

Supreme Court Of Canada Confirms Damages Can Be Awarded For Charter Breaches

July 23rd, 2010



In what is one of the most important legal decisions in the 28 year history of [the Canadian Charter of Rights and Freedoms](#), the Supreme Court of Canada released reasons for judgement confirming that Canadian Courts have the right to award financial damages for state actions that violate individuals rights under the Charter.

This decision ([Vancouver v. Ward](#)) creates a brand new right to ‘constitutional damages’ which is distinct from typical lawsuits for compensation.

In today’s case the Plaintiff was subjected to an unlawful strip search in 2002. At trial he was awarded \$5,000 for breach of his rights under the Charter. The BC Court of Appeal upheld this award. ([You can click here for more background on the judicial history](#)) The Supreme Court of Canada concluded that this was appropriate and set out the legal framework for when damages can be awarded for Charter breaches and the factors the Court should consider in determining the amount of damages.

The Chief Justice of the Supreme Court of Canada summarized the test of when damages can be awarded as follows:

[4] I conclude that damages may be awarded for Charter breach under s. 24(1) where appropriate and just. The first step in the inquiry is to establish that a Charter right has been breached. The second step is to show why damages are a just and appropriate remedy, having regard to whether they would fulfill one or more of the related functions of compensation, vindication of the right, and/or deterrence of future breaches. At the third step, the state has the opportunity to demonstrate, if it can, that countervailing factors defeat the functional considerations that support a damage award and render damages inappropriate or unjust. The final step is to assess the quantum of the damages.

The Court then provide the following summary of the factors Courts should consider in arriving at a dollar figure for Charter breaches:

[57] To sum up, the amount of damages must reflect what is required to functionally serve the objects of compensation, vindication of the right and deterrence of future breaches, insofar as they are engaged in a particular case, having regard to the impact of the breach on the claimant and the seriousness of the state conduct. The award must be appropriate and just from the perspective of the claimant and the state.

I strongly urge everyone to read today's case in full as the Court sets out extensive reasons of the justification for damage awards under the Charter, considerations when these are just, factors for when these should not be awarded, guiding principles in arriving at quantum and guidance on the form and procedure of these lawsuits.