

Publisher's Note

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<p style="text-align: center;">CONSTITUTIONAL REMEDIES IN CANADA</p> <p style="text-align: center;">SECOND EDITION Kent Roach Release No. 2, October 2021</p>

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Publisher's Special Release Note 2021

The pages in this work were reissued in September 2021 and updated to reflect that date in the release line. Please note that we did not review the content on every page of this work in the September 2021 release. We will continue to review and update the content according to the work's publication schedule. This will ensure that subscribers are reading commentary that incorporates developments in the law as soon as possible after they have happened or as the author deems them significant.

Changes to chapter and heading numbering may have occurred. Please refer to the Correlation Table in the front matter if you wish to confirm references.

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This has been an especially active year with respect to constitutional remedies with the highlight being the Supreme Court's revised approach to suspended declarations of invalidity in *Ontario (Attorney General) v. G.*, 2020 SCC 38, 2020 CarswellOnt 17020, 2020 CarswellOnt 17021 (S.C.C.). The majority of the court in that case also articulated a principled approach to the exercise of remedial which avoids strong discretion or the use of inflexible rules or categories.

The Supreme Court in *Fraser v. Canada (Attorney General)*, 2020 SCC 28, 2020 CarswellNat 4333 (S.C.C.) demonstrated the utility of making more specific declarations that directed the government's attention to providing retroactive relief. In two climate change cases, the courts continued to demonstrate their reluctance to consider supervisory remedies, at least outside the s. 23 context.

The court's decision in *Ontario (Attorney General) v. G.*, 2020 SCC 38, 2020 CarswellOnt 17020 (S.C.C.) articulates general principles to guide the decision whether the government can justify the use of a suspended declaration of invalidity. It also affirmed the availability of exemptions for suspended declarations of invalidity. The court's subsequent decision in *Reference re Code of Civil Procedure (Que.)*, art. 35, 2021 SCC 27, 2021 CarswellQue 7638 (S.C.C.) at paras. 156-157 demonstrates that it will continue to use suspended declarations of invalidity to protect important social interests and allow the legislature to select among different ways to comply with the constitution.

The Federal Court has remained reluctant to use mandatory orders in s. 35 cases. BC courts have, however, experimented with both split trials and the use of what I characterize as a declaration plus in several important s. 35 cases.

I thank you for your support of this service and welcome recommendations for improvement.

KR
August 2021

ProView Developments

Your ProView edition of this product now has a new, modified layout:

- The opening page is now the title page of the book as you would see in the print work
- As with the print product, the front matter is in a different order than previously displayed

- The Table of Cases and Index are now in PDF with no searching and linking
- The Table of Contents now has internal links to every chapter and section of the book within ProView
- Footnote text only appears in ProView-generated PDFs of entire sections and pages