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CONSTITUTIONAL REMEDIES
IN CANADA

SECOND EDITION

Kent Roach

Release No. 2, November 2024

Dear Subscriber:

This has been another active year with respect to constitutional remedies.

Perhaps the most important development this year has been an explicit recognition by the British Columbia Court of Appeal in *Thomas v. Rio Tinto Alcan Inc.*, 2024 BCCA 62, 2024 CarswellBC 457, 85 B.C.L.R. (6th) 1 (B.C. C.A.) and implicit recognition by the Supreme Court of Canada in *Ontario (Attorney General) v. Restoule*, 2024 SCC 27, 2024 CarswellOnt 11020, 2024 CarswellOnt 11021 (S.C.C.) of the declaration plus, a remedy long advocated for in this text. A declaration plus is a valuable addition to remedies and can be used in cases

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where a bare declaration is not sufficient and courts are prepared to retain jurisdiction but without ordering an enforceable and detailed mandatory remedy. The Restoule remedy is innovative and creative and provides a time limited opportunity for a negotiated solution without surrendering the courts ultimate obligation to enforce s. 35 rights.

In *Shot Both Sides v. Canada*, 2024 SCC 12, 2024 CarswellNat 1083, 490 D.L.R. (4th) 585 (S.C.C.), the Court issued a strongly worded declaration about a violation of Treaty rights even while holding that damage claims were prohibited under provincial statute of limitations legislation.

I thank you for your support of this publication and welcome recommendations for improvement and cases to be added.

KR

August, 2024