Sauvé v. Canada (1993) – Voting Rights for Prisoners

This article was written by a law student for the general public. In 1988, a prisoner serving a life sentence for first-degree murder challenged the constitutionality of the provision in the *Canada Elections Act* which denied prison inmates the right to vote.[1] He claimed that the legislation directly contravened section 3 of the *Canadian Charter of Rights and Freedoms*, which provides that "Every citizen of Canada has the right to vote in an election of members of the House of Commons or of a legislative assembly." Ruling on *Sauvé v. Attorney-General of Canada*, Judge Van Camp of the Ontario High Court of Justice agreed that the legislation infringed the section 3 rights of prisoners, but accepted that it could be saved as a reasonable limit on that right under section 1 of the *Charter*. Three years later, in 1991, another prisoner serving a life sentence brought the same issue before the Federal Court. In *Belczowski v. The Queen*, Judge Strayer came to the conclusion that taking the right to vote from all prisoners was not a reasonable limitation that could save the legislation. It was therefore declared invalid.[2] This ruling was upheld by the Federal Court of Appeal. Shortly after the *Belczowski* appeal, the Ontario Court of Appeal issued a ruling that reversed the trial decision in *Sauvé*. The appeal court agreed with the Federal Court and ruled that taking the right to vote from prisoners was unconstitutional.[3] The Government of Canada appealed both decisions to the Supreme Court of Canada. Justice Iacobucci delivered the Supreme Court's unanimous decision. Both appeals were dismissed; the legislation was unconstitutional and thus of no force or effect.[4]

There are No Inherent Limitations on the Right to Vote

At the *Sauvé* trial, the government argued that there are inherent limitations in the right to vote, rooted in democratic theory and history. Judge Van Camp dismissed this suggestion, saying that "the wording of section 3 is clear and unambiguous" and it "does not require definition and analysis."[5] Judge Strayer, in his decision on *Belczowski*, agreed. Other sections of the *Charter* provide for qualified rights with such phrases as "unreasonable search or seizure" (section 8) or "arbitrarily detained or imprisoned" (section 9) or "cruel and unusual treatment or punishment" (section 12). These phrases require some interpretation by a court. There are no such qualifying words in section 3.[6] The plain and obvious meaning of the right to vote means that any qualifications to that right must be established under the "reasonable limits" clause found in section 1 of the *Charter*.

The *Sauvé* Trial: Taking the Right to Vote from Prisoners is a Reasonable Limitation

The first step in determining whether seemingly unconstitutional legislation is actually a reasonable limitation of a *Charter* right is to look for a pressing and substantial objective. Judge Van Camp found such an objective in the preservation of the democratic state by a symbolic gesture of excluding indecent and irresponsible citizens from voting.[7] The

second step is to determine whether the challenged law is a proportional limit on the right that does not impair the right more than is necessary to achieve the objective. Judge Van Camp was satisfied that Parliament had crafted the law carefully enough to avoid limiting the right to vote more than is necessary. She said that the law does not go so far as to remove the other rights of citizenship. Neither does it permanently remove the right to vote. When the prisoner is released, his right to vote will be returned to him.[8] This was enough to satisfy Judge Van Camp that the law was a reasonable limit on the right to vote, and not unconstitutional.

The *Belczowski* Trial and Sauvé on Appeal: Taking the Right to Vote from Prisoners is Not a Reasonable Limitation

The Ontario Court of Appeal had the benefit of reviewing the Federal Court's *Belczowski* decision as well as three other provincial court decisions that had struck down similar provincial legislation.[9] The decision of the Ontario Court of Appeal in *Sauvé* – delivered by Justice Arbour – was essentially a reiteration of *Belczowski*. Expert testimony at the *Belczowski* trial proposed three objectives for denying prisoners the right to vote.[10] They are: (1) to affirm and maintain the sanctity of the franchise in our democracy; (2) to preserve the integrity of the voting process; and (3) to sanction offenders. The first objective was dismissed by Judge Strayer of the Federal Court, who said it was not reasonable for legislators to "impose tests of 'decency' and 'responsibility' on voters." Because indecent and irresponsible citizens may be found just as easily outside prison as inside prison, maintaining the sanctity of the franchise is not a workable objective.[11] Justice Arbour, in the *Sauvé* decision, added that protecting the sanctity of the franchise is not only unworkable, it is also contrary to the evolution of universal suffrage in Western democracies, which took an "irreversible step forward" in Canada with the enactment of the Charter.[12] Canada has progressed so far that "it is fair to assume that we had abandoned the notion that the electorate should be restricted to a 'decent and responsible citizenry,' previously defined by such attributes as ownership of land and gender, in favour of a pluralistic electorate which could well include domestic enemies of the state."[13] The government argued that the second objective – preserving the integrity of the voting process – requires more than merely marking a ballot. The electorate should be informed and engaged with the issues. Judge Strayer dismissed this objective because there is no reason to think that prisoners are unable to inform themselves, and neither is there anything stopping people outside of prison from maintaining their ignorance.[14] Justice Arbour added that "whether one takes advantage of the possible exposure to the democratic market place of ideas is a matter of personal choice, not a prerequisite for the right to cast a ballot."[15] The third objective – to punish offenders – is the only objective that both the Federal Court and the Ontario Court of Appeal found plausible. Just as it may be acceptable to deprive a criminal of his section 2 *Charter* freedoms of association and assembly as a means of punishment, it may also be legitimate to take away voting rights for the sake of punishment.[16] A plausible objective, however, must not be achieved through means that are disproportionate and more impairing of a right than necessary. The law in question does not meet the standard of minimal impairment. Rather than impairing as little as possible, it completely abolishes the right to vote. Parliament could have crafted the law to

take into account the seriousness of each crime, or followed the path of some European jurisdictions which allow the court discretion in taking away the right to vote.[17] Instead, the law indiscriminately took away the right to vote from any citizen who happens to be in prison – from the person serving a few days for a regulatory offence to a murderer serving a life sentence.[18] Such a law is not a reasonable limit on a *Charter* right. The unanimous judgment of the Supreme Court of Canada was to uphold the reasoning of the lower courts and dismiss the appeal.[19] The law which kept prisoners from voting was unconstitutional and, consequently, of no force or effect. Jim Young (May 26, 2010)

---

[1] *Sauvé v. Attorney-General of Canada* (1988), 53 D.L.R. (4th) 595. [2] *Belczowski v. The Queen* [1991] 5 C.R. (4th) 218 at para. 37. [3] *Sauvé v. Attorney-General of Canada* (1992), 7 O.R. (3d) 481. [4]*Sauvé v. Canada (Attorney General)*, [1993] 2 S.C.R. 438. [5] *Supra* note 1 at 597. [6] *Supra* note 2 at para. 8. [7] *Supra* note 1 at 600. [8] *Supra* note 1 at 601. [9] *Supra* note 3, *Grondlin v. Ontario (Attorney-General)* (1986), 65 O.R. (2d) 427, *Badger v. Manitoba (Attorney-General)* (1986), 30 D.L.R. (4th) 108, *Levesque v. Canada (Attorney-General)* (1985), 25 D.L.R. (4th) 184. [10] *Supra* note 2 at para. 20. [11] *Ibid.* at para. 24. [12] *Supra* note 3 at p. 5. [13] *Ibid*. [14] *Supra* note 2 at para. 25. [15] *Supra* note 3 at p. 6.. [16] *Supra* note 2 at para. 27. [17] *Ibid*. at para. 36. [18] *Ibid*. at para. 34. [19] *Supra* note 4.