

A Study in Canadian Citizenship

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III.

THE JUDICIAL COMMITTEE OF THE KING'S PRIVY COUNCIL.

This body is the final Court of Appeal in Law for the overseas dominions of the British Commonwealth. It is popularly called "The Privy Council," but this abbreviated nomenclature is exceedingly confusing to the student of British constitutional history and government. Lawyers usually much more aptly and correctly refer to it as "The Judicial Committee." Let me explain. There is another existing larger institution properly called "The Privy Council." It is true that this larger body never really meets in common council, and its existence is, therefore, seldom recognized, but it by no means follows that it never really functions. There are actually about seventy members of this larger body, although, since as I have said, it never really meets, it is exceedingly difficult to say just where its exact membership begins and ends. The following classes of persons, at any rate, are entitled to recognized membership at present, viz.: (a) All Imperial Cabinet Ministers; (b) all living ex-Imperial Cabinet Ministers; (c) several Jurists of great eminence and learning in the law selected from the Bench and the Bar of Great Britain; (d) a few Jurists, seldom present, selected from the higher courts of the overseas dominions; (e) several members of the

King's household; (f) a few parliamentary Undersecretaries of State, notably two from the Admiralty, and finally (g) a number of members, statesmen of great eminence at home and overseas, selected during recent years in order that they may wear the prefix of Right Honourable to their names as a title of honour, a curious example of how all ancient offices tend to fade out in the end into titles of nobility.

I know that you must think by now that the Privy Council is indeed a very strange mixture of noblemen, lawyers, lackeys, statesmen and executives, but whether you smile or not it matters not, for it is just for this reason that it illustrates perhaps better than any other institution that extraordinary, curious genius of the British people for being intensely, sometimes almost childishly human in all matters of organized government. The Privy Council, in a word, is a select loosely constituted body of the King's constitutional advisers and personal companions and attendants. It is at once a legislative, judicial, executive and purely private body privy to the King in person and assisting him in every human way in the government of a great people. Historically it is the lineal descendant, the apostolic successor to the old Wite-nagemot of Anglo-Saxon days and the *Curia Regis* of later Norman days which has never really ceased to exist from then until now.

In this way, too, the Privy Council illustrates, perhaps better than any other institution, that other well known custom of the British people never to wholly destroy any institution, once found useful, so long as it remains even remotely possible that it may yet prove useful in the future. Old institutions and offices need not be destroyed in order that new ones may take on their duties. They need only be reverently laid aside having served their day.

What, then, is the Judicial Committee? The answer is that the Judicial Committee is a committee of jurists carved out of the Privy Council to act as a final court of appeal in law for the overseas Dominions, just as the Imperial Cabinet is a committee carved out of the Privy Council to act as the King's executive council for the United Kingdom. The only real difference is that while the Cabinet is chosen from distinguished members of Parliament, Lords and Commons, the Judicial Committee is chosen from distinguished jurists on the Bench and at the Bar. In few words, its proper, full name, "The Judicial Committee of the King's Privy Council," exactly describes its real status and functions. The following figure will serve to visualize its position:—

THE PRIVY COUNCIL

The Cabinet

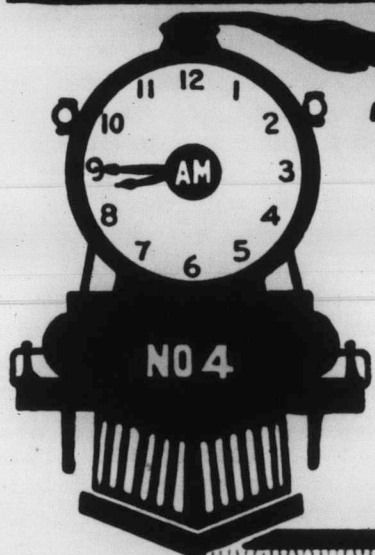
The Judicial Committee

Some important consequences which should be noted, follow, however, from this description of the Judicial Committee.

1. The members preside as a committee and not strictly as a court presides. The committee meets in a simple, small obscure parlour on Downing Street. There is no courtroom. There is no Bench or Bar. The members sit around a semi-circular table and the lawyers address them in a quiet, conversational, argumentative way from a small lectern in the middle. There are no rigid rules of procedure. Only a few cases are cited and the evidence is not always exhaustively read. There are really no visible evidences of a court of law except the gowns and wigs of learned counsel, and the first impression of a visitor is that these ancient habiliments of fictitious gravity seem singularly out of place in a court of common-sense, equity and real learning in the law. There are many interesting human things to be observed on a visit to the Judicial Committee.

2. Since the committee sits as a King's Council, it is always something more than a strict court of law and, therefore, is not bound as rigidly as other courts are bound by existing rules of law. It is not bound by the decisions of any other court of law. It is not bound even by its own previous decisions. As a King's Council it has admittedly in addition to its judicial power some slight background or reserve of legislative power. It may, if it think just and proper, arrive at its decisions on principles of policy rather than by strictly defined rules or law. It is not wholly confined to the interpretation and administration of existing law; it may upon occasion make new laws or at least adapt old rules and principles of law to new conditions overseas. In this way it is not unlike the old Court of Chancery or Equity in England which was originally designed to add some element of flexibility or humaneness to the rigid, technical rules of common law in cases of marked hardship or injustice. Perhaps it is this background of legislative or political power, this element of flexibility, and the consequent element of uncertainty in the decisions of the Committee which has brought upon its head so much sharp criticism by professional lawyers in Canada and

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