

## Telling Legal Backstories – making historic case papers from the Judicial Committee of the Privy Council available to all online

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**Abstract:** The Institute of Advanced Legal Studies holds copies of case papers of appeals to the Judicial Committee of the Privy Council (JCPC). Steven Whittle describes the recent open access initiative at the IALS, working with BAILII to provide online access to historic case papers of appeals from over 35 countries from the period 1935 to 1985. These are cases of the highest importance in the legal development of each of the countries and to the development of common law shared by many countries worldwide.

**Keywords:** Judicial Committee of the Privy Council; appeals; case papers; digitisation; free legal information; legal research; legal sources; open access; Commonwealth



A successful open access initiative at the Institute of Advanced Legal Studies is providing a new digital source for researchers. Thanks to an award from the School of Advanced Study's Strategic Development Fund, IALS has been able to digitise many of the additional case papers it holds relating to historic appeals to the Judicial Committee of the Privy Council (JCPC). Over 5,000 documents have been digitised involving more than 300,000 page scans from over 1,400 appeals to the JCPC, safeguarding the information previously held only in paper and extending significantly the number of people who are able to access these primary legal materials.

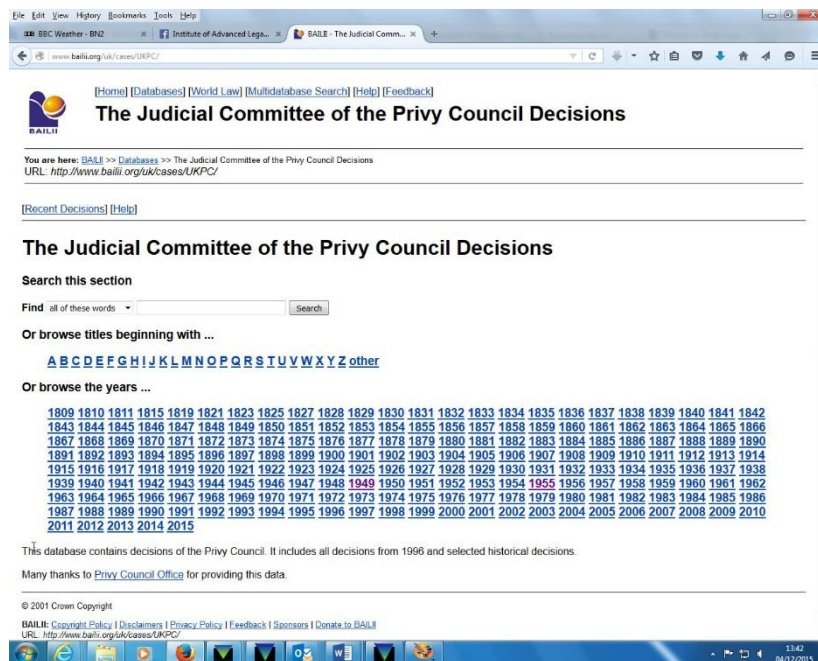
The Judicial Committee of The Privy Council in London is the final court of appeal for a number of Commonwealth countries, crown dependencies and UK overseas territories. Historically it was the highest court of appeal for the overseas countries which made up the British Empire. Since independence some countries chose to retain links with the JCPC - the right of appeal to the JCPC for their citizens being regulated by the constitution and legislation of the country in question.

Appeals before the JCPC have included highly significant cases to the legal development of each country and to the development of common law shared by many countries round the

world. It has heard both civil and criminal appeals across a wide range of legal topics including: admiralty, constitutional and ecclesiastical matters, contract, death sentence, status of persons; and had an important role in the continuing adoption and adaptation of common law itself. At the peak of its influence in the early 20<sup>th</sup> century the JCPC was effectively the final court of appeal for more than a quarter of the global population. The JCPC judges apply the law of the country or territory from which the appeal has been received in reaching a majority decision on a given case.

Case papers behind those decisions from the IALS collection covering the period 1935 to 1985 (effectively a full paper set from 1950 to 1985) and some selected papers from earlier judgments of special interest to researchers have been included in the digitisation project. [http://ials.sas.ac.uk/library/pdocs/pddd\\_project.htm](http://ials.sas.ac.uk/library/pdocs/pddd_project.htm)

IALS has been working with the British and Irish Legal Information Institute (BAILII) to present the digitised case papers as searchable PDF files alongside the judgment texts already freely available in the BAILII Privy Council decisions collection <http://www.bailii.org/uk/cases/UKPC/>, enhancing the established online source of JCPC judgments with substantial related court documents.



## Background to the case papers held at IALS

In a letter of July 19 1950 now in the IALS Archives<sup>1</sup>, George Curtis (Founding Dean of the Faculty of Law, University of British Columbia Vancouver, Canada) sought help from Professor David Hughes Parry (Director, Institute of Advanced Legal Studies) in obtaining case papers from two notable Canadian Appeals to the Judicial Committee of the Privy Council in London.

Judgment 11, 1916 Bonanza Creek Gold Mining Co. v The King (Appeal 61 of 1915) [http://www.bailii.org/uk/cases/UKPC/1916/1916\\_11.html](http://www.bailii.org/uk/cases/UKPC/1916/1916_11.html)

and

Judgment 2, 1925 Toronto Electric Commissioners v Colin G. Snider (Appeal 99 of 1924)  
[http://www.bailii.org/uk/cases/UKPC/1925/1925\\_2.html](http://www.bailii.org/uk/cases/UKPC/1925/1925_2.html)

George Curtis, a friend and host for Professor David Hughes Parry's lecture tour of North America in the autumn of 1949, drew special attention to the current and future research value of the case papers generally: "Their value to us would be so very great that I would like to make an effort to collect as many as possible" ... "I think that as the years go by this sort of material for research and teaching purposes would be very valuable indeed".

Full case papers from both the Canadian appeals highlighted by Dean Curtis are now online with the judgment texts on BAILII <http://www.bailii.org/uk/cases/UKPC/>

In drafting its Statement of Development Policy for the Quinquennium (1952-1957)<sup>2</sup> the Institute made provision to acquire the Canadian Law Library – a large library which included many papers from the Canadian appeals to the Privy Council and was owned by the Canadian Government and had been maintained in London for many years for the use of Counsel appearing before the Privy Council. Once Canadian appeals to the Privy Council ceased, a purchase was made and the library was added to the Institute's collections in 1953. The purchase drew on a £3,000 reserve of funding from a £10,000 Nuffield Foundation grant made to the IALS to help in developing a unique national collection of Commonwealth law.

Subsequent arrangements over the years with the Foreign and Commonwealth Office and the Judicial Committee of the Privy Council itself built a comprehensive collection at the Institute of JPCPC appeal case papers for many former colonies and Commonwealth jurisdictions including: Aden, Antigua, Australia, Bahamas, Barbados, Basutoland, Bermuda, Canada, Ceylon, Cyprus, Dominica, Fiji, Ghana, Gibraltar, Gold Coast, Great Britain, Guernsey, Guyana, Hong Kong, India, Jamaica, Jersey, Kenya, Lesotho, Malaya, Malaysia, Malta, Mauritius, New Zealand, Nigeria, Palestine, Rhodesia, Sierra Leone, Singapore, Somaliland, Tanganyika, Trinidad and Tobago and Uganda.

The screenshot shows a web browser window displaying the BAILII website. The page title is "The Judicial Committee of the Privy Council Decisions". The breadcrumb trail indicates the current page is "The Judicial Committee of the Privy Council Decisions" for the case "Florence A. Deeks (Appeal No. 18 of 1932) v H.G. Wells and others (Ontario) [1932] UKPC 66 (3 November 1932)". The URL is "http://www.bailii.org/uk/cases/UKPC/1932/1932\_66.html". The page content includes a navigation menu with links for "Judgment", "Cover", "Case for the Appellant", "Case for the 1st Respondent's", "Case for the 2nd Respondent's", "Record of Proceedings", and "About the Privy Council Papers". Below the menu, the text reads: "Judgment", "Privy Council Appeal No. 18 of 1932.", "Florence A. Deeks", "Appellant", "v.", "H. G. Wells and others", "Respondents", "FROM", "THE APPELLATE DIVISION OF THE SUPREME COURT OF ONTARIO".

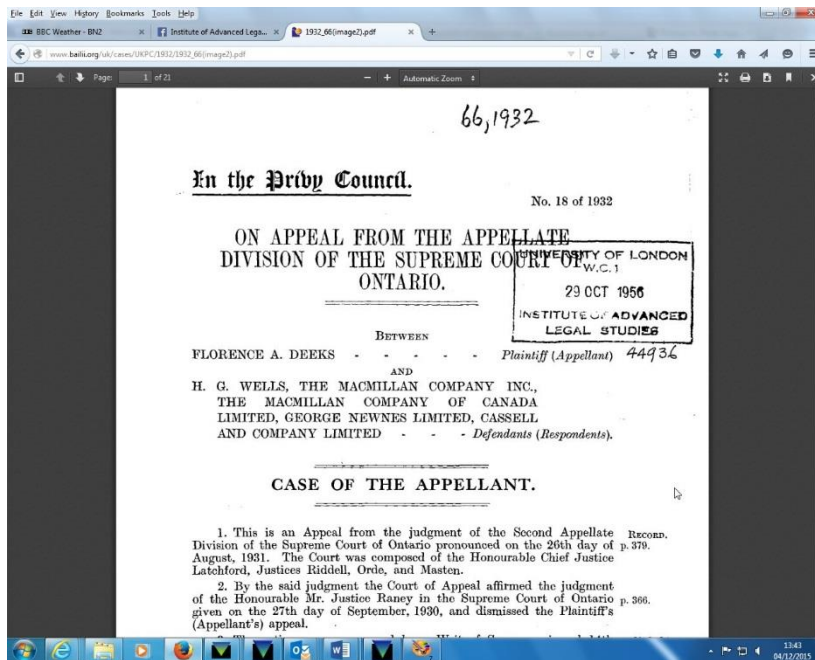
## **Significant work of the JCPC reflected in the case papers**

The case papers (case for the appellant, case for the respondent, record of proceedings, factums and appendices) are often substantial documents giving far more detail than the judgment text itself. They offer a chance to look behind those decisions, to visualise the context, to uncover backstories and gain insights into the lines of legal argument employed, endorsed or rejected by the JCPC judges. These extensive primary materials are records of the law in action, illustrating legal professionals at work and offering an insight into a wide range of public, personal, social, political, cultural and human issues.

The papers cover significant moments in time from the late 19<sup>th</sup> century and early 20<sup>th</sup> century, including both the First World War and World War II periods. They show the impact of the legal process on individual lives and the effect of changes globally. They present stories from the end of Empire and start of nationhood, illustrating the process of Colonial devolution and carrying significance for the development of constitutional law. They include disputes relating to private law and commercial interests which have continuing contemporary resonance such as: land and property disputes, arguments over the responsibilities of industry in exploitation of natural resources, the introduction of hydro-electric schemes, or railroad building, the perils of intemperance and the operations of telephone companies and jockey clubs.

They also show the JCPC demonstrating a practical and prescient commitment to the recognition of diversity in culture and religious belief, seeking to safeguard individual dignity, respect for humanity and support the wider international legal order – defining in a sense approaches for future “international” courts. These dimensions are reflected in cases involving issues of gender and ethnicity, the treatment of peoples and approaches to rights of women.

The work of the JCPC, revealed by the case papers, shows law as both a collective enterprise and as individual lived experience. The pre-1945 collection at IALS is particularly strong in materials from Canadian appeals to the JCPC. They include cases significant in the development of Canadian constitutional law and priority principles in the relationship between federal law and provincial law - the doctrine of paramountcy which establishes that where there is a conflict between valid provincial and federal laws, the federal law will prevail and the provincial law will be inoperative to the extent that it conflicts with the federal law.



From this collection we also have individual personalities involved in a matter of law and literature - papers from 1932 UKPC 66 *Florence A. Deeks (Appeal no 18 of 1932) v H.G.Wells and others (Ontario)* [http://www.bailii.org/uk/cases/UKPC/1932/1932\\_66.html](http://www.bailii.org/uk/cases/UKPC/1932/1932_66.html). This case, sometimes referred to as “the war of the words”, saw Florence Deeks take an accusation of plagiarism and suggestion that H.G.Wells’ *the Outline of History* had made improper use of her manuscript *The Web* (an early feminist history of the world) to the Privy Council. Over the years commentators<sup>3</sup> on the case and lives of those involved have exchanged different views on the extent to which Florence (who lost each legal action) was ill-served by the male dominated machinery of the publishing business and judicial system or whether justice was actually done from the best available evidence. It is likely that the benefit of increased visibility and usability of the full case papers will help inform new research and further debate and more varied perspectives on the dispute.

### **The digital initiative at IALS and additional content on BAILII**

As an elected member of the Free Access to Law Movement<sup>4</sup>, an international voluntary association which sees public legal information as part of the common heritage of humanity, the Institute is pleased to have had the opportunity to help in ensuring the preservation of these primary legal materials and in extending their availability as archival research sources.

The IALS digital initiative, led by Steven Whittle, IALS Information Systems Manager, involved local work at the Institute itself and outsourced work through UK scanning companies with archival quality expertise. Nimal Vitharana, Digital Resources Assistant at IALS, was particularly involved in the Privy Council case papers digitisation project, preparing large batches of papers for each scanning bureau, applying systematic approaches to checking the digital files they created against the returned print originals and helping with the presentation of links to papers on BAILII.

High quality scanning was undertaken by three proven companies: Hollingworth and Moss, RDW Digital and MAX Communications<sup>5</sup>. Preservation master copies of individual page scans were created in TIFF format, with searchable PDF document assembly for the public

access copy and with supplementary text files derived from optical character recognition (OCR) layers to assist database search capabilities. The searchable public access PDF files were optimised for the web and added to the BAILII Privy Council decisions database by Joe Ury and Viky Martzoukou at BAILII.

Experts in the study of the role of the JCPC, Professor Catharine MacMillan and Dr Charlotte Smith of the University of Reading and Dr Nandini Chatterjee of the University of Exeter, kindly guided the project, identifying key cases for selection.

The new digital source on BAILII resulting from the IALS project is designed to benefit the research community and public knowledge on several levels and make a valuable contribution to facilitating further initiatives in the UK and overseas in the areas of Commonwealth legal and cultural development, and additionally extend the scope of wider open access information delivery.

There is more work to come. We intend to add commentary illustrating the significance of selected case papers to particular research and legal development and share those examples through linked public events at the Institute - highlighting thematic interests and ways in which the more readily available case papers will form a basis on which further work can be built. A paper by Professor Catharine MacMillan<sup>6</sup> is already available on the IALS website and explores the enduring legacy of the Judicial Committee of the Privy Council on the development of Canadian law. A half-day symposium on different aspects of the JCPC is being co-organised by the Forum for Legal and Historical Studies at the University of Reading and the Institute of Advanced Legal Studies and will held at the IALS in London in May 2016.<sup>7</sup>

There are plans for the materials to be included in the Commonwealth Legal Information Institute (CommonLII)<sup>8</sup> service and also to appear in the US co-operative LLMC Digital service<sup>9</sup>. The IALS digital project and development on BAILII also serve as a pilot project for a potentially larger collaborative initiative that LLMC and partners are planning if necessary funding can be secured in the USA. That will build on the collection of images created here and aim to create a comprehensive online collection of JCPC case papers.



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<sup>1</sup> Correspondence and papers of Sir David Hughes Parry (Director 1847-1959) IALS archive <http://ials.sas.ac.uk/library/archives/ials.htm> IALS/02/01/02

<sup>2</sup> Correspondence and papers of Sir David Hughes Parry (Director 1847-1959) IALS archive <http://ials.sas.ac.uk/library/archives/ials.htm> IALS/02/01/04

<sup>3</sup> For examples, see Magnusson, Denis N. (Spring 2004) "Hell hath no fury: Copyright Lawyers' lessons from Deeks v. Wells" *Queen's Law Journal* 29 and Mckillop, Brian (2011) *The Spinster and the Prophet: Florence Deeks, H.G. Wells and the mystery of the purloined past*. Random House LLC ISBN 978-1-55199-621-9

<sup>4</sup> See Free Access to Law Movement (FALM) <http://www.falm.info/> and Declaration on Free Access to Law <http://www.falm.info/declaration/> (Accessed 4/1/2016)

<sup>5</sup> Hollingworth and Moss Ltd, <http://www.hollingworthmoss.co.uk/>; RDW Digital <http://www.rdw.co.uk/heritage-scanning-digitisation/>; Max Communications <http://maxcommunications.co.uk/> (All accessed 4/1/2016)

<sup>6</sup> MacMillan, Catharine (Autumn 2015) "Canadian Cases before the Judicial Committee of the Privy Council" [http://ials.sas.ac.uk/library/pdocs/docs/Canadian\\_Constitutional\\_Cases\\_Comment.pdf](http://ials.sas.ac.uk/library/pdocs/docs/Canadian_Constitutional_Cases_Comment.pdf) (Accessed 4/1/2016)

<sup>7</sup> JCPC Symposium planned for Friday 13<sup>th</sup> May 2016 at the Institute of Advanced Legal Studies (IALS)

<sup>8</sup> Commonwealth Legal Information Institute (CommonLII) <http://www.commonlii.org/> (Accessed 4/1/2016)

<sup>9</sup> LLMC Digital <http://www.llmc.com/> (Accessed 4/1/2016)

## Biography

Steven Whittle BA, MA is the Information Systems Manager at the Institute of Advanced Legal Studies, School of Advanced Study, University of London. He is a member of the Institute Management Committee and the Institute Library Management Team.

He is the manager of the IALS Information Systems Team; manages IALS Digital Resources; is editor for the IALS website ([www.ials.sas.ac.uk/](http://www.ials.sas.ac.uk/)), social media presence; and has helped to develop a number of national online services for law on the IALS site including the Eagle-i Internet Portal for Law, FLAG - the Foreign Law Guide, and Flare Index to Treaties. In 2010 he was honoured to receive the Wallace Breem Award from the British and Irish Association of Law Librarians (BIALL) in recognition for work on these services.

He has also managed digitisation project work at IALS and led IALS involvement in the School of Advanced Study's Open Access initiatives and collaborations, including development of the IALS collections on the SAS-Space e-prints e-repository, participation in a JISC funded initiative to create the SAS Open Journals System capability and subsequently has developed a number of open access journals for IALS on the SAS OJS.