Professor Hiebert addressed the topic of compatibility reports and their effect on political behaviour, in particular legislative decision making. Her seminar was informed by a decade of research for an upcoming book co-authored with James Kelly in which New Zealand and the UK’s approaches to marrying a Westminster-based parliamentary system with a Bill of Rights is considered in light of the Canadian experience.

Hiebert began by noting that when the New Zealand Bill of Rights Act 1990 was passed it was intended that s7 would focus parliamentary attention on compatibility of parliamentary bills with human rights. Section 7 requires the Attorney-General to report, for the attention of the House of Representatives, on any provision in a bill that appears to be inconsistent with a protected right or freedom. It is interesting that NZ now comprehensively leads the number of inconsistency reports with over 60, while the UK and Canada languish behind with 2 and 0 respectively. Does this mean that NZ has a more rigorous procedure?

Hiebert offered a nuanced explanation for the relative frequency of s7 reports in NZ. First, it is the Attorney General who makes the reports (rather than the sponsor minister as in the UK) reducing the kinds of political filters applied in the UK – where compatibility judgements are both decentralised and subject to Cabinet scrutiny. Second, more constrained judicial remedies mean that the reports have greater transparency, as they are not under threat of making the Bill weak in the face of judicial consideration once enacted. Further, s7 reports do not implicitly require that inconsistent bills be revised. Finally Hiebert suggested that despite the frequency of s7 reports, consideration of rights compatibility was lacking in parliamentary deliberations. It was also argued that MMP and the resulting need to form coalitions has diminished the incentives, and possibly the capacity, for parliamentarians to demand that government justify right-inconsistent bills. Political partners will be rivals in future elections. Also, unlike the UK, NZ lacks a select committee that would otherwise fulfil this function.

The UK position differs somewhat from NZ in that their Human Rights Act requires either a statement of inconsistency or an affirmative statement of compatibility. For the vast majority the latter is given, which does not give a true indication of consistency with rights. The Joint Committee for Human Rights frequently contests these claims. Interestingly Hiebert and Kelly report that JCHR reports rarely come as a surprise and that the criterion for deciding whether to proceed with a claim of consistency was a risk-based assessment for the Minister. The result, Hiebert has concluded, is that government and bureaucracy have "endorsed a fairly low threshold for determining compatibility". Furthermore, she said, when a bill is known by the executive to be rights-inconsistent they are rarely compelled to disclose the level of risk to parliament.

Despite this bleak outlook Hiebert recognised that public officials in both countries confirm that the statutory requirement for reporting on compatibility has encouraged a higher level of rights concern in legislation. Often the consideration of rights happens ‘behind the scenes’ in ministerial offices and Cabinet where there is a significant level of professional incentive to avoid s7 reports. However bureaucratic advice is not binding, nor is it transparent. The politics of balancing short-term interests with the parties’ future electoral prospects are present in both the UK and NZ, especially when working within coalitions.

Contrary to her initial expectations when beginning the research, Hiebert concluded that the presence of stronger judicial remedial power does not exert a substantial influence over whether legislation is subject to robust legislative review. While government does want to know about inconsistency, this is primarily for their own risk assessment purposes rather than for dissemination to parliament, and the public, for robust debate. The role of the Attorney General has been relatively successful in NZ as he or she enjoys greater autonomy from cabinet ministers than individual members. However s7 reports are received with little interest within parliament. Hiebert considers that the absence of a specialised committee makes it less likely that parliamentarians will focus on issues of compatibility. However, she also highlighted potential challenges including the small size of NZ’s legislature, that it is unicameral and the possibility that members of such a committee would have to be less politically ambitious in the face of criticism from party leaders. While rights-inspired debates do occur in parliament these often do not draw inspiration from NZBORA, and it could be argued that without such an Act the discussions would have occurred in the same manner. As it stands “Parliament is not a political venue that encourages independent, moral judgements … about how rights-based or compatibility-based considerations should guide or constrain legislation” as primarily informed by NZBORA.