

REPORT OF THE SECOND STUDY COMMISSION

TO THE CENTRAL COUNCIL

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

MEXICO CITY, MEXICO

October 15-20, 2016

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

There were 30 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 Mexico City. 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 “Class Actions”.

In doing so, we invited Madam Justice Allyson Duncan of the United States to prepare a paper to be presented at our first session of the Second Study Commission. She prepared an excellent discussion paper on Class Actions in the United States Federal Courts. Her paper along with attachments was circulated to all members long before our meeting in Mexico City for their perusal and consideration.

As we had done last year, we have focused upon the principal paper and two commentaries from different jurisdictions to provide broadness and diversity of perspective. The commentaries were prepared by Mr. Justice John Edwards of Ireland and Mr. Justice Skuli Magnusson of Iceland.

These three presentations generated a lively and robust discussion amongst the member representatives who attended the meetings on Monday and Wednesday of this week.

The work of the Second Study Commission here in Mexico City was made considerably easier due to simultaneous translation. The translation services provided have ensured excellent discussions amongst the delegates. We recommend that simultaneous translation be provided for future study commission meetings.

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

- The majority of respondents to our questionnaire whose jurisdictions have some form of class action procedure confirmed that the advantages of class actions greatly outweighed the disadvantages to such claims.
- The main advantages appear to be:
  - Improved access to justice for litigants for whom individual action would be economically unviable or otherwise overwhelming;
  - Reduction in costs for each member of the group as well as promoting efficiency in the administration of justice, by encouraging best use of limited resources;
  - Greater consistency in decision making;
  - Greater finality and certainty for defendants, in terms of potentially exhausting the underlying legal issues.
- The main disadvantages appear to be:
  - Lack of control in decision making for some members of the class;
  - The resolution of these type of claims usually takes longer;
  - In the event the class action is unsuccessful, members of the class may be precluded from further action.
- In the case of jurisdictions that do not have class action procedures, multi-party litigation tends to be conducted within the framework of representative action procedures; alternatively by the joinder of potentially interested parties to existing proceedings and/or the consolidation of existing proceedings; alternatively by the use of some form of test case procedure. However, each of these alternative means of dealing with multi-party litigation has widely acknowledged limitations.

We wish to thank Madam Justice Allyson K. Duncan for accepting to prepare and provide an excellent paper and presentation. As well, we wish to thank Mr. Justice John Edwards and Mr. Justice Skuli Magnusson 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: “The use of technology in civil litigation matters”.

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.

The Directors for the next two years are:

Thomas E. Cyr	President	Canada
Mette Sogaard Vammen	Vice-president	Denmark
John Edwards	Vice-president	Ireland
Carole Besch	Vice-president	Luxembourg

Thomas E. Cyr  
Canada  
Chair, Second Study Commission