

**IN THE SUPREME COURT OF CANADA
(ON APPEAL FROM THE COURT OF APPEAL FOR THE PROVINCE OF
BRITISH COLUMBIA)**

B E T W E E N:

CITY OF VANCOUVER

APPELLANT
(RESPONDENT)

-and-

ALAN CAMERON WARD

RESPONDENT
(APPELLANT)

AND BETWEEN:

**HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH
COLUMBIA**

APPELLANT
(APPELLANT)

-and-

ALAN CAMERON WARD

RESPONDENT
(RESPONDENT)

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PART I: OVERVIEW AND STATEMENT OF FACTS

1. This appeal concerns a matter that rarely is litigated, namely, whether compensatory damages may be awarded for a violation of rights guaranteed in the Charter when no charges have been laid. The British Columbia Civil Liberties Association (BCCLA) and the David Asper Centre (AC) will argue that the learned trial judge did not err in awarding damages to Mr. Ward. The \$5000 award was a legitimate exercise of the trial judge's broad remedial discretion under s.24(1) of the Charter. The remedy respected the traditional role of the judiciary and was fair to all affected parties.
2. A simple finding or declaration that Mr. Ward's rights had been violated would not have been a meaningful or effective remedy.¹ It would mean that factually innocent people like Mr. Ward would have to be quixotic and economically irrational actors by going to the enormous expense of litigation to vindicate their Charter rights.
3. The BCCLA/AC accept the facts as set by the parties and take no position where the parties disagree. The BCCLA/AC rely on the following facts. The trial judge awarded the Respondent \$5000 in damages as an individual remedy under s.24(1) of the Charter for an unconstitutional strip search and \$100 for the illegal towing of his car. He did not declare "any legislative provision to be unconstitutional."² The majority of the Court of Appeal upheld the trial judge's damage award on the following basis: "Appropriate and just remedies must be determined judicially from case to case. In the present case, I would not interfere with the trial judge's exercise of discretion to award damages for the unreasonable search."³ The majority also concluded that, "To require that the breach be accompanied by a tort or by bad faith to justify an award of damages in many cases will give to the victim of the breach only a pyrrhic victory, not a true remedy."⁴

PART II: INTERVENERS' POSITION ON THE QUESTION IN ISSUE

4. The BCCLA/AC submit that s.24(1) of the Charter authorizes a court of competent jurisdiction to award damages for the infringement of a right in the absence of bad faith, an abuse

¹ *Doucet-Boudreau v. Nova Scotia (Ministry of Education)*, [2003] 3 S.C.R. 3 [*Doucet-Boudreau*], Tab 2 at paras 55-59.

² *Ward v. Vancouver (City of)* (2007), 63 B.C.L.R. (4th) 361 [*Ward 1*], Tab 25 at para 109.

³ *Ward v. Vancouver (City of)* (2009), 89 B.C.L.R. (4th) 217 [*Ward 2*], Tab 26 at para. 64.

⁴ *Ibid.*, Tab 26 at para. 63.

of power or tortious conduct committed by the infringer.

III: ARGUMENT

A. Overview of the Position of the BCCLA/AC

5. The constitutionally protected remedial discretion of trial judges under s.24(1) of the Charter to award damages should not be fettered by requirements of bad faith, abuse of power or tortious conduct. Such requirements would depart from the purpose of s.24(1) which is to provide trial judges with broad remedial discretion to vindicate personal Charter rights through effective and meaningful remedies. They would also blur fundamental distinctions between discretionary relief and personal remedies under s.24(1) and more systemic relief under s.52(1).⁵

6. A tort or fault prerequisite for s.24(1) damages would allow routine departures from established principles that require retroactive and compensatory relief unless the proper test for a purely prospective remedy is met.⁶ It would impose severe restraints on the nascent development of s.24(1) damages. Such damages can be particularly effective and meaningful in enforcing Charter rights and rule of law values in response to violations that have not been authorized by legislatures.

7. Allowing the trial judge to award damages to compensate for Charter violations in the absence of a tort or a finding of bad faith or abuse of power is consistent with the basic principles of Charter adjudication that focus on the effects of state actions as opposed to the state's purpose or fault.⁷ It allows courts to tailor remedies to vindicate the purposes of each Charter right and it does not privilege traditionally protected interests such as property or pecuniary damages as does tort law.⁸ The Appellants request a restrictive approach that would not allow any compensation for aggrieved individuals and would allow the state to violate Charter rights with impunity except in cases where there is a high level of fault or an existing tort remedy.

B. The Purposes of Section 24(1) of the Charter

8. Section 24(1) has special significance; the *Canadian Bill of Rights* contained no equivalent

⁵ *R. v. Ferguson*, [2008] 1 S.C.R. 96, Tab 18 at paras. 58-66.

⁶ *Hislop v. Canada (Attorney General)*, [2007] 1 S.C.R. 429 [*Hislop*], Tab 3 Factum of the Appellant HMQ BC, at paras. 99-101.

⁷ *Hunter et al. v. Southam Inc.*, [1984] 2 S.C.R. 145 [*Hunter*], Tab 8 at para. 28. See also *Hawley v. Bapoo* (2005), 76 O.R. (3d) 649, Tab 5 at paras 194-197 rev'd (2007), 227 O.A.C. 81 (C.A.).

⁸ *Hunter, ibid.*, Tab 8 at p. 158 (recognizing that s.8 is designed to protect privacy not property).

clause providing for the provision of appropriate and just remedies. The proper approach to Charter remedies is a purposive one that recognizes the need for full and effective remedies.⁹ As this Court has long recognized: “It is difficult to imagine language which could give the court a wider and less fettered discretion. It is impossible to reduce this wide discretion to some sort of binding formula for general application in all cases, and it is not for appellate courts to pre-empt or cut down this wide discretion.”¹⁰ Section 24(1) recognizes the traditional wisdom that, “To create a right without a remedy is antithetical to one of the purposes of the *Charter*, which surely is to allow courts to fashion remedies when constitutional infringements occur.”¹¹

9. It would be a major step backward and one that would leave Charter rights without remedies to say that trial judges must find tortious conduct before awarding s.24(1) damages. Although Canadian tort law has traditionally been responsive to flagrant and bad faith abuses of conduct,¹² it is no substitute for the Charter. Section 24(1) “resonates across all Charter rights”¹³ including those not recognized in tort or delict. It also displaces common law limits on remedial powers.¹⁴ A tort requirement would blur the distinct roles of the Charter and tort systems.

10. Further, it would be a major step backward if the proof of a high level of fault, such as bad faith or abuse of process, was required before damages could be awarded under s.24(1). Such an approach would make damages an infrequent penalty for egregious conduct. The Appellants suggest that there should be hierarchy of remedies with declarations being the preferred remedy and damages being an extraordinary remedy. Their approach ignores the practical and ethical need for compensation for aggrieved individuals and meaningful enforcement of the supreme law.

11. A requirement for a tort, bad faith or abuse of process could impose more restraints on the personal and discretionary remedy of s.24(1) damages for unauthorized and unconstitutional

⁹ *R. v. Gamble*, [1988] 2 S.C.R. 595, Tab 19 at para. 73 (“A purposive approach should, in my view, be applied to the administration of *Charter* remedies as well as to the interpretation of *Charter* rights...); *Doucet-Boudreau*, *supra* note 1, Tab 2 at para. 25 (“A purposive approach to remedies in a *Charter* context gives modern vitality to the ancient maxim *ubi jus, ibi remedium*: where there is a right, there must be a remedy. More specifically, a purposive approach to remedies requires at least two things. First, the purpose of the right being protected must be promoted: courts must craft responsive remedies. Second, the purpose of the remedies provision must be promoted: courts must craft effective remedies.”).

¹⁰ *Mills v. The Queen*, [1986] 1 S.C.R. 863, Tab 13 at para. 23; *R. v. 974649 Ontario Inc.*, [2001] 3 S.C.R. 575 [*Dunedin Construction*], Tab 17 at paras. 18-20.

¹¹ *Nelles v. Ontario*, [1989] 2 S.C.R. 170, Tab 14 at para. 50.

¹² *Hill v. Hamilton-Wentworth (Regional Municipality) Police Services Board*, [2007] 3 S.C.R. 129, Tab 6 at paras. 39-45.

¹³ *Dunedin Construction*, *supra* note 10, Tab 17 at para 20.

¹⁴ *Doucet-Boudreau*, *supra* note 1, Tab 2 at para. 70, (per majority) and at para 105 (per minority).

governmental acts than have been imposed on damages that might flow declaring legislation to be unconstitutional under s.52(1).¹⁵

C. The Proper Approach to Damages as a Charter Remedy

12. Despite the importance that the Charter attaches to remedies, the status of damages as a remedy under s.24(1) of the Charter remains surprisingly unclear. In 1994, this Court recognized that damages could be awarded under the Charter, while noting that “no body of jurisprudence has yet developed in respect of the principles which might govern the award of damages under s. 24(1) of the Charter.”¹⁶ In 2007, this Court noted that s.24(1) damages “are necessarily retroactive” and that “[b]ecause courts are adjudicative bodies that, in the usual course of things, are called upon to decide the legal consequences of past happenings, they generally grant remedies that are retroactive to the extent necessary to ensure that successful litigants will have the benefit of the ruling...”¹⁷

13. The proper approach to the award of Charter damages under s.24(1) in a case where an applicant does not challenge legislation under s. 52(1) and where the activity that violates the Charter is not specifically authorized in legislation is to allow the trial judge to decide what, if any, damages would be an appropriate and just remedy in the circumstances of the particular Charter violation. Although the presence of fault, including negligence, may be a relevant consideration, particularly with respect to quantum of damages, there should be no rigid requirement that fault be established. Such a requirement would unduly fetter the trial judge’s remedial discretion and would undermine the purpose of s.24(1) in providing for full and effective remedies for violation of personal rights. There should also be no arbitrary minimum or maximum awards. Trial judges should be allowed to award appropriate and just remedies in the circumstances including damages with appellate courts correcting errors of law or unreasonable awards.

14. Although a majority of this Court has never dealt with this issue, a strong dissent by Justice Wilson reasoned that fault should not be required as a prerequisite for a damage award

¹⁵ *Mackin v. New Brunswick (Minister of Justice)*, [2002] 1 S.C.R. 405 [*Mackin*], Tab 10 at para. 82 (Rejecting damages combined with declaration of invalidity because “...it may not reasonably be suggested that the government of New Brunswick displayed *negligence*, bad faith or wilful blindness with respect to its constitutional obligations at that time.” [emphasis added]).

¹⁶ *RJR-MacDonald Inc. v. Canada (Attorney General)*, [1994] 1 S.C.R. 311, Tab 21 at para. 66.

¹⁷ *Hislop*, *supra* note 6, Tab 3 Factum of the Appellant HMQ BC at paras. 81 & 86.

and recognized compensation as a legitimate and leading remedial purpose:

“...I believe it is appropriate and just in these circumstances to award compensatory damages for the loss of income and benefits sustained by the appellants through the breach of their s. 15 rights. Compensation for losses which flow as a direct result of the infringement of constitutional rights should generally be awarded unless compelling reasons dictate otherwise.”¹⁸

15. As Justice Wilson recognized, a traditional function of a remedy is to provide compensation and recognition for a loss. In this respect, s.24(1) has a retrospective and personal orientation and differs from the prospective and systemic orientation of either ss.24(2) or 52(1). This Court has recognized that damages are an inherently retroactive and personal remedy.¹⁹ It is respectfully submitted that Justice Saunders in her dissent in this case in the Court of Appeal misconceived of correction as something equivalent to disciplining or censuring the police. Compensation or correction of a violation, in addition to deterrence, is a legitimate and important part of the remedial process. The Appellants’ request that compensation be rejected as a remedial purpose would leave remedies with little if any work to do. A person whose rights have been violated expects to receive compensation especially in a case such as this where vindication of the right requires expensive litigation.²⁰

16. A recognition of the seriousness of the Charter violation should play a role in determining an appropriate and just remedy. Recognition of the seriousness of the violation may have the indirect and salutary effect of deterring misconduct.²¹

17. It is in the public interest that meritorious Charter litigation be encouraged by the availability of full and effective remedies, including damages. Individuals who are not charged with an offence are extremely unlikely to commence Charter litigation if the only remedy that they can realistically obtain is a declaration that their Charter rights have been violated. A more

¹⁸ *Mckinney v. University of Guelph*, [1990] 3 S.C.R. 229, Tab 12 at para. 346.

¹⁹ *Hislop*, *supra* note 6, Tab 3 Factum of the Appellant HMQ BC at para 81. (“Section 24(1) may also, in some situations, enable the claimant to recover damages, which are necessarily retroactive”); contrary to Factum of the Attorney General of British Columbia at paras. 42, 52, & 53. See also *Ravndahl v. Saskatchewan*, [2009] 1 S.C.R. 181, Tab 16 at para 27 (s.24(1) damages personal remedy as contrasted with “in rem remedy flowing from s.52.”)

²⁰ Attorney General of British Columbia Factum at paras 90-92; Respondent Ward Factum at para. 143 (reference to costs of litigation).

²¹ *R. v. Grant* (2009), 309 D.L.R. (4th) 1, Tab 20 at para. 73. (“The concern of this [seriousness of the violation] inquiry is not to punish the police or to deter *Charter* breaches, although deterrence of *Charter* breaches may be a happy consequence.”).

tangible remedy is required in order to ensure that the Charter is meaningful both for those whose rights are violated and for state actors, such as police and correctional officials, who are bound by its restraints. By holding state actors accountable for Charter violations, damage awards are an effective way to induce governments to change their behaviour to prevent violations in the future.

18. Charter damages are starting to develop on a case by case basis and guidelines provided by this Court should be based on broad and flexible principles that recognize the status of the Charter as an evolving document. A recent case has suggested that principles of proportionality may be a helpful guide to ensure that the exercise of remedial discretion is appropriately related to the Charter violation.²² Another case also suggests that in those situations where questions of tort and the Charter overlap, judges and juries should pay particular attention to the significance, role and purposes of the Charter – all of which are distinct from the tort regime.²³ The general principled guidance in these cases can be contrasted with a rigid rule that would tie Charter damages to tort law or would require onerous proof of fault. A requirement that bad faith or abuse of power be a prerequisite to damages under s.24(1) would be even more restrictive than the qualified good faith immunity that applies to s.24(1) damages combined with s.52(1) systemic relief.²⁴

19. Trial judges, subject to the guidance of appellate courts, are capable of determining the appropriate quantum of damages. Although the existence of bad faith and abuse of power may in appropriate circumstances justify a higher quantum of damages, they should not be a rigid prerequisite to such damages. In addition, courts will have to consider the presence of tortious conduct in determining the appropriate quantum to avoid the possibility of double counting, just as they do in relation to other overlapping causes of action.

D. The Alleged Chilling Effects of Damage Awards and the Importance of Governmental Liability

20. The Appellants rely on the notion that damage awards may have a chilling effect on state

²² *Fédération Franco-Ténoise v. Canada*, 2008 NWTCA 6, Tab 3 at para. 62

²³ *Bevis v. Burns* (2006), 44 N.S.R. (2d) 211, Tab 4 Factum of the Respondent, at para. 3.

²⁴ *Ferri v. Root* (2007), 279 D.L.R. (4th) 643, Tab 4 at paras. 108 & 167. This case fails to recognize that in the context of combining remedies under s.24(1) of the Charter and s.52(1) of the *Constitution Act, 1982*, negligence as well as subjective fault in the form of willfulness or *mala fides* is a sufficient form of fault to ground liability. See also *Mackin*, *supra* note 15, Tab 10 at paras. 79-82.

officials.²⁵ The concern about over deterrence of official conduct is largely taken from American law, but the United States has a very different system of sovereign immunity. In the US, in most cases, the law only allows officials in their private capacity to be held liable for constitutional torts.²⁶ The Appellants' concerns about over deterrence and the chilling effects of damage awards are unwarranted in light of the reality of direct governmental liability under the Charter and the modest award of Charter damages in this case and others.

21. Courts have not allowed speculative concerns about the possible effects of damages to trump the need for constitutional remedies in other contexts. This Court has recognized that allowing policy considerations to trump a remedy in cases of monies paid under unconstitutional taxes “threatens to undermine the rule of law” and forces the innocent individual whose rights have been violated to absorb the cost of the government’s unconstitutional conduct.²⁷

22. It is also inappropriate to raise concerns about over deterring individual officials when the individual officials in this case were held not liable because of lack of fault.²⁸

E. Systemic Relief under Section 52(1) and the *Mackin* Rule of Good Faith Immunity

23. The rationale for the limited immunity contemplated in *Mackin* and for the limits on retroactive Charter relief in *Hislop*, is that governmental officials should be entitled to assume that actions specifically authorized by legislation are constitutional. Legislation by its nature affects large and indeterminate numbers of people and this Court has developed tests for responding to potential harms that fully retroactive and immediate remedies under s.52(1) can cause.²⁹ Section 52(1) cases raise institutional issues of good faith and reasonable reliance on legislation, fairness to other litigants, respect for Parliament’s role, and substantial changes to the law which do not apply to the case at bar.

F. Individual and Personal Relief under Section 24(1)

24. This section 24(1) case involves the state as the singular antagonist of a single individual

²⁵ Appellant City of Vancouver Factum at paras. 34-36; Attorney General of British Columbia Factum at paras. 70-79.

²⁶ See *infra* BCCLA/AC Factum at para. 28.

²⁷ *Kingstreet Investments Ltd. v. New Brunswick (Department of Finance)*, [2007] 1 S.C.R. 3, Tab 9 paras. 21, 27-29.

²⁸ *Ward 1*, *supra* note 2, Tab 25 at paras. 103-104.

²⁹ *Hislop*, *supra* note 6, Tab 3 Factum of the Appellant HMQ BC at para. 99 (substantial change in law necessary condition for prospective relief); *Schachter v. Canada*, [1992] 2 S.C.R. 679 [*Schachter*], Tab 23 at paras. 80-84 (test for suspended declarations of invalidity).

who was unconstitutionally strip searched. It only resulted in litigation because the innocent victim happened to be a lawyer with the knowledge and resources required to sue. It is distinguishable from minority language schools cases where declarations may be more appropriate because the litigant is primarily concerned with systemic change.³⁰

25. It has long been recognized that *ultra vires* acts by governmental officials raise fundamental rule of law issues and may require the award of damages.³¹ Section 24(1) now provides judges with an additional tool to respond to such actions. Judges can award damages against governments when it is appropriate and just to do so. They can award sums that are responsive and proportionate to the circumstances and may require government, as opposed to individuals acting on behalf of government, to pay such damages under s.32.³²

G. The Limited Relevance of Comparative Law Given the Unique Status of Section 24(1)

26. Although comparative law is a helpful source of guidance, care should be taken to account for the Canadian constitutional context. New Zealand and British jurisprudence must be approached with caution because the statutory bills of rights in those jurisdictions differ from the Charter. They do not provide constitutional recognition of the broad remedial discretion of courts, and in some cases impose explicit statutory restrictions on the award of damages.³³

27. Contrary to the Appellants' argument that the New Zealand experience supports their argument that Charter damages should only be awarded when there is tortious conduct, New Zealand courts have recognized that BORA damage claims are particularly useful in providing an "effective remedy" in cases where "non-Bill of Rights Act damages may not be available."³⁴ In other words, an absence of bad faith, an abuse of power or tortious conduct would be a factor *favouring* an award of damages in cases in New Zealand. In addition, the New Zealand jurisprudence suggests that an award of damages is essentially a matter for judicial discretion that is determined by assessing what in the particular circumstances is necessary to vindicate the

³⁰ *Mahe v. Alberta*, [1990] 1 S.C.R. 342, Tab 11 at paras. 107-116.

³¹ *Roncarelli v. Duplessis*, [1959] S.C.R. 121, Tab 22 at paras. 44 & 102-108.

³² *Doucet-Boudreau*, *supra* note 1, Tab 2 at para. 70 (per majority) and at para. 105 (per minority).

³³ Section 8(3) of the United Kingdom's *Human Rights Act, 1998*, places specific restrictions on the award of damages which are not found in s. 24(1) of the *Charter* including consideration of alternative remedies.

³⁴ "In other cases, however, non-Bill of Rights Act damages may not be available, since the only actionable wrong done to the plaintiff is the Bill of Rights Act breach. Then a restrained award of damages may be required if without them other Bill of Rights Act damages will not provide an effective remedy." *Taunoa v. Attorney General*, [2008] 2 NZLR 65, Tab 24 at paras. 256-257 (per Blanchard J.).

right that has been violated.³⁵

28. American constitutional tort jurisprudence is built on an unique constitutional structure³⁶ that is inconsistent with the recognition of both remedial discretion under s.24(1) of the Charter and direct governmental liability for violations under s.32 of the Charter. Constitutionally entrenched³⁷ sovereign immunity means that only individual state and federal officials can be held liable for constitutional torts. Because of concerns about over deterrence, these individuals are held liable in damages only for the most flagrant violations of established rights. They are not even liable for negligent violations of such rights.³⁸ In turn, municipalities are only liable when they make policy decisions to violate constitutional rights.³⁹

H. Conclusion

29. The remedial role of s.24(1) is particularly important in cases such as this where a factually innocent individual is subject to unconstitutional treatment but cannot seek remedies under s.24 (1) or (2) in a criminal trial. To impose a requirement that victims such as Mr. Ward must establish that they have an action in tort or delict would mean that s.24(1) adds nothing to existing remedies despite its important remedial purpose of recognizing that courts of competent jurisdiction should have the widest possible remedial discretion to provide appropriate and just remedies. It would leave many Charter rights without full and effective remedies even under the evolving ambit of tort and delict law.

30. The Charter is meant to protect individuals from unconstitutional state actions even when the state has no improper purpose. To require victims like Mr. Ward to establish bad faith or abuse of process would add to the already extensive burdens of litigation and amount to a further impediment for individuals to access justice. It would place individual state officials on trial to evaluate their purpose and fault even though the Charter is focused on protecting individuals from the unconstitutional effects of state actions that infringe their rights. It would mean that relief under s.24(1) would be prospective only despite the Court's recognition that retroactive

³⁵ “Whether to award compensation is a discretionary matter, albeit the discretion must be exercised judicially[...] In the end it is a matter of judgment in the individual case whether a declaration is sufficient to vindicate the breach or whether a sum of money should be added for that purpose.” *Ibid*, Tab 24. at paras. 303 & 305 (per Tipping J.).

³⁶ Attorney General of British Columbia Factum at paras. 74-75.

³⁷ U.S. Const. amend. XI.

³⁸ *Procunier v. Navarette*, 434 U.S. 555, Tab 15 at 555 (1978); *Hope v. Pelzer et al.*, 536 U.S. 730, Tab 7 at 731 (2002).

³⁹ *City of Canton, Ohio v. Harris*, 489 U.S. 378, Tab 1 at 389 (1989).

relief is the appropriate remedial norm and that the state should have to justify the extraordinary use of relief that is only prospective.⁴⁰

31. A requirement for the proof of abuse of power or bad faith would also adopt an even more restrictive approach to damages as a personal remedy than contemplated when damages are requested as a supplemental remedy to systemic relief under s.52(1). It would result in a restrictive approach to constitutional damages that would be similar to that followed in the United States. The American approach reflects concerns about the possible over deterrence of individuals and entrenched sovereign immunities which prevents federal and state governments from being held liable for constitutional damages. Such an approach is not necessary in Canada where governments can be held directly liable for violating the Charter under the combined application of ss.24(1) and 32(1) of the Charter.

32. Damages remedies under s.24(1) are just starting to be developed. There is no evidence of abuse of s.24(1) damages or that floodgates have been opened. A rigid requirement of a finding of a tort would fetter both the remedial discretion of trial judges under s.24(1) and the development of damage awards as appropriate and just remedies. It would tie Charter damages to tort law and not to the distinct purposes of various Charter rights.

PART IV & V: COSTS SUBMISSION AND ORDERS SOUGHT

The BCCLA/AC make no request for costs. The BCCLA/AC take no position on the disposition of the appeal. The BCCLA/AC respectfully seek permission to present oral argument at the hearing of this appeal.

All of which is respectfully submitted by



Kent Roach

Grace Pastine

Cheryl Milne

⁴⁰ *Hislop*, *supra* note 6, Tab 3 Factum of the Appellant HMQ BC at para. 99 (substantial change in law necessary condition for prospective relief); *Schachter*, *supra* note 29, Tab 23 at paras. 80-84 (test for use of suspended declarations of invalidity).

PART VI: TABLE OF AUTHORITIES

<u>Cases Cited</u>	<u>Paragraph No(s).</u>
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<i>RJR-MacDonald Inc. v. Canada (Attorney General)</i> , [1994] 1 S.C.R. 311	12
<i>Roncarelli v. Duplessis</i> , [1959] S.C.R. 121	25
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<i>Ward v. Vancouver (City of)</i> (2009), 89 B.C.L.R. (4th) 217	3

PART VII: STATUTORY PROVISIONS

<u>Statute</u>	<u>Paragraph No.</u>
UK Human Rights Act, 1998, Section 8(3)	26
U.S. Const. amend XI	28

United Kingdom Human Rights Act 1998

8. Judicial remedies

(1) In relation to any act (or proposed act) of a public authority which the court finds is (or would be) unlawful, it may grant such relief or remedy, or make such order, within its powers as it considers just and appropriate.

(2) But damages may be awarded only by a court which has power to award damages, or to order the payment of compensation, in civil proceedings.

(3) No award of damages is to be made unless, taking account of all the circumstances of the case, including—

(a) any other relief or remedy granted, or order made, in relation to the act in question (by that or any other court), and

(b) the consequences of any decision (of that or any other court) in respect of that act,

the court is satisfied that the award is necessary to afford just satisfaction to the person in whose favour it is made.

(4) In determining—

(a) whether to award damages, or

(b) the amount of an award,

the court must take into account the principles applied by the European Court of Human Rights in relation to the award of compensation under Article 41 of the Convention.

(5) A public authority against which damages are awarded is to be treated—

(a) in Scotland, for the purposes of section 3 of the [1940 c. 42.] Law Reform (Miscellaneous Provisions) (Scotland) Act 1940 as if the award were made in an action of damages in which the authority has been found liable in respect of loss or damage to the person to whom the award is made;

(b) for the purposes of the [1978 c. 47.] Civil Liability (Contribution) Act 1978 as liable in respect of damage suffered by the person to whom the award is made.

(6) In this section—

- “court” includes a tribunal;
- “damages” means damages for an unlawful act of a public authority; and
- “unlawful” means unlawful under section 6(1).

The Constitution of the United States of America Amendment XI

The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by citizens of another state, or by citizens or subjects of any foreign state.