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**CONSTITUTIONAL REMEDIES  
IN CANADA**

**SECOND EDITION**

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This has been another active year with many decisions on constitutional remedies.

The issue of whether a suspended declaration of invalidity should be extended has arisen with some frequency. The most interesting decision is *British Columbia Civil Liberties Association v. Canada (Attorney General)*, 2019 BCCA 5, where the court extended the suspension but imposed a series of conditions designed to minimize rights violations in solitary

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confinement during the extension period. This approach follows South African practice and is consistent with an approach that combines deference to Parliament's policy-making role with concerns about rights protection. See also *G. v. Ontario (Attorney General)*, 2019 ONCA 264 at paras. 151 and 153, aff'd 2019 SCC 36, for a similar two-track approach that secured an immediate remedy for the litigant while allowing the legislature an opportunity to craft a systemic remedy. At the same time, the Supreme Court continued in *R. v. Boudreault*, 2018 SCC 58 at para. 98 to be more reluctant to use suspended declarations of invalidity than in earlier years. This decision is also praiseworthy in its attention to remedial detail as it relates to all, including those whose appeals had been exhausted and had been affected by the unconstitutional victim fine surcharge.

Remedies for violations of Aboriginal rights continue to be important. Some interim remedies have been granted with a recognition that the public interest cannot be reduced to those of the Canadian state. Some of these cases also demonstrate sensitivity to values of Indigenous self-determination in their choice of remedies, especially with regard to voting in Band elections.

I thank you for subscribing to this service and welcome your suggestions for cases to be included and ways to improve the service.

KR

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