

Publisher's Note

An Update has Arrived in Your Library for:

Please circulate this notice to anyone in your office who may be interested in this publication. <i>Distribution List</i>
<input type="checkbox"/>
<input type="checkbox"/>
<input type="checkbox"/>
<input type="checkbox"/>

CONSTITUTIONAL REMEDIES IN CANADA

SECOND EDITION

Kent Roach

Release No. 2, October 2023

What's New in this Update:

This release features updates to the case law and commentary in Chapters 11 (Damages and Costs), 13 (Injunctions and Other Mandatory Remedies), 14 (Remedies Involving Legislation) and 15 (Remedies and Aboriginal Rights).

THOMSON REUTERS®

Customer Support

1-416-609-3800 (Toronto & International)

1-800-387-5164 (Toll Free Canada & U.S.)

E-mail CustomerSupport.LegalTaxCanada@TR.com

This publisher's note may be scanned electronically and photocopied for the purpose of circulating copies within your organization.

Highlights:

Damages and Costs—Elements of a Charter Damage Claim—The Functional Need for Damages—Compensation for a Wide Range of Harm and Loss—The purpose of compensating the plaintiff does require some proof of a connection between the state's actions and the harms to be compensated. That said, courts have consistent with their approaches under s. 24(2) not taken an overly narrow approach to causation especially when the state's Charter violation is serious. For example, after finding a s. 7 violation by an extradition to a substantial risk of torture in a particular Mexican prison, the Federal Court held there was a sufficient causal connection between Canada's failure to secure protection and the torture even if the actions of Mexican officials was the immediate cause of the torture: *Boily v. Canada*, 2022 FC 1243.

Remedies Involving Legislation—The Evolution and Purposes of Remedies for Unconstitutional Legislation—The Evolution of Section 52(1) Charter—The Court has stressed that a decision by a court to invalidate a law under s. 52(1) whether under the division of powers or the Charter “is an ordinary judicial task that involves resolving a question of law rather than an expression of the authority of a superior court to alter the statute book.” The Court added: “Other decisions of this Court that use the language of “striking out” or “striking down” or “severing” statutory text should be understood in a similarly figurative manner, rendering the text merely inoperative pursuant to s. 52(1) as opposed to altering or repealing the text in the literal sense.” At the same time, a ruling that a law is inoperative is not an individual remedy as under s.24(1) and should apply within the province subject to the ordinary rules of horizontal and vertical precedent: *R. v. Sullivan*, 2022 SCC 19.

Remedies and Aboriginal Rights—Remedies for Pre-1982 Extinguishment or Diminution of Aboriginal Title—Declarations Concerning Government's Discharge of Obligations—In 2023, a judge of the Ontario Superior Court issued a series of declarations that Canada had breached fiduciary duties and acted inconsistently with the honour of the Crown with respect to Saugeen First Nation with respect to the treatment of Sauble Beach. She observed that the parties at trial had assumed that compensation was a suitable remedy with the defendants defending as the status quo settler uses of Indigenous land as a status quo that should be preserved. She also contemplated an innovative remedy that the parties had not asked for which would be granting individual settlers a life interest in the Indigenous land: *Chippewas of Saugeen First Nation v. Town of South Bruce Peninsula et al.*, 2023 ONSC 2056, 2023 CarswellOnt 5956.

I thank you for your support of this publication and welcome recom-

mendations for improvement and cases to be added.

KR
September 2023

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