

# REPORT OF THE SECOND STUDY COMMISSION

## TO THE CENTRAL COUNCIL

### 61<sup>st</sup> ANNUAL MEETING OF THE IAJ

#### MARRAKECH, MOROCCO

October 14-18, 2018

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

There were 31 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 Marrakech. 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 “Strategies in effective case management”.

In doing so, we invited Judge Johan Nordgren of Sweden to prepare a paper to be presented at our sessions of the Second Study Commission. He prepared an excellent discussion paper pertaining to Management of Litigation Cases before Swedish Courts. His paper was circulated to all members before our meeting in Marrakech for their perusal and consideration.

We have focused upon a principal paper to provide broadness and diversity of perspective. This presentation 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 Marrakech was made considerably easier due to simultaneous translation. We wish to thank the organizing committee as well as the IAJ for making simultaneous translation

available. These services have ensured excellent discussions amongst the delegates. **Once again, thank you!** 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:

- Case management plays an important role in the majority of jurisdictions and is a very effective tool, particularly in the early stages of the procedure, to maximize the best use of scarce resources and to ensure the most efficient disposition of the case, whether by settlement or by trial;
- It is particularly useful both for best positioning the parties to achieve a resolution of their dispute without the necessity for a full trial if possible, but if there has to be a trial then to narrow down the issues and speed up the procedure;
- Case management should be judge driven and should be designed to help the judge focus on the core issues in dispute, and to ensure that the parties only put before the court that which is necessary. Additional advantages to this approach are that it improves the prospects of settlement and reduces costs;
- In some jurisdictions case management is mandatory. In other jurisdictions, it is strongly encouraged;
- Settlement conferences form an important part of the case management tool-kit. These conferences can be conducted either in the context of court mediated settlement discussions as happens in some countries, or in the course of third party mediation which is availed of in other countries;

In the light of these conclusions, we recommend that:

- as case management is a skill in itself, appropriate training in case management should be available to judges;
- where judicial settlement conferences are possible, training on this aspect is especially important;
- the option of mediation training should also be available to judges, for those who might wish to avail of it;

- it is important to use case management in a manner which is appropriate to the legal and procedural context in which the litigation is taking place.

We wish to thank Judge Johan Nordgren for accepting to prepare and provide an excellent paper and presentation. Thank you.

The topic for discussion next year to be approved by the Central Council is: “Problems, large and small, in the financing of litigation”.

I would like to thank the Study Commission Vice-chairs, Mette Søgaaard Vammen of Denmark, 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 Cyr, Canada	Chair
John Edwards, Ireland	Vice-chair
Mette Søgaaard Vammen, Denmark	Vice-chair
Flavia Da Costa Viana, Brazil	Vice-chair

Thomas E. Cyr  
Canada  
Chair, Second Study Commission