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978-1-107-07651-8 - Parliamentary Bills of Rights: The Experiences of  
New Zealand and the United Kingdom

Janet L. Hiebert and James B. Kelly

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## PARLIAMENTARY BILLS OF RIGHTS

Both New Zealand and the United Kingdom challenge assumptions about how a bill of rights functions. Their parliamentary bills of rights constrain judicial review and also look to parliament to play a rights-protecting role. This arises from the requirement to inform parliament if legislative bills are not compatible with rights. But are these bills of rights operating in this proactive manner? Are governments encountering significantly stronger pressures to ensure legislation complies with rights? Are these bills of rights resulting in more reasoned deliberations in parliament about the justification of legislation from a rights perspective? Through extensive interviews with public officials and analysis of parliamentary debates where questions of compliance with rights arise (prisoner voting, parole and sentencing policy, counter-terrorism legislation and same sex marriage), this book argues that a serious gap exists between the promise of these bills of rights and the institutional variables that influence how these parliaments function.

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JAMES B. KELLY is a professor in the Department of Political Science at Concordia University, Montréal.

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University Printing House, Cambridge CB2 8BS, United Kingdom

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[www.cambridge.org](http://www.cambridge.org)

Information on this title: [www.cambridge.org/9781107076518](http://www.cambridge.org/9781107076518)

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First published 2015

*A catalogue record for this publication is available from the British Library*

*Library of Congress Cataloguing in Publication Data*

Hiebert, Janet, 1960- author.

Parliamentary bills of rights : the experiences of New Zealand and the United Kingdom  
 experiences / Janet L. Hiebert, James B. Kelly.

pages cm – (Cambridge studies in constitutional law)

Includes bibliographical references and index.

ISBN 978-1-107-07651-8 (Hardback)

1. Civil rights–New Zealand. 2. Legislation–New Zealand. 3. Civil rights–Great Britain.
4. Legislation–Great Britain. I. Kelly, James B. (James Bernard), 1968- author. II. Title.

K3240.H54 2014

342.4108'5–dc23 2014027892

ISBN 978-1-107-07651-8 Hardback

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For Wayne  
For Michèle, Fiona and Liam

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## ACKNOWLEDGEMENTS

The idea to collaborate on this book occurred during a conversation one summer afternoon in 2003 in Parma, Italy, where we were both participating in a meeting of Research Committee 9 (Comparative Judicial Studies) of the International Political Science Association. After comparing notes on our independent research projects on whether, how and why the Canadian Charter of Rights and Freedoms has influenced legislative decision-making, we discovered we were both curious about what changes might arise elsewhere. More specifically, our curiosity arose from recent political reforms in New Zealand and the United Kingdom – two other Westminster-based systems that have chosen to marry a statutory bill of rights with a new statutory requirement to alert parliament when government is proceeding with a legislative bill despite being advised that it is inconsistent with protected rights. We had originally included Australia in this research project, as the first Rudd government began a national consultation on an Australian bill of rights. However, the Rudd government failed to act on the recommendations of the Brennan Commission, and thus our study focuses on the bills of rights in New Zealand and the United Kingdom.

Family and administrative responsibilities delayed the anticipated completion date of this project and, as one colleague has gently chided, the book has had a substantial gestation period. Fortunately, we have benefited from the extended opportunity to observe and reflect on how the New Zealand Bill of Rights Act and the United Kingdom's Human Rights Act have evolved, and the significance of changes that have occurred in how bureaucratic, executive and parliamentary actors engage in their new responsibilities to confront how legislative initiatives implicate rights.

A crucial element of understanding the significance of political reforms is discussion of how new statutory requirements are interpreted and how they influence the perspectives and responsibilities of those who help shape and advise on legislative policy developments. We are extremely

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ACKNOWLEDGEMENTS

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grateful to the more than 70 public and political officials who met with us for interviews in Wellington and London. We also wish to express our sincere gratitude for the contributions of our dedicated research assistants, who helped with the time-intensive task of understanding how rights considerations influence the life of a legislative bill, and want to acknowledge our gratitude to Jeremy Clarke, Matthew Hodgetts, Matt Kersten, Emmett Macfarlane, Nazeer Patel, Kate Puddister, Arjun Tremblay, Nickolas Tzoulas and Tom Wilson.

We have both presented papers drawn from the research for this book at conferences and in other scholarly venues, and have also discussed the innovative and ambitious idea of a parliamentary-centred bill of rights in our classrooms. We appreciate and have benefited from the critical observations and questions of colleagues, research assistants and students. In particular, we would like to acknowledge and thank Andrew Byrnes, Tom Campbell, Fergal Davis, Fiona de Londras, Julie Debeljak, Rosalind Dixon, David Erdos, Keith Ewing, Stephen Gardbaum, Conor Gearty, Andrew Geddis, Claudia Geiringer, Marco Goldoni, Aileen Kavanagh, Francesca Klug, Christopher Manfredi, Christopher McCorkindale, Danny Nicol, Paul Rishworth, Francesca Scala, Richard Schultz, Alex Schwartz, Adrienne Stone, Adam Tomkins, Mark Tushnet and George Williams. We are also grateful to the opportunity to visit and share ideas with members and other visitors at the Centre for Comparative Constitutional Studies at University of Melbourne, the Gilbert and Tobin Centre of Public Law at the University of New South Wales, the New Zealand Centre for Public Law at Victoria University of Wellington and the New Zealand Centre for Human Rights Law Policy and Practice at University of Auckland.

We would also like to thank the three anonymous reviewers for their advice and constructive criticisms.

In addition, we are extremely proud and pleased to have worked with Cambridge University Press and want to thank Finola O'Sullivan, Rebecca Roberts, Richard Woodham, Bindu Vinod, and Kristy Barker.

We would like to acknowledge the financial support we received from the Social Sciences and Humanities Research Council.

As always, our greatest support came from our spouses. Thank you, Wayne and Michèle, for your unwavering support for us throughout this long project.

Janet L. Hiebert acknowledges the incorporation of arguments and ideas in this book from the following prior publications:

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## ACKNOWLEDGEMENTS

Janet L. Hiebert, 'Governing Under the Human Rights Act. The Limitations of Wishful Thinking', (2012) *Public Law*, 29–46.

Janet L. Hiebert, 'The HRA: Ambiguity about Parliamentary Sovereignty', (2013) 14 *German Law Journal*, 2253–74.

James B. Kelly acknowledges the incorporation of arguments and ideas in this book from the following prior publication:

James B. Kelly, 'Judicial and Political Review as Limited Insurance: The Functioning of the New Zealand Bill of Rights Act in "Hard" Cases', (2011) 49 *Commonwealth & Comparative Politics* 3, 295–317.

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## ABBREVIATIONS

BNA	British North America Act 1867
BORA	Bill of Rights Act vetting
BZP	Benzylpiperazine
CMP	Closed material proceedings
DCA	Department of Constitutional Affairs
EACD	Expert Advisory Committee on Drugs
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
FPP	First-past-the-post electoral system
HRA	United Kingdom's Human Rights Act 1990
ICCPR	International Covenant on Civil and Political Rights
JCHR	Joint Committee on Human Rights
MFAT	Ministry of Foreign Affairs and Trade
MMP	Mixed member proportional electoral system
ODPM	Office of Deputy Prime Minister
NZBORA	New Zealand Bill of Rights Act 1990
PBL	Parliament Business and Legislation Committee Secretariat
RIS	Regulatory impact statement
SCNZ	Supreme Court of New Zealand
SMP	Single member plurality electoral system
SO	Standing orders of the House of Representatives
SST	Sensible Sentencing Trust
TFMPP	trifluoromethylphenylpiperazine
TPIM	Terrorism Prevention and Investigation Measures

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*Willock v. Muckle* [1951] 2 KB 844  
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Citizens Initiated Referenda Act 1993

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Electoral Amendment Act 2002

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