

Contents

<i>Foreword by The Hon Chief Justice Robert S French AC</i>	vii
<i>Acknowledgments</i>	xv
<i>About the Author</i>	xvii
<i>Table of Cases</i>	xix
<i>Table of Statutes</i>	xxiii

1	Introduction	1
	I. Three questions	1
	II. The Commonwealth's approach	4
	III. How is multi-stage rights review different?	5
	IV. Why multi-stage rights review?	8
	V. Which normative trade-offs must be made?	11
	VI. Structure of the book	13
2	The advent of multi-stage rights review	15
	I. Introduction	15
	II. Canada	16
	A. Prelude to the Charter: the Bill of Rights 1960	16
	B. The Canadian Charter of Rights and Freedoms 1982	18
	III. New Zealand	21
	IV. The United Kingdom	24
	V. Australia	28
	VI. Conclusion	32
3	Framework for comparison	34
	I. Introduction	34
	II. Expounding the framework for comparison	36
	A. Focusing on inter-institutional interaction	36
	B. Focusing on inter-institutional disagreement	38
	C. Why institutions?	43
	D. Why disagreement?	44
	III. Other frameworks of comparison	48
	A. Incorporating all three institutions of government	48
	B. Incorporating the nuances of the traditional paradigms	50
	C. Emphasising the compromises associated with multi-stage rights review	54
	D. The case for a framework based on inter-institutional disagreement	55
	IV. Conclusion	56

CONTENTS

4	Legislative supremacy	57
I.	Introduction	57
II.	Opportunities for, and costs of, indirect inter-institutional disagreement	58
III.	Types of indirect inter-institutional disagreement	60
	A. Judicial review of administrative action	63
	B. Statutory interpretation	65
	C. Structural constitutional provisions	74
IV.	Conclusion	84
5	Judicial supremacy	87
I.	Introduction	87
II.	Direct inter-institutional disagreement	88
III.	Opportunities for, and costs of, indirect inter-institutional disagreement	89
IV.	Expounding indirect inter-institutional disagreement	91
	A. Why the United States?	91
	B. Types of indirect inter-institutional disagreement	93
	C. Legitimacy	96
V.	Conclusion	98
6	Multi-stage rights review	100
I.	Introduction	100
II.	Direct inter-institutional disagreement	101
	A. Stage one: executive review	102
	B. Stage two: legislative committee review	103
	C. Stage three: judicial review	104
	D. Stage four: legislative override	105
	E. The cumulative effects of multi-stage rights review	106
	F. A culture of justification	108
	G. Deference	110
	H. Not necessarily weak or intermediate	112
III.	The case for direct inter-institutional disagreement	113
	A. Multiple perspectives and multiple points of public participation	113
	B. Analogous ideas associated with the traditional paradigms	117
	C. Beyond disagreement?	118
IV.	Conclusion	120
7	Normative trade-offs	122
I.	Introduction	122
II.	Bureaucratic independence	124
III.	Responsible government	126
IV.	Separation of powers	129
V.	The rule of law	132

VI.	The hierarchy of laws	137
VII.	Comity	139
VIII.	Bicameralism	140
IX.	An additional set of factors to help explain practice	141
X.	Conclusion	143
8	The United Kingdom	144
I.	Introduction	144
II.	Executive review	144
	A. Practice	144
	B. Analysis	146
III.	Legislative committee review	147
	A. Practice	147
	B. Analysis	150
IV.	Judicial review	152
	A. Practice	152
	B. Analysis	156
V.	Legislative override	160
	A. Practice	160
	B. Analysis	162
9	Canada	165
I.	Introduction	165
II.	Executive review and legislative review	165
	A. Practice	165
	B. Analysis	167
III.	Judicial review	168
	A. Practice	168
	B. Analysis	170
IV.	Legislative override	172
	A. Practice	172
	B. Analysis	175
10	New Zealand	180
I.	Introduction	180
II.	Executive review and legislative review	180
	A. Practice	180
	B. Analysis	182
III.	Judicial review	186
	A. Practice	186
	B. Analysis	191
IV.	Legislative override	193
	A. Practice	193
	B. Analysis	195

CONTENTS

11	Australia	197
	I. Introduction	197
	II. Executive review and legislative committee review	197
	A. Practice	197
	B. Analysis	201
	III. Judicial review and legislative override	204
	A. Practice	204
	B. Analysis	207
12	Conclusion	210
	I. The importance and relevant point of context	210
	II. Responsible government and bicameralism	212
	III. The rule of law	214
	IV. The separation of powers	215
	V. Other normative trade-offs	216
	VI. The limits of direct disagreement	218
	VII. The next step	219
	<i>Bibliography</i>	220
	<i>Index</i>	237