

INMATE VOTING RIGHTS

**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. Provincial inmates (incarcerated individuals serving sentences of two years or less) have the right to vote in federal elections under the Canada Elections Act. The exclusion of federal inmates was declared unconstitutional by the Federal Court of Canada in December 1995, but that ruling was overturned in 1999 and is currently under appeal to the Supreme Court of Canada. 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 Election Act that grant voting rights only to those inmates serving under 10 days, serving for fine default or convicted but not sentenced.

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 has the effect of discriminating 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, maintains an offender's connection to the rest 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.

INMATE VOTING RIGHTS IN CANADA

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). For example, minors and some elections officials are barred from voting in elections. Limitations on the right to vote are legislated, although the courts may become involved if a constitutional challenge to a particular piece of legislation arises. Federal elections are governed by the Canada Elections Act and provincial elections are governed by applicable provincial legislation. In Alberta, provincial elections fall under The Election Act.

Federal 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) are currently excluded from voting in federal elections. In December 1995, this exclusion was declared unconstitutional by the Federal Court of Canada (Sauvé v. Canada, 1995). Attempts by the federal government to have that decision stayed were unsuccessful and, as a result, both federal and provincial inmates voted in the June 1997 federal election. In October 1999, the Federal Court of Canada trial decision was reversed by the Federal Court of Appeal, meaning that federal inmates would once again be excluded from voting in federal elections. That ruling is currently under appeal to the Supreme Court of Canada and is expected to be heard in the spring of 2001. In November 2000, John Howard Society of Canada was granted intervener status in this appeal by the Supreme Court of Canada.

Provincial Elections

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. British Columbia and the Northwest Territories have limited voting bans that prohibit only inmates serving sentence of two years or more from voting.

As with the corresponding federal legislation, provincial legislation relating to inmate voting rights in Alberta has been the subject of court challenges in recent years. On February 27, 1997, the Alberta Court of Queen's Bench held that the section of The Election Act that prohibited prisoners from voting in provincial elections was unconstitutional (Byatt v. Dykema, 1997a). However, one day later the Alberta Court of Appeal issued a stay of the Court of Queen's Bench ruling pending the hearing of the appeal (Byatt v. Dykema, 1997b), meaning that inmates were not allowed to vote in the provincial election that year. The Court of Appeal upheld the lower court ruling (Byatt v. Dykema, 1998), although the Court of Appeal did suggest that certain modifications could be made to the legislation that would restrict inmate voting in a constitutionally valid manner.

The Alberta government chose not to seek leave to appeal the Court of Appeal decision to the Supreme Court. Rather, the government passed amendments to The Election Act that mirrored potential amendments suggested by the Court of Appeal. As of December 9, 1999, section 41(d) of The Election Act restricts the right of incarcerated individuals to vote in provincial elections to only those inmates sentenced to 10 days or less, in jail for not paying fines or convicted but awaiting sentencing. All other inmates in provincial or federal jails in Alberta are presently not allowed to cast ballots in provincial elections.

ISSUES

Opponents of inmate voting argue that inmates should be denied the democratic right to vote as a matter of principle: that inmates should be denied the right to vote as an added punishment; to send offenders a message about respect for the rule of law; and because inmates cannot be trusted to make politically astute decisions. The Government of Canada and the Premier of Alberta have openly expressed opposition to inmate voting rights ("Klein vows," 1997, "Feds take another stab," 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. Voting encourages inmates to view themselves as participating members of society and not as 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 a dominant society that 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 a predominantly white, middle-class power structure.

Informed Vote

A common argument for denying inmates the right to vote is that inmates are politically naive and incapable of making informed decisions. However, modern media has enabled interested inmates to become politically well-informed. Elections are an opportunity to educate and inform incarcerated citizens in an effort to encourage and facilitate the political awareness and involvement of both inmates and the rest of society.

Others argue that inmates may skew election results, favouring candidates who hold lenient views on crime and justice (“Feds take another stab,” 1997). Even if this were the case, it is unlikely that inmates would 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. This tiny percentage is not enough to skew an election, particularly since these votes are spread across all of the ridings in Canada.

Timing of Sentence

Denying inmates, particularly provincial inmates, the right to vote also unfairly distinguishes between those offenders who are currently incarcerated and those who are not. In 1998-99, the median sentence length of a typical inmate was 45 days (Canadian Centre for Justice Statistics, 2000, p.13-14. 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 of their previous rights and responsibilities. Further, only those offenders in custody on election day are barred from participation in elections. Offenders who are in the community on bail, probation, conditional

sentences and parole are eligible to vote. Denying inmates the right to vote creates arbitrary distinctions based on the chance timing of a citizen's 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, the riding of a spouse, dependant or relative 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 have elected to deny participation in provincial elections to incarcerated individuals. Other provinces have selective bans, as does the federal government. Appendix A provides a brief summary of inmate voting rights in Alberta as of the year 2000.

Appendix B 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 these court rulings, seek stays to prevent inmate voting pending appeals and create new laws that attempt to circumvent the rulings.

The history and rhetoric of government interference with inmate voting demonstrates clearly the underlying rationale for the development of legislation relating to 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, has drawn 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.

There is an appeal with respect to inmate voting before the Supreme Court of Canada. This ruling will affirm or reverse the Federal Court of Appeal ruling that the federal government is justified in denying the right to vote to federal inmates. If the Supreme Court grants the most serious offenders the right to vote by reversing the decision, then it would appear to be untenable for Alberta to attempt to deny the vote to less serious offenders. Depending on the outcome of the federal appeal, Alberta's legislation may once again be the subject of a court challenge. The sad fact is, though, that it will take years for legal challenges to the new legislation to make their way through the courts, years in which elections can take place that exclude certain inmates. Governments are on safe political ground because 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 the constitutional right to vote. Denying inmates the right to vote violates the Charter, has the effect of discriminating 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 portray the message that offenders are part of society and to reduce the inequity caused by the chance timing of an offender's sentence.

REFERENCES

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- Sauvé v. Canada, 2 S.C.R. 438 (1993).
- Sauvé v. Canada, 132 D.L.R. (4th) 136 (1995).
- Sauvé v. Canada, 3 F.C. 628 (1997a).
- Sauvé v. Canada, 3 F.C. 643 (1997b).

Sauvé v. Canada, 2 F.C. 117 (1999).

APPENDIX A

INMATE VOTING RIGHTS IN ALBERTA

	FEDERAL ELECTION	PROVINCIAL ELECTION
FEDERAL INMATE	NO	NO
PROVINCIAL INMATE	YES	RESTRICTED ¹

¹Only inmates serving under 10 days, serving for fine default or convicted but not sentenced are allowed to vote.

APPENDIX B

INMATE VOTING SUMMARY OF EVENTS

Date	Federal Elections (Canada Elections Act)	Provincial Elections in Alberta (The Election Act)
1993	Federal Court of Appeal declares voting prohibition in Canada Elections Act unconstitutional	
May 6, 1993	Federal government amends Canada Elections Act, granting limited inmate voting rights: provincial inmates can vote in federal elections	
May 28, 1993	Supreme Court of Canada upholds ruling of Federal Court of Appeal regarding previous section of Canada Elections Act (<u>Sauvé v. Canada, 1993</u> ²)	
December 27, 1995	Federal Court of Canada (Trial Division) declares amended provision of Canada Elections Act unconstitutional (<u>Sauvé v. Canada, 1995</u>)	
February, 1996	Federal government appeals December 1995 ruling	
February 27, 1997		Alberta Court of Queen's Bench declares voting prohibition in The Elections Act unconstitutional (<u>Byatt v. Dykema, 1997a</u>)
February 28, 1997		Alberta Court of Appeal grants stay of February 27, 1997 ruling pending appeal (<u>Byatt v. Dykema, 1997b</u>)

²This case did not address the 1993 amendment to the Canada Elections Act.

Date (Cont'd)	Federal Elections (Canada Elections Act)	Provincial Elections in Alberta (The Election Act)
May 15 & 16, 1997	Federal Court of Canada (Trial Division) denies federal government's application for a stay of December 1995 ruling pending appeal (<u>Sauvé v. Canada</u> , 1997a)	
May 21 & 22, 1997	Federal Court of Appeal refuses federal government's appeal of May 16, 1997 denial of stay (<u>Sauvé v. Canada</u> , 1997b)	
May, 1997	Supreme Court of Canada refuses to hear further appeal of May 16, 1997 denial of stay	
June, 1997	Federal election: Both federal and provincial inmates vote	
April 17, 1998		Alberta Court of Appeal upholds February 27, 1997 ruling declaring voting prohibition in The Election Act unconstitutional (<u>Byatt v. Dykema</u> , 1998)
October 21, 1999	Federal Court of Appeal reverses December 1995 ruling and declares voting prohibition in Canada Elections Act constitutional (<u>Sauvé v. Canada</u> , 1999)	
December 9, 1999		Alberta government amends The Elections Act, granting highly limited inmate voting rights
August 10, 2000	Supreme Court of Canada grants party representing inmates leave to appeal October 1999 ruling to Supreme Court of Canada	