

BILLS OF RIGHTS IN THE COMMON LAW

Scholars have addressed at length the ‘what’ of judicial review under a bill of rights – scrutinizing legislation and striking it down – but neglected the ‘how’. Adopting an internal legal perspective, Robert Leckey addresses that gap by reporting on the processes and activities of judges of the highest courts of Canada, South Africa, and the United Kingdom as they apply their relatively new bills of rights. Rejecting the tendency to view rights adjudication as novel and unique, he connects it to the tradition of judging and judicial review in the Commonwealth and identifies respects in which judges’ activities in rights cases genuinely are novel – and problematic. Highlighting inventiveness in rights adjudication, including creative remedies and guidance to legislative drafters, he challenges classifications of review as strong or weak. Disputing claims that it is modest and dialogic, he also argues that remedial discretion denies justice to individuals and undermines constitutional supremacy.

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Frontmatter
[More information](#)

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Robert Leckey
Frontmatter
[More information](#)

CONTENTS

Acknowledgements page x
Table of cases xiv

Introduction 1

1 Against bill-of-rights exceptionalism 7

2 The common law, judging, and three bills of rights 34

3 Judicial review of legislation before bills of rights 52

4 Bills of rights and other means of accessing judgment 68

5 Putting the strike-down in its place 93

6 Remedies from text to practice 123

7 Improving the system and engaging the legislature 151

8 Rethinking remedies and constitutional supremacy 170

Conclusion 191

Bibliography 199
Index 221

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xi

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Robert Leckey
Frontmatter
[More information](#)

ACKNOWLEDGEMENTS

xiii

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TABLE OF CASES

Canada

- Adler v. Ontario* [1996] 3 SCR 609
Alberta (Information and Privacy Commissioner) v. United Food and Commercial Workers, Local 401 2013 SCC 62, [2013] 3 SCR 733
Bell ExpressVu Limited Partnership v. Rex 2002 SCC 42, [2002] 2 SCR 559
Borowski v. Canada (Attorney General) (No 2) [1989] 1 SCR 342
Canada (Attorney General) v. Bedford 2013 SCC 72, [2013] 3 SCR 1101
Canada (Attorney General) v. Downtown Eastside Sex Workers United Against Violence Society 2012 SCC 45, [2012] 2 SCR 524
Canada (Attorney General) v. Hislop 2007 SCC 10, [2007] 1 SCR 429
Canadian Broadcasting Corp v. Canada (Attorney General) 2011 SCC 2, [2011] 1 SCR 19
Canadian Council of Churches v. Canada (Minister of Employment and Immigration) [1992] 1 SCR 236
Canadian Egg Marketing Agency v. Richardson [1998] 3 SCR 157
Canadian Foundation for Children, Youth and the Law v. Canada (Attorney General) 2004 SCC 4, [2004] 1 SCR 76
Carter v. Canada (Attorney General) 2012 BCSC 886, 261 CRR (2d) 1
Charkaoui v. Canada (Citizenship and Immigration) 2007 SCC 9, [2007] 1 SCR 350
Corbiere v. Canada (Minister of Indian and Northern Affairs) [1999] 2 SCR 203
Doucet-Boudreau v. Nova Scotia (Minister of Education) 2003 SCC 62, [2003] 3 SCR 3
Dunmore v. Ontario (Attorney General) 2001 SCC 94, [2001] 3 SCR 1016
Egan v. Canada [1995] 2 SCR 513
Figuroa v. Canada (Attorney General) 2003 SCC 37, [2003] 1 SCR 912
Finlay v. Canada (Minister of Finance) [1986] 2 SCR 607
Ford v. Quebec (Attorney General) [1988] 2 SCR 712
Forget v. Quebec (Attorney General) [1988] 2 SCR 90
Halpern v. Canada (Attorney General) (2003), 65 OR (3d) 161 (CA)
Hunter v. Southam Inc [1984] 2 SCR 145
Hy and Zel's Inc v. Ontario (Attorney General); Paul Magder Furs Ltd v. Ontario (Attorney General) [1993] 3 SCR 675
Kingstreet Investments Ltd v. New Brunswick (Finance) 2007 SCC 1, [2007] 1 SCR 3

TABLE OF CASES

xv

- Lavallee, Rackel & Heintz v. Canada (Attorney General)*; *White, Ottenheimer & Baker v. Canada (Attorney General)*; *R v. Fink* 2002 SCC 61, [2002] 3 SCR 209
Lavoie v. Canada 2002 SCC 23, [2002] 1 SCR 769
Law Society of Upper Canada v. Skapinker [1984] 1 SCR 357
M v. H [1999] 2 SCR 3
Mackin v. New Brunswick (Minister of Finance); *Rice v. New Brunswick* 2002 SCC 13, [2002] 1 SCR 405
Manitoba Metis Federation Inc v. Canada (Attorney General) 2013 SCC 14, [2013] 1 SCR 623
Maranda v. Richer 2003 SCC 67, [2003] 3 SCR 193
McKinney v. University of Guelph [1990] 3 SCR 229
Minister of Justice (Can) v. Borowski (No 1) [1981] 2 SCR 575
Miron v. Trudel [1995] 2 SCR 418
Montréal (City) v. 2952-1366 Québec Inc 2005 SCC 62, [2005] 3 SCR 141
Multani v. Commission scolaire Marguerite-Bourgeoys 2006 SCC 6, [2006] 1 SCR 256
New Brunswick (Minister of Health and Community Services) v. G (J) [1999] 3 SCR 46
Nova Scotia (Attorney General) v. Walsh 2002 SCC 83, [2002] 4 SCR 325
Nova Scotia Board of Censors v. McNeil (1975), [1976] 2 SCR 265
Nova Scotia (Workers' Compensation Board) v. Martin; *Nova Scotia (Workers' Compensation Board) v. Laseur* 2003 SCC 54, [2003] 2 SCR 504
Ontario (Attorney General) v. Fraser 2011 SCC 20, [2011] 2 SCR 3
Osborne v. Canada (Treasury Board) [1991] 2 SCR 69
Shafron v. KRG Insurance Brokers (Western) Inc 2009 SCC 6, [2009] 1 SCR 157
R v. Bain [1992] 1 SCR 91
R v. Big M Drug Mart Ltd [1985] 1 SCR 295
R v. Butler [1992] 1 SCR 452
R v. Demers 2004 SCC 46, [2004] 2 SCR 489
R v. Ferguson 2008 SCC 6, [2008] 1 SCR 96
R v. Finta [1994] 1 SCR 701
R v. Grant [1993] 3 SCR 223
R v. Heywood [1994] 3 SCR 761
R v. Lucas [1998] 1 SCR 439
R v. Moazami 2014 BCSC 261, 301 CRR (2d) 334
R v. Morgentaler (No 2) [1988] 1 SCR 30
R v. Oakes [1986] 1 SCR 103
R v. Sharpe 2001 SCC 2, [2001] 1 SCR 45
R v. Sparrow [1990] 1 SCR 1075
R v. Swain [1991] 1 SCR 933
Reference re Manitoba Language Rights [1992] 1 SCR 212
Reference re Motor Vehicle Act (British Columbia) S 94(2) [1985] 2 SCR 486
Reference re Remuneration of Judges of the Provincial Court (PEI) [1997] 3 SCR 3
Reference re Remuneration of Judges of the Provincial Court (PEI) [1998] 1 SCR 3
Re Manitoba Language Rights [1985] 1 SCR 721

RJR-MacDonald Inc v. Canada (Attorney General) [1995] 3 SCR 199
RWDSU v. Dolphin Delivery Ltd [1986] 2 SCR 573
Schachter v. Canada [1992] 2 SCR 679
Thorson v. Attorney General of Canada [1975] 1 SCR 138
Tremblay v. Daigle [1989] 2 SCR 530
Tsilhqot'in Nation v. British Columbia 2014 SCC 44, [2014] 2 SCR 256
Vriend v. Alberta [1998] 1 SCR 493

Other

A v. Governor of Arbour Hill Prison [2006] IESC 45, [2006] 4 IR 88
Brown v. Board of Education of Topeka 349 US 294 (1955)
Murphy v. Attorney General [1982] IR 241 (SC)

South Africa

AllPay Consolidated Investment Holdings (Pty) Ltd and Others v. Chief Executive Officer of the South African Social Security Agency and Others [2013] ZACC 42, 2014 (1) SA 604 (CC)
Bhe and Others v. Khayelitsha Magistrate and Others [2004] ZACC 17, 2005 (1) SA 580 (CC)
Brümmer v. Minister for Social Development and Others [2009] ZACC 21, 2009 (6) SA 323 (CC)
C and Others v. Department of Health and Social Development, Gauteng and Others [2012] ZACC 1, 2012 (2) SA 208 (CC)
Case and Another v. Minister of Safety and Security and Others; Curtis v. Minister of Safety and Security and Others [1996] ZACC 7, 1996 (3) SA 617 (CC)
Coetzee v. Government of the Republic of South Africa, Matiso and Others v. Commanding Officer Port Elizabeth Prison and Others [1995] ZACC 7, 1995 (4) SA 631 (CC)
Daniels v. Campbell and Others [2004] ZACC 14, 2004 (5) SA 331 (CC)
Dawood and Another; Shalabi and Another; Thomas and Another v. Minister of Home Affairs and Others [2000] ZACC 8, 2000 (3) SA 936 (CC)
Ex Parte Minister of Safety and Security and Others: In Re S v. Walters and Another [2002] ZACC 6, 2002 (4) SA 613 (CC)
Ferreira v. Levin NO and Others; Vryenjoek and Others v. Powell NO and Others [1995] ZACC 13, 1996 (1) SA 984 (CC)
First National Bank (FNB) of SA Ltd t/a Wesbank v. Commissioner, South African Revenue Service; First National Bank of SA Ltd t/a Wesbank v. Minister of Finance [2002] ZACC 5, 2002 (4) SA 768 (CC)
First National Bank of South Africa Ltd v. Land and Agricultural Bank of South Africa and Others; Sheard v. Land and Agricultural Bank of South Africa and Another [2000] ZACC 9, 2000 (3) SA 626 (CC)

TABLE OF CASES

xvii

- Fraser v. Children's Court Pretoria North and Others* [1997] ZACC 1, 1997 (2) SA 218 (CC)
- Independent Electoral Commission v. Langeberg Municipality* [2001] ZACC 23, 2001 (3) SA 925 (CC)
- Investigating Directorate: Serious Economic Offences and Others v. Hyundai Motor Distributors (Pty) Ltd and Others; In re: Hyundai Motor Distributors (Pty) Ltd and Others v. Smit NO and Others* [2000] ZACC 12, 2001 (1) SA 545 (CC)
- J and Another v. Director General, Department of Home Affairs and Others* [2003] ZACC 3, 2003 (5) SA 621 (CC)
- Jaftha v. Schoeman and Others, Van Rooyen v. Stoltz and Others* [2004] ZACC 25, 2005 (2) SA 140 (CC)
- Janse van Rensburg and Another v. Minister of Trade and Industry and Another* [2000] ZACC 18, 2001 (1) SA 29 (CC)
- J T Publishing (Pty) Ltd & Another v. Minister of Safety and Security & Others* [1996] ZACC 23, 1997 (3) SA 514 (CC)
- Lawyers for Human Rights v. Minister of Home Affairs* [2004] ZACC 12, 2004 (4) SA 125 (CC)
- Minister for Justice and Constitutional Development v. Nyathi and Others* [2009] ZACC 29, 2010 (4) SA 567 (CC)
- Minister of Communications v. Ngewu and Others (No 2)* [2013] ZACC 44, 2014 (3) BCLR 364 (CC)
- Minister of Home Affairs and Another v. Fourie and Another* [2005] ZACC 19, 2006 (1) SA 524 (CC)
- Minister of Justice v. Ntuli (No 2)* [1997] ZACC 7, 1997 (3) SA 772 (CC)
- Mistry v. Interim National Medical and Dental Council and Others* [1998] ZACC 10, 1998 (4) SA 1127 (CC)
- Moise v. Greater Germiston Transitional Local Council* [2001] ZACC 21, 2001 (4) SA 491 (CC)
- National Coalition for Gay and Lesbian Equality and Others v. Minister of Home Affairs and Others* [1999] ZACC 17, 2000 (2) SA 1 (CC)
- National Coalition for Gay and Lesbian Equality and Another v. Minister of Justice and Others* [1998] ZACC 15, 1999 (1) SA 6 (CC)
- National Credit Regulator v. Opperman and Others* [2012] ZACC 29, 2013 (2) SA 1 (CC)
- Ngewu and Another v. Post Office Retirement Fund and Others (No 1)* [2013] ZACC 4, 2013 (4) BCLR 421 (CC)
- Phillips and Another v. Director of Public Prosecutions and Others* [2003] ZACC 1, 2003 (3) SA 345 (CC)
- Port Elizabeth Municipality v. Prut NO & Another* 1996 (4) SA 318 (E)
- President of the Ordinary Court Martial NO v. Freedom of Expression Institute* [1999] ZACC 10, 1999 (4) SA 682 (CC)
- Print Media South Africa and Another v. Minister of Home Affairs and Another* [2012] ZACC 22, 2012 (6) SA 443 (CC)

- S v. Bhulwana, S v. Gwadiso* [1995] ZACC 11, 1996 (1) SA 388 (CC)
S v. Jordan and Others (Sex Workers Education and Advocacy Task Force and Others as Amici Curiae) [2002] ZACC 22, 2002 (6) SA 642 (CC)
S v. Makwanyane and Another [1995] ZACC 3, 1995 (3) SA 391 (CC)
S v. Manamela and Another (Director-General of Justice Intervening) [2000] ZACC 5, 2000 (3) SA 1 (CC)
S v. Ntuli (No 1) [1995] ZACC 14, 1996 (1) SA 1207 (CC)
S v. Ntuli (No 2) [1997] ZACC 7, 1997 (3) SA 772 (CC)
S v. Singo [2002] ZACC 10, 2002 (4) SA 858 (CC)
S v. Steyn [2000] ZACC 24, 2001 (1) SA 1146 (CC)
S v. Zuma and Others [1995] ZACC 1, 1995 (2) SA 642 (CC)
S and Others v. Van Rooyen and Others (General Council of the Bar of South Africa Intervening) [2002] ZACC 8, 2002 (5) SA 246 (CC)
Sibiya and Others v. The Director of Public Prosecutions, Johannesburg, and Others [2005] ZACC 6, 2005 (5) SA 315 (CC)
Sibiya and Others v. Director of Public Prosecutions [2006] ZACC 22, 2006 (2) BCLR 293 (CC)
South African Association of Personal Injury Lawyers v. Heath and Others [2000] ZACC 22, 2001 (1) SA 883 (CC)
South African Liquor Traders Association and Others v. Chairperson Gauteng Liquor Board and Others [2006] ZACC 7, 2009 (1) SA 565 (CC)
South African National Defence Union v. Minister of Defence and Another [1999] ZACC 7, 1999 (4) SA 469 (CC)
Van der Merwe v. Road Accident Fund and Another [2006] ZACC 4, 2006 (4) SA 230 (CC)
Volks NO v. Robinson and Others [2005] ZACC 2, [2005] 5 B Const LR 446 (CC)
Wood v. Ondangwa Tribal Authority 1975 (2) SA 294 (A)
Zondi v. MEC for Traditional and Local Government Affairs [2004] ZACC 19, 2005 (3) SA 589 (CC)

United Kingdom

- A and others v. Secretary of State for the Home Department; X and another v. Secretary of State for the Home Department* [2004] UKHL 56, [2005] 2 AC 68
Anderson and others v. Scottish Ministers and another [2001] UKPC D5, [2003] 2 AC 602
Anisminic Ltd v. Foreign Compensation Commission [1969] 2 AC 147 (HL)
Bellinger v. Bellinger [2003] UKHL 21, [2003] 2 AC 467
Boddington v. British Transport Police [1998] UKHL 13, [1999] 2 AC 143
Director of Public Prosecutions v. Hutchinson; Director of Public Prosecutions v. Smith [1990] 2 AC 783 (HL)
Fitzpatrick v. Sterling Housing Association Ltd (1999), [2001] 1 AC 27 (HL)

TABLE OF CASES

xix

- Francis v. Secretary of State for the Home Department* [2006] EWHC 3021 (QB)
Ghaidan v. Godin-Mendoza [2004] UKHL 30, [2004] 2 AC 557
In re S (Minors) (Care Order: Implementation of Care Plan); In re W (Minors) (Care Order: Adequacy of Care Plan) [2002] UKHL 10, [2002] 2 AC 291
In re Spectrum Plus Ltd (in liquidation) [2005] UKHL 41, [2005] 2 AC 680
Nordenfelt v. Maxim Nordenfelt Guns and Ammunition Co Ltd [1894] AC 535 (HL)
R v. A (No 2) [2001] UKHL 25, [2002] 1 AC 45
R v. Central Television Plc [1994] 3 WLR 20 (CA)
R v. Inland Revenue Commissioners Ex p. National Federation of Self-Employed and Small Businesses Ltd [1982] AC 617 (HL)
R v. Lambert [2001] UKHL 37, [2002] 2 AC 545
R (T) v. Secretary of State for the Home Department [2014] UKSC 35 [2015] 1 AC 49 (i.e. parallel citation is [2015] 1 AC 49)
R v. Secretary of State for the Home Department Ex p Salem [1999] 1 AC 450 (HL)
R v. Secretary of State for the Home Department, Ex Parte Simms; R v. Secretary of State for the Home Department, Ex Parte O'Brien [1999] UKHL 33, [2000] 2 AC 115
R v. Waya [2012] UKSC 51, [2013] 1 AC 294
R (Baiai and another) v. Secretary of State for the Home Department (Nos 1 and 2) (Joint Council for the Welfare of Immigrants and another intervening) [2008] UKHL 53, [2009] 1 AC 287
R (Chester) v. Secretary of State for Justice (Respondent) [2013] UKSC 63, [2014] 1 AC 271
R (F (A Child)) v. Secretary of State for the Home Department [2010] UKSC 17, [2011] 1 AC 331
R (Hammond) v. Secretary of State for the Home Department [2005] UKHL 69, [2006] 1 AC 603
R (Hirst) v. Secretary of State for Home Department [2002] EWHC Admin 1592
R (Medway Council) v. Secretary of State for Transport [2003] JPL 583
R (Nicklinson and another) v. Ministry of Justice [2014] UKSC 38, [2014] 3 WLR 200
R (O) v. Crown Court at Harrow [2006] UKHL 42, [2007] 1 AC 249
R (Rusbridger and another) v. Attorney General [2003] UKHL 38, [2004] 1 AC 357
R (Trailer & Marina (Leven) Ltd) v. Secretary of State for Environment [2004] EWCA Civ 1580, [2005] 1 WLR 1267
R (Westminster City Council) v. Mayor of London [2003] BGLR 611
R (Wright and others) v. Secretary of State for Health and another [2009] UKHL 3, [2009] 1 AC 739
Salvesen v. Riddell and another, Lord Advocate intervening (Scotland) [2013] UKSC 22
Secretary of State for the Home Department v. AF (No 3); Same v. AN; Same v. AE [2009] UKHL 28, [2010] 2 AC 269
Sheldrake v. Director of Public Prosecutions [2004] UKHL 43, [2005] 1 AC 264