



## Criminal Law and Enforcement Newsletter

September 2010

### Vancouver v. Ward: The Supreme Court Upholds Damages as a Charter Remedy

J. Bruce McMeekin, Markham

For many years now, section 24(1) of the *Charter of Rights and Freedoms* (the “*Charter*”) has provided criminal trial courts with the jurisdiction to award costs to defendants against the Crown when their *Charter* rights have been infringed. The justification for costs has been to discipline the Crown for acts that infringe a defendant’s *Charter* rights and needlessly compound the costs of the litigation. *Vancouver v. Ward* goes one very large step further, in that the Supreme Court upholds damages as a just and appropriate remedy under subsection 24(1) when state action has injured an individual.

In *Ward*, the plaintiff was arrested and strip searched in 2002 on the suspicion that he intended to assault then-Prime Minister Chrétien during a civic ceremony in Vancouver. His car was also seized without a warrant. After spending close to 5 hours in custody, the police released him after concluding that there was no evidentiary basis on which the plaintiff could be charged with attempted assault and no grounds to seize his car. The plaintiff subsequently sued the City for damages. At trial, the B.C. Supreme Court found that the plaintiff’s section 9 right (his right not to be arbitrarily detained) had been infringed by his arrest and strip search. Moreover, his section 8 right (to be free from unreasonable search and seizure) had been infringed by the seizure of his car. He was awarded \$5,000 in damages for the strip search and \$100 for the seizure of his car. The B.C. Court of Appeal and the Supreme Court subsequently upheld this decision.

For a unanimous court, Supreme Court Chief Justice McLachlin found that damages are a just and appropriate remedy for a *Charter* breach when:

- the plaintiff has established a *Charter* breach;
- the damages award is necessary to fulfil one or more of the objects of compensation, the vindication of the *Charter* right, or the deterrence of future *Charter* breaches;
- the state has failed to establish any factors which render section 24(1) damages inappropriate or unjust in the circumstances (for example, that there are alternative remedies which fit the circumstances); and
- the quantum of damages equals the purposes of the damages award (compensation, vindication and/or deterrence).

The Court found that although the plaintiff’s detention was brief and did not appear to cause any pecuniary loss, the strip search was inherently humiliating and constituted a significant injury to him. The damages award of \$5,000 was justified. On the other hand, a modest award of \$100 for the seizure of the plaintiff’s car was appropriate in that it met the need to vindicate the right against unreasonable search and seizure and deter further improper car seizures.

By way of jurisdiction, the Court found that provincial criminal courts are without jurisdiction to award damages at the end of a criminal trial. It is unclear whether the Court intended to restrict this finding to the lower or provincial courts, or if a superior or high court hearing a criminal matter would also be so restricted. (There is no issue that the latter in a purely civil proceeding have the jurisdiction to award damages as a remedy under subsection 24(1)). In at least the situation of the lower courts, however, after a criminal trial which revealed that a defendant was charged, arrested, detained and/or tried in contravention of one or more *Charter* rights, the defendant would have to commence a separate civil proceeding to obtain damages.

What remains unanswered by *Ward* is whether access to damages is restricted to injured individuals or whether they are available to corporations as well. Many *Charter* rights have been found by definition to be available to individuals alone, such as those in sections 7, 9, 11(c) and 13. Other rights, such as those found in section 8, are available to corporations. Presumably, therefore, a corporation which has been damaged by an illegal search or seizure could rely on *Ward* to commence a claim under subsection 24(1) for damages.

[Back to issue](#)

---

© Miller Thomson LLP, 2013. All Rights Reserved. All Intellectual Property Rights including copyright in this publication are owned by Miller Thomson LLP. This publication may be reproduced and distributed in its entirety provided no alterations are made to the form or content. Any other form of reproduction or distribution requires the prior written consent of Miller Thomson LLP which may be requested from the Editor(s).

This publication is provided as an information service and is a summary of current legal issues. This information is not meant as legal opinion and readers are cautioned not to act on information provided in this publication without seeking specific legal advice with respect to their unique circumstances.

Miller Thomson LLP uses your contact information to send you information on legal topics and firm events that may be of interest to you. It does not share your personal information outside the firm, except with subcontractors who have agreed to abide by its privacy policy and other rules. If you do not wish Miller Thomson to use your contact information in this manner, please notify us at [newsletters@millerthomson.com](mailto:newsletters@millerthomson.com) and include "Privacy Request" in the subject line.

© Miller Thomson LLP 2014. All Rights Reserved.