

BY-LAW NO. 1

A BY-LAW relating generally to the transaction of the business and affairs of

THE FLEMING COLLEGE FOUNDATION

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BE IT ENACTED as a by-law of the Foundation as follows:

1 INTERPRETATION

1.01 **Definitions.** In this by-law and all other by-laws and special resolutions of the Foundation, unless the context otherwise requires:

- (a) "Act" means the *Corporations Act* of Ontario, and any Act that may be substituted for it, as from time to time amended;
- (b) "Board" means the board of directors of the Foundation;
- (c) "by-laws" means this by-law and all other by-laws of the Foundation from time to time in force and effect;
- (d) "Director" means a member of the Board;
- (e) "Foundation" means the foundation incorporated as a corporation without share capital under the Act by letters patent dated the 22nd day of November, 1983; and as amended July 19, 1994, & July 30, 2001;
- (f) "letters patent" means the letters patent incorporating the Foundation, as from time to time amended and supplemented by supplementary letters patent;
- (g) "meeting of members" includes an annual meeting of members and a special meeting of members; and
- (h) "Special Resolution" means a resolution passed by the Board and confirmed with or without variation by at least two thirds (2/3) of the votes cast at a meeting of members duly called for that purpose.

For interpretation purposes, it is declared that words importing the singular number include the plural and vice versa; words importing the masculine gender include the feminine and neuter genders; and words importing persons include individuals, corporations, partnerships, trusts and unincorporated organizations.

2 BUSINESS OF THE FOUNDATION

- 2.01 **Head office.** Until changed in accordance with the Act, the head office of the Foundation shall be in the City of Peterborough, in the County of Peterborough.
- 2.02 **Corporate seal.** Until changed in accordance with the Act, the corporate seal of the Foundation shall be in the form impressed on this page.
- 2.03 **Financial year.** Until otherwise ordered by the Board, the financial year of the Foundation shall end on the last day of March in each year.
- 2.04 **Execution of instruments.** Deeds, transfers, assignments, contracts, obligations, certificates, charitable tax receipts and other instruments save and except banking and investment instruments may be signed on behalf of the Foundation by anyone of the Directors of the Foundation or by anyone of President, Vice-President Corporate Services, Director, Advancement & Alumni Relations, Director of Finance, Director of Budget Services, and Manager of Accounting Operations of The Sir Sandford Fleming College of Applied Arts and Technology.

Banking and investment instruments may be signed on behalf of the Foundation by anyone of the Directors of the Foundation or anyone of President, Vice-President Corporate Services, Director, Advancement & Alumni Relations, Director of Finance, Director of Budget Services, and Manager of Accounting Operations of The Sir Sandford Fleming College of Applied Arts and Technology for items up to ten thousand (\$10,000.00) and by any two of the Directors of the Foundation or anyone of President, Vice-President Corporate Services, Director, Advancement & Alumni Relations, Director of Finance, Director of Budget Services, and Manager of Accounting Operations of The Sir Sandford Fleming College of Applied Arts and Technology for items over ten thousand dollars (\$10,000.00).

In addition, the Board may from time to time direct the manner in which and the person or persons by whom any particular instrument or class of instruments may or shall be signed. Any person authorized to sign an instrument on behalf of the Foundation may affix the corporate seal to it.

- 2.05 **Banking arrangements.** The banking business of the Foundation shall be transacted with such banks, trust companies or other firms or corporations as may from time to time be designated by or under the authority of the Board. Banking business or any part of it shall be transacted under such agreements, instructions and delegations of powers as the Board may from time to time prescribe or authorize.
- 2.06 **Voting rights in other companies.** The proper signing officers of the Foundation may execute and deliver instruments of proxy and arrange for the issuance of voting certificates or other evidence of the right to exercise the voting rights attaching to any shares or other securities held by the Foundation. These instruments, certificates or other evidence shall be in favour of such person or persons as may be determined by the officers signing them or arranging for their signing. In addition, the Board may from time to time direct the manner in which or the person or persons by whom any particular voting rights or class of voting rights may or shall be exercised.

3. DIRECTORS

- 3.01 **Number of Directors and quorum.** The affairs of the Foundation shall be managed by its Board, which shall be between three (3) and nine (9) in number. Until changed by a Special Resolution¹, the number of Directors shall be three (3) and shall consist of the following members of The Sir Sandford Fleming College of Applied Arts and Technology Board of Governors: the Chair, the Vice-Chair and one other Governor selected by the College's Board of Governors. Two (2) Directors shall constitute a quorum for the transaction of business. Despite vacancies the remaining Directors may act if constituting a quorum.
- 3.02 **Qualification.** No person shall be qualified as a Director unless he shall be eighteen or more years of age and shall not be an undischarged bankrupt.
- 3.03 **Term.** Each Director shall hold office for a one-year term.
- 3.04 **Removal of Directors.** The members may, by resolution passed by at least a majority of the members, remove any Director before the expiration of his term of office and may, by majority vote at that meeting, elect any person in his stead for the remainder of his term.
- 3.05 **Vacation of office.** The office of a Director shall be vacated upon the occurrence of any of the following events:
- (a) if a receiving order is made against him or if he makes an assignment under the Bankruptcy Act;
 - (b) if an order is made declaring him to be a mentally incompetent person or incapable of managing his affairs;
 - (c) if he shall be removed from office by resolution of the members as provided in section 3.04;
 - (d) if by notice in writing to the Foundation he resigns his office and such resignation, if not effective immediately, becomes effective in accordance with its terms;
 - (e) for any action or conduct deemed inappropriate by the Board.
- 3.06 **Vacancies.** Vacancies on the Board may be filled for the remainder of its term of office by the Members. If the number of Directors is increased, a vacancy or vacancies on the Board to the number of the authorized increase shall thereby be deemed to have occurred which may be filled in the manner above provided.
- 3.07 **Calling of meetings.** Meetings of the Board shall be held from time to time at the call of the Board or the chair or any two Directors. Notice of the time and place of every meeting .so called shall be given to each Director not less than 48 hours (excluding Saturdays, Sundays and bank holidays) before the time when the meeting is to be held, save that no notice of a meeting shall be necessary if all the Directors are present or if those absent waive notice of or otherwise signify their consent to such meeting being held.

¹ To change the size of the Board between the 3-9 range, the Board itself must approve the change, and then take the change to the members, who must approve by 2/3 of the members in attendance at a meeting with quorum. This can be done anytime.

- 3.08 **First meeting of new Board.** Provided a quorum of Directors be present, each newly appointed Board may without notice hold its first meeting immediately following the meeting of the Board of Governors of The Sir Sandford Fleming College of Applied Arts and Technology at which such Board is appointed.
- 3.09 **Regular meetings.** The Board may appoint a day or days in any month or months for regular meetings at a place and hour to be named. A copy of any resolution of the Board fixing the place and time of regular meetings of the Board shall be sent to each Director forthwith after being passed, but no other notice shall be required for any such regular meeting.
- 3.10 **Place of meeting.** Meetings of the Board shall be held at the head office of the Corporation or elsewhere in Ontario.
- 3.11 **Chairman.** The chair or, in his absence, a vice-chair who is a Director shall be chairman of any meeting of Directors. If no such officer be present, the Directors present shall choose one of their number to be chairman.
- 3.12 **Votes to govern.** At all meetings of the Board every question shall be decided by a majority of the votes cast on the question. In case of an equality of votes the chairman of the meeting shall be entitled to a second or casting vote.
- 3.13 **Interest of Directors in contracts.** Subject to the provisions of the Act, no Director shall be disqualified by his office from contracting with the Foundation nor shall any contract or arrangement entered into by or on behalf of the Foundation with any Director or in which any Director is in any way interested be liable to be avoided nor shall any Director so contracting or being so interested be liable to account to the Foundation or any of its members or creditors for any profit realized from any such contract or arrangement by reason of such Director holding that office or the fiduciary relationship thereby established.
- 3.14 **Declaration of interest.** It shall be the duty of every Director of the Foundation who is in any way, whether directly or indirectly, interested in a contract or arrangement or proposed contract or proposed arrangement with the Foundation to declare such interest to the extent, in the manner and at the time required by the Act.
- 3.15 **Remuneration.** The Directors shall serve as such without remuneration but shall be entitled to be paid their travelling and other expenses properly incurred by them in attending meetings of the Board or of the members. Nothing herein contained shall preclude any Director from serving the Foundation in any other capacity and receiving compensation therefor.
- 3.16 **Committees.** The Board of Directors may by resolution create one or more other committees which may but need not include members of the Board. Until otherwise provided, the chair shall be a member ex officio of all committees. Other committees created by the Board of Directors shall be given written terms of reference by the Board.

4 OFFICERS

- 4.01 **Election of chair.** The Chair of the College Board of Governors shall serve as the chair of the Board. The chair shall be deemed to hold the office of president as contemplated by the Act.
- 4.02 **Appointment of other officers.** From time to time the Board shall appoint a secretary and may appoint one or more vice-chairs, a treasurer and such other officers as the Board may determine. The officers so appointed may but need not be Directors and one person may hold more than one office, save that the chair may not hold the office of secretary.
- 4.03 **Terms of office and remuneration.** The terms of employment and remuneration of officers appointed by the Board shall be settled by it from time to time. The Board may remove at its pleasure any officer of the Foundation, without prejudice to such officer's rights under any employment contract. Otherwise each officer elected or appointed by the Board shall hold office until his successor is elected or appointed, except that the term of office of the chair shall expire if and when he shall cease to be a Director.
- 4.04 **Chair.** The chair shall have the general management and direction, subject to the authority of the Board, of the business and affairs of the Foundation and the power to appoint and remove any and all employees and agents of the Foundation not elected or appointed by the Board and to settle the terms of their employment and remuneration.
- 4.05 **Vice-chair.** During the absence or disability of the chair, his duties shall be performed and his powers exercised by the vice-chair or, if there are more than one, by the vice-chair in order of seniority.
- 4.06 **Secretary.** The secretary shall attend and be the secretary of all meetings of members and Directors and shall enter or cause to be entered in books kept for that purpose minutes of all proceedings thereat. He shall give or cause to be given, as and when instructed, all notices to members and Directors. He shall be the custodian of the stamp or mechanical device generally used for affixing the corporate seal of the Foundation and of all books, papers, records, documents and other instruments belonging to the Foundation except when some other officer or agent has been appointed for that purpose.
- 4.07 **Treasurer.** The treasurer shall keep full and accurate books of account in which shall be recorded all receipts and disbursements of the Foundation and, under the direction of the Board, shall control the deposit of money, the safekeeping of securities and the disbursement of the funds of the Foundation. He shall render to the Board whenever required an account of all his transactions as treasurer and of the financial position of the Foundation.
- 4.08 **Chief Executive Officer.** The chief executive officer, being the senior administrator of the Foundation, shall be the individual serving as the President of the Sir Sandford Fleming College of Applied Arts and Technology. The Board shall establish a job description and accountability framework for the Chief Executive Officer.

- 4.09 **Other officers.** The duties of all other officers of the Foundation shall be such as the terms of their engagement call for or as the Board or the chair may prescribe. Any of the powers and duties of an officer to whom an assistant has been appointed may be exercised and performed by such assistant, unless the Board or the chair otherwise directs.
- 4.10 **Variation of duties.** From time to time the chair may add to the duties of any other officer and may vary or limit such additional duties. From time to time the Board may vary, add to or limit the powers and duties of any officer.
- 4.11 **Employees.** The terms of employment and remuneration of College employees assigned to assist the Board of Directors of the Foundation in doing work of the Foundation shall be settled by the College.
- 4.12 **Agents and attorney.** The Board shall have power from time to time to appoint agents or attorneys for the Foundation in or out of Canada with such powers of management or otherwise (including the power to sub-delegate) as may be thought fit.
- 4.13 **Fidelity bonds.** The Board may require such officers, employees and agents of the Foundation as the Board deems advisable to furnish bonds for the faithful discharge of their duties, in such form and with such surety as the Board may from time to time prescribe.

5. PROTECTION OF DIRECTORS AND OFFICERS

- 5.01 **Limitation of liability.** No Director or officer of the Foundation shall be liable for the acts, receipts, neglects or defaults of any other Director or officer or employee, or for joining in any receipt or other act for conformity, or for any loss, damage or expense happening to the Foundation through the insufficiency or deficiency of title to any property acquired by order of the Board for or on behalf of the Foundation, or for the insufficiency or deficiency of any security in or upon which any of the moneys of the Foundation shall be invested, or for any loss or damage arising from the bankruptcy, insolvency or tortuous act of any person with whom any of the moneys, securities or effects of the Foundation shall be deposited, or for any loss occasioned by any error of judgment or oversight on his part, or for any other loss, damage or misfortune whatever which shall happen in the execution of the duties of his office or in relation thereto unless the same are occasioned by his own wilful neglect or default.
- 5.02 **Indemnity.** Every Director and officer of the Foundation and his heirs, executors and administrators and estate and effects, respectively, shall from time to time and at all times be indemnified and saved harmless out of the funds of the Foundation from and against:
- (a) all costs, charges and expenses whatsoever that such Director or officer sustains or incurs in or about any action, suit or proceeding that is brought, commenced or prosecuted against him for or in respect of any act, deed, matter or thing whatsoever made, done or permitted by him in or about the execution of the duties of his office; and
 - (b) all other costs, charges and expenses that he sustains or incurs in or about or in relation to the affairs of the Foundation except such costs, charges or expenses as are occasioned by his own wilful neglect or default.

- 5.03 **Validity of actions.** No act or proceeding of any Director shall be deemed invalid or ineffective by reason of the subsequent ascertainment of any irregularity in regard to such act or proceeding or the qualification of such Director.
- 5.04 **Directors' reliance.** Directors may rely upon the accuracy of any statement or report prepared by the Foundation's auditors or accountants and shall not be responsible or held liable for any loss or damage resulting from acting upon such statement or report.

6. MEMBERS

- 6.01 **Members.** The members shall consist exclusively of the Board of Governors of Sir Sandford Fleming College of Applied Arts and Technology.

7. MEETINGS OF MEMBERS

- 7.01 **Annual meetings.** The annual meeting of the members shall be held at such time and on such day in each year as the Board or the chair may from time to time determine, for the purpose of receiving the reports and statements required by the Act to be placed before the annual meeting, electing Directors, appointing auditors and fixing or authorizing the Board to fix their remuneration, and for the transaction of such other business as may properly be brought before the meeting.
- 7.02 **Special meetings.** Two members shall have power to call a special meeting of members at any time.
- 7.03 **Place of meetings.** Meetings of members shall be held at the head office of the Foundation or elsewhere in the municipality in which the head office is situate or, pursuant to section 7.05 or if the Board shall so determine, at some other place in Ontario. Alternatively a meeting of the members may be held by telephonic or electronic means, and a member who, through those means, votes at the meeting or establishes a communications link to the meeting is deemed for the purposes of the Act to be present at the meeting.
- 7.04 **Notice of meetings.** Notice of the time and place of each meeting of members shall be given in the manner hereinafter provided not less than ten days before the day on which the meeting is to be held to each member of record at the close of business on the day on which the notice is given who is entered in the books of the Foundation. Notice of a special meeting of members shall state the general nature of the business to be transacted at it. The auditors of the Foundation are entitled to receive all notices and other communications relating to any meetings of members that any member is entitled to receive.
- 7.05 **Meetings without notice.** A meeting of members may be held at any time and place without notice if all the members entitled to vote thereat are present in person, or if those not present waive notice or otherwise consent to such meeting being held, and at such meeting any business may be transacted which the Foundation at a meeting of members may transact.
- 7.06 **Chairman, Secretary and Scrutineers.** The chair or, in his absence, a vice-chair who is a Director of the Foundation shall be chairman of any meeting of members. If no

such officer be present within fifteen minutes from the time fixed for holding the meeting, the persons present and entitled to vote shall choose one of their number to be chairman. If the secretary of the Foundation be absent, the chairman shall appoint some person, who need not be a member, to act as secretary of the meeting. If desired, one or more scrutineers, who need not be members, may be appointed by a resolution or by the chairman with the consent of the meeting.

- 7.07 **Persons entitled to be present.** The only persons entitled to attend a meeting of members shall be those entitled to vote thereat, the auditors of the Foundation and others who, although not entitled to vote, are entitled or required under any provision of the Act or the letters patent or by-laws to be present at the meeting. Any other person may be admitted only on the invitation of the chairman of the meeting or with the consent of the meeting.
- 7.08 **Quorum.** A quorum for the transaction of business at any meeting of members shall be two (2) persons present in person and each entitled to vote thereat.
- 7.09 **Right to vote.** At any meeting of members every person shall be entitled to vote who is at the time of the meeting entered in the books of the Foundation as a member.
- 7.10 **Proxies.** No proxy shall be entitled to participate on behalf of a member at any meetings of members.
- 7.11 **Votes to govern.** At any meeting every question shall, unless otherwise required by the letters patent or by-laws of the Foundation or by law, be determined by the majority of the votes duly cast on the question.
- 7.12 **Show of hands.** Any question at a meeting of members shall be decided by a show of hands unless, after a show of hands, a poll thereon is required or demanded as hereinafter provided. Upon a show of hands every person who is present and entitled to vote shall have one vote. Whenever a vote by show of hands shall have been taken upon a question, unless a poll thereon is so required or demanded, a declaration by the chairman of the meeting that the vote upon the question has been carried or carried by a particular majority or not carried and an entry to that effect in the minutes of the meeting shall be prima facie evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against any resolution or other proceeding in respect of the said question, and the result of the vote so taken shall be the decision of the members upon the said question.
- 7.13 **Polls.** After a show of hands has been taken on any question, the chairman may require or any person entitled to vote on the question may demand a poll thereon. A poll so required or demanded shall be taken in such manner as the chairman shall direct. A demand for a poll may be withdrawn at any time prior to the taking of the poll. Upon a poll each member present in person and entitled to vote shall have one vote and the result of the poll shall be recorded in the minutes of the meeting and shall be the decision of the members upon the said question.
- 7.14 **Adjournment.** The chairman at a meeting of members may, with the consent of the meeting and subject to such conditions as the meeting may decide, adjourn the meeting from time to time and from place to place.

8 NOTICES

- 8.01 **Method of giving notices.** Any notice (which term in this Article 8 includes any communication or document) to be given (which term in this Article 8 includes sent, delivered or served) pursuant to the Act, the letters patent, the by-laws or otherwise to a member, Director, officer or auditor shall be sufficiently given if delivered personally to the person to whom it is to be given or if delivered to his last address as recorded in the books of the Foundation or if mailed by prepaid ordinary or air mail addressed to him at his said address or if sent to him at his said address by any means of wire or wireless or any other form of transmitted or recorded communication. The secretary may change the address on the Foundation's books of any member, Director, officer or auditor in accordance with any information believed by him to be reliable. A notice so delivered shall be deemed to have been given when it is delivered personally or at the address aforesaid; a notice so mailed shall be deemed to have been given when deposited in a post office or public letter box; and a notice sent by any means of wire or wireless or any other form of transmitted or recorded communication shall be deemed to have been given when delivered to the appropriate communication company or agency or its representative for dispatch.
- 8.02 **Computation of time:** In computing the date when notice must be given under any provision requiring a specified number of days' notice of any meeting or other event, the date of giving the notice shall be excluded and the date of the meeting or other event shall be included.
- 8.03 **Omissions and errors.** The accidental omission to give any notice to any member, Director, officer or auditor or the non-receipt of any notice by any member, Director, officer or auditor or any error in any notice not affecting the substance thereof shall not invalidate any action taken at any meeting held pursuant to such notice or otherwise founded thereon.
- 8.04 **Waiver of notice.** Any member, Director, officer or auditor may waive any notice required to be given to him under any provision of the Act, the Letters Patent, the by-laws or otherwise and such waiver, whether given before or after the meeting or other event of which notice is required to be given, shall cure any default in giving such notice.

9 AUDITORS/ACCOUNTANTS


- 9.01 The members shall at each annual meeting appoint an auditor to audit the accounts of the Foundation, to hold office until the next annual meeting, provided that the Directors may fill any casual vacancy in the office of the auditor. The remuneration of the auditor shall be fixed by the Board of Directors.

10. EFFECTIVE DATE

- 10.01 **Effective date.** This by-law shall come into force on the 1st day of April, 2011 and the current By-Law #1 dated November 28, 2002 shall be repealed.

PASSED by the Directors and sealed with the corporate seal the 24th day of March, 2011 and amended by the Directors and the Members as of August 9, 2019.


Chair


Secretary