

## Unreasonable Search And Seizure, The Charter Of Rights, And Civil Suits For Damages



Although the Canadian Charter of Rights and Freedoms has been in force for almost 30 years the legal remedies available to Canadians for having their Charter rights violated are still developing. One question that needs to be definitively answered is whether Canadians are entitled to damages in civil suits for having their Charter Rights violated.

Reasons for judgement are expected to be delivered shortly by the Supreme Court of Canada giving guidance in this important area of law. In the soon to be released decision (Ward v. British Columbia) the Plaintiff was arrested and strip searched. He successfully sued with the trial judge finding that the strip search violated the Plaintiff's Charter rights and awarded him damages for this. Both parties appealed and in a split decision the BC Court of Appeal upheld the award of damages for Charter Breach with the majority finding as follows:

[64] *I do not suggest that an award of damages is the appropriate remedy in all cases in which a government actor has breached a person's **Charter** rights. Section 24(1) vests the court with a broad judicial discretion to grant "such remedy as the court considers appropriate and just in the circumstances." Appropriate and just remedies must be determined judicially from case to case. In the present case, I would not interfere with the trial judge's exercise of discretion to award damages for the unreasonable search.*

If the Supreme Court of Canada upholds this judicial discretion a very meaningful remedy will be available for individuals who have their Charter rights breached by Government bodies.

With this background in mind I want to share some thoughts on various Canadian Police Departments and their policies to conduct warrantless searches of individuals at public events.

At any large gathering (*The Olympics, Canada Day celebrations, the G20, the Vancouver Celebration of Light to name a few*) many people come together in one spot. Most are well intentioned, some are not. Alcohol often fuels poor behaviour. Police have the difficult job of controlling the crowds.

Sometimes the police, however well intentioned, go further than their powers allow and conduct random, warrantless and potentially unlawful searches of individuals. Such a policy was put in place by the Victoria Police Department for the 2010 Canada Day Celebrations as was recently highlighted by the BC Civil Liberties Association.

In short the police planned on conducting numerous warrantless searches of individuals in an effort to control how much alcohol was being brought into the downtown core during the celebrations. While there may be mixed feelings about this by many members of the public if the Supreme Court of Canada upholds the ability of Courts to award damages for violations of Charter rights the Victoria Police Departments actions can expose the City to numerous claims.

Clarity will be welcome and I will continue to monitor this interesting area of the law as it develops. In the meantime police departments throughout Canada ought to take into serious consideration the fact that their policies when policing large events may expose them to significant lawsuits for damages if they choose not to respect individuals rights under the Canadian Charter of Rights and Freedoms.

Instead of conducting wide scale warrantless searches it may be wise to follow the recommendation of the Commission for Public Complaints Against the RCMP who in 2008 concluded that *“until such time that the required legislative bases are put in place, the RCMP’s participation in preventative and early interdiction liquor strategies in BC be limited to police presence and that searches only be conducted when the RCMP members have the requisite grounds under the applicable legal authority“*.