

**THE SIR SANDFORD FLEMING COLLEGE  
OF APPLIED ARTS AND TECHNOLOGY**

**BY-LAW 1 – Approved June 22, 2022**

This By-law replaces and supersedes all prior by-laws.

**1. DEFINITIONS**

1.1 In this By-law, unless the context otherwise specifies or requires, the following capitalized terms have the following meanings:

- (a) “Academic Staff Member” means a person who is employed by the College as a teacher, counsellor or librarian;
- (b) “Act” means the *Ontario Colleges of Applied Arts and Technology Act, 2002*, as may be amended from time to time and every statute that may be substituted for the Act;
- (c) “Administrative Staff Member” means a person who is employed by the College and who is not an academic staff member, a support staff member or a student;
- (d) “Associates” in relation to an individual means the individual’s children, parents, siblings, spouse, or common law partner, and includes any organization, agency, company, or individual (such as a business partner) with a formal business relationship to the individual;
- (e) “Board” means the Board of Governors of the College;
- (f) “By-law” means this By-law 1, as may be amended from time to time;
- (g) “Chair” means the chair of the Board;
- (h) “College” means The Sir Sandford Fleming College of Applied Arts and Technology established by the Act as an agency of the Crown, and is also known as Fleming College and/or Sir Sandford Fleming College;
- (i) “Conflict of Interest” includes any situation that impairs or interferes with (or appears to or may impair or interfere with) a Governor’s ability to vote objectively and in the best interests of the College including, without limitation, the following two areas that may give rise to a conflict of interest for any of the Governor of the College:
  - (i) Financial interest – a Governor is said to have a financial interest in a decision when the Governor (or an Associate of the Governor) stands to gain by that decision, either in the form of money, gifts, favours, gratuities, or other special considerations that have value; or

- (ii) Adverse interest – a Governor is said to have an interest adverse to the College when the Governor (or an Associate of the Governor) is a party to a claim, application or proceeding by or against the College;
- (k) “Council” means the College Employer Council established pursuant to the Regulation;
- (l) “Directive” means a Minister’s binding policy as issued by the Minister under section 4(1) of the Act;
- (m) “External Members” means those Governors other than the President and the Internal Members;
- (n) “Governor” means an elected or appointed member of the Board;
- (o) “Head Office” means 599 Brealey Drive, Peterborough, ON or such place as the Board may from time to time determine, and this shall be the registered office for the purposes of the ONCA;
- (p) “Internal Members” means those Governors duly elected in accordance with procedures established by the Board after consultation with the Students and with Academic, Administrative and Support Staff Members and set out in the election policy of the Board;
- (q) “Lieutenant Governor” means the Lieutenant Governor in Council;
- (r) “Minister” and “Ministry” means the Minister and Ministry of Colleges and Universities or its successor by any other name;
- (s) “Officers” means the Chair, the Vice-Chair, Secretary and such other officers as the Board may appoint pursuant to this By-law;
- (j) “ONCA” means the *Not-for-Profit Corporations Act, 2010* (Ontario) and where the context requires, includes the regulations made under it, as amended from time to time;
- (t) “President” means the President of the College;
- (u) “Program of Instruction” means a group of related courses leading to a degree, diploma or certificate awarded by the College;
- (v) “Regulation” means Ontario Regulation 34/03, “General” made under the Act, as may be amended from time to time;
- (w) “Student” means a person who is enrolled in a course or Program of Instruction in the College;

- (x) “Support Staff Member” means a person who is employed by the College as a member of the office, clerical, technical, health care, maintenance, building service, shipping, transportation, cafeteria or nursery staff;
- (y) “telephonic or electronic means” means any means that uses the telephone or any other electronic or other technological means to transmit information or data, including telephone calls, voice mail, fax, e-mail, automated touch-tone telephone system, computer or computer networks; and
- (z) “Vice-Chair” means the vice-chair of the Board.

## **2. GENERAL RULES OF INTERPRETATION**

- 2.1 In this By-law and all other by-laws and resolutions of the Board, unless the context otherwise requires, words importing the singular number shall include the plural number and vice versa and words importing one gender shall include all genders.
- 2.2 Except where specifically stated otherwise, references to “in writing” or similar terms shall include electronic communication and references to “address” or similar terms shall include email address. It is the intent of the College to use electronic communication whenever possible.
- 2.3 The headings used in this By-law are inserted for reference purposes only and are not to be considered or taken into account in construing the terms or provisions of this By-law or to be deemed in any way to clarify, modify or explain the effect of any such terms or provisions.
- 2.4 As required by the Regulation, this By-law and any additional by-laws shall be open to examination by the public during the normal office hours of the College and shall be made available to the public on the College’s website.
- 2.5 In the event of a conflict between the Act or the Regulation and the *ONCA*, the Act or the Regulation shall prevail.
- 2.6 In all instances not provided for in this By-law, the provisions of Kerr & King, *Procedures for Meetings and Organizations*, shall be applicable to all procedures of the Board and its committees except where those rules conflict with the Act, the Regulation, the *ONCA*, a Directive or a by-law of the College.
- 2.7 Any reference to Board committees includes standing committees, ad hoc committees and Board-established working or advisory groups.

## **3. POWERS OF THE BOARD**

- 3.1 The Board:
  - (a) shall oversee all of the affairs of the College;

- (b) may cause or cause to be made on the College's behalf in the College's name any kind of contract into which the College may lawfully and, save as hereinafter provided, generally exercise all such powers and do all such other acts and things as the College is authorized to exercise and do, as provided by any applicable statute or law, in accordance with and subject to obtaining such approvals as may be required by an applicable statutory provision;
- (c) without in any way derogating from the foregoing and subject to obtaining such approvals as may be required by any applicable statutory provision, is expressly empowered to purchase, lease or otherwise acquire, sell, exchange or otherwise dispose of shares, stocks, rights, warrants, options and other securities, lands, buildings and other property movable or immovable, real or personal, or any right or interest therein owned by the College for such consideration and upon such terms and conditions as it may deem advisable;
- (d) shall annually review and approve the College's business plan, budget and annual report before submission to the Minister, approve the auditors' report and audited financial statements, and appoint the auditors;
- (e) shall review and approve the College's strategic plan before submission to the Minister;
- (f) shall have the power to set policies consistent with the Act, Regulation, Directives and any applicable law; and
- (g) the Board may establish policies to guide the President in operating the College.

#### **4. BOARD OF GOVERNORS & QUALIFICATIONS**

- 4.1 The Act stipulates that the College is a corporation without share capital and shall consist of the members of its Board of Governors. As such, the affairs of the College shall be governed by the Board, which shall consist of such persons as are from time to time appointed or elected as Governors in accordance with this By-law. The College is a registered charity under the *Income Tax Act* (Canada) and shall be carried on without purpose of gain for its External and Internal Members.
- 4.2 In accordance with the Regulation, the Board shall be composed of 17 voting Governors as follows:
  - (a) 12 External Members including four External Members appointed by the Lieutenant Governor and eight External Members appointed by the Board;
  - (b) the President; and,
  - (c) the Internal Members, being:
    - (i) one Academic Staff Member, duly elected by members of the College's academic staff in accordance with the election policy, for a term prescribed by the Board;

- (iii) one Administrative Staff Member, duly elected by members of the College's administrative staff in accordance with the election policy, for a term prescribed by the Board;
  - (iv) one Support Staff Member, duly elected by Members of the College's support staff in accordance with the election policy, for a term prescribed by the Board; and
  - (v) one Student, duly elected by the College's students in accordance with the election policy, for a term prescribed by the Board.
- 4.3 As required by the Regulation, no External Member shall be an employee or student of any college of applied arts and technology.
- 4.4 Every Governor shall meet the following qualifications:
- (a) Every Governor shall be 18 or more years of age.
  - (b) No Governor shall be an undischarged bankrupt.
  - (c) No Governor shall be an individual found under the *Substitute Decisions Act, 1992* or under the *Mental Health Act* to be incapable of managing property;
  - (d) No Governor shall be an individual found to be incapable by any court in Canada or elsewhere;
  - (e) No Governor shall be an "ineligible individual" to serve as a governor of a charity, as defined in the *Income Tax Act (Canada)*.

## **5. TERM AND TERM LIMITS**

- 5.1 Term limits are stipulated by the Regulation.
- 5.2 Each External Member and each Internal Member, other than the elected Student, shall be appointed or elected for a term not to exceed three years. The elected Student shall serve a one year term; however, if the elected Student graduates prior to the expiration of the Student's term, the elected Student may remain a Governor until August 31 in the year of their graduation.
- 5.3 All Governors, whether appointed or elected, take office on the first day of September in the year of their appointment or election, except in the case of filling mid-term vacancies on the Board.
- 5.4 The term of any Governor automatically ends:

- (a) when the Governor resigns in writing on notice to the Secretary, which resignation shall be effective at the time it is received by the Secretary or at the time specified in the notice, whichever is later;
- (b) when the Governor is removed from the Board or by the Lieutenant Governor in accordance with this By-law;
- (c) upon their death;
- (d) upon their permanent disability where such disability prevents the individual from fulfilling the duties of a Governor;
- (e) upon an order being made by a competent authority declaring the Governor to be incapable of managing their property or otherwise to be incapable;
- (f) when the Governor ceases to meet the applicable qualifications for being a Governor set out in section 4.3 or 4.4; or
- (g) when the Internal Member ceases to meet the applicable qualifications for being an Internal Member.

5.5 Each External Member and Internal Member, other than the elected Student, is eligible for re-appointment or re-election, as the case may be, for successive terms not to exceed six years in total; however, following two years' continuous absence from the Board, an individual is eligible for re-appointment or re-election. The procedure outlined in the Protocol for Board Nominations and Appointments shall be followed for re-appointment of External Members appointed by the Lieutenant Governor.

5.6 The elected Student is eligible for re-election for one successive term only; however, following two years' continuous absence from the Board, a Student is eligible for re-election.

5.7 As required by the Regulation, no Governor shall participate in a vote of the Board in relation to the renewal or extension of their appointment.

## **6. BOARD DUTIES & RISK MANAGEMENT**

6.1 The Board shall fulfill the following duties:

- (a) be responsible for hiring and performance of the President, in the process satisfying itself as to the integrity of the President and that the President creates a culture of integrity, and shall establish the President's employment contract;
- (b) approve a strategic planning process;

- (c) ensure there is a succession plan for the President and the Board, including appropriate orientation;
- (d) adopt a communication policy for the College;
- (e) ensure integrity of the College's internal control and management information systems;
- (f) identify principal risks of the College's business and ensure the implementation of appropriate systems to manage these risks as set out in this By-law; and
- (g) develop an approach to corporate governance, including a set of corporate governance principles and guidelines.

6.2 For the purposes of this section,

- (a) "risk" means an event, action or trend that can potentially impact the achievement of the activities, priorities and strategic objectives of the College if the event, action or trend occurs; and
- (b) "risk management" means a planned and systematic approach to setting the best course of action by identifying, assessing, understanding and acting on risks in order to maximize opportunities and minimize losses;

6.3 The Board shall ensure the introduction, adoption and implementation of an effective risk management framework for the College, with the following categories used to identify potential risk:

- (a) strategic;
- (b) reputational;
- (c) operational; and
- (d) compliance.

6.4 The Board shall approve proposed strategies for risk management.

6.5 The Board shall integrate an assessment of potential risks in the Board's decision-making process.

6.6 The Board shall ensure there are systems and processes put in place to minimize or manage risks. Reports on the College's efforts to mitigate risk shall be provided to the Board, through the President, in a timely manner.

6.7 The President shall also report to the Board on significant emergent risk in a timely manner.

- 6.8 The Board shall speak with one voice. Governors shall support properly authorized actions of the Board. Those Governors who have abstained or voted against a motion must adhere to and support the decision of a majority of Governors.
- 6.9 Governors must act solely in the best interests of the College. All Governors are held to the same duties and standard of care. Governors who are elected by a particular group must act in the best interests of the College, even if this conflicts with the interests of such group. A Governor's fiduciary duties are owed to the College. The Governor is not solely accountable to any special group or interest and shall act and make decisions that are in the best interest of the College, as a whole. A Governor shall be knowledgeable of the stakeholders to whom the College is accountable and shall appropriately take into account the interests of such stakeholders when making decisions as a Governor, but shall not prefer the interests of any one group if to do so would not be in the best interests of the College.

## **7. BOARD VACANCIES**

- 7.1 The Regulation stipulates how mid-term Board vacancies are filled.
- 7.2 If a vacancy occurs among the Academic Staff Member, Administrative Staff Member, Support Staff Member or elected Student, the Students or the staff, as the case may be, shall elect a new Governor in accordance with the election policy.
- 7.3 If a vacancy occurs among External Members not appointed by the Lieutenant Governor, the Board shall appoint a qualified person to fill the vacancy.
- 7.4 The term of the person appointed or elected to fill a vacancy shall:
- (a) commence on the date of the appointment or election, as the case may be;
  - (b) be for the remainder of the term of the Governor whose position became vacant;  
and
  - (c) terminate on August 31 of the year in which the term expires.

## **8. REMOVAL OF GOVERNORS<sup>1</sup>**

- 8.1 The Regulation stipulates that the Board must have a process for removing Governors in the By-laws.
- 8.2 The Board may remove any Governor, other than the President (who may be removed only through termination of employment) or those External Members appointed by the Lieutenant Governor (who may be removed only by the Lieutenant Governor), before the expiration of their term by resolution of the Board if the Governor has, in the determination of the Board:

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<sup>1</sup> Please see *Governance Policy GP-001: Removal of a Board Member* for procedure of removal.

- (a) neglected or refused to participate on Board committees and/or contribute to effective discussion and decision-making at the Board;
- (b) failed to comply with applicable legislation or the By-laws or policies of the College including, without limitation, confidentiality and Conflict of Interest provisions;
- (c) failed to observe and perform their fiduciary duty to act honestly, in good faith and in the best interests of the College;
- (d) failed to meet the Board's attendance requirements (75% of all meetings) for Board and committee meetings; or
- (e) demonstrated conduct unbecoming of a Governor including but not limited to activities that are illegal, are in breach of established Board policies, constitute or demonstrate harassment, violence or discrimination, or misconduct which, in the opinion of the Board, would adversely affect the image and/or operations of the Board or of the College if the Governor were to continue.

8.3 As an alternative to removing a Governor, the Board may impose any one or a combination of the following sanctions:

- (a) issue an oral reprimand;
- (b) issue a written reprimand; and/or
- (c) request the Governor resign.

8.4 If the Board believes that reasons exist justifying the removal of an External Member appointed by the Lieutenant Governor, the Board may set those reasons out in a report to the Minister for referral to the Lieutenant Governor, requesting the Governor be removed from the Board.

## **9. REMUNERATION**

9.1 Governors shall serve without remuneration, and no Governor shall directly or indirectly profit from their position as a Governor, unless:

- (a) if the Governor is an External Member or an Internal Member who is not an employee, the process set out by the *Charities Accounting Act* for the fair market value provision of goods and services to a charity by a Governor is followed; or
- (b) if the Governor is an Internal Member who is an employee, the Governor shall not receive any remuneration from the College other than the remuneration paid to that Governor as an employee.

9.2 Notwithstanding section 9.1, a Governor may be reimbursed for reasonable expenses incurred by him or her in the performance of Board duties as more particularly described in the Board Procedure, "Expenses Regarding Governor Travel" as well as

in College Policy and Administrative Operating Procedure, “Travel and Related Expenses”.

9.3 This section applies to all members of the Board’s committees as well.

## **10. MEETINGS & CONFIDENTIALITY**

10.1 As required by the Regulation, all Board meetings are public except where a matter is determined by the Board to be confidential. Committee meetings are not public because the committees are advisory in nature only.

10.2 Agenda packages and related materials for the open session of public meetings shall be made available to the public on the College website and/or through arrangement with the Secretary.

10.3 The Board may determine that a member of the public attending an open session of a public meeting has engaged in improper conduct and may exclude that individual from the Board meeting.

10.4 The Regulation permits the Board to determine what matters are confidential. Where the Board discusses a matter determined by it to be confidential, the Board may hold an *in camera* meeting and the public shall be excluded from such meeting or portion of a meeting. The following matters shall be discussed *in camera*:

- (a) the conduct, discipline, suspension and all other matters relating to individual Students;
- (b) identification of a potential or perceived conflict of interest;
- (c) consideration of sanctions against and removal of a Governor;
- (d) matters relating to an individual Governor or a prospective Governor;
- (e) donor-specific matters;
- (f) all personnel matters, including strategic labour relations and matters pertaining to collective bargaining or terms of employment,
- (g) litigation or contemplated litigation or matters relating to proposed mediation, arbitration or other legal proceedings;
- (h) matters relating to security, safety or health of persons or security of property;
- (i) nominations and appointments of Board and committee members and consideration of removal of same;
- (j) Board evaluation and self-evaluation;

- (k) matters relating to real estate;
- (l) matters of a contractual or financial nature where it is in the interest of the College to maintain confidentiality or where information has been disclosed to the College in confidence;
- (m) advice that is subject to solicitor-client privilege, including communications necessary for that purpose;
- (n) whistleblowing reports;
- (o) consideration of whether an item is to be discussed in-camera;
- (p) financial, personal or other matters may be disclosed of such a nature that the desirability of avoiding public disclosure of them in the interest of any person affected or in the public interest outweighs the desirability of adhering to the principle that meetings be open to the public; and
- (q) other matters that, in the opinion of the majority of the Governors, the disclosure of which might be prejudicial to an individual or to the best interests of the College.

10.5 Attendance at *in camera* meetings shall be restricted to Governors and those individuals appropriate to the business of that meeting on the invitation of the Chair, subject to approval of the Board. Depending on the topic being discussed and the nature of the discussion, one or more Governors may need to recuse themselves.

10.6 Decisions made during an *in camera* meeting may, at the discretion of the Board, be reported at a subsequent open session meeting, taking into consideration the need or requirement for ongoing confidentiality.

10.7 No Governor shall use for their own benefit confidential information obtained from College sources or divulge the same to others unless legally compelled or specifically authorized to do so. Confidential information includes all information which is not generally available to or known by the public and includes those matters which, if known, would give a member of the public an advantage for profit or benefit. Confidential information includes information, discussion and decisions made at *in camera* meetings unless the Board determines otherwise.

## **11. NOTICE OF MEETINGS**

11.1 The Board may appoint a day or days in any month or months for regular meetings.

11.2 Notice of regular Board meetings shall be given in such a manner as may be from time to time determined by the Board and at least three days prior to the day appointed for the meeting. Notice may be delivered by courier, email, facsimile, pre-paid regular mail, College mail service, or via publication on the College website and Board portal.

- 11.3 Notice of all other meetings of the Board or its committees shall be delivered or transmitted to each Governor or other persons entitled to notice of such meeting. However, no formal notice of any such meeting shall be necessary if all the Governors are present or if those absent waive notice or otherwise signify in writing their consent to the meeting being held in their absence. Such waiver of notice or consent may be given either before or after the meeting.
- 11.4 Special meetings may be formally called by the Chair or Vice-Chair or by the President on the direction of the Chair or Vice-Chair. Notice of such meetings shall be delivered by telephone or email to each Governor not less than one day before the meeting is to take place or delivered by courier to each Governor not less than two days before the meeting is to take place. The statutory declaration of the President or Chair that notice has been given pursuant to this By-law shall be sufficient and conclusive evidence of the giving of such notice.
- 11.5 No error or omission in the giving of such notice for any meeting of Governors shall invalidate such meeting or invalidate or make void any proceeding taken or had at such meeting, and any Governor may at any time waive notice of such meeting and may ratify and approve of any or all proceedings taken thereat.

## **12. OTHER MEETINGS & SESSIONS OF EXTERNAL MEMBERS**

- 12.1 The Board may, at any time, schedule a Governors' retreat, planning session, information session, orientation or any other such events as it deems appropriate. No resolutions shall be passed during these sessions, and such events shall not be open to the public.
- 12.2 On an as-needed basis as determined by the Chair or at the request of any External Member, sessions of the External Members may be held. A session of the External Members is intended to facilitate full and frank discussion, without the presence of the President and other staff, in order to escalate concerns to the President or to set the agenda for future Board meetings. These sessions are not Board meetings and no binding decisions may be made. These sessions may be scheduled to occur after the regular Board meeting has been adjourned to allow those Governors who are not participating in the session to leave.

## **13. FREQUENCY OF MEETINGS**

- 13.1 The Board shall meet in public no less than six times per year, unless otherwise determined by the Board in its sole discretion.

## **14. PLACE OF BOARD MEETINGS**

- 14.1 The Board may hold its meetings at such place or places as it may from time to time determine in its sole discretion. Board meetings shall normally be held at the College's main campus and may, when possible, be scheduled at other College campus locations.

## **15. MEETINGS BY ELECTRONIC MEANS AND RESOLUTIONS IN WRITING**

- 15.1 Any Governor may participate in a meeting of the Board or its committees by means of telephonic or electronic means that permits all participants to communicate adequately with each other during the meeting. A Governor participating in a meeting pursuant to this section shall be deemed to be present in person at the meeting and shall be counted toward quorum.
- 15.2 In this instance, quorum shall be established by a verbal roll call conducted by the Secretary at the beginning of each meeting.
- 15.3 A resolution signed by all the Governors is as valid and effective as if passed at a meeting of the Governors duly called, constituted and held for that purpose.

## **16. QUORUM**

- 16.1 As required by the Regulation, the quorum required for a meeting of the Board is the majority of the number of Governors listed in section 4 of these By-laws plus one (i.e., 10 Governors).
- 16.2 No business shall be transacted at any Board meeting unless the requisite quorum is present at the commencement of such business.
- 16.3 If, during a meeting, quorum is lost, business may be discussed but the Chair shall not allow any decisions to be made.
- 16.4 Where a Governor declares a Conflict of Interest for an item of business, the quorum for that portion of the Board meeting consists of the majority of the Governors who have not declared a Conflict of Interest, plus one.

## **17. VOTING**

- 17.1 Questions arising at any Board meeting shall be decided by a simple majority vote of the Governors. In the case of an equality of votes, the Chair, in addition to their original vote, shall have a second or deciding vote.
- 17.2 All votes at any Board meeting shall be taken by ballot if so demanded by any Governor present, but if no demand is made, the vote shall be taken by a show of hands. Any Governor may request a recorded vote. Any Governor may request their vote or abstention be recorded.
- 17.3 Unless there is a demand for a recorded vote, a declaration by the Chair that a motion has been carried and an entry to that effect in the Board meeting minutes shall be admissible in evidence as *prima facie* proof of the fact of the number or proportion of votes recorded in favour of or against the motion.
- 17.4 The minutes shall record a motion as carried or defeated.
- 17.5 No Governor may delegate his/her voting privilege to a proxy.

## **18. DELEGATIONS TO MEETINGS**

- 18.1 Delegations will be heard by the Board at any of its regular meetings, subject to the requirements outlined in the Board Procedure, “Delegations to the Board of Governors”.

## **19. ADJOURNMENTS**

- 19.1 Any Board meeting or committee meeting may be adjourned by motion at any time and from time to time, and such business may be transacted as might have been transacted at the original meeting from which such adjournment took place. No notice shall be required of any such adjournment. Such adjournment may be made notwithstanding the absence of a quorum.

## **20. ANNUAL MEETING**

- 20.1 The Board shall hold an annual meeting at the Head Office or such other location in Ontario as may be determined by the Board and on such day as the Board shall appoint.
- 20.2 For clarity, the Board meeting at which the audited financial statements are received will be deemed to be the annual meeting of the College.

## **21. CONFLICT OF INTEREST**

- 21.1 Every Governor who, either directly or through one of the Governor’s Associates, has or thinks the Governor may potentially have a Conflict of Interest with respect to a proposed or current matter or decision before the Board, shall disclose the nature and extent of the Conflict of Interest.
- 21.2 The Directive on Conflict of Interest provides that the following Conflicts of Interest are permissible, and this should be considered by the Governors and the Board collectively in determining the existence of a Conflict of Interest:
- (a) that is so remote or insignificant that it cannot reasonably be regarded as likely to influence the Governor; or
  - (b) where a pecuniary or other interest is in common with a broad group of which the governor is a member (e.g., Students, support staff, academic staff, administrative staff).
- 21.3 At the beginning of every Board meeting, the Chair shall ask and have recorded in the minutes whether any Governor has a Conflict of Interest to declare in respect to any agenda item.

- 21.4 In cases where the Conflict of Interest cannot be avoided, the Governor with the Conflict of Interest must declare the nature and extent of the Conflict of Interest at the Governor's earliest opportunity, but, in any case, no later than the meeting of the Board at which the matter or decision that is the subject of the Conflict of Interest is first raised.
- 21.5 If the Governor, either directly or indirectly, becomes interested in a matter or decision after the Board meeting at which it is first raised, the Governor shall declare the nature and extent of the Conflict of Interest at the Governor's first opportunity.
- 21.6 After making such a declaration, the Governor with a Conflict of Interest shall not: (a) vote on the matter that is the subject of the Conflict of Interest; (b) if the vote is held at the *in camera* portion of the meeting, be present at the vote or for the discussions; or (c) otherwise attempt to influence the voting.
- 21.7 The failure of any Governor to comply with the Conflict of Interest provisions of this By-law does not, in or of itself, invalidate any decision made by the Board. However, If the Board determines that involvement of said Governor influenced the decision of the matter, the Board is to re-examine the matter and may rescind, vary, or confirm its decision.
- 21.8 If a Governor believes that any other Governor is in a Conflict of Interest position with respect to any matter or decision, the Governor shall raise this concern with the Chair. The Chair, in turn, is to discuss the matter with the Governor who is perceived to be in conflict and, as appropriate, to hold further discussion with the reporting Governor. If the discussions do not lead to a resolution, the matter is to be brought to the Board and the Board is to determine by majority vote whether or not a Conflict of Interest exists. The Board's decision on this matter shall be final. The Governor perceived to be in conflict shall have the right to address the Board with respect to the allegation of Conflict of Interest prior to the Board's discussion of the allegation and vote on whether a Conflict of Interest exists. The Governor perceived to be in conflict must then withdraw from the meeting for the duration of any subsequent discussion and the vote. If the Board finds the Governor to be in a Conflict of Interest, the Governor shall comply with Section 21.6 and any other procedures set out in the Directive on Conflict of Interest and this By-law.
- 21.9 Every declaration of a Conflict of Interest and the general description shall be recorded in the minutes by the Board.
- 21.10 Every Governor shall complete and submit to the Secretary an annual conflict of interest declaration in the form approved by the Board from time to time.

21.11 Where there has been a failure on the part of a Governor to comply with these Conflict of Interest rules, unless the failure is the result of a *bona fide* error in judgment, the Board shall:

- (a) issue a verbal reprimand;
- (b) issue a written reprimand;
- (c) request that the Governor resign; and/or
- (d) remove the Governor through processes established in this By-law.

21.12 Without limiting the general application of the Directive on Conflict of Interest, the Board shall recognize the following circumstances as a Conflict of Interest requiring the affected Internal Member to follow the Conflict of Interest procedures in the Directive on Conflict of Interest and this By-law:

- (a) Agenda items relating either directly or indirectly to collective bargaining and/or compensation and terms and conditions of employment and/or academic programs in relation to their constituent group<sup>2</sup>; and
- (b) Agenda items relating to the President's evaluation or performance review<sup>3</sup>.

## **22. OFFICERS**

22.1 The Board shall ensure the Chair and the Vice-Chair are appointed from amongst the External Members, as required by the Regulation. The Board shall also appoint the Chair of the Finance & Audit Committee, who shall be an Officer of the Board.

22.2 The President shall serve as the Secretary.

22.3 The Board may appoint other Officers as the Board may determine from time to time.

22.4 The Board may delegate all or any of the powers of an Officer from time to time, as may be necessary due to absence, inability to act, or otherwise.

22.5 The Board may remove any Officer by resolution of the Board.

22.6 The Board may fill vacancies amongst the Officers by resolution of the Board for the remainder of the term of that Officer.

## **23. APPOINTMENT OF OFFICERS AND TERMS**

23.1 No later than the regular meeting of the Board in June of each year, the Board shall appoint its Officers for the coming year, provided that in default of such appointment

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<sup>2</sup> Note: this would not apply to agenda items that are of a general nature occurring in the open to the public portion of the Board meeting.

<sup>3</sup> Note: this does not prevent the Chair or evaluation committee asking for their input as part of a general information-gathering process in preparing the President's evaluation.

the then incumbents, provided they continue to be Governors, shall hold office until their successors are appointed.

23.2 The Chair and Vice-Chair are appointed for a one year term commencing September 1. The incumbent Chair and Vice-Chair are eligible for reappointment, subject to the maximum term limit in section 23.3.

23.3 No Governor may serve more than three successive years as Chair of the Board.

## **24. OFFICERS' DUTIES**

24.1 The Chair shall:

- (a) when present, preside at all meetings of the Board and the Executive Committee;
- (b) together with the Secretary or other Officers appointed for the purpose, sign all By-laws of the College;
- (c) sign such contracts, documents or instruments in writing as require their signature;
- (d) on behalf of the Board, have primary supervisory responsibility for the President with an obligation to report to the Executive Committee and the Board;
- (e) act generally as spokesperson for the Board;
- (f) have such other powers and duties as may from time to time be required or assigned to him or her by the Board or as are incident to the office.
- (g) Be a voting member of each sub or standing committee as they so choose.

24.2 The Vice-Chair shall:

- (a) work collaboratively with the Chair and support the Chair in fulfilling his/her responsibilities;
- (b) in the Chair's absence, perform all the duties and have all the powers of the Chair, and
- (c) have such powers and perform such duties as may from time to time be required or assigned to him or her by the Board.

24.3 The Secretary shall:

- (a) The Secretary shall carry out the duties of the secretary of the College generally and shall attend or cause a recording secretary to attend all meetings of the Board and committees to record all votes and minutes of all proceedings in the books to be kept for that purpose.

- (b) The Secretary shall give or cause to be given notice of all meetings of the Members and of the Board and shall perform such other duties as may be prescribed by the by-laws or the Board.
- (c) The Secretary have custody of all minute books and registers of the College and the corporate seal.

## **25. PRESIDENT**

- 25.1 The Board shall delegate to the President full authority to manage and direct the business and affairs of the College, except such matters and duties as by law must be transacted or performed by the Board, and further to employ and discharge agents and employees of the College.
- 25.2 The President shall conform to all lawful orders given to him or her by the Board and/or by the Chair and shall at all reasonable times give to the Governors and/or any one of them as authorized by the Board all information any of them may require regarding the affairs of the College.

## **26. INDEMNIFICATION & INSURANCE**

26.1 Every Governor or Officer or former Governor or Officer or an individual who acts or acted at the request of the College as a director or officer, or in a similar capacity, of another entity, shall be indemnified and saved harmless out of the funds of the College from and against all costs, charges and expenses, including an amount paid to settle an action or satisfy a judgment, reasonably incurred by the individual in respect of any civil, criminal, administrative, investigative or other action or proceeding in which the individual is involved because of that association with the College or other entity.

26.2 The College may advance money to an individual referred to in subsection 0 for the costs, charges and expenses of an action or proceeding referred to in that subsection, but the individual shall repay the money if the individual does not fulfil the conditions set out in subsection 26.3.

26.3 The College shall not indemnify an individual under subsection 0 unless:

- (a) the individual acted honestly and in good faith with a view to the best interests of the College or other entity, as the case may be; and
- (b) if the matter is a criminal or administrative proceeding that is enforceable by a monetary penalty, the individual had reasonable grounds for believing that their conduct was lawful.

26.4 Subject to section 26.3, no Governor or Officer shall be liable for:

- (a) the acts or omissions of any other Governor, Officer or College employee;

- (b) any loss, damage or expense happening to the College through the insufficiency or deficiency of title to any property acquired by the College or for or on behalf of the College;
- (c) the insufficiency or deficiency of any security in or upon which any of the money of or belonging to the College shall be placed out or invested; or
- (d) any loss or damage arising from the bankruptcy, insolvency or tortious act of any person, firm or college with whom or which any money, securities or effects shall be lodged or deposited; or

unless the same shall happen by or through their own wrongful and willful act or through their own wrongful and willful neglect or default.

26.5 Where permitted by the *Charities Accounting Act*, the Board shall cause to be purchased directors and officers liability insurance as it considers advisable and necessary, in such amounts reasonable for a college of similar size in Ontario, to ensure that Governors, Officers and committee members will be indemnified and saved harmless in accordance with this By-law. The premiums for such insurance coverage shall be paid from the funds of the College.

## **27. COMMITTEES OF THE BOARD**

27.1 The Board shall have the standing committees established by this By-law. All committees are advisory except for the Executive Committee, which may within its mandate make decisions on behalf of the Board.

27.2 The Board may establish other committees, consisting of such persons as may from time to time be appointed by the Board, to act in an advisory capacity to the Board in the particular area of responsibility assigned to each of such committees. The Board shall establish terms of reference for other committees including mandate, composition and meeting frequency. The Board may from time to time amend the purposes or responsibilities of any such committee. The Board may fill any vacancies occurring from time to time on any such committees.

27.3 Committee members are appointed for a term of one (1) year commencing September 1 through to the following August 31.

27.4 Committee members serve at the pleasure of the Board. By virtue of office, the Chair the Vice-Chair, and the President shall receive all committee agenda packages unless otherwise directed, and shall have the right to participate in all committee meetings, without vote or consideration in quorum (unless they are committee members).

27.5 Committees meet *in camera*. Committee meeting minutes are reviewed by the Committee at the next Committee meeting, and after Committee endorsement, minutes are included as part of the in-camera consent agenda at the next Board meeting.

- 27.6 The Board, in its sole discretion, may abolish committees which no longer serve a function for the Board.
- 27.7 Any committee established pursuant to Section 27.1 or 27.2 may meet for the transaction of business, adjourn and otherwise regulate its meetings as it thinks fit provided, however, that a majority of the members of each committee shall constitute a quorum for the transaction of business.
- 27.8 Committee members may attend meetings in person or by telephone, electronic or other communication facilities as permit all individuals participating in the meeting to communicate with each other simultaneously and instantaneously, which committee members count towards quorum.
- 27.9 A quorum for committees is defined as a simple majority (half plus one) of the named committee members.
- 27.10 When a committee member declares a Conflict of Interest for an item at a committee meeting, the quorum shall be a simple majority of the remaining committee members for that item.
- 27.11 With the exception of the Executive Committee, the members of any committee need not be Governors. However, there shall be at least one Governor on each committee. Non-Governors serving on committees shall sign a declaration annually whereby they acknowledge that they owe a fiduciary duty to the College and must comply with this By-law and College policies and procedures.

## 28. **EXECUTIVE COMMITTEE**

- 28.1 The Executive Committee shall be composed of:
- (a) the Chair, who shall serve as the committee chair;
  - (b) the Vice-Chair;
  - (c) the Chair of the Finance & Audit Committee; and
  - (e) the President.
- 28.2 The Executive Committee shall make decisions between Board meetings on urgent matters only where Board quorum is not attainable, and report on all decisions made at the next Board meeting, provided that decisions regarding the following matters may only be made by the Board in accordance with the ONCA:
- (a) to fill a vacancy among the Governors;
  - (b) to fill a vacancy in the position of auditor;
  - (c) to appoint additional Governors;
  - (d) to issue debt obligations except as authorized by the Governors;

- (e) to approve any annual financial statements;
- (f) to adopt, amend or repeal by-laws.

28.3 The Executive Committee (excluding the President) shall fulfill the following human resource functions:

- (a) review, on an annual basis, the performance of the President and make decisions with respect to the compensation of the President and the setting of their goals and objectives;
- (b) review executive compensation and ensure that it meets any legislative requirements;
- (c) ensure there is a succession plan for the President; and
- (d) lead the search and recruitment efforts should the position of President become vacant.

28.4 The Executive Committee shall meet at least once per year, and at the call of the committee chair or upon the request of any two committee members.

## 29. **GOVERNANCE COMMITTEE**

29.1 The Governance Committee shall be composed of:

- (a) four External Governors, one of whom shall be the committee chair; and
- (b) the President.

29.2 The Governance Committee shall:

- (a) ensure processes are in place for the review and approval of the College's mission, vision and values;
- (b) ensure development of an effective Board orientation package and program for ongoing professional development for Governors;
- (c) establish a process for and monitor the regular review of the College's by-laws and governance structure, policies and processes;
- (d) conduct Board and committee performance and effectiveness evaluations annually;
- (e) make recommendations to the Board on improved Board effectiveness;
- (f) act as the nominating committee including:

- i. identify recruitment and selection processes as needed for Board approval;
- ii. identify competencies needed by the Board annually;
- iii. review and assess candidates using a competency matrix;
- iv. vet and interview eligible external candidates and provide recommendations to the Board for approval;
- v. identify and recommend candidates for the appointed Officer positions to the Board after due inquiries;
- vi. recommend to the Board re-appointment of External Members;
- vii. identify and recommend to the Board the members of standing committees including the committee chairs; and

(g) annually develop a work plan for review and approval by the Board.

29.3 The Governance Committee shall meet at least three times per year and at the call of the committee chair.

### 30. **FINANCE & AUDIT COMMITTEE**

30.1 The Finance & Audit Committee shall be composed of:

- (a) at least two External Governors, one of whom shall be the committee chair;
- (b) the President;
- (c) at least two other Governors; and
- (d) up to two other individuals who are not Governors, appointed by the Board, at its discretion, following consultation with the Finance & Audit Committee.

A majority of the Finance & Audit Committee members must not be officers or employees of the College or of any of its affiliates.

The auditor of the College is entitled to notice of the time and place of any Finance & Audit Committee meeting.

30.2 The members of the Finance & Audit Committee shall be financially literate as determined by the Board or shall become financially literate within a reasonable time following appointment to the committee.

30.3 At least one member of the Finance & Audit Committee shall have accounting or related financial experience.

30.4 The Finance & Audit Committee shall be responsible for oversight of the reliability and integrity of the accounting principles and practices used by the College as reflected in the College's financial statements and financial reporting.

30.5 Annually, the Finance & Audit Committee shall develop a work plan for review and approval by the Board.

30.6 The Finance & Audit Committee shall have the following financial functions:

- (a) study and recommend to the Board for approval a detailed annual budget for capital and operating revenues and expenditures for the ensuing fiscal year;
- (b) study the detailed monthly and quarterly financial statements on a timely basis and report back to the Board;
- (c) where necessary, recommend to the Board an appropriate investment policy for the management of the College's funds and monitor and report quarterly on the control and management of these investments;
- (d) make recommendations to the Board about its budget and reporting against the budget;
- (e) recommend to the Board the types and amounts of insurance to be carried and review these annually; and
- (f) inform and advise the Board on financial matters as requested.

30.7 The Finance & Audit Committee shall have the following audit functions:

- (a) annually monitor and evaluate the performance of the external auditors and recommend to the Board the appointment of a firm of chartered accountants as the College's external auditors and any changes of external auditors;
- (b) review with the auditors their audit plan, including scope, timetable and fees and recommend to the Board the approval of same;
- (c) require the auditor to disclose all work provided to the College that has not been approved in advance by the committee and assess whether the auditor's independence is impaired;
- (d) enquire into the major financial risks faced by the College, and the appropriateness of related controls to minimize their potential impact;
- (e) review audited annual financial statements, in conjunction with the report of the external auditors, and obtain an explanation from management of all significant variances between comparative reporting periods and a response to any identified weaknesses;
- (f) recommend approval of the financial statements to the Board;
- (g) meet privately with the external auditors (without the presence of management) and with senior management (without the external auditors) to obtain full and frank disclosure about any concerns with the audit process;

- (h) oversee management's establishment of an adequate system of internal controls and procedures and effective performance of those internal controls and procedures;
  - (i) make other recommendations with respect to matters delegated to it by the Board; and
  - (j) establish a whistleblower policy and oversight of the receipt, retention and treatment of complaints received pursuant to such whistleblower policy.
- 30.8 The Finance & Audit Committee shall meet at least three times per year and at the call of the committee chair.

### **31. SIGNING AUTHORITY**

- 31.1 The Chair, Vice-Chair and/or President may execute instruments, contracts or obligations related to externally binding transactions and contractual obligations with parties external to the College as set out in the College Policy and Administrative Operating Procedure, "Signing Authority – Externally Binding Transactions and Contractual Obligations" as may be amended from time to time.
- 31.2 The President may further delegate their authority to execute documents to other College personnel in writing on notice to the Board.
- 31.3 Notwithstanding sections 31.1 and 31.2 and the College Policy and Administrative Procedure on Signing Authority, the Board may, at any time, by resolution, delegate the execution of instruments, contracts or obligations related to externally binding transactions and contractual obligations with parties external to the College to any person or persons it deems appropriate.

### **32. DEPOSIT OF SECURITIES**

- 32.1 The securities of the College shall be deposited for safekeeping with one or more banks, trust companies or other financial institutions to be selected by the Board. Any and all securities so deposited may be withdrawn, from time to time, only upon the written order of the College signed by such officer or officers, agent or agents of the College, and in such manner, as shall from time to time be determined by resolution of the Board and such authority may be general, or confined to specific instances. The institution, which may be so selected as custodian by the Board, shall be fully protected in acting in accordance with the directions of the Board and shall in no event be liable for the due application of the securities so withdrawn from deposit or the proceeds thereof.

### **33. BORROWING OF FUNDS**

- 33.1 Subject to applicable legislation and Directives and without limiting the borrowing powers of the College specified in the ONCA and the Directives, the Board may from time to time:

- (a) borrow money on the credit of the College;
- (b) issue, sell or pledge securities of the College;
- (c) charge, mortgage, hypothecate or pledge all or any of the real or personal property of the College, including book debts, rights, powers, franchises and undertakings to secure any securities or any money borrowed, or other debts, or any other obligation or liability of the College.

33.2 Subject to applicable legislation and Directives, the Board may from time to time authorize any Governor, Officer or employee of the College or any other person to make arrangements with reference to the moneys borrowed or to be borrowed as in section 33.1 and as to the terms and conditions of the loan thereof, and as to the securities to be given therefore, with power to vary or modify such arrangements, terms and conditions and to give such additional securities for any moneys borrowed or remaining due by the College as the Governors may authorize and generally to manage, transact and settle the borrowing of money by the College.

#### **34. AUDITORS**

34.1 The Board shall annually appoint an auditor or a firm of auditors licensed under the *Public Accounting Act, 2004* who shall be instructed to prepare for submission to the Board, the Ministry and other agencies as required by legislation audited financial statement(s) of the College for the preceding fiscal year, and such other reports as required.

#### **35. FINANCIAL YEAR**

35.1 Unless otherwise ordered by the Ministry, the fiscal year of the College shall terminate on the 31<sup>st</sup> day of March in each year.

#### **36. AMENDMENTS TO BY-LAW**

36.1 This By-law may be amended or repealed at a regular meeting of the Board by an affirmative majority vote of the Governors present.

Enacted by the Board and sealed with the corporate seal this 22 day of June, 2022



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Fred Clifford  
Chair of the Board



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Maureen Adamson  
President/Secretary