



## MEMORANDUM

TO: Executive Operations Committee

FROM: Brendan Wycks, Executive Director

DATE: October 28, 2013

SUBJECT: CAFII Continuance Under Canada Not-for-Profit Corporations Act

---

The deadline for CAFII, a federally incorporated not-for-profit corporation, to become compliant with this legislation – by filing Articles of Continuance – is October 17, 2014.

Accompanying this memo are two related documents that were recently shared with me by Leya Duigu and Pamela Smith of TO Corporate Services:

- a proposal dated November 19, 2012 from TO Corporate Services with respect to providing co-ordination and administration services to CAFII around transitioning to the CNCA; and
- a letter dated September 21, 2012 from Jane Burke-Robertson (subsequently deceased) of Carters Professional Corporation, a law firm that specializes in non-profit and registered charity clients, outlining a proposal to provide legal services to CAFII with respect to continuance under the CNCA.

### Observations

- I am reasonably familiar with the CNCA through my experience as an Association Executive Director. However, I left MRIA, my previous Association, just as the serious compliance analysis and continuance work was about to get underway.
- I concur with pretty well everything stated in the TO Corp proposal, especially that the requirement to transition under the new Act should be looked upon as an opportunity for CAFII to re-examine its purposes, membership model, governance model, and other fundamentals. We may have to come up with an altered approach to Associate Members, to avoid having the new Act put the Association in a position where Associate Members would have voting rights, even in limited circumstances.
- While CAFII is, relatively speaking, a small, straightforward, narrowly-focused Association, from a CNCA compliance perspective, things are not as simple as they might first appear. The fact that we distinguish between Foundation and Voting Members; and between them and Associate Members; and the fact that we have a somewhat unique division of responsibilities between the Board of Directors and the Executive Operations Committee are complicating factors.
- I have seen numerous presentations on Association/non-profit legislative and regulatory issues by Carters Professional Corporation principals at Canadian Society of Association Executives (CSAE) events over the past five years. I have also attended a half day workshop put on by Carters under its own banner. Each time, I have come away impressed by the breadth and depth of legal expertise and experience related to non-profits that Carters has on its team. They are also a “distributed” legal firm – headquartered in Orangeville but with partners working from various communities in Ontario – such that their average hourly rate is much lower than the downtown Toronto law firms. And while Jane Burke-Robertson recently passed away, given its specialist focus, Carters has lots of bench strength on its legal team. I have no hesitation in recommending Carters Professional Corporation as “the” law firm that CAFII should work with when we are in a position to finalize our continuance work and become compliant with the CNCA.

255-55 St. Clair Ave West, Toronto, Ontario M4V 2Y7

Tel: (416) 494-9224 Fax: (416) 967-6320

Email: [info@cafii.com](mailto:info@cafii.com) Web: [www.cafii.com](http://www.cafii.com)

- Pamela Smith, as TO Corp's resident "governance expert," has worked with two other Association clients thus far in helping them complete the work necessary to file Articles of Continuance with Industry Canada to achieve CNCA compliance. She says that she has developed a matrix that references an Association's current Bylaw/governance document(s) against the key provisions of the CNCA, to help Associations work expeditiously through the required analysis and wording considerations.
- While it is definitely fair to say that part of my role as Executive Director is to lead such governance review exercises and it could therefore be argued that we do not need to engage Pamela Smith and pay TO Corp for her services, there is a trade-off at play here.
- Given that Pamela has been through the process with two other Association clients and given that the analysis and consideration exercise that she facilitates is designed to minimize the number of required hours of a lawyer's time, it does seem prudent to me for CAFII to invest in purchasing some of Pamela's services from TO Corp.
- TO Corp has quoted \$2,500 for 35 hours of Pamela's time on this project (\$71.43 per hour).
- Given CAFII's situation as a relatively straightforward Association and the fact that I will be centrally involved in the project myself, and will bring my own Association governance knowledge and experience to bear, 35 hours (five work days) of Pamela's time for this project seems excessive.
- I estimate that 21 hours (three work days) of Pamela's time should be more than sufficient to see CAFII through the phase of the work where she can add value, to the point where we're pretty well ready to engage with legal counsel. If we can negotiate with TO Corp for 21 hours of Pamela's time at the same hourly rate, that would be an expenditure of \$1,500 rather than \$2,500.

### **Recommendation**

- (a) That CAFII form a "CNCA Compliance Working Group" of three or four EOC members, plus myself and Leya, to tackle this project, the deadline for which will be upon us quickly. The most suitable candidates would be those who have previously served as EOC Chair; have a legal background; and/or have served on a Board and/or Executive Committee of another non-profit corporation and been involved in governance review work.
- (b) That the CNCA Compliance Working Group, as Job #1, develop a Critical Path that will see the appropriate compliance and continuance document(s) for the Association be ready for approval by the Association's membership at our Annual General Meeting in June 2014.
- (c) That CAFII negotiate with TO Corp to engage the services of Pamela Smith for approximately 21 hours of administrative and co-ordination services related to CAFII's review and analysis with respect to compliance with the CNCA.
- (d) That CAFII enter into a legal services retainer agreement with Carters Professional Corporation related to the Association's compliance with the CNCA and the filing of related Articles of Continuance prior to the October 17, 2014 deadline.
- (e) That CAFII budget approximately \$6,000 for this work in its 2014 Operating Budget.