



HUMAN RESOURCES  
LAW AND ADVOCACY

# Case Law Assessing Non-Pecuniary Damages for Breach of Privacy

UPDATED to March 2015

## 5 Factors from *Jones v. Tsigie* to Determine Damages:

1. The nature, incident and occasion of the defendant's wrongful act;
2. The effect of the wrong on the plaintiff's health, welfare, social, business or financial position;
3. Any relationship, whether domestic or otherwise, between the parties;
4. Any distress, annoyance or embarrassment suffered by the plaintiff arising from the wrong; and
5. The conduct of the parties, both before and after the wrong, including any apology or offer of amends made by the defendant.

**Legend:**

**higher** – increased the damages award

**lower** – decreased the damages award

**did not mention** – the adjudicator did not expressly mention this factor in making their determination of damages

## Post-*Jones v. Tsigie* Cases:

Case Name	(1) Nature of the Wrongful Act	(2) Effect of the Wrong	(3) Relationship between the Parties	(4) Distress to the Plaintiff	(5) Conduct of the Parties	Damages Award (only non-pecuniary damages)
<b>Court Cases:</b>						
<i>Jones v. Tsigie</i> , 2012 ONCA 32	higher	lower	higher	higher	lower	\$10,000 The "mid-point of the range" (para. 90)

<i>McIntosh v. Legal Aid Ontario</i> , 2014 ONSC 6136	higher	lower	did not mention	lower	higher	\$7,500
<i>Action Auto Leasing &amp; Gallery Inc. v. Gray</i> , 2013 CarswellOnt 2352	lower	did not mention	did not mention	did not mention	did not mention	\$100
<b>Arbitration Cases:</b>						
<i>Edmonton Police Service and EPA (B. (R.)), Re</i> , (2014) 121 C.L.A.S. 252 (Sims)	higher	higher	higher	higher	did not mention	\$5,000
<i>Alberta v. A.U.P.E.</i> , (2012) 221 L.A.C. (4th) 104 (Sims)	higher	higher	higher	lower	lower	\$1,250.00 per grievor
<i>Ontario Public Service Employees Union (Spicer) v Ontario (Labour)</i> , 2013 CanLII 72580 (ON GSB) (Fisher)	did not mention	did not mention	did not mention	higher	did not mention	\$2,500

**Pre-Jones v. Tsige Cases:**

Case Name	Damages Award (only non-pecuniary damages)
<i>Fillion v. Fillion</i> , 2011 BCSC 1593	\$50 for one plaintiff and \$100 for a second plaintiff
<i>Nesbitt v. Neufeld</i> , 2010 BCSC 1751; appeal dismissed at 2011 BCCA 529	\$40,000
<i>Ward v. Vancouver (City)</i> , [2010] 2 S.C.R. 28 (S.C.C.)	\$5,000
<i>Wasserman v. Hall</i> , 2009 BCSC 1318	\$3,500
<i>Heckert v. 5470 Investments Ltd.</i> , 2008 BCSC 1298	\$3,500
<i>Hamilton Health Sciences and Ontario Nurses Association (Re)</i> , [2008] O.L.A.A. No. 103 (Devlin)	\$5,000
<i>Watts v. Klaemt</i> , 2007 BCSC 662	\$30,000

<i>Molson Breweries v. Canadian Union of Brewery &amp; General Workers</i> (2005) 142 L.A.C. (4th) 84 (Rayner)	\$5,000
<i>Malcolm v. Fleming</i> , 2000 CarswellBC 1316 (B.C. S.C.)	\$15,000
<i>Tran v. Financial Debt Recovery Ltd.</i> , (2000) 193 D.L.R. (4th) 168 (Ont. S.C.J.); rev'd 2001 CarswellOnt 8246 (On. Div. Ct).	\$25,000  <b>*Note:</b> this decision was overturned due to a reasonable apprehension of bias
<i>Garrett v. Mikalachki</i> , 2000 CarswellOnt 1298 (Ont. S.C.J.)	\$25,000 total (\$15,000 for acts of defamation and \$10,000 for the separate acts of harassment which were not defamatory)
<i>F. (J.M.) v. Chappell</i> (1998), 45 B.C.L.R. (3d) 64 (B.C. C.A.), leave to appeal to SCC refused, (1998), 231 N.R. 400 (note) (S.C.C.) .	\$3,000 – general damages  <b>*Note:</b> C.A. reinstated the jury award
<i>Hollinsworth v. BCTV</i> (1996), 34 C.C.L.T. (2d) 95 (B.C. S.C.), aff'd 113 B.C.A.C. 304 (B.C. C.A.)	\$15,000
<i>Lipiec v. Borsa</i> (1996), 31 C.C.L.T. (2d) 294 (Ont. Gen. Div.)	\$3,000
<i>MacKay v. Buelow</i> (1995), 24 C.C.L.T. (2d) 184 (Ont. Gen. Div.)	\$25,000 – general damages
<i>Provincial Partitions Inc. v. Ashcor Inplant Structures Ltd.</i> (1993), 50 C.P.R. (3d) 497 (Ont. Gen. Div.)	\$1000
<i>Lee v. Jacobson</i> (1992), 87 D.L.R. (4th) 401 (B.C. S.C.), rev'd (1994), 120 D.L.R. (4th) 155 (B.C. C.A.)	\$ 2,000 for one plaintiff, \$5,000 for a second plaintiff – general damages  <b>*Note:</b> this decision was overturned on a factual error
<i>Roth v. Roth</i> (1991), 9 C.C.L.T. (2d) 141 (Ont. Gen. Div.)	\$20,000 – general damages
<i>Palad v. Pantaleon</i> (1989), 1989 CarswellOnt 2794 (Ont. Dist. Ct.)	\$2,500
<i>Pateman v. Ross</i> (1988), 68 Man. R. (2d) 181 (Man. Q.B.)	NIL – interlocutory injunction granted
<i>S. &amp; A. Nagy Farms Ltd. v. Repsys</i> , 1987 CarswellOnt 4093 (Ont. Dist. Ct.)	\$4,000

<i>Insurance Corp. of British Columbia v. Somosh</i> (1983), 51 B.C.L.R. 344 (B.C. S.C.)	\$1,000
<i>Saccone v. Orr</i> (1981), 34 O.R. (2d) 317 (Ont. Co. Ct.)	\$500

**Federal Court:** The cases list the following non-exhaustive factors for damages in *PIPEDA* applications:

1. Whether awarding damages would further the general objects of *PIPEDA* and uphold the values it embodies;
2. Whether damages should be awarded to deter future breaches; and
3. The seriousness or egregiousness of the breach.

Case Name	Damages Award (only non-pecuniary damages)
<i>Henry v. Bell Mobility</i> , 2014 FC 555	\$2,500
<i>Chitrakar v. Bell TV</i> , 2013 FC 1103	\$10,000
<i>Townsend v. Sun Life Financial</i> , 2012 FC 550	NIL
<i>Biron c. RBC Banque Royale</i> , 2012 FC 1095	\$2,500
<i>Girao v. Zerek Taylor Grossman Hanrahan LLP</i> , 2011 FC 1070	\$1,500
<i>Landry c. Banque Royale</i> , 2011 FC 687	\$4,500
<i>Nammo v. Transunion of Canada Inc.</i> , 2010 FC 1284	\$5,000
<i>Randall v. Nubodys Fitness Centres</i> , 2010 FC 681	NIL
<i>Stevens v. SNF Maritime Metal Inc.</i> , 2010 FC 1137	NIL