

# RIGHTS & WRONGS

## Inmates fought to exercise fundamental rights

Don Weitz analyses a successful battle for the right to vote by those labeled "incompetent"

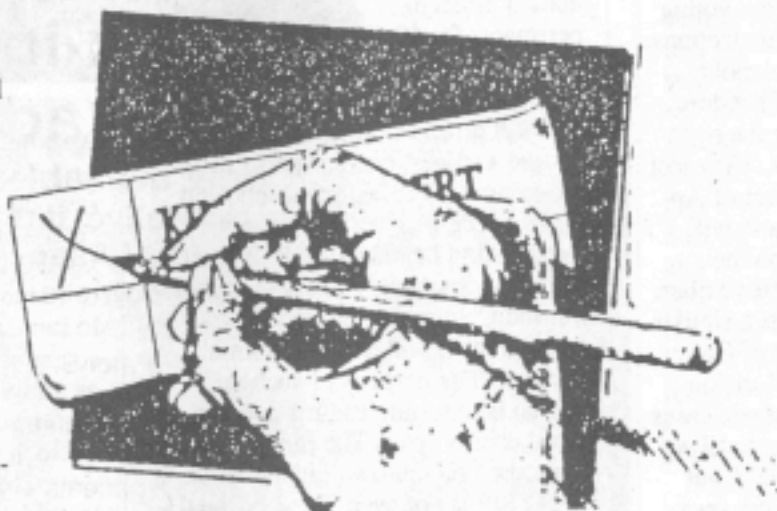
About 50,000 Canadians, who had previously been labeled "incompetent" and denied the right to vote because they were locked up in psychiatric institutions and institutions for the developmentally handicapped, finally voted in the federal election November 21, 1988.

This was not a result of government initiatives or commitment to justice for inmates or the disabled; the Canadian Disability Rights Council (CDRC) achieved this victory through timely lobbying. The two-year-old CDRC is a national coalition whose members include individual activists with disabilities, organizations of the disabled, and civil rights advocates and lawyers. Its main objective is to fight for the rights of people with disabilities in Canada by launching test cases under the federal government's Charter Challenges Program.

Section 14(4)(f) of the Canada Elections Act states that "every person who is restrained of his liberty of movement or deprived of the management of his property by reason of mental disease" is "not qualified to vote at an election, and shall not vote at an election." "Mental disease" isn't even defined in the Act, nor

does it explain what "being judged incapable of handling money or property" has to do with a person's ability to vote. This wording directly contravenes Section 3 of the Canadian Charter of Rights and Freedoms, which states that "every [adult] citizen has the right to vote."

Last year, the CDRC decided to challenge the Canada Elections Act



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as unconstitutional. On September 15, 1988, the coalition filed a "statement of claim" in the Federal Court, asserting that the Act violates not only Section 3 of the Charter, but also Section 15, which guarantees all Canadians "equal protection and equal benefit of the law without dis-

crimination based on . . . mental disability."

Several member groups of the CDRC served as plaintiffs for the case: the Coalition of Provincial Organizations of the Handicapped (COPOH), the Canadian Association of the Deaf, the Blind Organization of Ontario with Self-help Tactics (BOOST), the DisAbled Women's Network (DAWN), People First (a self-help and advocacy group of the developmentally handicapped), the Canadian Association for Community Living, the Advocacy Resource Centre for the Handicapped (ARCH), and the Canadian Mental Health Association. Six individual inmates were also named as plaintiffs: Marie-Michelle Bédard (Robert Giffard Institution in Beaumont, Quebec), Gilles Hawey (also at Robert Giffard), Denis Duval (Louis H. Lafontaine Institute in Montreal), Tom Last (Queen Street Mental Health Centre in Toronto), Eldon Hardy (Oak Ridge, in Penetanguishene, Ontario), and Clifford Stacey (a former inmate from Port Coquitlam, BC).

The same day the CDRC filed its claim in court, it also held press conferences in Toronto and Montreal to announce the challenge. The Toronto

press conference criticized the government for delaying enactment of Bill C-79, a proposed amendment to the Canada Elections Act that would give all psychiatric and developmentally handicapped inmates the vote. First introduced in Parliament in June 1987, Bill C-79 has been stalled, largely due to Tory House leader and Privy Council President Don Mazankowski. In Montreal, Marie-Michelle Bédard and civil rights lawyer Jean-Pierre Menard spoke out at a press conference.

The federal government had 30 days to respond to the CDRC's court challenge. On October 14, Justice Department lawyer Eric Bowie informed CDRC lawyer Gail Czucar that the government was backing down and would not fight the CDRC

challenge of the Act. On October 17, the case was heard in the Federal Court in Ottawa; Judge Barbara Reed ruled in favour of the CDRC, struck down the offending section as "invalid," and awarded all court costs to the CDRC. The courtroom erupted in loud applause.

Chief Electoral Officer Jean-Marc Hamel immediately instructed election officers across Canada to inform all inmates of psychiatric institutions and institutions for the developmentally handicapped of their right to vote in the federal election. He also ordered them to enumerate the inmates, and to make sure that polling booths were set up in the institutions and that short-term inmates could vote by proxy.

The fight is not over yet. Except in Ontario and Quebec, these inmates still cannot vote in provincial and/or municipal elections. Manitoba has recently changed its laws to allow psychiatric inmates to vote, but still denies this right to developmentally handicapped and "incompetent" people. The Federal Court decision should put strong pressure on all other provinces to change their laws.

Prisoners are still denied the right to vote in federal elections, and most provinces prohibit them from voting in provincial and municipal elections.

In Manitoba, prisoners Arnold Badger, Frank Piche and Theodore Kotyk are still fighting for the right to vote in federal elections. They lost their legal battle in the Court of Appeals in November 1988, and will probably appeal to the Supreme Court of Canada. Also in November, prisoner Richard Sauvé lost a similar case in the Supreme Court of Ontario. He is appealing the decision.

There will be more legal test cases and more political lobbying until we win the absolute right to make our own decisions and control our own lives, wherever we live and whatever our disability or label. This is the real challenge of this victory.

*For more information about the Canadian Disability Rights Council, please write to Dick Santos, c/o BOOST, 597 Parliament Street, Suite B-3, Toronto, Ontario M4X 1W3, or call him at (416) 964-6838.*