

## ***‘The work of the Judicial Committee of the Privy Council’***

Lord Hodge, Deputy President of the UK Supreme Court<sup>1</sup>

Supreme Court of Brunei Darussalam, 27 February 2025

### **Introduction**

It is a great pleasure and privilege to speak to you today on the work of the Judicial Committee of the Privy Council. For brevity I will refer to it in this address as “the JCPC” or “the Judicial Committee”.

The aim of the Judges of the JCPC, who are in the main also Justices of the UK Supreme Court, is, in both our roles, to be a world-leading court by providing a world class service, serving the public, and engaging outwards. Our work in the JCPC is a crucial part of this exercise; we endeavour to provide such a service to all the jurisdictions we serve. I have been privileged to be a part of the work of the JCPC for over eleven years. I have experienced firsthand how the relationships between the JCPC and the jurisdictions we serve are of great importance and how the connection between the work of the UK Supreme Court and that of the JCPC informs and enriches one another.

In this address, I hope to examine this significant interrelationship and the initiatives we have implemented to modernise the Judicial Committee. But, first, I hope to ‘set the scene’ on what the JCPC is and how it operates, and I hope that I can give you an idea of its valuable, interesting, and varied work.

### **The work of the JCPC**

Since October 2009, the UK Supreme Court and the JCPC have found their home on Parliament Square in London directly opposite the Houses of Parliament.

Our court building is open and accessible to the public. We take great pride in being transparent and accountable to the public we serve. Since the Court opened its doors in 2009, over 1 million people have visited us at Parliament Square. In the last year alone, we

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<sup>1</sup> I am grateful to my Judicial Assistant, Poppy Mulligan, and fellow Judicial Assistants Monty Fynn, Amna Ali and Amy Kerr for their assistance in the preparation of this lecture.

welcomed over 58,000 visitors.<sup>2</sup> Our hearings are also live streamed, allowing the public to watch live on our website. This facility is particularly important to jurisdictions which the JCPC serves which are located far from London. JCPC cases can attract great interest. For example, a case from Jamaica, *Shawn Campbell*,<sup>3</sup> attracted over 55,000 live viewers. The proceedings are also recorded and can be watched on the website after the hearing.

### *The Role of the JCPC*

The JCPC is the court of final appeal for UK overseas territories, Crown dependencies, and Commonwealth countries that have retained right to the appeal to His Majesty in Council. In the case of republics, such as Mauritius, Trinidad and Tobago, and Kiribati, the appeal is to the Judicial Committee itself.

The JCPC applies the law of the jurisdiction from which an appeal comes. For example, if the appeal comes from Trinidad and Tobago, it is the law of Trinidad and Tobago which we apply. It is not our task to solve social, political or moral questions. Our role is to resolve difficult legal questions by interpreting and applying the law of the relevant jurisdiction.

Judges who sit on the JCPC are members of His Majesty's Privy Council. Most of the appeals which we hear are heard by a panel drawn from the twelve Justices of the UK Supreme Court. Normally, we sit in a panel of five; for particularly difficult or important appeals, we can sit in a larger panel of seven or more. Sometimes, a panel includes a judge from an appellate court of the UK who is a Privy Counsellor. Part of our work to modernise the JCPC has included the reintroduction of the practice of inviting judges from other jurisdictions to sit as Privy Counsellors, which I will expand upon in more detail later in this lecture.

### *The evolution of the JCPC*

I shall say a few words about how the Judicial Committee has evolved to the unique body it is today.

Originally, the JCPC's power to hear and decide appeals was founded on the Royal prerogative; prerogative powers are powers which belonged to the monarch but most of

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<sup>2</sup> The Supreme Court and Judicial Committee of the Privy Council, *Annual Report and Accounts 2023- 2024*, <[annual\\_report\\_2023\\_2024\\_14a511ecd0.pdf](#)>, p.8.

<sup>3</sup> [2024] UKPC 6.

those powers are now exercised by the executive branch of the state, for example government ministers. The Privy Council Acts of 1833 and 1844 formally placed the Privy Council on a statutory footing such that, whilst the appeal was still in form, an appeal to the King in Council, it was in truth an appeal to the JCPC which exercised the residual prerogative power of the King in Council.<sup>4</sup>

The history of the JCPC is intertwined with the British Empire. For a period of its history, it was an institution which oversaw the administration of law throughout the Empire. However, in 1931 the Statute of Westminster granted the Dominions (including Australia, New Zealand, and South Africa) full legal autonomy enabling their legislatures to oust the jurisdiction of the JCPC.<sup>5</sup> As for other independent nations, the choice of whether to retain the services of the JCPC rightly shifted to each jurisdiction on obtaining independence. Some Commonwealth countries decided to keep the JCPC as their apex court, and some adopted a nuanced arrangement by which the Judicial Committee would only have jurisdiction in certain circumstances.

The Judicial Committee remains the highest court of appeal for several independent Commonwealth countries, including Trinidad and Tobago, the Bahamas, Jamaica, Grenada, and Mauritius. It also serves several British Overseas Territories and three Crown dependencies: Jersey, Guernsey and the Isle of Man. However, as I will come to address, each nation has its own unique arrangement provided for and regulated by its constitution as to when an appellant may appeal all the way to the JCPC.

### *Routes of Appeal*

For the Commonwealth nations which retain the services of the JCPC, the right to appeal is regulated by their own constitutional arrangements. There are typically two routes of appeal for appellants from these countries.

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<sup>4</sup> *British Coal Corporation v The King* [1935] AC 500, 512 (Viscount Sankey LC); as cited and discussed in Daniel Clarry, 'Institutional Judicial Independence and the Privy Council' *Cambridge Journal of International and Comparative Law* 2014, 3(1), 46-76, 61.

<sup>5</sup> South Africa removed the JCPC jurisdiction in 1950 further to the Privy Council Appeal Act 1950. Australia removed the JCPC jurisdiction in 1986 with the passing of the Australia Act 1986, which established the Australian High Court as the final court of appeal for all Australian cases. New Zealand removed the JCPC jurisdiction in 2004 further to the Supreme Court Act 2003, which established the Supreme Court of New Zealand as the highest court of New Zealand.

First, there is the appeal as of right. The constitution or law of the local jurisdiction may provide that a party has a right to appeal a local court decision to the JCPC and the local court decides that the party has satisfied the conditions for an appeal as of right.<sup>6</sup>

Where there is no appeal as of right, the second route is to seek permission directly from the JCPC. For civil appeals, the test is the same as the test for applications to appeal to the Supreme Court; that is whether the appeal raises an arguable point of law of public importance which ought to be considered by the JCPC at that time.<sup>7</sup> For criminal appeals, the test is whether there is a risk that a serious miscarriage of justice has occurred.<sup>8</sup> As you will appreciate, both of these tests are very high bars to clear. For example, there may be an arguable point of law in a civil appeal, but the case concerns a simple contractual dispute between parties which does not raise any novel points of contractual interpretation. In such a case, we would ordinarily refuse permission on the basis that the appeal is unlikely to affect anyone outside of the parties to the contract, therefore it is not of public importance. Similarly, with criminal appeals, most cases do not cross the very high threshold of showing a risk of ‘a serious miscarriage of justice’.

It is clear from these two routes of appeal that Commonwealth nations, who retain the services of the JCPC, regulate appeals to the Board according to clear tests. But it is also important to note that the regulation also comes from each jurisdiction’s own case law which interprets its constitutional tests in accordance with its own legal traditions. See the recent case of *Inderjit Kaur Chhina v Ismail and another* concerning how the JCPC decides what is a “final” decision in civil proceedings in certain categories of cases.<sup>9</sup>

I would now like to discuss how the JCPC respects each jurisdiction’s unique legal traditions and how we are seeking to evolve as a modern institution.

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<sup>6</sup> For example, according to section 110(a) of the Jamaican Constitution, an appeal shall lie from decisions of the local Court of Appeal to the Privy Council as of right, where the matter in dispute on appeal is of the value of one thousand dollars or upwards. That is approximately 9 Brunei dollars. The passage of time and currency inflation explains this very low limit.

<sup>7</sup> Practice Direction 3.35 of the JCPC Rules and Practice Directions.

<sup>8</sup> Practice Direction 3.36 of the JCPC Rules and Practice Directions.

<sup>9</sup> *Inderjit Kaur Chhina v Ismail and another* [2024] UKPC 10.

### **The JCPC's relationship with local institutions and courts**

The JCPC is the final court of appeal for the jurisdictions it serves. Its role as the apex court in the judicial hierarchy may cause some to see the JCPC as somehow 'higher' than the local courts of these jurisdictions. However, this does not accurately reflect the more nuanced relationship between local institutions and the Judicial Committee. In reality, the relationship is a partnership, allowing space for local institutions and the JCPC to work together to develop a legal system which reflects the specific culture and needs of each jurisdiction.

A first and fundamental point is that in modern times the JCPC relies on the continuing consent of independent countries for its jurisdiction in those countries. It is only because these countries choose to preserve this jurisdiction that the JCPC operates as their final court of appeal. As I have discussed, some countries have chosen to leave, but others have chosen to remain. For example, after attaining its independence, India created its own Supreme Court in 1949 and removed the right to appeal to the Judicial Committee.<sup>10</sup> On the other hand, when Trinidad and Tobago passed its Constitutions in 1962 and 1976, it retained the right to appeal to the Judicial Committee.<sup>11</sup>

The JCPC's current jurisdiction in Brunei derives from an Exchange of Notes, an agreement, between the UK Government and the Government of Brunei on 27<sup>th</sup> June 1989.<sup>12</sup> This resulted in the Brunei (Appeals) Order 1989 which provides that the Judicial Committee has jurisdiction to hear appeals to His Majesty the Sultan. If Brunei did not wish the JCPC to have jurisdiction for its appeals, it would not.

Independent countries have control over the existence of the JCPC's jurisdiction and over the scope of that jurisdiction. As I have already mentioned, it is the jurisdictions themselves which decide what kinds of cases have a right of appeal to the JCPC and what conditions have to be met to exercise that right of appeal.

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<sup>10</sup> Abolition of Privy Council Jurisdiction Act 1949 (India).

<sup>11</sup> Now found in section 109 of the Constitution of Trinidad and Tobago.

<sup>12</sup> Recital of the Brunei (Appeals) Order 1989.

In the case of Brunei, as many of you will know, the JCPC does not have jurisdiction in criminal or constitutional matters. However, civil appeals may be heard by special agreement between His Majesty the Sultan of Brunei and Yang Di-Pertuan and His Majesty, King Charles III, with a subsequent referral being made to the Judicial Committee for the hearing of such appeals and a direct report given by the JCPC to His Majesty the Sultan of Brunei, rather than to His Majesty The King. Article 2(4) of the Brunei (Appeals) Order 1989<sup>13</sup> mandates that the right to appeal to the JCPC is restricted to cases where the parties have, before the hearing of the appeal to the Supreme Court of Brunei, consented in writing to be bound by a further appeal to His Majesty the Sultan.

Brunei has thus limited the scope of this civil jurisdiction in two ways. First, the Judicial Committee has no jurisdiction to determine issues relating to the Brunei Constitution. Secondly, as I have said, appeal to the JCPC is restricted to cases where the parties have given prior consent to a further appeal to His Majesty the Sultan.

As I have already emphasised, the JCPC is not an English court and does not simply impose English law on its jurisdictions: instead, the JCPC applies the local law of the jurisdiction. To illustrate this with respect to legislation, in *Marsal v Apong*<sup>14</sup> the Judicial Committee applied the Brunei Limitation Act 1984 to determine whether the appellant's false imprisonment claim was time-barred, upholding the Brunei court's decision that it was. Similarly, the JCPC recognises that the common law for a particular country may diverge from the English common law to suit the needs of its society. This idea was powerfully articulated by Lord Diplock in *Broome v Cassell & Co Ltd (No. 1)*.<sup>15</sup> He said:

*“The common law would not have survived in any of those countries which have adopted it, if it did not reflect the changing norms of the particular society of which it is the basic legal system. It has survived because the common law subsumes a power in judges to adapt its rules to the changing needs of contemporary society—to discard those which have outlived their usefulness, to develop new rules to meet new situations.”*

He went on to say that despite the unifying effect of the inheritance of the common law upon the concept of man's legal duty to his neighbour, *“it does not follow that*

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<sup>13</sup> SI 1989/2396 as amended by the Brunei (Appeals) (Amendment) Order 1998/25.

<sup>14</sup> [1998] 1 W.L.R. 674.

<sup>15</sup> [1972] AC 1027.

*the development of the social norms in each of the inheritor countries has been identical or will become so.*<sup>16</sup>

In *De Lasala v De Lasala*, a case from Hong Kong, Lord Diplock continued this idea:

*It has become generally accepted at the present day that the common law is not unchanging but develops to meet the changing circumstances and patterns of society in which it is applied... So too in Hong Kong, where the reception of the common law and the rules of equity is expressed to be 'so far as they are applicable to the circumstances of Hong Kong or its inhabitants' and 'subject to such modifications as such circumstances may require ...'.*<sup>17</sup>

The same approach would apply equally to the common law in Brunei, such that the Judicial Committee would shape it to meet the needs of its particular culture and society. As well as the common law, the Judicial Committee also applies other non-statutory sources of law that apply in a jurisdiction, including Islamic sharia law. Dr. Zubair Abbasi, an academic specialising in Islamic law, notes that the Judicial Committee has decided about one hundred cases on Islamic endowment law during a period stretching over more than a century.<sup>18</sup> Dr Abbasi argues that the Judicial Committee contributed towards the development of several legal principles in Islamic endowment law. Based on these principles, the subject matter of Islamic endowments was extended to new forms of immovable property, such as shares of joint stock companies and securities issued by the state. In contrast, under classical Islamic endowment law, only land could be the valid subject matter of an endowment. Dr Abbasi also argues that the decisions introduced new administrative strategies aimed at the better governance of Islamic endowments.

I should note that the Judicial Committee's jurisprudence on Islamic law is not without its critics, who argue that the Committee did not fully understand the differences between English trusts and Islamic endowments.<sup>19</sup> These misunderstandings may well have been because in the 19<sup>th</sup> and 20<sup>th</sup> centuries, the JCPC was less likely to hear from local counsel

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<sup>16</sup> [1972] AC 1027, p.1127. See Lord Mance and Jacob Turner, *Privy Council Practice* (OUP 2017), [5.32] - [5.33].

<sup>17</sup> [1980] AC 546.

<sup>18</sup> Zubair Abbasi, 'Commentary: The Judicial Committee of the Privy Council and Islamic Endowments (Awqāf)' (2018), *Islamic Law Blog* <https://islamiclaw.blog/2018/01/31/commentary-the-judicial-committee-of-the-privy-council-and-islamic-endowments-awqaf/> (accessed 28 January 2025).

<sup>19</sup> Rohit De, "'A Peripatetic World Court" Cosmopolitan Courts, Nationalist Judges and the Indian Appeal to the Privy Council', 32 *Law & Hist. Rev.* 821 (2014) 830.

from the jurisdictions themselves. However, in the 21<sup>st</sup> century, I know from my own experience in the JCPC that we regularly have local counsel appearing before us, either in person or remotely by video link, and we give great weight to their knowledge of local law, custom and practice.

Another important aspect of the relationship between the JCPC and local courts, is the respect which the Judicial Committee gives to the role of local courts in its jurisprudence. One example of this is the JCPC's approach to factual findings of local courts.<sup>20</sup> First, the JCPC will only overturn concurrent findings of pure fact in 'very limited circumstances.' Concurrent findings in this context means a finding that has been made by the trial judge at first instance, which is then upheld on a review of those findings by the local court of appeal. This principle stems from the case of *Devi v Roy*<sup>21</sup>, where the Judicial Committee held that to disturb a concurrent finding there must be some miscarriage of justice or violation of some principle of law or procedure. This is an extremely high bar, and one which in my experience is rarely met.

The second aspect of this jurisprudence is the appellate caution which applies to JCPC appeals as much as it does to domestic appeals to the UK Supreme Court. It was outlined by Lord Mance in *Central Bank of Ecuador*<sup>22</sup>, where he explained:

*"... quite apart from the settled rule relating to concurrent findings, any appeal court must be extremely cautious about upsetting a conclusion of primary fact. Very careful consideration must be given to the weight to be attached to the judge's findings and position, and in particular the extent to which, he or she had, as the trial judge, an advantage over any appellate court. The greater that advantage, the more reluctant the appellate court should be to interfere..."*

Another context in which the JCPC defers to the judgment of local courts is in the assessment of damages. In *Nance v British Columbia Electric Railway Company*<sup>23</sup> Viscount Simon LC explained that the Judicial Committee will not generally interfere with a lower court's assessment of damages unless there has been a misdirection of law, or the amount is inordinately low or high. This principle was applied in the Brunei case of *Moi*

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<sup>20</sup> Mance and Turner (n 16), [5.47].

<sup>21</sup> [1946] AC 508, [4]-[6].

<sup>22</sup> *Central Bank of Ecuador and others v Conticorp SA and others (The Bahamas)* [2015] UKPC 11, [2015] BUS LR D 7, [5].

<sup>23</sup> [1951] AC 601, 613.



*Yin v Bin Suhaili*.<sup>24</sup> In *Moi Yin*, the claimant was a widow, whose husband had been killed in a road traffic accident caused by the defendant's negligence. There was no record of the deceased's actual earnings but the judge in Brunei made an award of \$1.5 million in damages; at the time this was the highest award ever made for such a case in Brunei. When the appeal reached the JCPC, their Lordships were "troubled" by some aspects of the lower courts' assessment of damages but ultimately deferred to the judgment of the trial judge.

Fourthly and finally, the respect with which the Judicial Committee regards local courts can be seen from the frequency with which it remits matters back to local courts for determination or redetermination.<sup>25</sup>

I now turn to the interaction of the JCPC with the Supreme Court of the United Kingdom.

### **The JCPC's interrelation with the UKSC**

Because all of the Justices of the UK Supreme Court also sit on the JCPC, there is a cross-fertilisation of principles and reasoning between the two courts, with the work of each informing the other.

The JCPC is not a court of the United Kingdom, but its decisions are considered persuasive authority by our courts – as confirmed in the Supreme Court case of *Willers v Joyce (No. 2)*.<sup>26</sup> Lord Neuberger, giving the judgment of the Court, noted that the JCPC is not a UK court and so its judgments cannot be binding on courts in England and Wales.<sup>27</sup> However, Lord Neuberger stated that judges in England and Wales should regard JCPC decisions as of great weight and persuasive value and, unless there is a decision of a superior court to the contrary effect, a court in England and Wales can normally be expected to follow a decision of the JCPC.<sup>28</sup> This is because the JCPC often applies the common law, and either all or almost all of the judges sitting on any appeal in the JCPC will also be Justices of the UK Supreme Court.<sup>29</sup> Lord Neuberger continued that where the JCPC is addressing a point of English law, it can rule that the UK Supreme Court or Court of Appeal was wrong and direct that English courts should treat the decision of the JCPC as representing the binding law of England and Wales.<sup>30</sup> The JCPC exercised this power last year in *Sian Participation*

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<sup>24</sup> [1996] C.L.Y. 2130.

<sup>25</sup> Mance and Turner (n 16), [5.51]. For example, *Krishna Persad, Ramsingh Jairam v The State* [2001] UKPC 2.

<sup>26</sup> [2016] UKSC 44.

<sup>27</sup> *ibid* [12].

<sup>28</sup> *ibid* [12] and [16].

<sup>29</sup> *ibid* [11].

<sup>30</sup> *ibid* [19]-[21].

*Corporation*,<sup>31</sup> an appeal from the Virgin Islands overturning a decision of the Court of Appeal of England and Wales on an issue of corporate insolvency.

My colleagues and I often draw on JCPC authorities in our decision-making in the UK Supreme Court. To give just one example, the majority judgment in *R (Miller) v Secretary of State for Exiting the European Union* cited several JCPC decisions.<sup>32</sup> These included *The Zamora*,<sup>33</sup> which was cited in support of the proposition that the exercise of the Crown's administrative powers must be compatible with legislation and the common law,<sup>34</sup> and *Madzimbamuto v Lardner Burke*,<sup>35</sup> which was cited to support the notion that courts will not directly enforce political or constitutional conventions.<sup>36</sup>

A further illustration of the interrelation of the work of the JCPC and UK Supreme Court is that in 2016, for the first time, the two courts sat together as a single body to hear *Ruddock v The Queen* and *R v Jogee*.<sup>37</sup> These two appeals, one from Jamaica and one from England, concerned the law of joint enterprise and the principles at issue in the two cases were the same. A single judgment was delivered, but it was given two citations: one for each body. These decisions changed the law on joint enterprise. The appellant in *Ruddock* had been convicted of murder, which had been committed in the course of a robbery. A co-defendant, Hudson, had pleaded guilty to the murder. However, Ruddock had given a statement to the effect that he was involved in the robbery and had tied the deceased's hands and feet. The trial judge directed the jury that Ruddock was guilty of murder if he took part in the robbery and knew that there was a possibility that Hudson might intend to kill the deceased. This direction derived from an earlier JCPC decision, *Chan Wing-Siu*.<sup>38</sup> In *Ruddock* and *Jogee*, it was held that the JCPC had taken a wrong turn in *Chan Wing-Siu* and the cases that followed it. The courts held that a secondary party could only be guilty of a crime if he or she intended to assist or encourage the primary party to carry out the crime; knowing that there was a possibility that the crime might be committed was not sufficient.

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<sup>31</sup> *Sian Participation Corp v Halimeda International Ltd* [2024] UKPC 16; [2024] 3 WLR 937.

<sup>32</sup> [2017] UKSC 5.

<sup>33</sup> [1916] 2 AC 77.

<sup>34</sup> *R (Miller) v Secretary of State for Exiting the European Union* [2017] UKSC 5, [45].

<sup>35</sup> [1969] 1 AC 645.

<sup>36</sup> *R (Miller) v Secretary of State for Exiting the European Union* [2017] UKSC 5, [144].

<sup>37</sup> *Ruddock v The Queen* [2016] UKPC 7, heard with *R v Jogee* [2016] UKSC 8.

<sup>38</sup> [1985] AC 168.

This leads me into my next point: that JCPC decisions have caused significant developments in the common law, contributing to the development of law across the globe on questions of considerable importance.

### **The JCPC's contribution to the common law**

Lord Neuberger described the JCPC as being “of a piece with the common law”.<sup>39</sup> As I touched on previously, the jurisdictions from which we hear appeals usually have a common law system, and their laws are often similar to that which we apply in the UK. Although the JCPC applies the laws of the relevant country when considering the appeal before it, it applies the principle of precedent on a cross-jurisdictional basis such that JCPC decisions will also bind the courts of other JCPC jurisdictions where the same point of law arises for decision. This will be the case where both jurisdictions apply English common law to the point at issue, and there is no reason to suggest any difference between them.<sup>40</sup> In this way, the JCPC helps to promote uniformity – where appropriate - and certainty in the common law across the jurisdictions from which it hears appeals. Yet, we accept divergence; we will not apply a JCPC authority in an appeal from a jurisdiction where the common law differs on the point in question. Nor where a point decided under common law in an earlier JCPC case arises in a jurisdiction like Mauritius which applies the Mauritian Civil Code, which is based on French law, to the point.

I will now briefly canvass just some of the significant contributions the JCPC has made to the common law, across a range of fields – from constitutional and public law to commercial law. As to constitutional law, the JCPC decision in *Ministry for Home Affairs v Fisher* is now the classic source of the important principle that constitutions should be generously interpreted,<sup>41</sup> and *De Freitas* laid the foundation for the common law proportionality test.<sup>42</sup> The JCPC has also delivered a number of significant decisions in the field of public law – from cases concerning the independence of the judiciary, to the rules of natural justice, and the abuse or fettering of discretion by a public body or official.<sup>43</sup> The Judicial Committee also makes an important contribution to areas of the common law

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<sup>39</sup> Lord Neuberger, ‘The Judicial Committee of the Privy Council in the 21<sup>st</sup> Century’ (The Annual Caroline Weatherill Memorial Lecture, Isle of Man, 11 October 2013), [2].

<sup>40</sup> Mance and Turner (n 16), [5.06].

<sup>41</sup> *Ministry for Home Affairs v Fisher* [1980] AC 319.

<sup>42</sup> *De Freitas v Permanent Secretary of Ministry of Agriculture, Fisheries, Lands and Housing* [1999] 1 AC 69.

<sup>43</sup> See, for instance: *Hinds v R* [1977] AC 195; *Thomas v Attorney General of Trinidad and Tobago* [1982] AC 113; *Royal Cayman Islands Police Service v Commissioners of the Royal Cayman Islands* [2021] UKPC 21; *Almazeedi v Penner* [2018] UKPC 1.

which are used in commerce, delivering significant cases in the fields of trusts, contract, tort, and property law.<sup>44</sup>

Through its development of the common law, the JCPC's sphere of influence lies beyond its formal jurisdiction - extending to common law countries such as Australia, Canada, Hong Kong and New Zealand. To illustrate the influence and persuasiveness of JCPC decisions – between 2000 and 2016, the JCPC was cited 34 times by the Supreme Court of Canada.<sup>45</sup> This made it the second most cited supranational court after the European Court of Human Rights, during that period.<sup>46</sup>

In my view the JCPC has made a substantial contribution to the development of public and private law, not just in the jurisdiction from which any particular appeal comes, but in the UK and across the common law world.

### **The influence of English law on the common law**

There is also a beneficial process in the other direction as the jurisprudence of the UK Supreme Court is available to provide authoritative or at least highly persuasive answers to legal problems in JCPC jurisdictions. Thus, relatively small states which have much less case law on which to draw than, for example, England and Wales, can draw on the decisions of the UK Supreme Court knowing that those cases are decided by judges who also sit in the JCPC. Before I became a judge, as a Scots lawyer practising in a jurisdiction with a much smaller body of case law than England and Wales, I drew on the commercial cases of the English courts to inform my analysis, similarly knowing that my apex court – then the House of Lords - decided cases in both Scots law and English law.

In my time on the Supreme Court and the JCPC since 2013 the judges, sitting on both courts, have decided many important cases on contract and commercial law. They have

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<sup>44</sup> See, for instance: *Investec Trust (Guernsey) Limited and another v Rawlinson and Hunter Trustees SA and another* [2018] UKPC 7; *Charles B Lawrence & Associates v Intercommercial Bank Ltd* [2021] UKPC 30; *Nolan v Jude* [2024] UKPC 22; *Primeo Fund (in Official Liquidation) v Bank of Bermuda (Cayman) Ltd and another* [2021] UKPC 22; and *Primeo Fund (in Official Liquidation) v Bank of Bermuda (Cayman) Ltd and another* [2023] UKPC 40.

<sup>45</sup> Klodian Rado, 'The use of non-domestic legal sources in Supreme Court of Canada judgments: Is this the judicial slowbalization of the court?' (2020) 16(1) *Utrecht Law Review* 57, 71 < [The use of non-domestic legal sources in Supreme Court of Canada judgments: Is this the judicial slowbalization of the court? | Utrecht Law Review](#)> (accessed 27 January 2024).

<sup>46</sup> *ibid.*

included cases on proper approach to the interpretation of contracts<sup>47</sup> the implication of terms,<sup>48</sup> the rectification of contracts,<sup>49</sup> penalty clauses,<sup>50</sup> the defence of illegality,<sup>51</sup> the defence of economic coercion,<sup>52</sup> and remoteness of damage.<sup>53</sup> There have also been several important cases on shipping law,<sup>54</sup> international trade,<sup>55</sup> and arbitration.<sup>56</sup> There have also been important cases on the tort of negligence.<sup>57</sup> These decisions and many others are a rich resource for judges and lawyers in the common law family.

### **The modernisation of the JCPC**

Before concluding I would like to say a few words about the continuing evolution of the JCPC. It is a forward-thinking institution.

As I mentioned earlier, all JCPC hearings are now live streamed on our website, with recordings subsequently uploaded to the website. The crucial point here is that our hearings can be watched by lawyers and interested members of the public in the local jurisdiction. We hope that this goes some way to address some of the challenges arising out of our geographical distance from the jurisdictions which we serve.

To further bridge this distance, we have also adopted remote and hybrid hearings, and are flexible about the time of day at which cases are heard. This has increased representation of local counsel by making the JCPC more accessible and ensures that we continue to deliver access to justice at a reasonable cost.

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<sup>47</sup> See, for instance: *Wood v Capita Insurance Services Ltd* [2017] UKSC 24; and *Rainy Sky SA v Kookmin Bank* [2011] UKSC 50 and *Arnold v Britton* [2015] UKSC 36.

<sup>48</sup> See, for instance: *Marks and Spencer plc v BNP Paribas* [2015] UKSC 72; and *Barton v Gwynn -Jones* [2023] UKSC 3.

<sup>49</sup> See, for instance: *National Union of Rail, Maritime and Transport Workers and another v Tyne and Wear Passenger Transport Executive T/A Nexus* [2024] UKSC 37.

<sup>50</sup> See, for instance: *Cavendish Square Holding BV v El Makdessi* [2015] UKSC 67.

<sup>51</sup> See, for instance: *Allen v Hounga* [2014] UKSC 47; *Les Laboratoires Servier v Apotex Inc* [2014] UKSC 55; *Jetivia SA v Bilta (UK) Ltd* [2015] UKSC 23, reported as *Bilta (UK) Ltd v Nazir* [2016] AC 1; and *Patel v Mirza* [2016] UKSC 42.

<sup>52</sup> See, for instance: *Times Travel (UK) Ltd v Pakistan International Airline Corporation* [2021] UKSC 40; and *Ukraine (represented by the Minister of Finance of Ukraine acting upon the instructions of the Cabinet of Ministers of Ukraine) v The Law Debenture Trust Corporation plc* [2023] UKSC 11.

<sup>53</sup> See, for instance: *Attorney General of the Virgin Islands v Global Water Associates* [2020] UKPC 18.

<sup>54</sup> See, for instance: *Fimbank Plc v KCH Shipping Co Ltd* [2024] UKSC 38; and *MUR Shipping BV v RTI Limited* [2024] UKSC 18.

<sup>55</sup> See, for instance: *Lifestyle Equities CV and another v Amazon UK Services Ltd and others* [2024] UKSC 8.

<sup>56</sup> See, for instance: *UniCredit Bank GmbH v RusChemAlliance LLC* [2024] UKSC 30.

<sup>57</sup> See, for instance: *Cox v Ministry of Justice* [2016] UKSC 10.

We recently had Dame Janice Pereira, former Chief Justice of the Eastern Caribbean Supreme Court, sit with us on several cases in December. Dame Janice brings a wealth of experience and expertise to the Judicial Committee's work. We look forward to welcoming her again this year. Sir Anthony Smellie, former Chief Justice of the Cayman Islands, will also sit with us this summer, and we hope that other judges from a range of JCPC jurisdictions may similarly be invited in the future. Having the ability to invite judges from JCPC jurisdictions brings to the Board the benefit of legal expertise and experience from other jurisdictions and the opportunity to deepen connections with the countries it serves. The start of December also saw the launch of our Case Management Portal and new website. These were created with a focus on delivering a service which puts users at its heart. The Portal is a two-way online site with features such as a case tracker, electronic service, correspondence and e-payment. It enables users to interact with the administration of the Court at a time which suits them, despite the time difference that may apply. Parties can now file court documents digitally, track the progress of their case, pay any fees that are due, and be notified of any updates when they happen – all through the Portal. We hope that this will make the submission and management of a case more intuitive, efficient and modern, enhancing access to justice for our users.

These are just some illustrations of the JCPC's continuing improvements of the service that it provides to the jurisdictions which it serves.

### **The continuing role for the JCPC**

In recent years there has been a debate, particularly in the Caribbean but also more widely, as to whether it is appropriate that there be a supra-national appeal court in London acting as the final court of appeal of the JCPC jurisdictions. It is a perfectly proper debate for independent states to have, and the JCPC maintains a strictly neutral stance on whether an independent country should send its appeals to London or send them to a domestic or regional final court of appeal.

I understand political arguments which present the JCPC as a hangover from a colonial past. Our past history is a fact. But there is another perspective. That is that independent sovereign states, which have a historical connection with the UK, are free to make a pragmatic judgement on whether they derive benefit from what the JCPC has to offer them.

### **Final remarks**

In conclusion, I will leave you with a comment from Viscount Haldane in a 1926 JCPC case, where he said that the Judicial Committee is “not a body, strictly speaking, with any location.”<sup>58</sup> He said that it is “not an English body in any exclusive sense.” In 2025, I hope that this rings true more than ever.

It is an honour to serve as a member of the JCPC and I hope that the relationship between the courts in the UK and Brunei will prosper and flourish over the years to come.

Thank you.

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<sup>58</sup> *Alex Hull & Co v McKenna* [1926] IR402, 404.