***Sauvé v. Canada (Attorney General)* [1993**] **2 S.C.R. 438**.

**FACTS**

Section 51 of the Canada Elections Act disqualifies certain people from voting. Prominent on that list is "every person undergoing punishment as an inmate in any penal institution for the commission of any offence" [s.51(e)]. Richard Sauvé, a former member of the Satan's Choice Motorcycle Club, was serving a life sentence for first degree murder. He challenged the law that prevented him from voting while in prison. Section 3 of the Canadian Charter of Rights and Freedoms guaranteed every citizen the right to vote. 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 argue 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. Both the Ontario Court of Appeal and the Federal Court of Appeal declared the paragraph unconstitutional. The Government of Canada appealed the ruling to the Supreme Court of Canada.

**ISSUES**

Attorney General of Canada: *Canada Elections Act*, Section 51(e).The following persons are not qualified to vote at an election and shall not vote at an election: every person undergoing punishment as an inmate in any penal institution for the commission of any offence

Sauve: Section 3 of *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”

Sauvé was a citizen. So did the Canada Elections Act violate the charter?

Some argued that taking away a prisoner's right to vote was a **reasonable** violation of the charter given that they were irresponsible, uninformed, and simply undeserving. (applying Section One of the Charter)

**DECISION**

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, in a 5-4 ruling, the Supreme Court ruled against the government. Canada’s highest court found that the federal government did not have sufficient reason to deny inmates the right to vote.

Following this case, the federal government amended the law to prohibit from voting only prisoners serving sentences of more than 2 years. Sauvé challenged the new law. He lost in the Federal Court of Appeal on October 21, 1999. The court saw that the new law was proportional and punished the offender for his or her crime.

**Discussion Questions:**

1. Do you think inmates in federal prisons should retain their democratic rights while incarcerated? Explain your position?
2. The Supreme Court claimed that section 51 of the Canada Elections Act was a “blanket punitive measure” for inmates and was therefore arbitrary. What do you think this means?
3. An inmate in a federal penitentiary has claimed the right to run for public office. Should they be allowed to do this?
4. What legal precedent was established with this ruling?