

- (b) If a Members' meeting is adjourned for fewer than 30 days, no notice of the meeting that continues the adjourned meeting is required other than by announcement at the meeting that is adjourned.
- (c) If a Members' meeting is adjourned by one or more adjournments for an aggregate of 30 or more days, notice of the meeting that continues the adjourned meeting shall be given in accordance with section 13.1.

## **2.10 Written Resolution in Lieu of Meeting**

Except as provided in the Act, a resolution signed by all of the Members is as valid as if it had been passed at a Members' meeting.<sup>18</sup>

## **2.11 Telephonic or Electronic Members' Meetings**

Any person entitled to attend a Members' meeting may participate in the meeting by telephonic or electronic means that permits all participants to communicate adequately with each other during the meeting if the Corporation makes these means available. A person so participating in a meeting is deemed to be present at the meeting.<sup>19</sup>

# **Article 3 Board**

## **3.1 Composition of Board**

The Board shall consist of:

- (a) up to 15 and no less than 11 Directors (as determined from time to time in accordance with the Act and the Articles),<sup>20</sup> who satisfy the criteria set out in

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<sup>18</sup> This provision does not need to be included in the By-law but is provided for comprehensiveness. ONCA, s. 59(1) provides: *A resolution signed by all the members entitled to vote on that resolution at a meeting of the members is as valid as if it had been passed at a meeting of the members.* Section 59(2) provides: *A resolution dealing with a matter required by this Act to be dealt with at a meeting of the members, and signed by all the members entitled to vote at that meeting, satisfies all the requirements of this Act relating to meetings of the members.* Note that ss. 59(1) and (2) do not apply – and written resolutions are not permitted – in respect of a meeting at which a statement is given by a Director under ONCA, s. 27(1) (where the Director resigns or is opposing their removal) or by an auditor under s. 75(4) (where the auditor resigns or is opposing their removal) (ONCA, s. 59(5)). Written resolutions must be kept with the Members' meeting minutes (ONCA, s. 59(3)).

<sup>19</sup> ONCA, s. 53(4) provides: *Unless the by-laws provide otherwise, any person entitled to attend a meeting of the members may participate in the meeting by telephonic or electronic means that permits all participants to communicate adequately with each other during the meeting if the corporation makes such means available. A person so participating in a meeting is deemed for the purposes of this Act to be present at the meeting.* Note that during a temporary suspension period that begins on October 19, 2021 and ends on December 31, 2021 (and if the regulations so provide, a further prescribed period of time immediately following December 31, 2021), the following provision would apply pursuant to ONCA, Schedule 1, s. 1(6): *Despite any provision in the articles or by-laws of a corporation that provides otherwise, a meeting of the members of a corporation 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 this Act to be present at the meeting.*

<sup>20</sup> ONCA, s. 22(2) provides: *If a corporation's articles provide for a minimum and maximum number of directors, the number of directors of the corporation and the number of directors to be elected at the annual meeting of the members must be the number determined from time to time by special resolution or, if a special resolution empowers the directors to determine the number, by resolution of the directors. A decrease in the number of directors does not shorten the term of an incumbent director.* Section 30(1) provides: *The members of a corporation may amend its articles to increase or decrease the number of directors, or the minimum or maximum number of directors, but a decrease shall not shorten the term of an incumbent director.* Thus, the Articles may provide for a range in the number of Directors, and if a range is set, the composition of the Board must fall within the range. For greater flexibility, the Articles could set a range in the number of Directors and provide that the Directors may fix the number from time to time.

section 3.3 and who are elected by the Members in accordance with sections 3.7 and 3.8 or appointed in accordance with section 3.10;

- (b) the following six *ex-officio* non-voting Directors:<sup>21</sup>
  - (i) Chief Executive Officer;
  - (ii) Chief of Staff/Vice President of Medicine;
  - (iii) President of the Medical Staff Association;
  - (iv) Vice President of the Medical Staff Association;
  - (v) Vice President, Clinical/Chief Nursing Executive; and
  - (vi) one individual residing in the District of Cochrane who is nominated by the North Eastern Ontario Municipal Association, approved by the Board, and then elected by the Members; and
- (c) one *ex-officio* voting Director who is a director of the Foundation, nominated by the Foundation, approved by the Board, and then elected by the Members.

### **3.2 Duties and Responsibilities**

Subject to the Act, the Board shall govern and supervise the management of the activities and affairs of the Corporation and may exercise all other powers and do all other acts and things as the Corporation is, by its Articles or otherwise, authorized to exercise and do.

### **3.3 Qualifications of Directors**

- (a) No individual shall be qualified for election or appointment as a Director if the individual:
  - (i) is under 18 years old;
  - (ii) has been found under the *Substitute Decisions Act, 1992* or under the *Mental Health Act* to be incapable of managing property;
  - (iii) has been found to be incapable by any court in Canada or elsewhere;<sup>22</sup>
  - (iv) has the status of a bankrupt;

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<sup>21</sup> ONCA, s. 23(4) provides: *The by-laws of a corporation may provide for persons to be directors by virtue of their office.* HMR, ss. 2(1.1), (2). Further, as public benefit corporations under ONCA (as defined in s. 1(1)) (by virtue of being charities), Ontario public hospitals must comply with ONCA, s. 23(3), which provides: *Not more than one-third of the directors of a public benefit corporation may be employees of the corporation or any of its affiliates.*

<sup>22</sup> ONCA, s. 23(1)4.

- (v) is an “ineligible individual” as defined in the *Income Tax Act* (Canada) or any regulations made under it; and
  - (vi) is an Excluded Person, except as provided for in section 3.1(b) above.
- (b) The Board’s decision as to whether or not a candidate is qualified to stand for election shall be final.

### 3.4 Director’s Consent to Act

An individual who is elected or appointed to hold office as a Director shall, in writing, consent to the election or appointment before or within 10 days after the election or appointment, unless the Director has been elected or appointed where there is no break in the Director’s terms of office. If an elected or appointed Director consents in writing after the 10-day period, the election or appointment is valid.<sup>23</sup>

### 3.5 Ceasing to Hold Office

- (a) A Director shall automatically cease to hold office if the Director:
- (i) dies;
  - (ii) resigns office by delivering a written resignation to the Secretary, and the resignation shall be effective at the time it is received by the Secretary or at the time specified in the resignation, whichever is later, or
  - (iii) becomes disqualified by virtue of any of sections 3.3(a)(ii) through 3.3(a)(v).
- (b) Where there is a vacancy in the Board, the remaining Directors may exercise all the powers of the Board so long as a quorum remains in office.

### 3.6 Removal

In accordance with the Act,<sup>24</sup> the Members may remove any elected Director before the expiry of the Director’s term of office, and may elect any qualified individual as a Director to fill the vacancy for the remainder of the vacated term.

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<sup>23</sup> ONCA ss. 24(8) – (10). This provision does not need to be included in this By-law but serves as a reminder of this new requirement.

<sup>24</sup> ONCA, s. **Error! Bookmark not defined.** provides: (1) *The members of a corporation may, by ordinary resolution at a special meeting, remove from office any director or directors, except persons who are directors by virtue of their office.* (2) *A director elected by a class or group of members that has an exclusive right to elect the director may only be removed by an ordinary resolution of members of that class or group.* (3) *A vacancy created by the removal of a director may be filled at the meeting of the members at which the director is removed or under section **Error! Bookmark not defined.***

### **3.7 Election and Term**

Directors shall be elected and shall retire in rotation. The Directors referred to in section 3.1(a), 3.1(b)(vi), and 3.1(c) shall be elected for a term of up to three years, provided that each such Director shall hold office until the earlier of the date on which their office is vacated pursuant to sections 3.5 or 3.6 or until the end of the meeting at which their successor is elected or appointed. Four Directors shall retire from office each year subject to re-election as permitted by section 3.9.

### **3.8 Nomination Procedure for Election of Directors**

Nominations made for the election of Directors at a Members' meeting may only be made:

- (a) by the Board in accordance with the nominating and election procedure prescribed by the Board from time to time; or
- (b) by not less than five per cent of the Members pursuant to a proposal submitted to the Corporation in accordance with the requirements of the Act and this By-law.<sup>25</sup>

### **3.9 Maximum Terms**

- (a) Each Director referred to in section 3.1(a), 3.1(b)(vi), and 3.1(c) shall be eligible for re-election, provided that the Director shall not be elected or appointed for a term that will result in the Director serving more than twelve consecutive years. The Director may also be eligible for re-election for another term or terms to a maximum of twelve consecutive years if at least 12 months have elapsed since the termination of their last term. In determining a Director's length of service as a Director, service prior to the effective date of this By-law shall be included.
- (b) Despite the foregoing:
  - (i) a Director may, by Board resolution, have their maximum term as a Director extended for the sole purpose of that Director succeeding to the office of Chair or serving as Chair;
  - (ii) a Director may, in circumstances deemed exceptional by a two-third vote of the Board, have their maximum term as a Director extended by one year increments in the interests of Board continuity and succession planning; and
  - (iii) where a Director was appointed to fill an unexpired term of a Director, the partial term shall be excluded from the calculation of the maximum years of service.

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<sup>25</sup> ONCA, s. 56(5) provides: *A proposal may include nominations for the election of directors if the proposal is signed by not less than 5 per cent of the members of a class or group of members of the corporation entitled to vote at the meeting at which the proposal is to be presented or a lower percentage that is set out in the by-laws but this subsection does not preclude nominations being made at a meeting of the members.*

### 3.10 Filling Vacancies

So long as there is a quorum of Directors in office, any vacancy occurring in the Board may be filled by a qualified individual appointed for the remainder of the term by the Directors then in office, but the total number of Directors so appointed may not exceed one-third of the number of Directors elected at the previous annual Members' meeting. If there is not a quorum of the Board, or if there has been a failure to elect the number or minimum number of Directors provided for in the Articles, the Directors then in office shall, without delay, call a special Members' meeting to fill the vacancy. A Director appointed or elected to fill a vacancy holds office for the unexpired term of the Director's predecessor term.

### 3.11 Directors Remuneration

The Directors shall serve as such without remuneration and shall not, directly or indirectly, receive any profit from their position as such, provided that a Director may be reimbursed reasonable expenses incurred by the Director in the performance of their duties.<sup>26</sup>

## Article 4 Board Meetings

### 4.1 Board Meetings

- (a) The Board may appoint one or more days for regular Board meetings at a time and place named. A copy of any Board resolution fixing the time and place of regular Board meetings shall be given to each Director forthwith after being passed and, subject to the Act,<sup>27</sup> no other notice shall be required for any regular meeting.
- (b) In addition to section 4.1(a):
  - (i) the Board, the Chair, a Vice Chair, or the Chief Executive Officer may call a Board meeting; and
  - (ii) the Secretary shall call a Board meeting upon receipt of the written request of three Directors;

and such meeting shall be held at the time and place determined in the notice of meeting.

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<sup>26</sup> While ONCA, s. 47(1) permits remuneration of Directors, the *Charities Accounting Act* and common law continues to prohibit remuneration of Directors for serving as Directors. Generally, expenses can be reimbursed if they were incurred to carry out the charitable purposes, the amount is reasonable, and proper receipts are provided. Note that Ontario Reg. 4.01 made under the *Charities Accounting Act* allows Ontario charities to make payments to Directors (generally for most goods, services, and facilities) without a court order provided specific requirements are met. See [Guardianship Investigations: The Role of the Public Guardian and Trustee - Ministry of the Attorney General \(gov.on.ca\)](#) for additional details. The Corporation's Articles should also be considered for restrictions before any payments are made.

<sup>27</sup> ONCA, s. 34(3) provides: *A notice of a meeting of directors need not specify the purpose of or the business to be transacted at the meeting, unless the meeting is intended to deal with a matter referred to in subsection Error! Bookmark not defined.(2), in which case the notice must specify that matter.* Those matters are addressed in this By-law in section 4.1(c).