The Honourable Kim Pate, C.M. | L'honorable Kim Pate, C.M.

Senator for Ontario | Sénatrice pour l'Ontario

News Release

Corrections Continues to Use Discriminatory Classification Tools

FOR IMMEDIATE RELEASE

OTTAWA, JUNE 13, 2018 – This morning, the majority of the Supreme Court of Canada ruled that Correctional Service Canada (CSC), by disregarding the possibility that its risk assessment tools are systematically disadvantaging Indigenous prisoners, is failing to abide by its statutory duty to use accurate information and to account for systemic discrimination. In *Ewert v The Queen*, the Court noted that, "[n]umerous government commissions and reports, as well as decisions of this Court, have recognized that discrimination experienced by Indigenous persons, whether as a result of overtly racist attitudes or culturally inappropriate practices, extends to all parts of the criminal justice system, including the prison system." Unfortunately, the Court failed to recognize the consequent extent to which CSC violates the liberty and equality rights of Indigenous prisoners, particularly those of Indigenous women, by basing decisions about their conditions of confinement and consequent access to programs, services and conditional release on flawed classification processes.

The Court agreed with the trial judge, who accepted expert evidence that the correctional classification tools have not been shown to be reliable when they are applied to Indigenous prisoners. The court ruled that CSC failed to meet its obligations under the *Corrections and Conditional Release Act* when it used these questionable tools to make decisions affecting the liberty and personal security of Mr. Ewert, a Métis prisoner. The Court affirmed that CSC must abide by its statutory duty to ensure that its policies respect the needs and circumstances of marginalized groups and to take all reasonable steps to ensure its decisions are based on accurate and reliable information. It held that CSC must, at a minimum, conduct research into the impact of these tools—even though existing research has shown them to be discriminatory.

Disappointingly, though the court concluded that CSC places Indigenous prisoners in "clear danger" of systemic discrimination, they declined to find a violation of Mr. Ewert's right to equality, citing a lack of evidence on the record. Unfortunately, the Court declined to take notice of significant evidence of the adverse impact of classification tools on federally sentenced women, particularly Indigenous women and those with disabling mental health issues.

"CSC has known for many years that its policies and procedures discriminate against and therefore violate the rights of prisoners on the basis of the intersecting grounds of gender, race, and disability. In fact, in response to just such a finding by the Canadian Human Rights Commission in 2003, CSC commissioned a review of the procedures for women. The conclusion of that study? Despite actually posing minimal to no risk to public safety, women are routinely over classified. Such over-classification limits access to programs and services, which in turn makes it more difficult for people to integrate into the community in a safe, supervised and structured manner," observed Senator Pate.

The Court failed to recognize that these discriminatory impacts violate the equality rights enshrined in section 15 of the Canadian Charter of Rights and Freedoms. As the interveners Native Women's Association of Canada and Canadian Association of Elizabeth Fry Societies pointed out in their submissions to the Court, "By neutralizing gender, race, and disability, the results produced by CSC's actuarial risk assessment tools are wholly unresponsive to the needs of marginalized groups."

"Assessment tools designed for male, non-Indigenous prisoners fail federally sentenced women, particularly Indigenous women and those with disabling mental health issues. The Court's declaration can still provide us with the opportunity to remedy these wrongs," concluded Senator Pate.

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