

The NZ Bill of Rights in 2019

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The NZ Bill of Rights in 2019:

- *Department of Corrections v Chisnall* [2019] NZHC 3126
- The Bill of Rights Oscars 2019
- Watch this space...

Department of Corrections v Chisnall [2019]

NZHC 3126:

1

- What regulatory interventions are available to protect the public from those offenders who (we think) will remain a high risk to public safety after they've served a prison sentence suitable to punish them for their crime?
 - One option: indeterminate sentence (life imprisonment or preventive detention)
 - Other option: impose conditions at end of sentence

Department of Corrections v Chisnall [2019]

NZHC 3126:

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- What regulatory interventions are available to protect the public from those offenders who (we think) will remain a high risk to public safety after they've served a prison sentence suitable to punish them for their crime?
 - One option: indeterminate sentence (life imprisonment or preventive detention)
 - Other option: impose conditions at end of sentence
 - Extended Supervision Orders (ESOs)
 - Public Protection Orders (PPOs)
 - Mr Chisnall applies for a declaration of inconsistency in respect of the ESO and PPO regimes

Department of Corrections v Chisnall [2019]

NZHC 3126:

2

- ESO regime – NZ Bill of Rights analysis
 - Section 26(2): No one who has been finally ... convicted of ... an offence shall be ... punished for it again
 - Is an ESO a “punishment” or “penalty”? YES
 - Is it justified under s 5?
 - Offenders who commit their qualifying offence after the ESO regime came into force: YES. Justified
 - Others: NO. Not justified; and also breach of ...
 - Section 25(g): ... the right if convicted of an offence in respect of which the penalty has been varied between ... commission ... and sentencing, to the benefit of the lesser penalty

Department of Corrections v Chisnall [2019]

NZHC 3126:

3

- PPO regime – NZ Bill of Rights analysis
 - A PPO is not a “presumptively” a penalty or punishment (so ss 26(2) and 25(g) are not “presumptively” limited)
 - But a PPO may operate as a penalty in particular cases, especially in light of:
 - The conditionality of therapy
 - The location of one facility on prison grounds
 - The potential for detention in prison in some cases

Department of Corrections v Chisnall [2019]

NZHC 3126:

4

- Of interest:
 - Legal questions
 - What regulatory features enable the characterisation of a public protection regime as “civil”
 - In what circumstances, if ever, can limits on the relevant rights be justified?
 - What evidence is required to support a s 5 analysis?
 - Underlying policy (and human rights) challenge
 - *Miller v Carroll* (2017) UN Human Rights Committee
 - Are declarations of inconsistency to be routine?

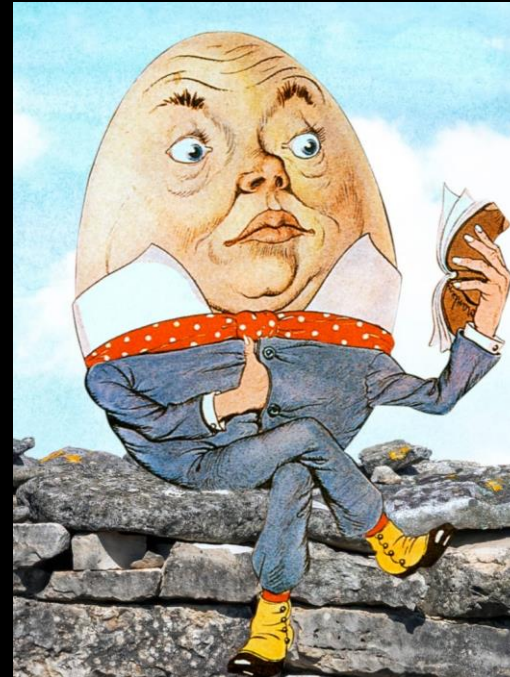


The Bill of Rights Oscars 2019

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The Humpty Dumpty golden brick for “it means just what I choose it to mean” ...



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The Humpty Dumpty golden brick for “it means just what I choose it to mean” ...

... Courtney J in *Re Gordon* [2019] NZHC 184

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The Treebeard medal for “Don’t be hasty ...” :



SMF434





**The Treebeard medal for
“Don’t be hasty ...”**

**... UN Human Rights
Committee in *Teitiotia v New
Zealand* (Jan 2020)**

ISSUE 434

The Castro Cup for “Close but no Cigar” ...



IMF439





**The Castro Cup for “Close but
no Cigar” ...**

***... Low Volume Vehicle
Technical Association v Brett
[2019] NZCA 67***

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Simon and Garfunkel Sounds of Silence Award...



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Simon and Garfunkel Sounds of Silence Award...



Watch this space...

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- *Minister of Justice v Kim* (extradition)
- *Department of Corrections v Smith* (journalist' access to prisoner)
- *R v Fitzgerald* (three strikes)
- Report-free term of Parliament (for Government Bills)?