

## **Report of the CARS Bylaw Committee**

The committee created at the CARS AGM in January 2005 has completed its review process. This process consisted of two elements: 1. examination of proposals referred to the Committee at the AGM; 2. examination of additional proposals submitted from within rally sport under the terms of reference given to the Committee. This second phase of the process was conducted within each region after which the Committee reviewed all submissions.

### **The Function of the CARS Bylaws**

In reviewing all proposals submitted, the Committee has attempted to adhere to the principle that any alteration to the Bylaws be considered from the perspective of how it might affect the Bylaws as a governance document both in the day to day running of CARS and at an AGM or EGM. As a result, the Committee has assumed that Bylaws should set out the mechanisms by which an organization operates and assigns broad areas of responsibility within the organization. They should be, to the greatest possible extent, simple, brief, and self-explanatory. They should be designed to balance the members' desire for clarity and accountability with an organizational need for flexibility and ease of day to day operation. The content of Bylaws for a not-for-profit entity, such as CARS, is governed by statute and regulations issued by Industry Canada. All amendments must meet legal requirements set out by Industry Canada and which are approved by Industry Canada. When procedural questions arise about the interpretation of Bylaws, as for example may happen at an AGM, they are resolved on the limited wording within the Bylaws, and on the rules of formal business procedure as set out in Bourinot's Rules of Order. In the event that the two are in conflict, the Bylaws are supreme; where the Bylaws say nothing on a subject, Bourinot's procedural rules prevail.

### **Conclusions of the Committee's Review Process**

Set out below are the submissions made to the Committee and the analysis made by the Committee. The Committee has not reached agreement on all points. Within the Committee there are those who favour a variety of changes. There are, however, those on the Committee who feel that the Bylaws are adequate as they are and should not be changed. Given the differing perspectives and backgrounds of the members, both professionally and within rally sport, this was perhaps inevitable. Where these differences of opinion exist, this report attempts to set out the issues as clearly as possible within the limited context of the Bylaws, and attempts to address the technical aspects of any changes. It is for the Board, the Regions, and the members of individual clubs to arrive at the political determination of any next steps which should be taken.

### **Section One: Motions Referred to the Committee by the AGM/EGM**

**Referred Issue 1:** The Committee received two proposed bylaw amendments concerning the process to elect the President of CARS as follows:

Motion 5: Proposed by Island Rallysport Club (IRC)

Regarding: Bylaw 6.3 (b) Appointment of Directors

Election of the CARS President

*Be it moved that CARS Bylaw subsection 6.3(b) be replaced as follows:*

*6.3(b) (i) The Directors of the Board shall, at the first meeting of the Board after an Annual General Meeting, elect by majority vote a member-in-good-standing of a member club to serve as President until the first meeting of the Board following the next Annual General Meeting. In the event that no candidate for President carries a majority of the appointed Directors, then the appointed Directors shall call an Extraordinary General Meeting to elect a President by majority vote of the Members of the Association.*

*6.3(b)(ii) Nominations for the position of President shall be open for a period commencing 60 days prior and ending 30 days prior to the date of the annual general meeting after which the Directors of the Board will elect the president for the coming term in accordance with 6.3(b)(i). Any member in good standing of a member club may submit a nomination by mail, facsimile, email or personal delivery to the Registered or Head Office of CARS between 60 days and 30 days prior to the Annual General Meeting. Where such Notice is delivered personally it shall be deemed to be delivered on the date of delivery. Where such Notice is delivered by Facsimile or email it shall be deemed to be delivered on the date following the date it is sent. Where such Notice is delivered by mail it shall be deemed to be delivered 7 days after the date of mailing.*

*Be it further moved that the following subparagraph be added to the list of ordinary business at an Annual General Meeting in subsection 11.3:*

*11.3(f) consideration of a list of candidates for President, from nominations received by the Board in accordance with paragraph 6.3(b)(ii) of these Bylaws, with an opportunity for any candidate to address the meeting for a maximum of 2 minutes on the subject of his candidacy.*

*Be it further moved that subsection 11.1 Call to Meet be amended as follows:*

*Add the following immediately before the final full stop: ", or by the Directors alone, in the case of an extraordinary general meeting for the sole purpose of electing a President."*

Motion 6: Proposed by Calgary Sports Car Club (CSCC)

Regarding: Bylaw 6.3 (b) Election of the CARS President

Election of the CARS president

*Be it moved that CARS Bylaw subsection 6.3 (b) be replaced as follows: 6.3 (b) (i) The Directors of the Board appointed shall elect by majority vote a member-in-good-standing*

*of a member club to serve as President until the end of the following Annual General Meeting, such election to take place at the Board meeting immediately preceding the AGM, and that the election be subject to ratification by the association members at the AGM. In the event that no candidate for President carries a majority of the appointed Directors, or in the event that the board's selection is not ratified by the AGM, the appointed Directors shall call an Extraordinary General Meeting to elect a President by majority vote of the Members of the Association.*

*6.3 (b) (ii) Not less than 60 days before the end of a President's term, the Board shall solicit nominations for President from the Members, and the Board shall consider all nominations that it receives. Candidates wishing to nominate themselves must do so in writing to their Region Director no less than 30 day prior to the Annual General Meeting at which the current President's term expires.*

*Be it further moved that subsection 11.1 Call to Meet be amended as follows: Add the following immediately before the final full stop: ", or by the Directors alone, in the case of an extraordinary general meeting for the sole purpose of electing a President."*

*Be it further moved that subsection 11.3 Meeting Agenda be amended as follow: Add the following agenda item in ordinary business: "(f) Ratification of the President as elected by the board of directors."*

### **Conclusions of the Committee Review:**

1. The existing bylaws assign the power for the direction of the sport to the Directors.
2. The Directors are responsible for the selection of a President and for directing the President's actions. They are, by extension, responsible for his actions on their behalf.
3. A ratification process, as proposed, would obscure this power and more importantly this responsibility vested in the Directors. There is also the possibility of an impasse in which the AGM could not ratify a nomination, which would then effectively halt the AGM.
4. The Committee has no objections to the nomination processes such as those proposed, but does not agree such a process needs to be specified in the Bylaws at this time. Adoption of a process such as that set out in the Calgary Sports Car Club 6.3 (b) (ii) is possible without altering section 6.3 (b) and should be considered by the Board as a "best practice."
5. The Five-Year Plan envisions a directly elected President. The current Bylaws describe a President who serves at the will of the Directors. The proposed changes are a hybrid likely to yield few benefits.

**Referred Issue 2:** The Committee received two motions dealing with the status of the organizers' committee and competitors' committee as follows:

#### *Motion 8: Initially Proposed by Club Auto Sport Defi Inc. (CASDI)*

*Regarding: Bylaw 6.5.1 Directors' Privileges and Duties*

*- Articulate the Role of the Existing Organizers' Committee Chair and the Role of the New Competitors' Committee Chair*

*Be it moved that CARS Bylaw subsection 6.5.1 be added as follows:*

*6.5.1 Directors' Meetings, Other Parties to Attend*

*The chair of the CARS Organizers' Committee (or his appointee) and the chair of the CARS Competitors' Committee (or his appointee) shall attend all meetings of the Board of Directors and shall enjoy all of the same notice provisions but none of the powers or responsibilities of a Director.*

*Motion 9: Initially Proposed by Calgary Sports Car Club (CSCC)*

*Regarding: Bylaw 6.5.1 Directors' Privileges and Duties*

*-Articulate the Role of the Existing Organizers' Committee Chair and the Role of the New Competitor's Committee Chair*

*Be it moved that CARS Bylaw subsection 6.5.1 be added as follows: 6.5.1 Directors' Meetings, Other Parties to Attend*

*The chair of the CARS Organizers' Committee (or delegate) and the chair of the CARS Competitors' Committee (or delegate) shall attend all meetings of the Board of Directors and shall enjoy all of the same notice provisions. Each chair is authorized to exercise one vote.*

**Conclusions of the Committee Review:**

1. At present, neither the Organizers' Committee nor the Competitors' Committee is technically a Committee of CARS (i.e. a committee created by the Board and under its direction). Instead, each is an interest group within the sport with specific issues on which it wishes to advise and/or influence the Board.
2. It is not clear that either group wishes to be a committee of CARS or that making either a standing committee would improve their effectiveness.
3. The Board is currently consulting with the Organizers' Committee without benefit of a specific requirement to do so. The Committee sees no reason to anticipate a change in this relationship.
4. Granting either the Organizers' Committee or the Competitors' Committee a vote is not recommended. Among the reasons put forward were:
  - a) CARS is a structure in which power is vested in individual clubs (primarily at an AGM/EGM) and in Directors elected by their Regions. Events and competitors are, or should be, represented via their region and club when the Board votes on issues affecting their interests.
  - b) an Organizer or Competitor vote on the Board represents the concept of a super-regional director representing a specific interest within the sport. As such, it implies a different model of governance based on interests rather than clubs/regions.
  - c) adopting such a model would imply the eventual inclusion of voting Board members representing other interests within the sport. Among these would be: marshals, navigational rallyists, manufacturers, team owners, and others. Such a change would require much larger revisions to the structure of CARS' bylaws including a rethinking of the regional structure of the sport.

d) it is the understanding of the Bylaw Committee that the Organizers do not wish to have a vote at this time.

**Referred Issue 3:** The Committee received a proposed bylaw amendments concerning the process to limit the powers of the President of CARS as follows:

*Motion 12: Initially Proposed by Club Auto Sport Defi Inc. (CASDI)*

*Regarding: Bylaw 9.3 Directors' Privileges and Duties*

*- Separate Series Manager from President to Avoid Conflict of Interest*

*Be it moved that CARS Bylaw subsection 9.3 be amended as follows:*

*After the final full stop of section 9.3, the following to be added; "The President shall not take on any responsibilities or position within the Association beyond those described herein."*

### **Conclusions of the Committee Review:**

1. The proposed amendment has no effective meaning in view of the wording of section 9.3 of the Bylaws which reads in part:

*"The President shall have general supervision of the activities of the Association, shall represent the Association on the advisory board of ASN, and shall perform such duties as may be assigned to him by the Board of Directors from time to time, shall conduct all Executive, Board, ordinary and extraordinary general meetings, and may serve ex officio on all Committees."*

The wording of this clause is sufficiently broad and flexible that without specific exclusionary wording proscribing certain activities on the part of the President, he or she effectively is governed only by the wishes of the Board or by motions passed by the member clubs at an AGM/EGM.

2. It is understood by the Bylaw Committee that the intent of the proposed motion was to separate the roles of President, as set out in the Bylaws, and Series Manager, as outlined in the Five-Year Plan. To this end, the Committee discussed an amendment to section 6.10 which would either permit or direct the Board to create a role of Series Manager, in addition to that of Executive Director. It was argued by those in favour of this amendment that it would create a means within the Bylaws to reference a Series Manager, in line with the intent of the Five-Year Plan, while giving the Board the flexibility to define the operational details of the position. The committee member who favours no changes argued that the Board could, assuming it desired, appoint a Series Manager without any alteration to the Bylaws. It should be inferred that the same option to appoint a Series Manager is open to the member clubs at an AGM/EGM, provided the requirements of notice are met.

3. The Committee identifies an underlying difficulty with the current governance in that the roles of Executive Director and President have been combined to an extent not anticipated by the original framers of the Bylaws. They propose that the position of "President" should actually be that of "Chairman" appointed by the Board and that the Board should be charged with hiring a CEO or Executive Director (ED) to fill the current role of "President." They also argue that operationally, non-profit organizations and associations are run by CEOs/EDs, not by Presidents and Chairmen. The Board would be responsible for holding the CEO/ED accountable, but the CEO/ED would have freedom to implement strategies and actions to achieve the mission and vision set out by the Board. Furthermore, policy development would be carried out collaboratively by both levels. This would also free up the Board from day-to-day operations and encourage the CEO/ED to focus on operating the association, including fund-raising activities and the hiring of additional staff or contractors. In this model, the role of President/Chairman would be separate from "series manager" because series manager is an operational role, while that of President/Chairman is a governance role.

4. There is strong support throughout the Committee for reform in this area. It is agreed that separation of the roles of President/Chairman and CEO/ED is desirable. The Committee however is unable recommend a binding amendment at this time only because of concern that an amendment which, in effect, would require that the Board appoint a CEO/ED and that the President not be eligible, could place financial and organizational strains on the sport which would be damaging to CARS in its present financial state.

### **Section Two: Additional Submissions to the Committee**

**Submission 1:** It was submitted that the Bylaw Committee seek a way to reference official CARS policy documents, such as the Five-Year Plan and the Safety Guidelines, in the Bylaws.

### **Conclusions of the Committee Review:**

1. It is important to distinguish between a governance document, such as the CARS Bylaws, which should describe the structural framework of an organization, and living documents, such as the Five-Year Plan which are in constant transition.
2. It was argued that the Association could and should reference documents like the Five-Year Plan by amending the bylaws to make a formal report an agenda item at the AGM under section 11.3 of the Bylaws. It was argued that by making a reference to the Five-Year Plan as an agenda item it would allow the Board to provide to the general membership an idea of the future, and that while it is a living document and, as such, does not belong within the Bylaws, some reference to it being discussed at an AGM should be there.
3. There was concern that referencing documents like the Five-Year Plan directly could potentially 'date' the Bylaws. It was further observed that given the present situation in which it appears that the Board, in whole or in part, has not successfully advanced the present Five-Year Plan, it may already be a dead or at least an ineffective process. It was argued in view of this that making it a part of the required AGM agenda will likely not necessarily fix the fundamental problem. Finally it was observed that even if the Plan were alive and well, there are possibly more effective ways than an AGM to

communicate and discuss the document with the general membership, such as circulation of the document by mail (even email), availability on the web with a BBS for questions and input, etc.) The Committee reached no consensus on this point.

4. The committee is aware that from the point of view of most of the original authors of the Bylaws, the AGM filled a procedural requirement for Industry Canada and was not envisioned as an important decision-making event for CARS, or even a key communications event. This is, in part, a reflection of the fact that in a country as large as Canada, many of the potential participants cannot readily attend in person, with the result that CARS must rely on proxies and regional representation. As a consequence, discussions of this type were not a goal of the AGM currently described in the Bylaws.

5. It was argued that the Association should use the Bylaws to assert its authority for rule making, creation of safety guidelines, and other areas within the sport over which CARS wishes to have control. It was put persuasively that the proper place for this is the Objects of CARS. The Committee notes that the Objects are quite dated and in need of revision.

**Submission 2:** It was submitted that the Bylaw Committee look into including in the Bylaws a requirement for a frequency of CARS Board meetings (i.e. more than the twice per year called for in Section 6.5)

#### **Conclusions of the Committee Review:**

1. This submission appears to have resulted from a failure of the Board to meet regularly this spring, and particularly during the period of the bylaw consultation process. Several members of the Committee expressed disbelief that the Board would allow long periods to occur between meetings.
2. In view of this, it was argued that an amendment to section 6.5 which required the Board to meet at a minimum of every two months was a reasonable compromise which could be met by any Board which the members of CARS may choose to elect.
3. Any increase in the number of meetings must be predicated on Industry Canada's acceptance of the amendment passed in January 2005 to permit the Board to meet via conference call.

**Submission 3:** It was submitted that the Bylaws include specific duties of CARS Directors.

#### **Conclusions of the Committee Review:**

1. It was argued that Section 6.10 should be amended to include three broad areas of responsibility for Directors, namely that each Director is responsible for: 1. furthering the objects of CARS. 2. representing the interests of the Region which elected them. 3. reporting annually to the AGM about the state of the sport and the clubs within their Region.
2. The Committee is conscious that Industry Canada is committed to holding Directors of not-for-profit organizations within its jurisdiction to higher standards of responsibility than previously, and desires directors to understand their substantial legal responsibilities. To this end, the Committee recommends consultation with Industry Canada.

3. It was agreed that more specific duties of directors properly belong in “Job Descriptions” and should be developed by the Board as a “Best Practice” outside of the Bylaws. Such detailed descriptions, which are changeable, should not appear in the Bylaws.

**Submission 4:** It was submitted that there should be some clear definition of what is required to form a CARS member club and minimum requirements to earn a vote at the CARS AGM.

**Conclusions of the Committee Review:**

1. The Committee recognizes that under certain circumstances it would be possible for clubs representing very few members to represent a substantial number of votes at an AGM. However, the Committee is confident that the existing provisions of Section 4 of the Bylaws provide an adequate remedy.
2. The Committee agrees that no requirement based on number of members, number of licence holders, number of events organized or other criteria should be used to determine the status of a member club.
3. However, it is argued by some members of the Committee that this submission speaks to an underlying unease which could be addressed by better reporting from the Region Directors about the level of activity within their Regions and about the health of their member clubs.

**Submission 5:** It was submitted that the section on proxies at the AGM be revised to limit how many proxies one individual can vote at an AGM/EGM. Two was suggested to be a reasonable number.

**Conclusions of the Committee Review:**

1. The Committee discussion was divided. At the extremes, there were those who felt that any limit on proxies was undemocratic, and those who felt that proxies should be strictly controlled with particular limits on Directors. There was also support for the limit of two proxies as proposed in the submission.
2. Virtually every vote cast in a CARS decision is by someone representing the will of constituents, with the consequence that great care and clarity is required to any changes affecting proxies which might have unintended consequences.
3. It is an option to word proxies for non-attending clubs in such a way as to permit specific direction of the proxy holder on how to vote. It is, however, unclear if the proxy can then be counted as part of the quorum on issues where it does not offer instruction.
4. It is also an option to require proxies, as described above, to be placed in the hands of the Secretary of the meeting, which would permit scrutiny of the proxies.
5. The Committee is unable to recommend any change to the Bylaws.

**Submission 6:** It was submitted that the section on the AGM require region reports to be pre-circulated to clubs prior to the AGM rather than having them handed out at the door.

### **Conclusions of the Committee Review:**

1. The Committee agrees that this a sound idea and would lend transparency to the reporting process in a similar fashion to circulating financial or other reports which may require prior consideration.
2. The Committee considers that such a pre-circulation might address some of the concerns related to the issues of proxies and club status outlined above.
3. While there is broad agreement about the desirability of this process, one member of the Committee is concerned that a Director's failure to pre-circulate a Region report as mandated by the proposed amendment would call into question the legitimacy of such a report or place the Director in difficulties with the members of CARS.
4. The Committee agrees that this submission should be established as a best practice and expects that it will be followed by the Board so that an amendment will not be required at this time.

**Submission 7:** It was suggested by a committee member that Section 16 be amended to allow the Board to appoint a "parliamentarian" to assist with the rules at the AGM.

### **Conclusions of the Committee Review:**

1. Currently under Section 16, the interpretation of the CARS Bylaws and of Bourinot's Rules of Order falls to the VP, but it is sometimes useful to have an outside authority who can deal only with the procedural rules at an AGM. This is very important if the VP is not experienced with Rules of Order or if complex points of order are raised based on Bourinot.
2. Adding the option gives flexibility and provides the meeting with an impartial resource. Members of the Committee liken having such a position as akin to having an Auditor to offer technical financial guidance.
3. It was argued that such a parliamentarian could be appointed currently; however close reading of Section 16 suggests that the wording is exclusionary and limits the role to the VP.
4. The Committee suggests that permitting a parliamentarian could be accomplished if Section 16 of the Bylaws be amended to read: *If a situation arises which is not dealt with clearly in these Bylaws, the Vice-President or an appointed parliamentarian shall make a ruling in accordance with the spirit and intention of these Bylaws, and shall be guided by Bourinot's Rules of Order.*

**Submission 8:** It was suggested by a committee member that a clause be inserted which would specifically allow the President to debate all questions at the AGM by calling another Board member to the chair.

### **Conclusions of the Committee Review:**

1. It was argued that this is a useful amendment as it allows the President to present ideas, make policy arguments, and debate issues without the "Chair" debating the meeting. The result is that the running of the meeting remains procedurally neutral, while allowing the President to communicate in the clearest possible manner.

2. In effect, it permits the President to reconcile two roles which some committee members see as conflicting; that of Executive Director of CARS, and that of Chairman of the Board.
3. It was argued that there is nothing to prohibit the President calling another Board member to the Chair in the current Bylaws. However, a point of order based on Bourinot has potential to complicate this without specific wording in the Bylaws.
4. The Committee recommends a simply worded amendment such as: "*The President shall be privileged to debate all questions arising at an AGM by calling another Board member to assume the Chair.*" Such an amendment would be inserted at the end of Section 11.7 as item (d)

**Submission 9:** It was suggested by a committee member that the Bylaws should state who can take part in discussions at an AGM/EGM.

**Conclusions of the Committee Review:**

1. At present, the Bylaws do not address this issue, which is therefore governed by the provisions of Bourinot's Rules of Order.
2. In procedural terms, it can be argued that only Board members or proxy-holders can speak at an AGM/EGM. A point of order of this sort could prevent rank and file club members from taking part and would exclude participation from, among others, ASN who were invited to take part this year.
3. The Committee feels that unreasonable restrictions on who can participate at the AGM is not in the interests of the sport and recommends that CARS adopt an amendment such as: *Persons entitled to be present: Only persons entitled under this Bylaw or by law to attend a meeting of members of the Association have the right to attend any such meeting. Any other person may be admitted to a meeting only on the invitation of the Chairman of the meeting or with the consent of the meeting.*