

**FINAL REPORT OF THE TASK FORCE
ON COLLABORATION BETWEEN
THE COMPETITION BUREAU AND THE
CANADIAN BAR ASSOCIATION'S
NATIONAL COMPETITION LAW SECTION**

JULY 13, 2007

EXECUTIVE SUMMARY

By the Fall of 2006, it had become apparent to observers at the Competition Bureau (“Bureau”) and also within the Canadian Bar Association National Competition Law Section (“Section”) that the once close relationship between the Section and the Bureau had become less effective. At the same time it was clear that the American Bar Association Section of Antitrust Law (“ABA Section”) had developed effective models of collaboration with the US DOJ and FTC. The genesis of the Task Force was a desire, in the Bureau and the Section, to emulate that success, and we were very fortunate that the Past Chair of the ABA Section, Don Klawiter, generously agreed to participate as a member of our Task Force.

During a series of meetings over the Winter and Spring of 2006/2007 the Task Force developed proposals to promote closer collaboration between the Bureau and the Section. While all parties recognized that there might be some risks in pursuing collaboration, that the process would not be without bumps, and that there would inevitably and quite properly be areas where Bureau and Section would disagree, all members of the Task Force agreed that the goal of greater and more effective collaboration was desirable and achievable.

The Task Force recommends protocols for collaboration which include:

- All comment and debate shared in Bureau/Section convened committees, task forces and working groups, as well as during informal consultations and regular Bureau/Section interfaces (as distinct from public fora) are to be “not for attribution”, and all participants are bound to respect that fundamental understanding.
- In those cases where the session itself or the expression of a view by a particular individual are prefaced as being confidential, nothing will be repeated outside that gathering.
- All participants will, to the best of their ability, and within the bounds of what they personally feel appropriate, offer their informed views, assessments and opinions, without blind advocacy for a particular position.

The Task Force also recommends a number of mechanisms to “kick start” the collaboration, including the following:

1. The Section proposes to invite a number of members of the Bureau to participate in its formal structures as committee Chairs and Vice-Chairs.
2. Various task forces, established by the Section but drawing upon personnel from the Bureau as well as the Section, will be struck to tackle particular issues. Areas where task forces seem to be most likely to be useful in the short term include:
 - (a) Pre-notification issues;
 - (b) Merger procedures in circumstances of hostile transactions;
 - (c) Developing instructional and educational opportunities between the Bureau/Competition Law Section (“CLS”) and the Section;
 - (d) Consideration of the indirect effects of conduct; and
 - (e) Commentary on corporate compliance policies.
3. *Ad hoc* working groups may be established from time to time, at the instance of the Commissioner of Competition, drawing upon the knowledge and expertise of Section members.
4. Regular (perhaps twice per year) interfaces between key Bureau committees and the Section, as well as possible Section involvement in Bureau retreats.
5. Enhanced use of informal consultations, short of (or in circumstances where it might not be desirable to strike) formal task forces, or even *ad hoc* working groups, in situations where Bureau management identifies issues with respect to which outside input might be valuable.

In summary, the Task Force believes that if a pattern of effective collaboration is developed between the Bureau and the Section through some of the mechanisms noted above a useful pattern will be established. As a result, the Task Force urges that its recommendations, as

summarized above, and as set out more completely in this Report, be endorsed and adopted both by the Bureau and Section.

JULY, 2007

I. INTRODUCTION

In recognition of the fact that the National Competition Law Section of the Canadian Bar Association, the Competition Bureau and the Competition Law Division of the Department of Justice/Competition Law Section share a common fundamental belief in the importance of efficient and effectively functioning competitive markets to the health and prosperity of the Canadian economy, the Task Force examined how the collaboration among the Section, the Bureau and the CLS might be improved.

The Task Force believes that enhanced collaboration, particularly through mechanisms allowing for a more continuous and open dialogue among the Section, the Bureau and the CLS will ultimately result in the development and application of more effective competition law and policy for Canada.

The Task Force is composed of the following nine persons: on behalf of the Bureau and CLS, Melanie Aitken, Senior Deputy Commissioner of Competition (Mergers Branch); John Pecman, Assistant Deputy Commissioner of Competition (Criminal Matters Branch); William Miller, General Counsel, Competition Law Division, Department of Justice; on behalf of the Section, Paul Collins, Executive Member; Michelle Lally, Executive Member; James Musgrove, Chair; and Ex-Officio members of the Task Force, George Addy, Davies Ward Phillips & Vineberg LLP; Calvin Goldman, Q.C., Blakes, Cassels and Graydon LLP, and Don Klawiter, Morgan Lewis.

This Report summarizes the Task Force meetings held throughout the Winter of 2006/07, and sets out the recommendations that the Task Force members have committed to present to the Executive of the Section and Senior Bureau Management. The Task Force is hopeful that all of these recommendations will be accepted and acted upon by the Section and the Bureau/CLS. The recommendations are advanced with the full and enthusiastic support of all members of the Task Force.

II. THE U.S. EXPERIENCE: THE HISTORY OF THE RELATIONSHIP BETWEEN THE ABA SECTION AND GOVERNMENT REPRESENTATIVES (DOJ/FTC/STATE AGS)

The Task Force examined the history of strong collaboration between the American Bar Association's Section of Antitrust Law ("ABA Section") and U.S. antitrust agencies (DOJ/FTC/State AGs) for purposes of determining whether there are mechanisms or methods of collaboration between the ABA Section and the agencies that could possibly be applied to the relationship between the Section and the Bureau/CLS. Don Klawiter provided Task Force members with the history of this ABA Section-Agency relationship from his perspective as Immediate Past Chair of the ABA Section.

A. ABA Section Governance Structure

1. ABA Section Governing Council

The ABA Section is comprised of a Council (its governing executive) that is comprised of 15 members at large, as well as 10 officers. Each Council member is appointed to a three-year term. The Nominating Committee of the ABA Section elects the Council and is comprised of five voting members (including a Chair and a Vice-Chair of the Nominating Committee) as well as four ex-officio non-voting members, being the Immediate Past Chair, the Chair, Chair-Elect and Vice-Chair of the ABA Section. The Nominating Committee selects five new members each year based upon a prospective member's history of accomplishments and work within the ABA Section.

2. ABA Section Officers

As noted above, the Council includes 10 officers. Officers are selected from among the membership of the ABA Section. Many officers commence their service within the Section as Vice-Chair and then Chair of a committee (see below), and are later selected to be members of the Council. Each officer on Council has a specific function and area of responsibility within the ABA Section (e.g. committee officer, program officer, international officer, etc.). Advancement

in office is in some respects a ladder – for example, a Vice-Chair will typically ascend to Chair – and generally an officer needs to have served in two different offices over the past two years in order to advance to the next rung on the ladder. The ABA has no prohibition on government representatives holding positions as an officer of the Council; however, this is not common. In instances where this has occurred, the government representative makes clear whether he/she speaks on his/her own behalf, or on behalf of the agency he/she represents.

3. *Government/Judiciary Representatives*

The Council includes FTC, DOJ (federal), AG (state) and judiciary representatives. Representatives from the judiciary are appointed to a three-year term by the Chair of the ABA Section and are non-voting members. Typically, other government representatives do not vote. Significantly, government representatives also sit from time-to-time as Chairs and Vice-Chairs of various ABA Section committees.

B. *Role of ABA Section Committees, Task Forces and Working Groups*

1. *ABA Section Committees*

There are 28 committees within the ABA Section. To join and/or hold a leadership position within a committee, one must be a member of this ABA Section. Committee Chairs and Vice-Chairs, and members of the various task forces and working groups are selected by the incoming Chair of the ABA Section following the ABA Annual Meeting. As appropriate, reports prepared by committees are sent to the government representatives on those committees for review and comment.

2. *ABA Section Task Forces*

Task forces are appointed annually by the Chair of the ABA Section for a one-year term, although, occasionally, there have been task forces that have existed for terms of longer than one

year. More and more, government representatives are becoming involved in the work of ABA Section task forces, and their presence on such task forces has been found to be valuable.

3. *Benefits of Collaboration*

The size of the ABA provides more opportunities for government representatives to participate in a variety of roles, including committees and task forces, and, from the ABA Section's perspective, these opportunities to collaborate have benefited the working relationship between members of the private bar and government representatives. Task Force members' unscientific canvassing of U.S. agency members confirmed that there is considerable agreement about those benefits. It is perhaps worth noting that the positive perspective appears to be demonstrated most strongly by those who have worked both inside and outside an agency, and those at the most senior levels. While the view has occasionally been expressed that the cost of ABA membership – \$300-400 per year – is prohibitive for government representatives, the ABA Section has increased its membership of government representatives substantially over the last five to ten years.

C. *Building A History of Collaboration*

1. *1970's & 1980's*

In the 1970's and 1980's, only three or four individuals from among the senior leadership of the Department of Justice's Antitrust Division participated in ABA Section events. The ABA Section's committee structure was much smaller, consisting of a Chair, Vice-Chair, a small number of officers and a collection of task forces and working groups. At this time, there existed a view that government representatives should not be involved in the ABA Section's leadership. It was seen as inappropriate for government representatives to "have a point of view", and it was thought that government representatives lacked the resources to do the things members of the private bar were expected to do as part of membership in a voluntary organization like the ABA. A trade association focus applied to much of what the ABA Section did at this time, and

differing political views lead to division between the ABA Section and government representatives.

2. 1990's

This state of affairs continued into the early 1990's when a renewed interest in debating policy issues evolved among members of the private bar and government representatives. Reflecting this interest, and the initiative of the then leadership of the ABA Section, two DOJ/FTC working groups were created, one dealing with mergers and the other dealing with criminal matters, consisting of senior government representatives and senior private bar lawyers brought together to discuss issues of mutual concern and to generate a report documenting these discussions. In the mid-1990's, DOJ and FTC representatives were encouraged to and did occupy positions as Chairs and Vice-Chairs of various ABA Section committees. Furthermore, Don Klawiter and Gary Spratling developed the idea of conducting demonstrations as a teaching device at the ABA Section's annual Spring Meeting. This idea met with some initial reluctance; however, this model has been implemented successfully for the last several years at the Spring Meeting and elsewhere and has engendered goodwill and created an environment much more open to participation by government representatives.

III. THE CANADIAN EXPERIENCE: THE HISTORY OF THE RELATIONSHIP BETWEEN THE SECTION AND THE BUREAU/CLS

After reflecting on the history of the relationship between the ABA's Section of Antitrust Law and its government representatives, the Task Force proceeded to examine the historic relationship between the Section and the Bureau/CLS. Former Commissioners of Competition George Addy and Calvin Goldman offered their perspectives on this topic.

A. Historical Relationship Between the Section and the Bureau/CLS

1. Origins of the Section

The Section was formed in 1991. The impetus for creating the Section was a realization following the passage of the Competition Act in 1986 that, unlike the United States with its ABA Section, there was no forum for the regular exchange of views on competition law issues between the private competition law bar and the Bureau. Senior members of the bar and senior Bureau management viewed the establishment of a CBA competition section as a valuable forum for dialogue and collaboration as well as a mechanism to provide continuing education on competition law matters to private bar and Bureau staff.

Howard Wetston, then the Competition Bureau's Director of Investigation and Research, Lawson Hunter, Calvin Goldman, Russell Lusk, Yves Beriault and George Addy were instrumental in the creation of the Section. An issue that was perhaps not given sufficient consideration at the time of the Section's creation (and one that continues today), is the role of the Department of Justice Canada within the CBA generally, and within the Section in particular. Members of the CLS have generally seen the Section as a Bureau/private sector interface. When invited, they have devoted considerable effort to participate in Section activities. These invitations are extended by the Bureau. The Department of Justice Canada has substantial interaction with the Section National Executive on a continuing basis and holds a "National CBA/Justice Day" each year.

2. The Section and the Bureau/CLS Relationship: The Early Years

When the Section was created, there was excitement among members of the private bar, the Bureau and the CLS.

The Section provided both formal and informal opportunities for continuous dialogue. The informal opportunities for dialogue between certain members of the Section and the Bureau were

seen by some as the most valuable. For example, informal “sidebar meetings” or telephone calls were held between Section members and senior management staff of the Bureau to discuss issues ranging from immunity to sentencing and compliance program guidelines. In such discussions, there existed an understanding among all participants that dialogue could occur in an open, candid fashion without fear of attribution or subsequent retaliation. A genuine interest in the law was foremost; it was not a venue for advocating particular client or stakeholder interests. According to those on the Task Force who were engaged at the time, mutual respect existed for both the opinions of those present and the knowledge that each participant was able to bring to the table.

Over time the relationship between the Bureau and the Section (and the private bar generally) changed and, at times, has been quite adverse not just in substance but in spirit.

B. Factors Contributing to Changes in the Relationship Between the Section and the Bureau

The Task Force considered a number of possible factors contributing in recent years to a change in the relationship between the Section and the Bureau, including:

- (i) increasing formality in exchanges between the Section and the Bureau, arising from leadership changes at the Bureau and the CBA, significant growth in the Section, and the loss of the more informal relationship between the Bureau and the Section/private bar. The Bureau has moved away from informal exchanges and focused on a formal process which it considered more open, transparent and accessible.
- (ii) Competition Bureau staff have interpreted some remarks made by members of the Section, both at CLE functions and in meetings, as personal attacks, and thus have become less willing to be open and engaged with members of the Section.
- (iii) The Bureau has not been involved in the Section’s leadership.

- (iv) Limited opportunities/venues exist for mid-level staff at the Bureau – perhaps the group most directly affected by input provided from the Section – to engage in dialogue with the Section outside the context of ongoing cases.
- (v) Fewer cases has led to an overemphasis within the Bureau and the Section on the significance of particular case outcomes and the perception of entrenched positions by those involved in the particular cases. This, in turn, has increased skepticism about the ability of the Section or the Bureau to dialogue on issues.

IV. THE IMPLICATIONS OF ENHANCED COLLABORATION BETWEEN THE SECTION AND THE BUREAU/CLS

The basic principles, risks and benefits of enhanced collaboration as identified by members of the Task Force are summarized below.

A. The Meaning of Collaboration

While the Task Force found it difficult to define with precision what “collaboration” means in this context, the Task Force considered collaboration to encompass, *at a minimum*, a dialogue between the Section and the Bureau/CLS. The Task Force also intends “collaboration” to encompass joint activity by the Section and Bureau/CLS on competition law policy and enforcement matters but not in derogation of the statutory mandate of the Bureau and the CLS and their relationship in that regard. Nor should collaboration suggest or further the impression that the Section speaks for all legal practitioners regarding issues which may arise under the Competition Act or associated legislation. This could take all manner of forms, ranging from enhanced and continuous consultation on policy matters, joint advocacy as appropriate, and coordinated CLE activities.

B. Benefits and Risks of Enhanced Collaboration between the Bureau and the Section

The benefits of greater collaboration include the following:

1. Represents an opportunity to engage in improved/more open/better informed dialogue on domestic and international competition policy, practice and enforcement issues. In this regard, the emphasis is on dialogue – two sides working together to find areas of common understanding or common ground – rather than on debate, two sides opposing each other attempt to prove each other wrong.
2. May allow the Section and the Bureau to engage in earlier dialogue on emerging policy issues, rather than having the initial exchange of views take place in formal position papers, or in actual cases, at which stage views can have become entrenched.
3. Facilitates a more informed understanding of the rationales informing the positions of the Section and the Bureau on various issues.
4. Allows for identification of common ground more quickly which, in turn, facilitates the implementation of any action related to such areas of consensus.
5. Facilitates a more effective and focused debate on issues of disagreement.
6. May enhance the “market power” of the Section and Bureau in contributing to the Government’s legislative agenda.
7. May stimulate dialogue on the future of competition law and policy and the role Canada plays or may play in the global economy.
8. May enhance the role of the Section and Bureau in the existing international competition law community, such as with the International Competition Network and the OECD.

9. May enhance CLE activities.

C. Risks of Enhanced Collaboration between the Section and Bureau

1. Concern about the freedom of the Bureau to dialogue freely and potentially contrary to Bureau policies and directives, with representatives of the Section.
2. The Section may be concerned that forceful expressions of views may attract retribution.
3. The Section may be seen by its members as a “lapdog” of the Bureau; likewise, the Bureau may be seen as a captive regulator to the Section.
4. Consultation between the Section and the CLS may lead to an appearance of intimacy which, with respect to the independent function of the Attorney General in criminal matters, in particular, may appear to some to compromise his constitutional role.

V. PROTOCOLS AND MECHANISMS TO ENCOURAGE COLLABORATION BETWEEN THE BUREAU AND THE SECTION

A. Setting the Groundwork: A Protocol For Collaboration

Recognizing that there is a desire for and value to enhanced collaboration between the Section and the Bureau, the Task Force proposes that a Protocol for Collaboration (“Protocol”) in the form attached as **Appendix A** be adopted. The Protocol is designed to provide parameters within which members of the Bureau and the Section will conduct themselves when working together on non-contentious or non-adversarial matters. The Protocol should be adopted as the governing principles and “rules of engagement” promulgated by the Bureau and the Section in their future collaborative efforts.

B. Mechanisms to Encourage Collaboration Between the Bureau and the Section

Given the considerable success in building collaboration between the private bar and government representatives experienced by the ABA Section through the use of committees, working groups and task forces, the Task Force proposes the following mechanisms to encourage collaboration between the Bureau and the Section.

1. Section Committees

The proposed new Section committee structure offers an opportunity through which Bureau personnel could become more effectively involved in the Section activities. The Task Force recommends, as part of the proposed Section committee restructuring, that it would be beneficial to encourage and allow representatives from the Bureau (even if they are non-paying CBA members, at least for the first year following the restructuring) to hold committee Chair/Vice-Chair positions within the various committees of the Section on an *ex-officio* basis. Thereafter, individuals within the Bureau who wish to participate in the Section as non-*ex-officio* Chairs/Vice-Chairs will likely have to become CBA members.

2. Regular Bureau Interface

The Bureau members of the Task Force expressed their willingness to explore regular (perhaps twice per year) interfaces between key Bureau committees and the Section to advise, by way of example, about anticipated policy projects for the coming period. Should the Section ultimately have an interest in such interfaces, or even less formal ones such as invitations to Branch retreats (as has already been tested), the Bureau members are very open to pursuing them.

3. *Task Forces*

The Task Force recommends that, in addition to Section committees, task forces also be considered as a mechanism for encouraging collaboration. Such joint task forces could be convened at the pleasure of the Section or the Bureau. Section task forces would be initiated by the Chair of the Section, who would invite appropriate Bureau personnel to participate on the task force. Bureau task forces would be initiated by the Commissioner, who would invite appropriate members of the Section to participate on the task force.

4. *Ad Hoc Joint Working Groups*

The Task Force recommends that, as a first step in encouraging collaboration, working groups, composed of representatives of the Bureau and the Section, be established to address the specific topics discussed below.

The Task Force proposes that the Bureau and the Section commence work on various topics utilizing joint working groups – with membership appointed by both the Bureau and the Section. These joint working groups would reach independent conclusions on the topics they examine, and each of the Bureau and Section would be at liberty to adopt some or all of such conclusions as they, respectively, felt appropriate. Even if there was no consensus with respect to the particular topic examined, this approach should significantly narrow the range of issues in disagreement with respect to such topic. The establishment of such working groups as a trial vehicle in no way precludes the Section and its committees from establishing working groups from time-to-time which may seek the input and involvement of Bureau personnel, nor does it preclude the Bureau from striking consultative panels or working groups of its own, which may involve participation from the Section. This proposal is simply designed to test the appetite for collaboration of the kind contemplated and to confirm how productive it can be while raising everyone's comfort level with the model.

The possible topics for study by these joint working groups, which the Task Force recommends that the Bureau and Section consider, include the following:

(a) Merger Notification Issues

The working group could draw on the work already done in this area and develop a list of recommended clarifications and/or amendments. These would likely fall within three categories: (a) matters of procedure benefiting from clarification, by way of guidelines or otherwise; (b) matters requiring regulatory amendment; and (c) matters requiring statutory amendment.

Obviously, the ability to deal with these three different types of issues will be circumscribed by parliamentary and other realities, but having some agreed upon changes with respect to these issues is likely to be helpful for promoting clarity and reform.

(b) Merger Procedures in Circumstances of Hostile Transactions

The instances of hostile take-overs appear to be increasing. The Bureau is concerned to ensure it continues to appropriately assess the competitive impact of these transactions without otherwise interfering in the marketplace dynamic. Some general understanding of how the Bureau will and should proceed in various cases could be of benefit to both the Bureau and the private bar. Indeed, this may be an area where we should seek to involve a counterpart from the ABA Section, to enhance the substantive comment and, at the same time, to borrow from the rich experience within the ABA Section.

(c) Instructional and Educational Opportunities

The Section engages in various continuing legal education/brown bag/conference activities on an ongoing basis. The Bureau also has a well-developed and thoughtful learning plan. There may be ways in which the Bureau and Section could work together to maximize mutual benefit in this area. This may involve improvements to or better understanding and publicity for interchange programs, brown bag programs, committee working groups and interface with the Bureau's learning committee, among other things. This working group may be able to recommend a variety of ways in which the Bureau and Section can work more effectively together.

(d) Indirect Effects

The Bureau is studying the issue of indirect competitive harm in the context of criminal conspiracies in particular. Specifically, in some international cartel investigations, the cartel conduct takes place outside Canada and is directed to an input market. The higher cartelized prices on input products are passed through to downstream purchasers. The focus is the effects from sales into Canada of the cartelized good (whether unaltered or as an input to a finished good) by someone other than the conspirator or its agent.

These are areas in which both the Bureau and the private bar would benefit from increased clarity with respect to the approaches to these issues, although there is mutual recognition that it may be premature to issue a formal position, guideline or bulletin on the point. That said, joint work may give rise to a preliminary document setting out the current situation, which could be used as a foundation for subsequent public discussions, and if deemed appropriate, guidelines or a bulletin. As such, this may be an area that would benefit from a joint working group, although the output would likely be generated over a longer term than some of the other items mentioned above.

5. *Informal Consultations*

In light of the observation by, in particular, the *ex-officio* members of our Task Force as to the value of informal dialogue as between senior Bureau staff and the private bar, it is proposed that, as appropriate, Bureau management consider identifying issues with respect to which outside input might be valuable, short of (or in circumstances where it might not be desirable to strike) formal task forces, or even *ad hoc* working groups. To that end, the Bureau has already invited three members of the private bar (all of whom are Section members) to input on a Bureau initiative regarding compliance; while the resulting proposal will ultimately be widely circulated for comment, this early input may prove valuable. Having been reassured as to the value and the desire in the private bar for this sort of informal consultation, the Bureau is committed to exploring future such topics, and looks forward to the dialogue opportunities that will present.

VII. CONCLUSION

At the outset, the Task Force described its goal as determining whether enhanced collaboration between the Bureau/CLS and the Section/private bar can or should be sought. The example set by the ABA Section illustrates that a close, collaborative relationship between the private bar and government representatives – while not easily won – can be achieved and can be rich indeed.

Initial trepidation and uncertainty aside, and in an effort to leave past misgivings behind us, the Task Force focused on the benefits of an improved, more collaborative relationship between the Bureau/CLS and the Section/private bar. To that end, Task Force members have canvassed the possibilities for greater collaboration that may exist within the organizations they represent. Further, we have proposed a draft Protocol for Collaboration to set the “ground rules” for collaboration between the parties, and developed a modest list of possible initial collaborative initiatives and activities to improve and strengthen the relationship between the parties. It is the hope of the Task Force that the suggestions advanced in this Report will help provide a framework for encouraging and supporting a renewed spirit of collaboration among the Bureau/CLS and the Section and foster future and meaningful such possibilities for all participants’ benefit.

Appendix A

Protocol for Collaboration

The Goal

To foster an environment conducive to frank, open and respectful dialogue¹ in our antitrust community, the Task Force on Collaboration believes that it would be beneficial to endorse certain guiding principles that participants in such dialogues should respect.

Specifically, in order to relieve individuals from the inhibiting prospect that their contribution, offered in the spirit of enhancing the level and diversity of debate, might be cited in another forum, or otherwise unfairly attributed to them, the Task Force urges all members of the Canadian Bar Association National Competition Law Section and the Competition Bureau who are invited to play a role in these debates to honour these basic precepts.

¹ The attributes of the dialogue desired by the Task Force are effectively summarized in this comparison of the terms “dialogue” and “debate”:

- Dialogue is collaborative: two or more sides work together toward a common understanding. Debate is oppositional: two sides oppose each other and attempt to prove each other wrong.
- In dialogue, one listens to the other side(s) in order to understand, find meaning, and find agreement. In debate, one listens to the other side in order to find flaws and to counter its arguments and win.
- Dialogue enlarges and possibly changes a participant's point of view. Debate affirms a participant's own point of view.
- Dialogue reveals assumptions for reevaluation. Debate defends assumptions as truth.
- Dialogue causes introspection on one's own position. Debate causes critique of the other position.
- Dialogue opens the possibility of reaching a better solution than any of the original solutions. Debate defends one's own positions as the best solution and excludes other solutions.
- Dialogue creates an open-minded attitude: an openness to being wrong and an openness to change. Debate creates a closed-minded attitude, a determination to be right.
- In dialogue, one submits one's best thinking, knowing that other people's reflections will help improve it rather than destroy it. In debate, one submits one's best thinking and defends it against challenge to show that it is right.
- Dialogue calls for temporarily suspending one's beliefs. Debate calls for investing wholeheartedly in one's beliefs.
- In dialogue, one searches for basic agreements. In debate, one searches for glaring differences.
- In dialogue, one searches for strengths in the other positions. In debate, one searches for flaws and weaknesses in the other positions.
- Dialogue involves a real concern for the other person and seeks to not alienate or offend. Debate involves a countering of the other position without focusing on feelings or relationship and often belittles or deprecates the other person.
- Dialogue assumes that many people have pieces of the answer and that together they can put them into a workable solution. Debate assumes that there is a right answer and that someone has it.
- Dialogue remains open-ended. Debate implies a conclusion.

The Understanding

All comment and discussion shared in Bureau/Section convened committees, task forces and working groups, as well as during informal consultations and regular Bureau/Section interfaces (as distinct from public fora) are to be “not for attribution”, and all participants are bound to respect that fundamental understanding. Further, where the session itself or the expression of a view by a particular individual are prefaced as confidential, nothing will be repeated outside that gathering.

The Commitment

All participants will, to the best of their ability, and within the bounds of what they personally feel appropriate, offer their informed views, assessments and opinions, without blind advocacy for a particular position. We recognize that individuals will draw that line in different places. What we hope is that, particularly over time, all participants will come to recognize the enormous value to open debate, and feel that the environment is a "safe" one, with peers and colleagues, not adversaries. In that context, they will feel able to debate issues at large, free from fear of attribution.