

SUPREME COURT OF CANADA



Case in Brief: *Ewert v. Canada (Correctional Service)*

2018 SCC 30 | Judgment of June 13, 2018 | On appeal from the Federal Court of Appeal

Prison authorities must show that psychological and statistical tools used to make decisions about Indigenous inmates are effective for them, the Supreme Court has said.

Correctional Service of Canada (CSC) runs federal prisons. Its goal is to help rehabilitate inmates, while protecting other inmates, staff, and society as a whole. To do this, it uses certain psychological and statistical tools to make decisions about inmates, like whether s/he is likely to reoffend or what kind of supports s/he should get.

Under the *Corrections and Conditional Release Act*, CSC has to “take all reasonable steps to ensure that any information about an offender that it uses is as accurate, up to date and complete as possible.” The Act also says CSC must make sure that its policies and programs are suitable for Indigenous offenders and take their specific needs and circumstances into account.

Mr. Ewert is a federal inmate and identifies as Métis. He was serving two simultaneous life sentences for murder and attempted murder. Because certain tools used to make decisions about him were created based mostly on non-Indigenous people, Mr. Ewert argued they were less accurate for Indigenous persons like himself. He said that CSC was not following the law by using these tools on Indigenous offenders without proof that they worked.

The Federal Court agreed with Mr. Ewert, but this was overturned by the Federal Court of Appeal. Mr. Ewert appealed to the Supreme Court.

Writing for the majority, Justice Richard Wagner (who was not yet Chief Justice when the case was heard) granted Mr. Ewert a declaration that CSC was not obeying the law. He said CSC hadn’t taken reasonable steps to make sure its tools gave accurate and complete results for Indigenous offenders. Justice Wagner was concerned about the growing gap between how Indigenous and non-Indigenous offenders are treated in the criminal justice system. For example, Indigenous offenders are more likely to be classified at a higher security level and less likely to get early release. He said the gap is due in part to policies that may look neutral on the surface but actually discriminate against Indigenous offenders. That’s why it was important to ensure the tools worked. CSC knew there were concerns about the tools, but it continued using them anyway. Based on all of this, Justice Wagner formally declared that CSC violated the law. Six judges agreed with Justice Wagner.

Justice Malcolm Rowe, writing in dissent, disagreed. In his view, “information” clearly meant only biographical or factual data about an inmate (for example, whether s/he had been in a fight in prison). It did not mean the results of psychological and statistical tools. He said that CSC only needed to keep complete and accurate records of the results of the assessment tools. He agreed with the majority that it was important to address the high number of Indigenous inmates in prisons compared to their share of the population. But this had to be done in a way that respected the logic of the law. Justice Rowe said Mr. Ewert instead should have asked the courts to review the specific decisions CSC made about him using the results of the tools.

This case dealt with the interpretation of section 24(1) of the *Corrections and Conditional Release Act*, in the context of section 4(g) of the same Act. It was the first time the Court interpreted section 4(g). While the majority formally declared that CSC had violated the Act, Mr. Ewert would still have to apply for judicial review to challenge any decision. Mr. Ewert also argued his *Charter* rights were violated, but those arguments were rejected.

For more information (case no. 37233):

- [Reasons for judgment](#)
- [Case information](#)
- [Webcast of hearing](#)

Breakdown of the decision:

- Majority: [Wagner](#) J. ([McLachlin](#) C.J. and [Abella](#), [Moldaver](#), [Karakatsanis](#), [Gascon](#) and [Brown](#) JJ. in agreement)
- Dissenting: [Rowe](#) J. ([Côté](#) J. in agreement)

Lower court rulings:

- Federal Court of Appeal ([appeal judgment](#))
- Federal Court (trial [judgment](#))

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