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**CONSTITUTIONAL REMEDIES
IN CANADA**

SECOND EDITION

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Release No. 32, October 2018

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

The Manitoba Court of Appeal in *R. v. Ackman*, 2017 MBCA 78, has followed the Supreme Court in *Bilodeau v. Attorney General (Manitoba)*, [1986] 1 S.C.R. 449 in affirming a conviction under an unconstitutional law during the period of a suspended declaration of invalidity. This crystalizes the harms that can be caused during the period of a suspended declaration of invalidity. Courts in Ontario and British Columbia suspended declarations that indefinite administrative segregation in prison without effective review would violate the Charter, but without demonstrating that

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they would prepared to take steps to prevent irreparable harm during the interim.

In *Ktunaxa Nation v. British Columbia (Forests, Lands and Natural Resource Operations)*, [2017] 2 S.C.R. 386 at para. 84, and *First Nation of Nacho Nyak Dun v. Yukon*, [2017] 2 S.C.R. 576 at para. 58, the Supreme Court indicated that ancillary remedies and declarations are not appropriate in judicial review proceedings to quash government action for lack of consultation. This continues to limit the value of duty to consult litigation and suggests that separate litigation will often be necessary to establish Aboriginal rights. This was again confirmed in recent litigation finding a violation of the duty to consult in relation to the Trans Mountain pipeline

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