

**INTERNATIONAL ASSOCIATION OF JUDGES  
UNION INTERNATIONALE DES MAGISTRATS**

**Asia, Oceania and North America Regional Group**

**Minutes of the Meeting of the ANAO  
Toronto, Canada  
8 - 12 June 2014**

**ATTENDANCE:**

- Australia: Justice Tony Pagone (Federal Court of Australia)  
Justice Jennifer Davies (Federal Court of Australia)
- Canada: Justice Robert Blair (President, ANAO, Ontario Court of Appeal)  
Justice Denis Jacques (President, Canadian Superior Court Judges' Association)  
Justice Mark McEwan (Vice President, Canadian Superior Court Judges' Association)  
Justice Julie Dutil (Representative of CSCJA)  
Justice Barry MacDougall (Representative of CSCJA to IAJ)  
Justice Thomas Cyr (Representative of CSCJA to IAJ)
- IAJ Judge Gerhard Reissner (President IAJ, Austria)  
Judge Giacomo Oberto (Secretary-General, IAJ, Italy)
- Kazakhstan: Judge Serik Baibaturov (Kazakhstani Judges' Association)  
Judge Beknarkov Naratali (Kazakhstani Judges' Association)  
Judge Yerbol Akhmetzhanov (Kazakhstani Judges' Association)  
Judge Malik-Tegi Bakyt (Kazakhstani Judges' Association)
- United States: Judge David Carter (United States District Judge)

**1. WELCOME**

Justice Robert Blair, President of the ANAO Group, welcomed all present in particular the President of the IAJ, Judge Gerhard Reissner and the IAJ Secretary-General, Judge Giacomo Oberto.

**2. APPROVAL OF MINUTES**

The Chair accepted a motion from Justice MacDougall and seconded by Justice Davies approving the minutes from the meeting of the ANAO held in Yalta, Ukraine, on 6 October 2013. The motion was put and carried unanimously.

**3. PRESIDENT'S REPORT**

The President reported on a number of matters which had occurred since the last ANAO meeting including some matters which would be the subject of the discussion at the ANAO meeting on this occasion. The first of those matters was to report that all ANAO members would be required to respond to the questionnaire to be sent to all associations to ensure continuing compliance with the objectives of the IAJ. Amendments had been made to the IAJ Statute at the Washington meeting in November 2012 which called for the periodic monitoring of IAJ member associations to ensure continuing compliance. Former extraordinary members were to tender a response to the approved questionnaire regarding their association within one year and all members are to do so every five years commencing 2015 (Regulation, Article 13). The Presidency Committee has

received and viewed a number of reports from extraordinary members since the Yalta meeting including from: Azerbaijan, Albania, Bosnia, Guatemala, Guinea, Serbia, São Tomé & Príncipe and Turkey. Most of the reports have been accepted by the Presidency Committee but those of Azerbaijan, Bosnia and Guatemala have been referred to their respective regional groups for consideration.

The IAJ has applications for membership in various stages from associations from Russia, Iraq, Yemen, Palestine, Chad, Cape Verde and Montenegro. Expressions of interest have been received from an umbrella association of Caribbean judges also. Justice Blair noted that the Russian application has been pending for a number of years and that he, with Vice President Virgilijus Valancius, are the appointed rapporteurs. IAJ President Reissner together with IAJ Vice Presidents Regnard, Valancius and Blair were to have attended a conference in Moscow two weeks ago to have assisted in assessing the Russian application but the Russian Association of Judges cancelled the proposed meeting given the current international situation concerning the Crimea and Ukraine. The IAJ is treating the Russian application as being “on hold” for the time being.

The applications from Iraq and Yemen have raised concerns about security of the rapporteurs especially in light of the current protocol of the IAJ, which is to require the visit of one of the rapporteurs to the country in respect of the application. The President noted that this was a matter which would be discussed later at the meeting.

The application from Palestine raises a number of sensitive issues given the situation in the Middle East and the International Law considerations concerning “Statehood”. The International status of Palestine as a State is questioned in some places and the application for membership by Palestine may potentially give rise to some conflict with Israel whose member association is a member of the IAJ. On the other hand, Palestine is recognised as a State by many countries and has a status as a “non-member State” at the United Nations since 2012. Other IAJ members are in similar positions such as, for example, Taiwan and, perhaps Puerto Rico (which is a US Territory).

The relationship of an association to a country is also relevant to the inquiries that have been received from a Caribbean association as an umbrella association for the Caribbean region as a whole rather than for membership of only one country.

Justice Blair also reported on the IAJ’s activities in support of judiciaries under attack in several countries. The first concerned the position of the judiciary in Turkey. In February IAJ President Reissner attended a conference on the independence of the judiciary organised by the Turkish Judges’ Association in Istanbul. IAJ President Reissner returned discouraged about the situation and said in an email to the members of the Presidency Committee:

“To summarise it looks as if the independence of the judiciary is abolished. The Government invented high[ly] sophisticated ways how to do this. The main tool is the amendment of the jurisdiction and of the internal structure of the High Council of Judges and Prosecutors (HCJP), another is the subordination of the Justice Academy under the Ministry of Justice, and the last but not least the misuse of the already existing possibility to transfer judges and prosecutors to other positions. But there are also direct rejections to follow court decisions and to enforce orders of the prosecutors. All this is accompanied with a media campaign which aims to harm the trust of the judiciary, which already is very low.”

President Reissner and other presidents of the IAJ Regional Groups communicated with the President and Prime Minister of Turkey conveying deep concerns on behalf of the IAJ members about the eroding effect of these amendments on judicial independence. Justice Blair acknowledged and thanked those of the ANAO members who had assisted in drafting the letter

forwarded on behalf of the ANAO but reported that unfortunately neither the President of Turkey nor the Prime Minister had responded to his letter.

A situation in Peru has arisen regarding the payment of judicial salaries. The Peruvian Constitutional Court ruled that the legislation was unconstitutional but the Government ignored the court's ruling. IAJ President Reissner also wrote to the relevant Peruvian authorities on behalf of the IAJ pointing out that the failure to comply with laws regarding judicial remuneration contravenes the United Nations basic principles of the independence of the judiciary and other international declarations. IAJ President Reissner received a response but not one which appeared promising.

Egypt has also been the subject of attention by the IAJ. A new Constitution was adopted in Egypt in January following a referendum with new provisions concerning the judiciary put in place. The Egyptian Judges' Club reports that the majority of the proposals made by the judges were adopted. Justice Blair reported that IAJ President Reissner and others expressed some scepticism that the changes would mean much because they too are open to challenge by the passage of legislation. Justice Blair also expressed some personal reservations about the independence of the judiciary in Egypt.

Justice Blair remarked that the IAJ plays an important role in supporting beleaguered judicial associations around the world notwithstanding the discouraging effects occasioned by the lack of positive responses received from Turkey and Peru. The IAJ continues to keep alive issues of judicial independence in countries where that vital fact is under attack.

Justice Blair informed the meeting that the Secretary-General Judge Giacomo Oberto, has circulated to the Presidency Committee members some proposed amendments to the IAJ Statutes which fall into three broad categories:

- (a) Housekeeping amendments;
- (b) Procedural amendments concerning the application for membership; and
- (c) Amendments concerning the monitoring procedures.

Justice Blair informed the meeting that the Presidency Committee will be considering these amendments at its meeting in Rome at the end of June and that this meeting of the ANAO would be discussing items (b) and (c) generally at its meeting in Toronto.

Justice Blair then invited questions and comments before turning to the items on the agenda. Justice McEwan asked whether it was likely that there would be a positive vote concerning the position in Egypt. There then following general discussion concerning the position in Egypt including the expression of concerns by a number of members about media reports about the imposition of death sentences in large blocks.

#### **4. WORKING GROUP ON RECRUITMENT OF NEW ANAO MEMBERS**

Justice Pagone was asked to report on the developments of the working group for the recruitment of new members. He tabled the letter which had been drafted by Judge Tsogt of Mongolia but settled in conjunction with other judges on the working group. He also tabled the list of countries which Judge Tsogt had prepared. Justice Pagone explained the process adopted by Judge Tsogt as being to ensure transparency and thoroughness by having identified every country recognised by the United Nations within the area covered by the ANAO. That yielded a list of some 52 countries which were not represented in the IAJ. The draft letter was one which was designed to be sent to the principal judicial officer in each jurisdiction to identify whether there was an appropriate body or group of people who might be approached with a view to discussing the

possibility of joining the IAJ. The letter was not drawn as an invitation to join but as a first step in exploring the possibility of doing so.

There was wide and a general discussion about the process including the expression of concern that the judiciaries in some of the countries on the list might be known as inappropriate for the IAJ to be approaching.

Discussion on this item was interrupted to permit the presentation on the operation of the commercial lists on the Canadian Superior Trial Courts but resumed on Wednesday 11 June when Justice MacDougall reported on discussions which he had with others present leading to the suggestion of a much shorter list of countries to which attention should first be placed to maximise energy. The list was circulated and approved by those present. Accordingly, 16 countries were adopted for initial approach with a letter to the effect drafted by Judge Tsogt and assigned within the same primary area of responsibility as Judge Tsogt had identified. Thus,:

Kazakhstan Association of Judges are to contact potential members in:

- (1) Jordan
- (2) Pakistan
- (3) Tajikistan
- (4) Turkmenistan
- (5) Uzbekistan
- (6) Kyrgyzstan

Mongolian Association of Judges are to contact potential members in:

- (1) Butan
- (2) India
- (3) South Korea
- (4) Nepal

Taiwan Association of Judges are to contact potential members in:

- (1) Maldives
- (2) Malaysia
- (3) Philippines
- (4) Singapore

Australian Association of Judges are to contact potential members in:

- (1) New Zealand
- (2) Solomon Islands

The meeting approved a draft letter to go to the 16 countries listed above and that the draft letter should also go to all ANAO members asking that they provide to Judge Tsogt the names of any individuals they may know in each of the countries if they have personal contacts in those countries and that they provide any comments they may have concerning the balance of the other countries that were not listed in the shorter list adopted at the meeting. Justice Pagone was asked to liaise with Justice Tsogt to progress this matter before the meeting in Brazil.

## **5. PRESENTATION OF IAJ WEBSITE**

The Secretary-General was invited to inform their members of the IAJ website and to take the members through a tour of the website screened through a computer.

## **6. PRESENTATION REGARDING THE EVOLUTION AND OPERATION OF COMMERCIAL LISTS ON CANADIAN SUPERIOR TRIAL COURTS**

Regional Senior Justice Geoffrey Morawetz (Superior Court of Ontario, Toronto) and Mr Peter Griffin (experienced commercial list litigator of the firm Lenczner, Slaght, Royce, Smith, Griffin LLP) joined the meeting to make a presentation concerning the evolution and operation of commercial disputes in Toronto.

Justice Morawetz began the presentation explaining the ways in which the courts had come to address the perennial problems associated with cross-border insolvency. Amongst the concerns for the development of the commercial list which evolved in Toronto was the need to ensure access to decision making on a timely basis where decisions were needed on a timely basis and access to justice and decision makers was needed. In 1991 the commercial list was created in Toronto to deal with what was then an increase in insolvency disputes with time sensitive litigation on the increase. That ultimately led to an expanding of the commercial list to other areas of commerce and now works on the basis that there is a category of cases which are entitled to issue for determination in the commercial list and others where access is dependant upon the discretion of the court in conference between judges and the parties. The commercial list operates by reference to what is referred to as the three Cs: Communication, Co-operation and Common Sense. It has been six to seven judges who rotate into the commercial list on the basis of a balance between experience and the need to gain knowledge. There is a users' group which, amongst its activities, has developed standard orders that are frequently used in commercial litigation in Toronto.

Mr Peter Griffin is a commercial litigator and stressed the significance of the commercial list in having ensured accessibility and predictability of decision making. For commercial litigants, an important factor is to be able to hold a decision obtained at first instance on appeal. The Court of Appeal seems to accept that the commercial list has developed a degree of expertise and generally appears to defer to decisions of trial judges thereby increasing predictability and certainty in outcomes at first instance.

The group was also told about cross-border disputes between the United States and Canada where trials are heard simultaneously with the development of a protocol and procedure adopting the UNCTRAL model. The first step in a joint hearing is for the court to order for the adoption of a cross-border communication protocol. The UNCTRAL model can be seen online at [www.iiiglobal.org](http://www.iiiglobal.org). The protocol is not substantive law but enables procedurally the one dispute to be heard at a joint hearing. The meeting asked about various issues arising from joint hearings including the possibility of inconsistent results, appeals and the potential differences arising from different rules of evidence.

The members of the meeting visited Osgoode Hall at 1.30pm and proceeded from there to visit the Commercial Court and the Criminal Court from 1.45-4.30pm. At Osgoode Hall they met with the judge conducting a criminal trial before the resumption of the hearing in the afternoon and

then sat in on a part of the hearing. At the Commercial Court the members of the ANAO group were able to see the complicated IT set up for the conduct of joint hearings in the Nortel trial run concurrently in Canada and the United States.

## **7. ANAO PROPOSAL FOR AMENDMENT TO CONSTITUTION**

Justice Julie Dutil reported on the progress of the committee which had been established to consider the proposed constitutional amendment to ensure that within a period of years each of the regional groups would have held the Office of President of the IAJ. The proposal had been deferred to a sub-committee shared by IAJ Vice-President Christophe Reynard and including Justice Julie Dutil. The latter reported that the matter had not yet progressed.

IAJ President Reissner reported that the question had been referred for consideration to a committee consisting of honorary presidents of the IAJ. A number of proposals had been considered including the potential abolition of the position of first vice-president. IAJ Secretary-General Oberto informed the meeting of a letter of 28 May 2014 for consideration of the Presidency Committee. The concerns included ensuring freedom of choice for the best candidate to take on the position of president. A countervailing motion was that there be adequate provision for each of the regional groupings to have access to the role of president of the IAJ. Justice Blair asked for the 28 May 2014 report to be circulated and to enable all members of the ANAO to comment and participate by email exchange once it had been available.

## **8. MONITORING OF MEMBER ASSOCIATIONS**

Justice Blair reported, as he foreshadowed in his report, on the need for all IAJ members to supply information in a summary questionnaire. All members will need to be monitored within a period of time and will need to complete a summary questionnaire which was not yet ready for submission to members. Justice Pagone reminded the meeting that not all members of the IAJ fell within the first group provided for by the Constitution, namely, as a National Association of Judges: Some members attended as a group of members from a country as a representative delegation but did not necessarily exist as an association or had the Constitution found in others.

## **9. RAPPORTEUR PROTOCOL FOR NEW MEMBER APPLICATION AND NEED TO ATTEND**

Justice Blair raised for consideration the need to have rapporteurs attend the country of the place in which an application was made to join the IAJ. The issue arose in the context of concerns for security which had arisen in relation to the applications by Yemen and Iraq. However, the focus was now in part also shifting upon membership of associations rather than the position in respect of the country itself. There was general discussion with the expression of different views concerning the importance of the presence of the rapporteur to evaluate what occurred in the country concerned and not just to see what appeared on paper. Justice Pagone explained the process undertaken by him in the context of the Mongolian application and the importance of ensuring that there was direct discussions with those who were supporting the application as well as potential opposition groups who might provide a reference point to evaluate the independence of the judiciary and the extent to which the rule of law applied. IAJ Secretary-General Oberto reported on the process generally adopted including the questionnaire which was prepared by the Presidency Committee and would be submitted for approval to the General Council. It was currently being reviewed and took into account the change of focus from the country to the association seeking admission: Was the association promoting independence? IAJ Secretary-General also indicated his view that it was difficult to provide a general rule about the particular figures to be identified in evaluating an application. Judge Carter suggested for principles to apply in the context of concerns for security:

- (a) Look primarily to the person inviting for security safeguards;

- (b) Ensure that the rapporteur does not fall inappropriately under the influence of the host;
- (c) Ensure the rapporteurs have sufficient independence and flexibility; and
- (d) Preferably have both rapporteurs on the ground at the same time so that discussions concerning their investigations can take place at the time of their investigations.

IAJ President Reissner responded that he could see the benefit of having both rapporteurs physically present but thought the cost would simply be prohibitive. There was general agreement for the need for a rapporteur to be physically present in the country to evaluate an application. It was thought that the questionnaire provided an initial focal point for the work of the rapporteur which should be implemented by detailed discussions with those proposing the application as well as those who would be likely to give an opposing point of view: the latter might include politicians, practitioners, leaders from interest groups and academics.

## **10. APPLICATION BY PALESTINE**

Justice Blair asked whether there was any concern about the application for a group from Palestine to join the IAJ. Different views were expressed in response to that request. Judge Carter was concerned about the fact that the United Nations might not recognise Palestine as a State; however, it was pointed out that Palestine did have recognition in the United Nations as a State although it was not a member of the United Nations. Similar problems that might be posed by the application from Palestine might also be seen in applications from Hong Kong or the more recent application from Kazakhstan. Concern was also expressed to avoid becoming involved in political considerations such as might, in any event, have arisen from Taiwan's membership.

## **11. RESPONSE TO UN QUESTIONNAIRE**

Justice Davies was invited to speak on the questionnaire which had been submitted by the UN Special Rapporteur on the independence of judges and lawyers, Mrs Gabrielle Knaul. Justice Davies tabled the letter and opened discussion by identifying the purpose of the questionnaire and some of the difficulties in responding to it. Its purpose was expressed to be the creation of a manual but it was not clear how the questions could be answered in a meaningful way consistent with the production of a manual.

IAJ President Reissner informed the meeting that he had not been able to answer all of the questions but thought it worth co-operating. Judge Carter queried whether the IAJ should co-operate in the request whilst expressing the view that it was desirable to continue to have good relations with United Nations.

IAJ Secretary-General said it was important to have good relations with the United Nations and reminded the meeting of the United Nations Charter directed to the protection of judges and the rule of law. However, there was general difficulty expressed about how to respond to the questionnaire. Justice McEwan said that it might be useful to have a manual for judges throughout the world which would act as a statement of aspirational ideals but could not see how a manual of implementation or practice could be of much assistance. Justice Dutil explained that the Canadian Supreme Court had said that the right of children to be heard was an example of an international human right which was to be looked at in applying domestic law but that generally international human rights obligations do not apply domestically. Justice Davies confirmed the position in Australia to be the same and stressed the importance of distinguishing between processes from substantive law. Kazakhstan was invited to express its views about the questionnaire but said that it would review the questionnaire and would have liked more time to consider its position.

A motion was put by Judge Carter (and seconded by Justice Davies) that the ANAO would be pleased to respond to the questionnaire but would like to discuss the proposal at the meeting in Brazil.

## **12. SELF-REPRESENTED LITIGANTS**

Justices Pagone and Jacques were asked to report on additional work that had been done to bring together material concerning self-represented litigants that might be put on the IAJ website. Justice Pagone began by noting the difference between vexatious litigants and unrepresented litigants and making available links from Australian sources which might be of general assistance to all judges dealing with, variously, vexatious litigants and unrepresented litigants. The material included articles and summaries about what to do when dealing with a vexatious litigant. This included articles by eminent forensic psychological experts who had made a study of vexatious litigants. Justice Pagone then listed website information provided by a representative sample of the courts in Australia for unrepresented litigants which could all be made available on the IAJ website for other countries thinking about what information they might wish to make available to their unrepresented litigants.

Justice Jacques similarly went through material available from the Quebec Family, Criminal and Civil Courts. He identified new guidelines on how judges should deal with unrepresented litigants which was generally available and reminded the meeting that the 2<sup>nd</sup> Study Commission at its meeting in Yalta had reported on the topic also. It was suggested that the Canadians also provide an example of an article by Justice Yves-Marie Morissette of the Quebec Court of Appeal that might be added as well.

The general meeting agreed that Justices Pagone and Jacques would forward all of the material to Justice Blair for him to arrange to have put on the IAJ website and to be made publicly available on the website for potential use by any member that might wish to adopt or modify such material for their own jurisdictions or who might find the information of some assistance.

## **13. QUESTIONNAIRE ON COURT/JUDICIAL RESOURCES**

Justice MacDougall reported on the development of a questionnaire concerning the budget and financial issues affecting the judiciary. The draft questionnaire was tabled and it was agreed that responses from any member wishing to respond should be sent to Justice MacDougall directly at [bmacdougall@judicom.ca](mailto:bmacdougall@judicom.ca). Responses from all members would be co-ordinated by Justice MacDougall and sent by September 30.

## **14. EVALUATION OF PRESENTATIONS AND COURT SESSIONS**

Justice Blair sought the participants' views on the presentations that had been made concerning Canada's Commercial Court and the visits to the Canadian courts and Osgoode Law School. The delegates had also been taken to Osgoode Law School on Tuesday afternoon to meet with Associate Dean Trevor Farrow who informed the delegates about recent developments in the educational program at Osgoode Law School for law students including practical clinical training, mediation and other forms of alternative dispute resolution.

The meeting unanimously endorsed the value of seeing the way in which one of the jurisdictions dealt with matters of common interest. By and large the problems confronting each jurisdiction were the same but the way in which each dealt with them was different. A suggestion was that there might be similar meetings of the ANAO group at which a jurisdiction would be asked to showcase the best, or an aspect, of what occurs in their jurisdiction as a focal point for ANAO meeting.



**15. THANKS**

The meeting wished to thank Justice Blair and all of the Canadian delegates for their hard work in putting together the conference and for making it so informative. Specific thanks were given to the various institutions and people that had sponsored or funded various social activities and excursions. The Kazakhstan delegation specifically thanked all those present and left each delegate with a gift from Kazakhstan.

The meeting then concluded.

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