

An International Discussion on Good Faith

By Benjamin Stowers



On June 16, the bar associations of Lyon, Montreal, and Philadelphia partnered on an international conference with 120 people participating from all three jurisdictions. The speakers were prominent judges from the three countries, speaking on “Contractual Good Faith: Perspectives from Canada, France and the United States.”

Pre-pandemic, the event was scheduled in-person in all three cities. With the pandemic, however, the organizers decided on an event spanning the Atlantic, taking advantage of our new ways of doing business.

Jeremy Heep, co-chair of the International Law Committee at the Philadelphia Bar Association, opened the event in French, greeting attendees and introducing the panelists. Heep’s co-chair Diane Edelman introduced the chancellors of all three bar associations. Philadelphia Bar Chancellor Lauren McKenna informally greeted her

international counterparts. She stressed the importance of these relationships during difficult times, and noted that this was the first event to feature all three parties simultaneously. The chancellors of Lyon and Montreal echoed McKenna’s comments, stressing their mutual commitments to the tri-partite partnership.

The panel featured Judge Thierry Gardon, president of the Commercial Court of Lyon, Louis LeBel, former justice of the Supreme Court of Canada, and Judge Gary S. Glazer, former head of the Commercial Court of the Philadelphia Court of Common Pleas. The panel was skillfully moderated by Althia O. Bennett, chief counsel to The Office of State Inspector General in the Pennsylvania Governor’s Office.

The idea for the conference came from a series of decisions addressing good faith by the Supreme Court of Canada. The judges opened by discussing key similarities of good faith across jurisdictions. While operating in differing systems, the panelists agreed that good faith is nevertheless fundamental to the understanding of any contract. Panelists described the judicial sense that parties owe each other a certain adherence to contractual provisions. Considering the other party when performing contractual duties satisfies good faith. The panelists agreed that the standard varies, based within expectations

of behavior that tie to differing contractual clauses.

Both French and Quebec law define good faith by statute, while Pennsylvania (and the common law of Canada outside Quebec) relies on case law. Another notable difference in Pennsylvania was the possibility of jury trials in commercial cases. Glazer explained that without ever mentioning good faith to a jury, jury members have an innate sense when a party acts contrary to its principles.

Glazer and LeBel found similarities in the U.S. and Quebec when contractual circumstances change. Both jurisdictions allow for court involvement due to changed circumstances, and can encourage (or order) parties to renegotiate. Gardon noted French courts’ hesitance towards this judicial activism. He agreed, however, that judges necessarily consider changed circumstances when interpreting whether parties behaved in good faith.

Overall, good faith across the three jurisdictions shared many similarities. While sometimes hard to define, good faith’s lack of rigidity allows it to fit the greatly varying situations in which it arises.

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