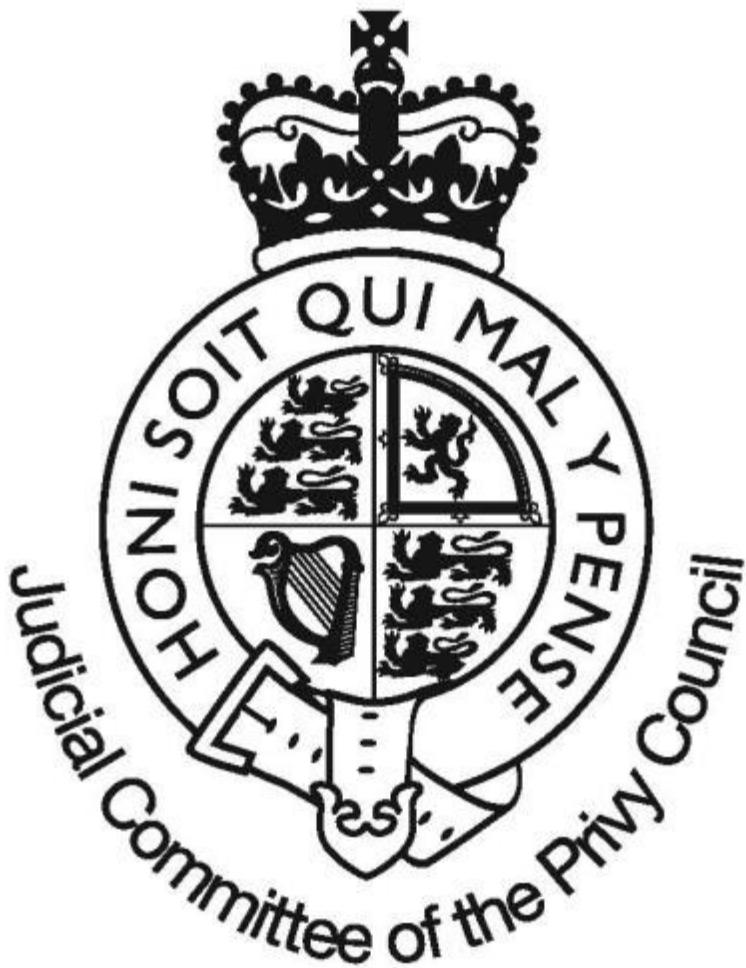


# The Judicial Committee of the Privy Council



## **What is the Judicial Committee of the Privy Council?**

The Judicial Committee of the Privy Council (JCPC) is the highest court of appeal for a number of Commonwealth countries, crown dependencies and United Kingdom overseas territories.

It used to be the highest court of appeal for the overseas countries which made up the British Empire, including places such as Canada, Australia, New Zealand and India. In the 1920s, the JCPC was said to be the final court of appeal for more than a quarter of the world's population.

When the British Empire became the Commonwealth of Nations and its members gradually sought independence, many countries established their own 'Supreme Court' to serve as their final court of appeal. However, some chose to retain their legal links with the United Kingdom and the JCPC.

## **The Privy Council**

The Privy Council advises the Queen in carrying out her duties as Monarch.

It was once a very powerful institution, however most of its power now lies in the hands of one of its committees, the Cabinet.



Queen Victoria meeting with her Privy Council

Meetings of the Privy Council are normally held once a month and are usually attended by four members.

Full meetings of the Privy Council are only held when the reigning monarch announces his or her own engagement (which last happened in 1839, in the reign of Queen Victoria), or when there is a "demise of the crown", either by the death or abdication of the monarch.

## **What does the Privy Council do?**

The Privy Council can issue Orders-in-Council, which are used to make government regulations and appointments, and Orders of Council, which are mostly used to regulate certain public institutions. It also advises the Queen on the issuing of Royal Charters.

## **Who are the members of the Privy Council?**

There are currently about 500 members of the Privy Council, known as Privy Counsellors.

These include all current and former members of the Cabinet, the Speaker of the House of Commons, the leaders of all major political parties, some Archbishops, various senior judges and other senior public figures.



Once appointed, an individual is a Privy Counsellor for life; however, the Queen does have the power to remove individuals. In 2011, Elliot Morley (left) was expelled from the Privy Council following his conviction on charges of false accounting in connection with the MPs' expenses scandal.

## **Which countries use the JCPC as their highest court of appeal?**

The countries which use the JCPC as their highest court of appeal can be split into three main groups: Commonwealth countries, crown dependencies and United Kingdom Overseas Territories.

### **Commonwealth countries**

A Commonwealth country is one which is a member of the Commonwealth of Nations. This is an international association consisting of independent nations that were previously part of the British Empire. Some of these independent nations still have the Queen as Head of State, but others do not.

These Commonwealth countries use the JCPC as their highest court of appeal:

- Antigua and Barbuda
- The Bahamas
- Cook Islands and Niue (Associated States of New Zealand)
- Grenada
- Jamaica
- Kiribati
- Mauritius
- St Christopher and Nevis
- Saint Lucia
- Saint Vincent and the Grenadines
- Trinidad and Tobago
- Tuvalu

## Crown dependencies

Crown dependencies are self-governing territories which are not part of the United Kingdom. They have their own legal systems and courts of law.

These Crown dependencies use the JCPC as their highest court of appeal:

- Guernsey
- Isle of Man
- Jersey

## United Kingdom Overseas Territories

United Kingdom Overseas Territories are part of the United Kingdom but have their own governments and justice systems.

These UK Overseas Territories use the JCPC as their highest court of appeal:

- Anguilla
- Ascension
- Bermuda
- British Antarctic Territory
- British Indian Ocean Territory
- British Virgin Islands
- Cayman Islands
- Falkland Islands
- Gibraltar
- Monserrat
- Pitcairn Islands
- St Helena
- Tristan da Cunha
- Turks and Caicos Islands

Additionally, appeals are heard from sovereign base areas in Cyprus:

- Akrotiri
- Dhekelia

## **United Kingdom**

Occasionally, the JCPC hears appeals from the United Kingdom (such as on certain shipping disputes and Church matters), but these are very rare.

The Queen also has the power to refer any matter to the JCPC for “consideration and report” under section 4 of the Judicial Committee Act 1833.

## **Brunei**

There is an agreement between the Queen and the Sultan of Brunei, which means that some civil appeals from Brunei are heard by the JCPC.

## **Who are the judges of the JCPC?**

The following groups of people are eligible to sit as the judges of the JCPC:

### **Justices of the Supreme Court of the United Kingdom**

The Justices (formerly the Law Lords) have been the permanent judges of the JCPC since 1876.



The Justices of the Supreme Court of the United Kingdom

## **Privy Counsellors**

Privy Counsellors who are (or have been) judges of the Court of Appeal of England and Wales, the Inner House of the Court of Session in Scotland, or of the Court of Appeal in Northern Ireland are all eligible to sit as judges of the JCPC.

## **Judges from Commonwealth countries**

Judges of superior courts in certain Commonwealth countries can also sit as judges of the JCPC.

One historic example of this is **Sir Shadi Lal** (right) from India, who was sat as a judge of the JCPC between 1934 and 1938. India abolished appeals to the Privy Council in 1949.



## **How many judges hear appeals to the JCPC?**

Normally, five judges hear appeals. However, in certain circumstances there can be a panel of three.

## **What types of appeal does the JCPC hear?**

The JCPC hears both civil and criminal appeals.

Occasionally, the JCPC hears appeals regarding the death penalty. Some of the countries which use the JCPC employ the death penalty as punishment for very serious crimes, such as murder.

## **How many appeals does the JCPC hear each year?**

Between 1st April 2020 and 31st March 2021, 41 appeals were heard by the JCPC.

## **Which countries send the largest number of appeals?**

In no particular order, Trinidad and Tobago, The Bahamas, and Jamaica send the largest number of appeals to the JCPC.

## **How does an individual appeal to the JCPC?**

The right of appeal to the JCPC is regulated by the constitution and legislation of the country in question. In most cases involving Commonwealth countries, appeals come 'as of right' from citizens: they do not need to obtain permission to appeal from the lower court whose decision they are appealing.

## **Where does the JCPC sit to hear appeals?**



Since October 2009, the JCPC has sat in Court 3 of the Supreme Court of the United Kingdom (left). However, when a hearing is expected to attract a large number of visitors, the appeal is heard in Court 1 instead.

From 16<sup>th</sup> November 2016, the Court piloted hearing appeals for JCPC countries via video-link.

Following a successful trial period, the JCPC now regularly hear cases via video-link. During the pandemic all cases have been heard via video-link.

## **Why does the JCPC sit in the same building as the Supreme Court of the United Kingdom?**

The JCPC and the Supreme Court share the same judges and administrative functions, so it makes sense for them to be located together in the same building. This also saves public money.

## **How long does an appeal hearing last?**

JCPC hearings normally last one or two days.

## **As the JCPC sits in London, do the judges apply UK law when making their decision?**

No. The judges of the JCPC apply the law of the country or territory from which the appeal has come. They also apply 'common law' principles which are shared by a large number of countries across the world.

## **Does the JCPC have to hear appeals in the United Kingdom?**

No, it does so just for practical convenience. Sometimes the judges of the JCPC are invited to hear an appeal in the country from which it has arisen. For example, the JCPC has sat in The Bahamas in 2006, 2007 and 2009. In addition, hearings are heard by video link.

## **How do the judges make their decision about an appeal?**

As soon as a hearing is complete, the judges who have heard the appeal go into a meeting room to discuss it with one another. Each judge gives the others his or her initial opinion and the reasons for it. The most junior judge always goes first, the theory being that he or she will then not be influenced by the more senior judges.

## **Do the judges all have to agree?**

No, they just need to reach a majority decision.

## **Do all the judges write their own judgment?**

One judge will be chosen to write the lead judgment, outlining the decision of the majority. The other judges may also write a judgment if they wish. Those judges who disagree with the majority can also write a 'dissenting' judgment.

## **How do the judges make their decision public?**

Once a judgment is finalised, a date is set for it to be handed-down in court. Most judgments of the JCPC technically take the form of advice to the Queen, as the Court's orders are confirmed by the Privy Council before they are formally given effect. This is why the judgments often end with the words "The Board will humbly advise Her Majesty..."

## **Famous cases heard by the JCPC**

Below are three of the most interesting historical cases which have been heard by the JCPC.

## **Henrietta Muir Edwards and others v The Attorney-General of Canada and others (1929)**



In 1927, Henrietta Muir Edwards, Nellie L. McClung, Louise C. McKinney, Emily F. Murphy and Irene Parlby asked the Supreme Court of Canada to clarify whether the words "qualified persons" in Section 24 of the British North America Act included women, and consequently, whether women were eligible to become members of the Senate of Canada.

The Supreme Court of Canada unanimously decided that "qualified persons" did not include women and so Edwards and the others appealed to the JCPC. After hearing the appeal, the judges of the JCPC unanimously ruled that because the words "qualified persons" were ambiguous and did not specify a particular sex, they should include women as well.

As a result of this decision, women became eligible to be appointed to the Senate of Canada.

## **Florence A. Deeks v H.G. Wells and others (1932)**



Florence Deeks was a Canadian historian and academic who wrote a manuscript entitled "The Web". "The Web" was written as a history of the world, with particular reference to the contribution of women.

In 1918, Deeks sent the manuscript to the publishers Macmillan Company of Canada because she wanted to find out if they would object to her use of extracts from "A Short History of the English People", of which they owned the copyright.

The following year, "The Outline of History" by HG Wells was published. This book was also written as a history of the world but dealt with it from a different point of view than that of Florence Deeks.

Deeks believed that HG Wells had plagiarised her manuscript. She argued that the numerous similarities in the content and style of the two works proved that HG Wells must have seen a copy of "The Web" and used it when writing his own book.

However, the judges of the JCPC decided that there was no evidence to prove that HG Wells had copied Deeks' work. They decided that the similarities could be explained by the similar nature of the two books and the fact that both writers had access to the same sources and information. As a result, Deeks' appeal was dismissed and "The Web" was never published.

### **Overseas Tankship (U.K.) Limited v Morts Dock & Engineering Company Limited (1961)**

In 1951, Morts Dock & Engineering Company owned Sheerlegs Wharf in Sydney Harbour, where they stored a large quantity of tools and equipment. A ship called "Corrimal" was also moored alongside the wharf. At the same time, Overseas Tankship owned an oil burning ship called the S.S. Wagon Mound, which was moored a short distance away at another wharf in the Harbour.

On the 30th October 1951, Overseas Tankship's workers accidentally spilled a large amount of oil into Sydney Harbour. The oil spread across a large part of the bay and was particularly concentrated in the area near Sheerlegs Wharf. Overseas Tankship's workers made no attempt to clean up the oil and the S.S. Wagon Mound set sail shortly afterwards.

On the 1st November 1951, the oil near Sheerlegs Wharf was set alight and the fire spread rapidly. Sheerlegs Wharf and "Corrimal" both caught fire and were badly damaged.

Morts Dock & Engineering Company claimed that Overseas Tankship was responsible for the fire and resulting damage and sought to recover compensation from them.

However, the judges of the JCPC decided that Overseas Tankship was not responsible because their workers could not have reasonably been expected to know that oil was capable of being set alight when spread on water.

The judges decided that an individual or company could only be liable for compensation where the damage or loss was "reasonably foreseeable". Although the pollution of the dock was a foreseeable consequence of the oil spill, the fire was deemed not to be.