

AIDA Mail



Association Internationale de Droit des Assurances International Association for Insurance Law
 Associazione Internazionale de Diritto delle Assicurazioni Asociación Internacional de Derecho de Seguros
 Internationale Vereinigung für Versicherungsrecht

Introduction

Michael Mendelowitz's report of the proceedings of the Presidential Council gives some idea of the size and enthusiasm of the South and Central American Chapters of AIDA grouped in CILA—a fact which, because of the geographic distances involved, is not generally realised. The draft programme for the XIth World Congress to be held in New York in 2002 was discussed and I would like to repeat that it is by no means too early for those Chapters who wish to contribute to the reports on the principal themes to choose their reporters. It will be noted that reference was also made to *AIDA Mail* at the Presidential Council meeting and in view of what was said I would like to take the opportunity to ask again that those Chapters who have not yet contributed news items to the publication make an effort to do so.

John Butler
Honorary President, AIDA

NEWS FROM THE PRESIDENTIAL COUNCIL AND NATIONAL CHAPTERS

The Meeting of the Presidential Council

The Presidential Council met in Cartagena de Indias, Colombia, on 24 May 2000 in conjunction with the VIth Congress of CILA, the Comité Ibero Latinoamericano de AIDA. The AIDA President, Mikael Rosenmejer, opened the meeting by paying tribute to the memory of the late Dr Gordon Shaw, Honorary President of AIDA, who died earlier this year. The President referred to Dr Shaw's distinguished career in the insurance industry, his authorship of two books on insurance broking (the latter written as his doctoral thesis in his eightieth year) and, above all, his long-standing association with and support for AIDA and its UK Chapter, the British Insurance Law Association. Those present at the meeting stood for a minute's silence in Gordon Shaw's memory. On a happier note, the President also paid tribute to Professor Antigono Donati, the first

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President of AIDA, on the occasion of his ninetieth birthday. The President remarked that Professor Donati's birthday also coincided with the fortieth birthday of one of his "children", the Italian Section of AIDA, which was founded in 1960.

Professor Carlos Ignacio Jaramillo of Colombia presented a report to the Presidential Council on the programme for the CILA Congress. The Congress would examine five representative topics of importance to the international insurance and reinsurance markets, under the general title "Risks and Opportunities for Insurance and Reinsurance in the New Millennium". Papers which had been delivered to the organisers prior to the Congress had been printed, bound and published and these, together with the proceedings of the previous CILA Congress, held in Madrid in 1997, were available for distribution to delegates in Cartagena. Other important publications whose appearance coincided with the CILA Congress were a collection of decisions in insurance cases handed down by the Colombian Supreme Court of Justice between 1971 and 2000, Issue No. 14 of the *Revista Ibero-Latinoamericano de Seguros* and Issue No. 101 of the *Revista Espanola de Seguros*.

Judges of various divisions of the Colombian Supreme Court, as well as 30 regional representatives of the courts of Barranquilla and Cartagena would be present at the Congress. The total number of delegates who had registered for the Congress, including accompanying persons, had increased to 400, of whom 120 were from outside Colombia.

Professor Fernando Sánchez Calero, the President of CILA, presented a report on the organisation and academic activities of CILA since its foundation in 1962. His report appears below.

A report on arrangements for the XIth World Congress, to be held in New York in 2002, was received from the US Chapter. The draft programme covers two principal themes to be examined at the Congress, namely Integration of Financial Services and Alternative Compensation Mechanisms, with time also being allowed for meetings of AIDA's permanent Working Parties and a full social programme. Meetings will be held at a number of venues, and block reservations have been made at three major hotels, providing a range of price levels for delegates. The budgeted registration fee is US\$850, including receptions and dinners which are part of the programme, for the entire four days.

Reports on the activities of various Working Parties were presented by the Chairmen of those Working Parties present at the meeting. The reports of the Working Party on Loss Prevention and Insurance and the Reinsurance Working Party appear below. The President announced that an application for admission as a member of AIDA had been received from the Insurance Law Association of Costa Rica. It was agreed that for the purpose of admitting Costa Rica to membership of AIDA, a meeting of the AIDA General Assembly should be convened in conjunction with the VIth Budapest Insurance Colloquium, to be held in November. A report on AIDA's finances was submitted by the Treasurer, Dr Otto Klob. It was observed that although the AIDA bank account is currently healthy, the Association's finances continue to be provided by less than half of its membership. This is not only because of exemptions granted by the Presidential Council to Chapters which have difficulty in funding the subscription, but also simply because a number of Chapters are in arrears with the payment of their subscriptions. The question was discussed of how best to use the AIDA funds to further AIDA's stated objectives and its activities. The President and General Secretariat will be considering this question with a view to making recommendations to the Presidential Council. One suggestion made at the meeting was that the AIDA account might be called upon to pay for translation services at meetings of Working Parties and other international events.

The Secretary General, Colin Croly, reported that AIDA Mail was now being published on a regular basis, with news items being received consistently from some Chapters, although the contributions from other Chapters were disappointing (or non-existent). The General Secretariat continues to be hampered in its efforts to reach every individual member of AIDA's National Sections by the failure of some Chapters to provide the General Secretariat with their membership lists.

The Assistant Secretary General (Administration), Michael Mendelowitz, reported that the General Secretariat has now taken over control of the AIDA website, which has a new, simplified address: www.aida.org.uk. Any items of information which members of the Presidential Council, Working Parties, or AIDA Chapters wish to place on the website should be sent to the General Secretariat, or to Marlene McConway, the assistant editor of IJIL and AIDA Mail (e-mail address: mmconway@blg.co.uk). The General

Secretariat will be looking into the possibility of re-designing and modernising the website, and creating links between the AIDA website and the websites of other National Sections.

A new AIDA brochure has been printed, giving brief and basic information on AIDA's aims, its office bearers and activities. Any National Section wishing to obtain copies of the brochure should get in touch with Michael Mendelowitz.

It was noted that in 2000, AIDA celebrates the fortieth anniversary of its foundation. Hopefully, a formal ceremony to mark the occasion will be held in conjunction with the Budapest Colloquium in November, which will also be the venue for the Presidential Council's next meeting.

Michael Mendelowitz

Assistant Secretary General (Administration)

Ibero-Latin American Committee of AIDA (CILA)

Constitution of CILA

The origins of CILA, as a regional committee of AIDA, date back to the establishment of AIDA itself. Although the idea for AIDA originated in Luxembourg, the Association was formally established at its First World Congress in Rome in 1962. Twenty-nine national sections attended the inaugural General Assembly, and eight of them—over a quarter—were Ibero-Latin American (Argentina, Brazil, Colombia, Guatemala, Mexico, Spain, Uruguay and Venezuela). The representatives of these sections decided to create a regional committee under the name of CILA.

The Committee had two objectives: to promote the creation of national sections in other Ibero-Latin American countries and to facilitate the harmonisation of the insurance laws of those countries, in accordance with AIDA's aims.

Development of CILA

The development of CILA over the past 40 years can be divided into two stages. In the early stage, the work of Manuel Soares Povoas and Ernesto Caballeo Sánchez is prominent. Soares Povoas was the first President of the Committee and oversaw the four Pan American Insurance Congresses (in Mexico in 1964, Buenos Aires in 1969, and Rio de Janeiro in 1971 and 1984). At the last of these congresses, a new structure and by-laws were adopted for the Committee.

The second stage of CILA's development began with the appointment of Professor Efrén Ossa of the Colombian Section as the new President at the General Assembly of the Committee held during AIDA's VIIIth World Congress in Budapest in 1986. At this Assembly new by-laws were passed, providing for the appointment of a new President every four years, at the time of the General Assembly held in conjunction with AIDA's World Congress, and stipulating that the existing President could not be re-elected. It was also agreed that a CILA Congress would be held biennially, in years that would not coincide with AIDA's World Congress.

Activities of CILA

CILA's activities in promoting the aims of AIDA are outlined below.

First, the national sections of which CILA is comprised contribute to AIDA's World Congresses, as well as the CILA Congresses (the four Pan American Congresses and the Ibero-Latin American Congresses). The VIth Ibero-Latin American Congress was held in May 2000 in Cartagena de Indias, Colombia. In order to avoid clashing with the XIth AIDA World Congress in 2002, the VIIth Ibero-Latin American Congress is to be held in autumn 2001 in Rosario City, Argentina.

Secondly, CILA has been active in disseminating information through publications, and organising conferences, study days and similar activities. Many of the sections of CILA publish regular journals and reviews. One publication which deserves special mention is the *Revista Ibero-latinoamericana de Seguros*, produced by the Colombian Section (ACOLDESE), with the collaboration of the Pontificia Universidad Javeriana and FIDES (Inter-American Association of Insurance Enterprises). This journal acts as a channel of communication between the various sections of CILA. In addition, the President of CILA sends out regular circulars (by e-mail) on the progress of the Committee and the activities of its member sections.

Under an agreement between CILA and FIDES, the institutions collaborate in activities of mutual interest whilst maintaining their independence and their separate aims.

The CILA Foundation was created to raise funds to help to fulfil the objectives of the Committee.

Professor Fernando Sanchez Calero
President, CILA

Danish Section of AIDA

The Nordic sections of AIDA (Denmark, Sweden, Norway and Finland) held a colloquium in Stockholm on 18 and 19 September 2000.

The themes of the colloquium were:

- alternative compensation systems;
- time-barring of claims for compensation;
- compensation for non-economic losses.

“Alternative compensation systems” is one of the two main themes of the AIDA XIth World Congress, which is to be held in October 2002 in New York. The Nordic AIDA sections are planning to deliver a joint Nordic report on this theme and the joint reporter, Professor Dr Jur. Bo von Eyben, will prepare a Nordic report based on the national reports from the individual countries. The national reports were discussed during the colloquium.

Professor Lic. Jur. Ivan Sørensen of the University of Copenhagen, was co-reporter on the Swedish topic, “Time-barring of claims of compensation”. The principal reporter was Professor Erland Strömback.

Professor Lena Sisula Tulokas was the principal reporter on the Finnish Topic, “Compensation for non economic losses”.

About 20 members of each Nordic section of AIDA participated in the colloquium, which was held in the Scandinavian languages.

Torben Bondrop

Attorney-at-Law, Plesner & Grønberg, Copenhagen

Italian Section of AIDA

Professor Antigono Donati

Professor Antigono Donati, co-founder and Honorary President *de jure* of AIDA, was presented with a medal and a parchment citation from the Italian Chapter of AIDA and the review *Assicurazioni* (which he also founded in 1934) to mark his ninetieth birthday this year and his 40 years of service to AIDA. He also received commemorative plates and medals from SEAIDA (the Spanish section), ACOLDESE (the Colombian Section) and the Generali Group and he received over 100 messages of congratulation from all over the world. He sends thanks to all his well-wishers. The Accademia Nazionale dei Lincei organised a ceremony at the Palazzo

Corsini to honour his life's work.

Activities of the regional chapters

Sezione Abruzzo

The Abruzzo Chapter held its third National Congress in Pescara on 1 and 2 June 2000. The theme of the Congress was “Evolution of legislation on biological damage”. The speakers were Prof. Gianni Manghetti, President of ISVAP (Insurance Control Institute) and the Members of Parliament Sen. Michele Pinto and Sen. Vincenzo Mungari, respectively President and Member of the Justice Commission of the Italian Senate.

Sezione Toscana

The Tuscany Chapter of AIDA held a Congress on the theme “Insurance, Globalisation, Information Technology” in Florence on 30 June 2000. The reporters—university professors and chief executive officers of insurance companies—covered many issues including the validity of a telecommunicated insurance contract, the importance of e-commerce for the selling of financial products, the importance of an insurance website, and the future role of insurance intermediaries.

Sezione Ligure

The “Ligure” Chapter of AIDA held its XVth Annual Meeting in Santa Margherita Ligure on 15 and 16 September 2000. The theme of the meeting was “Premiums and indemnities in third-party motor insurance”.

Sezione Piemonte- Valle d'Aosta

This Chapter held its XXXIVth Congress in St Vincent on 19 and 20 October 2000 on the theme “Insurance guarantees and new frontiers for professional risks”.

Sezione Lombarda

The Lombardy Chapter is to hold a meeting in Milan on 24 November 2000 on the theme “Fraud and compensation in compulsory third party motor insurance”.

Presidential Council of Italian Section

The Presidential Council of the Italian Section held a meeting at the Tuscany regional chapter's congress in Florence on 30 June 2000. Professor

Gambino spoke about the activities of AIDA internationally and about the activities of the Italian Section. He also announced the establishment of a new regional chapter in Sicily, based in Palermo, with the name "AIDA—Sezione Sicilia—Centro Studi Assicurativi". The President is Professor Aurelio Anselmo of Palermo University. Another new regional Chapter, the Calabria Chapter, is currently being formed: an organising committee will be set up shortly and the by-laws prepared.

The meeting agreed to the enlargement of the Presidential Council with acquisition of five new members. A complete list of Council members, who will hold office until 2002, is set out below:

Honorary President	Prof. Antigono Donati
President	Prof. Agostino Gambino*
Vice Presidents	Prof. Giovanna Volpe Putzolu* Avv. Renzo Capotosti*
Council members	Prof. Vittorio Afferni Prof. Guido Alpa* Dr Brando Battistig (Treasurer)* Avv. Giorgio Bonino Sen. Danilo de' Cocci* Avv. Alfonso De Virgiliis Prof. Giuseppe Fanelli Avv. Michele Greco Prof. Antonio Longo Prof. Giovanni Manghetti Prof. Giuseppe Morbidelli Dr Mario Orio Dr Roberto Pontremoli Dr Marco Rossetti Prof. Giorgio Sacerdoti Avv. Guido Scoponi Dr Enrico Tonelli Avv. Romolo Tosetto Avv. Giuseppe Tricoli Avv. Giorgio Pietro Vianello Dr Armando Zimolo
Secretary General	Dr Brando Battistig

*Member of Executive Committee

Dr Brando Battistig,
Secretary General, Italian Section of AIDA

Mexican Section of AIDA

Third Congress — "Tendencies in the Insurance and Guarantees Law in the Twenty-first Century"

The "Association Mexicana de Derecho Seguros Fianzas" invites participants to its Third Congress, entitled "Tendencies in Insurance and Guarantees Law". The objective of the Congress is to promote the study of private and social insurance law and guarantee law, to establish relations with groups with a similar interest, both nationally and internationally, and to propose prevention measures and solutions to potential disputes and conflicts. The programme includes:

- 1 The legal-preventative function in guarantee institutions — Jorge Orozco Laine
- 2 Fraud in insurance — José Pablo Saenz Padilla
- 3 Entering into a life insurance agreement by electronic means — Aurelio González Alcocer
- 4 Mexican insurance before the United States Courts — Fred J Kumtez
- 5 Mediation and arbitration in insurance and guarantees before CONDUSEF (Commission for the Defence of Financial Services Users)
- 6 The guarantee before other similar alternatives — Pablo Retes González
- 7 Indisputable clause in life insurance — Gabriel Corvera Caraza

The Congress will take place from 9th to 11th November 2000 at the Fiesta Americana Hotel in the City of the Port of Veracruz. Interested parties should contact Francisco Becerril (fbecerril@tepeyac.com) or Reynaldo Islas (rislas@tepeyac.com) for registration details.

Swiss Section of AIDA

Changes in Personnel on the Committee

A new President of the Swiss Section has been appointed:

Dr. Alfred Reber
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The new Secretary (Administration) is:
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Dr Rudolph Rüedi

AIDA WORKING PARTIES

Working Party on Loss Prevention and Insurance

A meeting of the Working Party on Loss Prevention and Insurance was held on 26 May 2000 in Cartagena, Colombia, during the VIth CILA Ibero-Latin American Congress.

The following report was presented by Mr Joaquín Alarcón, who chaired the working group in place of Mr Justino Duque, who was absent due to illness.

Mr Alarcón greeted the participants on behalf of Mr Duque and presented a short report on the past and current activities of the working group. He also explained the proposed new working methods for the group.

Issues

1 *Electronic fraud*

As agreed at its previous meeting in New York in November 1999, the Prevention Group addressed the problem of fraud in electronic contracts, with reference to the Spanish section's report for the CILA Congress on "The implications of computer science for insurance and reinsurance". The first stage of this project involved sending out questionnaires to insurance entities, to ascertain the extent of their use of the Internet for insurance business, the legal environment and the number of companies covering liabilities, and other risks relating to e-business. On the basis of the answers, the group compiled a new questionnaire, which is to be sent out to its members.

It was agreed that the main areas of investigation should be related to the prevention of wrongful activities on the Internet. For this purpose it was necessary to determine the

responsibilities of the various parties and to reconcile the different interests at stake (the right of privacy and the need for suppliers to have the means to identify wrongdoers).

2 *Genetic technologies*

The second issue was the prevention of harmful consequences arising from the use or release (whether deliberate or accidental) of substances created using genetic technologies, with particular regard to all aspects of personal and liability insurance.

3 *Work-related accidents*

This topic concerned the prevention of work-related accidents, having regard to the differences in and interactions between compulsory accident insurance (workers' compensation) and voluntary employers' liability insurance.

4 *Prevention of road accidents*

The group hopes to continue its investigation of road accident prevention if it receives the promised grant from the European Union.

Working methods

Mr Alarcón informed the group about the proposed new working methods. For each of the above topics, an expert would be appointed as a general reporter, who would be responsible for the technical input and the co-ordination of group members from different countries. Two experts had already been chosen for the initial period: Mr Eduardo Mangialardi, from Argentina, who would be responsible for genetically modified organisms and Mr Francisco Espejel, from Mexico, who would be responsible for issues related to the prevention of work accidents covered by employers' liability policies. The group was looking for a third expert on risks related to e-commerce. It was proposed that Colombia take on this task.

Joaquín Alarcón
Acting Chairman, Loss Prevention and Insurance
Working Party

Reinsurance Working Party

A meeting of the Reinsurance Working Party was held on 26 May 2000 in Cartagena, Colombia, during the VIth CILA Ibero-Latin American Congress.

The following were present: Colin Croly (UK-Chairman); Michael Mendelowitz (UK-Acting Secretary); Maria Alejandra Paez (Colombia); Jorge Eduardo Narvaez (Colombia); Sergio Ruy Barosso de Mello (Brazil); J. Vivas Diez (Colombia); Merle Cristina Isaza Posse (Colombia); Carolina Araniegas (Colombia); Erika Paola Pelaez Chauvez (Mexico); Gerardo Trigueros (Mexico); Mikael Rosenmejer (Denmark); Fernando Rodas (Colombia); Laura Lopez (Colombia); Bernardo Botero M. (Colombia); Ernesto Tzirulnik (Brazil); Paulo Luiz de Toledo Piza (Brazil); Nancy A. Vila (Argentina); Cristina Sakura Iwata (Brazil); Cesar A. Numez Villalba (Colombia); Franciso Javier Becerril Brito (Mexico); and Pedro Zournadjian (Argentina).

Apologies were received from Mikael Hagiopian and Pal Ljostad.

1 Publication of Reports 2 and 3

Colin Croly produced copies of the Working Party's Reports Nos 2 (Proper Law of Reinsurance Contracts) and 3 (Follow the Settlements) which had recently been published by LLP. He explained that a series of similar volumes was in production, with a view to building up an international comparative encyclopaedia of legal issues in reinsurance.

2 Questionnaire No. 4 "Meaning of Event"

To date, responses to this questionnaire have been received from Argentina, Brazil, Denmark, France, Germany, Greece, Switzerland, the UK and the USA. Michael Mendelowitz led a discussion on this questionnaire later in the meeting.

3 Questionnaire No. 5 "Custom and Practice"

The reporter on this questionnaire is Katherine Posner of Condon & Forsyth in New York. Her report is in the course of preparation, but further responses to the questionnaire may still be submitted to her. The deadline for receipt of such responses was April 2000. To date responses have been received from USA, UK, France, Denmark, Brazil, Switzerland and Argentina.

4 Questionnaire No. 6 "Cut Through and Transfer and Reconstruction Issues"

The reporter for this questionnaire is Michael Gill of Phillips Fox in Sydney, Australia. The deadline for submission of responses to Michael was June 2000. To date responses have been received from the UK, Denmark, Finland, Brazil and Argentina.

5 Questionnaire No. 7 "Intermediaries"

This questionnaire has recently been circulated. The reporter is Professor Robert Merkin of the UK. The deadline for responses was September 2000. Nancy Vila of the Argentine Chapter informed the meeting that Argentina has already responded to this questionnaire.

6 Suggestion for publication of a country-by-country guide to reinsurance

Mr Croly informed the meeting that LLP, which publishes the Reinsurance Working Party reports, had recently mentioned a proposal for the publication of a country-by-country guide to reinsurance law. Mr Croly's response had been that the AIDA Reinsurance Working Party was already part of the way towards the production of such a guide.

7 AIDA Mail

AIDA Mail is now being published regularly. It is obtainable direct from LLP if National Sections simply provide their membership lists to the AIDA General Secretariat. The Reinsurance Working Party questionnaires and minutes appear in AIDA Mail and on the AIDA website (www.aida.org.uk).

8 Discussion on Questionnaire No. 4

The discussion was led by Michael Mendelowitz, who explained some of the legal disputes which had led to the formulation of this questionnaire. He had produced some model answers written from the point of view of an English lawyer and would be circulating these answers to other members of the Working Party and to all National Sections in the hope that this would elicit further responses to the questionnaire.

9 Reinsurance issues in Latin America

Brief presentations were made by the following:

- (1) Professor Jorge Narvaez and Professor Samuel Botero of Colombia—they commented that reinsurance arbitrations are not yet common in Colombia, although arbitration clauses appear in both proportional and excess of loss treaties. They predicted that Colombia was likely to see more conflicts arising in this regard. The issue would require careful analysis, because otherwise Colombian insurance and reinsurance companies might find that their disputes were subject to foreign law.
- (2) Nancy Vila of Argentina—she pointed out that in conflicts between insurers and

reinsurers, the feeling was sometimes expressed that reinsureds are at the mercy of reinsurers. One should get away from this attitude and recognise that both parties to a reinsurance relationship are in that relationship with a view to mutual profit. Some of the conflicts were getting in the way of a clear understanding of this relationship.

- (3) Sergio Ruy Barroso De Mello, Brazil—the situation in Brazil is very fluid at the moment. A law which was passed last year handed over authority for the regulation of reinsurance to an independent body, whereas previously the Brazilian Reinsurance Institute (IRB) had had a monopoly on reinsurance business in Brazil. Much has happened in the last three months in connection with the privatisation and sale of IRB. The auction has, however, had to be postponed because of a number of mistakes in the calculation of the price. (See Sergio Ruy Barroso De Mello's two recent articles in the *International Journal of Insurance Law* (which is published by LLP in association with AIDA).)¹
- (4) Gerardo Trigueros Gaisman, Mexico—the North American Free Trade Agreement (NAFTA) has meant an increased participation by foreign investors in the Mexican market. Of the 65 companies operating in Mexico, only three are not backed to some extent by foreign capital. Reinsurance disputes—both between insurers and reinsurers and with intermediaries—are on the increase. From the Mexican point of view, commercial relationships with other Latin American countries do not appear very important at the moment, but the significance of the Latin American market is likely to increase. Mexico is still, for the time being, looking to London (and other European centres) and the USA as the principal markets in which to buy and sell reinsurance. Mexican companies are still suffering from the effects of writing reinsurance in the 1970s without having sufficient experience of long-tail casualty business, for which they did not establish sufficient reserves.

10 Next meeting

It was agreed to hold the next meeting of the AIDA Reinsurance Working Party in Budapest on 23 November 2000, in conjunction with the VIth Budapest Insurance Colloquium, and the AIDA fortieth anniversary celebrations.

Michael Mendelowitz
Acting Secretary, Reinsurance Working Party

Legal Developments

Legal Professional Privilege in Australia

Australia's High Court has followed the international line and introduced the dominant purpose test to determine legal professional privilege, replacing the long-standing sole purpose test.

The decision in *Esso Australia Resources Ltd v. The Commissioner of Taxation* brings Australia into line with other common law jurisdictions, including England, New Zealand, Ireland and most Canadian provinces. In Australia, documents which can be subject to legal professional privilege include information recorded on video and tape recordings, computer discs and printouts of information sent from distant locations. Copies of privileged documents do not diminish from the privilege associated with the document. Therefore copies remain privileged provided the original document qualifies.

To satisfy the dominant purpose test, the communication made, or the document prepared, must be for the dominant purpose of providing legal advice or services. The document in question may have been prepared for multiple purposes but, so long as the dominant purpose for which it was created was a legal purpose, it remains privileged.

This represents a significant change from the previous common law position. Previously, Australian courts followed the High Court's 1976 decision in *Grant v. Downs*² that legal professional privilege applied only to written or oral communications made for "the sole purpose" of obtaining or giving advice or of use in legal proceedings.

In separate judgments, McHugh and Kirby JJ. expressed concerns that overruling *Grant v. Downs* would over-extend legal professional privilege. The judges were concerned that parties would have less access to material, as greater opportunity would exist to claim legal professional privilege than was offered under the sole purpose test. Kirby J., in his dissenting judgment, expressed concern that the dominant purpose test was more likely to advantage corporations at the cost of ordinary individuals.

1. [2000] IJIL 164 and [2000] IJIL 249.

2. (1976) 135 C.L.R. 674.