by completing an Application for Registration on the Register of Electors (Elections Canada, 1997). Like all electors, incarcerated persons may cast only one vote and their vote is counted in their home riding. An inmate's home riding is determined by his/her address before incarceration. In the case of previously homeless individuals, a spouse, dependant or relative's riding may be used. Incarcerated electors vote on the tenth day before general public

polling. Polling stations are set up in each institution by a liaison officer for Elections Canada and remain open until all eligible voters wishing to participate in the election have voted. Ballots are then forwarded to Elections Canada headquarters and sorted by electoral riding.

DISCUSSION

The right to vote is vital to any democratic society. Although each Canadian citizen's right to vote is guaranteed in the Charter of Rights and Freedoms, three Canadian provinces and territories (New Brunswick, Nova Scotia and the Yukon) have elected to deny participation in provincial elections to incarcerated individuals. Other provinces have selective bans.

Appendix A provides a list of court challenges and legislative amendments on inmate voting rights both provincially and federally. Court after court has said that the Constitution guarantees every citizen the right to vote and that banning inmate voting is contrary to the Charter. In spite of this and at great expense to the taxpayers, governments continue to challenge the rulings, creating new laws that attempt to circumvent the rulings and seeking stays against a segment of its citizens exercising their democratic rights.

The history and rhetoric of government interference with inmate voting demonstrates clearly the political agenda involved in this issue. The federal government granted provincial inmates the right to vote in federal elections, while continually seeking to deny federal inmates the same right. Their logic for this was that denial of voting for federal inmates was justifiable because the two year sentence requirement ensures that only those who have committed the most serious crimes are denied the vote (Judge returns prisoners= right..., 1996). The Alberta government, on the other hand, seeks to draw the line at 10 days. The fact that these lines can be drawn at such disparate places for the same reason speaks clearly to a political agenda, rather than a correctional or rehabilitative one. Alberta's legislation was passed in late 1998, but has yet to be enacted.

There is an appeal with respect to inmate voting before the Supreme Court of Canada. This ruling will say whether the federal government is justified in denying the right to vote to federal inmates, who should, given that they are the most serious offenders, be the easiest to deny voting privileges. If the federal government is unsuccessful in denying the most serious offender the right to vote, then Alberta's options would be more clear. It would then be untenable for Alberta to attempt to deny the vote to less serious offenders. Alberta would be wise to wait for the Supreme Court ruling before amending our legislation. Any amended Alberta legislation would be subject to court challenge immediately should the federal government lose at the Supreme Court.

The sad fact is, though, that the province can amend its legislation now, thereby denying democratic rights to some citizens. It will take years for court challenges to the new legislation to make their way through the courts, years in which elections can take place that would not be tainted by inmates

voting. Governments are on safe political ground, as there are very few who will defend the democratic rights of serving offenders.

The John Howard Society of Alberta believes that there is no adequate justification for denying incarcerated individuals their democratic right to vote. Denying inmates the right to vote violates the Charter, discriminates against those who are disadvantaged and serves no rehabilitative function.

The John Howard Society of Alberta believes that incarcerated individuals should be allowed to exercise their democratic right to vote to increase their sense of responsible citizenship, to state symbolically that offenders are part of society and to reduce the inequity caused by the chance timing of an offender's sentence.

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- Manning calls for government to protect crime victims' rights. (1997, May 16). The Edmonton Journal, p. A5.
- Prisoners regain vote in appeal court ruling. (1998, April 18). The Edmonton Journal, p. A3.
- Ruling giving inmates right to vote faces immediate appeal by province. (1997, February 28). The Edmonton Journal, p. A5.

APPENDIX A

INMATE VOTING SUMMARY OF EVENTS

- 1992 Federal Court of Appeal ruling strikes down voting prohibition in Canada Elections Act (CEA)
- May 6, 1993 Canada Elections Act revised to allow provincial inmate to vote in federal elections, but not federal inmates
- May 28, 1993 Supreme Court of Canada rules inmates could vote in federal elections - this ruling not include judgement on recent amendment - constitution says all citizens can vote
- Jan, 1996 Federal Court of Canada says federal inmates can vote in federal elections (challenge to new section of CEA)
- Feb, 1996 federal government appeals Federal Court ruling to Supreme Court
- Feb, 1997 Alberta Court of QB overturns Alberta Elections Act denial of prisoners rights to vote in provincial elections (based on 1993 SCC ruling) - unconstitutional
- 1997 Alberta launches appeal of QB ruling
- May, 1997 federal government seeks a stay against federal inmate voting in June election
- May, 1997 Federal Court of Appeal denies the request for a stay by federal government
- May, 1997 federal government appeals to Supreme Court of Canada for a stay
- May, 1997 Supreme Court of Canada refused to hear the appeal
- May, 1997 Alberta Court of Appeal issues stay against prisoners voting in Alberta election until legislature has chance to change law or appeal QB ruling
- June, 1997 federal and provincial inmates vote in federal election
- April, 1998 Alberta Court of Appeal declares Alberta's Elections Act's denial of inmate vote in provincial elections unconstitutional (but suggests could amend and deny to some)

APPENDIX B

INMATE VOTING - EXCLUSIONS

PROVINCE	PROVINCIAL ELECTIONS		FEDERAL ELECTIONS	
	Provincial Inmates	Federal Inmates	Provincial Inmates	Federal Inmates
Alberta	NO ¹	NO		
British Columbia		NO		
Manitoba				
New Brunswick	NO	NO		
Newfoundland				
Nova Scotia	NO	NO		
Ontario				
Prince Edward Island				
Quebec				
Saskatchewan				
Northwest Territories		NO		
Yukon Territory	NO	NO		

¹Only inmates serving under 10 days, serving for fine default and those convicted by not sentenced will be allowed to vote