

DURHAM COLLEGE OF APPLIED ARTS AND TECHNOLOGY

PUBLIC MEETING OF THE GOVERNANCE REVIEW COMMITTEE

AGENDA

Date: Wednesday, September 7, 2022, 5:30 p.m.

Location: Virtual Meeting, MS Teams

| | Pages |
|---|---------|
| 1. CALL TO ORDER | |
| 2. INTRODUCTION OF GUESTS | |
| 3. CONFLICT OF INTEREST DECLARATIONS | |
| 4. APPROVAL OF THE AGENDA | |
| <u>Recommendation</u> That the agenda for September 7, 2022, meeting of the Governance Review Committee be approved as presented. | |
| 5. APPROVAL OF PREVIOUS MINUTES | |
| 5.1. Minutes of the September 14, 2021, Governance Review Committee Meeting | 3 - 6 |
| <u>Recommendation</u> That the minutes from the September 14, 2021, meeting of the Governance Review Committee be approved as presented. | |
| 5.2. Minutes of the May 31, 2022, Governance Review Committee Meeting | 7 - 9 |
| <u>Recommendation</u> That the minutes from the May 31, 2022, meeting of the Governance Review Committee be approved as presented. | |
| 6. DECISION ITEMS | |
| 6.1. Proposed Renewal Schedule for Board By-laws and Policies - D. Lovisa | 10 - 10 |
| <u>Recommendation</u> That the renewal schedule for the Board's by-laws and policies be approved as presented. | |
| 7. DISCUSSION ITEMS | |
| 7.1. Review of Committee Terms of Reference - E. Cowie | 11 - 18 |

- 7.2. Future Role of the Governance Review Committee - E. Cowie
- 7.3. Review of the Board's Meeting Assessment Process - E. Cowie
- 7.4. Board Retreat Planning (March 11 & 12, 2023) - D. Lovisa 19 - 19
- On-campus versus off-site
 - Agenda topics
 - Social activities
- 7.5. Governance Presentation at the October 12, 2022, Board of Governors Meeting - E. Cowie
- 8. INFORMATION ITEMS**
- 8.1. Colleges Ontario Slide Deck: Transition to the Not-for-Profit Corporations Act, 2010 20 - 46
- 9. MEETING CRITIQUE - E. Cowie**
- 10. ADJOURNMENT**



**DURHAM COLLEGE OF APPLIED ARTS AND TECHNOLOGY
PUBLIC MEETING OF THE GOVERNANCE REVIEW COMMITTEE
DRAFT MINUTES**

Date: Tuesday, September 14, 2021

Location: Virtual Meeting, MS Teams

Members Present: Elizabeth Cowie, Committee Chair
Nerissa Carino
Kenneth Michalko
Kunal Nagpal
Jerry Ouellette
Gary Rose, Committee Vice-Chair
Kristi Honey, Chair of the Board
Don Lovisa, President

Staff Present: Melissa Pringle, Corporate and Board Secretary

1. CALL TO ORDER

With quorum present, the Chair called the meeting to order at 6:59 p.m.

2. INTRODUCTION OF GUESTS

None.

3. ADDITIONS/DELETIONS TO THE AGENDA

None.

4. CONFLICT OF INTEREST DECLARATIONS

None.

5. PRESENTATIONS

None.

6. ACTIONS ARISING FROM PREVIOUS MINUTES/REGULAR RECURRING ITEMS

6.1 Annual Review of Terms of Reference

The Committee reviewed its terms of reference and discussed referring to the Manual for Effective College Governor or "best practices" in bullet a). Following a brief discussion, the Committee agreed to consider adding the words "best practices" in bullet a) when the by-law is reviewed.

7. DECISION ITEMS

7.1 Review & Approval of Governance Review Committee Meeting Minutes of May 26, 2021

The Committee reviewed its minutes from the May 26, 2021, Governance Review Committee and requested the Corporate and Board Secretary provide an update on the status of the whistleblowing policy. In response to questions, the Corporate and Board Secretary advised the policy was not previously highlighted during orientation but is now included in materials provided to new employees.

Moved By Governor Michalko

Seconded By Governor Rose

"That the minutes from the May 26, 2021, meeting of the Governance Review Committee be approved as presented." CARRIED

8. DISCUSSION ITEMS

8.1 Annual Review of Skills Matrix

President Lovisa provided an overview of the Board's skills matrix and how it informs the Board's recruitment and selection processes.

Following discussion, the Committee agreed no changes were required to the skills matrix.

8.2 Learn More Series on September 23 - Governance Refresher & Governance Models

The Committee discussed the upcoming *Learn More* series on governance and governance models and reviewed the draft agenda provided by Victoria Prince, Borden Ladner Gervais.

A brief discussion ensued about the governance topics to be highlighted during the session. The Committee agreed that the facilitator should focus on the role of a Governor, the duties/obligations of a board member, fiduciary responsibilities, confidentiality, conflicts of interest, and models of governance.

The Committee also discussed the importance of the session to set the tone for future discussions about the Board's governance framework. The Board Chair agreed to send a note to Governors encouraging attendance at the session.

8.3 Potential Review of the Board's Meeting Assessment Process

The Chair provided context on this agenda item, noting it was a conversation deferred from last year. Additionally, the Chair reported that a review of the Board's meeting assessment process is one of the Board's 2021-2022 goals related to continuous improvement.

A brief discussion ensued about the purpose of reviewing the meeting assessment process, best practices, and the connection to the larger conversation around governance. Following discussion, the Committee agreed to defer discussion of this item until later in the year to give new Committee members time to observe how the Board meetings run to provide context for a review.

8.4 Practice of the Board Approving Committee Minutes & Path Forward

The Chair provided context on this item advising the current practice of the Board approving Committee minutes was flagged as problematic by a Governor at the June Board meeting. The concern with this practice is that the Board is being asked to approve minutes of a meeting they were not in attendance for, and the minutes may not be in final form.

A brief discussion ensued about possible solutions to resolve this issue, such as having Committees meet pre-board meeting to approve their minutes, using a Committee of the Whole format, or revising the format of the current Committee report to only include a written narrative and summary of recommended actions.

Following discussion, the Committee decided to recommend a revision to the Committee report to the Board.

Moved by Governor Michalko

Seconded by Governors Rose

That the Governance Review Committee recommend to the Durham College Board of Governors:

"That the practice of the Board approving Committee minutes be discontinued effective immediately and that the format of the Committee report to the Board be revised to include a written summary of the meeting and the actions to be approved." CARRIED

8.5 Status of Outstanding Board Policies

President Lovisa reminded the Committee that the review of the Board's by-laws and outstanding policies is on hold until after the Board reviews its governance framework.

9. MEETING CRITIQUE

The Committee conducted a roundtable meeting critique and concurred that the meeting was well organized, efficient, and effective.

10. ADJOURNMENT

With no further business, the meeting ended at 7:54 p.m.



**DURHAM COLLEGE OF APPLIED ARTS AND TECHNOLOGY
PUBLIC MEETING OF THE GOVERNANCE REVIEW COMMITTEE
DRAFT MINUTES**

Date: Tuesday, May 31, 2022

Location: Virtual Meeting, MS Teams

Members Present: Elizabeth Cowie, Committee Chair
Kunal Nagpal
Gary Rose, Committee Vice-Chair
Don Lovisa, President

Members Absent: Kristi Honey, Chair of the Board
Kenneth Michalko
Jerry Ouellette

Staff Present: Melissa Pringle, Corporate and Board Secretary

1. CALL TO ORDER

With no quorum present, the Chair called the meeting to order at 6:19 p.m.

2. INTRODUCTION OF GUESTS

None.

3. APPROVAL OF THE AGENDA

None.

4. CONFLICT OF INTEREST DECLARATIONS

None.

5. APPROVAL OF PREVIOUS MINUTES

5.1 Approval of Governance Review Committee Minutes of September 14, 2021

Due to the lack of quorum, this item was deferred to the next meeting.

6. PRESENTATIONS

None.

7. DECISION ITEMS

7.1 President's Annual Compliance Report for 2021-2022

The Committee received the President's annual compliance report for 2021-2022 and questioned the President regarding the disclosure of non-compliance related to the College Council, the Section 28 attestation, and why other employee-related policies were not referenced in the disclosure.

8. DISCUSSION ITEMS

8.1 Feedback on Committee Effectiveness Survey

The Committee Chair requested members to provide start/stop/continue feedback and to think about the future role of the Governance Review Committee once the new corporate documents are approved.

The Committee discussed various ways the Committee could add value, such as focusing on meeting assessment tools, supporting high-performance, and providing oversight to suggestions submitted through the evaluation process. Following the discussion, Governor Rose requested a holistic review of the Committee's role be added to the Board's work plan for 2022-2023.

9. MEETING CRITIQUE

The Committee engaged in a roundtable meeting assessment and acknowledged it was challenging to move business forward without a quorum. However, the Committee discussed the recent work of Borden Ladner Gervais in revising the Board's corporate documents and the value of the Governance Review Committee.

10. ADJOURNMENT

With no further business, the meeting ended at 6:41 p.m.

Durham College - Policies & Bylaws

PROPOSED RENEWAL SCHEDULE

| Tab | Document | Policy Category | Renewal Date |
|-----|---|------------------------------|--------------|
| 1. | By-law No. 1 + Definitions Schedule | By-law | January 2028 |
| 2. | By-law No. 2 – Program Advisory Committees | By-law | January 2026 |
| 3. | By-law No. 3 – Advisory College Council | By-law | January 2027 |
| 4. | By-law No. 4 – Internal Governor Elections | By-law | January 2025 |
| 5. | Mission Vision Values and Strategic Goals | Outcomes | May 2025 |
| 6. | Financial Matters | Executive Limitations | May 2028 |
| 7. | Integrated Risk Management Framework | Executive Limitations | May 2028 |
| 8. | Student, Employee, Client and Visitor Treatment | Executive Limitations | May 2026 |
| 9. | Whistleblowing | Executive Limitations | May 2025 |
| 10. | Board-President Relations | Board-President Relationship | January 2024 |
| 11. | Assessing the President's Performance | Board-President Relationship | January 2024 |
| 12. | President Emeritus | Board-President Relationship | January 2024 |
| 13. | Governors' Duties and Responsibilities | Governance Process | May 2025 |
| 14. | Governor Code of Conduct | Governance Process | May 2027 |
| 15. | Roles and Duties of Officers | Governance Process | May 2027 |
| 16. | Recruitment and Reappointment of External Governors | Governance Process | May 2027 |
| 17. | Committee Terms of Reference | Governance Process | May 2026 |
| 18. | Consent Agenda | Governance Process | May 2026 |

*initial review schedule, then every 3 years thereafter

| | |
|------------------------|------------------------------|
| POLICY TYPE: | Governance Process |
| POLICY TITLE: | Committee Terms of Reference |
| EFFECTIVE DATE: | June 2022 |
| REVISION DATE: | |
| RENEWAL DATE: | To be determined |

In this policy, unless otherwise defined herein or the context requires otherwise, words have the same meaning as they do in the Definitions Schedule to By-law No. 1 of the College.

1. COMMITTEE PRINCIPLES

- 1.1 A Committee shall conduct its affairs in accordance with By-law No. 1 and College policies.
- 1.2 Subject to Section 2, except as specifically provided for in this By-law, a policy, or a resolution of the Board:
 - (a) a Committee cannot make a decision that binds the Board or the College, except as provided for in By-law No.1 and this policy;
 - (b) a Committee may not speak or act for the Board; and
 - (c) a Committee does not have authority over College Employees or operations.
- 1.3 The Board shall review and approve all actions taken at a Committee meeting and all recommendations made by a Committee.
- 1.4 The Board shall appoint the members of the Committees who shall hold office at the pleasure of the Board.
- 1.5 Every Governor shall be appointed to a minimum of one (1) Committee.
- 1.6 Internal Governors are permitted to serve as Vice-Chair of a Committee; however, an Internal Governor cannot be appointed as Chair of a Standing Committee as they cannot serve as a member of the Executive Committee.
- 1.7 Unless provided otherwise, the term of appointment to a Committee is one year and Committee members are eligible for re-election or re-appointment for additional terms.
- 1.8 The Chair and Vice-Chair of a Committee can serve successive one-year terms.

- 1.9 A Governor not appointed to a particular Committee can attend a meeting of another Committee as a guest, with the exception of Internal Governors who cannot attend a meeting of the Executive Committee. When attending as a guest, the Governor is permitted to sit at the table and participate in discussion, but is not entitled to vote on any matter.
- 1.10 Committees shall act in support of the College's mission, vision, values and strategic plan.

2. EXECUTIVE COMMITTEE

- 2.1 The Board shall establish an Executive Committee. Subject to Section 2.4 and the direction of the Board, the terms of reference of the Executive Committee are:
- (a) To recommend to the Board the composition of a Presidential Search Committee, as required, to conduct a search and recommend the appointment of a President.
 - (b) To recommend the appointment and/or reappointment of a President, including the terms of employment of the President, to the Board.
 - (c) To annually review the President's performance.
 - (d) To annually review and approve the salary changes for all staff reporting to the President.
 - (e) To review and approve College organizational changes affecting the senior leadership team.
 - (f) To review and approve the expense accounts of the President.
 - (g) To review and approve the expense accounts of the Governors.
 - (h) To consider and recommend to the Board the attendance of Governors at relevant, external educational functions.
 - (i) To annually conduct a formal review of the Board.
 - (j) To review all major legal actions and contractual arrangements and prepare recommendations for consideration by the Board.
 - (k) To recommend for approval by the Board, the conferring of the title "president emeritus".
 - (l) To act on behalf of the Board in any matter which may arise, subject to Board approval at the next meeting of the Board:

- (i) requiring such prompt attention that it is not practical to convene a special meeting of the Board; or
- (ii) during periods when a quorum of the Board cannot be obtained.
- (m) To exercise the powers of the Board in respect of such matters as the Board may refer to it from time to time.

2.2 **Membership**

The membership of the Executive Committee shall consist of:

- (a) The Chair of the Board, who will also be the Chair of the Executive Committee;
- (b) The Vice-Chair of the Board, who will also be the Vice-Chair of the Executive Committee;
- (c) The Chairs of each of the Audit and Finance Committee, the Nominating Committee, and the Governance Review Committee; and
- (d) The President.

The Board Secretary shall be entitled to attend meetings of the Executive Committee and shall act as a resource of the Executive Committee.

2.3 **Meetings**

Meetings shall be held as established by the schedule referred to in Section 18 of By-law No. 1 or at the request of the Chair of the Executive Committee. All meetings will be held in-camera.

2.4 **Non-Delegable Matters**

The Executive Committee shall not have any of the following powers:

- (a) To appoint Governors.
- (b) To appoint the auditor of the College.
- (c) To issue debt obligations except as authorized by the Board.
- (d) To approve financial statements in place of the Board.
- (e) To adopt, amend or repeal By-laws.

3. AUDIT AND FINANCE COMMITTEE

3.1 The Board shall establish an Audit and Finance Committee. Subject to the direction of the Board, the terms of reference of the Audit and Finance Committee are:

- (a) To oversee College financial practices, reporting processes, systems of internal control, and review appropriateness of existing College accounting policies, disclosures and reserves.
- (b) To oversee the audit process, including recommending the independent auditor and reviewing: audit fees, audit scope of work, annual audited financial statements and management letter.
- (c) To review the annual operating and capital budgets.
- (d) To monitor risk through the annual risk register and assessment of long-term capital projects.
- (e) To review proposed private-public partnerships and regular progress reports of major projects.
- (f) To investigate any financial matter brought to its attention by the Board Chair or President.
- (g) To receive the annual College investment report.
- (h) To review the Schedule of Authorities policy.
- (i) To perform such other oversight functions as may be assigned to the Committee by the Board.

The Committee shall fulfill its responsibilities consistent with Board and institutional policy, financial literacy and the Canadian public sector accounting standards for government not-for-profit organizations (PSAB).

3.2 Membership.

Subject to Section 3.3, the membership of the Audit and Finance Committee shall consist of:

- (a) The Chair of the Board;
- (b) A minimum of four (4) other Governors appointed by the Board; and
- (c) The President.

3.3 The Chair and Vice-Chair of the Committee will be appointed by the Board. At least one member of the Committee shall have accounting or

related financial experience. A majority of the Audit and Finance Committee members must not be Officers or Employees of the College or of any of its affiliates.

- 3.4 The Board Secretary and Treasurer shall be entitled to attend meetings of the Audit and Finance Committee and shall act as resources of the Audit and Finance Committee.
- 3.5 The auditor of the College is entitled to notice of the time and place of any Audit and Finance Committee meeting.
- 3.6 Meetings

Meetings shall be held a minimum of five (5) times per year, as established by the schedule referred to in Section 18 of By-law No. 1 or at the request of the Chair of the Board, the Chair of the Committee, or at the direction of the Board. All meetings will be held in-camera.

4. NOMINATING COMMITTEE

- 4.1 The Board shall establish a Nominating Committee. Subject to the direction of the Board, the terms of reference of the Nominating Committee are:
 - (a) To recommend to the Board the composition of the Committees following a review of the skill requirements for the Committees and their Chairs, Governor relevant experience, and preferences indicated in surveys.
 - (b) To ensure the election of a Chair and Vice-Chair of the Board occurs in accordance with the Roles and Duties of Officers Policy.
 - (c) To solicit and review nominations to fill External Governor vacancies and to make recommendations to the Board regarding potential external candidates, based on current legislation, policies and By-laws. When making its recommendations and nominations, the Committee shall consider the skills and expertise required by the Board of Governors and its Committees at that time.
 - (d) To oversee the reappointment process for External Governors and recommend reappointments to the Board.
 - (e) To oversee the implementation of the procedures set out in By-law No. 4, which regulates the election of Internal Governors.
 - (f) To support and monitor and the Board's mentorship program.
 - (g) To annually review the Board skills matrix.

4.2 Membership

The membership of the Nominating Committee shall consist of

- (a) The Chair of the Board;
- (b) A minimum of four (4) other Governors appointed by the Board; and
- (c) The President.

4.3 The Chair and Vice-Chair of the Committee will be appointed by the Board.

4.4 The Board Secretary shall be entitled to attend meetings of the Nominating Committee and shall act as a resource of the Nominating Committee.

4.5 Meetings

Meetings shall be held a minimum of twice (2) per year, as established by the schedule referred to in Section 18 of By-law No. 1 or at the request of the Chair of the Board, the Chair of the Committee, or at the direction of the Board. All meetings will be held in-camera.

5. GOVERNANCE REVIEW COMMITTEE

5.1 The Board shall establish a Governance Review Committee. Subject to the direction of the Board, the terms of reference of the Governance Review Committee are:

- (a) To review current governance practice to ensure effective operation of the Board.
- (b) To confirm how the current governance policy structure is serving the College and explore ways to build on these strengths.
- (c) To assist the Board in fulfilling its governance oversight responsibilities.
- (d) To develop strategies to assist new Governors to develop advanced governance knowledge.
- (e) To develop an effective communication mechanism for the flow of information between Committees and the Board.
- (f) To review each By-law and each policy at least once every 5 years and more often where: (i) otherwise required by a review schedule prescribed in the policy, (ii) the By-law or policy is affected by new legislation, Directives or rules, or (iii) is otherwise appropriate.

- (g) To receive and review the President's annual compliance report.
- (h) To plan annual Board retreat.

5.2 Membership

- (a) The Chair of the Board;
- (b) A minimum of four (4) other Governors appointed by the Board; and
- (c) The President.

5.3 The Chair and Vice-Chair of the Committee will be appointed by the Board.

5.4 The Board Secretary shall be entitled to attend meetings of the Governance Review Committee and shall act as a resource of the Governance Review Committee.

5.5 Meetings

- (a) Meetings shall be held a minimum of twice (2) per year or at the request of the Chair of the Board, the Chair of the Committee, or at the direction of the Board.
- (b) All meetings will be held in public, unless a matter meets the requirements for an in-camera meeting under subsection 16.2 of By-law No. 1, at which time the Committee shall move in-camera.

6. GENERAL

6.1 The Board may fill any vacancies occurring on such Committees.

6.2 Minutes of the proceedings of any Committee shall be kept in a book or books for that purpose, which shall always be open for inspection by any Governor. Minutes of the Governance Review Committee shall be open for inspection by members of the public.

6.3 The Board shall receive an information report outlining recommended actions for approval at the next regular Board meeting following the meeting of a Committee.

6.4 Any Committee may meet for the transaction of business, adjourn and, except as provided in this By-law or the resolution establishing the Committee, regulate its meetings as it thinks fit. Motions arising at any meeting of a Committee shall be decided by a majority of votes cast. In the case of an equality of votes, the chair of the meeting shall have a second or casting vote.

6.5 Section 19 of By-law No. 1 (Conflict of Interest) applies to Committees.

6.6 Quorum:

- (a) A quorum for each Committee consists of a simple majority of the voting members (half plus one).
- (b) Only Governors listed as members of the Committee may make motions and vote at Committee meetings.
- (c) When a Governor declares a conflict of interest at a Committee meeting, the quorum shall be a majority of the remaining Governors.

7. MONITORING

As part of its annual self-evaluation, the Board will review the effectiveness of its Committees and recommend any changes to structure, format or policy to the Executive Committee.

8. RELATED LEGISLATION, MINISTER'S BINDING POLICY DIRECTIVES AND OTHER DOCUMENTS

8.1 Durham College By-law No. 1

8.2 Ministry's Binding Policy Directive – Governance and Accountability

Excerpt from the Skills Matrix

May inform potential agenda topics for the retreat

| ADDITIONAL EXPERTISE (self-identified as advanced (3), intermediate (2), basic (1)) | | | | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|----|
| Advancement/Fundraising | 2 | 1 | 2 | 1 | 2 | 1 | 2 | 3 | 1 | 1 | 3 | 1 | 1 | 2 | 1 | 24 |
| Advocacy | 2 | 1 | 3 | 2 | 2 | 1 | 1 | 3 | 1 | 1 | 3 | 1 | 2 | 2 | 1 | 26 |
| Capital Planning | 1 | 3 | 3 | 1 | 3 | 1 | 3 | 3 | 1 | 2 | 3 | 1 | 3 | 2 | 1 | 31 |
| Change Management (*added in 2020) | | 1 | | | 2 | | | | | | | 2 | | 1 | 1 | 7 |
| Data Analytics | 3 | 2 | 3 | 2 | 3 | 1 | 2 | 2 | 2 | 2 | 3 | 1 | 2 | 1 | 2 | 31 |
| Digital Literacy | 2 | 2 | 3 | 1 | 3 | 1 | 2 | 3 | 1 | 2 | 2 | 1 | 2 | 2 | 3 | 30 |
| Diversity & Inclusion (*added in 2020) | | 2 | 3 | | 2 | | | | | | | 1 | | 3 | 1 | 12 |
| Finance/Investment/Accounting | 3 | 3 | 2 | 1 | 3 | 1 | 3 | 3 | 2 | 3 | 2 | 1 | 3 | 1 | 1 | 32 |
| Governance (previous to DC, greatest emphasis) | 3 | 3 | 3 | 3 | 2 | 1 | 3 | 3 | 2 | 2 | 3 | 2 | 2 | 2 | 2 | 36 |
| Government/Political Knowledge | 2 | 2 | 3 | 2 | 2 | 1 | 2 | 3 | 2 | 2 | 3 | 1 | 2 | 2 | 1 | 30 |
| Human Resources/Labour Relations | 1 | 2 | 3 | 3 | 2 | 3 | 2 | 3 | 2 | 2 | 3 | 2 | 2 | 2 | 1 | 33 |
| Indigenous/Aboriginal History/Community | 1 | 1 | 2 | 2 | 1 | 1 | 1 | 3 | 1 | 1 | 3 | 1 | 2 | 1 | 1 | 22 |
| Policy Development | 1 | 1 | 3 | 3 | 2 | 2 | 3 | 3 | 2 | 2 | 3 | 2 | 2 | 2 | 2 | 33 |
| Public Relations/Stakeholder Relations | 2 | 3 | 3 | 2 | 2 | 1 | 3 | 3 | 1 | 2 | 3 | 1 | 3 | 3 | 1 | 33 |
| Regulatory/Legal | 2 | 2 | 2 | 3 | 2 | 1 | 2 | 2 | 3 | 3 | 3 | 2 | 2 | 2 | 1 | 32 |
| Risk Management | 3 | 2 | 3 | 3 | 2 | 1 | 3 | 3 | 2 | 3 | 3 | 2 | 3 | 1 | 1 | 35 |
| Strategic Planning | 2 | 2 | 3 | 3 | 3 | 1 | 3 | 3 | 2 | 2 | 3 | 2 | 3 | 3 | 2 | 37 |

COLLEGES ONTARIO

TRANSITION TO THE NOT-FOR-PROFIT CORPORATIONS ACT, 2010 - ONCA IS FINALLY HERE!

Presented By

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May 18, 2022

1. Background
2. Why ONCA is relevant for public colleges
3. Potential amendments to by-laws
4. Transitioning and timing

○ What is a Public College?

- A corporation without share capital (not-for-profit) established under *Ontario College of Applied Arts and Technology Act, 2002* (OCAAT Act)
- A registered charity
- A Crown agent
- Subject to regulatory oversight of *Ministry of Colleges and Universities* (MCU)
- Governed for many years by *Corporations Act (Ontario)* (OCA) where OCAAT Act silent
- **As of October 19th 2021, the *Not-for-Profit Corporations Act, 2010 (Ontario)* (ONCA) replaced the OCA**

Legislative Framework

- **OCAAT Act plus Regulation 34/03 (Regulation)**
 - *Establishes all 24 Ontario public colleges*
 - *Sets out details on certain governance matters*
 - *Establishes the **authority of the Minister** (MCU)*
 - *Provides that the Minister may issue **policy directives** in relation to the manner in which colleges carry out their objects or conduct their affairs*
 - ***Policy directives** are binding on the colleges*

Binding Policy Directives

- Governors should be familiar with directives, including
 - Strategic Plan
 - Business Plan
 - Governance and Accountability Framework
 - Conflict of Interest
 - Banking and Investments
 - Purchase, Sale or Encumbrance of College Property
 - Annual Report
 - Audited Financial Statements
 - Entrepreneurial Activities
 - Public Private Partnerships

“The objects of the colleges are to offer a comprehensive program of career-oriented, post-secondary education and training to assist individuals in finding and keeping employment, to meet the needs of employers and the changing work environment, and to support the economic and social development of their local and diverse communities.”

- Came into force on October 19, 2021
- New online Business Registry system launched at the same time
- Applies to Ontario non-share corporations currently incorporated under the OCA or a Special Act of the Ontario Legislature and thus applies to colleges

What does ONCA do?

- Allows for greater flexibility in some areas of corporate governance
- Simplifies some processes and procedures applicable to boards
- Brings not-for-profit corporate law closer to laws applicable to for-profit corporations governed by the Business Corporations Act (Ontario)

- Need to look to ONCA rather than OCA re default provisions not covered in the OCAAT Act
- Much will remain the same given content of OCAAT Act and changes previously made to OCA that brought it into alignment with the ONCA
- But there are some key differences that should be worked into your by-laws as applicable!

- Key differences are that may require a change to college by-laws are:
 - *New concept of public benefit corporation*
 - *Qualifications for governors*
 - *Governor standard of care*
 - *Governor decision making*
 - *Audit committee provisions*
 - *Indemnity provisions*
 - *Other matters*

- What is a PBC?

- A charitable corporation or a non-charitable corporation that receives more than \$10,000 in a financial year, in the form of donations or gifts from persons who are not governors, officers or employees, or in the form of grants or similar financial assistance from the federal government or a provincial or municipal government or an agency of any such government.
- A public college is a PBC!

- What does that mean?

Qualifications for Governors

- A governor must be an individual who:
 - is eighteen or more years of age;
 - is not an undischarged bankrupt;
 - has not been found under the *Substitute Decisions Act, 1992* or under the *Mental Health Act* to be incapable of managing property;
 - has not been found to be incapable by any court in Canada or elsewhere; and
 - has not been declared an ineligible individual under the *Income Tax Act* (Canada).

Governor Consent

- The ONCA requires that all governors consent to hold office before or within 10 days after the election or appointment
- Consents must maintained by the college (part of corporate records)

Governor Standard of Care

- New codified standard of care applies to governors and officers:
 - act honestly, in good faith, with a view to the best interest of the corporation, and
 - exercise care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances
 - benefit from case law on similar provisions in business corporations acts

- This was implemented in OCA

- Duty of every governor and officer to comply with:
 - ONCA and regulations (as applicable)
 - by-laws

Discharging the Duty: Due Diligence Defence

- Reasonable diligence defence for governors
- Governors can rely in good faith on:
 - Financial statements represented by officer or auditor to present fairly the financial position of the corporation
 - Report or advice of an officer or employee – if reasonable in the circumstances to rely on report or advice
 - Report or advice of an expert: lawyer, accountant, engineer, appraiser or other person whose profession lends credibility to statements made by them

Governor Decision Making

- Governors have a general authority to manage or supervise the management of activities and affairs of the college
- Broad power of delegation to an officer or committee of governors
- Non-delegable powers that must be exercised by full board of governors:
 - Filling board vacancies/auditor vacancies
 - Issuing debt obligations (except as specifically authorized by governors)
 - Approving financial statements
 - Adopting, amending and repealing by-laws

Governor Deemed Consent to Resolutions

- A governor present at a meeting is **deemed to have consented** to any resolution passed, *unless*:
 - Their dissent is recorded in the minutes;
 - They request that their dissent be entered into the minutes;
 - They give their dissent to the secretary of the meeting before it ends; or
 - They submit their dissent immediately after the meeting ends.
- If a governor votes or consents to a resolution, they are not entitled to enter a dissent.
- If a governor is not present at a meeting, the governor is deemed to have consented to any resolution or action at that meeting, *unless* they dissent within 7 days of becoming aware of the resolution.

Governor Meetings: Notice

- No minimum notice of meeting (except for first meeting after incorporation) or specified form unless by-laws so provide
- No requirement to state purpose in notice unless non-delegable business
- Written resolutions (unanimous) permitted for board and committee meetings

Governor Meetings

- **General rule:** Governors may meet at any place, subject to the by-laws
- **Electronic meetings:**
 - Unless the by-laws provide otherwise, a governor may, if all the governors consent, participate in a meeting of the governors or of a committee of governors by telephonic or electronic means that permits all participants to communicate adequately with each other during the meeting and a governor so participating in a meeting is deemed for the purposes of the ONCA to be present at the meeting
 - Note ongoing temporary suspension of provision above until September 30, 2022
 - *For now, despite any provision in the by-laws, a meeting of governors or of a committee of governors may be held by such telephonic or electronic means as permit all persons participating in the meeting to communicate with each other simultaneously and instantaneously, and a governor participating in the meeting by those means is deemed for the purposes of the ONCA to be present at the meeting*

Governor Meetings: Record Keeping

- Minutes must be taken at all meetings
- A copy of the resolutions must be kept with the meeting minutes
- Certified copies of the minutes from meetings may be introduced as evidence in any action or proceeding

- Governors may designate offices, appoint officers, specify duties and delegate powers to manage activities and affairs (except non-delegable board powers)
 - **The only officer required by ONCA is a chair who must be a governor**
 - **The OCAATA requires there to be a chair and a vice-chair – that “wins”**
 - **Under the ONCA, an individual may hold more than one office at the same time**

A note about audit committees

- The ONCA includes certain requirements if there is an audit committee
- If there is one it:
 - Must review the financial statements before they are approved by the governors
 - Must be notified by a governor or officer if a governor or officer becomes aware of a misstatement in financial statements
 - Must give notice of meetings to the auditor who is entitled to attend the meeting at the expense of the corporation and entitled to be heard at the meeting
 - Must allow the auditor to attend the meeting if a member so requests
 - Must have a majority of committee members who are not officers or employees of the corporation or any of its affiliates

Indemnification of Governors

- Indemnification provisions in ONCA similar to business corporation legislation:
 - Includes former governors
 - Clarifies that governors will be indemnified in respect of civil, criminal, administrative, investigative matters **if they acted honestly, in good faith, with a view to best interests of the college**
 - In cases of criminal or administrative proceedings enforceable by monetary penalty, they **had reasonable belief conduct was lawful**
 - Colleges may also **advance money** to a governor for costs of an action

Transitioning under ONCA: 3 year window

- ONCA contemplates a **3 year transition period**, during which:
 - Provisions in existing letters patent, supplementary letters patent, by-laws and special resolutions will continue to prevail for 3 years to the extent they conflict with ONCA as long as they were valid under the OCA
 - If letters patent, supplementary letters patent, by-laws and special resolutions are not amended to comply with ONCA within 3 years of proclamation (i.e. Oct. 18, 2024), the letters patent, supplementary letters patent, by-laws and special resolutions will be “deemed” compliant.
- **NOTE: best practice is to avoid ‘deemed’ amended governance documents as this may create governance uncertainty, so should be taking steps to become ONCA compliant during the 3 year period!**

What to do and when?

- Consider your current by-laws and practices - you are going to need ONCA compliant by-laws (check generally for OCA default language)
- Consider possible changes – and how best to determine – who is going to be looking at this from the college’s perspective?
 - This is a good time to consider making any other governance changes or updates required with respect to the by-laws!
- Consider best timing for making changes – leave yourself some room
- Consider whether there are other college entities, like a foundation, that might need to have updated documents as well



Questions?

Thank You

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