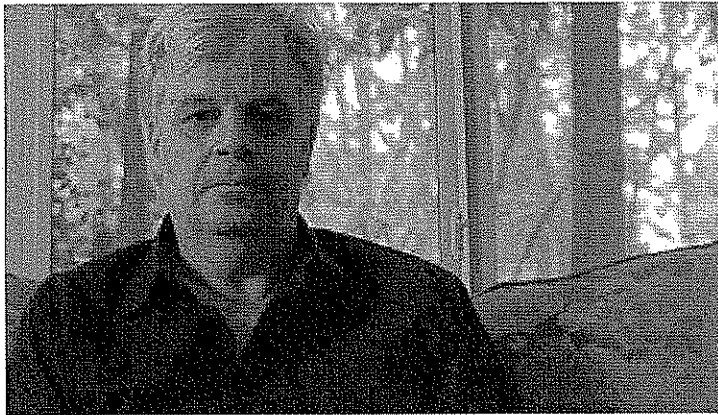


<http://www.theglobeandmail.com/news/national/british-columbia/supreme-court-upholds-compensation-for-breach-of-charter-rights/article1649475/>

Supreme Court upholds compensation for breach of Charter rights



Ruling the first to say damages can be awarded even if authorities acting in good faith

Caroline Alphonso

Toronto — Globe and Mail Update Published on Friday, Jul. 23, 2010 10:15AM EDT Last updated on Saturday, Jul. 24, 2010 7:04PM EDT

Canadians are entitled to compensation when their Charter rights are violated even if authorities act in good faith, the Supreme Court of Canada has ruled in a decision that has far-reaching implications.

In a unanimous decision released on Friday, the court upheld \$5,000 in damages awarded to Alan Cameron Ward, a veteran Vancouver lawyer who police detained in 2002 on suspicion that he intended to toss a pie at then-prime minister Jean Chrétien.

But the court also said that damages awarded should be justified based on the seriousness of the breach, and overturned a \$100 judgment given to Mr. Ward to compensate for seizure of his car as part of the police investigation.

"I conclude that damages may be awarded for Charter breach ... where appropriate and just," Chief Justice Beverley McLachlin wrote in her ruling.

Mr. Ward alleged that he was improperly strip searched and jailed for almost five hours in 2002 after Vancouver police arrested him not far from where Mr. Chrétien was speaking.

"Strip searches are inherently humiliating and degrading and the Charter breach significantly impacted on [Mr. Ward's] person and rights," Judge McLachlin added.

The decision by Canada's highest court is the first to say that damages can be awarded even if authorities were acting in good faith and following orders, lawyers say. And it's a timely decision given that several people have complained that police infringed on their rights during protests at the G20 summit in Toronto in June.

Julian Falconer, a Toronto lawyer who is representing four people who have made such complaints, said authorities can no longer hide behind orders or reason that good-faith actions grant them immunity if Charter rights are violated.

"There is no question in my mind that some of the policing excesses in the context of G20 crowd control are very much now vulnerable to Charter damage awards. There is no question that the Ward judgment lays down a threshold, which in my view some of the police excesses have crossed."

Mr. Falconer, who acted as an intervenor in the Ward case on behalf of the Aboriginal Legal Services of Toronto, said the Supreme Court's decision is not about to open up a floodgate of litigation, because the court was clear that trivial charter violations should not entitle a person to damages.

For his part, Mr. Ward said he was pleased his eight-year ordeal has come to an end. "It clarifies that Charter rights are important and the violation of them may attract monetary compensation in suitable cases," he said.

Police received a tip that someone in the crowd intended to throw a pie at Mr. Chrétien. They mistakenly identified that individual as Mr. Ward. He was chased down and handcuffed, all the while loudly protesting, according to court documents. His car was impounded and searched.

Mr. Ward sued the city and the province of British Columbia for violations of his rights. He was awarded another \$5,000 for false imprisonment, but that was not appealed in this case.

Constable Lindsey Houghton of Vancouver police said Friday that the department welcomed the court's ruling that police officers acted in good faith, but it also disagreed with the fact that Mr. Ward was awarded damages. The B.C. Attorney-General was unavailable for comment Friday, a spokesman said.

With a report from Rebecca Lindell in Vancouver