

2. In view of the importance of uniformity in this matter, and having regard to the weighty considerations urged by the Privy Council of the Dominion of Canada in favour of the maintenance of the existing arrangement, I propose to postpone taking further action in the matter until I have received an expression of the wishes of your Ministers on the question.

I have, &c.,

L. HARCOURT.

Governor the Right Hon. Lord Islington, K.C.M.G., D.S.O., &c.

Enclosures.

The ACTING GOVERNOR-GENERAL to the SECRETARY OF STATE.

No. 551.

SIR,—

Ottawa, 10th October, 1912.

With reference to your telegram of the 3rd July, on the subject of the publication of dissenting opinions in the Judicial Committee of the Privy Council, I have the honour to transmit herewith, for your consideration, copies of an approved minute of the Privy Council for Canada, setting forth the views of my Responsible Advisers.

I have, &c.,

C. FITZPATRICK,

Deputy Governor-General.

CERTIFIED COPY OF A REPORT OF THE COMMITTEE OF THE PRIVY COUNCIL, APPROVED BY HIS EXCELLENCY THE DEPUTY GOVERNOR-GENERAL ON THE 8TH OCTOBER, 1912.

THE Right Hon. the Secretary of State for External Affairs submits a memorandum, dated 25th September, 1912, from the Minister of Justice, with reference to a despatch of 3rd July, 1912, from the Right Hon. the Secretary of State for the Colonies, stating, in effect, that His Majesty's Government propose to submit to His Majesty the King an Order in Council authorizing the publication of dissenting opinions in the Judicial Committee of the Privy Council. Mr. Harcourt states that he would be glad to know whether Your Royal Highness's Ministers concur in this proposal, and he adds that they will no doubt ascertain the views of the Provincial Governments on the subject.

The Minister of Justice observes that it has been ascertained upon inquiry of the local Governments that Ontario concurs in the proposal; Quebec, Prince Edward Island, and Saskatchewan express themselves in favour; New Brunswick approves; while British Columbia and Alberta have no objection. On the other hand, Nova Scotia and Manitoba are opposed to the proposal, the former upon the ground that no useful purpose would be served by the publication of dissenting opinions in any Court of final resort, and the latter for the reason that the publication of dissenting opinions is inadvisable.

The Minister of Justice, upon careful consideration, is unable to escape the conclusion that it would not be in the public interest to introduce any change in the ancient constitutional practice with regard to dissenting opinions. The value of the Judicial Committee of the Privy Council as a final Court of Appeal consists not only in the ultimate and decisive effect of its judgments as relating to the particular cases submitted and the parties; but more especially, since appeals to the Judicial Committee usually involve serious questions of law, often of great public importance, the decisions are of permanent advantage to the profession and to the public generally. While as to the immediate suitors, expression of dissent is of no material value because it does not alter the result, it would serve in the more important aspect of the case, from the public point of view, to affect the interpretation or certainty of a judgment, and its quality as a determining precedent. Moreover, cases not infrequently go to the Judicial Committee in which public opinion is very deeply concerned. There are constitutional questions as between the dominion and the provinces; there are questions involving education having a religious aspect; there are cases involving racial differences, and others which may well be imagined, which cannot perhaps be acceptably determined except by a tribunal of the experience, learning, and impartiality which the Judicial Committee is universally acknowledged to possess and exercise. Recently it is becoming the practice for local Judges to sit in the Committee, and the Minister cannot help feeling that it would be extremely unfortunate if it were made known that one of these cases had been determined by a bare majority depending upon the concurrence of a local Judge. It might even perhaps be only less unfortunate that the local Judge should consider it necessary to express dissent.

For these and other reasons which might be stated, the Minister of Justice considers that effect cannot be given to Mr. Harcourt's proposal without in a measure impairing the dignity and influence of a tribunal which is the ultimate exponent of the law and Constitution.

The Committee concur in the foregoing, and, on the recommendation of the Secretary of State for External Affairs, advise that Your Royal Highness may be pleased to transmit a copy hereof, if approved, to the Right Hon. the Principal Secretary of State for the Colonies.

All which is respectfully submitted for approval.

RODOLPHE BOUDREAU,

Clerk of the Privy Council.