

The Top Five 2011

Each year at OJEN's Toronto Summer Law Institute, a judge from the Court of Appeal for Ontario identifies five cases that are of significance in the educational setting. This summary, based on these comments and observations, is appropriate for discussion and debate in the classroom setting.



***Vancouver (City) v. Ward*, 2010 SCC 27, [2010] 2 S.C.R. 28**

<http://scc.lexum.org/en/2010/2010scc27/2010scc27.html>

In this case, the Supreme Court of Canada (SCC) considered whether government actors can be made to pay financial damages to individuals after infringing upon their rights under the Canadian Charter of Rights and Freedoms.

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Ruling

Where it is appropriate and just to do so, a breach of an individual's rights by state actors is subject to an award of financial damages pursuant to s. 24(1) of the *Canadian Charter of Rights and Freedoms*.

Facts

The Vancouver police received information that someone intended to throw a pie at the Prime Minister at a public event. The police mistakenly identified Mr. Ward as the potential pie-thrower, chased him down and handcuffed him. After being removed from the street, Mr. Ward became loud and aggressive and was eventually arrested for breach of the peace. Upon arrival at the police lockup, he was strip-searched and his vehicle was impounded so it could later be searched. He was released four and a half hours after his arrest since there was not enough evidence to charge him for attempted assault or to obtain a search warrant for his car. Mr. Ward brought an action against the Province of British Columbia and the City of Vancouver in tort, and also for the breach of his s. 8 right to be secure against unreasonable search and seizure, under the *Canadian Charter of Rights and Freedoms*.

Canadian Charter of Rights and Freedoms

8. Everyone has the right to be secure against unreasonable search and seizure.

At trial, the Province and the City were found not liable in tort. However, even though the Province and City did not act in bad faith, the Province's strip search and the City's vehicle seizure violated Mr. Ward's right to be free from unreasonable search and seizure under s. 8 of

the *Charter*. Pursuant to s. 24 of the *Charter*, the judge granted damages in the amount of \$100 for the seizure of the car and \$5,000 for the strip search. The British Columbia Court of Appeal upheld this decision.

Decision

The Supreme Court of Canada (SCC) unanimously decided that damages could be awarded for a breach of an individual's *Charter* rights even where public officials were not acting in bad faith. In other words, even though the police had reason to suspect Mr. Ward, they and the city were still responsible for their actions against him. Section 24(1) of the *Charter* gives courts broad discretion to grant remedies deemed "appropriate and just" according to the specific facts and circumstances of each case. It provides as follows:

Canadian Charter of Rights and Freedoms

24(1) Anyone whose rights or freedoms, as guaranteed by this *Charter*, have been infringed or denied may apply to a court of competent jurisdiction to obtain such remedy as the court considers appropriate and just in the circumstances.

According to jurisprudence, an "appropriate and just" remedy will: (1) meaningfully vindicate the rights and freedoms of the claimants; (2) employ means that are legitimate within the framework of our constitutional democracy; (3) be a judicial remedy which vindicates the right while invoking the function and powers of a court; and (4) be fair to the party against whom the order is made.

The Court then set out a four-step process when granting s. 24(1) damages. First, there must be proof of a *Charter* breach. In this case, Mr. Ward's right to be free from unreasonable search and seizure under s. 8 of the *Charter* was violated.

Second, the claimant must provide evidence demonstrating that awarding damages under s. 24 will serve one of the following objectives: compensation, vindication and deterrence. The purpose of compensation is to place the claimant back in the position he was in prior to the *Charter* breach, whether the loss is financial, physical, psychological or intangible. Vindication recognizes that *Charter* rights must be maintained to uphold the *Charter's* integrity. Deterrence helps prevent government actors from committing future *Charter* breaches.

Third, once the claimant has met his evidentiary burden, the onus shifts to the state to provide evidence against awarding damages. This could include the existence of alternative remedies such as private law remedies or other *Charter* remedies. Also, concern for effective governance could negate the granting of s. 24 damages, as courts would not want to discourage effective enforcement of the law for fear of risking damages.

The final step focuses on an appropriate and just amount of damages. In tort law, compensation is awarded to restore the claimant to the position he was in prior to the breach. However, with *Charter* breaches, the SCC recognized that depending on the seriousness of

the breach, vindication and deterrence may also be considered. Further, individual damages need to be considered in light of the public interest; society should not have to suffer tremendous losses in order to compensate individuals.

In this case, the SCC held that the “appropriate and just” remedy for the strip search was \$5,000. Strip searches are inherently degrading and humiliating and “minimum sensitivity to *Charter* concerns within the context of the particular situation would have shown the search to be unnecessary and violative.” Accordingly, this violation touches on all three objectives of compensation, vindication and deterrence. However, the SCC held that Mr. Ward had not established that damages were appropriate for the vehicle seizure, as he did not suffer any injury and the objects of vindication and deterrence were not compelling given the non-serious nature of the breach.

Discussion

1. In this novel decision, the SCC ruled that financial damages can be awarded for breaches of *Charter* rights. Do you think these rights are easy to assign a monetary value to? Why or why not?
2. In private civil matters, an individual can seek compensation for losses suffered. However, in the case of violations of *Charter* rights, individuals can also seek damages for the functions of vindication and deterrence. Does this make sense to you? Why or why not?
3. Do you think that in order to be compensated for a *Charter* violation, a claimant should have to show that the state was acting in bad faith?
4. Do you agree that \$5000 was appropriate compensation for Mr. Ward’s strip search?