

**THE BOARD OF GOVERNORS OF THE
NIAGARA COLLEGE OF APPLIED ARTS AND TECHNOLOGY**

BY-LAW NO. 1

(General Matters)

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BE IT ENACTED as a by-law of THE BOARD OF GOVERNORS OF THE NIAGARA COLLEGE OF APPLIED ARTS AND TECHNOLOGY (hereinafter called the "Corporation") as follows:

1 INTERPRETATION

- 1.1 In this by-law, the following terms shall have the indicated meanings:
- 1.1.1 "OCAAT Act" shall mean the *Ontario Colleges of Applied Arts and Technology Act, 2002*, as amended from time to time;
- 1.1.2 "Board" shall mean the Board of Governors of the Corporation;
- 1.1.3 "Council" shall mean the College Compensation and Appointments Council established pursuant to section 13 of the Regulations;
- 1.1.4 "Regulations" shall mean the regulations made under the "OCAAT Act";
- 1.1.5 "spouse" and "same sex partner" shall have the same meanings as defined in the Regulations;
- 1.2 In these by-laws and in all other by-laws and special resolutions of the Corporation hereafter passed unless the context otherwise requires, words importing the singular number or the masculine gender shall include the plural number or the feminine gender, as the case may be, and vice-versa, and references to persons shall include firms and corporations.

2 HEAD OFFICE

The Head Office of the Corporation shall be in the City of Welland in the Province of Ontario and at such place therein as the governors may from time to time determine.

3 SEAL

The seal, an impression whereof is stamped at the end of this by-law, shall be the corporate seal of the Corporation.

4 BOARD OF GOVERNORS

- 4.1 **Size and Constitution of Board:** Each such governor shall also be a member of the Corporation. The Board shall consist of seventeen (17) governors of whom: twelve (12) governors, hereinafter referred to as "external" governors, shall be appointed in the manner provided in subsection 4.2 below; four (4) additional governors, hereinafter referred to as "internal" governors, shall be elected as provided in subsection 4.3 below; and the President of the Corporation (who shall for the purposes of the Regulations be regarded as "the President of the College") shall be appointed by the Board pursuant to subsection 11.5.3 hereof and who shall be a voting member of the Board by virtue of office. The Board shall not be improperly constituted should an internal stakeholder group chose not to exercise the right to elect a member.
- 4.2 **Appointment of External Governors:** The external governors shall be appointed by the College Compensation and Appointments Council established pursuant to section 13 of the Regulations in the manner contemplated by the Regulations.
- 4.3 **Election of Internal Governors:** The internal governors, as defined in the Regulations, shall be appointed in accordance with the procedures established in the by-laws of this Corporation.

4.4 **Eligibility Requirements of External Members:** No person shall be eligible for appointment as an external governor if such person is:

4.4.1 a student or an employee of a college of applied arts and technology, or

4.4.2 a spouse or same sex partner of a student or employee of a college of applied arts and technology.

4.5 **Term and Term Limits:**

4.5.1 each external governor and each internal governor (other than the student governor) shall be appointed or elected, as applicable, for a term of 3 years;

4.5.2 each student governor shall be elected for a term of 1 year;

4.5.3 each governor shall take office on the first day of September in the year of appointment or election;

4.5.4 Notwithstanding the length of the term to which an internal governor may be elected, such term shall immediately terminate upon such governor ceasing to be a student, academic staff member, administrative staff member or support staff member, as applicable. Provided that a student governor who graduates prior to the expiration of such student governor's term may continue to serve until the 31st day of August in such student's year of graduation;

4.5.5 No person shall serve as an external governor or internal governor (other than the student governor) for more than 6 consecutive years provided that after an absence of 2 years such person shall again be eligible for re-election or re-appointment, as applicable, for successive terms not to exceed 6 years;

4.5.6 No person shall serve as the student governor for more than 4 consecutive years provided that after an absence of 2 years such person shall again be eligible for re-election for successive terms not to exceed 4 years.

4.6 **Vacancies:**

4.6.1 where a vacancy occurs among the external governors of the Board, the Council shall appoint a person to fill the vacancy;

4.6.2 where a vacancy occurs among the internal governors of the Board, such vacancy shall be filled in with the procedures set forth in By-law No. 4;

4.6.3 The term of the person appointed or elected to fill a vacancy pursuant to subsection 4.6.1 or 4.6.2 shall be for the same term as is provided in subsections 4.5.1 and 4.5.2, as applicable, and shall commence upon such appointment or election and shall terminate on August 31 in the year in which such term expires.

5 POWERS OF THE BOARD

5.1 The *OCAAT Act* stipulates that the Board of Governors of a college is a non-share Corporation. As such, the Board shall govern the affairs of the Corporation in all things.

- 5.2 The Board may make, or cause to be made, in the Corporation's name any kind of contract which the Corporation may lawfully enter into and, save as hereinafter provided, generally may exercise all such powers and do all such other acts and things as the Corporation is authorized to exercise and do, as provided by any applicable statute or law, in accordance with and subject to the obtaining of such approvals as may be required by an applicable statutory provision.
- 5.3 Without in any way derogating from the foregoing and subject to the obtaining of such approvals as may be required by any applicable statutory provision, the Board is expressly empowered from time to time to purchase, lease or otherwise acquire, alienate, sell, exchange or otherwise dispose of shares, stocks, rights, warrants, options and other securities, lands, buildings, and other property movable or immovable, real or personal, or any right or interest therein owned by the Corporation for such consideration and upon such terms and conditions as it may deem advisable. The Board may approve the ownership of other businesses, the creation of wholly owned or partially owned subsidiary corporations, including a college foundation, in accordance with legislative requirements and the provisions of Regulations and Policy Directives issued under the *OCAAT Act*.
- 5.4 **Board Policies:** The Board may issue governance policies to define its responsibilities and its relationship with other officers of the Corporation.

6 MEETINGS OF THE BOARD

6.1 Calling of Meetings:

- 6.1.1 Except as otherwise required by law, the Board may hold its meetings at such place or places, or by such means, as it may from time to time determine.
- 6.1.2 Meetings of the Board or its committees may be held by means of such telephone, electronic or other communication facilities as permit all persons participating in the meeting to communicate with each other simultaneously or asynchronously, and a member of the Board or of the committee, as the case may be, participating in such a meeting by such means is deemed for the purposes of this by-law to be present at that meeting.
- 6.1.3 The Board shall determine each year an annual schedule of regular meetings. Board meetings may be formally called by the Chair or Vice Chair or by the Secretary or Treasurer on the direction of the Chair, or of the Vice Chair or of any four (4) governors.
- 6.1.4 The governors may consider or transact any business, either special or general, at any meeting of the Board.

6.2 Notice of Meetings:

- 6.2.1 Once established by the Board, the schedule of regular meetings shall be sent to all governors and shall be posted on the Corporation's web site and publicized via whatever medium deemed appropriate by the Board.
- 6.2.2 Where urgent conditions prevail, notice of an unscheduled Board meeting shall be delivered, telephoned or sent by electronic mail to each governor not less than one (1) day before the meeting is to take place or shall be mailed to each governor not less than four (4) days before the meeting is to take place. Wherever possible, notice of unscheduled meetings of the Board will be posted on the Corporation's web site as soon as possible after they are called.
- 6.2.3 The certificate of the Secretary or Chair that notice has been given pursuant to this by-law shall be sufficient and conclusive evidence of the giving of such notice.

- 6.2.4 No accidental error or omission in the giving of notice for a meeting of the Board shall invalidate such meeting or invalidate or make void any proceeding taken or had at such meeting and any governor may at any time waive notice of such meeting and may ratify and approve any or all proceedings taken or had thereat.
- 6.3 **Disclosure of Conflict of Interest:** At the opening of each meeting, the Chair shall ask for disclosures of any actual, potential, or perceived conflicts of interest of any governor relating to any agenda item. Any such declared conflicts shall be recorded in the minutes.
- 6.4 **Quorum:** Two-thirds of the total Board membership shall form a quorum for the transaction of business. If a quorum is not present when a formal recommendation is being put to a vote, then the absent members must be polled by mail, electronic mail or telephone, with the results appended to the minutes of the appropriate meeting.
- 6.5 **Meetings to be Public:** Subject to subsection 6.6 below, meetings of the Board shall be open to the public and no person shall be excluded from such a meeting except for improper conduct as determined and expressed by resolution of the Board.
- 6.6 **In Camera:** Where a matter to be considered at a Board or committee meeting is determined by the majority of the governors present, in accordance with the criteria established below, to be confidential to the Corporation, the part of the meeting concerning such confidential matter may be closed to the public (in-camera).
- 6.6.1 In-camera meetings will generally be held to discuss sensitive matters pertaining to the following:
- 6.6.1.1 individual students;
 - 6.6.1.2 individual governors or prospective governors;
 - 6.6.1.3 individual employees;
 - 6.6.1.4 all matters arising out of the President's Terms of Employment, including hiring, evaluation, contract terms and termination;
 - 6.6.1.5 any other matter where personal information about an identifiable individual will be disclosed;
 - 6.6.1.6 strategic labour relations and matters pertaining to collective bargaining or terms of employment;
 - 6.6.1.7 the security of property of the Corporation;
 - 6.6.1.8 the acquisition, disposition, lease, exchange or expropriation of real or personal property or improvements, if the Board considers that disclosure might reasonably be expected to harm the interests of the Corporation;
 - 6.6.1.9 Board self evaluation;
 - 6.6.1.10 litigation or potential litigation affecting the Corporation;
 - 6.6.1.11 the receiving of advice that is subject to solicitor-client privilege, including communications necessary for that purpose;
 - 6.6.1.12 information that is prohibited from disclosure under the *Freedom of Information and Protection of Privacy Act*;

- 6.6.1.13 other matters that, in the opinion of the majority of governors, the disclosure of which might be prejudicial to an individual or to the best interests of the Corporation;
- 6.6.1.14 consideration of whether an item is to be discussed in-camera.
- 6.6.2 Where a matter of a personal nature concerning an individual may be considered at a meeting, the part of the meeting concerning such individual shall be closed to the public unless such individual requests and the Board of Governors agrees that that part of the meeting be open to the public.
- 6.6.3 The Board may convene in camera only by proper resolution of the Board. Such resolution shall be recorded in the minutes of the Board. The items to be discussed in-camera will be identified on the In-Camera Agenda. Board members may question the appropriateness of any agenda item on the In-Camera Agenda. During the in-camera meeting the Board shall discuss only the matter that gave rise to the closed meeting and shall not vote on any amendment or adoption of a by-law.
- 6.6.4 Governors who are in conflict of interest with respect to the subject matter to be discussed shall be excluded during the in-camera portion of the meeting. The Chair, the President or any Board member may request the presence of appropriate administrators or other persons as a resource to address specific issues. Members will direct such requests to the Chair. Such resource people will be present at Board discussion or debates unless an objection is raised and a vote taken by the Board. While meeting "in-camera" the Board may request certain persons to appear for the purpose of providing information to the Board on the topic(s) under discussion.
- 6.6.5 All governors and other persons attending the in-camera meetings shall keep all information, discussions and proceedings at in camera sessions of the Board strictly confidential. Even when the resulting decision is made public, all discussions and all information provided at an in-camera session shall remain confidential unless the Board decides, by resolution, to make the information public.
- 6.6.6 Where in camera discussions lead to the passing resolutions, the Board will make every effort to make public such decisions as soon as possible after the meeting, taking into consideration the need or requirement for continued confidentiality. Where the in-camera discussions lead to a general policy decision or a decision that may have immediate impact on the College community, the Board will establish the date for the information to be made public and means by which the information will be released. Minutes will be recorded of any resolutions passed during the in-camera session.
- 6.6.7 The Board may, at any time, declare a governors' retreat, planning session, information session, orientation for new members or any other such events as it deems appropriate. No resolutions shall be passed during these sessions. Such events shall not be open to the public.
- 6.7 **Adjournments:** Any meeting of governors may be adjourned to any time and from time to time and such business may be transacted at such adjourned meeting as might have been transacted at the original meeting from which such adjournment took place. Such adjournment may be made notwithstanding that no quorum is present. In the event of an adjournment to a future date, notice of the rescheduled meeting shall be given in the same manner as provided in subsection 6.2.
- 6.8 **Voting:**
- 6.8.1 Except for votes to amend or adopt by-laws or to remove a governor pursuant to section 8, questions arising at any meeting of governors shall be decided by a majority vote. Votes to amend or adopt by-laws or to remove a governor pursuant to section 8 shall require a two-thirds majority. In the case of an equality of votes, the Chair shall have a second or casting vote.

- 6.8.2 All votes at any such meeting shall be taken by ballot, if so demanded by any governors present; but if no demand be made, the vote shall be taken in the usual way by assent or dissent.
- 6.8.3 Unless there is a demand for a recorded vote, a declaration by the Chair that a resolution has been carried or carried unanimously or by a particular majority or lost or not carried by a particular majority, and an entry to that effect in the minutes shall be admissible in evidence as prima facie proof of the fact without proof of the number or proportion of votes recorded in favour of or against such resolution. In the absence of the Chair, the Chair's duties may be performed by the Vice Chair or such other external governor as the Board may from time to time appoint for the purpose.
- 6.8.4 A resolution in writing signed by a quorum of the Board is as valid as if it had been passed at a meeting of the Board, provided that the resolution was sent to all governors and that governors were given at least two (2) business days to respond. A copy of every such resolution shall be kept with the minutes of the proceedings of the Board.
- 6.9 **Chair.** In the absence of the Chair and the Vice Chair of the Board, the external members present at any meeting of members shall choose one of their number to be Chair of the meeting.

7 COMPLIANCE WITH CONFLICT OF INTEREST OBLIGATIONS

- 7.1 **Minister's Binding Policy Directive:** The Board and its governors shall comply with the Minister's Binding Policy Directive on Conflict of Interest, issued under the *OCAAT Act*. Should any provisions in this section be in conflict with this Policy Directive or any further Policy Directives issued by the Minister, the conflicting provision shall be ineffective to the extent of such conflict without invalidating the remaining provisions of this section. Notwithstanding the above, any provisions of this section that exceed the minimum requirements contained in the aforementioned Policy Directive are not in conflict with such and shall remain in force.
- 7.2 **Definitions:**
- 7.2.1 **Actual Conflict of Interest:** a situation where a governor has a private or personal interest that is sufficiently connected to the governor's duties and responsibilities as a governor that it influences the exercise of these duties and responsibilities.
- 7.2.2 **Internal Governor:** A member elected to the Board pursuant to subsection 4.3. For the purpose of this section, the president of the college shall be deemed to be an internal governor.
- 7.2.3 **Perceived Conflict of Interest:** a situation where reasonably well-informed persons could properly have a reasonable belief that a governor has an actual conflict of interest, even where that is not the case in fact.
- 7.2.4 **Potential Conflict of Interest:** a situation where a governor has a private or personal interest that could influence the performance of the governor's duties or responsibilities, provided that the governor has not yet exercised that duty or responsibility.
- 7.3 **Principles:**
- 7.3.1 Governors are expected to act honestly, lawfully and uphold the highest ethical standards. This commitment includes proper use of authorization and appropriate decorum in group and individual behaviour when acting as governors. The Board shall institute standards and procedures as well as endorse sanctions in its endeavour to govern with excellence. Governors will be subject to further policies regarding code of conduct as may be adopted by the Board.

- 7.3.2 Governors are obligated to perform their official duties and conduct themselves in a manner that will bear the closest public scrutiny because colleges are part of the broader public sector and are subject to greater public scrutiny than private organizations.
- 7.3.3 Governors shall not have private interests (other than those permitted pursuant to the Minister's binding policy directive, or applicable laws, or statutes) that would be affected particularly or significantly by college decisions or actions in which they participate as governors.
- 7.3.4 When appointed, governors must arrange their private interests to prevent conflicts of interest. If a conflict does arise between the private interests of a governor and the official duties of that individual, the conflict shall be resolved in favour of the public interest.
- 7.3.5 Each governor (regardless of how the governor becomes a member of the Board) has a responsibility first and foremost to the welfare of the institution and must function primarily as a member of the Board, not as a member of any particular constituency.

7.4 **Conflict of Interest Situation:**

- 7.4.1 A conflict of interest arises when a governor's private or personal interest supersedes or competes with that governor's duties and responsibilities as a member of a Board. This could arise from an actual, potential, or perceived conflict of interest of a financial or other nature.
- 7.4.2 **Meeting Procedure:** At the beginning of every Board meeting, the Chair of the Board is to ask and have recorded in the minutes whether any governor has a conflict to declare in respect to any agenda item. A governor who has a conflict of interest is to declare the conflict and the general nature of the conflict.
- 7.4.3 When the agenda item arises in the open portion of the Board meeting, the governor(s) with an actual conflict of interest may remain in the room for the duration of the discussion and not participate in the vote on this item. The minutes are to record that the governor(s) in conflict of interest remained in the room for the discussion and did not vote on this item. Should the matter occur in the in camera portion of a meeting, the governor(s) shall withdraw while the matter is being discussed or voted on and the minutes should reflect this. Such governor(s) shall not be informed of the results of the in-camera session until and unless the Board has determined that such results are to be made public.
- 7.4.4 When the conflict of interest is perceived or potential, the Board will determine whether the governor(s) remain for the discussion and vote on agenda items. The minutes are to reflect the ruling of the Board and whether said governor(s) remained in the room, participated in the discussion or voted on the item.

7.5 **Duty to Declare:**

- 7.5.1 In cases where a conflict cannot be avoided, a governor is to declare a conflict of interest at the earliest opportunity and, at the same time, is to declare the general nature of the conflict. Where a conflict of interest is declared prior to a Board meeting, the declaration is to be made to the Chair of the Board and the Board is to be informed.
- 7.5.2 Where a governor is unsure whether a conflict exists, the said governor is to raise the perceived potential conflict with the Board, and the Board is to determine by majority vote whether or not a conflict of interest exists. The said governor must refrain from voting on whether or not a conflict of interest exists.

- 7.5.3 Where a conflict of interest is discovered after consideration of a matter, it is to be declared to the Board and appropriately recorded at the first opportunity. If the Board determines that involvement of said governor influenced the decision of the matter, the Board is to re-examine the matter and may rescind, vary, or confirm its decision.
- 7.5.4 Where the governor in conflict, or with a perceived or potential conflict, is the Chair of the Board, the Vice-Chair will act as Chair for the purposes of this section. The Vice-Chair will also act as Chair of the meeting for that portion of the meeting dealing with the conflict. If the Chair has declared or is found by the Board to have an actual, perceived or potential conflict of interest, the Vice-Chair will also chair that portion of the meeting dealing with the item in question.
- 7.6 **Duty to Report:** Any governor who perceives another governor to be in conflict of interest in a matter under consideration is to raise this concern with the Chair of the Board. The Chair, in turn, is to discuss the matter with the governor who is perceived to be in conflict and, as appropriate, to hold further discussion with the reporting governor. If the discussions do not lead to a resolution, the matter is to be brought to the Board and the Board is to determine by majority vote whether or not a conflict of interest exists. The governor perceived to be in conflict is to refrain from voting.
- 7.7 **Sanctions:** Where there has been a failure on the part of a governor to comply with this section and/or the Minister's Binding Policy Directive, unless the failure is the result of a bona fide error in judgment, the Board shall impose sanctions which will include any one or combination of the following:
- 7.7.1 issuing a verbal reprimand; or
- 7.7.2 issuing a written reprimand; and/or
- 7.7.3 requesting that the governor resign; and/or
- 7.7.4 removing the governor through processes established in section 8.
- 7.8 **Application:** These provisions are applicable to all governors of the Board, including officers and internal governors. Without limiting the general application of the Minister's Binding Policy Directive on conflict of interest, the Board shall recognize the following circumstances as an actual conflict of interest requiring the affected governor to conduct themselves in accordance with subsection 7.4 hereof:
- 7.8.1 **President:** The president has a conflict of interest in respect to agenda items relating either directly or indirectly to the president's evaluation or performance review, compensation, perquisites, and/or benefits;
- Note: The Board may require certain information from the president to assist their deliberations, but these queries must be of the general nature or relate to providing performance related information concerning the president's success in meeting agreed to objectives. This does not preclude the president from participating in the evaluation or performance review process as the employee being evaluated.
- 7.8.2 **President's Evaluation, Compensation, Perquisites, Benefits:** All internal governors have a conflict of interest in respect to agenda items relating to the president's evaluation or performance review, compensation, perquisites, and/or benefits;
- Note: This does not prevent the Chair or evaluation committee asking for their input as part of a general information-gathering process in preparing the president's evaluation.

- 7.8.3 **Compensation and Terms and Conditions of Employment of College Staff:** All internal governors, except the president, have a conflict of interest in respect to agenda items relating to compensation and terms and conditions of employment of college staff;
- 7.8.4 **Collective Bargaining.** All internal governors, except the president, have a conflict of interest in respect to agenda items relating either directly or indirectly to collective bargaining;
- 7.8.5 **Programs or Activities.** All internal governors have a conflict of interest in respect to agenda items relating either directly or indirectly to programs or activities in which they are employed or a student;
- 7.8.6 **Increase in Tuition Fees.** A student governor has a conflict of interest in respect to agenda items relating to an increase in the tuition fees for the particular program in which the student is enrolled;
- 7.9 **Insignificant Conflicts:** The Minister's Binding Policy Directive does not apply where the interest is so remote or insignificant that it cannot reasonably be regarded as likely to influence the Board member or where a pecuniary or other interest is in common with a broad group of which the governor is a member (e.g., students, support staff, academic staff, administrative staff). This Binding Policy Directive does not apply where the issue is one of general or public information.
- 7.10 **Disclosure of Interests in Contracts:**
- 7.10.1 Every governor who is in any way directly or indirectly interested in a proposed contract or a contract with the Corporation or any subsidiary of the Corporation shall declare the governor's interest and conflict in accordance with the Minister's Binding Policy Directive.
- 7.10.2 Where the Board, by majority vote, approves the award of a contract to an entity in which a governor or a member of a governor's immediate family has a material interest and where a governor has made a declaration of his or her interest in the proposed contract in compliance with this section and has not voted in respect of the resolution which awards the contract (or, in the case of a conflict declared in accordance with subsection 7.5.3 hereof, the governor has not voted on the resolution confirming the award of the contract),
- 7.10.2.1 the governor is not accountable to the Corporation or to any of its members or creditors for any profit realized from the contract; and
- 7.10.2.2 the contract is not voidable by reason only of the governor's holding that office or of the fiduciary relationship established thereby.
- 7.11 **Quorum:** A governor who has declared or is found to be in conflict of interest with respect to an agenda item, but was present at the beginning of the meeting, may be counted to determine the presence of a quorum.

8 REMOVAL OF GOVERNORS

- 8.1 The Board may remove a governor from the Board, other than the president, before the expiration of his or her term by a resolution of the Board (enacted pursuant to section 8.4 below) if:
- 8.1.1 the governor does not attend three (3) consecutive meetings or four (4) cumulative regular meetings of the Board during a twelve (12) month period, without having been granted a Leave of Absence by the Board;
- 8.1.2 the governor has neglected or refused to participate on Board committees and/or to contribute to effective discussion and decision making at the Board;

- 8.1.3 the governor has failed to comply with the Minister's Binding Policy Directive on Conflict of Interest which is set forth in section 7 of this by-law;
- 8.1.4 the governor has failed to maintain the confidentiality of any and all information, discussions, or proceedings at in camera sessions of the Board;
- 8.1.5 the governor has failed to observe and perform the governor's fiduciary duty to the Corporation in that the governor has not acted with honesty, in good faith and in the best interests of the Corporation;
- 8.1.6 the governor has, in the opinion of the Board, committed one of the following grounds of misconduct and in consequence would, if such governor were to continue as a member of the Board, adversely affect the image and/or operations of the Board or of the College:
 - 8.1.6.1 harassment (including activities that would constitute harassment under College policies and directives);
 - 8.1.6.2 violence (including activities that would constitute violence under College policies and directives);
 - 8.1.6.3 conviction of a criminal offence;
 - 8.1.6.4 conduct unbecoming of a member of the Board, including but not limited to, improper use of authority or position, improper use of privileged or confidential information, conduct that is deemed to be detrimental to, or generally contrary to the mandate, interest and welfare of the College;
 - 8.1.6.5 discrimination as defined under the Ontario Human Rights Code (including activities that would constitute discrimination under College policies and directives).
- 8.2 An external governor becomes disqualified under subsection 4. (3) of Ontario Regulation 34/03 which precludes a person appointed to a Board of Governors of a college from being an employee or student or a spouse or same-sex partner of an employee or student of a college of applied arts and technology. Should an external governor become disqualified under these provisions, their seat will automatically become vacant without the need of a resolution. Any dispute regarding the facts of such a governor's relationship to a college or to an employee or student of a college shall be dealt with by the Board in accordance with the procedure outlined in this section.
- 8.3 An internal governor becomes disqualified under subsection 7 (4) of Ontario Regulation 34/03 when such a person ceases temporarily or permanently to be a student, academic staff member, administrative staff members or support staff member, as the case may be. A student who graduates prior to the expiration of the student's term may remain a member of the Board until August 31 in the year of his/her graduation. Should an internal governor become disqualified under these provisions, their seat will automatically become vacant without the need for a resolution, and a new member will be selected in accordance with By-law No. 4.
- 8.4 Prior to the Board voting to remove a governor (the "Subject Governor"), the Chair or the Vice-Chair is to discuss the matter with the Subject Governor to explain why the removal is being considered and to seek a satisfactory explanation of or solution to the alleged grounds for removal (the "Grounds"). If the discussions do not result in a satisfactory explanation or solution, the matter is to be brought to the Board in an in camera session, and the Board is to determine by resolution, passed by at least two-thirds of the votes cast, whether the Subject Governor is to be removed. The notice for the in camera session is to specify the intention to pass a resolution removing the Subject Governor and the Grounds therefore. The Subject Governor is to be given

an opportunity to respond to the Grounds by addressing the Board at the in camera session, but is to refrain from voting. The Subject Governor is to be clearly notified of the final consideration and decision of the Board and any action that will be taken.

- 8.5 In the event any governor perceives that another governor has engaged in conduct warranting their removal from the Board under this section, they shall bring the matter to the attention of the Chair of the Board, or if the Chair's conduct is in question, to the Vice-Chair of the Board. The Chair or Vice-Chair will follow the procedure outlined in subsection 8.4. Misuse of this provision by a governor is considered conduct unbecoming of a governor defined under subsection 8.1.6.4 and may result in the removal of the offending governor.
- 8.6 Any person who is removed as a governor from the Board may apply to the College Compensation and Appointments Council ("the Council") to review the decision to remove the person from the Board. As provided in the Regulations, the Council's review shall be subject to the following:
- 8.7 The Council's review is limited to determining whether the removal was for a reason set out in this by-law and in accordance with the procedure established in this by-law and does not include a review of whether the Board was correct in removing a governor of the Board.
- 8.8 The decision of the Council on whether the decision of the Board was made for a reason set out in this by-law and in accordance with the procedure established in this by-law is final and binding.

9 REMUNERATION OF GOVERNORS AND COMMITTEE MEMBERS

- 9.1 The governors of the Corporation shall serve without remuneration and shall not, directly or indirectly, receive any profit from their position as governors; provided that they may be paid reasonable travel and living expenses incurred in the performance of their duties.
- 9.2 The provisions of subsection 9.1 shall apply equally to all members of committees and subcommittees of the Board.
- 9.3 Subject to compliance with the provisions of section 7 hereof, where a governor is employed by or performs services for the Corporation other than as a governor, or is a member of a firm or shareholder, director or officer of a company which is employed by or performs services for the Corporation, the fact of such person being a governor of the Corporation shall not disentitle such person or such firm or company, as the case may be, from receiving proper remuneration for such services.

10 PROTECTION OF GOVERNORS AND OFFICERS

- 10.1 **Indemnification by Corporation:** Every governor and officer of the Corporation, and his or her heirs, executors and administrators, and estate and effects, respectively, shall be indemnified and saved harmless out of the funds of the Corporation, from and against:
- 10.1.1 all costs, charges and expenses whatsoever that he, she or it sustains or incurs in or about any action, suit or proceeding that is brought, commenced or prosecuted against him, her or it, for or in respect of any act, deed, matter or thing whatsoever, made, done or permitted by such governor or officer, in or about the execution of the duties his or her office; and;
- 10.1.2 all other costs, charges and expenses that he, she or it sustains or incurs in or about or in relation to the affairs thereof, except such costs, charges or expenses as are occasioned by such governor's or officer's own wilful neglect or default.

- 10.2 No governor or officer of the Corporation shall be liable for the acts, receipts, neglects or defaults of any other governor or officer or employee or for joining in any receipt or act for conformity or for any loss, damage or expense happening to the Corporation through the insufficiency or deficiency of title to any property acquired by the Corporation for or on behalf of the Corporation or for the insufficiency or deficiency of any security in or upon which any of the moneys of or belonging to the Corporation shall be placed out or invested or for any loss or damage arising from the bankruptcy, insolvency or tortious act of any person, firm or corporation with whom or which any moneys, securities or effects shall be lodged or deposited or for any other loss, damage or misfortune whatever which may happen in the execution of the duties of such governor's or officer's respective office or trust or in relation thereto unless the same shall happen by or through such governor's or officer's own wrongful and wilful act or through such governor's or officer's own wrongful and wilful neglect or default.
- 10.3 The governors of the Corporation shall not be under any duty or responsibility in respect of any contract, act or transaction whether or not made, done or entered into in the name or on behalf of the Corporation except such as shall have been submitted to and authorized or approved by the Board.
- 10.4 The Corporation shall maintain appropriate liability insurance for members of the board with respect to lawful activities and authorized activities undertaken in the course of their duties on behalf of the college.

11 OFFICERS OF THE CORPORATION

- 11.1 **Officers:** There shall be a Chair, a Vice Chair, a President, a Secretary and a Treasurer, and such other officers as the Board may determine by resolution from time to time. The Chair and Vice Chair shall be external governors of the Board. The other officers of the Corporation (excepting the President who is a member of the Board by virtue of office) need not be members of the Board.
- 11.2 **Election:** At the May or June meeting of the Board each year, the Board shall elect a Chair and Vice-Chair from its external members. The Secretary of the Board, as defined in subsection 11.5.4, shall perform the duties of Chief Returning Officer and as such shall be responsible for the nominations process and for conducting the election. Following their election, the Officers will assume their responsibilities on the 1st of September each year. If the Board shall fail to appoint any or all of such officers by September 1, the incumbents for whom no replacements have been appointed shall continue in office until their successors are appointed except in the case of a Chair or Vice-Chair whose term as governor has expired.
- 11.3 **Remuneration:** The governors may, in accordance with, and subject to the obtaining of such approvals as may be required by any applicable statutory provision, fix the remuneration (if any) to be paid to Officers of the Corporation.
- 11.4 **Removal:** All Officers, in the absence of agreement to the contrary, shall be subject to the removal from that office of the Corporation by resolution of the Board at any time with or without cause.
- 11.5 **Duties of Officers:** The duties of the Officers are as follows:

11.5.1 **Chair:** The Chair shall be elected annually and shall, when present, preside at all meetings of the Board. Together with the Secretary or other officer appointed for the purpose, the Chair shall sign all by-laws of the Corporation and such contracts, documents or instruments in writing as require the Chair's signature. The Chair shall approve the incidental expenses of the President. The Chair or the Chair's designate is the official spokesperson of the Board. The Chair shall also have such other powers and duties as may from time to time be assigned by the Board or as are incidental to the office.

11.5.2 **Vice-Chair:** The Vice-Chair shall be elected annually and shall have such powers and perform such duties as may be assigned by the Board. In the absence or inability or refusal to act of the Chair, the Vice-Chair shall perform all the duties and have all the powers of the Chair. Where the Vice-Chair, or such other external governor as the Board may from time to time appoint for the purpose, performs any such duty or exercises any such power, the absence, inability or refusal to act of the Chair shall be presumed with reference thereto.

11.5.3 **President:** The Board shall appoint a President for such term as the Board may consider appropriate from time to time and hereby delegates to the President full authority to manage and direct the business and affairs of the Corporation, except such matters and duties as by law must be transacted or performed by the Board and subject to the executive constraints as may be imposed by the Board from time to time, and further to employ and discharge agents and employees of the Corporation, to whom the President may delegate any lesser power.

11.5.4 **Secretary:** The Secretary shall be the President of the Corporation. The Secretary shall:

11.5.4.1 be ex-officio clerk of the Board;

11.5.4.2 attend all meetings of the Board and record, or cause to be recorded, all facts and minutes of all proceedings in the books kept for that purpose;

11.5.4.3 give, or cause to be given, all notices required to be given to governors and to the public;

11.5.4.4 be the custodian of the corporate seal of the Corporation and of all books, papers, records, correspondence, contracts and other documents belonging to the Corporation which shall be delivered up only when authorized by a resolution of the Board;

11.5.4.5 perform the duties of Chief Returning Officer for the election of Officers and Committee Chairs in accordance with subsection 11.2;

11.5.4.6 perform such other duties as may from time to time be determined by the Board.

11.5.5 **Treasurer:** The Treasurer shall be the senior administrator responsible for the Corporation's finances. The Treasurer shall:

11.5.5.1 in accordance with regulations and policy directives made under the *OCAAT Act* and any other applicable statute or regulation, keep full and accurate accounts of all receipts and disbursements of the Corporation in proper books of account;

11.5.5.2 deposit all moneys or other valuable effects in the name and to the credit of the Corporation in such banks as may from time to time be designated by the Board;

11.5.5.3 disburse the funds of the Corporation under the direction of the Board, taking proper vouchers therefore;

- 11.5.5.4 provide whenever required by the Board an account of the financial position of the Corporation;
- 11.5.5.5 co-operate with the auditors appointed by the Board during any audit of the accounts of the Corporation;
- 11.5.5.6 perform such other duties as may from time to time be determined by the Board.
- 11.5.6 **Other Officers:** Subject to the provisions of any applicable statute or regulation, the Board will determine the requirement for and the duties of any and all other Officers of the Corporation.
- 11.6 **Vacancies:**
 - 11.6.1 If the office of the Chair or Vice Chair, or one or more of them, becomes vacant by any reason, the Board shall appoint one of the external governors to fill such vacancy.
 - 11.6.2 If the office of the Secretary, President, Treasurer, or one or more of them, becomes vacant, such vacancy shall be filled as the Board may appoint.
- 11.7 **Delegation of Duties of Officers:** In case of the absence or inability to act of the Chair, the Vice-Chair or any other Officer of the Corporation or for any other reason that the Board may deem sufficient, the Board may, for the time being, delegate all or any of the powers of such Officer to any other Officer or to any external governor.

12 EXECUTION OF DOCUMENTS

- 12.1 **Cheques, Drafts, Notes, Etc.:** All cheques, drafts, bills of exchange or other orders for the payment of money and all notes or other evidence of indebtedness issued in the name of the Corporation shall be signed by such Officer or Officers or agent or agents, whether or not Officers of the Corporation, and in such manner as the Board may from time to time designate by resolution.
- 12.2 **Contracts, Documents or Instruments in Writing:**
 - 12.2.1 Contracts, documents or instruments in writing, required to be signed by the Corporation, shall be signed by the Treasurer and the President, or, in the absence of the Treasurer or the President, by any one of them and another senior administrator of the Corporation. All contracts, documents or instruments in writing so signed shall be binding upon the Corporation without any further authorization or formality. Notwithstanding any provisions to the contrary contained in the by-laws of the Corporation, the Board may at any time by resolution direct the manner in which, and the person or persons by whom, any particular instrument, contract or obligations of the Corporation may or shall be executed.
 - 12.2.2 It is the responsibility of the signing officer as defined in subsection 12.2.1 hereof, to ensure that the transaction is in accordance with all statutory regulations, Board Policies and directives, and to obtain Board approval when required.
 - 12.2.3 The seal of the Corporation may, when required, be affixed to contracts, documents or instruments in writing signed by signing officers as defined in subsection 12.2.1 hereof.
 - 12.2.4 The term "contracts, documents or instruments in writing" as used herein shall include deeds, mortgages, hypothecs, charges, conveyances, transfers and assignments, releases, receipts and discharges for the payment of money or other obligations, conveyances, transfers and assignments of shares, bonds, debentures or other securities and all paper writings.

12.2.5 In particular without limiting the generality of the foregoing, the President and Treasurer are authorized to sell, assign, transfer, exchange, convert or convey any and all shares, bonds, debentures, rights, warrants or other securities owned by or registered in the name of the Corporation in its individual capacity or any other capacity or as trustee or otherwise and to sign and execute (under the corporate seal of the Corporation or otherwise) all assignments, transfers, conveyances, powers of attorney and other instruments that may be necessary for the purpose of selling, assigning, transferring, exchanging, converting or conveying any such shares, bonds, debentures, rights, warrants or other securities.

13 BOOKS AND RECORDS

13.1 The Board shall ensure that all necessary books and records of the Corporation required by the by-laws of the Corporation or by any applicable statute or law are regularly and properly kept.

13.2 Without limiting the generality of subsection 13.1 above, the Board shall keep minutes and records of its proceedings that accurately reflect the proceedings of the Board.

13.3 The by-laws of the Corporation:

13.3.1 shall be open to examination by the public during the normal office hours of the Corporation; and

13.3.2 whenever possible, shall be available to the public at no charge on the Corporation's website.

14 COMMITTEES

14.1 The Board may, from time to time, appoint committees, consisting of such persons as may from time to time be appointed members thereof by the Board, to act in an advisory capacity to the Board in connection with the particular field of activity referred to each of such committees. Standing Committees are permanent committees of the Board and their composition and mandate are defined in the bylaws.

14.2 The Board may also, from time to time, appoint ad hoc committees, consisting of such persons as may from time to time be appointed members thereof by the Board, to act in an advisory capacity to the Board in connection with a particular issue referred to it. Ad hoc committees have a term of the lesser of one year or until its assigned mandate has been completed, and is renewable for a further term if required by the Board.

14.3 Each Standing Committee member shall be appointed by the Board for a term of one (1) year, and such term may be extended for one (1) year at a time while the Standing Committee member continues as a governor. The Chair of the Board shall be an ex-officio member of each such committee, unless otherwise stipulated.

14.4 Any member of the Board may attend any Standing Committee meeting, whether public or in-camera, except where a conflict of interest exists, and may participate in the discussion but may not vote unless a duly appointed or ex-officio member of the Standing Committee.

14.5 The Board may fill any vacancies occurring from time to time in such committees and may abolish and from time to time re-appoint any such committee.

14.6 Minutes of the proceedings of any such committee shall be recorded by, or caused to be recorded by, the Secretary. Such committees shall report to the Board and may be required to provide a report to the Board on its deliberations.

14.7 Any such committee so appointed may meet for the transaction of business, adjourn and otherwise regulate its meetings as it thinks fit. The quorum for any such standing committee shall be a majority of the governors on the committee, exclusive of the ex officio members thereof. Questions arising at any meeting of a committee shall be decided by a majority of votes and, in the case of an equality of votes, the Chair of the meeting shall have a second or casting vote.

14.8 Standing Committees:

14.8.1 **Audit Review Committee:** The Audit Review Committee shall be composed of no less than three (3) external governors appointed by the Board and shall elect a Chair from amongst themselves. Internal governors may not be appointed to the Audit Review Committee. The Audit Review Committee shall be entrusted to:

14.8.1.1 advise and assist the Board on matters relating to the Corporation's financial affairs;

14.8.1.2 work with the external auditors and the Treasurer of the Corporation to ensure that the Corporation's financial systems and controls are adequate, operating satisfactorily and producing accurate financial statements;

14.8.1.3 recommend to the Board the annual appointment of the Corporation's auditors;

14.8.1.4 evaluate and make recommendations to the Board regarding the fees charged by the auditors;

14.8.1.5 review the annual report submitted by the President, including the financial statements, and making recommendations to the Board regarding its acceptance or rejection;

14.8.1.6 examine the auditors' recommendations, if any, and discuss any areas of concern with the auditors, the President and the Treasurer and make appropriate recommendations to the Board;

14.8.1.7 ensure the Treasurer has appropriate risk management strategies, particularly with respect to entrepreneurial activities;

14.8.2 **New Member Search Committee:** The New Member Search Committee shall be composed of no less than four (4) governors appointed by the Board and the President who shall be an ex-officio member, and shall elect a Chair from amongst themselves. The New Member Search Committee shall be entrusted to:

14.8.2.1 develop the annual candidate search profile and process;

14.8.2.2 undertake and complete a candidate search as per the process established above, including seeking recommendations from the appropriate stakeholders

14.8.2.3 establish an annual evaluation and re-appointment process for Board members;

14.8.2.4 report to the Board on work-in-progress;

14.8.2.5 prepare a final report on nominations for the approval of the Board which shall be submitted to the College Compensation and Appointments Council for ratification;

14.8.3 **Priorities and Planning Committee:** The Priorities and Planning Committee shall be composed of no less than four (4) governors appointed by the Board, including the Vice-Chair of the Board who shall be the Committee Chair. In addition, the President shall be an ex-officio member. The Priorities and Planning Committee shall be entrusted to:

- 14.8.3.1 provide recommendations to the Board for strategic planning and related to functions focused on addressing significant issues, including annual Board agenda framework, future trends and issues, learning opportunities for the Board related to significant issues, entrepreneurial activities such as the ownership of other businesses or the creation of a subsidiary corporation, property transactions;
- 14.8.3.2 conduct the ongoing evaluation of the governance process as defined in Board Policies;
- 14.8.4 **Presidential Evaluation Committee:** The Presidential Evaluation Committee shall be composed of no less than four (4) external governors appointed by the Board, including the Vice-Chair of the Board and the Chair of the Board who shall be the Committee Chair. Internal governors may not be appointed to the Presidential Evaluation Committee. The Presidential Evaluation Committee be entrusted to:
 - 14.8.4.1.1 prepare, for Board approval, the evaluation of the President's performance in accordance with Board Policies;
 - 14.8.4.1.2 negotiate with the President for contract renewal or with the new President on terms of employment, for approval by the Board – the Committee shall be empowered to seek support/advice from a legal firm when deemed necessary.
- 14.8.5 **Investment Advisory Committee:** The Investment Advisory Committee shall be composed of no less than one (1) member appointed by the Niagara College Board of Governors and no less than one (1) member appointed by the Niagara College Foundation Board of Directors, the Niagara College Treasurer, the administrator responsible for the Foundation, and the administrator responsible for Finance. Quorum shall be fifty percent plus one of members (excluding vacancies) and must consist of at least one appointed member. The Treasurer shall be the Committee Chair. The Investment Advisory Committee shall be entrusted to:
 - 14.8.5.1 ensure an understanding of [and adherence with] provincial and legal guidelines concerning the investment of trust funds;
 - 14.8.5.2 review investment portfolio options and recommend to the Board an appropriate strategy to ensure [suitable security of funds and] an adequate return;
 - 14.8.5.3 approve the investment portfolio [for the year];
 - 14.8.5.4 monitor, on a regular basis throughout the year, the investment results [and performance];
 - 14.8.5.5 within the terms of the Ministry Policy Directive, approve disbursements of Fund income;
 - 14.8.5.6 appoint a professional investment manager, [if appropriate]. *(added June 17, 1999)*
(originally passed by BOG June 18, 1998)

EXECUTIVE COMMITTEE

- 14.9 The Executive Committee, heretofore established by resolution of the Board is hereby confirmed and continued to assist the governors in carrying on the affairs of the Corporation in connection with all matters that may be properly referred to it by the Board. The Committee shall be chaired by the Chair of the Board and shall be composed of the Chair, the Vice Chair and the Chairs of the Standing Committees, of whom a majority shall be resident Canadians. In addition, the President shall be a member of the Executive Committee by virtue of office. The Board may, by resolution, delegate to such Executive Committee any powers of the Board subject to such restrictions, if any, as may be imposed by an applicable statutory provision or as may be imposed from time to time by the Board. The Executive Committee is empowered to act on behalf of the Board during the summer as well as on other occasions when a quick decision is required and it is not possible to achieve the requisite quorum of Governors.

15 MEMBERS

- 15.1 The governors of the Board, appointed in accordance with the *OCAAT Act* and these by-laws, shall constitute the members of the Corporation.
- 15.2 The interest of a member is not transferable and lapses and ceases to exist when such governor ceases to be a member of the Board of the Corporation by resignation, expiration of term of office as a governor or otherwise in accordance with these by-laws or as provided by any applicable statute or law.

16 MEETINGS OF MEMBERS

- 16.1 **Annual and Other General Meetings:** For purposes of compliance with the Corporations Act, the meeting of the Board at which the audited financial statements are received will be deemed to be the annual general meeting of the members. The members may consider and transact any business either special or general without any notice thereof at any meeting of the members. The Board or the Chair or Vice Chair shall have power to call at any time a general meeting of the members of the Corporation.
- 16.2 The provisions of sections 6 and 7 of this by-law shall apply to the annual general meeting of the members, except as noted below.
- 16.3 **Notice:** Members shall be notified not less than ten (10) days prior to the time fixed for the holding of any such meeting. Provided always that any meeting of members may be held for any purpose at any date and time and any place within Ontario without notice if all the members are present in person at the meeting or if all the absent members waive notice thereof or otherwise signify in writing their consent to such meeting being held in their absence. Such waiver of notice or consent may be given either before or after the meeting.
- 16.4 No error or omission in giving notice of any annual or general meeting or any adjourned meeting, whether annual or general, of the members of the Corporation shall invalidate such meeting or make void any proceedings taken thereat and any members may at any time waive notice of any such meeting and may ratify, approve and confirm any or all proceedings taken or had thereat.
- 16.5 **Polls:** If at any meeting a poll is demanded on the election of a Chair of the meeting or on the question of adjournment it shall be taken forthwith without adjournment. If a poll is demanded on any other question it shall be taken in such manner and either at once or later at the meeting or after adjournment as the Chair of the meeting directs. The result of a poll shall be deemed to be the resolution of the meeting at which the poll was demanded. A demand for a poll may be withdrawn.

17 FINANCIAL MATTERS

- 17.1 **Fiscal Year:** The fiscal year of the Corporation shall terminate on the 31st day of March in each year.
- 17.2 **Budget:** In accordance with the *OCAAT Act*, the Board of Governors shall not approve a budget projecting an accumulated deficit without the written approval of the Minister responsible for administering the *OCAAT Act*.

- 17.3 **Auditors:** The Board of Governors shall appoint an auditor licensed under the Public Accountancy Act or its successor Act, who shall not be a member of the Board or a partner or an employee of a member of the Board, to audit the accounts and transactions of the Corporation at least once a year. If an appointment is not so made, the auditor in office shall continue in office until a successor is appointed.
- 17.4 **Reporting:** In accordance with Regulations and Policy Directives made under the *OCAAT Act*, the Board shall prepare a strategic plan, an annual business plan and an annual report, including audited financial statements. These reports shall be made available to the public and submitted to the Minister in accordance with and by the dates specified in the applicable Policy Directives. The Board of Governors shall compile key performance indicators and provide such indicators to the Minister in accordance with Regulations and Policy Directives made under the *OCAAT Act*.


18 AMENDMENTS TO BY-LAWS

All by-laws may be amended after notice is given at any meeting of the Board of Governors. The proposed amendment may then be presented at the meeting following such notice of motion and a two-thirds majority of the governors present shall be required to pass the amendment. Amendments so made shall be effective when approved by the Board of Governors.

19 CONFLICT

- 19.1 The Corporation having been established pursuant to the *OCAAT Act*, this by-law is in addition to the said Act and the Regulations and Policy Directives made thereunder. Should any provision in this by-law or any further by-laws enacted by the Board of Governors conflict with the said *OCAAT Act*, Regulations and Policy Directives, the conflicting provision shall be ineffective to the extent of such conflict without invalidating the remaining provisions in the said by-laws.
- 19.2 The *OCAAT Act* identifies each college as a Crown agency and as a corporation without share capital and with a Board of Governors under the authority of the *Corporations Act*. As such, the Corporation is subject to the provisions of the *Corporations Act*, except where limited by the *OCAAT Act*, its Regulations, and the Minister's Binding Policy Directives. The Corporation is also subject to provincial legislation such as, but not limited to, the *Financial Administration Act*, *Ombudsman Act* and *Freedom of Information and Protection of Privacy Act* and any other provincial and federal legislation and regulations applicable to non-share corporations and agencies of the Crown. Should any provision in this by-law or any further by-laws enacted by the Board of Governors conflict with any legislation or regulations judged to be applicable to the Corporation, the conflicting provision shall be ineffective to the extent of such conflict without invalidating the remaining provisions in the said by-laws.

ENACTED BY THE BOARD OF GOVERNORS of The Niagara College of Applied Arts and Technology and sealed with the corporate seal the 30th day of January, 1986; revised the 12th day of January, 1989, the 19th day of April, 1990, the 25th day of October, 1990, the 14th day of May, 1992, the 11th day of January, 1996, the 20th day of June, 1996, the 12th day of February, 1998, the 17th day of October, 2003, the 20th day of September, 2007 and further revised on the 16th of April, 2009.



M. Scott, Chair
Niagara College Board of Governors



D. Patterson, Secretary
Niagara College Board of Governors