

## Charter Breaches Against G20 Protester Lead to \$500 in Damages

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In a recent decision of the Ontario Court of Appeal, one of the issues was the quantum of damages available to a plaintiff when there is a breach of the *Canadian Charter of Rights and Freedoms*. The decision shows that damages are usually minimal.

### **Background**

In [\*Stewart v. Toronto \(Police Services Board\)\*](#), 2020 ONCA 255, the plaintiff attended a peaceful protest at a public park in Toronto that was held during the G20 summit in 2010.

As a condition of entering the park, police officers searched people's bags. The plaintiff objected to his backpack being searched.

The plaintiff forced his way by the police officers. The police officers stopped him and removed the backpack and inspected it. This lasted less than three minutes. During this time, the plaintiff was momentarily restrained. The police officers seized swimming goggles from the plaintiff's backpack.

The plaintiff sued the Toronto Police Services Board in tort and for breach of *Charter* rights. His action was dismissed at trial. The Court of Appeal allowed the plaintiff's appeal.

### **Breach of Charter**

On appeal, the Toronto Police Services Board conceded that the plaintiff's right of freedom of expression under section 2(b) of the *Charter* was infringed, but argued that such infringement was justified by section 1 of the *Charter*. Under section 1, an individual's *Charter* rights are subject to "reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society".

The Court of Appeal held that the infringement of the plaintiff's right of freedom of expression was not justified because the police officers did not have legal authority to search people's bags and belongings as a condition of entry into the park.

In addition, the Court of Appeal held that the plaintiff's rights under sections 8 and 9 of the *Charter* were violated and were not justified. Section 8 provides that everyone has the right to be secure against unreasonable search or seizure. Section 9 indicates that everyone has the right to not be arbitrarily detained or imprisoned.

### ***Four Part Test for Damage***

When there is a breach of *Charter* rights, section 24(1) of the *Charter* permits a court to grant "such remedy as the court considers appropriate and just in the circumstances".

Referring to the Supreme Court of Canada's decision in *Vancouver (City) v. Ward*, [2010] 2 SCR 28, the Court of Appeal noted that the 4-step framework for considering claims for damages for the breach of *Charter* rights is as follows:

1. **Proof of a *Charter* breach:** Establishing whether a *Charter* right has been breached;
2. **Functional justification of damages:** Showing why damages are a just and appropriate remedy, having regard to whether they would fulfill one or more of the related functions of compensation for the personal loss caused by a breach, vindication of the *Charter* right, and/or deterrence of future breaches;
3. **Countervailing factors:** Considering any demonstration by the state that countervailing factors defeat the functional considerations that support a damage award and render damages inappropriate or unjust; and
4. **Quantum:** Assessing the quantum of damages.

When a plaintiff establishes a breach of *Charter* rights, the damages analysis first has to consider whether awarding damages would be a just and appropriate remedy. Considerations in this regard include compensation for loss, vindication of the *Charter* right, and deterrence.

Even if a plaintiff establishes that *Charter* damages are functionally justified, the state may establish that other considerations render section 24(1) damages inappropriate or unjust. Such countervailing considerations include the existence of alternative remedies and concerns for good governance.

The Court of Appeal stated that, absent exceptional circumstances, non-pecuniary compensation is fixed at a fairly modest conventional rate, subject to variation for the degree of suffering in the particular case. An award must fair to both the claimant and the state.

Factors to consider in determining non-pecuniary compensation are the seriousness of the breach, its impact on the claimant, and the seriousness of the state misconduct.

In addition, any claim for compensatory damages must be supported by evidence of the loss suffered.

### ***Court's Assessment of Damages***

The trial judge did not make any findings regarding the amount of damages. Rather than remitting the matter back to trial, the Court of Appeal conducted a damages assessment.

The plaintiff was found to not be entitled to any compensatory damages. The Court rejected that the *Charter* breaches caused a delay in the plaintiff completing his PhD degree or that his reputation was tarnished.

Regarding non-compensatory damages, the Court of Appeal accepted that the freedom to engage in the peaceful public expression of political views is central to our conception of a free and democratic society. However, the Court held that a large award of damages was not required.

The plaintiff's interaction with the police officers lasted only approximately 10 minutes, including a three minute detention. After being released, the plaintiff gave a media interview and continued on his way to the protest. He was not physically injured.

Further, the police officers acted in good faith to protect the safety of all users of the park. It was not the police officers' intention to turn away protestors. Instead, they wanted to ensure that those who entered the park were not carrying objects that could be used as weapons or used to defeat police crowd control tactics. Moreover, the police officers acted in a calm and professional manner.

The Court of Appeal distinguished two previous cases that ultimately went to the Supreme Court in which \$5,000 in *Charter* damages were awarded. In one case, the plaintiff was mistakenly identified and arrested. He was wrongfully strip-searched, his car was impounded, and he was held for several hours. In the other case, the plaintiff was precluded from attending a peaceful protest. He was arrested, thrown to the ground (causing serious injury), handcuffed, held in a police van, moved to a jail cell, and released after 2.5 hours.

The Court of Appeal concluded that the vindication and deterrence functions of *Charter* damages could be served by a modest award of damages in the amount of \$500.

## **Summary**

Non-compensatory damages for breach of *Charter* rights are usually very modest. In cases involving serious breaches, appellate courts have found \$5,000 in damages to be appropriate. In most cases, the damages are significantly less than \$5,000.

In the case in issue, the Court of Appeal held that the following *Charter* rights were breached: the right of freedom of expression, the right to be secure against unreasonable search or seizure, and the right to not be arbitrarily detained or imprisoned.

However, since the intrusion on the plaintiff's rights was brief and minimal, and since the conduct of the defendant was not malicious, the plaintiff was awarded only \$500 in damages.