

REPORT OF THE SECOND STUDY COMMISSION

TO THE CENTRAL COUNCIL

58<sup>th</sup> ANNUAL MEETING OF THE IAJ

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The topic for discussion in the Second Study Commission this year was: Expert Evidence. We had limited the questionnaire to five questions and we asked member representatives to provide short but concise answers.

There were 37 responses to the questionnaire that were circulated to member associations. A summary of the responses was prepared and circulated as well.

However, we did not believe that the questionnaire and answers should be central to the work done by the Second Study Commission at our meetings here in Barcelona. Instead, we decided that we should treat the questionnaire as being a series of background questions to stimulate the way in which the delegates would be thinking in the context of the theme of “Expert Evidence”.

In doing so, we invited Mr. Justice Tony Pagone of Australia to prepare a paper to be presented at our first session of the Second Study Commission in Barcelona. He prepared an excellent discussion paper on the management of expert evidence for use by courts and tribunals. Attached to his paper, Mr. Justice Pagone produced practical documentation presently in use in Australia, which included:

- a pre checklist for briefing an expert to give evidence at trial;
- a practice note from the Federal Court of Australia regarding expert witnesses and proceedings in the Federal Court of Australia; and,
- an expert witness Code of Conduct.

His paper, along with these additional documents, was circulated to all members long before our meeting in Barcelona for their perusal and consideration.

Unlike prior years, we decided that we would focus upon the principal paper and two commentaries from different jurisdictions to provide broadness and diversity of perspective. The commentaries were prepared by Madam Justice Carole Besch of Luxembourg and Mr. Justice Max Carette of Belgium.

These three presentations generated a lively and robust discussion amongst the member representatives who attended the meetings on Tuesday and Wednesday.

The work of the Second Study Commission would have been made considerably easier if we had had available to us the facility of simultaneous translation. The absence of this unfortunately inhibited to some extent the fluidity of an otherwise excellent discussion. We recommend that the possibility of providing simultaneous translation for future study commission meetings should receive serious consideration. But for the considerable translation skills informally made available to us by Madam Justice Carole Besch, to whom we express sincere thanks, we could not have managed.

For purposes of this report to Central Council, we have reduced our deliberations to principal conclusions. They are as follows:

- The Second Study Commission studied together the judicial problem of the receipt and management of expert evidence by reference to a paper and two commentaries on the use of concurrent evidence and explored in plenary discussion the extent to which that method of receipt and management of expert evidence could be adapted by the respective and different jurisdictions represented at the meeting, consistent with the fundamental requirements of ensuring reliability of evidence, independence of judicial decision making and fairness to the parties.
- Our deliberations have already produced a number of direct and tangible results. A pilot project on concurrent evidence has been initiated in Israel, and the Australian delegation has offered to assist the Israelis with this pilot project. In addition, we expect that the paper and other materials produced for the Second Study Commission may inform and assist on-going rule revisions in relation to the management of expert evidence in Canada.
- We believe that the new approach brought to the deliberations of the Second Study Commission here in Barcelona has brought value to our member representatives. They each obtained practical information that they can in turn bring home and distribute amongst the members of their respective associations. In doing so, we believe we have raised the educational component of the work of the Second Study Commission.

We wish to thank our colleagues from Australia, Jennifer Davies and Tony Pagone who planted the seed of change amongst us in Brazil last year. Moreover, thank you Justice Pagone for accepting to prepare and provide an excellent paper and presentation.

As well, I wish to thank two officers of our Study Commission, Carole Besch and Max Carette for accepting to prepare and present commentaries which were very well done and most helpful in our deliberations. Thank you.

The topic for discussion next year to be approved by the Central Council is: “Class actions”.

I would like to thank the Study Commission Vice-chairs, Mette Sogaard Vammen of Denmark, Max Carette of Belgium, John Edwards of Ireland and our Secretary, Carole Besch of Luxembourg, for their helpful and wise contributions to the work of the Commission during this past year.

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Canada  
Chair, Second Study Commission