

Judicial Committee of the Privy Council

From 1867 until 1949 the 'Judicial Committee of the Privy Counsel' (JCPC), a British institution, served as Canada's highest court of appeal. Ottawa abolished appeals to the JCPC in 1949. Until then, the Supreme Court of Canada was subordinate, not supreme. Its decisions could be appealed to the JCPC. Furthermore, provincial court of appeal decisions could be appealed directly to the JCPC, bypassing Canada's Supreme Court altogether.

The JCPC played a vital, controversial role in the evolution of Canadian federalism. The *British North America Act, 1867* (renamed *Constitution Act, 1867* in 1982) created an 'imperial federation.' The federal Parliament retained the same imperial powers over the provinces (see reservation and disallowance) that London enjoyed over the colonies. The division of powers also gave the federal government the most significant government powers of the time. The intent was clear: Canada was to be a very centralized country. Ottawa should lead in building a national economy and society; the powers of provinces should be limited so they could be nothing more than "glorified municipal institutions."

The JCPC's interpretation of the division of powers disappointed the champions of a centralized federation and delighted those who wanted the provinces to be Ottawa's equals. In the first seventy years after Confederation the JCPC authored an expansive interpretation of section 92 (especially the provincial jurisdiction over property and civil rights). This expansive interpretation of provincial power came at the expense of several of the federal powers outlined in section 91 (especially the trade and commerce power and the power to legislate for the Peace, Order, and Good Government of Canada).

Debates over the appropriateness of the JCPC's role in re-balancing federal and provincial powers in Canada foreshadowed today's debates about the role the courts are playing as interpreters of the *Canadian Charter of Rights and Freedoms*.

Sources:

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