# Vancouver (City) v. Ward (2010) – Damages for Breach of Charter Rights

When the police – or any other government actor – breach any of the rights and freedoms guaranteed by the*Canadian Charter of Rights and Freedoms*, section 24(1) of the *Charter* empowers courts to order any remedy that the court considers "appropriate and just in the circumstances." Section 24(1) does not appear to limit the court's choice of remedies. A court may, for example, dismiss a charge, stay the proceedings, quash a search warrant, or exclude evidence. But there has been little authority on monetary damages for *Charter* breaches. The Supreme Court of Canada's ruling in *Vancouver (City) v. Ward*[1] is significant because it offers guidance on when monetary damages should be awarded for*Charter* breaches and the amount that is appropriate. Alan Cameron Ward is a Vancouver-based lawyer who, in 2002, was arrested by police near the site of a public speech by then-Prime Minister Jean Chrétien. The police wrongly suspected that Mr. Ward intended to throw a pie at the Prime Minister. Upon arrest, his car was impounded and he was strip-searched.[2] The trial judge determined that Mr. Ward's section 8 *Charter* right to be free from unreasonable search and seizure was breached and awarded him damages in the amount of $100 for the impounded car and $5000 for the strip search.[3] The British Columbia Court of Appeal upheld the trial court's ruling. The Supreme Court unanimously upheld the ruling for damages of $5000 for the strip search, but overturned the $100 for the impounded car.[4] The Court's reasons focus on providing a framework for courts to analyze whether damages are an "appropriate and just" remedy and the amount that is "appropriate and just." In making this determination, a court's discretion is broad, but not unfettered.[5] It depends on the circumstances of each case.[6] The Supreme Court also cautiously noted that since constitutional damages is a "new endeavour," the jurisprudence on the matter "should develop incrementally."[7] To guide the inquiry into when constitutional damages are appropriate and just, the Court set out a four-step process. The first step is to establish whether there is a *Charter* breach. Next, it must be shown how awarding damages would serve at least one of the three functions of compensation, vindication and deterrence. The third step involves considering any countervailing factors which weigh against awarding damages. The final step is to determine the appropriate quantum, or amount of money.

**Function Justification of Damages**

A functional approach to damages means that damages must serve a useful function or purpose.[8]When it comes to awarding damages for *Charter* breaches under section 24(1), there are three interrelated functions that further the objectives of the *Charter*. These are compensation, vindication and deterrence of future breaches.[9] Compensation is the most fundamental and prominent objective. The goal of compensation is to put the claimant back,

as nearly as possible, into the condition he was in prior to the *Charter* breach. The losses to be compensated may be purely financial, or they may be intangible, such emotional or psychological harm.[10] Vindication means protecting the *Charter* from slow erosion. Vindication repairs the breach and maintains the integrity of the *Charter*. It recognizes that society as a whole is harmed if *Charter*breaches go unanswered.[11] The final objective, deterrence, aims at discouraging government actors from future *Charter* breaches.[12] The potential cost of damages awards, for example, might influence police departments to be more vigilant about respecting *Charter* rights.

**Countervailing Factors**

Even if the claimant can show that damages are justified, the state must be given an opportunity to show that there are good reasons not to award damages. The Court gave two examples. There may be an alternative remedy – such as the opportunity to sue for damages on non-*Charter* grounds – or awarding damages may impede good governance.[13] Good governance would be impeded if damages were awarded for conduct that did not meet a "minimum threshold of gravity."[14] If every insignificant *Charter* breach resulted in an award of damages, there would be a "chilling effect" on state action. There must be "some immunity" for policy-making and legislative decisions, so it is important that the state not be held liable for enforcing laws that are *later* declared invalid.[15] Otherwise, the government would be unable to act without undue concern about being sued.[16]

**Quantum of Damages**

Financial losses are easy to measure, but in cases like this one, it is hard to put a dollar figure on such losses as pain and suffering. Nonetheless, tort law regularly involves assessing the value of emotional loss, and it provides good guidance for assessing constitutional damages.[17] Essentially, the quantum of damages will be determined by the seriousness of the breach.[18] But this is not the only consideration. Reaching an "appropriate and just" figure involves accounting for the public interest. Beneficial government policies and programs should not be jeopardized in the process of awarding damages to an individual.[19] While it is important to compensate the losses caused by the *Charter*breach, society as a whole should not have to suffer from the diversion of large sums from public purposes to private interests.[20] Jim Young (July 28, 2010)

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[1]*Vancouver (City) v. Ward*, 2010 SCC 27. [2] *Ibid*. at paras. 6-9. [3] *Ibid*. at paras. 10-11. [4] *Ibid*. at para. 5. [5] *Ibid*. at para. 19. [6] *Ibid*. [7] *Ibid*. at para. 21. [8] *Ibid*. at para. 24. [9] *Ibid*. at para. 25. [10] *Ibid*. at para. 27. [11] *Ibid*. at para. 28. [12] *Ibid*. at para. 29. [13] *Ibid*. at para. 33. [14] *Ibid*. at para. 38. [15] *Ibid*. at para. 40. [16] *Ibid*. at para. 39. [17] *Ibid*. at para. 50. [18] *Ibid*. at para. 51. [19] *Ibid*. at para. 53. [20] *Ibid*. at para. 54.