



Hôtel-Dieu Grace Healthcare

# ADMINISTRATIVE BY-LAW

Approved by the Board of Directors<sup>1</sup> - June 26, 2024

Approved by the Members<sup>2</sup> - June 27, 2024

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<sup>1</sup> See *Public Hospitals Act (Ontario) Regulation 965* section 4(1)(a) and *Not-for-Profit Corporations Act, 2010* (Ontario) section 17(1).

<sup>2</sup> See *Not-for-Profit Corporations Act, 2010* (Ontario) section 17(2).

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## ADMINISTRATIVE BY-LAW

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

### ARTICLE 1: OVERVIEW

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#### 1.1 Background

Hôtel-Dieu Grace Healthcare is a health care community which participates in the healing ministry of Jesus Christ, respecting the sanctity of life, dedicated to the service of the sick and the promotion of health. Hôtel-Dieu Grace Healthcare was founded by the Religious Hospitallers of St. Joseph in 1888, entered into an Alliance Agreement with the Salvation Army on December 1, 1993 to share services with the Salvation Army Grace Hospital, and since 2006, has been sponsored by CHI. The Hospital is recognized as a Roman Catholic Hospital, by the Roman Catholic Diocese of London, Ontario.

#### 1.2 Definitions

In this Administrative By-law, unless the context otherwise requires:

- (a) “**Administrative By-law**” means this by-law, a by-law of the Corporation concerning its management and administration, made in accordance with the *Public Hospitals Act (Ontario)*;<sup>3</sup>
- (b) “**Articles**” has the meaning given in the *Not-for-Profit Corporations Act, 2010 (Ontario)* and includes articles of incorporation and letters patent, as may be continued and/or amended;<sup>4</sup>

<sup>3</sup> *Public Hospitals Act (Ontario)* section 12(1) requires the Corporation to pass by-laws as prescribed by *Public Hospitals Act (Ontario) Regulation 965*. *Public Hospitals Act (Ontario) Regulation 965* section 4 in turn, requires the Corporation to pass by-laws in relation to the management and administration of the hospital and to provide for the organization and duties of the medical staff. Sometimes both the by-laws relating to management and administration of the hospital and the by-laws related to the organization and duties of the medical staff are combined in one by-law, but more typically, they are divided into two separate by-laws, as is the case here.

<sup>4</sup> Articles are what are commonly referred to as the charter or constitution – it is the document that brings a corporation into existence. The Corporation was originally incorporated by, *An Act to Incorporate the Religious Hospitallers of the Hôtel Dieu of St. Joseph of the Diocese of London, in the Province of Ontario* dated April 12, 1917 under the name, “Religious Hospitallers of the Hotel Dieu of St. Joseph. Subsequently:

- Letters patent of continuation dated June 15, 2012 were issued, which among other things, changed the name of the Corporation from, “The Religious Hospitallers of Hotel Dieu of St. Joseph of the Diocese of London” to, “Hôtel-Dieu Grace Hospital, Windsor”.
- Supplementary letters patent dated October 15, 2013 were issued, changing the name of the Corporation from, “Hôtel-Dieu Grace Hospital, Windsor” to, “Hôtel-Dieu Grace Healthcare”.

- (c) “**Board**” means the board of directors of the Corporation;<sup>5</sup>
- (d) “**Board Chair**” means the chair of the Board;<sup>6</sup>
- (e) “**Board Secretary**” means the secretary of the Board;<sup>7</sup>
- (f) “**Board Vice Chair**” means one or more vice chair(s) of the Board;<sup>8</sup>
- (g) “**Catholic Health Partners, Inc.**” means the corporation created by Letters Patent dated April 11, 2001 pursuant to the provisions of the *Canada Corporations Act* (Canada) and a Public Juridic Person of Pontifical Right recognized as such by the Roman Catholic Church and with membership currently comprised of: the General Superior, or designate; 4 Religious Institutes (Congregations), namely the Religious Hospitallers of St. Joseph, The Sisters of Charity of the Immaculate Conception of Saint John, Les Religieuses de Notre-Dame du Sacre-Coeur, La Congregation des Filles de Jesus; and the Chairperson, or designate of the New Brunswick Catholic Health Association and which operates as CHI;
- (h) “**CHI**” means Catholic Health International, an operating name of Catholic Health Partners, Inc.;
- (i) “**Chief Executive Officer**” means, in addition to ‘administrator’<sup>9</sup> as defined in the *Public Hospitals Act* (Ontario), the chief executive officer of the Corporation, who, subject to the authority of the Board, is responsible for the administration, organization, and management of the affairs of the Corporation;<sup>10</sup>
- (j) “**Chief Nursing Executive**” means the senior nurse employed by the Corporation, who reports directly to the Chief Executive Officer and is responsible for nursing services provided in the Hospital;<sup>11</sup>
- (k) “**Chief of Staff**” means the medical staff member appointed by the Board to serve as such in accordance with the *Public Hospitals Act* (Ontario) and the Professional Staff By-law;<sup>12</sup>
- (l) “**Corporation**” means Hôtel-Dieu Grace Healthcare;<sup>13</sup>

- Articles of Amendment dated October 26, 2022 were issued to transition the Corporation under the *Not-for-Profit Corporations Act, 2010* (Ontario), which came into force on October 19, 2021, replacing relevant portions of the *Corporations Act* (Ontario).

<sup>5</sup> Boards are comprised of directors, who collectively function as a decision-making body for the Corporation.

<sup>6</sup> *Not-for-Profit Corporations Act, 2010* (Ontario) section 42(2) requires the board to appoint a chair from among the directors. Chair of the board is distinct from chair of a meeting although often it is the chair of the board that chairs corporate meetings.

<sup>7</sup> *Not-for-Profit Corporations Act, 2010* (Ontario) does not require the appointment of a secretary but such an appointment is customary and is required by By-law section 8.2(b) and (c).

<sup>8</sup> *Not-for-Profit Corporations Act, 2010* (Ontario) does not require the appointment of a vice chair but such an appointment is customary.

<sup>9</sup> “Administrator” is defined in the *Public Hospitals Act (Ontario)* as the “person who has for the time being the direct and actual superintendence and charge of the hospital.”

<sup>10</sup> See *Public Hospitals Act (Ontario) Regulation 965* sections 3 and 4(1)(a)(v).

<sup>11</sup> See *Public Hospitals Act (Ontario) Regulation 965* sections 1(1), and 4(1)(a)(viii).

<sup>12</sup> See *Public Hospitals Act (Ontario) Regulation 965* sections 2(1.1)(c). A hospital may have a chief of staff or a chair of the medical advisory committee. Where a hospital has a chief of staff, as in this case, the chief of staff is appointed as chair of the medical advisory committee.

<sup>13</sup> The Corporation’s Ontario corporation number is 47042. The *Not-for-Profit Corporations Act, 2010* (Ontario) categorizes subject corporations as either public benefit or non-public benefit. Within the public benefit category, there are two

- (m) “**day**” unless otherwise specified as a business day, means a clear calendar day;
- (n) “**Director**” means an individual elected or appointed to the Board;<sup>14</sup>
- (o) “**ex-officio**” means “by virtue of office”, and includes all rights, responsibilities and power to vote unless otherwise specified;
- (p) “**Hospital**” means the public hospital operated by the Corporation;<sup>15</sup>
- (q) “**HSAA**” means the Hospital Service Accountability Agreement entered into between the Corporation and Ontario Health;<sup>16</sup>
- (r) “**MSAA**” means the Multi-Sector Service Accountability Agreement entered into between the Corporation and Ontario Health;<sup>17</sup>
- (s) “**Members**” means members of the Corporation as described in article 2 of this Administrative By-law;<sup>18</sup>
- (t) “**Membership President**” means the president of the Membership;
- (u) “**Membership Secretary**” means the secretary of the Membership;
- (v) “**Membership Vice-President**” means the vice-president of the Membership;
- (w) “**Patient Family Advisory Council**” means the council established in 2015 as an advisor to the executive leadership team of the Corporation;
- (x) “**Policy**” means a policy adopted by the Board in accordance with section 12.2 of this Administrative By-law;
- (y) “**Professional Staff**” means the Board-appointed professional/credentialed staff of the Hospital;<sup>19</sup>

subcategories: charitable and non-charitable. For more details about categorization see:

<https://www.ontario.ca/page/guide-not-profit-corporations-act-2010>. In this case, the Corporation is categorized as public benefit and charitable. The Corporation also has registered charity status under the *Income Tax Act* (Canada) having registration number 107493439 RR0001. Registered charities are categorized as charitable organizations, public foundations or private foundations, with the Corporation classified as a charitable organization.

<sup>14</sup> Directors are the individuals who are elected by the members to the board or appointed to the board by virtue of their office. This latter type of appointment is referred to as an ex officio appointment. “Directors,” “board members” and “members of the board” are synonymous terms and are in contrast to members of the Corporation and officers.

<sup>15</sup> The Corporation operates hospital facilities at 1453 Prince Road, Windsor, Ontario, referred to as the Tayfour Campus Site. It has been approved as a public hospital under the *Public Hospitals Act (Ontario)* and classified as a, “Group B” Hospital pursuant to *Public Hospitals Act (Ontario) Regulation 964*. There are classifications A-V. Group B hospitals are general hospitals having not fewer than 100 beds.

<sup>16</sup> Previously the HSAAs were with the local health integration networks, however in 2019 the Ontario government abolished the local health integration networks in favour of a single agency called Ontario Health.

<sup>17</sup> Previously the MSAAs were with the local health integration networks, however in 2019 the Ontario government abolished the local health integration networks in favour of a single agency called Ontario Health.

<sup>18</sup> Members of the Corporation are parallel to shareholders of a share capital corporation. As a non-share capital corporation, the Corporation has members and not shareholders. Members of the Corporation are in contrast to members of the Board.

<sup>19</sup> This may include, for examples: physicians, nurses, dentists etc.

- (z) "Professional Staff By-law" means the by-law of the Corporation concerning the Professional Staff, made in accordance with the *Public Hospitals Act (Ontario)*;<sup>20</sup>
- (aa) "**Religious Hospitallers of St. Joseph**" means the Religious Institute (Congregation) of the Religious Hospitallers of St. Joseph as recognized by the Roman Catholic Church; and
- (bb) "**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, an automated touch-tone telephone system, computer, or computer networks.<sup>10</sup>

### 1.3 Interpretation

In this Administrative By-law, unless the context otherwise requires:

- (a) **Statutory Terms.** In this Administrative By-law, unless context otherwise requires and other than as specifically defined in this Administrative By-law, all terms contained in this Administrative By-law that are defined in the *Not-for-Profit Corporations Act, 2010* (Ontario) shall have the meanings given to the terms in the *Not-for-Profit Corporations Act, 2010* (Ontario).
- (b) **Singular = Plural.** Words importing the singular shall include the plural and *vice versa*.
- (c) **Headings.** Headings are used for convenience of reference and do not affect the interpretation of this Administrative By-law.
- (d) **References to Statutes.** Any reference to a statute in this Administrative By-law includes, where the context requires, the statute and the regulations made under it, all as amended or replaced from time to time.
- (e) **Footnotes.** The footnotes in this Administrative By-law are not part of the Administrative By-law and are inserted for non-binding explanatory purposes only. They are not to be considered or taken into account for the purposes of construing or interpreting the provisions of this Administrative By-law, nor shall they be used in any way to clarify, modify or explain the effect of any such provisions.

### 1.4 Legal Context

This By-law is part of a larger legal framework, including in order of hierarchy:

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<sup>20</sup> *Public Hospitals Act (Ontario)* section 12(1) requires the Corporation to pass by-laws as prescribed by *Public Hospitals Act (Ontario) Regulation 965*. *Public Hospitals Act (Ontario) Regulation 965* section 4 in turn, requires the Corporation to pass by-laws in relation to the management and administration of the hospital and to provide for the organization and duties of the medical staff. Sometimes both the by-laws relating to management and administration of the hospital and the by-laws related to the organization and duties of the medical staff are combined in one by-law, but more typically, they are divided into two separate by-laws, as is the case here..

- (a) law of the land, including statutory law<sup>21</sup> and common law;<sup>22</sup>
- (b) Articles;<sup>23</sup>
- (c) by-laws<sup>24</sup> of the Corporation, consisting of this Administrative By-law containing provisions relating to corporate management and administration of the Corporation and a separate Professional Staff By-law, containing provisions relating to the organization and duties of the professional staff of the Hospital.
- (d) Policies;<sup>25</sup> and
- (e) contracts.<sup>26</sup>

## 1.5 Purposes

The purposes of the Corporation are as set out in the Articles.<sup>27</sup>

<sup>21</sup> Statutory law of particular relevance includes the *Public Hospitals Act (Ontario)* and the *Not-for-Profit Corporations Act, 2010* (Ontario). Most statutory laws are available at [CanLII](#).

<sup>22</sup> Common law, also sometimes referred to as “judge-made law,” or “caselaw” is the law that comes from court decisions. Most caselaw is available at [CanLII](#).

<sup>23</sup> Articles are what are commonly referred to as the charter or constitution – it is the document that brings a corporation into existence. The Corporation was originally incorporated by, *An Act to Incorporate the Religious Hospitallers of the Hôtel Dieu of St. Joseph of the Diocese of London, in the Province of Ontario* dated April 12, 1917 under the name, “Religious Hospitallers of the Hotel Dieu of St. Joseph. Subsequently:

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<sup>24</sup> *Public Hospitals Act (Ontario)* section 12(1) requires the Corporation to pass by-laws as prescribed by *Public Hospitals Act (Ontario) Regulation 965*. *Public Hospitals Act (Ontario) Regulation 965* section 4 in turn, requires the Corporation to pass by-laws in relation to the management and administration of the hospital and to provide for the organization and duties of the medical staff. Sometimes both the by-laws relating to management and administration of the hospital and the by-laws related to the organization and duties of the medical staff are combined in one by-law, but more typically, they are divided into two separate by-laws, as is the case here.

<sup>25</sup> Board resolutions of an enduring nature are often referred to as “board policy” and are often captured in a board policy manual or a series of board policies. These policies often refine by-laws concepts and should also be referred to when referring to the by-laws or considering corporate questions.

<sup>26</sup> Sometimes contracts with third parties can bind an organization to establishing certain policy. This is often the case with funding, grant, donor and accreditation program agreements. In this case, the *Affiliation Agreement*, HSAA, MSAA and CHI’s *Understanding your Sponsor Orientation Guide* (2<sup>nd</sup> ed 2021) are relevant here.

<sup>27</sup> The purposes are as follows: a) to promote health by establishing, equipping, staffing, maintaining, operating, conducting, and managing, on one or more sites, a hospital or hospitals or health facilities for the public with health care programs and services that may include, without limitation, active treatment programs and services, chronic care, complex continuing care, community health, emergency services, out-patient services, rehabilitation services, and therapy services; (b) to promote health by establishing, operating, and maintaining, for the public, laboratories, diagnostic imaging services, research facilities, therapeutic and rehabilitation facilities, pharmacies, dispensaries, and/or other facilities incidental to a hospital; (c) to advance education by teaching or training physicians, dentists, nurses, midwives, and other health care providers; (d) to advance education and promote health by conducting or funding research pertaining to health care including, without limitation, clinical trials, health promotion, disease prevention, and integrative medicine including alternative and complementary therapies, and disseminating the results of the research to the public; (e) to promote health by collaborating with government, governmental agencies, and other health services providers and participate in activities carried on to promote and improve the general health of the community; and (f) to promote health by providing other health care related programs and services to the public that may include, without limitation, long-term care, in-home health care, public health, community health, and mental health and addictions services.



**1.6 Values, Vision and Mission.** Any values,<sup>28</sup> vision<sup>29</sup> and mission<sup>30</sup> of the Corporation shall be within the scope of the purposes of the Corporation and shall be based on the philosophy of CHI.

**1.7 Health Equity**

The Corporation is committed to health equity and more specifically:

- (a) **French Language Services.** The Corporation is committed to the delivery of French language services. To reflect such commitment, the Corporation shall establish and implement a French languages services policy which complies with the requirements of MSAA.<sup>31</sup>
- (b) **Indigenous.** The Corporation is committed to contributing to advancing Indigenous health strategies and outcomes. To reflect such commitment, the Corporation shall develop and implement a health workplan that complies with the requirements of MSAA.

**ARTICLE 2: MEMBERS AND MEMBERS' MEETINGS**

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2.2	No Transfer of Membership	2.10	Voting
2.3	No Membership Fees	2.11	Chair of Meeting
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2.5	Location of Members' Meetings	2.13	Written Resolution in Lieu of Meeting
2.6	Annual Members' Meeting	2.14	Telephonic or Electronic Members' Meetings
2.7	Calling Meetings		
2.8	Quorum		

**2.1 Members**

The Members shall consist, ex officio,<sup>32</sup> of:

- (a) those individuals who are from time-to-time directors on the board of directors of CHI; and

<sup>28</sup> The current values of the Corporation are as follows: kindness, teamwork, expertise and social responsibility.

<sup>29</sup> The current vision of the Corporation is as follows: A trusted leader transforming healthcare and cultivating a healthier community.

<sup>30</sup> The current mission of the Corporation is: HDGH is a specialty hospital, driven by the faith and compassion of the Religious Hospitallers of St. Joseph who cared for the most vulnerable and marginalized. Our mission to provide physical, emotional social and spiritual care.

<sup>31</sup> The Corporation is not a "designated" public service agency, nor is it "identified" under the *French Language Services Act* (Ontario).

<sup>32</sup> *Not-for-Profit Corporations Act, 2010* (Ontario) section 48(2) permits ex officio membership to be provided for in the by-laws.

- (b) up to 1 designate of CHI, who is a resident in the area served by the Corporation. Any such designate is not required and may be changed from time to time by CHI, with or without notice.

## **2.2 No Transfer of Membership**

Membership is not transferrable.<sup>33</sup>

## **2.3 No Membership Fees**

No fees shall be payable by the Members.

## **2.4 Responsibilities of Membership**

The business and the property of the Corporation shall be under the jurisdiction and control of the Members, and the corporate authority necessary or incidental to any of the purposes of the Corporation as set forth in the Articles shall be vested in the Members. Without restricting the generality of the foregoing, the responsibilities of the Members shall include the following:

- (a) to approve any change in the values, vision, mission, purposes and/or nature, of the Corporation;
- (b) to amend the Articles and/or the Administrative By-Law;
- (c) to appoint the Board;
- (d) to appoint or dismiss the Chief Executive Officer of the Hospital;
- (e) to acquire or dispose of real estate of the Corporation, or the mortgaging or pledging as security any of the assets of the Corporation;
- (f) to approve the audited financial statements of the Corporation and to appoint the auditor of the Corporation;
- (g) to approve the annual capital and operating budgets of the Corporation;
- (h) to approve new construction projects, major renovations, expansions or improvements; and
- (i) to approve or disapprove the merger, amalgamation or dissolution of the Corporation.

## **2.5 Location of Members' Meetings**

Unless a Members' meeting is to be held entirely by telephonic or electronic means as contemplated by section 2.14 of this Administrative By-law, Members' meetings shall

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<sup>33</sup> See *Not-for-Profit Corporations Act, 2010* (Ontario) section 51.

be held at the registered office<sup>34</sup> of the Corporation or at any place in Ontario,<sup>35</sup> as the persons calling the meeting may determine.<sup>36</sup>

## 2.6 Annual Members' Meeting

The annual Members' meeting shall be held between the 1<sup>st</sup> day of April and the 31<sup>st</sup> day of July of each year,<sup>37</sup> at a date and time to be fixed by the Membership President, failing which by the Board.

## 2.7 Calling Meetings

- (a) **Authority to Call.** The Board,<sup>38</sup> the Membership President or any such number of Members that constitutes at least 10% of the Membership,<sup>39</sup> shall have the power to call, at any time, a Members' meeting.
- (b) **Means of Meeting.** Those calling the Members' meeting may determine that the meeting be held entirely by telephonic or electronic means or by any combination of in-person attendance and telephonic or electronic means that enables all persons entitled to attend the meeting to reasonably participate.

## 2.8 Quorum

A majority of the Members shall constitute a quorum at any Members' meeting.<sup>40</sup> If a quorum is present at the opening of a Members' meeting, the Members present may proceed with the business of the meeting, even if a quorum is not present throughout the meeting.<sup>41</sup>

## 2.9 Notice

- (a) **Method and Amount.** Notice of Members' meetings shall be given by one of the following methods:
  - (i) by sending it to each:
    - (A) Member;<sup>42</sup>
    - (B) Director;<sup>43</sup> and

<sup>34</sup> *Not-for-Profit Corporations Act, 2010* (Ontario) section 14 requires the Corporation to at all times have a registered office. Currently the registered office is at 1453 Prince Road, Windsor, Ontario. To change the registered office see *Not-for-Profit Corporations Act, 2010* (Ontario) section 14.

<sup>35</sup> See *Not-for-Profit Corporations Act, 2010* (Ontario) section 53(1).

<sup>36</sup> See *Not-for-Profit Corporations Act, 2010* (Ontario) section 53(5).

<sup>37</sup> Timing for annual Members' meetings has 2 overlays:

- *Not-for-Profit Corporations Act, 2010* (Ontario) section 52(1)(b) requires an annual members' meeting to be held not later than 15 months after the preceding annual members' meeting.
- *Public Hospitals Act (Ontario) Regulation 965* section 9(2) requires the annual members' meeting to be held between April 1<sup>st</sup> and July 31<sup>st</sup> each year.

<sup>38</sup> See *Not-for-Profit Corporations Act, 2010* (Ontario) section 52(2).

<sup>39</sup> Note, this is the threshold for the Members to requisition a special members' meeting per *Not-for-Profit Corporations Act, 2010* (Ontario) section 60.

<sup>40</sup> Note there is no statutory requirement for quorum for Members' meetings. In the absence of any quorum provision in the by-laws, quorum is a majority per *Not-for-Profit Corporations Act, 2010* (Ontario) section 57(1).

<sup>41</sup> See *Not-for-Profit Corporations Act, 2010* (Ontario) section 57(2).

<sup>42</sup> See *Not-for-Profit Corporations Act, 2010* (Ontario) section 54 for details regarding record date.

<sup>43</sup> See *Not-for-Profit Corporations Act, 2010* (Ontario) section 55(1)(b).

- (C) the auditor,<sup>44</sup> by one of the methods set out in section 13.1 of this Administrative By-law, addressed to the person at their latest address as shown in the Corporation's records not less than 10 days and not more than 50 days before the meeting;<sup>45</sup> or
  - (ii) in any other manner permitted by the *Public Hospitals Act* (Ontario).<sup>46</sup>
- (b) **Financial Information.** Not less than 21 days,<sup>47</sup> or a prescribed number of days, before each annual Members' meeting or before the signing of a resolution in lieu of the annual Members' meeting, the Corporation shall give a copy of the Board- approved financial statements, auditor's report and any further information respecting the financial position of the Corporation and the results of its operations required by the Articles or this Administrative By-law<sup>48</sup> to all Members who have informed the Corporation that they wish to receive a copy of those documents.
- (c) **Content.** Notice of a Members' meetings shall include:
  - (i) date and time of the meeting;<sup>49</sup>
  - (ii) place of the meeting,<sup>50</sup> unless it is to be held wholly by telephonic or electronic means;
  - (iii) instructions for attending and participating by electronic or telephonic means, if the meeting is to be held in whole or in part by telephonic or electronic means;
  - (iv) an agenda describing the nature of the business to be transacted in sufficient detail to allow a Member to make a reasoned judgment on the business;<sup>51</sup>
  - (v) the text of any special resolutions<sup>52</sup> to be submitted to the meeting; and
  - (vi) any proposals properly submitted by Members.

## 2.10 Voting

- (a) **1 Vote Per Member.** Each Member in attendance at a Members' meeting shall, subject to section 2.10(c) of this Administrative By-law, be entitled to 1 vote<sup>53</sup> on each matter.
- (b) **Majority Rules Unless Otherwise Required.** At all Members' meetings, every question shall be determined by a majority of votes cast, unless otherwise specifically provided by the the *Not-for-Profit Corporations Act, 2010*

<sup>44</sup> See *Not-for-Profit Corporations Act, 2010* (Ontario) section 55(1)(c).

<sup>45</sup> See *Not-for-Profit Corporations Act, 2010* (Ontario) section 55(1).

<sup>46</sup> See *Public Hospitals Act (Ontario)* section 17 which provides that notice of a members' meeting may be provided by newspaper publication, as specified in section 17(2), however, when amendments are proclaimed in force this provision will be amended to provide that meeting notices to members will be sufficiently given if published on the hospital website for at least 2 continuous weeks prior to the day of the meeting.

<sup>47</sup> See *Not-for-Profit Corporations Act, 2010* (Ontario) Regulation 395/21 section 26. The current prescribed number of days is 5 business days.

<sup>48</sup> No further information is currently required.

<sup>49</sup> See *Not-for-Profit Corporations Act, 2010* (Ontario) section 55(1).

<sup>50</sup> See *Not-for-Profit Corporations Act, 2010* (Ontario) section 55(1).

<sup>51</sup> See *Not-for-Profit Corporations Act, 2010* section 55(8).

<sup>52</sup> *Not-for-Profit Corporations Act, 2010* (Ontario) defines "special resolution" to in essence be a resolution passed by a 2/3rds vote at a properly constituted members' meeting or alternatively a written resolution signed by 100% of the members entitled to vote. Certain matters require special resolution, such as for example, amending the Articles.

<sup>53</sup> See *Not-for-Profit Corporations Act, 2010* (Ontario) section 48(6).

(Ontario) or this Administrative By-law.<sup>54</sup>

- (c) **In the Event of a Tie Vote.** If there is a tie vote at a Members' meeting, the chair of the meeting, if the chair is a Member, shall have a 2<sup>nd</sup> vote to break the tie.<sup>55</sup>
- (d) **No Proxy Voting.** Votes at all Members' meetings shall be cast by those Members in attendance at the meeting and not by proxy.<sup>56</sup>
- (e) **Method of Voting.** Subject to the Articles, voting at a Members' meeting shall be by show of hands unless a Member demands a ballot.<sup>57</sup> For clarity, in either case such vote may be conducted by telephonic or electronic means or by a combination of telephonic and electronic means and voting in person, if the Corporation makes these means available.<sup>58</sup>
- (f) **Demand for Ballot.** A Member may demand a ballot either before or after any vote by show of hands.<sup>59</sup> A Member may withdraw a demand for a ballot.<sup>60</sup>
- (g) **Minutes Are Proof.** Unless a ballot is demanded, an entry in the minutes of a meeting to the effect that the chair of the meeting declared a resolution to be carried or defeated is, in the absence of evidence to the contrary, proof of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.<sup>61</sup>

## 2.11 Chair of Meeting

The chair of a Members' meeting shall be:

- (a) the Membership President; or
- (b) the Membership Vice-President if the Membership President is absent, unable or unwilling to act; or
- (c) a chair elected by the Members present if the Membership President and Membership Vice-President are absent, unable or unwilling to act. The Membership Secretary shall preside at the election of the chair of the meeting but if the Membership Secretary is not present, the Members, from those present, shall choose a Member to preside at the election.

<sup>54</sup> *Not-for-Profit Corporations Act, 2010* (Ontario) defines "ordinary resolution" in essence to be a resolution passed by a majority vote at a properly constituted members meeting or alternatively a written resolution signed by 100% of the members entitled to vote. Certain decisions are required by the *Not-for-Profit Corporations Act, 2010* (Ontario) to be passed by extraordinary resolution (80% vote) such as for example a consent to exemption from financial review requirements and special resolution (2/3rds vote), such as, for example amending the Articles.

<sup>55</sup> *Not-for-Profit Corporations Act, 2010* (Ontario) section 48(6) provides that each member only has 1 vote unless the articles provide otherwise. In this case the Articles provide, "If there is a tie vote at a meeting of the members of the Corporation, the chair of the meeting shall have a second vote to break the tie."

<sup>56</sup> *Public Hospitals Act (Ontario)* section 16 provides that no member shall vote by proxy.

<sup>57</sup> See *Not-for-Profit Corporations Act, 2010* (Ontario) section 58(1).

<sup>58</sup> See *Not-for-Profit Corporations Act, 2010* (Ontario) section 58(3).

<sup>59</sup> See *Not-for-Profit Corporations Act, 2010* (Ontario) section 58(2).

<sup>60</sup> See *Not-for-Profit Corporations Act, 2010* (Ontario) section 58(2).

<sup>61</sup> See *Not-for-Profit Corporations Act, 2010* (Ontario) sections 59(4).

## 2.12 Adjourned Meetings

- (a) If within a ½ hour after the time appointed for a Members' meeting, the meeting has not commenced because a quorum is not present, the meeting shall stand adjourned until a day to be determined by the Membership President, failing which the Board.
- (b) If a Members' meeting is adjourned by 1 or more adjournments for an aggregate of less than 30 days,<sup>62</sup> no notice of the meeting that continues the adjourned meeting is required if all of the following are announced at the time of the adjournment:
  - (i) the time of the continued meeting;
  - (ii) if applicable, the place of the continued meeting; and
  - (iii) if applicable, instructions for attending and participating in the continued meeting by telephonic or electronic means that will be made available for the meeting, including if applicable, instructions for voting by such means at the meeting.
- (c) If a Members' meeting is adjourned by 1 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 2.9 of this Administrative By-law.<sup>63</sup>

## 2.13 Written Resolution in Lieu of Meeting

Except as provided in the *Not-for-Profit Corporations Act, 2010* (Ontario), a resolution signed by all of the Members is as valid as if it had been passed at a Members' meeting.<sup>64</sup>

## 2.14 Telephonic or Electronic Members' Meetings

A Members' meeting may be held entirely by telephonic or electronic means<sup>65</sup> or by any combination of in-person attendance and telephonic or electronic means, provided such means enables all persons entitled to attend the Members' meeting to reasonably participate.<sup>66</sup> A person who, through telephonic or electronic means, votes at or attends a Members' meeting is deemed to be present in person at the meeting.<sup>67</sup>

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<sup>62</sup> See *Not-for-Profit Corporations Act, 2010* (Ontario) section 55(5).

<sup>63</sup> See *Not-for-Profit Corporations Act, 2010* (Ontario) section 55(6).

<sup>64</sup> See *Not-for-Profit Corporations Act, 2010* (Ontario) section 59. Note written resolutions are not permitted per *Not-for-Profit Corporations Act, 2010* (Ontario) section 59(5) in respect to a meeting at which a statement is given by a Director under *Not-for-Profit Corporations Act, 2010* (Ontario) section 27(1) (where a director resigns or is opposing their removal) or by an auditor under *Not-for-Profit Corporations Act, 2010* (Ontario) section 75(4) (where the auditor resigns or is opposing their removal).

<sup>65</sup> See *Not-for-Profit Corporations Act, 2010* (Ontario) section 53(4).

<sup>66</sup> See *Not-for-Profit Corporations Act, 2010* (Ontario) section 53(6).

<sup>67</sup> See *Not-for-Profit Corporations Act, 2010* (Ontario) section 53(7).

## ARTICLE 3: BOARD

### CONTENTS

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3.2	Duties and responsibilities	3.8	Nomination Procedure for Election of Directors
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3.5	Ceasing to Hold Office	3.11	Directors' Remuneration
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### 3.1 Composition of Board

The composition of the Board shall be as follows:

- (a) **Number of Directors.** The Board shall consist of the number of Directors stated in its Articles,<sup>68</sup> provided that if the Articles set out a minimum<sup>69</sup> and maximum<sup>70</sup> number of Directors, the number of Directors on the Board shall be determined from time to time by special resolution<sup>71</sup> or such number as the Board determines from time to time,<sup>72</sup> providing that any decrease in the number shall not shorten the term of any incumbent Director.<sup>73</sup>
- (b) **How Constituted.** The Board shall be constituted as follows:
- (i) **Ex Officio Voting Directors.** The following shall ex officio,<sup>74</sup> be voting Directors:
- (A) Designates of CHI to a maximum of 2; and
  - (B) Designates of the Patient Advisory Council to a maximum of 2.
- (ii) **Ex Officio Non-Voting Directors.** The following shall ex officio, be non-voting Directors:
- (A) Chief Executive Officer;<sup>75</sup>
  - (B) President of the Professional Staff;<sup>76</sup>
  - (C) Chief of Staff;<sup>77</sup> and
  - (D) Chief Nursing Executive.<sup>78</sup>
- (iii) **Elected Directors.** The remaining number of Directors shall be voting and subject to sections 3.6 and 3.10 of this Administrative By-law and

<sup>68</sup> See *Not-for-Profit Corporations Act, 2010* (Ontario) section 22(3). The Articles in this case provide for minimum of 10 and maximum of 25 Directors.

<sup>69</sup> *Not-for-Profit Corporations Act, 2010* (Ontario) section 22(1) requires at least 3 directors and the Articles set the minimum at 10 Directors.

<sup>70</sup> The Articles set the maximum at 25 Directors.

<sup>71</sup> See *Not-for-Profit Corporations Act, 2010* (Ontario) section 22(2). *Not-for-Profit Corporations Act, 2010* (Ontario) defines "special resolution" in essence to be a resolution passed by a 2/3rds vote at a properly constituted members meeting or alternatively a written resolution signed by 100% of the members entitled to vote.

<sup>72</sup> See *Not-for-Profit Corporations Act, 2010* (Ontario) section 22(2).

<sup>73</sup> See *Not-for-Profit Corporations Act, 2010* (Ontario) section 21.

<sup>74</sup> See *Not-for-Profit Corporations Act, 2010* (Ontario) section 23(4) provides for persons to be directors by virtue of their office, also known as ex officio.

<sup>75</sup> See *Public Hospitals Act (Ontario) Regulation 965* section 2(1.1)(a).

<sup>76</sup> See *Public Hospitals Act (Ontario) Regulation 965* section 2(1.1)(b).

<sup>77</sup> See *Public Hospitals Act (Ontario) Regulation 965* section 2(1.1)(c).

<sup>78</sup> See *Public Hospitals Act (Ontario) Regulation 965* section 2(1.1)(d).

provided they meet the qualifications set out in section 3.3 of this Administrative By-law, shall be elected by the Members at the annual Members' meeting.

### 3.2 Duties and Responsibilities

Subject to the *Not-for-Profit Corporations Act, 2010* (Ontario), 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.<sup>79</sup>

### 3.3 Qualifications of Directors

- (a) **Qualifications.** No individual shall be qualified for election or appointment as a Director if the individual:
- (i) is under 18 years old;<sup>80</sup>
  - (ii) has been found under the *Substitute Decisions Act, 1992* or under the *Mental Health Act* to be incapable of managing property;<sup>81</sup>
  - (iii) has been found to be incapable by any court in Canada or elsewhere;<sup>82</sup>
  - (iv) has the status of a bankrupt;<sup>83</sup>
  - (v) is an "ineligible individual" as defined in the *Income Tax Act* (Canada) or any regulations made under it;<sup>84</sup>
  - (vi) does *not* have their principal residence or carry on business within Windsor -Essex, or the Erie St. Clair sub-region area (Chatham-Kent, Sarnia Lambton) of Ontario, Canada; and
  - (vii) is a current or former employee or Professional Staff member or their spouse, except as provided under the *Public Hospitals Act* (Ontario),<sup>85</sup> except by resolution of the Board.
- (b) **Board's Decision Final.** The Board's decision as to whether or not a candidate is qualified to stand for election shall be final.

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<sup>79</sup> Subject to the *Not-for-Profit Corporations Act, 2010*, (Ontario) sections 15(1) and 16(1) give the corporation the rights, powers and privileges of a natural person.

<sup>80</sup> See *Not-for-Profit Corporations Act, 2010* (Ontario) section 23(1)2.

<sup>81</sup> See *Not-for-Profit Corporations Act, 2010* (Ontario) section 23(1)3.

<sup>82</sup> See *Not-for-Profit Corporations Act, 2010* (Ontario) section 23(1)4.

<sup>83</sup> See *Not-for-Profit Corporations Act, 2010* (Ontario) section 23(1)5.

<sup>84</sup> See *Income Tax Act* (Canada) section 149.1(1) for full details regarding the meaning of "ineligible individual." In general terms, an individual is ineligible if he or she:

- has been convicted of an offence
  - related to financial dishonesty
  - relevant to the operation of the organization
- was connected to an organization whose registration was revoked for a serious breach of the requirements for registration. The connection was as:
  - a director, trustee, officer, or like official
  - an individual in a position of management or control
  - a promoter of a tax shelter, and participating in that tax shelter caused the revocation of an organization's registration

For a further discussion on the topic of "ineligible individuals" see: *Ineligible Individuals ... And The Problem Gets Worse. Public Hospitals Act (Ontario) Regulation 965* section 2(1.1) provides for the ex officio appointment of the Chief Executive Officer, the president of the Professional Staff, the Chief of Staff and Chief Nursing Executive.

<sup>85</sup>



### 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,<sup>86</sup> unless the Director has been elected or appointed where there is no break in the Director's terms of office.<sup>87</sup> If an elected or appointed Director consents in writing after the 10 day period, the election or appointment is valid.<sup>88</sup>

### 3.5 Ceasing to Hold Office

- (a) A Director shall automatically cease to hold office if the Director:
  - (i) dies;<sup>89</sup>
  - (ii) resigns<sup>90</sup> office by delivering a written<sup>91</sup> 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,<sup>92</sup> or
  - (iii) becomes disqualified by virtue of any of sections 3.3(a)(ii) through 3.3(a)(vii) of this Administrative By-law.<sup>93</sup>
- (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 *Not-for-Profit Corporations Act, 2010* (Ontario), the Members may remove<sup>94</sup> 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.

### 3.7 Election and Term

Directors shall be elected and shall retire in rotation.<sup>95</sup> The Directors referred to in section 3.1(b)(iii) of this Administrative By-law shall be elected for 1 to 3 year terms,<sup>96</sup> provided that:

- (a) The 1<sup>st</sup> full term of a Director shall be limited to 1 year. For greater clarity, where a Director is appointed to fill an unexpired term of a Director, the partial term shall not be considered to be their 1<sup>st</sup> full term.
- (b) 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 of this Administrative By-law or

<sup>86</sup> See *Not-for-Profit Corporations Act, 2010* (Ontario) section 24(8).

<sup>87</sup> See *Not-for-Profit Corporations Act, 2010* (Ontario) section 24(9).

<sup>88</sup> See *Not-for-Profit Corporations Act, 2010* (Ontario) section 24(10).

<sup>89</sup> See *Not-for-Profit Corporations Act, 2010* (Ontario) section 25(1).

<sup>90</sup> See *Not-for-Profit Corporations Act, 2010* (Ontario) section 25(1).

<sup>91</sup> Ontario Regulation 395/21 section 7 requires the resignation to be in writing.

<sup>92</sup> See *Not-for-Profit Corporations Act, 2010* (Ontario) section 25(2).

<sup>93</sup> See *Not-for-Profit Corporations Act, 2010* (Ontario) section 25(1).

<sup>94</sup> See *Not-for-Profit Corporations Act, 2010* (Ontario) sections 26(1) and 27(1)(b).

<sup>95</sup> See *Public Hospitals Act (Ontario)* section 12(4).

<sup>96</sup> See *Public Hospitals Act (Ontario)* section 12(4) which provides for a maximum term of 5 years but this provision limits it to 3 years.

until the end of the meeting at which their successor is elected or appointed.

- (c) 4 Directors shall retire from office each year,<sup>97</sup>subject to re-election as permitted by section 3.9 of this Administrative By-law.

### 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<sup>98</sup> in accordance with the nominating and election procedure prescribed by the Board from time to time;
- (b) by not less than 5% of the Members pursuant to a proposal submitted to the Corporation in accordance with the requirements of the *Not-for-Profit Corporations Act, 2010* (Ontario) and this Administrative By-law;<sup>99</sup> and/or
- (c) by the meeting (from the floor).<sup>100</sup>

### 3.9 Maximum Terms

- (a) **9 Year Maximum.** Each Director referred to in section 3.1(b)(iii) of this Administrative By-law 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 9 consecutive years. The Director may also be eligible for re-election for another term or terms (to a maximum of 9 consecutive years) if at least 1 year has 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 Administrative By-law shall be included.
- (b) **Exceptions.** Despite the foregoing:
  - (i) a Director may, by Board resolution followed by a Members' resolution have their maximum term as a Director extended provided it may only be extended once and only by 1 additional year.
  - (ii) 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 Board Chair or serving as Board Chair; 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.

### 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,<sup>101</sup> but the total number of Directors so appointed may not

<sup>97</sup> See *Public Hospitals Act (Ontario)* section 12(4).

<sup>101</sup> See *Not-for-Profit Corporations Act, 2010* (Ontario) section 28(1).

<sup>101</sup> See *Not-for-Profit Corporations Act, 2010* (Ontario) section 28(1).

<sup>101</sup> See *Not-for-Profit Corporations Act, 2010* (Ontario) section 28(1).

<sup>101</sup> See *Not-for-Profit Corporations Act, 2010* (Ontario) section 28(1).

exceed 1/3 of the number of Directors elected at the previous annual Members' meeting.<sup>102</sup> If there is not a quorum of the Board, or if there has been a failure to elect the number or minimum<sup>103</sup> 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.<sup>104</sup> A Director appointed or elected to fill a vacancy holds office for the unexpired term of the Director's predecessor's term.<sup>105</sup>

### 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>106</sup>

## ARTICLE 4: BOARD MEETINGS

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4.5	1 <sup>st</sup> Board Meeting after Annual Members' Meeting	4.10	Adjournment of the Meeting

### 4.1 Board Meetings

- (a) **Regular.** The Board may appoint 1 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 *Not-for-Profit Corporations Act, 2010* (Ontario), no other notice shall be required for any regular meeting.

<sup>102</sup> See *Not-for-Profit Corporations Act, 2010* (Ontario) section 24(7).

<sup>103</sup> The Articles set the minimum at 10 Directors.

<sup>104</sup> See *Not-for-Profit Corporations Act, 2010* (Ontario) section 28(2).

<sup>105</sup> See *Not-for-Profit Corporations Act, 2010* (Ontario) section 28(7).

<sup>106</sup> *Not-for-Profit Corporations Act, 2010* (Ontario) section 47(1) appears to permit remuneration of Directors but there are other overlays to consider in the context of charities and public hospitals. At common law, in the absence of a court order, it used to be that directors of charities could not personally benefit from the charity. This extended to being paid as an employee or in any other capacity or having an interest in a contract. Effective April 1, 2018, regulations were passed under the *Charities Accounting Act* (Ontario) relaxing these rules but only to a limited extent. For details see, Ontario Ministry of the Attorney General publication, *Payments to Directors & Connected Persons*. Further, it is notable that the special provisions in the Articles provide as follows: "No director shall receive remuneration for services provided in the capacity as a director, although they may be paid reasonable expenses incurred by them in the performance of their duties. Unless otherwise prohibited by the corporation, a director may be compensated for services other than as a director pursuant to the regulation made under the Charities Accounting Act, or with court approval or an order made under section 13 of the Charities Accounting Act." It is notable that the chief executive officer is a statutory exception to the common law rule per *Public Hospitals Act (Ontario) Regulation 965* section 2(1.1)(a) which provides for ex officio appointment to the board.

- (b) **Other.** In addition to section 4.1(a) of this Administrative By-law, the Board Chair, a Board Vice Chair or the Chief Executive Officer may call a Board meeting.
- (c) **Agenda.** Notice of a Board meeting need not specify the purpose of or the business to be transacted at the meeting, unless the meeting is intended to deal with any of the following matters, in which case the notice must specify that matter:<sup>107</sup>
  - (i) to submit to the Members any question or matter requiring their approval;
  - (ii) to fill a vacancy among the Directors or in the position of auditor;
  - (iii) to appoint additional Directors;
  - (iv) to issue debt obligations, except as authorized by the Directors;
  - (v) to approve any annual financial statements; or
  - (vi) to adopt, amend, or repeal by-laws.

## 4.2 Telephonic or Electronic Meetings

A Board or Board committee meeting may be held entirely by telephonic or electronic means, or by any combination of in-person attendance and telephonic or electronic means,<sup>108</sup> provided that all persons attending the meeting are able to communicate with each other simultaneously and instantaneously.<sup>109</sup> A person who, through telephonic or electronic means, attends a Board or Board committee meeting is deemed to be present in-person at the meeting.<sup>110</sup>

## 4.3 Notices

- (a) **Amount of Notice.** Notice of Board meetings, other than regular meetings, shall be given to all Directors at least 36 hours prior to the meeting. The Board Chair, a Board Vice Chair, or the Chief Executive Officer may call a meeting on less notice, by means deemed appropriate, provided that notice is given to all Directors and the majority of the Directors consent to holding the meeting.
- (b) **Exception.** Notice of an adjourned Board meeting is not required to be given if all of the following are announced at the time of an adjournment:
  - (i) the time of the continued meeting;<sup>111</sup>
  - (ii) if applicable, the place of the continued meeting;<sup>112</sup> and
  - (iii) if applicable, instructions for attending and participating in the continued meeting by the telephonic or electronic means that will be made available for the meeting, including, if applicable, instructions for voting by such means at the meeting.<sup>113</sup>

<sup>107</sup> See *Not-for-Profit Corporations Act, 2010* (Ontario) section 34(3) and section 36(2) which lists the purposes/business that must be specified in a notice of meeting.

<sup>108</sup> See *Not-for-Profit Corporations Act, 2010* (Ontario) sections 34(1) and 34(2).

<sup>109</sup> See *Not-for-Profit Corporations Act, 2010* (Ontario) section 34(8).

<sup>110</sup> See *Not-for-Profit Corporations Act, 2010* (Ontario) sections 34(9).

<sup>111</sup> See *Not-for-Profit Corporations Act, 2010* (Ontario) section 34(1).

<sup>112</sup> *Not-for-Profit Corporations Act, 2010* (Ontario) section 34(3.1).

<sup>113</sup> *Not-for-Profit Corporations Act, 2010* (Ontario) section 34(3.2).

#### 4.4 Quorum

A majority of the voting Directors shall constitute a quorum.<sup>114</sup>

#### 4.5 1st Board Meeting after Annual Members' Meeting

If a quorum of Directors is present, the Board may, without notice, hold a meeting immediately following the annual Members' meeting.<sup>115</sup>

#### 4.6 Persons Entitled to be Present

Guests may attend Board meetings with the consent of the meeting on the invitation of the Board Chair or Chief Executive Officer. The Board may adopt a Policy from time to time on the attendance of the public at Board meetings.

#### 4.7 Voting

- (a) Each voting Director in attendance at a Board meeting shall be entitled to 1 vote on each matter.
- (b) As required by the regulations under the *Public Hospitals Act* (Ontario), the Directors referred to in section 3.1(b)(ii) of this Administrative By-law shall not be entitled to vote as Directors but shall otherwise be entitled to notice of, to attend, and to participate in, Board meetings and to receive the materials that are distributed to voting Directors.
- (c) A Director shall not be entitled to vote by proxy.<sup>116</sup>
- (d) Every question arising at a Board meeting shall be determined by a majority of votes cast, unless otherwise specifically provided by statute or by this Administrative By-law.
- (e) If there is a tie vote at a Board meeting, the chair of the meeting shall not have a 2nd vote to break the tie.
- (f) The vote on any question shall be taken by secret ballot if so demanded by any Director in attendance and entitled to vote. The chair of the meeting shall count the ballots. Otherwise, a vote shall be by a show of hands. For clarity, in either case such vote may be conducted by telephonic or electronic means or by any combination of voting in person and by telephonic or electronic means, if the Corporation makes these means available.
- (g) Unless a ballot is demanded, an entry in the minutes of a meeting to the effect that the chair of the meeting declared a resolution to be carried or defeated is,

<sup>114</sup> See *Not-for-Profit Corporations Act, 2010* (Ontario) section 34(2). Note, quorum is calculated on the number of directors a corporation should have – not on the number it actually has.

<sup>115</sup> It is often customary to open a board meeting immediately after closing the annual members' meeting at which the new board is elected, so that the new board can then appoint board officers.

<sup>116</sup> Many organizations mistakenly believe that directors are permitted to vote by proxy or through an alternate. It is well-established under the common law, that the rules of fiduciary duty applicable to directors prohibit a director from delegating his or her right to vote to another individual. This common law rule has been codified by *Public Hospitals Act* (Ontario) section 12 and *Not-for-Profit Corporations Act, 2010* (Ontario) section 23(5).

in the absence of evidence to the contrary, proof of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.<sup>117</sup>

#### 4.8 Written Resolutions in Lieu of Meeting

- (a) **Board.** A resolution signed by all of the Directors entitled to vote on that resolution at a Board meeting is as valid as if it had been passed at a Board meeting.<sup>118</sup>
- (b) **Committee.** A resolution signed by all of the Board committee members entitled to vote on that resolution at a Board committee meeting is as valid as if it had been passed at a Board committee meeting.<sup>119</sup>

#### 4.9 Consent and Dissent of Director

- (a) A Director who is present at a Board or Board committee meeting is deemed to have consented to any resolution passed or action taken at the meeting, unless:<sup>120</sup>
  - (i) the Director's dissent is entered in the meeting minutes;
  - (ii) the Director requests that their dissent be entered in the meeting minutes;
  - (iii) the Director gives their dissent to the secretary of the meeting before the meeting is terminated; or
  - (iv) the Director submits their written dissent to the Corporation immediately after the meeting is terminated.
- (b) A Director who votes for or consents to a resolution is not entitled to dissent under this section.<sup>121</sup>
- (c) A Director who was not present at a meeting at which a resolution was passed or action taken is deemed to have consented to the resolution or action unless within 7 days after becoming aware of the resolution, the Director:<sup>122</sup>
  - (i) causes their written dissent to be placed with the meeting minutes; or
  - (ii) submits their written dissent to the Corporation.

#### 4.10 Adjournment of the Meeting

If within a ½ hour after the time appointed for a Board meeting a quorum is not present, the meeting shall stand adjourned until a day within 2 weeks to be determined by the chair of the meeting.

<sup>117</sup> See *Not-for-Profit Corporations Act, 2010* (Ontario) section 38.

<sup>118</sup> See *Not-for-Profit Corporations Act, 2010* (Ontario) section 35(1).

<sup>119</sup> See *Not-for-Profit Corporations Act, 2010* (Ontario) section 35(1).

<sup>120</sup> See *Not-for-Profit Corporations Act, 2010* (Ontario) sections 45(1) and (2) and *Ontario Regulation 395/21* section 7(8).

<sup>121</sup> See *Not-for-Profit Corporations Act, 2010* (Ontario) sections 45(1) and (2)..

<sup>122</sup> See *Not-for-Profit Corporations Act, 2010* (Ontario) section 45(3) and (2) and *Ontario Regulation 395/21* section 7.

## ARTICLE 5: CONFLICT OF INTEREST DISCLOSURE<sup>123</sup>

### CONTENTS

5.1 Disclosure of Conflict	5.5 Do Not Attend Meeting or Vote
5.2 Timing for Directors	5.6 Quorum
5.3 Timing for Officers	5.7 General Notices
5.4 Matters Not Requiring Approval	5.8 Board Policy

#### 5.1 Disclosure of Conflict

A Director or officer who:

- (a) is a party to a material contract or transaction or proposed material contract or transaction with the Corporation; or
- (b) is a director or officer of, or has a material interest in, any person who is a party to a material contract or transaction or proposed material contract or transaction with the Corporation,

shall disclose to the Corporation or request to have entered in the minutes of Board meetings the nature and extent of their interest.<sup>124</sup>

#### 5.2 Timing for Directors

The disclosure required by section 5.1 of this Administrative By-law must be made, in the case of a Director:<sup>125</sup>

- (a) at the meeting at which a proposed contract or transaction is first considered;<sup>126</sup>
- (b) if the Director was not then interested in a proposed contract or transaction, at the first meeting after the Director becomes so interested;
- (c) if the Director becomes interested after a contract is made or transaction is entered into, at the first meeting after the Director becomes so interested; or
- (d) if an individual who is interested in a contract or transaction later becomes a

<sup>123</sup> It is notable that the common law imposes a fiduciary duty on directors – also known as the duty of loyalty. This duty requires directors to act honestly, in good faith and in the best interests of the corporation served. It is a breach of fiduciary duty if a director has any other factors, other than the corporate best interests in mind, when participating in the collective decision making of the board. To capture certain problematic contexts, but without limiting the larger duty to act in the best interests of the corporation served, a director's fiduciary duty also includes the sub-duty to avoid conflicts of interest and the sub-duty to preserve independent judgment. *Not-for-Profit Corporations Act, 2010* (Ontario) sections 41 and 43 codify these common law duties to some extent. This article 5 of the Administrative By-law tracks these provisions but should not be assumed to capture completely the common law duties and which may additionally be addressed in board policy.

<sup>124</sup> See *Not-for-Profit Corporations Act, 2010* (Ontario) section 41(1) and *Ontario Regulation 395/21* section 7 which requires the disclosure to be made in writing 41(2).

<sup>125</sup> See *Not-for-Profit Corporations Act, 2010* (Ontario) section 4.

<sup>126</sup> This applies whether or not the Director is in attendance at the meeting.

Director, at the first meeting after the individual becomes a Director.<sup>127</sup>

### **5.3 Timing for Officers**

The disclosure required by section 5.1 of this Administrative By-law must be made, in the case of an officer who is not a Director:<sup>128</sup>

- (a) forthwith after the officer becomes aware that the contract or transaction or proposed contract or transaction is to be considered or has been considered at a Board meeting;
- (b) if the officer becomes interested after a contract is made or transaction is entered into, forthwith after the officer becomes so interested; or
- (c) if an individual who is interested in a contract or transaction later becomes an officer, forthwith after the individual becomes an officer.

### **5.4 Matters Not Requiring Approval**

If the contract or transaction or proposed contract or transaction in respect of which a disclosure is required to be made for the purposes of section 5.1(a) of this Administrative By-law is one that, in the ordinary course of the Corporation's business, would not require approval of the Board or Members, then the Director or officer shall disclose to the Corporation, or request to have entered in the minutes of Board meetings, the nature and extent of their interest forthwith after the Director or officer becomes aware of the contract or transaction or proposed contract or transaction.<sup>129</sup>

### **5.5 Do Not Attend Meeting or Vote**

Except as permitted by the *Not-for-Profit Corporations Act, 2010* (Ontario), a Director referred to in section 5.1(a) of this Administrative By-law shall not attend any part of a Board meeting during which the contract or transaction is discussed, and shall not vote on any resolution to approve the contract or transaction.<sup>130</sup>

### **5.6 Quorum**

If no quorum exists for the purposes of voting on a resolution to approve a contract or transaction only because one or more Director(s) are not permitted to be present at the meeting by virtue of section 5.5 of this Administrative By-law, the remaining Directors are deemed to constitute a quorum for the purpose of voting on the resolution.<sup>131</sup>

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<sup>127</sup> See *Not-for-Profit Corporations Act, 2010* (Ontario) section 41(2).

<sup>128</sup> See *Not-for-Profit Corporations Act, 2010* (Ontario) section 41(3).

<sup>129</sup> See *Not-for-Profit Corporations Act, 20writi10* (Ontario) section 41(4).

<sup>130</sup> See *Not-for-Profit Corporations Act, 20writi10* (Ontario) section 41(5).

<sup>131</sup> See *Not-for-Profit Corporations Act, 2010* (Ontario) section 41(6).



## 5.7 General Notices

For the purposes of section 5.1 of this Administrative By-law, a general notice to the Board by a Director or officer disclosing that the individual is a director or officer of, or has a material interest in, a person, or that there has been a material change in the Director's or officer's interest in the person, and is to be regarded as interested in any contract or transaction entered into with that person, is sufficient disclosure of interest in relation to any such contract or transaction.<sup>132</sup>

## 5.8 Board Policy

The provisions of this Article are in addition to any Board-approved conflict of interest policy.

# ARTICLE 6: PROTECTION AND INDEMNIFICATION OF DIRECTORS, OFFICERS AND OTHERS

## CONTENTS

6.1 Indemnities

6.3 Directors and Officers Insurance

6.2 Advance of Money

## 6.1 Indemnities

Subject to applicable legal requirements:<sup>133</sup>

- (a) The Corporation shall indemnify a Director or officer of the Corporation, a former Director or officer of the Corporation, or an individual who acts or acted at the Corporation's request as a director or officer, or in a similar capacity, of another entity, 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 Corporation or other entity.<sup>134</sup>
- (b) The Corporation shall not indemnify an individual under section 6.1(a) of this Administrative By-law unless:

<sup>132</sup> See *Not-for-Profit Corporations Act, 2010* (Ontario) section 41(8).

<sup>133</sup> See *Charities Accounting Act (Ontario) Regulation 4/01* section 2(5) requires the Board to consider the following factors in this context: 1. The degree of risk to which the director or officer is or may be exposed. 2. Whether, in practice, the risk cannot be eliminated or significantly reduced by means other than the indemnity or insurance. 3. Whether the amount or cost of the insurance is reasonable in relation to the risk. 4. Whether the cost of the insurance is reasonable in relation to the revenue available to the director or officer. 5. Whether it advances the administration and management of the property to purchase the insurance. Further section 2(7) provides no indemnity shall be paid if doing so would result in the amount of the debts and liabilities exceeding the value of the property or, if [it would] render the corporation insolvent and section 2(8) provide it may only be paid from property to which the personal liability relates and not from any other charitable property.

<sup>134</sup> See *Not-for-Profit Corporations Act, 2010* (Ontario) section 46.

- (i) the individual acted honestly and in good faith<sup>135</sup> with a view to the best interests of the Corporation or other entity, as the case may be;<sup>136</sup> and
  - (ii) if the matter is a criminal or administrative proceeding that is enforced by a monetary penalty, the individual had reasonable grounds for believing that their conduct was lawful.
- (c) The indemnity provided for in section 6.1(a) of this Administrative By-law shall not apply to any liability that a Director or officer, or former Director or officer, of the Corporation, or individual, may sustain or incur as the result of any act or omission as a Professional Staff member.

## 6.2 Advance of Money

The Corporation may advance money to an individual referred to in section 6.1(a) of this Administrative By-law for the costs, charges, and expenses of an action or proceeding referred to in that section, but the individual shall repay the money if the individual does not fulfil the conditions set out in section 6.1(c) of this Administrative By-law.<sup>137</sup>

## 6.3 Directors and Officers Insurance

Subject to the requirements of the *Charities Accounting Act (Ontario) Regulation 4/01*,<sup>138</sup> the Corporation shall purchase and maintain insurance for the benefit of an individual referred to in this section 6.3 of this Administrative By-law against any liability incurred by the individual:

- (a) in the individual's capacity as a Director or officer of the Corporation; or
- (b) in the individual's capacity as a Director or officer, or in a similar capacity, of another entity, if the individual acts or acted in that capacity at the Corporation's request.

<sup>135</sup> Ontario *Charities Accounting Act Regulation 4/01* section 2(2) prohibits indemnification for liability that relates to a failure to act honestly or in good faith in the performance of duties.

<sup>136</sup> See *Not-for-Profit Corporations Act, 2010* (Ontario) section 46(3).

<sup>137</sup> See *Not-for-Profit Corporations Act, 2010* (Ontario) section 46(2).

<sup>138</sup> *Charities Accounting Act (Ontario) Regulation 4/01* section 2(5) requires the Board to consider the following factors in this context: 1. The degree of risk to which the director or officer is or may be exposed. 2. Whether, in practice, the risk cannot be eliminated or significantly reduced by means other than the indemnity or insurance. 3. Whether the amount or cost of the insurance is reasonable in relation to the risk. 4. Whether the cost of the insurance is reasonable in relation to the revenue available to the director or officer. 5. Whether it advances the administration and management of the property to purchase the insurance. Further section 2(6) provides that the purchase of insurance must not, at the time of the purchase, unduly impair the carrying out of the religious, educational, charitable or public purpose [of the Corporation] and section 2(7) provides no insurance shall be purchased if doing so would result in the amount of the debts and liabilities exceeding the value of the property or, if [it would] render the corporation insolvent and section 2(8) provides it may only be purchased from property to which the personal liability relates and not from any other charitable property.

## ARTICLE 7: COMMITTEES

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| 7.1 Committees   | 7.4 Procedures at Committee Meetings |
| 7.2 Functions, Duties, Responsibilities and Powers of Board Committees | 7.5 Delegation to a Committee        |
| 7.3 Board Committee Members, Chair                                     |                                      |

#### 7.1 Committees

The Board may, from time to time, establish:

- (a) standing committees, being those committees whose duties are normally continuous; and
- (b) special committees, being those committees appointed for specific duties whose mandate shall expire with the completion of the tasks assigned.

#### 7.2 Functions, Duties, Responsibilities and Powers of Board Committees

The Board shall provide for the functions, duties, responsibilities, and powers of the Board committees in the Board resolution by which a Board committee is established or in Board-approved terms of reference or general committee policy.<sup>139</sup>

#### 7.3 Board Committee Members, Chair

- (a) Unless otherwise provided by by-law or by Board resolution:
  - (i) the Board shall appoint the chair, vice chair (if any), and members of each Board committee;
  - (ii) each chair and vice chair of a Board committee shall be a Director;
  - (iii) the Board committees may include members who are not Directors (other than a committee referred to in section 7.5 of this Administrative By-law or an audit committee,<sup>140</sup> if any);
  - (iv) a majority of the members of any Board committee shall be elected Directors; and
  - (v) the Chair, Chief Executive Officer and CHI Director shall be *ex-officio* members of all Board committees.
- (b) The Board may remove any chair, vice chair, or Board committee member from any Board committee at any time.

<sup>139</sup> See relevant Board policies.

<sup>140</sup> See *Not-for-Profit Corporations Act, 2010* (Ontario) section 80(1) which requires that a majority of members of any audit committee not be officers or employees of the corporation or of any affiliates.

## 7.4 Procedures at Committee Meetings

Procedures at and quorum for Board committee meetings shall be determined by the chair of each Board committee, unless established by this Administrative By-law, Board resolution, or in Board-approved terms of reference or general committee policy.<sup>141</sup>

## 7.5 Delegation to a Committee

The Board may delegate to any committee comprised entirely of Directors<sup>142</sup> any of the Board's powers, other than the following powers:<sup>143</sup>

- (a) to submit to the Members any question or matter requiring the Members' approval;
- (b) to fill a vacancy among the Directors or in the position of auditor;
- (c) to appoint additional Directors;
- (d) to issue debt obligations, except as authorized by the Board;
- (e) to approve any annual financial statements;<sup>144</sup> or
- (f) to adopt, amend, or repeal by-laws.

## ARTICLE 8: OFFICERS

### CONTENTS

8.1 Membership Officers

8.2 Board Officers

### 8.1 Membership Officers

- (a) **General**
  - (i) Subject to the *Not-for-Profit Corporations Act, 2010* (Ontario), the Articles, and this Administrative By-law, the Membership shall appoint the following Membership officers and specify their duties: Membership President; Membership Vice President; and Membership Secretary.
  - (ii) The Membership shall appoint the Membership officers at the annual Members' meeting at which the Directors are elected or at other times when a vacancy occurs.
- (b) **Terms of Office**
  - (i) **1 Year Terms.** Unless otherwise provided in this Administrative By-law, the Membership officers shall hold office for a 1-year renewable

<sup>141</sup> See relevant Board policies. Further, it is notable that sections 4.2, 4.8(b) and 4.9 of this Administrative By-law apply to Board committees. Both are specifically enabled by *Not-for-Profit Corporations Act, 2010* (Ontario) sections 34(6), 35 and 45.

<sup>142</sup> See *Not-for-Profit Corporations Act, 2010* (Ontario) section 36(1).

<sup>143</sup> See *Not-for-Profit Corporations Act, 2010* (Ontario) section 36(2) and *Public Hospitals Act (Ontario)* section 15.

<sup>144</sup> Also see *Not-for-Profit Corporations Act, 2010* (Ontario) section 83(1) requires the Board to approve annual financial statements.

term from the date of their appointment or until their successors are appointed in their stead.

- (ii) **Removal at Any Time.** The Membership may remove any Membership officer at any time.

(c) **Duties of Membership President**

The Membership President shall:

- (i) when present, preside at all Members' meetings; and
- (ii) have such other powers and duties as the Membership may properly specify.

(d) **Duties of Membership Vice President**

The Membership Vice President shall, in the absence, disability, or unwillingness of the Membership President, perform the duties and exercise the powers of the Membership President and shall perform such other duties as the Membership may properly specify.

(e) **Duties of Membership Secretary**

The Membership Secretary shall attend or cause a recording secretary to attend all meetings of the Members to act as a clerk thereof and to record all votes and minutes of all proceedings in the records to be kept for that purpose. The Membership Secretary shall give or cause to be given notice of all meetings of the Members and shall perform those other duties as may be prescribed by the by-laws or the Membership.

## 8.2 Board Officers

(a) **General**

- (i) Subject to the *Not-for-Profit Corporations Act, 2010* (Ontario), the Articles, and this Administrative By-law, the Board may designate the Board officers of the Corporation, appoint Board officers,<sup>145</sup> specify their duties, and delegate to them powers to manage the activities and affairs of the Corporation, except powers to do anything referred to in section 7.5 of this Administrative By-law.
- (ii) The Board officers shall include the Board Chair,<sup>146</sup> Board Secretary,<sup>147</sup> and may include 1 or more Board Vice Chairs<sup>148</sup> and other Board officers as the Board may determine.
- (iii) The Board shall, subject to section 2.4 of this Administrative By-law appoint the Board officers at its first meeting following the annual Members' meeting at which the Directors are elected or at other times when a vacancy occurs. A Director may be appointed to any Board office

<sup>145</sup> Officers are appointed to facilitate the work of the Board in accordance with the terms of their appointments. Officers and directors are distinct from one another, although often officers are also directors.

<sup>146</sup> See *Not-for-Profit Corporations Act, 2010* (Ontario) section 42(2) which requires the appointment of a chair.

<sup>147</sup> *Not-for-Profit Corporations Act, 2010* (Ontario) does not require the appointment of a secretary but contemplates one and such an appointment is common and is required by this provision.

<sup>148</sup> *Not-for-Profit Corporations Act, 2010* (Ontario) does not require the appointment of a vice-chair but such an appointment is common and is required by this provision.

of the Corporation.<sup>149</sup> The Chief Executive Officer shall be the Board Secretary.<sup>150</sup> The same individual may hold 2 or more offices, except 1 individual may not hold the offices of Board Chair and Board Vice Chair. The Board shall, appoint the Board Chair<sup>151</sup> and Board Vice Chair(s) from among the elected Directors.

(b) **Terms of Office**

- (i) **Year Terms.** Unless otherwise provided in this Administrative By-law, the officers shall hold office for a 1-year renewable term from the date of their appointment or until their successors are appointed in their stead.
- (ii) **Removal at Any Time.** Subject to section 2.4 of this Administrative By-law, the Board may remove any officer at any time.

(c) **Duties of Board Chair**

The Board Chair shall:

- (i) when present, preside at all Board meetings;
- (ii) represent the Corporation and the Board as may be required or appropriate;
- (iii) have those other powers and duties as the Board may specify;
- (iv) unless otherwise provided by by-law or by Board resolution, be an *ex-officio* member of all Board committees; and
- (v) meet on an annual basis with the Bishop of the Diocese of London to ensure the Bishop is kept informed of any developments at the Hospital that may affect the catholicity of the Hospital.

(d) **Duties of Board Vice Chairs**

A Board Vice Chair shall, in the absence, disability, or unwillingness of the Board Chair, perform the duties and exercise the powers of the Board Chair and shall perform those other duties as the Board may specify. Where 2 or more Board Vice Chairs are appointed they shall be designated Board Vice Chair, 2<sup>nd</sup> Board Vice Chair, and so on. The Board Chair, or failing the 1<sup>st</sup> Board Chair, the Board, shall designate which of the Board Vice Chairs shall exercise the powers and perform the duties of the Board Chair as contemplated in this section.

(e) **Duties of Board Secretary**

The Board Secretary shall carry out the duties of the secretary of the Corporation generally and shall attend or cause a recording secretary to attend all meetings of the Members, the Board, and the Board committees to act as a clerk thereof and to record all votes and minutes of all proceedings in the

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<sup>149</sup> See *Not-for-Profit Corporations Act, 2010* (Ontario) section 42(1)(b).

<sup>150</sup> *Not-for-Profit Corporations Act, 2010* (Ontario) does not require the appointment of a secretary but contemplates one and such an appointment is common and is required by this provision. Often organizations find it convenient to appoint the chief executive officer as secretary because such individual often performs many of the typical functions of such office.

<sup>151</sup> *Not-for-Profit Corporations Act, 2010* (Ontario) section 42(2) requires the chair to be a director.

records to be kept for that purpose. The Secretary shall give or cause to be given notice of all meetings of the Members, the Board, and the Board committees, and shall perform those other duties as may be prescribed by the by-laws or the Board.

(f) **Other Officers**

The Board shall determine the powers and duties of all other officers from time to time. Any of the powers and duties of an officer to whom an assistant has been appointed may be exercised and performed by the assistant unless the Board otherwise directs.

## ARTICLE 9: ORGANIZATION AND FINANCIAL

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9.1 Seal	9.5 Appointment of Auditor
9.2 Execution of Documents	9.6 Borrowing Power
9.3 Banking Arrangements	9.7 Investments
9.4 Financial Year	9.8 Records

#### 9.1 Seal

The Corporation shall not have a seal. <sup>152</sup>

#### 9.2 Execution of Documents

- (a) Any one of the and Board Chair or a Board Vice Chair, together with any one of the Chief Executive Officer or a Director, shall sign deeds, transfers, assignments, contracts, agreements, mortgages, conveyances, obligations, certificates, or any other instruments or documents requiring the signature of the Corporation, and all instruments or documents so signed shall be binding upon the Corporation without any further authorization or formality.
- (b) Additionally, the Board may from time to time direct the manner in which and the individual or individuals by whom any particular instrument or document, or class of instruments or documents, may or shall be signed.

#### 9.3 Banking Arrangements

The Corporation shall transact the banking business of the Corporation or any part of it with those banks, trust companies, or other financial institutions as the Board may

<sup>152</sup> *Not-for-Profit Corporations Act, 2010* (Ontario) section 13 permits but does not require a seal.

determine from time to time.<sup>153</sup>

#### 9.4 Financial Year

Unless otherwise determined by the Board and subject to the *Public Hospitals Act* (Ontario), the financial year end of the Corporation shall be March 31<sup>st</sup> in each year.<sup>154</sup>

#### 9.5 Appointment of Auditor

- (a) The Members shall, at each annual meeting, appoint an auditor<sup>155</sup> to audit the accounts of the Corporation and to report to the Members at the next annual meeting.
- (b) The auditor shall be duly licensed under the *Public Accounting Act, 2004* (Ontario) and shall be independent of the Corporation and its Directors and officers.<sup>156</sup>
- (c) The auditor shall hold office until the close of the next annual meeting,<sup>157</sup> provided that the Board shall immediately fill any casual vacancy in the office of auditor for the unexpired term.<sup>158</sup>
- (d) The Board shall fix the remuneration of the auditor.<sup>159</sup>

#### 9.6 Borrowing Power<sup>160</sup>

Subject to the Articles<sup>161</sup> and subject to section 2.4 of this Administrative By-law, the Board may, without authorization of the Members:<sup>162</sup>

- (a) borrow money on the credit of the Corporation;
- (b) issue, reissue, sell, or pledge debt obligations of the Corporation;
- (c) give a guarantee on behalf of the Corporation to secure performance of an obligation of any person; and
- (d) mortgage, pledge, or otherwise create a security interest in all or any property of the Corporation, owned or subsequently acquired, to secure any obligation of the Corporation.

<sup>153</sup> *Not-for-Profit Corporations Act, 2010* (Ontario) section 32(1)(f).

<sup>154</sup> See *Public Hospitals Act (Ontario) Regulation 964* section.

<sup>155</sup> *Not-for-Profit Corporations Act, 2010* (Ontario) section 68 details financial review requirements.

<sup>156</sup> *Not-for-Profit Corporations Act, 2010* (Ontario) section 69(1) details financial review requirements.

<sup>157</sup> *Not-for-Profit Corporations Act, 2010* (Ontario) section 68(1).

<sup>158</sup> *Not-for-Profit Corporations Act, 2010* (Ontario) section 72(1).

<sup>159</sup> *Not-for-Profit Corporations Act, 2010* (Ontario) section 68(4) allows the members to fix the remuneration and if not so fixed permits the board to fix the remuneration.

<sup>160</sup> It is not uncommon for assets acquired through government funding to be subject to a contractual obligation preventing disposition without the consent of the funder. Granting security interests in such assets, which is often a requirement in the context of borrowing, can be seen as a disposition. Thus, it is important to consider related contractual obligations.

<sup>161</sup> The Articles in this case are silent on borrowing.

<sup>162</sup> See *Not-for-Profit Corporations Act, 2010* (Ontario) section 85.



## 9.7 Investments

The Corporation may invest<sup>163</sup> its funds as the Board thinks fit,<sup>164</sup> subject to the Articles<sup>165</sup> or any limitations accompanying a gift.

## 9.8 Records

The Board shall see that all necessary records of the Corporation required by the by-laws of the Corporation or by any applicable laws are regularly and properly kept.<sup>166</sup>

## ARTICLE 10: CONFIDENTIALITY

### CONTENTS

10.1 Confidentiality

10.2 Board Spokesperson

### 10.1 Confidentiality

Every Director,<sup>167</sup> officer, Professional Staff member, Board committee member, employee, and agent of the Corporation shall respect the confidentiality of matters:<sup>168</sup>

- (a) brought before the Board or any Board committee; or
- (b) dealt with in the course of the employee's employment, or agent's or Professional Staff member's activities in connection with the Corporation.

### 10.2 Board Spokesperson

The Board may give authority to one or more Directors, officers, or employees of the Corporation to make statements to the news media or public about matters brought before the Board.

<sup>163</sup> See *Not-for-Profit Corporations Act, 2010* (Ontario) section 88.

<sup>164</sup> The *Trustee Act* (Ontario) sections 26-34 impose a prudent investor standard, among other requirements, which should be considered in this context.

<sup>165</sup> It is notable that the special provisions in the Articles provide as follows: "To invest or re-invest the funds of the Corporation in such manner as may be determined by the board of directors from time to time."

<sup>166</sup> See *Not-for-Profit Corporations Act, 2010* (Ontario) section 92 and Regulation 395/21 section 6 for certain records requirements but these are not exhaustive.

<sup>167</sup> It is notable that in addition to any duty of confidentiality that Directors have pursuant to this Administrative By-law at common law a duty of confidentiality automatically applies as part of a duty of loyalty and requires Directors to keep the confidential information of the Corporation confidential. For a discussion see: *20 Questions Directors of Not-for-Profit Organizations Should Ask About Directors Duties*.

<sup>168</sup> While directors are automatically bound by this Administrative By-law, others are not and therefore should separately agree to be bound.

## ARTICLE 11: MATTERS REQUIRED BY THE *PUBLIC HOSPITALS ACT* AND OTHER APPLICABLE LEGISLATION

### CONTENTS

11.1 Professional Staff	11.6 Retention of Written Statements
11.2 Required Committees and Programs	11.7 Occupational Health and Safety Program
11.3 Fiscal Advisory Committee	11.8 Health Surveillance Program
11.4 Chief Nursing Executive	11.9 Organ Donation
11.5 Nurses and other Staff and Professionals on Committees	

#### 11.1 Professional Staff

There shall be a Professional Staff of the Hospital whose appointment and functions shall be as set out in the Professional Staff By-law.<sup>169</sup>

#### 11.2 Required Committees and Programs

The Board shall ensure that the Corporation establishes the committees and undertakes the programs that are required pursuant to applicable legislation, including the *Public Hospitals Act* (Ontario) and the *Excellent Care for All Act, 2010* (Ontario), including a medical advisory committee, a fiscal advisory committee, and a quality committee.<sup>170</sup>

#### 11.3 Fiscal Advisory Committee

The Chief Executive Officer shall appoint the members of the fiscal advisory committee required to be established pursuant to the regulations under the *Public Hospitals Act* (Ontario).<sup>171</sup>

#### 11.4 Chief Nursing Executive

The Chief Executive Officer shall ensure that there are appropriate procedures in place for the appointment of the Chief Nursing Executive.<sup>172</sup>

<sup>169</sup> *Public Hospitals Act (Ontario)* section 12(1) requires the Corporation to pass by-laws as prescribed by *Public Hospitals Act (Ontario) Regulation 965*. *Public Hospitals Act (Ontario) Regulation 965* section 4 in turn, requires the Corporation to pass by-laws in relation to the management and administration of the Hospital and to provide for the organization and duties of the Medical Staff. Sometimes both the by-laws relating to management and administration of the Hospital and the by-laws related to the organization and duties of the Medical Staff are combined in one by-law, but more typically, they are divided into two separate by-laws, as is the case here.

<sup>170</sup> See *Public Hospitals Act (Ontario) Regulation 965* section 5.

<sup>171</sup> See *Public Hospitals Act (Ontario) Regulation 965* sections 5 and 7 and *Excellent Care for All Act, 2010* (Ontario) section 3.

<sup>172</sup> See *Public Hospitals Act (Ontario) Regulation 965* section 4(1)(a)(viii).

## 11.5 Nurses and other Staff and Professionals on Committees

The Chief Executive Officer shall, from time to time, approve a process for:

- (a) the participation of the Chief Nursing Executive, nurse managers, staff nurses, staff, and other professionals of the Corporation in decision making related to administrative, financial, operational, and planning matters; and
- (b) the election or appointment of the Chief Nursing Executive, nurse managers, staff nurses, and other staff and professionals of the Corporation to those administrative committees approved by the Chief Executive Officer to have a nurse or other staff or professional representation.<sup>173</sup>

## 11.6 Retention of Written Statements

The Chief Executive Officer shall cause to be retained for at least 25 years, all written statements made in respect of the destruction of medical records, notes, charts, and other material relating to patient care and photographs thereof.<sup>174</sup>

## 11.7 Occupational Health and Safety Program

- (a) Pursuant to the regulations under the *Public Hospitals Act* (Ontario), there shall be an occupational health and safety program for the Corporation, which shall include procedures for:
  - (i) a safe and healthy work environment;
  - (ii) the safe use of substances, equipment, and medical devices;
  - (iii) safe and healthy work practices;
  - (iv) the prevention of accidents to individuals on the premises; and
  - (v) the elimination of undue risks and the minimizing of hazards inherent in the Corporation environment.
- (b) The Chief Executive Officer shall designate an individual to be in charge of occupational health and safety in the Corporation, who shall be responsible to the Chief Executive Officer or their delegate for the implementation of the occupational health and safety program.
- (c) The Chief Executive Officer shall report to the Board as necessary on the occupational health and safety program.

## 11.8 Health Surveillance Program

- (a) Pursuant to the regulations under the *Public Hospitals Act* (Ontario), there shall be a health surveillance program for the Corporation, which shall be in respect of all individuals carrying on activities in the Corporation and include a communicable disease surveillance program.

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<sup>173</sup> See *Public Hospitals Act* (Ontario) *Regulation 965* section 4(1)(f).

<sup>174</sup> See *Public Hospitals Act* (Ontario) *Regulation 965* section 21(3).

- (b) The Chief Executive Officer shall designate an individual to be in charge of health surveillance in the Corporation, who shall be responsible to the Chief Executive Officer or their delegate for the implementation of the health surveillance program.
- (c) The Chief Executive Officer shall report to the Board as necessary on the health surveillance program.<sup>175</sup>

## 11.9 Organ Donation

Pursuant to the regulations under the *Public Hospitals Act* (Ontario), the Board shall approve procedures to encourage the donation of organs and tissues including procedures to identify potential donors and make potential donors and their families aware of the options of organ and tissue donations, and shall ensure that these procedures are implemented in the Corporation.<sup>176</sup>

## ARTICLE 12: RULES OF ORDER AND POLICIES

### CONTENTS

12.1 Rules of Order

12.2 Policies

### 12.1 Rules of Order

Any questions of procedure at or for any meetings of the Members, the Board, the Professional Staff, or any Board committee, which have not been provided for in this Administrative By-law or by applicable legislation, the Policies, or the Professional Staff rules and regulations, shall be determined by the chair of the meeting in accordance with the rules of order adopted by the Board, or failing such adoption, adopted by the chair of the meeting.

### 12.2 Policies

The Board may, from time to time, adopt, amend, or repeal Policies as it may deem necessary or desirable in connection with the management of the activities and affairs of the Board and the conduct of the Directors, officers, and Board committee members; provided, however, that any Policy shall be consistent with the provisions of this Administrative By-law.

<sup>175</sup> See *Public Hospitals Act (Ontario) Regulation 965* section 4(1)(d).

<sup>176</sup> See *Public Hospitals Act (Ontario) Regulation 965* section 4(1)(g).

## ARTICLE 13: NOTICES

### CONTENTS

13.1 Notice	13.3 Omissions and Errors
13.2 Computation of Time	13.4 Waiver of Notice

#### 13.1 Notice

- (a) Whenever under the provisions of the by-laws of the Corporation notice is required to be given, unless otherwise provided, the notice may be given in writing and delivered or sent by prepaid mail or personal delivery, or by electronic means,<sup>177</sup> if there is a record that the notice has been sent,<sup>178</sup> addressed to the Director, officer, Board committee member, Member, or auditor, at the address, as the case may be, as the same is shown in the records of the Corporation.
- (b) Notice of a Board or Members' meeting need not specify the place of the meeting if the meeting is to be held entirely by telephonic or electronic means.<sup>179</sup> If a person may attend a Board or Members' meeting by telephonic or electronic means, the notice of the meeting must include instructions for attending and participating in the meeting by the telephonic or electronic means that will be made available for the meeting, including, if applicable, instructions for voting by such means at the meeting.<sup>180</sup>
- (c) Any notice sent by the following means shall conclusively be deemed to be received as provided below:
- (i) if by electronic means, on the next business day after transmission;
  - (ii) if delivered, at the time of delivery; and
  - (iii) if by prepaid mail, subject to section 13.1(d) of this Administrative By-law, on the 5<sup>th</sup><sup>181</sup> business day following its mailing.
- (d) Notwithstanding the foregoing provisions with respect to mailing, if it may reasonably be anticipated that, due to any strike, lock out, or similar event involving an interruption in postal service, any notice will not be received by the addressee by no later than the 5<sup>th</sup> business day following its mailing, then the

<sup>177</sup> *Not-for-Profit Corporations Act, 2010* (Ontario) refers to the *Electronic Commerce Act, 2000* (Ontario) for an understanding of providing notices by "electronic means". The *Electronic Commerce Act, 2000* (Ontario) provides the following definition of "electronic": "electronic" includes created, recorded, transmitted or stored in digital form or in other intangible form by electronic, magnetic or optical means or by any other means that has capabilities for creation, recording, transmission or storage similar to those means.

<sup>178</sup> *Not-for-Profit Corporations Act, 2010* (Ontario) definition of "electronic means" requires notice to be "transmitted", with a record of transmission. Accordingly, Board portal uploads alone, without further prompts (for example, an email referring to a meeting for which meeting materials have been uploaded), would not be sufficient notice of a Board meeting that was not otherwise a regularly scheduled meeting.

<sup>179</sup> See *Not-for-Profit Corporations Act, 2010* (Ontario) section 34(3.1) and 55(1.1).

<sup>180</sup> *Not-for-Profit Corporations Act, 2010* (Ontario) sections 34(3.2) 55(1.2) provide that if the directors or the members (as applicable) may attend a director or members' meeting (as applicable) by telephonic or electronic means, the notice of the meeting must include instructions for attending and participating in the meeting by the telephonic or electronic means that will be made available for the meeting, including, if applicable, instructions for voting by such means.

<sup>181</sup> See *Not-for-Profit Corporations Act, 2010* (Ontario) section 197(4) and Regulation 395/21 section 10(2).

mailing of the notice shall not be an effective means of sending it but rather any notice must then be sent by an alternative method that may reasonably be anticipated will cause the notice to be received reasonably expeditiously by the addressee.

- (e) The Secretary may change or cause to be changed the recorded address of any Director, officer, Board committee member, Member, or auditor in accordance with any information believed by them to be reliable.

### **13.2 Computation of Time**

In computing the date when notice must be given under any provision of the by-laws requiring a specified number of days' notice of any meeting or other event, the date of giving the notice shall be excluded and the notice period shall terminate at midnight of the last day of the notice period, except if the last day is a holiday, the period shall terminate at midnight of the next day that is not a holiday.<sup>182</sup>

### **13.3 Omissions and Errors**

The accidental omission to give any notice to any Member, Director, officer, Board committee member, or the auditor of the Corporation, or the non-receipt of any notice by any such person, or any error in any notice not affecting the substance of it, shall not invalidate any action taken at any meeting held pursuant to the notice or otherwise founded on it.

### **13.4 Waiver of Notice**

Any Member, Director, officer, Board committee member, or the auditor of the Corporation, may, in writing, waive any notice required to be given to them under any provision of the *Public Hospitals Act* (Ontario), the *Not-for-Profit Corporations Act, 2010* (Ontario), or the Articles or by-laws of the Corporation, either before or after the meeting to which it refers, and the 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 the notice.<sup>183</sup> Attendance and participation at a meeting constitutes waiver of notice, unless the attendance is for the express purpose of objecting to the transaction of any business on the grounds the meeting was not lawfully called.<sup>184</sup>

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<sup>182</sup> See *Not-for-Profit Corporations Act, 2010* (Ontario) section 2.

<sup>183</sup> See *Not-for-Profit Corporations Act, 2010* (Ontario) section 198 and Regulation 395/21 section 7(1)(18) requires the waiver to be in writing and section 12 requires it to be sent by electronic means.

<sup>184</sup> See *Not-for-Profit Corporations Act, 2010* (Ontario) section 34(4) for directors and section 55(3) for members.

## ARTICLE 14: BY-LAWS

### CONTENTS

14.1 Administrative By-laws and Amendments

14.2 Professional Staff By-laws and Amendments

#### 14.1 Administrative By-law and Amendments

- (a) Subject to section 2.4 of this Administrative By-law, the Board may make, amend, or repeal any by-law that regulates the activities or affairs of the Corporation, except in respect of a by-law:<sup>185</sup>
  - (i) to add, change, or remove a provision respecting the transfer of a membership;
  - (ii) to change the manner of giving notice to Members; or
  - (iii) to change the method of voting by Members not in attendance at a Members' meeting.
- (b) The Board shall submit the Administrative By-law, amendment, or repeal to the Members at the next Members' meeting, and the Members may confirm, reject, or amend the Administrative By-law, amendment, or repeal by ordinary resolution.<sup>186</sup>
- (c) No amendment or repeal is effective until approved by the Membership in accordance with section 2.4 of this Administrative By-law.

#### 14.2 Professional Staff By-law and Amendments

- (a) Prior to submitting all or any part of the Professional Staff By-law to the process established below in sections 14.2(a)-(g) of this Administrative By-law, the procedures set out in the Professional Staff By-law shall be followed.
- (b) The Board may make, amend, or repeal any by-law that provides for the organization and duties of the Professional Staff.<sup>187</sup>
- (c) The Board shall submit the by-law, amendment, or repeal to the Members at the next Members' meeting, and the Members may confirm, reject, or amend the by-law, amendment, or repeal by ordinary resolution.<sup>188</sup>
- (d) Subject to section 14.2(f), the by-law, amendment, or repeal is effective from the date of the Board resolution.
- (e) If the by-law, amendment, or repeal is confirmed or confirmed as amended by

<sup>185</sup> See *Not-for-Profit Corporations Act, 2010* (Ontario) section 17.1.

<sup>186</sup> *Not-for-Profit Corporations Act, 2010* (Ontario) section 1(1) defines an "ordinary resolution" in essence to be a resolution passed by a majority vote at a properly constituted members meeting or alternatively a written resolution signed by 100% of the members entitled to vote.

<sup>187</sup> See *Not-for-Profit Corporations Act, 2010* (Ontario) section 17.1.

<sup>188</sup> *Not-for-Profit Corporations Act, 2010* (Ontario) section 1(1) defines an "ordinary resolution" in essence to be a resolution passed by a majority vote at a properly constituted members meeting or alternatively a written resolution signed by 100% of the members entitled to vote.

the Members, it remains effective in the form in which it was confirmed.

- (f) The by-law, amendment, or repeal ceases to have effect if the Board does not submit it to the Members as required under section 14.2 (c) or if the Members reject it.
- (g) If a by-law, amendment, or repeal ceases to have effect, a subsequent Board resolution that has substantially the same purpose or effect is not effective until it is confirmed or confirmed as amended by the Members.
- (h) In any case of rejection, amendment, or refusal to approve the by-law or part of the by-law in effect in accordance with this section, no act done or right acquired under any by-law is prejudicially affected by any rejection, amendment, or refusal to approve.

**Passed by the Board:<sup>189</sup> June 26, 2024**

*Dr Kenneth Blanchette*

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Kenneth Raymond Blanchette – Board Chair

*Biagio Marra*

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Biagio Marra – Board Secretary

**Unanimously approved, ratified, sanctioned and confirmed by the Members of the Corporation:<sup>190</sup>  
June 27, 2024**

*Robert Stewart*

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Dr. Robert Stewart – Membership President

*Gizanne Lafrance-Allaire*

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Gizanne Lafrance-Allaire – Membership Secretary

<sup>189</sup> See *Public Hospitals Act (Ontario) Regulation 965* section 4(1)(b) and Ontario *Not-for-Profit Corporations Act, 2010* section 17(1).

<sup>190</sup> See Ontario *Not-for-Profit Corporations Act, 2010* section 17(2).