



[ALLEGRA CRAWFORD, ASSISTANT EDITOR](#)

Research Assistant, Victoria University of Wellington School of Law  
[allegra.crawford@vuw.ac.nz](mailto:allegra.crawford@vuw.ac.nz)

[LAURA LINCOLN, ASSISTANT EDITOR](#)

Research Assistant, Victoria University of Wellington School of Law  
[laura.lincoln@vuw.ac.nz](mailto:laura.lincoln@vuw.ac.nz)

[JOHN PREBBLE, EDITOR](#)

Professor of Law, Victoria University of Wellington - Faculty of Law, Adjunct  
Senior Research Fellow, Monash University, Gastprofessor, Institut für  
Österreichisches und Internationales Steuerrecht, Wirtschaftsuniversität Wien  
[john.prebble@vuw.ac.nz](mailto:john.prebble@vuw.ac.nz)

[Browse ALL abstracts for this journal](#)

Links: [Subscribe ~ Unsubscribe](#) | [Distribution](#) | [Network Directors](#) | [Submit ~ Revise Your Papers](#)

## Announcements

The New Zealand Bill of Rights Act 1990: Papers by Professor Claudia Geiringer, Chair in Public Law, Victoria University of Wellington Faculty of Law.

## Table of Contents

[The Dead Hand of the Bill of Rights? Is the New Zealand Bill of Rights Act 1990 a Substantive Legal Constraint on Parliament's Power to Legislate?](#)

[Claudia Geiringer](#), Victoria University of Wellington School of Law

[The Principle of Legality and the Bill of Rights Act: A Critical Examination of R v Hansen](#)

[Claudia Geiringer](#), Victoria University of Wellington School of Law

[Moving from Self-Justification to Demonstrable Justification – The Bill of Rights and the Broadcasting Standards Authority](#)

[Claudia Geiringer](#), Victoria University of Wellington School of Law

[Steven Price](#), Victoria University of Wellington School of Law

[On a Road to Nowhere: Implied Declarations of Inconsistency and the New Zealand Bill of Rights Act](#)

[Claudia Geiringer](#), Victoria University of Wellington School of Law

[Sources of Resistance to Proportionality Review of Administrative Power Under the New Zealand Bill of Rights Act](#)

[Claudia Geiringer](#), Victoria University of Wellington School of Law  
[^top](#)

---

**LEGAL SCHOLARSHIP NETWORK: LEGAL STUDIES RESEARCH PAPER SERIES**

**VICTORIA UNIVERSITY OF WELLINGTON LEGAL RESEARCH PAPERS**

["The Dead Hand of the Bill of Rights? Is the New Zealand Bill of Rights Act 1990 a Substantive Legal Constraint on Parliament's Power to Legislate?"](#) 

(2007) 11 Otago Law Review 389

[Victoria University of Wellington Legal Research Paper No. 102/2014](#)

[CLAUDIA GEIRINGER](#), Victoria University of Wellington School of Law  
Email: [claudia.geiringer@vuw.ac.nz](mailto:claudia.geiringer@vuw.ac.nz)

This article confronts an untested assumption found in the two leading textbooks on the New Zealand Bill of Rights Act 1990: that Parliament is bound in law to legislate consistently with the NZ Bill of Rights even though there is no judicial remedy if Parliament fails in this obligation. The article picks apart this assumption and lays bare its implications (including its constitutional implications for the doctrine of parliamentary sovereignty and its practical implications for the obligations of political actors). Ultimately the article concludes that the assumption cannot be sustained, and that the NZ Bill of Rights is not a substantive constraint on Parliament's power to legislate.

["The Principle of Legality and the Bill of Rights Act: A Critical Examination of R v Hansen"](#) 

First published in the New Zealand Journal of Public and International Law, (2008) 6 NZJPI 59.

Also published in Claudia Geiringer and Dean Knight (eds) Seeing the World Whole: Essays in Honour of Sir Kenneth Keith (Victoria University Press, Wellington, 2008) 59.

[Victoria University of Wellington Legal Research Paper No. 103/2014](#)

[CLAUDIA GEIRINGER](#), Victoria University of Wellington School of Law  
Email: [claudia.geiringer@vuw.ac.nz](mailto:claudia.geiringer@vuw.ac.nz)

This article uses the Supreme Court decision in R v Hansen [2007] 3 NZLR 1 to explore the relationship between rights-mandated interpretation under section 6 of the New Zealand Bill of Rights Act 1990 and value-oriented interpretation at common law. It suggests that the New Zealand case law, including Hansen, evinces a particular conception of that relationship — a conception that can be contrasted with the more robust vision of the interpretive effect of section 3 of the Human Rights Act 1998 (UK) that is found in some House of Lords authority. The article then suggests that some aspects of the five-step methodology set out by the Supreme Court in Hansen for interpreting legislation in light of section 6 are inconsistent with the Court's underlying vision of the role of section 6 and of its relationship with common law interpretive techniques. The five-step methodology may, therefore, need to be revisited.

["Moving from Self-Justification to Demonstrable Justification – The Bill of Rights and the Broadcasting Standards Authority"](#) 

First published in J Finn and S Todd (ed) *Law, Liberty, Legislation: Essays in Honour of John Burrows QC* (LexisNexis, 2008). The authors are grateful to the publishers for permission to publish it on SSRN.

[Victoria University of Wellington Legal Research Paper No. 104/2014](#)

[CLAUDIA GEIRINGER](#), Victoria University of Wellington School of Law

Email: [claudia.geiringer@vuw.ac.nz](mailto:claudia.geiringer@vuw.ac.nz)

[STEVEN PRICE](#), Victoria University of Wellington School of Law

This paper explores the way that the New Zealand Bill of Rights Act 1990 impacts, or ought to impact, on the work of New Zealand's Broadcasting Standards Authority – a statutory administrative tribunal charged with determining complaints against broadcasters in relation to breach of broadcasting standards. In doing so, it explores the problem more generally of how administrative decision-makers are to make effective use of the NZ Bill of Rights in their work. The article identifies significant obstacles (deriving from the case law) to the effective absorption of Bill of Rights methodology into administrative decision-making, and suggests ways in which the situation could be improved. Specifically in relation to the Broadcasting Standards Authority, it provides detailed practical guidance on how the Authority might change its practice in order to give more prominent consideration in its decisions to the right to freedom of expression found in section 14 of the NZ Bill of Rights Act, and the obligation not to place unjustified limits on rights (the proportionality standard) found in section 5.

["On a Road to Nowhere: Implied Declarations of Inconsistency and the New Zealand Bill of Rights Act" □](#)

First published in the *Victoria University of Wellington Law Review* (2009) 40 VUWLR.

[Victoria University of Wellington Legal Research Paper No. 105/2014](#)

[CLAUDIA GEIRINGER](#), Victoria University of Wellington School of Law

Email: [claudia.geiringer@vuw.ac.nz](mailto:claudia.geiringer@vuw.ac.nz)

This article explores case law touching on the suggestion that the New Zealand courts have an implied power to formally declare that legislation is inconsistent with the rights and freedoms contained in the New Zealand Bill of Rights Act 1990. The article concludes from this case law that the prospects for the development of a formal declaratory jurisdiction of this kind in New Zealand are, if anything, receding. Further, although the Supreme Court's decision in *R v Hansen* [2007] 3 NZLR 1 affirms the power of the New Zealand courts to informally "indicate" the existence of such legislative inconsistencies, early indications suggest that it is unlikely that this power will be exercised on a routine basis. In the absence of legislative reform, any "dialogue" over human rights between the New Zealand courts and the political branches of government is likely to continue to be far more sporadic and sotto voce than in those countries that have legislated for an express declaration of inconsistency power.

["Sources of Resistance to Proportionality Review of Administrative Power Under the New Zealand Bill of Rights Act" □](#)

First published in the *New Zealand Journal of Public and International Law*, (2013) 11 NZJPIIL 123.

[Victoria University of Wellington Legal Research Paper No. 106/2014](#)

[CLAUDIA GEIRINGER](#), Victoria University of Wellington School of Law

Email: [claudia.geiringer@vuw.ac.nz](mailto:claudia.geiringer@vuw.ac.nz)

Much scholarship on the New Zealand Bill of Rights Act 1990 assumes that the Act requires the

courts to engage in proportionality review of administrative action. This article seeks to establish two key propositions. The first is that the New Zealand case law does not bear out that assumption. The second is that there may be some distinctive features of the New Zealand context that help to explain why that is so. The author's purpose in drawing out these sources of resistance to proportionality review is not (necessarily) to validate the absence of proportionality review in the New Zealand case law. Rather, it is to shed light on the reasons for this resistance so that the desirability (or not) of proportionality review can be addressed within a distinctively New Zealand context.

[^top](#)

---

## **About this eJournal**

The Victoria University of Wellington was founded in 1899 to mark the Diamond Jubilee of the reign of Queen Victoria of Great Britain and of the then British Empire. Law teaching started in 1900. The Law Faculty was formally constituted in 1907. The first dean was Richard Maclaurin (1870-1920), an eminent scholar of both law and mathematics. Maclaurin went on to lead the Massachusetts Institute of Technology as President in its formative years. Early professors included Sir John Salmond (1862-1924), still one of the Common Law's leading scholars. His texts on jurisprudence and torts have gone through many editions and remain in print.

Alumni include Sir Robin Cooke (1926-2006), one of the leading judges of the British Commonwealth. As Baron Cooke of Thorndon, he sat on over 100 appeals to the Judicial Committee of the House of Lords, one of very few Commonwealth judges ever appointed to do so.

Since 1996 the [Law School](#) has occupied the Old Government Building in central Wellington. Designed by William Clayton and opened in 1876 to house New Zealand's then civil service, the building is a particularly fine example of Italianate neo-Renaissance style. Unusually among large colonial official buildings of the time it is constructed of wood, apart from chimneys and vaults.

The School is close to New Zealand's Parliament, courts, and the headquarters of government departments. Throughout Victoria's history, our law teachers have contributed actively to policy formation and to law reform. As a result, in addition to many scholarly articles and books, the Victoria SSRN pages include a number of official reports.

Victoria graduates approximately 230 LLB and LLB(Hons) students each year, and about 60 LLM students. The faculty has an increasing number of doctoral students. Ordinarily there are ten to twelve students engaged in PhD research.

Victoria University observes the British system of academic ranks. In North American terms, lecturers and senior lecturers are tenured doctrinal scholars, not legal writing teachers. A senior lecturer corresponds approximately to a North American associate professor in rank.

## **Submissions**

To submit your research to SSRN, sign in to the [SSRN User Headquarters](#), click the My Papers link on left menu and then the Start New Submission button at top of page.

## **Distribution Services**

If your organization is interested in increasing readership for its research by starting a Research Paper Series, or sponsoring a Subject Matter eJournal, please email: [RPS@SSRN.com](mailto:RPS@SSRN.com)

## **Distributed by**

Legal Scholarship Network (LSN), a division of Social Science Electronic Publishing (SSEP) and Social Science Research Network (SSRN)

## **Directors**

### LAW SCHOOL RESEARCH PAPERS - LEGAL STUDIES

BERNARD S. BLACK

Northwestern University - School of Law, Northwestern University - Kellogg School of Management, European Corporate Governance Institute (ECGI)

Email: [bblack@northwestern.edu](mailto:bblack@northwestern.edu)

RONALD J. GILSON

Stanford Law School, Columbia Law School, European Corporate Governance Institute (ECGI)

Email: [rgilson@leland.stanford.edu](mailto:rgilson@leland.stanford.edu)

Please contact us at the above addresses with your comments, questions or suggestions for LSN-LEG.

[^top](#)

Links: [Subscribe to Journal](#) | [Unsubscribe from Journal](#) | [Join Site Subscription](#) | [Financial Hardship](#)

## **Subscription Management**

You can change your journal subscriptions by logging into [SSRN User HQ](#). If you have questions or problems with this process, please email [Support@SSRN.com](mailto:Support@SSRN.com) or call 877-SSRNHelp (877.777.6435 or 585.442.8170). Outside of the United States, call 00+1+585+4428170.

## **Site Subscription Membership**

Many university departments and other institutions have purchased site subscriptions covering all of the eJournals in a particular network. If you want to subscribe to any of the SSRN eJournals, you may be able to do so without charge by first checking to see if your institution currently has a site subscription.

To do this please click on any of the following URLs. Instructions for joining the site are included on these pages.

- [Accounting Research Network](#)
- [Cognitive Science Network](#)
- [Corporate Governance Network](#)
- [Economics Research Network](#)
- [Entrepreneurship Research & Policy Network](#)
- [Financial Economics Network](#)
- [Health Economics Network](#)
- [Information Systems & eBusiness Network](#)
- [Legal Scholarship Network](#)

- [Management Research Network](#)
- [Political Science Network](#)
- [Social Insurance Research Network](#)
- [Classics Research Network](#)
- [English & American Literature Research Network](#)
- [Philosophy Research Network](#)

If your institution or department is not listed as a site, we would be happy to work with you to set one up. Please contact [site@ssrn.com](mailto:site@ssrn.com) for more information.

**Individual Membership** (for those not covered by a site subscription)

Join a site subscription, request a trial subscription, or purchase a subscription within the SSRN User Headquarters: <http://www.ssrn.com/subscribe>

### **Financial Hardship**

If you are undergoing financial hardship and believe you cannot pay for an eJournal, please send a detailed explanation to [Subscribe@SSRN.com](mailto:Subscribe@SSRN.com)  
[^top](#)

---

To ensure delivery of this eJournal, please add **LSN@publish.ssrn.com** (**Prebble/Lincoln/Crawford**) to your email contact list. If you are missing an issue or are having any problems with your subscription, please Email [Support@ssrn.com](mailto:Support@ssrn.com) or call 877-SSRNHELP (877.777.6435 or 585.442.8170).

### **FORWARDING & REDISTRIBUTION**

Subscriptions to the journal are for single users. You may forward a particular eJournal issue, or an excerpt from an issue, to an individual or individuals who might be interested in it. It is a violation of copyright to redistribute this eJournal on a recurring basis to another person or persons, without the permission of Social Science Electronic Publishing, Inc. For information about individual subscriptions and site subscriptions, please contact us at [Site@SSRN.com](mailto:Site@SSRN.com)  
[^top](#)

Copyright © 2014 Social Science Electronic Publishing, Inc. All Rights Reserved