

*Agenda Item 8(a)  
May 28, 2013 EOC Meeting*

CAFII's Bylaw No. 2009-5, enacted December 8, 2009, does not contain any provision related to decision situations where a consensus of its Board of Directors cannot be reached.

In fact, the Bylaw contains only one clause that is pertinent in this area, as follows:

**5.11 Votes to Govern**

Each Director is authorized to exercise one vote. At all meetings of the Board, every question shall be voted on and decided by at least a two-thirds (2/3) majority of the votes cast on the question. Prior to the calling for votes on a question by the Chair of the meeting, a Director may request to have recorded in the minutes of the meeting the number or proportion of the votes recorded in favour of or against any resolution or other proceeding in respect of the said question.

**From:** Brendan Wycks [mailto:brendan.wycks@cafii.com]  
**Sent:** May-23-13 1:40 PM  
**To:** 'PAMELA SMITH'  
**Cc:** 'Leya Duigu'; 'Pamela Smith (TOCS)'; 'Hines, Jennifer' (jennifer.hines@rbc.com)  
**Subject:** RE: Options for decision-making by consensus for CAFII bylaws

Thanks for this helpful info and advice, Pamela.

Two follow-up questions for you:

- What is the "Act" that is referred to below? Is it the new Canada Non-Profit Corporations Act (CNCA) or is it some older legislation such as the Canada Corporations Act (CCA)?
- Even though the first section in italics refers specifically to Board Meetings and the second italicized section pertains to Meetings of Members (Annual General Meetings or Special General Meetings) – and these two types of meetings are quite distinct beasts – it does seem to fit that the Member Voting guidance offered with respect to Meetings of Members is transferable to the situation of Directors voting at Board Meetings.

Right now, the CAFII Bylaws stipulate that – in the case of both Board Meetings and Meetings of Members – a two-thirds majority vote is required for a resolution to be carried. However, to the best of my knowledge, CAFII has not been following that in practice. Rather, the Association has always tried to govern itself by consensus/unanimity on key decisions.

So the two key questions that need to be revisited, in my view, are:

- Does CAFII want to retain the high threshold of two-thirds majority support for a resolution to be carried, or should that be changed to a simple majority of members?; and
- What rules do we want to have in place for the voting of the Chair at a Board Meeting and at a Meeting of Members? Given CAFII's nature/make-up as an Association, it perhaps goes without saying that the Chair of a General Meeting, who is almost certain to be a Director from one of the 10 Voting Members, would cast a vote; but it's less clear in the situation of a Board Meeting.

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**Cc:** Leya Duigu; Pamela Smith (TOCS)  
**Subject:** Options for decision-making by consensus for CAFII bylaws

Hi Brendan - I'm not sure if you received my previous email - I don't seem to have a receipt of email notice - so I am trying again from my home email address. At the last EOC the question of how to governing by consensus could be incorporated into the CAFII bylaws. Hope this will help.

*Voting - Subsection 137(1) of the Act permits the by-laws to specify that the directors will make decisions by consensus, with certain exceptions. If consensus decision making is desired, the following may be used:*

*"Unless otherwise required by the Act or the articles of the Corporation, questions arising at any meeting of the board shall be decided by a consensus of the directors present at the meeting. A consensus will be considered to have been reached when no director objects to the question on the floor before the meeting. Should the chair of the meeting determine, after a reasonable effort to achieve consensus has been made, that a consensus will not be reached regarding a particular question, then the chair shall refer the question to be decided by a majority vote of the directors. In that event, each director is authorized to exercise one vote".*

*Tie-Vote – Where there is a tie vote, the example provided in the precedent gives the chair a second or casting vote to break a tie. There are other variations possible, such as stating that the chair shall not exercise a vote except to break a tie.*

Organizations that do not make decisions by consensus are directed to the following options:

*Votes to Govern at Members' Meetings*

*Option 1- the default rule in the Act.*

*At any meeting of members every question shall, unless otherwise provided by the articles or by-laws or by the Act, be determined by a majority of the votes cast on the questions. In case of an equality of votes either on a show of hands or on a ballot or on the results of electronic voting, the chair of the meeting in addition to an original vote shall have a second or casting vote.*

*Option 2 - Write your own by-law governing how votes are to be determined at meetings of members.*

Most of the organizations I have worked with have used, *At any meeting of members every question shall, unless otherwise provided by the articles or by-laws or by the Act, be determined by a majority of the votes cast on the questions. In case of an equality of votes either on a show of hands or on a ballot or on the results of electronic voting, the chair of the meeting **shall not** have a second or casting vote and the motion is defeated.*

I haven't done the quick review of the CAFII bylaws to determine how much time will be required to transition the bylaws. I'll get back to you on that in June.

Let me know - hit reply all- if you need anything else prior to that.

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