



Society of Construction Law

To promote the study and understanding of construction law amongst those involved in the Construction industry

Chairman's Report 15 May 2002

The Society has enjoyed a particularly busy and active year; I am delighted to report that we now have 1,279 members, representing all sectors of the construction industry as well as the legal profession. Over 100 new members have joined during the year.

Meetings

Meetings were held throughout the United Kingdom and the Republic of Ireland, with the titles of talks including:-

- “Fast Track Contracts, Slow Track Disputes: What is the Answer?”
- “The Killing Fields of Construction: Corporate Manslaughter”
- “Dispute Avoidance and Resolution”
- “The Party Wall Etc. Act”
- “Part 36, Part 44 and Calderbank Proposals: Have the Regimen Changed?”
- “Constructing the Deal: Project Negotiations - Beginning, Middle and End”
- “Human Rights”
- “A Quantum Meruit: What Might it Be?”
- “Commercial and Contractual Communications: They Just Don't Want To Know!”
- “Liability for Design”
- “Is There Any Future For Arbitration After Adjudication?”
- “Adjudication: A Wish List”
- “Adjudication: The First 1,000 Days”
- “Concurrent Delay”
- “*Bannertown -v- McAlpine*: The Final Word on Third Party Loss?”
- “The Civil Liability (Contribution) Act 1978: Will it Survive in its Present Form?”
- “Delay and Disruption: The SCL Protocol”
- “Damages in the Shadow of a Penalty Clause - Tripping over Policy in the Search for Logic and Legal Principle”
- “Separability - A Tale of Two Agreements”
- “Extensions of Time: The Conflict Between the “Prevention Principle” and Notice Requirements as a Condition Precedent”
- Debate: “The House Believes that arbitration has no role for the domestic construction industry”
- “Old Dogs, New Tricks”

Sincere thanks are due to the many speakers.

Papers

February 2002 saw the publication of the 100th paper published by the Society, the first being dated February 1984 (a few months after the incorporation of the Society). Over the last year, a total of 15 papers have been printed and circulated to all members and also put on SCL's website; a further 11 have just been put online – a total of 26. On a number of occasions it has been possible to make a speaker's paper available online within a week or less of the paper being given.

The subjects covered are wide ranging, and include general topics, specific ones and non construction law topics which may be of interest and relevance to construction law specialists. Members are building up a useful library of accessible information. Records show that the papers on SCL's website (which now includes an extremely helpful index, thanks to the Society's webmaster, Edward Peters) are accessed from all over the world.

I am most grateful to Frances Paterson for all the work she has carried out on behalf of the Society in relation to the editing, co-ordinating and publication of speakers' papers, which is a very time consuming task.

Hudson Prize

Entries this year were submitted from all around the world; many thanks to the judging team which was once again led by Professor Anthony Lavers.

The winner of the 2001 SCL Hudson Prize was Adrian Baron from Brisbane for his paper entitled "Damages in the Shadow of a Penalty Clause - Tripping over Policy in the Search for Logic and Legal Principle".

The joint second prize winners were Ben Ring from Hong Kong, for his paper entitled "Separability - A Tale of Two Agreements" and Hamish Lal from London for his paper entitled "Extensions of Time: The Conflict Between the "Prevention Principle" and Notice Requirements as a Condition Precedent".

All three prize winners addressed the April meeting of the Society in London.

SCL Delay Protocol

A challenge made at the June 2000 London talk given by Jeremy Winter and Peter Johnson on "Delay Claim Analysis" prompted the Society to co-ordinate a forum on delay analysis. The considerable interest in this subject was self evident from the fact that approximately 200 people attended the meeting. As a result a group of over 40 individuals representing all sides of the construction industry and the legal profession has been meeting regularly with the objective of producing a delay protocol.

The group presented its initial draft for consultation in November 2001. I sent copies out to over 60 construction industry organizations and professional institutions. The public

consultation period for the draft Protocol ended on 28 February 2002. Over 6,000 copies of the draft Protocol have been circulated to date. More than 5,000 people have visited the website on <http://www.eotprotocol.com/> with downloads occurring at more than 100 per day. The Protocol has been made the subject of several seminars.

The number of detailed submissions received during the consultation period amounted to nearly 80. A similar number of comments was made at the website Bulletin Board. A brief summary of the comments received is as follows.

In general a large majority of the consultation contributors were supportive of the Protocol and made comments with the aim of improving the document. Several industry bodies, such as RIBA and CIC, expressed concerns that the Protocol may generate more problems and disputes than it is attempting to resolve. The ICE and others suggested a second round of consultation to secure a wider acceptance of the Protocol.

Several contributors thought that the Protocol has an identity crisis in its relationship with contracts and case law and should be published simply as a set of Guidance Notes. The Protocol was also considered to be too prescriptive in its requirements concerning the form the programme should take and in its methods of analysing extensions of time. Others thought that the Protocol should be structured to suit different sized projects, it being perceived as being aimed at only the large complex projects.

Many of the contributors who are or represented contractors said that the Protocol's allocation of float to the project was wrong, as in their opinion float was a risk contingency for the contractor's sole use. They also thought that the Protocol should give more credence to global claims, constructive acceleration and use of tender allowances. The Protocol's recommendation to use adjudication to resolve disputes about extensions of time was questioned.

The Society considered the comments received at its March Council meeting and agreed that a second round of consultation should take place before the Protocol is finalised and published later this year.

The re-draft of the protocol, which takes account of many the comments received to date, was published earlier this week. A consultation workshop has been booked for the afternoon of Wednesday 22 May 2002 in London and we are honoured that His Honour Judge Humphrey LLoyd QC has agreed to act as Chairman on the day. So far approximately 150 people have booked places for this workshop, clearly demonstrating the great interest which the Protocol has generated.

e-SCL

Introduction

2001 has been a year of development for SCL's website. In December 2001 there were approximately 2,800 visitors, as compared with 1,770 in January 2001. Add to that a

further 1,100 visitors to SCL's Eotprotocol.com website, and there is an encouraging picture of the potential of SCL's web presence for serving the aim of 'promoting the study and understanding of construction law'.

The improvement in visitor numbers has continued to increase in the first few months of 2002.

Major statistics for 2001

The figures below show the number of "human" visits per month in 2001. They exclude search engines, robots and the like which would otherwise increase numbers dramatically.

Number of "HUMAN" VISITORS – excludes search engines, robots etc

Site	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total
SCL	1770	2002	2003	1634	1745	1030	1052	1108	1066	1910	2630	2803	20,753
Eotprotocol	0	0	0	0	0	0	0	0	0	0	0	1103	1,103
ESCL	0	0	0	0	0	12	15	21	11	16	28	24	127

This table shows which countries visitors were from:

Country	%	Country	%
UK	58.10	Korea Rep. of	0.13
USA	28.20	Saudi Arabia	0.11
Australia	5.28	Turkey	0.11
Canada	0.93	Belgium	0.10
Germany	0.75	Sweden	0.10
Ireland	0.75	Cyprus	0.09
Europe (generic)	0.60	Austria	0.09
France	0.54	Greece	0.08
Singapore	0.46	Israel	0.07
Malaysia	0.42	Egypt	0.06
Hong Kong	0.39	Japan	0.06
<i>Less than 100 visitors:</i>		Portugal	0.05
Utd. Arab Em.	0.27	Lebanon	0.05
Netherlands	0.23	Denmark	0.05
South Africa	0.19	Brazil	0.05
Spain	0.17	Norway	0.04
Switzerland	0.16	Barbados	0.04
China	0.15	Poland	0.04
Italy	0.15	India	0.03
Taiwan	0.15	Mexico	0.03

Summary of main developments as at May 2002

Considerable work was done during the autumn to increase the volume of online material and links, and improve its topicality and immediacy. In particular there was a great increase in the number of papers available online, and this has generated considerable interest.

Likewise work was carried out to increase SCL's visibility on major search engines.

Over 6,000 people have viewed and/or downloaded the EOT draft Protocol since going live in early December. The majority of these people were non-members. Many online papers have been downloaded several hundred times.

Summary of e-commerce facility as at May 2002

The e-commerce facility (SCL's new online 'shop') was set up in December 2001. It is now possible to purchase papers, renew membership or even buy dinner tickets through the website.

In the first four months of its use over £10,000.00 worth of transactions have been undertaken in this way.

We know that for many of our members cheques will always be preferred for financial transactions and we do not intend to stop that facility. However the e-commerce facility is simply an alternative which we see as particularly useful to people wishing to purchase items out of business hours.

Future Web Strategy

We believe that the chief aims of SCL's website strategy for 2002 should be:

1. To continue with increasing the volume of online material and links, and improving the website's topicality and immediacy.
2. To help increase SCL membership by showing its benefits, and by offering certain online privileges to members. We have now made all published papers available via online purchase.
3. To restrict the downloading of papers from the website without charge to members only and to those involved in academic study.
4. To provide the "central hub" for the European Society (this will depend on how much material is provided by our European partners).

I am indebted to Richard Bayfield and the Society's webmaster, Edward Peters, for the huge amount of work they have carried out in developing the IT side of the Society's activities.

SCL Hong Kong

The Society in Hong Kong continues to flourish; it has just celebrated its second anniversary. While not yet formalized, SCL UK and SCL HK have agreed in principle reciprocal arrangements for membership transfers and SCL HK now has its own page on SCL UK's website, accessed via the new overseas link.

SCL HK had a good mix of visiting and local speakers giving talks during the last 12 months and is in the process of responding formally to the Hong Kong Committee considering the proposed civil procedure court reforms.

There is still great interest in Singapore, Kuala Lumpur and Australia in setting up similar, autonomous, Societies; at present it looks likely that Singapore will be next. Details to follow!

European Society of Construction Law

It is hoped that by the time of the SCL/ESCL Conference here in London on 12 July that the ESCL will have produced a publication with details not just about the individual member Societies but also information on procurement and the implementation of EU directives in each member state. This will update and expand the original bibliography produced by His Honour Judge Humphrey LLoyd QC.

The SCL/ESCL Conference on 12 July will be taking place in conjunction with and at King's College and is entitled "Delivering Infrastructure: International Best Practice". Details of the conference programme will be sent out to all members of SCL within the next week and I hope that as many of you as possible will be able to attend. An impressive line-up of international speakers will be presenting papers on a variety of topics, giving European perspectives and insights from beyond Europe on procurement as well as discussing best practice in dispute avoidance and resolution.

Social Functions

On 1 March we held our annual lunch at the Brewery in Chiswell Street, where we were addressed by Zara Lamont, Chief Executive of the Confederation of Construction Clients. A record number of people attended this event, which was a huge success; I am most grateful to Jackie Morris, Helen Garthwaite and Elaine Corne for organizing this lunch as well as organizing this evening's Annual Dinner, at which the principal speaker will be Graham Watts, Chief Executive of the Construction Industry Council.

Advocacy Classes

We are all very grateful to His Honour Judge Humphrey LLOYD QC for his continued involvement in the advocacy classes run by SCL for solicitors. A further course of classes is planned for the autumn. My thanks go to Nigel Jones QC and Helen Garthwaite for their role in organizing these classes, which are inevitably over-subscribed and a great success.

Universities: Book Grants and Other Donations

The Society's intention this year was to continue to foster co-operation between universities and institutions as well as give grants to educational establishments teaching construction law.

After extensive research, we are close to finalizing the information we need about the various universities and institutions to be able to form a link-up between them, which will also include linking our various regional co-ordinators with the universities in their area.

During the last year we have given the following donations:-

£1,004 to Glasgow Caledonian University, for books.

£2,464 to Strathclyde University, for subscriptions to journals and to a CD-Rom service.

£3,250 to King's College for journal subscriptions.

£900 to King's College to buy back volumes of Public Procurement Law Review.

£3,160 to the University of Wolverhampton, to renew subscriptions to journals and electronic resources.

We are giving two free tickets to the SCL/ESCL Conference on 12 July to each of the universities with whom we are in contact.

My thanks to Jim Pragnell and Philip Britton for all the work they have carried out in this sub-committee of Council.

Retiring Members of Council

I would like to pay tribute to the three members of Council who are standing down at the AGM today, namely John Burgess, Ken Hughes and Paul Darling QC. We are all immensely grateful to them for the enormous contribution they have made to the work of the Society during their respective terms on Council.

Other Developments

I am delighted to be able to report that, at last, we have been able to introduce a system of postal voting for elections to Council.

It is already clear that this is a popular development, particularly for those unable to come to the AGM itself; many people have voted by post this year and the elections to Council should therefore be far more representative of the views of the members of the Society.

After extensive debate and discussion in Council, the decision was taken last autumn to appoint a consultant to the Society, on a temporary basis, to assist in some of the Society's many activities. An interviewing committee led by John Tackaberry QC interviewed the applicants for this post in January and Robert Knutson was subsequently appointed for a six month period. With his assistance, Council will review and discuss how best to carry out the work of the Society without becoming "institutionalized" yet still achieving objectives which sometimes require a huge amount of work to be carried out by those giving their time on a voluntary basis.

After two action packed years as Chairman, I will be stepping down from this role in June. I would like to place on record my thanks to Council for their support during the last two years and in particular to the very strong team of Officers: Richard Bayfield, Chris Miers and Helen Garthwaite, as well as our Administrator, Jackie Morris, for all they have done and the help they have given me. I would also like to give my thanks to the Society's President, Sir Philip Otton, for his enthusiasm, commitment and wise counsel.

Victoria Russell
15 May 2002