

MINUTES

**CBA National Air and Space Law Section (in person) meeting
Wednesday, September 17, 2014, 8:30 a.m.
Westin Montreal (Youville Room) – 270 St. Antoine West, Montreal**

In attendance:

Minutes: S. Kovacs

B. Poston, Chair
P. Floyd, Vice-Chair
N. Nind, Treasurer (by telephone)
S. Kovacs, Secretary
D. Pankratz
J. Barnsley

N. Arshinoff
A. Acquah
J. Lalonde
A. Marasco
K. Bulmer (by telephone)

1. Welcome

- B. Poston welcomed everyone and introduced our new CBA liaison, A. Acquah, accompanied by J. Lalonde, one of two directors in the Sections and Conferences Department.

2. Approval of Agenda and Minutes

- Motion to approve Minutes from our September 13, 2013 in person meeting in Ottawa: J. Barnsley moved, seconded by P. Floyd, carried.
- Motion to approve Minutes from June 10, 2014: D. Pankratz moved, seconded by P. Floyd, carried.

3. Report from the Chair

- This year we attended all national meetings.
- One of this year's goals was to improve our relationship with our ABA counterpart. B. Poston was part of the planning committee for the ABA / McGill. Executive member T. Park is scheduled to speak at the conference. ABA representatives will be joining us for today's meeting.
- The section achieved its legislation and law reform objectives by ensuring the Capetown Convention was legislated in each Province.
- The section hosted a webinar attended by 40 members. Thanks to A. Marasco and K. Bulmer. J. Barnsley labelled us "the little section that could".
- A LinkedIn page was established.

- We encouraged the formation of branch sections in Ontario and Alberta. Some progress has been made in Ontario.
- The section initiated outreach with McGill Air and Space Law students; 12 students have signed up for our outreach event this evening.
- The section implemented formal committees and chairs to foster objectives.
- The section continued to attract new members this past year.
- On behalf of the committee, J. Barnsley thanked B. Poston for his work as Chair.

4. ABA

- We have continued to solidify our relationship with our ABA section counterpart. Past Chair I. Hornsby spoke at last year's conference. B. Poston is on the planning committee for this year's conference.
- A joint webinar with the ABA was proposed and discussed. J. Lalonde or A. Acquah will follow-up respecting deadlines. J. Barnsley inquired if an ABA member could attend. J. Lalonde suggested we can give ABA members the same rate as a CBA member. The ABA could promote the webinar as well. J. Lalonde noted the international section has a cooperating agreement with the ABA.
- J. Barnsley queried whether we could invite an ABA member to sit on our board as an ex-officio member. B. Poston suggested this would be a good position for the ABA's vice-chair. **MOTION: J. Barnsley moved to invite an ABA member to join our executive as an ex-officio executive member, seconded by P. Floyd, carried.** J. Lalonde noted that creating an ex-officio position cannot be done until later this winter, December 6 is the deadline. B. Poston suggested we should wait to hear from the ABA Chair on this issue before moving forward to change the regulation.
- **At 11:00 a.m., we were joined by Bob Span, Chair; Monica Hargrove, Chair-Elect; and Dawn Holiday, Manager from the ABA Air and Space Law Forum.** The ABA's Forum has 1,800 lawyer members and 2,000 student members. The ABA section and the CBA section would like to have greater ties. The idea of a webinar involving an ABA member was discussed. D. Holiday will send a query to the ABA's CLE department for approval for either co-sponsorship or marketing assistance. A concern respecting CLE fees was raised. B. Poston will connect A. Acquah and D. Holiday by e-mail. The CBA section's format for publications was explained. The ABA is also experimenting with LinkedIn, social media, and increasing website traffic.
- B. Poston thanked the ABA Forum guests for joining us.

5. Roundtable Discussion

- J. Barnsley reported on the Manitoba section's activities. He called a meeting with the business law section to review Capetown. A hot issue in Manitoba is the devolution of airports to local authorities and Transport Canada's aggressive steps to say these airports

are not in compliance with regulations, i.e. runway lights, etc. J. Barnsley summarized a recent tribunal decision wherein TC was required to pay costs. The Manitoba industry is reasonably healthy. There are some concerns with Manitoba's air ambulance service. The fixed wing sector has experienced steady growth, particularly in remote area services. Winnipeg has a new airport.

- D. Pankratz reported on behalf of K. Burnett for the B.C. Section. The section reports strong membership numbers. Two formal meetings were held this past year. An April seminar featured speaker D. Varte on his recent case considering Article 11 of the Montreal Convention. In late May, John Doddsworth of the CTA spoke to the section. Two long-serving members, S. Gill and P. Saul, have retired. J. Ball and B. Poston have joined the executive. **S. Kovacs to contact L.S.B.C. to secure educational credits for B.C. executive members respecting the Justice visit component of our meeting this afternoon. J. Barnsley will follow-up with D. Pankratz respecting teleconferencing of B.C.'s section meetings and educational seminars. D. Pankratz will follow-up with the CBABC's Director of Sections Jennifer Weber respecting the \$68 levy for section enrollment.**
- P. Floyd reported on recent trends in Ontario, including Transport Canada actions and enforcement. P. Floyd raised a recent concern involving an air ambulance crash wherein several charges were laid under the Canada Labour Code for aeronautical offences.

6. Member Communications

- J. Lalonde reported that the CBA is creating a new web platform. There will be no more National newsletters as of November or December, but an article database instead. Sections will require 3-4 executive members to organize the article database. There will be quarterly communiques to announce new articles, etc. The section page will be a searchable resource to members.
- Many sections are merging their newsletter and website committees into "Communications Committees".
- There is a translation policy. Any articles less than 1,000 words are translated in full. Otherwise the policy is to translate a % of the articles proportionate with the % of the section's members that are bilingual.

7. Planning and Priorities for 2014-2015

- Professional Development committee - K. Bulmer reported that the webinar planned this past year was well-attended and well-received. We have not secured a date for a further seminar this fall on the topic of the Capetown Convention. A. Marasco proposed a seminar for the beginning of December. The topic of drones was discussed. B. Poston proposed we focus on Capetown for now and drones next year. B. Poston also proposed asking someone from the ABA to participate on the panel. J. Lalonde has emailed the PD department for availability. A. Marasco said we can get an FAA representative. There

will be three speakers. The format will be 1.5 hours with questions. Powerpoints must be submitted to the CBA in advance.

- Website committee - D. Pankratz is the webmaster for our LinkedIn page. The ABA conference link has been posted, as have other links to aviation law related conferences. B. Poston suggested we restrict postings to legal conferences. Anyone receiving anything by e-mail should send it to D. Pankratz for posting on the LinkedIn page.
- Deliverables for the upcoming year. P. Floyd proposed preparation of a primer for our members respecting regulatory matters with Transport Canada, i.e. an enforcement proceeding from start to finish, inclusive of precedents, disclosure, etc. P. Floyd and J. Barnsley will work together on this project. We should have one primer for clients, and one for counsel. The first step is to establish a framework. B. Poston to assist, S. Kovacs will edit. This is an immediate priority, with the goal to have this accomplished before next summer. B. Poston wants to be “Section of the Year” next year.
- Next year’s National meeting is in Calgary. J. Lalonde raised the CBA’s reconceptualization of that conference, with skills-based programming as opposed to individual section-related PD seminars.
- Our outreach to McGill students was discussed. There was some discussion respecting whether these students will continue to be CBA members if they are out-of-country after graduation. At minimum, access to their articles would be great. **J. Barnsley motioned that the section offer an executive membership to a representative of the Masters program at McGill – seconded by P. Floyd. Carried.** J. Lalonde clarified that students cannot vote.
- J. Barnsley discussed our previous invitation to Transport Canada to have our executive assist in the training of tribunal members. Proposed and discussed that B. Poston send another invitation.

8. Legislation and Law Reform

- N. Arshinoff reported success in having the Capetown Convention ratified in each province.
- Transport Canada representatives will be joining us for lunch and they’ve been invited to come to the McGill student networking session. They will not discuss matters of pure policy. The purpose is to discuss updates on legislation.
- N. Arshinoff discussed some impending changes to the Transportation Appeal Tribunal.
- The CBA generally has had a number of SCC intervention requests. The CBA has been granted intervenor status in a recent jurisdictional matter.
- P. Floyd noted some legislative changes for 604 operators and the issue of municipal approval for airport expansion or, at minimum, a duty to consult may be required in the regulations in future. We should encourage the federal government to back away from

any duty to consult. J. Barnsley raised the concern of a detrimental economic impact if there is a duty to consult local governments and communities for airport construction or expansion.

- J. Barnsley discussed the Transportation Appeal Tribunal changes – Mary Cannon retired – there is a concern that subject expertise will be lost. Tribunal staff did not know this was coming, no consultation.
- **J. Barnsley motioned to develop a resolution for approval at the CBA’s meeting opposing any legislative change or administrative policy that would weaken federal jurisdiction over aviation and, specifically, any requirement to consult with provincial or municipal entities as a condition to airport development. Seconded by D. Pankratz. Carried.**
- **P. Floyd motioned to prepare a letter to CARAC – P. Floyd to prepare a first draft. Seconded by J. Barnsley. Carried.**

9. Lunch / Meeting with Transport Canada

- Daniel Blasioli, Senior Counsel, and John Thachet, Legal Counsel, of Transport Canada joined the meeting for the lunch hour.

(1) Update on recent case law and interpretation

- D. Blasioli reviewed recent case law on aerodromes and the issue of interjurisdictional immunity. The courts have made it clear that Transport Canada is not the final arbiter of the *Act*; the court retains jurisdiction to decide matters under the *Act*. Cases discussed: *Seguin (Township) et al v. Bak*, 2013 ONSC 5788, *Parkland Airport Development Corporation v. Parkland (County)*, 2013 ABQB 641, *Burlington Airpark v. City of Burlington*, 2013 ONSC 6990.
- D. Blasioli also reviewed *Unlu v. Air Canada*, 2013 BCCA 112, regarding fuel surcharges and the applicability of consumer protection legislation to airfare advertisements. Interjurisdictional immunity considered – this issue did not impair core area of aeronautics and so provincial law applied. – leave to appeal refused by SCC.
- D. Blasioli also raised the issue of the advisory sent out encouraging aerodromes to consult with local authorities before building or expanding. P. Floyd noted that municipalities have been relying on this advisory to require building permit. COPA is unhappy.
- J. Barnsley stated that having a duty to consult essentially gives the local authorities a veto right to any new aerodrome. The advisory could be clearer. Municipalities need to realize this is not an opportunity to keep airports out. The use of the word “duty” is problematic.
- D. Blasioli noted the concerns and thanked the committee for communication of same, suggesting it is possible the advisory will be revisited.

- J. Thatchet reviewed *Air Canada v. Thibodeau*, 2012 FCA 246. Air Canada is required to comply with the *Official Languages Act* because it is a former Crown corporation. However, the offense alleged was during an international flight and ICAO conventions adopted. Leave to appeal to the SCC was granted. Awaiting decision.

(2) Update on legislation and recent amendments.

- CARAC No.2013-014 – proposal for TC to regulate aerodrome placement and consultation. Municipalities and Provinces are making a lot of noise. To establish a regime to impose consultation requirements on aerodrome placement before construction starts. A proponent will have to speak to interested parties. Possibly for expansion as well. Discussion ensued, as above.
- *Canadian Aviation Security Regulations* – There has been an amendment for enhanced security for aerodromes, essentially SMS for security i.e. safety risks should be identified on an ongoing basis, followed by a plan to mitigate, etc.
- Part IV of the *CARS* have been amended respecting multi-crew pilot licenses. Training was going off shore. The regulations now match ICAO standards.
- P. Floyd inquired into the status of the 604 rule out? Operators are opting for 704 instead. J. Barnsley – The CTA issued guidance that inter-corporate use is not “for higher reward”.

(3) Update on ICAO activities

- J. Thatchet reported on the recent protocol to amend the Tokyo Convention. IATA reported an increased number of unruly passenger events and many countries are not taking jurisdiction such that the offender walks away. There have been some serious cases, including a sexual assault where the UK wouldn’t take jurisdiction. The amendment intends to clarify that the State of landing has jurisdiction. Some states have not ratified the amendment because of political concerns requiring the state to first consider if the offence is consistent with the operator’s state before laying charges. After 9/11 it is a part of life that we have flight security officers on board aircraft, but there has been no legal regime regulating same. The amendment to the Tokyo Convention also recognizes the status of in-flight security officers. However, the US wanted the officer to have the same status as an aircraft commander (the pilot). Other states were not comfortable with that proposition. As a result, the U.S. may not ratify that section of the treaty. To date, no state has ratified it. There is serious doubt this protocol will get the same ratification success as the first Tokyo Convention.
- J. Thatchet also reported on the Capetown Convention. It has now been ratified in Canada. This is good news for the financing community.

(4) CBA Questions and Specific Issues:

- When seeking an interpretation of TC legislation, is it TC's view that it should first be sought at TATC prior to going to the Federal Court? Can TC advise on correct interpretation if asked? To prevent a civil aviation safety alert, is it possible to bypass TATC by going directly to Federal Court?
- *If TATC has been given jurisdiction under the Aeronautics Act to hear the issue i.e. AMPs, notice of suspension, refusal, etc. it can't hear anything other than what it's been given jurisdiction to hear. Statutory remedies should be exhausted first and the TATC can be quicker. Transport Canada struggles with interpretation. TC is undergoing a multimodal project to encourage consistency between regions.*

(5) General discussion on how CBA can work with TC counsel

- It is helpful to have these discussions i.e. the feedback on the duty to consult advisory was very helpful to TC's legal counsel today.
- TC counsel were thanked by B. Poston and invited to join the McGill outreach session.

10. Professional Development

- J. Lalonde – The PD department is prepared to move forward for December if urgent, but resources are an issue. A teleconference would be preferred given limited resources; generally there should only be one webinar each year.

11. National Sections/CBA Update

- Deferred.

12. Other Business

- Executive meetings will be bi-monthly every second Tuesday. The next call is November 12 because the Tuesday is Remembrance Day. 10:00 PST / 1:00 EST
- P. Floyd will attend the mid-winter National meeting on behalf of the executive.

The meeting was adjourned at 2:15 p.m.