

The Top Five - 2003

Each year Justice Stephen Goudge of the Ontario Court of Appeal identifies five cases that are of significance in the educational setting. This summary, based on his comments and observations, is appropriate for discussion and debate in the classroom setting.



Richard Sauvé v. The Attorney General of Canada, the Chief Electoral Officer of Canada and the Solicitor General of Canada

Right To Vote: Should Prisoners Be Allowed To Vote

[Note to Teachers: At the time of updating our website, this September 2003 SCC decision was not available online, and we are not able to provide a citation; however, the SCC's website will be updated to include this case. Please go to <http://lexum.umontreal.ca/csc-scc/en/> to locate this or any other SCC decision.]

Previously, Section 51(e) of the *Canada Elections Act* denied all prison inmates the right to vote in federal elections regardless of the length of their sentences. This prohibition was challenged as unconstitutional by Richard Sauvé who had been convicted of murder as an aider and abettor and been sentenced to 25 years in prison. In 1993 the Supreme Court of Canada agreed. As a result Parliament revised the wording of Section 51(e) of the *Act* to deny the right to vote only to those inmates serving a sentence of two years or more.

Mr. Sauvé challenged the newly worded section of the law. At trial the judge decided that the new Section 51(e) violated the *Charter's* guarantee of the right to vote and was not demonstrably justified. He stated that denying prisoners the right to vote hindered their rehabilitation and reintegration into society. These negative consequences were more important than any benefits produced by the law. The Federal Court of Appeal disagreed with the trial judge noting that Parliament has a role in maintaining and enhancing the integrity of the electoral process and that denying the right to vote to these inmates was a reasonable means to achieve those objectives. The Court of Appeal decided that the prohibition was not overbroad or disproportionate. Mr. Sauvé appealed to the SCC.

At the SCC the respondents (the government), conceded that restricting the voting rights of the prisoners did violate the *Charter*, but argued that the violation was justifiable under S. 1, just as the Federal Court of Appeal had decided. The SCC's opinion was divided. Four members, (the minority), agreed with the government and the Court of Appeal, but five members, (the majority), decided that the denial of a prisoner's right to vote was not justifiable, and Section 51(e) was struck down. The Chief Justice of the Supreme Court, Beverley McLachlin, wrote for the majority. They decided that the right to vote is so fundamental to democracy and the rule of law that limits on it is not a matter of deference to Parliament but requires careful examination. "This is not a

matter of substituting the Court's philosophical preference for that of the legislature, but of ensuring that the legislature's proffered justification is supported by logic and reason."

The government argued, and the minority of the Court agreed, that the objective of the law was to enhance prisoner's civic responsibility and respect for law. Denying the right to vote was educative. If inmates voted it would demean the political system. Denying them the right to vote was an appropriate punishment no matter what crime had been committed.

The majority decided that denying the right to vote does not teach anything about the nature of our rights and obligations under the law. Denying the right to vote runs counter to the Canadian commitment to the inherent worth and dignity of every individual. The majority noted that right to vote is a Charter right that cannot be "override" by the notwithstanding clause (Section 33). The Parliament cannot invoke the notwithstanding provision. The majority indicated that the government cannot equate inmate disenfranchisement with youth voting restrictions. They are different. Inmates are denied the right to vote because they are considered unworthy. Youth are not allowed to vote because of their level of experience. Punishment should have a penal purpose: deterrence, rehabilitation, rehabilitation and denunciation. The majority found that the government did not show how punishing an inmate by disenfranchisement is relevant to the offender's particular crime or serves a legitimate sentencing purpose. The Court also stated that Aboriginal peoples in particular would be disproportionately affected due to their over-representation in prisons.

In the opinion of the minority of the Court, Parliament may temporarily suspend the right to vote of inmates. Even if it is a violation of the Charter, it is justifiable. The minority wrote that the issue before the Court was a matter of competing social or political philosophies and that the Court ought not to approve or prefer one over the other. The minority stated that discriminating against inmates right to vote was strikingly different from past discrimination. This is a temporary suspension of their right to vote based exclusively on serious criminal activity; it is not based on an irrelevant personal characteristic like gender, race or religion. Responsible citizenship is logically related to whether or not a person engages in criminal activity.

The right to vote is not an absolute right. For example, youth are not allowed to vote. Parliament is allowed to make such choices under section 1 of the *Charter* as long as they are rational reasonable limitations that are justified in a free and democratic society. The issue is not about good penal policy or bad penal policy. The Court ought not to decide what theories of penology should be adopted by our elected legislatures.

The minority stated that the provision in question denounces serious crime. Permitting offenders convicted of serious crime to vote undermines the rule of law because such persons have demonstrated disrespect for the community, stability and order. Therefore society may temporarily curtail their rights. The community should be empowered to exclude from elections persons with no nexus to the community. An overview of Canadian provinces and other countries indicate that Canada's approach to

the curtailment of prisoner's rights is quite moderate. The minority would have upheld the decision of the Federal Court of Appeal.