

NOMENCLATURE

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Acacia, the 2011 Nomenclature Section in Melbourne, and beyond

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Abstract This paper briefly reports on the developments surrounding the *Acacia* name conservation controversy since the Nomenclature Section meeting at the Seventeenth International Botanical Congress at Vienna in 2005. Actions taken at Vienna led to the listing of *Acacia* Mill. with a conserved type in Appendix III (p. 286) of the current printed version of the *International code of botanical nomenclature*. While decisions taken at Nomenclature Sections generally tend to resolve nomenclatural disputes, the actions taken in Vienna with regard to *Acacia*—i.e., treating the proposal to conserve the name *Acacia* with a conserved type as approved even though the majority of the votes cast were opposed to the proposal—has only resulted in increased controversy. Today, the *Acacia* listing in the *Code* continues to be met with considerable resistance from the global plant taxonomic community and beyond. We believe the “minority rule” approach used in Vienna was contrary to the procedural rules established in Vienna. As a result, an objection to the acceptance of the *Vienna Code* as currently printed with the *Acacia* listing will be raised at the Nomenclature Section meeting during the Eighteenth International Botanical Congress in Melbourne in 2011. A procedure is outlined for handling this objection that we hope will allow the botanical community to finally resolve this matter.

Keywords *Acacia* Mill.; International Botanical Congress; *International code of botanical nomenclature*; Melbourne; Nomenclature Section; *Racosperma* Mart.; Vienna

■ INTRODUCTION¹

Orchard & Maslin (2003) proposed (Proposal 1584) to conserve the name *Acacia* Mill. with a new type (*Acacia penninervis* Sieber ex DC.) in order to preserve the use of this genus name for approximately 1000 taxa in Australia that otherwise would have to go by the name *Racosperma* Mart. under a pending new taxonomy (e.g., Miller & Bayer, 2001; Luckow & al., 2003; Pedley, 2003). This proposal was recommended by the Committee for Spermatophyta (Brummitt, 2004) and General Committee, in 2004 and 2005, respectively (see below for the timing of the General Committee meeting in Vienna). In 2005, on the final day of the Nomenclature Section of the Seventeenth International Botanical Congress, this matter was debated and voted on, with the Section voting 54.9% against Proposal 1584. Surprisingly, the proposal was treated as having been approved by the Section’s administrators, who ruled that it only needed to receive a 40% positive vote to be affirmed (McNeill & al., 2005).

While controversy at Nomenclature Section meetings is not uncommon, recent examples being proposals to harmonize the various codes of nomenclature (Greuter & al., 1996a,b) and mandatory registration of new names (Smith & al., 1993; Smith & Hawksworth, 1994; Smith & Germishuizen, 1999; Smith 2000), perhaps no proposal in the history of botanical nomenclature has created as much controversy as Proposal 1584 on *Acacia*. The proposal itself generated significant debate among its supporters (Maslin, 2004a,b; Maslin & Orchard, 2004; Orchard & Maslin, 2005) and opponents (Walker & Simpson, 2003; Murray, 2004; Pedley, 2004; Luckow & al., 2005). Furthermore, the handling of the proposal at the Nomenclature Section in Vienna, specifically the treatment of the proposal as approved even though it failed to receive majority support from the Section, has also been the subject of criticism (Smith & al., 2006; Rijkveorsel, 2006; Moore, 2007, 2008), including a critique from legal scholars (Glazewski & Rumble, 2009). This issue has also been the subject of much attention outside the botanical nomenclature community, with numerous pieces being published (e.g., Low, 2002; Spencer, 2002, 2003; Woodford, 2002; Rijkveorsel, 2004; Lewino, 2005; Moll, 2005; Cameron, 2006; Moore, 2006a,b; Potgieter, 2006; Sievers, 2006a,b;

1 This paper was written prior to the publication of McNeill & Turland (2010) on this subject. See Addendum for specific responses to McNeill and Turland’s conclusions.

Whitehead & Shepard, 2006; Anonymous, 2007; Anonymous, 2008; Robin, 2008; Carruthers & Robin, 2010; Michler, 2010; Moll, 2010; Shigwedha, 2010) and even a website dedicated to the issue (www.acaciavote.com).

While we see little point in revisiting the pros and cons of whether the type of the name *Acacia* should be the Australian *A. penninervis* Sieber ex DC. instead of the African-Asian *A. scorpioides* (L.) W. Wight (= *A. nilotica* Karst.), we do believe the *Acacia* listing in the current *International code of botanical nomenclature* (*Code* or *ICBN*) (McNeill & al., 2006) should be challenged due to the way in which this matter (Proposal 1584) was handled at Vienna. The authors' reasoning for this challenge and a proposal on how this might be done that will allow botanical nomenclature to finally resolve this matter are presented.

■ ARGUMENTS AGAINST THE PROCEDURE USED ON PROPOSAL 1584 AT VIENNA

(1) Use of article 14.14 allowing only a 40% positive vote for passage of proposal 1584 was unjustified. — It has been argued (McNeill & al., 2005; McNeill, 2006) that the procedure used during the Nomenclature Section on Proposal 1584, requiring only a 40% vote in the affirmative to approve the proposal, was justified by Article 14.14 of the *Code*. Such a position is inconsistent with the decision-making authority of the Nomenclature Section regarding amending the *Code*.

The wording of Article 14.14. — Article 14.14 (McNeill & al., 2006): “When a proposal for the conservation of a name, or of its rejection under Art. 56, has been approved by the General Committee after study by the Committee for the taxonomic group concerned, retention (or rejection) of that name is authorized subject to the decision of a later International Botanical Congress.” McNeill (2006): “... the reason for the requirement of a 60% vote to overturn the decision of the General Committee was that Article 14.14 of the *Code* makes clear that the de facto decision on conservation and rejection of names rests with the General Committee, in that botanists are authorized to adopt such names in the sense of the conservation pending the decision of a later IBC, and that such names often appear in editions of the *Code* prefixed by an asterisk (see e.g. the Berlin *Code*, *Regnum Veg.* 118: 111. 1988). Whereas, the Nomenclature Section has the final decision, overturning a decision of the General Committee is clearly a momentous step and, like an amendment to the *Code*, is not to be taken lightly.”

Based on its wording it is clear that Article 14.14 authorizes the retention (or rejection) of a name after approval of a proposal by the General Committee. However, regarding Proposal 1584, retention (or rejection) of a name was never an issue, since the name *Acacia* would be retained regardless of whether its type remained the African-Asian *A. scorpioides* (L.) W. Wight (= *A. nilotica* Karst.) or was switched to the Australian *A. penninervis* Sieber ex DC. Thus, the actual wording of Art. 14.14 does not justify McNeill's (2006) assertion that a General Committee's approval authorizes the adoption of “such names in the sense of the conservation”, since the concept of

a name's “sense” is not included in Article 14.14. In fact, the option of conserving a name with a given sense through the conservation of its type was not available until 1950 with the *Stockholm Code* (Lanjouw & al., 1952), and the procedure used in Proposal 1584—conserving a name from its original place of valid publication with a conserved type and no change in the name's authorship—was not authorized until 1994 with the *Tokyo Code* (Greuter & al., 1994). The essential language of what is now Art. 14.14 first appeared in 1935 with the *Cambridge Rules* (Briquet, 1935). Thus, Art. 14.14 should not have been applied to the General Committee's recommendation on Proposal 1584, the procedures used in this proposal—conserving the name in a particular sense through the conservation of the name's type—not being directly mentioned in the wording of Art. 14.14, and the essential language of Art. 14.14 appearing in the *Code* decades before the procedure used in Proposal 1584 was authorized.

The intent of Article 14.14. — In the original proposal to add the essential language that now appears in Art. 14.14 (see Moore, 2007 for a more detailed history of Article 14.14), the proposers (Ramsbottom & al., 1929) were quite clear as to its intent—to give authors guidance during the interim period when a General Committee recommends a proposal for approval and action at the next International Botanical Congress. However, regarding Proposal 1584, there was effectively no interim period, the General Committee and Nomenclature Section votes being hours apart! Thus, even if the wording of Article 14.14 were applicable to Proposal 1584, the article still would not be applicable from the standpoint of intent.

(2) Decision-making authority to amend the *Code* lies with the Nomenclature Section and International Botanical Congress, not with any Committee. — Even if one discounts the arguments made above regarding the inapplicability of Art. 14.14 to Proposal 1584 based on the article's wording and its intent, the fact still remains that the authority to amend the *Code* rests not with the General Committee but with the Nomenclature Section and International Botanical Congress. Division III, Provision 1 of the *Code*: “The *Code* may be modified only by action of a plenary session of an International Botanical Congress on a resolution moved by the Nomenclature Section of that Congress.”

In conversation and correspondence it has been argued by some that proposals to conserve or reject names are not proposals to amend the *Code*, and, therefore, the language of Division III Provision 1 does not apply to these proposals. This is simply not true, since conserved or rejected names must appear in one of the *Code*'s appendices, and indeed used to appear in the synopses of proposals to amend the *Code* prepared by the rapporteurs (Stafleu & Voss, 1969; Voss & Greuter, 1981; Greuter & McNeill, 1987). Furthermore, Rickett & Smith (1958) in their summary of the procedure for conserving and rejecting names cited Division III, Provision 1 governing modification of the *Code* as the authority for this process.

(3) Decisions are made only through a majority vote. — Under any standard protocol regarding procedure, a decision-making body (such as a Nomenclature Section) can only render decisions through a majority vote. Sturgis (2001): “The most

fundamental rule governing voting is that at least a majority vote is required to take action.” Thus, McNeill’s (2006) conclusion that Proposal 1584 could appear in the *Code* even though it did not receive majority support from the Nomenclature Section in Vienna is inconsistent with his assertion that the Nomenclature Section has the “final decision”. The assertion that both the General Committee and Nomenclature Section have decision-making authority with respect to proposals to conserve or reject names (McNeill, 2006) is also problematic. Two separate entities cannot be given authority to decide something (the same thing) because such a structure creates problems when they come to different decisions, such as what happened with the General Committee and Nomenclature Section on Proposal 1584. However, the General Committee does not have decision making authority with respect to proposals to conserve or reject names (if it did it would more accurately be called a commission). Rather, it offers recommendations to the Nomenclature Section on proposals it reviews, and such recommendations can never trump the decisions rendered by the Nomenclature Section, even when such recommendations can serve to guide the users of plant names between Nomenclature Sections as outlined in Article 14.14.

(4) The Vienna Nomenclature Section’s own rules of procedure were not followed during the vote on proposal 1584. — The Vienna Nomenclature Section, like all recent Nomenclature Sections before it, was operating under the procedural rules that a majority vote was needed to pass any motion and that the majority would have to be a three-fifths (60%) majority for any proposal to amend the *Code*. Therefore, under the Section’s own rules of procedure, Proposal 1584—not those opposed to Proposal 1584—needed to get a 60% majority vote to be approved and this did not occur. Therefore, the Nomenclature Section administrators’ assertion that Proposal 1584 was passed even though it failed to get a majority vote was incorrect, since it was inconsistent with the Section’s own rules of procedure, and the decision-making authority given to the Nomenclature Section under the Division III Provision 1 of the *Code*—authority that McNeill (2006) himself has concluded the Section has. Even if one interprets that the vote on *Acacia* by the Section was to reject the positive recommendation and that that vote failed to receive 60% required by the President (see McNeill & al., 2005), this vote cannot be taken as approval of the proposal on *Acacia*. Voting down a motion is not the same as adopting a motion expressing the opposite opinion.

■ THE LARGER ISSUE

Putting specific arguments on various rules of the *Code* and Nomenclature Section aside, there are larger reasons to be deeply concerned about the procedure used on Proposal 1584 at the Nomenclature Section in Vienna: minority rule and its inevitable divisive consequence of noncompliance. The Section’s administrators were clearly engaging in minority rule, since they treated Proposal 1584 as having been approved even though it received only a 45.1% minority vote. If this is allowed

to stand, it will represent the first time in botanical nomenclature’s 100+ year history that something of substance was placed in the *Code* without having obtained majority support from the Nomenclature Section from which it was proposed.

Treating something as having been approved even though it received only minority support is vastly different from treating something as rejected when the motion receives a majority vote (but less than the supermajority required) in the affirmative. The former is a consequence of minority rule; the latter is a consequence of a supermajority requirement (e.g., 60%).

Minority rule is simply bad business and questionable governance, and one that encourages noncompliance out of protest and resentment. While Proposal 1584 was controversial and divisive on its own, there can be no doubt that the way in which it was handled at the Nomenclature Section—treating something as approved when it failed to achieve a majority positive vote—has significantly exacerbated these divisions.

■ THE WAY FORWARD

Botanical nomenclature must find a way to put this most controversial matter behind it. We believe the best way forward is to go back to requiring a majority vote for all matters serving before Nomenclature Sections, and to re-visit the one instance in botanical nomenclature’s 100+ year history that the will of the majority was ignored.

We therefore plan to object to the adoption of the *Vienna Code* when it comes up early on for adoption as the basis of discussion at the next Nomenclature Section in Melbourne. The following two options can simultaneously be put up for debate and a vote: (1) adoption of the *Vienna Code* as published (but with the corrections as subsequently published in *Taxon* as well as others discovered since then) and (2) adoption of the *Vienna Code* as above BUT with the *Acacia* entry struck from it. Whichever of these two options achieves a majority when the vote is taken will form the basis of the discussion at the Melbourne meeting.

This objection is not a proposal to amend the *Code* but rather a procedural matter as to what will form the basis of the discussion at the Melbourne meeting. Therefore, should the Melbourne Nomenclature Section adopt the same procedural rules as those used at Vienna (and other recent Nomenclature Sections), the vote on this matter should only require a simple majority. Furthermore, we believe this a most reasonable way to resolve this issue since it will end the debate as to who must get the 60% supermajority and also remove the possibility of either side “prevailing” even though it received only minority support.

■ CONCLUSION

We believe that the *Acacia* listing should not remain in the *Code*, the 54.9% percent vote against the proposal in Vienna after a lengthy debate being a clear indication that the Vienna Nomenclature Section was opposed to Proposal 1584. We are sure we

represent the opinion of many when we state we want to seek an end to this seemingly never-ending controversy that began back in 2003 with Orchard & Maslin's (2003) proposal. This issue, perhaps more than any other debated in previous Nomenclature Sections, has been aired in the global media. It has engaged significant public interest and condemnation of the voting process and of the decision reached in Vienna (e.g., see voting results of the *acaciavote* website available from the co-ordinating authors). It is thus all the more important with the eyes of the world on the outcome of this debate that justice is seen to be done at the next Nomenclature Section meeting in Melbourne in 2011.

We believe that it is safe to assume that a large component of the plant taxonomic community and well beyond, will simply never accept the minority-supported inclusion of *Acacia* with a conserved type in the *Code* based on the events at the International Botanical Congress in 2005. Thus, we believe the controversy will continue well beyond Melbourne, if this situation is not resolved there.

■ ADDENDUM

Upon submission of an earlier draft of this manuscript, it was brought to our attention by the Nomenclature Editor and Rapporteur-Général for the 2011 Nomenclature Section (John McNeill) that he and the Vice-rapporteur (Nicholas Turland) had an in press publication (subsequently published as McNeill & Turland, 2010) on this issue. In the paper, the authors state that the conclusion we reached that the procedure used on the *Acacia* proposal was invalid (and thus the vote taken by the Nomenclature Section did not represent approval of that proposal), is “ill-founded”, “false”, and “untrue”. They further state that websites that oppose recognizing *Acacia penninervis* as the type of the name *Acacia* contain information that is not “in accord with the procedures regarding conservation of names”, although McNeill & Turland do not provide specific examples. McNeill & Turland (2010) attribute these “misconceptions” on these websites to the “significant errors” present in some of the published commentaries on the *Acacia* issue (e.g., Rijkveorsel, 2006; Moore, 2007, 2008). McNeill & Turland (2010) further conclude that any attempt to raise this issue when the *Vienna Code* is up for ratification at the next Nomenclature Section in 2011 would be “untenable”, “out of order”, and “contrary to Art. 14.8” of the *ICBN*. McNeill & Turland (2010) also felt it was “urgent to provide clarification well ahead of the next IBC to avoid misunderstanding and perhaps frustration at that Congress” and to ensure “that the facts are made clear and that due process, as historically established and as set out in the *Code*, be followed in any future discussion on the type of *Acacia*.”

We strongly disagree with McNeill & Turland (2010) that there was nothing procedurally wrong with the way the *Acacia* matter was handled at Vienna and that it is not possible to raise this issue again when the *Vienna Code* is up for ratification at the next Nomenclature Section meeting. While we believe that most of their conclusions are already addressed in the main

body of our manuscript, we directly reply to their main conclusions below.

(1) McNeill & Turland: “At the start of the Tenth Session of the Nomenclature Section on the afternoon of Saturday 16 July, the reports of the Permanent Committees were presented for approval by the Section. The President proposed that if there was a vote on a particular item arising from the reports, it should require a 60% majority. This procedure ... was approved by the Section.”

RESPONSE: What follows is the relevant discussion from the unpublished transcript (provided to the authors by McNeill and Turland) on procedure prior to the debate on the proposal to conserve the name *Acacia* with a conserved type at the Nomenclature section at Vienna.

Dan Nicolson: “If there is a possible discussion of a particular item, I would propose that if there is a vote on a particular item that it would require a 60% majority. It takes that much within the Committees, it's the majority we used here at the sessions, and I propose to maintain that...”

Roy Gereau: “Approving the report of the Committee, then let's say this is 60% vote to approve, if the assembly is questioning the report of the Committee, what's the threshold there?”

Dan Nicolson: “This is 60% to overturn.”

John McNeill: “I think the point is that 60% to overturn rather than to approve on the grounds that all the comments in the report will have previously been approved by 60%, so to reverse that would seem to require 60%. It was that way round that the President had in mind.”

This discussion is critical in that it is here where the administrators of the Nomenclature Section began using a procedure that was out of order as it was in complete conflict with the rules voted on at the beginning of the Nomenclature Section that required any vote on a motion to receive a majority vote in the affirmative. These rules were never suspended through voting and the new rule proposed by President Nicolson was never adopted by a vote. Therefore, the conclusion by McNeill & Turland that this new procedure was “approved” by the section is not accurate, since the Section never voted to suspend the established rules nor did it ever vote to adopt the proposed new rule. Rather, as noted by Rijkveorsel (2006) and Moore (2007), the approach implemented by the Section's administrators was presented as established procedure, even though this procedure was in conflict with the established rules and had never been used in the 100+ year history of acting on proposals at Nomenclature Sections. Those of us currently raising concerns and who were also present at the Nomenclature section in Vienna in 2005 are guilty for not following up on Roy Gereau's inquiry in a manner that would have brought the procedures of the Section back into order, but that does not negate the fact that the procedure used was in conflict with the rules established at the beginning of the Section and in effect at the time of the *Acacia* vote. President Nicolson's assertion that his proposal sought to maintain the majority “used here at the sessions” ignores the fact that this altered procedure placed the 60% majority requirement on those *opposing* a proposal, and this completely violated the

standing procedure adopted at Vienna (and all previous Congresses) requiring the 60% majority in the *affirmative*.

(2) McNeill & Turland: “[T]he Nomenclature Section of the XVII IBC in Vienna approved the conservation of *Acacia* with *A. penninervis* as type, and this was accepted at the final session of the Congress.”

RESPONSE: We agree with McNeill & Turland (2010) that at the Section there were 247 votes (54.9%) to reject the General Committee’s report recommending the conservation of *Acacia* with a conserved type and 203 (45.1%) in support of this recommendation. However, we strongly disagree with the following announcement made by Rapporteur McNeill at the Vienna Nomenclature Section (and repeated in McNeill & Turland, 2010) in response to this vote: “So that means, therefore, that the proposal to reject the report has not been accepted. So the report is accepted and the conservation goes ahead.” First, the Rapporteur’s characterization that what was being voted on was a “proposal to reject the report” is inaccurate, as a “yes” vote was to accept the General Committee report (and recommendation) on *Acacia* (see later discussion addressing McNeill’s remarkable statement “The proposal was essentially to reject . . . although we actually voted . . . the other way around”). Therefore, the proposal before the Nomenclature Section was to accept the General Committee report (and thus approve its recommendation on *Acacia*), and not rejection as stated by McNeill. Secondly, and more importantly, under the rules adopted (i.e., through a formal vote on a motion) by the Section approval could not occur without a majority vote. Besides being what the rules of the Section required and a central tenant of parliamentary practice, majority rule is basic common sense. How on earth can a deliberative body “approve” something when a majority disapproved?!

(3) McNeill & Turland: “It is true that at each Nomenclature Section meeting prior to consideration of amendments to the *Code* arising from the previous Congress, that *Code* as published is formally ratified by the Section as the basis for its debates. Unless an Editorial Committee has been extraordinarily negligent in carrying out its mandate, this is a mere formality. There has never been the provision to ratify only a portion of the *Code* (or all but a portion of the *Code*). Indeed on the one occasion of which we are aware in which any question was raised at the time of ratification (at the Edinburgh Congress in 1964 – see Stafleu, 1966: 6), it was made clear [by Section President R. C. Rollins], that ‘the *Code* could either be approved or disapproved, the changes were not up for discussion’.”

RESPONSE: Despite Rollins’s statement, there is no sound reason not to allow debate on the single portion or entry of the *Code*, especially when there is only one portion (or entry) of the *Code* that is in dispute with respect to its legitimacy. It would be grossly unfair and destructive to the process to only allow an up or down vote on the ratification of the *Vienna Code* as a whole without amendments (such as the amendments we have

suggested in the main text of this article). Questions concerning the ratification of the *Code* from the previous Congress should not be limited to cases of “extraordinary negligence” of the Editorial Committee but can and should be raised when there were problems elsewhere in the process, such as Section administrators declaring motions “approved” even though the vote of the Section expressed the exact opposite.

(4) McNeill & Turland: “So both from traditional practice and from the purpose of the ratification of the *Code* at the ensuing Congress, namely to confirm that the Editorial Committee has carried out the wishes of the previous Congress in an adequate manner, it would be out of order to question the inclusion of *Acacia* at that stage of the proceedings of the Nomenclature Section at the Melbourne Congress in 2011. Moreover it would be contrary to Art. 14.8, which states that ‘[t]he listed type of a conserved name may not be changed except by the procedure outlined in Art. 14.12’, i.e., by a proposal ‘accompanied by a detailed statement of the cases both for and against its conservation [with a different type]’, in fact the same mechanism that led, in the first place, to the conservation of *Acacia* with *A. penninervis* as type.”

RESPONSE: This statement is troubling in that it implies that McNeill & Turland are not going to allow a challenge to the *Acacia* entry. They are incorrect in stating that it would be out of order to question the inclusion of *Acacia* in the *Code*. Each Nomenclature Section establishes its own rules and only those will determine what is and is not out of order. While the administrators of the Section can make rulings, those rulings (assuming we are following some well-established and widely accepted set of procedures such as those in *Robert’s Rules of order*) are subject to the approval or rejection by the Section. In other words, the Section has the final say on its rules and their interpretation. We reject McNeill & Turland’s assertion that such a challenge on the *Acacia* entry in Appendix III of the *Vienna Code* would be contrary to Art. 14.8. The whole point of the objection is that the inclusion of the *Acacia* entry was based on *an out of order* procedure that allowed the motion on this to be declared “approved” even though the majority of votes cast disapproved of its inclusion. In other words, it is our opinion that the *Acacia* entry in Appendix III is not part of the *de jure Code* (see also Rijckevorsel, 2006; Moore, 2007). Challenges to whether something in the printed version of the *Code* from the previous Congress is part of the *de jure Code* most certainly should be made when that printed version comes up for ratification. We reject McNeill & Turland’s suggestion that those who are dissatisfied with *Acacia* being conserved with the new type *A. penninervis* propose to conserve the name *Acacia* again with a different type. To do so would be a tacit admission that *A. penninervis* is indeed the conserved type of *Acacia*, and based on our interpretation of what took place in Vienna, this is something we do not accept.

(5) McNeill & Turland: “[A]t the time of voting there was no confusion as to how to vote if one favoured the conservation proposal or were against it.”

RESPONSE: Based on the official transcript, Rapporteur McNeill stated that the proposal was to “reject” but that the vote was “perhaps confusingly, the other way around”. When the Rapporteur admits the vote was “perhaps confusingly” done there is ample reason to suspect that there may have been confusion surrounding the *Acacia* vote.

Conclusion

McNeill and Turland’s (2010) paper is disappointing in that it continues to make the conclusion that it is somehow possible to approve something, like the General Committee recommendation on *Acacia* even when the vote on the matter registered a majority disapproval. They also continue to maintain that it is possible for the Nomenclature Section to “approve” a new rule allowing this most bizarre procedure even though no vote on the procedure was ever taken. So, according to McNeill & Turland (2010) it is possible for things to be “approved” even when there is no record of approval (i.e., no vote) or—even more remarkable—when there is a record (i.e., a vote) of disapproval!

Equally disappointing is McNeill & Turland’s failure to defend the procedure used beyond the citation of Art. 14.14 used by McNeill (2006) and rebutted earlier in this paper (see also Rijckevorsel, 2006; Moore, 2007). While they vigorously maintain that there was indeed a valid outcome from this procedure and that any attempt to challenge it at the next Nomenclature Section would be “out of order”, they never defend nor justify this procedure. Rather, they characterize it as “unusual”, “probably not one to be adopted again”, one in which the “appropriateness . . . may be questioned”, and one that many find “strange”. In 2006, an opinion on this matter was obtained from Nancy Sylvester, a certified parliamentarian in the U.S., and author of *The complete idiot’s guide to Robert’s Rules* (2004). She based her opinion on a draft of the lead author’s MS (eventually Moore, 2007), as well as other publications (Greuter & al., 2000; McNeill & al., 2005; Rijckevorsel, 2006; portion of the unedited transcript of Nomenclature Section for 16 July 2005). Below is the relevant portion of her opinion:

“There appears to be a misunderstanding among the parties involved regarding the effect of a vote. Some people appear to believe that if a motion fails, that action has been taken. Parliamentary law is very clear in that when a motion fails, no action is considered to have been taken. . . . The Nomenclature Section took no official action on the General Committee report. The Nomenclature Section decided nothing in regard to *Acacia*. The plenary session of the XVII International Botanical Congress in Vienna approved the action of the Nomenclature Section, which was to decide nothing in regard to *Acacia*. Therefore, nothing changed. There is absolutely no basis for a change in *The international code of botanical nomenclature* in regard to *Acacia*.”

A second opinion based on the same documents provided to Ms. Sylvester was prepared by another U.S. parliamentarian, Professor Larry Winn. Dr. Winn came to the same conclusion as Ms. Sylvester and noted that the way forward would have to involve parliamentary procedure but should also go beyond parliamentary practice to “encompass a broader perspective”.

The same conclusion was also reached in an article by Dr. Jan Glazewski (Professor of Law) and Olivia Rumble (2009), where they stated that a future Congress should “reconsider the matter before the changes are implemented.”

We agree with the conclusions cited above. We are dismayed that we even have to have a debate with the Rapporteurs regarding whether or not the proposal to conserve the name *Acacia* with a conserved type was approved when the vote on this matter registered disapproval. We will thus be raising an objection to the *Acacia* listing when the *Vienna Code* comes up for ratification at the next Nomenclature Section meeting in 2011 in Melbourne.

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