

Hospital Prototype Corporate By-law

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FOREWORD

Hospital Prototype Corporate By-law

The Ontario *Not-for-Profit Corporations Act, 2010* (ONCA) was proclaimed in force on October 19, 2021. It removes not-for-profit corporations, including public hospitals, from the framework of the *Corporations Act*. A number of amendments to ONCA were proclaimed in force effective as of October 1, 2023.

This 2021 OHA Prototype Corporate By-law was designed to fully reflect ONCA's requirements.

It was also designed:

- with a closed membership model; that is, where the Directors and Members are one and the same;
- for a public hospital where all Members have full voting rights; that is, where the *ex-officio* non-voting Directors have voting rights as Members at Members' meetings and when signing written Members' resolutions;
- to simplify drafting in light of the membership model selected for the purposes of this By-law; and
- to apply plain language drafting principles.

If a public hospital has anything other than the described membership model selected for this By-law, then revisions will need to be made, and the following would need to be considered: provisions relating to classes of Members (if any); Members entitled to notice of meetings; Members entitled to vote; Members' contributions and dues/fees; record date rules and a fixed Member admission date; discipline and termination of Members; telephonic and electronic meetings where there is a broad membership; alternative means of Membership voting; provision of appropriate notice of Special Business; and requests for financial statements at least 21 days, or a prescribed number of days, before the annual meeting.

The footnotes in this By-law are provided for informational and review purposes only and should be deleted when the By-law is submitted for approval by the Board and Members.

ACKNOWLEDGEMENTS

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Lydia Wakulowsky and Heather Pessione, at the time both Partners with Borden Ladner Gervais LLP, updated this OHA Prototype Corporate By-law in 2021. The Prototype was originally developed by the OHA in consultation with Anne Corbett, a former Senior Partner with Borden Ladner Gervais LLP, and other subject matter experts.

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KEY TO FOOTNOTES

Guide to Good Governance means the Ontario Hospital Association’s *Guide to Good Governance*, 3rd Edition, published in 2016

HMR means the Hospital Management Regulation, R.R.O. 1990, Reg. 965 under the *Public Hospitals Act*

ONCA means the *Not-for-Profit Corporations Act, 2010*, S.O. 2010, C.15

PHA means the *Public Hospitals Act*, R.S.O. 1990 c. P.40

Hospital Name Corporate By-law

A by-law relating generally to the conduct of the activities and affairs of the Corporation.

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

Article 1

Interpretation

1.1 Definitions

In this By-law and in all other by-laws of the Corporation, unless the context otherwise requires:¹

- (a) **“Act”** means the *Not-for-Profit Corporations Act, 2010* (Ontario);
- (b) **“Articles”** means any instrument that incorporates the Corporation or modifies its incorporating instrument, including articles of incorporation, restated articles of incorporation, articles of amendment, articles of amalgamation, articles of arrangement, articles of continuance, articles of dissolution, articles of reorganization, articles of revival, letters patent, supplementary letters patent, or a special act;²
- (c) **“Board”** means the board of directors of the Corporation;
- (d) **“Chair”** means the chair of the Board;
- (e) **“Chief Executive Officer”** means, in addition to “administrator” as defined in the *Public Hospitals Act*, the president and chief executive officer of the Corporation who, subject to the authority of the Board, is responsible for the administration, organization, and management of the affairs of the Corporation;³
- (f) **“Chief Nursing Executive”** means the senior nurse employed by the Corporation, who reports directly to the Chief Executive Officer and is responsible for nursing services provided in the Hospital;⁴

¹ The definition of “ECFAA” was removed because it was only used once. “Corporation” is now defined for clarity, and certain instances of “Hospital” have been changed to “Corporation” where the reference is to the legal entity. The definition of “Person” was removed because ONCA refers to individuals and legal persons separately and in context, and to clarify that only individuals can be Directors. For purposes of interpreting the footnotes, note that the Act defines “special resolution” as a resolution that: (a) is submitted to a special Members’ meeting duly called for the purpose of considering the resolution and passed at the meeting, with or without amendment, by at least two-thirds of the votes cast, or (b) consented to by each Member entitled to vote at a Members’ meeting.

² ONCA, s. 1(1). This term is defined in ONCA but the definition is provided for comprehensiveness.

³ HMR, s.3; s.4(1)(a)(v). The “administrator” is defined in the PHA as the “person who has for the time being the direct and actual superintendence and charge of the hospital”.

⁴ HMR, ss. 1(1), 4(1)(a)(viii). See also Section 11.4 of this By-law.

- (g) **“Chief of Staff”** means the medical staff member appointed by the Board to serve as such in accordance with the *Public Hospitals Act* and the Professional Staff By-law;⁵
- (h) **“Corporation”** means [insert full legal name of the corporation that operates the public hospital];
- (i) **“day”**, unless otherwise specified as a business day, means a clear calendar day;
- (j) **“Director”** means an individual elected or appointed to the Board;⁶
- (k) **“ex-officio”** means membership “by virtue of office”, and includes all rights, responsibilities, and power to vote unless otherwise specified;
- (l) **“Hospital”** means the public hospital operated by the Corporation;
- (m) **“Members”** means members of the Corporation as described in Article 2;⁷
- (n) **“Policy”** means a policy adopted by the Board in accordance with section 12.2;⁸
- (o) **“Professional Staff”** means the Board-appointed professional/credentialed staff of the Hospital;⁹
- (p) **“Professional Staff By-law”** means the by-law of the Corporation concerning the Professional Staff made in accordance with the *Public Hospitals Act*;
- (q) **“Public Hospitals Act”** means the *Public Hospitals Act* (Ontario);
- (r) **“Secretary”** means the secretary of the Board;
- (s) **“Special Business”** means all business transacted at a special Members’ meeting and all business transacted at an annual Members’ meeting except for the following:
 - (i) consideration of the financial statements;
 - (ii) consideration of the audit report, if any;
 - (iii) election of directors; and
 - (iv) reappointment of the incumbent auditor;

⁵ HMR, s.2(1.1)(c) A Hospital may have a Chief of Staff or a Chair of the Medical Advisory Committee. Where a Hospital has a Chief of Staff, the Chief of Staff is appointed as Chair of the Medical Advisory Committee. Where the by-laws do not provide for a Chief of Staff, the Board is to appoint a Physician on the Medical Advisory Committee to be chair of the Medical Advisory Committee. HMR, ss. 2(3)(c) and (d).

⁶ Some hospitals may use the term Trustee or Governor.

⁷ This definition is appropriate for the provisions set out in Article 2. If another membership model is chosen, the definition of “Member” may need to be modified, and additional provisions, including those relating to the discipline or termination of memberships, record dates, and proposal processes may need to be included (ONCA, s. 51).

⁸ References to Rules were deleted as generally most Boards adopt Policies. If the Board adopts Rules, the reference can remain in addition to Policies. Professional Staff Rules and Regulations are addressed in the Professional Staff By-law. Consider if your Board Policies will require revision to comply with ONCA (e.g., Conflict of Interest Policy).

⁹ By generalizing this definition, we can remove references to Dental Staff, Dentists, Midwifery Staff, Midwives, Medical Staff, Physicians, Extended Class Nursing Staff, Registered Nurses in the Extended Class, Medical Advisory Committee, and Patients. Some hospitals use the term credentialed staff instead of professional staff.

- (t) **“telephonic or electronic means”** means any means that uses the telephone or any other electronic or other technological means to transmit information or data, including telephone calls, voice mail, fax, e-mail, an automated touch-tone telephone system, computer, or computer networks;¹⁰ and
- (u) **“Vice Chair”** means one or more vice chair(s) of the Board.

1.2 Interpretation

In this By-law and in all other by-laws of the Corporation, unless the context otherwise requires and other than as specifically defined in this By-law, all terms contained in this By-law that are defined in the Act shall have the meanings given to the terms in the Act; words importing the singular shall include the plural and *vice versa*; and headings are used for convenience of reference and do not affect the interpretation of the by-law. Any reference to a statute in this By-law includes, where the context requires, the statute and the regulations made under it, all as amended or replaced from time to time.

Article 2

Members and Members' Meetings

2.1 Members¹¹

- (a) The Members shall consist of the Directors from time to time, who shall be *ex-officio* Members for so long as they serve as Directors.¹²
- (b) Membership is not transferrable and terminates upon the Member ceasing to be a Director.¹³
- (c) No fees shall be payable by the Members.¹⁴

¹⁰ ONCA, s. 1(1). This term is defined in ONCA but the definition is provided for comprehensiveness.

¹¹ Membership classes and groups, conditions, and voting rights should be carefully considered with reference to a number of factors, including the Corporation's mission and accountabilities, the different roles of Directors and Members, and the importance of Board quality and managing Board succession. For a detailed discussion of hospital membership models, refer to the *Guide to Good Governance*. This By-law provides for a membership model where the Directors are the only Members. The Directors are made “*ex-officio*” Members for so long as they serve as a Director. Previously, these Directors were not required to provide their consent to be a Director. Under ONCA, this consent must be obtained from all Directors. Under this By-law, all Directors, including *ex-officio* non-voting Directors, would be Members and entitled to vote at Members' meetings. The 2010 Prototype Corporate By-law included additional options for membership which provided for non-voting Members. Legal advice should be sought if one of these options is being contemplated.

¹² ONCA, s. 48(2) provides: *The by-laws may provide for persons to be members by virtue of their office.*

¹³ ONCA, s. 50(2) provides: *Unless this Act, the articles or by-laws provide otherwise, the rights of a member, including any rights in the property of the corporation, cease to exist on termination of the membership.*

¹⁴ The voting section was removed as it was duplicative and is addressed under the Voting section 2.7.

2.2 Meeting Location

Members' meetings shall be held at the registered office¹⁵ of the Corporation or at any place in Ontario as the Board may determine.¹⁶

2.3 Annual Meeting

The annual Members' meeting shall be held between the 1st day of April and the 31st day of July of each year, unless otherwise approved by the Board, provided such variation is directed by the Minister of Health, all in accordance with the *Public Hospitals Act*.¹⁷

2.4 Calling Meetings

- (a) The Board or Chair¹⁸ shall have the power to call, at any time, a Members' meeting.¹⁹
- (b) If the Board, Chair, or Members call a Members' meeting, the Board or Chair may determine that the meeting be held entirely by telephonic or electronic means or by any combination of in-person attendance and telephonic or electronic means that enables all persons entitled to attend the meeting to reasonably participate.²⁰

¹⁵ ONCA, s. 14(1) provides: *A corporation shall at all times have a registered office in Ontario at the location specified in its articles, in a resolution made under subsection (3) or in a special resolution made under subsection (4).* Note the change in nomenclature from "head office" to "registered office". The hospital's current head office established under the *Corporations Act* is deemed to be its registered office under ONCA. Under ONCA, ss. 14(3) and (4), a hospital may change its registered office location within a municipality or geographic township by Board resolution; however, a change in the municipality or geographic township requires approval by special resolution.

¹⁶ ONCA, s. 53(1) provides: *Meetings of the members of a corporation must be held within Ontario at the place provided in the by-laws or, in the absence of such a provision, at the place within Ontario that the directors determine.* The exemption in ONCA, s. 53(2) permitting meetings outside of Ontario is unlikely to be relevant to a public hospital.

¹⁷ HMR, s. 15.

¹⁸ ONCA, s. 52(2) refers to the directors having this power. This By-law provides for an additional Board delegation of this power to the Chair in this section.

¹⁹ ONCA, s. 52(2).

²⁰ ONCA, s. 53(5), effective as of October 1, 2023 provides: *In addition to any other matters that the articles or by-laws may provide for with respect to the holding of meetings of the members in accordance with section (4), the articles or by-laws may: (a) limit the manner or manners by which a meeting of the members may be held in accordance with subsection (4); and (b) specify requirements that apply with respect to the holding of a meeting of the members in a manner described in subsection (4) or in such manner as described by the articles or by-laws made under clause (a).* This provides the Board or Chair with the flexibility to determine whether (or not) any particular Members' meeting should allow for Member participation by telephonic or electronic means. Hospitals with large memberships should consider the implications of meetings by telephonic or electronic means, particularly with respect to the logistics of Members voting by telephonic or electronic means. If it is felt that it will never be appropriate to permit for Member participation by telephonic or electronic means, a hospital could choose to omit this provision. If this is the hospital's preference, we recommend that this section be amended to provide as follows, in order to clarify the hospital's intention: *Members' meetings shall be held at the registered office of the Corporation or at any place in Ontario as the Board may determine.* ONCA, s. 53(6), effective October 1, 2023 provides: *A meeting of the members held in any manner described in subsection (4) or in such manner as described by the articles or by-laws made under subsection (5) must enable all persons entitled to attend the meeting to reasonably participate.* ONCA formerly required that meetings held by telephonic or electronic means permit all participants to communicate adequately with each other. Hospitals that adopted the 2021 OHA Prototype By-law prior to October 1, 2023 are likely already using technology that enables all persons entitled to attend the meeting to reasonably participate. These hospitals will likely need to amend their By-law to reflect this change at the next reasonable opportunity, and in the interim should continue to comply with the amendment.

2.5 Quorum

A majority of the Members shall constitute a quorum at any Members' meeting.²¹ If a quorum is present at the opening of a Members' meeting, the Members present may proceed with the business of the meeting, even if a quorum is not present throughout the meeting.²²

2.6 Notice

- (a) Notice of Members' meetings shall be given by one of the following methods:
- (i) by sending it to each Member, Director, and to the auditor by one of the methods set out in section 13.1 addressed to the person at their latest address as shown in the Corporation's records not less than ten days and not more than 50 days before the meeting; or²³
 - (ii) in any other manner permitted by the *Public Hospitals Act*.
- (b) Not less than 21 days, or a prescribed number of days,²⁴ before each annual meeting or before the signing of a resolution in lieu of the annual meeting, the Corporation shall give a copy of the Board-approved financial statements, auditor's report, and any further information respecting the financial position of the Corporation and the results of its operations required by the Articles or this By-law²⁵ to all Members who have informed the Corporation that they wish to receive a copy of those documents.²⁶

²¹ ONCA, s. 57(1) provides: *Unless the by-laws provide otherwise, the quorum for a meeting of the members is a majority of the members entitled to vote at the meeting...* Under ONCA, s. 53(7), effective October 1, 2023 provides: *A person who, through telephonic or electronic means, votes at or attends a meeting of the members is deemed for the purposes of this Act to be present in person at the meeting.* There are no requirements for a minimum quorum for Members' meetings. The quorum should be a number that is likely to be satisfied by attendance at a Members' meeting.

²² ONCA, s. 57(2) provides: *If a quorum is present at the opening of a meeting of the members, the members present may proceed with the business of the meeting, even if a quorum is not present throughout the meeting, unless the by-laws provide otherwise.* If you do not want this, the by-laws must provide otherwise. Section 57(3) provides: *If a quorum is not present at the opening of a meeting of the members, the members present may adjourn the meeting to a fixed time and place, but may not transact any other business.*

²³ ONCA, s. 55(1) provides: *The corporation shall give notice of the time and place of a meeting of the members in accordance with the by-laws, but in any event not less than 10 days and not more than 50 days before the meeting, to, (a) each member entitled to receive notice of the meeting; (b) each director; and (c) the auditor of the corporation ...* ONCA, s. 75(1) provides: *An auditor is entitled to attend every meeting of the members at the expense of the corporation and to be heard on matters relating to the auditor's duties.*

²⁴ Under ONCA, General Regulation (O Reg. 395/21), s. 13, the current prescribed number of days is five business days.

²⁵ None are currently required.

²⁶ ONCA s. 84(2) provides: *Not less than 21 days, or a prescribed number of days, before each annual meeting of the members or before the signing of a resolution under section 86 in lieu of the annual meeting, a corporation shall give a copy of the documents referred to in subsection (1) to all members who have informed the corporation that they wish to receive a copy of those documents.* The referenced documents are the Board-approved financial statements; the auditor's report; and any further information on the financial position of the corporation and the results of its operations required by the articles or the by-laws. See also PHA, s. 17. The PHA currently provides that notice of a Members' meeting may be provided by newspaper publication, as specified in s. 17(2). However, s. 17(2) of the PHA will be amended to provide that meeting notices to Members will be sufficiently given if published on the hospital website for at least two continuous weeks prior to the day of the meeting. This section accommodates the current and future iterations of s. 17(2) of the PHA. Before relying on the ability to provide notice by publication on their website, hospitals should confirm that the new s. 17(2) of the PHA has been proclaimed in force.

- (c) Notice of a Members' meeting at which Special Business²⁷ is to be transacted must state the nature of that business in sufficient detail to permit a Member to form a reasoned judgment on the business and state the text of any resolution to be submitted to the meeting.²⁸

2.7 Voting

- (a) Each Member in attendance at a Members' meeting shall be entitled to one vote on each matter.²⁹
- (b) At all Members' meetings, every question shall be determined by a majority of votes cast, unless otherwise specifically provided by the Act or this By-law.
- (c) If there is a tie vote at a Members' meeting, the chair of the meeting shall not have a second vote to break the tie.³⁰
- (d) Votes at all Members' meetings shall be cast by those Members in attendance at the meeting and not by proxy.³¹
- (e) Subject to the Articles, voting at a Members' meeting shall be by show of hands unless a Member demands a ballot.³² For clarity, in either case such vote may be conducted by telephonic or electronic means or by a combination of telephonic and electronic means and voting in person, if the Corporation makes these means available.³³

²⁷ ONCA, s. 55(7) provides: *All business transacted at a special meeting of the members and all business transacted at an annual meeting of the members is special business except for the following: 1. Consideration of the financial statements. 2. Consideration of the audit or review engagement report, if any. 3. An extraordinary resolution to have a review engagement instead of an audit or to not have an audit or a review engagement. 4. Election of directors. 5. Reappointment of the incumbent auditor or person appointed to conduct a review engagement. For the purposes of this ONCA provision, "extraordinary resolution" means a resolution that is, (a) submitted to a special meeting of the members of a corporation duly called for the purpose of considering the resolution and passed at the meeting, with or without amendment, by at least 80 per cent of the votes cast, or (b) consented to by each member of the corporation entitled to vote at a meeting of the members ...*

²⁸ ONCA, s. 55(8).

²⁹ ONCA, ss. 48(4) and (6). A hospital may develop a membership model where not all Members have the right to vote.

³⁰ The *Corporations Act* (s. 93(1)(c)) provided for a casting vote at Members' meetings to break the tie. ONCA, s. 48(6) provides: *Unless the articles provide otherwise, each member is entitled to one vote at a meeting of the members.* Accordingly, the chair of the meeting will not have a casting vote unless the Articles so provide.

³¹ PHA, s. 23 provides: *No member of a hospital corporation shall vote by proxy at any meeting of the corporation.*

³² ONCA, s. 58(1) provides: *Subject to the by-laws, voting at a meeting of the members shall be by show of hands unless a ballot is demanded by a member entitled to vote at the meeting.*

³³ Section 58(3) of ONCA, effective as of October 1, 2023 provides: *Unless the Articles or By-laws expressly provide otherwise, a vote at a meeting of the members may be conducted entirely by one or more telephonic or electronic means or by a combination of one or more telephonic or electronic means and voting in person.* The following sentence in section 2.7(e) does not need to be included in the By-law but has been added for clarity purposes: *For clarity, in either case such vote may be conducted by telephonic or electronic means or by a combination of telephonic and electronic means and voting in person, if the Corporation makes these means available* If it is the hospital's preference to prohibit telephonic or electronic participation in Members' meeting, we recommend striking this sentence from the By-law.

- (f) A Member may demand a ballot either before or after any vote by show of hands³⁴. A Member may withdraw a demand for a ballot.³⁵
- (g) Unless a ballot is demanded, an entry in the minutes of a meeting to the effect that the chair of the meeting declared a resolution to be carried or defeated is, in the absence of evidence to the contrary, proof of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.³⁶

2.8 Chair of the Meeting

The chair of a Members' meeting shall be:

- (a) the Chair; or
- (b) a Vice Chair, if the Chair is absent, unable, or unwilling to act;³⁷ or
- (c) a chair elected by the Members present if the Chair and Vice Chair(s) are absent, unable, or unwilling to act. The Secretary shall preside at the election of the chair of the meeting but if the Secretary is not present, the Members, from those present, shall choose a Member³⁸ to preside at the election.

2.9 Adjourned Meetings

- (a) If within one-half hour after the time appointed for a Members' meeting, the meeting has not commenced because a quorum is not present, the meeting shall stand adjourned until a day to be determined by the Board.
- (b) If a Members' meeting is adjourned by one or more adjournments for an aggregate of less than 30 days, no notice of the meeting that continues the adjourned meeting is required if all of the following are announced at the time of the adjournment:
 - (i) the time of the continued meeting;
 - (ii) if applicable, the place of the continued meeting; and

³⁴ ONCA, s. 58(2), effective October 1, 2023 provides: *A member... may demand a ballot either before or after any vote by show of hands.* The provision previously provided: *A member may demand a ballot before or after any vote.* Section 2.7(f) has been updated to mirror the language of ONCA but this is not a substantive change for hospitals that adopted the 2021 OHA Prototype By-law prior to October 1, 2023 given that section 2.7(e) already provides: *Subject to the Articles, voting at a Members' meeting shall be by show of hands unless a Member demands a ballot.*

³⁵ The second sentence is not found in ONCA but is added for clarity. Typically, a ballot on the election of chair or on the question of adjournment would be taken immediately, and the chair would determine the manner and timing of a ballot for all other questions.

³⁶ ONCA, s. 59(4).

³⁷ The reference to unwilling is added to address situations (albeit remote), where the Chair is a dissenting voice and controls the agenda.

³⁸ If a hospital has a closed membership model, the reference can be to a Member. If a different membership model applies, consider using the term Director.

- (iii) if applicable, instructions for attending and participating in the continued meeting by telephonic or electronic means that will be made available for the meeting, including if applicable, instructions for voting by such means at the meeting.³⁹
- (c) If a Members' meeting is adjourned by one or more adjournments for an aggregate of 30 or more days, notice of the meeting that continues the adjourned meeting shall be given in accordance with section 2.6.⁴⁰

2.10 Written Resolution in Lieu of Meeting

Except as provided in the Act, a resolution signed by all of the Members is as valid as if it had been passed at a Members' meeting.⁴¹

³⁹ ONCA, s. 55(5), effective as of October 1, 2023. If the hospital wishes to amend this By-law to prohibit telephonic or electronic Members' meetings, we recommend revising this provision as follows: *If a Members' meeting is adjourned by one or more adjournments for an aggregate of less than 30 days, no notice of the meeting that continues the adjourned meeting is required if all of the following are announced at the time of the adjournment: (i) the time of the continued meeting; and (ii) the place of the continued meeting.* Note that ONCA, s. 55(9), effective as of October 1, 2023 also provides: *For clarity, this section, as it reads immediately before the day subsection 5 (3) of Schedule 22 to the Less Red Tape, Stronger Economy Act, 2023 comes into force, continues to apply to a notice that was given before that day in respect of a meeting of the members to be held on or after that day.* As a result, the former s. 55(5) of ONCA would continue to apply to notices given before October 1, 2023 in respect of a Members' meeting to be held on or after that day. s. 55(5) of ONCA prior to October 1, 2023 provides: *If a meeting of the members is adjourned for less than 30 days, it is not necessary, unless the by-laws provide otherwise, that any person be notified of the meeting that continues the adjourned meeting, other than by announcement at the meeting that is adjourned.* Hospitals that adopted the 2021 OHA Prototype By-law prior to October 1, 2023 will likely need to amend their By-law at the next reasonable opportunity to reflect this change and in the interim should comply with the amendment, which imposes additional requirements.

⁴⁰ ONCA, s. 55(6).

⁴¹ This provision does not need to be included in the By-law but is provided for comprehensiveness. ONCA, s. 59(1) provides: *A resolution signed by all the members entitled to vote on that resolution at a meeting of the members is as valid as if it had been passed at a meeting of the members.* Section 59(2) provides: *A resolution dealing with a matter required by this Act to be dealt with at a meeting of the members, and signed by all the members entitled to vote at that meeting, satisfies all the requirements of this Act relating to meetings of the members.* Note that ss. 59(1) and (2) do not apply – and written resolutions are not permitted – in respect of a meeting at which a statement is given by a Director under ONCA, s. 27(1) (where the Director resigns or is opposing their removal) or by an auditor under s. 75(4) (where the auditor resigns or is opposing their removal) (ONCA, s. 59(5)). Written resolutions must be kept with the Members' meeting minutes (ONCA, s. 59(3)).

2.11 Telephonic or Electronic Members' Meetings

A Members' meeting may be held entirely by telephonic or electronic means or by any combination of in-person attendance and telephonic or electronic means⁴² provided such means enables all persons entitled to attend the Members' meeting to reasonably participate.⁴³ A person who, through telephonic or electronic means, votes at or attends a Members' meeting is deemed to be present in person at the meeting.⁴⁴

Article 3

Board

3.1 Composition of Board

Subject to the Articles,⁴⁵ the Board shall consist of:

- (a) 12⁴⁶ Directors, who satisfy the criteria set out in section 3.3 and who are elected by the Members in accordance with sections 3.7 and 3.8 or appointed in accordance with section 3.10; and

⁴² ONCA, s. 53(4), effective as of October 1, 2023 provides: *Subject to the articles or by-laws and subsection (6), a meeting of the members may be held entirely by one or more telephonic or electronic means or by any combination of in-person attendance and by one or more telephonic or electronic means.* ONCA s. 53(5), effective as of October 1, 2023 further provides: *In addition to any other matters that the articles or by-laws may provide for with respect to the holding of meetings of the members in accordance with subsection (4), the articles or by-laws may (a) limit the manner or manners by which a meeting of the members may be held in accordance with subsection (4); and (b) specify requirements that apply with respect to the holding of a meeting of the members in a manner described in subsection (4) or in such manner as described by the articles or by-laws made under clause (a).* If it is felt that it will never be appropriate to permit for Member participation by telephonic or electronic means, a hospital could choose to omit this provision. If this is the hospital's preference, we recommend inserting the following language in the By-law: *Participation at a Members' meeting by telephonic or electronic means is not permitted and attendance at a Members' meeting shall be in person.*

⁴³ ONCA, s. 53(6), effective October 1, 2023 provides: *A meeting of the members held in any manner described in subsection (4) or in such manner as described by the articles or by-laws made under subsection (5) must enable all persons entitled to attend the meeting to reasonably participate.* ONCA formerly required that meetings held by telephonic or electronic means permit all participants to communicate adequately with each other. Hospitals that adopted the 2021 OHA Prototype By-law prior to October 1, 2023 are likely already using technology that enables all persons entitled to attend the meeting to reasonably participate. These hospitals will likely need to amend their By-law to reflect this change at the next reasonable opportunity, and in the interim should continue to comply with the amendment.

⁴⁴ ONCA, s. 53(7), effective October 1, 2023 provides: *A person who, through telephonic or electronic means, votes at or attends a meeting of the members is deemed for the purposes of this Act to be present in person at the meeting.*

⁴⁵ ONCA, s. 22(2) provides: *If a corporation's articles provide for a minimum and maximum number of directors, the number of directors of the corporation and the number of directors to be elected at the annual meeting of the members must be the number determined from time to time by special resolution or, if a special resolution empowers the directors to determine the number, by resolution of the directors. A decrease in the number of directors does not shorten the term of an incumbent director.* Section 30(1) provides: *The members of a corporation may amend its articles to increase or decrease the number of directors, or the minimum or maximum number of directors, but a decrease shall not shorten the term of an incumbent director.* Thus, the Articles may provide for a range in the number of Directors, and if a range is set, the composition of the Board must fall within the range. For greater flexibility, the Articles could set a range in the number of Directors and provide that the Directors may fix the number from time to time. The reference to Articles here serves as a reminder to check the Articles before amending the Board size.

⁴⁶ Refer to the *Guide to Good Governance* for factors to consider in selecting Board size. ONCA, s. 22(1) requires at least three Directors. Directors need not be Members unless the By-law so requires.

(b) the following four *ex-officio* non-voting Directors:⁴⁷

- (i) Chief Executive Officer;
- (ii) Chief of Staff;⁴⁸
- (iii) President of the Medical Staff; and
- (iv) Chief Nursing Executive.

3.2 Duties and Responsibilities

Subject to the Act, the Board shall govern and supervise the management of the activities and affairs of the Corporation and may exercise all other powers and do all other acts and things as the Corporation is, by its Articles or otherwise, authorized to exercise and do.⁴⁹

3.3 Qualifications of Directors

(a) No individual⁵⁰ shall be qualified for election or appointment as a Director if the individual:

- (i) is under 18 years old;⁵¹
- (ii) has been found under the *Substitute Decisions Act, 1992* or under the *Mental Health Act* to be incapable of managing property;⁵²
- (iii) has been found to be incapable by any court in Canada or elsewhere;⁵³
- (iv) has the status of a bankrupt;⁵⁴
- (v) is an “ineligible individual” as defined in the *Income Tax Act (Canada)* or any regulations made under it;⁵⁵

⁴⁷ ONCA, s. 23(4) provides: *The by-laws of a corporation may provide for persons to be directors by virtue of their office.* HMR, ss. 2(1.1), (2). This By-law does not include any *ex-officio* Directors other than those required by the HMR. This is consistent with principles of Board independence and the objective of minimizing risks of a “representational” Board. Further, as public benefit corporations under ONCA (as defined in s. 1(1)) (by virtue of being charities), Ontario public hospitals must comply with ONCA, s. 23(3), which provides: *Not more than one-third of the directors of a public benefit corporation may be employees of the corporation or any of its affiliates.*

⁴⁸ If the Hospital does not have a Chief of Staff, the Chair of the Medical Advisory Committee will serve on the Board. Since 2011, the HMR has no longer required that the Vice President of the Medical Staff be a Director.

⁴⁹ ONCA, s. 21. The Board should adopt a statement of Board Roles and Responsibilities that describes the Board’s role and its key performance areas. Refer to the *Guide to Good Governance* for an example. Alternatively, a Board may prefer to set out a description of the Board’s responsibilities in the By-law.

⁵⁰ ONCA, s. 23(1)1.

⁵¹ ONCA, s. 23(1)2.

⁵² ONCA, s. 23(1)3.

⁵³ ONCA, s. 23(1)4.

⁵⁴ ONCA, s. 23(1)5.

⁵⁵ This is a requirement under the *Income Tax Act* for directors of charities. A description of who is an ineligible individual is found here: <https://www.canada.ca/en/revenue-agency/services/charities-giving/charities/policies-guidance/ineligible-individuals.html#toc2>.

(vi) [does not have their principal residence or carry on business within the area served by the Corporation as established by the Board from time to time, except by resolution of the Board; and]⁵⁶

(vii) is a [current or former] employee or Professional Staff member, except as provided under the *Public Hospitals Act*, except by resolution of the Board.⁵⁷

(b) The Board's decision as to whether or not a candidate is qualified to stand for election shall be final.

3.4 Director's Consent to Act

An individual who is elected or appointed to hold office as a Director shall, in writing, consent to the election or appointment before or within 10 days after the election or appointment, unless the Director has been elected or appointed where there is no break in the Director's terms of office. If an elected or appointed Director consents in writing after the 10-day period, the election or appointment is valid.⁵⁸

3.5 Ceasing to Hold Office

(a) A Director shall automatically cease to hold office if the Director:

(i) dies;

(ii) resigns office by delivering a written resignation to the Secretary, and the resignation shall be effective at the time it is received by the Secretary or at the time specified in the resignation, whichever is later,⁵⁹ or

(iii) becomes disqualified by virtue of any of sections 3.3(a)(ii) through 3.3(a)(vii).

(b) Where there is a vacancy in the Board, the remaining Directors may exercise all the powers of the Board so long as a quorum remains in office.

⁵⁶ This is optional and would be included for a Board that wishes to recruit its Directors only from its catchment area. A Board may wish to specify that only a percentage of its elected Directors come from within the catchment area to allow greater flexibility to recruit a skilled and qualified Director from outside the catchment area. The words "except by resolution of the Board" are added to allow the Board to make decisions in individual cases where it would be in the best interests of the Hospital to have a particular Director remain on the Board.

⁵⁷ This is optional but recommended to ensure Director independence. Other "exclusions" from Board eligibility might also be included. For example, many Boards have found that municipal council members who sit on the Board are from time to time in a conflict of interest. Another example of "excluded" Directors is often family members of employees and Professional Staff members. The words "except by resolution of the Board" are added to allow the Board to make decisions in individual cases where it would be in the best interests of the Hospital to have a particular Director on the Board.

⁵⁸ ONCA ss. 24(8) – (10). This provision does not need to be included in this By-law but serves as a reminder of this new requirement.

⁵⁹ ONCA, s. 25(2). ONCA, General Regulation (O Reg. 395/21), s. 7 requires the resignation to be in writing.

3.6 Removal

In accordance with the Act,⁶⁰ the Members may remove any elected Director before the expiry of the Director's term of office, and may elect any qualified individual as a Director to fill the vacancy for the remainder of the vacated term.⁶¹

3.7 Election and Term

Directors shall be elected and shall retire in rotation. The Directors referred to in section 3.1(a) shall be elected for a three-year term, provided that each such Director shall hold office until the earlier of the date on which their office is vacated pursuant to sections 3.5 or 3.6 or until the end of the meeting at which their successor is elected or appointed. Four Directors shall retire from office each year subject to re-election as permitted by section 3.9.⁶²

3.8 Nomination Procedure for Election of Directors

Nominations made for the election of Directors at a Members' meeting may only be made:⁶³

- (a) by the Board in accordance with the nominating and election procedure prescribed by the Board from time to time; or
- (b) by not less than five per cent of the Members pursuant to a proposal submitted to the Corporation in accordance with the requirements of the Act and this By-law.⁶⁴

⁶⁰ ONCA, s. 40 provides: (1) *The members of a corporation may, by ordinary resolution at a special meeting, remove from office any director or directors, except persons who are directors by virtue of their office. (2) A director elected by a class or group of members that has an exclusive right to elect the director may only be removed by an ordinary resolution of members of that class or group. (3) A vacancy created by the removal of a director may be filled at the meeting of the members at which the director is removed or under section Error! Bookmark not defined.*

⁶¹ The 2018 Prototype Corporate By-law included a provision addressing Director absenteeism and non-compliance (with laws, fiduciary duties, governing documents, policies, etc.). It enabled the vacation of office of a Director by a majority Board resolution and was developed for the benefit of hospitals that do not have a closed membership model. This By-law does not include that provision because it is designed for a hospital with a closed membership model (Directors and Members are the same).

⁶² PHA, s. 12(4). Where Directors are elected in rotation, no Director may be elected for a term of more than five years and at least four Directors shall retire each year (subject to re-election). If a Board has fewer than 12 elected Directors and wishes to have rotating terms, the Directors will need to be elected for terms of two years to ensure that at least four Directors terms expire each year, subject to re-election. Note that ONCA refers to terms of up to four years; however, the PHA allows for terms of up to five years and where the two statutes conflict, PHA prevails: ONCA, s. 5(1): *If there is a conflict between this Act or a regulation made under it and a provision in any other Act or in a regulation made under any other Act that applies to a body corporate without share capital, the provision in the other Act or its regulation prevails.*

⁶³ The Board should be comprised of individuals who have the necessary skills, competencies, experience, and independence to collectively perform the Board's roles and responsibilities. Directors must also have the attributes and qualities that will enable them to adhere to their fiduciary duties. A Board should adopt transparent recruitment processes for the nomination and election of Directors. The By-law contemplates that such a process or policy will be adopted. Refer to the *Guide to Good Governance*. The policy should include the following: (a) Ensuring that there is an open and transparent process for soliciting new applications for Directors; (b) Recruiting and nominating on the basis of the expertise, skills, and attributes which are needed by the Board; (c) Reviewing all applications for new Directors and selecting the persons who are most qualified to fulfil the needs of the Board; and (d) The establishment of a nominating committee which could include non-Director members to ensure transparency. If another membership model is selected it may be advisable to include in the By-law a process for conducting the election of Directors. A Board should consider the election process it wishes to follow. Reference should be made to the rules of order (procedural text) adopted by the Board. Two examples of election processes are set out in the Notes pages of the 2018 Prototype Corporate By-law.

⁶⁴ ONCA, s. 56(5) provides: *A proposal may include nominations for the election of directors if the proposal is signed by not less than 5 per cent of the members of a class or group of members of the corporation entitled to vote at the meeting at which the proposal is to be presented or a lower percentage that is set out in the by-laws but this subsection does not preclude nominations being made at a meeting of the members.*

3.9 Maximum Terms

- (a) Each Director referred to in section 3.1(a) shall be eligible for re-election, provided that the Director shall not be elected or appointed for a term that will result in the Director serving more than six consecutive years. The Director may also be eligible for re-election for another term or terms (to a maximum of six consecutive years) if at least two years have elapsed since the termination of their last term. In determining a Director's length of service as a Director, service prior to the effective date of this By-law shall be included.
- (b) Despite the foregoing:
 - (i) a Director may, by Board resolution, have their maximum term as a Director extended for the sole purpose of that Director succeeding to the office of Chair or serving as Chair; and
 - (ii) where a Director was appointed to fill an unexpired term of a Director, the partial term shall be excluded from the calculation of the maximum years of service.⁶⁵

3.10 Filling Vacancies

So long as there is a quorum of Directors in office, any vacancy occurring in the Board may be filled by a qualified individual appointed for the remainder of the term by the Directors then in office, but the total number of Directors so appointed may not exceed one-third of the number of Directors elected at the previous annual Members' meeting.⁶⁶ If there is not a quorum of the Board, or if there has been a failure to elect the number or minimum number of Directors provided for in the Articles, the Directors then in office shall, without delay, call a special Members' meeting to fill the vacancy⁶⁷. A Director appointed or elected to fill a vacancy holds office for the unexpired term of the Director's predecessor term.⁶⁸

⁶⁵ This By-law contemplates a maximum term of six years. Partial terms are excluded and therefore a Director who completes another Director's term may serve more than the full six years. A Board may prefer to provide that partial terms are included in the calculation of a Director's maximum term. This By-law also provides that service as a Director prior to the coming into force of this By-law shall be included in the calculation of a Director's maximum term. Where a Board is transitioning to new maximum terms the service of the current Directors will be counted towards the maximum term. If a longer term is desired, changes should be made to this section. Refer to the *Guide to Good Governance* for the factors to consider in determining term of office. A Board may need to include a "transition" provision to move the terms of its current Directors to a new rotation. For example: "Despite the foregoing, upon the coming into force of this By-law, the Board shall by resolution assign terms of one, two, and three years for the Directors to establish a three-year rotation as herein provided for the Directors then in office". Where a Board is transitioning to new maximum terms, the By-law could also provide that service as a Director prior to the effective date of the By-law shall be included in the calculation of a Director's maximum term.

⁶⁶ ONCA, s. 28(1) provides: *Except as provided in this section, a quorum of directors may fill a vacancy among the directors.*

⁶⁷ ONCA, s. **Error! Bookmark not defined.** provides: *(2) If there is not a quorum of directors or if there has been a failure to elect the number or minimum number of directors provided for in the articles, the directors then in office shall without delay call a special meeting of the members to fill the vacancy and, if they fail to call a meeting or if there are no directors then in office, the meeting may be called by any member... (6) A vacancy among the directors is not required to be filled if the vacancy results from an increase in the number or the minimum number of directors provided for in the articles or from a failure to elect that increased number or minimum number of directors.*

⁶⁸ ONCA, s. 28(7).

3.11 Directors' Remuneration

The Directors shall serve as such without remuneration and shall not, directly or indirectly, receive any profit from their position as such, provided that a Director may be reimbursed reasonable expenses incurred by the Director in the performance of their duties.⁶⁹

Article 4

Board Meetings

4.1 Board Meetings

- (a) The Board may appoint one or more days for regular Board meetings at a time and place named.⁷⁰ A copy of any Board resolution fixing the time and place of regular Board meetings shall be given to each Director forthwith after being passed and, subject to the Act,⁷¹ no other notice shall be required for any regular meeting.
- (b) In addition to section 4.1(a):
 - (i) the Board, the Chair, a Vice Chair, or the Chief Executive Officer may call a Board meeting; and
 - (ii) the Secretary shall call a Board meeting upon receipt of the written request of [four] Directors; and such meeting shall be held at the time and place determined in the notice of meeting.
- (c) Notice of a Board meeting need not specify the purpose of or the business to be transacted at the meeting, unless the meeting is intended to deal with any of the following matters, in which case the notice must specify that matter:
 - (i) to submit to the Members any question or matter requiring their approval;
 - (ii) to fill a vacancy among the Directors or in the position of auditor;
 - (iii) to appoint additional Directors;
 - (iv) to issue debt obligations, except as authorized by the Directors;

⁶⁹ While ONCA, s. 47(1) permits remuneration of Directors, the *Charities Accounting Act* and common law continues to prohibit remuneration of Directors for serving as Directors. Generally, expenses can be reimbursed if they were incurred to carry out the charitable purposes, the amount is reasonable, and proper receipts are provided. Note that Ontario Reg. 4.01 made under the *Charities Accounting Act* allows Ontario charities to make payments to Directors (generally for most goods, services, and facilities) without a court order provided specific requirements are met. See [Guardianship Investigations: The Role of the Public Guardian and Trustee - Ministry of the Attorney General \(gov.on.ca\)](https://www.attorneygeneral.gov.on.ca/guardianship-investigations-the-role-of-the-public-guardian-and-trustee) for additional details. The Corporation's Articles should also be considered for restrictions before any payments are made.

⁷⁰ This section enables the Board to schedule a regular meeting time (i.e., third Tuesday of the month) and give a general notice to the Directors.

⁷¹ ONCA, s. 34(3) provides: *A notice of a meeting of directors need not specify the purpose of or the business to be transacted at the meeting, unless the meeting is intended to deal with a matter referred to in subsection 51 (2), in which case the notice must specify that matter.* Those matters are addressed in this By-law in section 4.1(c).

- (v) to approve any annual financial statements; or
- (vi) to adopt, amend, or repeal by-laws.⁷²

4.2 Telephonic or Electronic Meetings

A Board or Board committee meeting may be held entirely by telephonic or electronic means, or by any combination of in-person attendance and telephonic or electronic means,⁷³ provided that all persons attending the meeting are able to communicate with each other simultaneously and instantaneously.⁷⁴ A person who, through telephonic or electronic means, attends a Board or Board committee meeting is deemed to be present in-person at the meeting.⁷⁵

4.3 Notices

- (a) Notice of Board meetings, other than regular meetings, shall be given to all Directors at least 48 hours⁷⁶ prior to the meeting. The Chair, a Vice Chair, or the Chief Executive Officer may call a meeting on less notice, by means deemed appropriate, provided that notice is given to all Directors and the majority of the Directors consent to holding the meeting.

⁷² Note that ONCA also refers to the matter of establishing contributions to be made, or dues to be paid, by Members. This By-law contemplates that no dues are payable and, thus, does not include that reference.

⁷³ ONCA, s. 34(6), effective as of October 1, 2023, provides: *Subject to the articles or by-laws and subsection (8), a meeting of directors may be held entirely by one or more telephonic or electronic means or by any combination of in-person attendance and by one or more telephonic or electronic means.* ONCA, s. 34(7), effective as of October 1, 2023, further provides: *In addition to any other matters that the articles or by-laws may provide for with respect to the holding of meetings of directors in accordance with subsection (6), the articles or by-laws may: (a) limit the manner or manners by which a meeting of directors may be held in accordance with subsection (6); and (b) specify requirements that apply with respect to the holding of a meeting of directors in a manner described in subsection (6) or in such manner as described by the articles or by-laws made under clause (a).* This means that Board meetings may be held by telephonic or electronic means or by a combination of in-person attendance and telephonic or electronic means, but the articles or by-laws can limit how the meetings may be held and specify applicable requirements. In addition, all of the directors no longer need to consent to the holding of a Board or Board committee meeting by telephonic or electronic means. Hospitals that adopted the 2021 OHA Prototype By-law prior to October 1, 2023 will likely need to continue to comply with their By-law, which now imposes a higher standard than ONCA by requiring that all directors consent to the holding of telephonic or electronic Board or Board Committee meetings, until such time as they amend their By-law to reflect this change. If it is felt that it will never be appropriate to permit director participation by telephonic or electronic means, a hospital could choose to omit this provision. If this is the hospital's preference, we recommend that this section be omitted and section 4.1 be amended to include the following: *Participation at a Board meeting by telephonic or electronic means is not permitted and attendance at a Board meeting shall be in person.*

⁷⁴ ONCA, s. 34(8), effective as of October 1, 2023, provides: *A meeting of directors held in any manner described in subsection (6) or in such manner as described by the articles or by-laws made under subsection (7) must provide that all persons attending the meeting are able to communicate with each other simultaneously and instantaneously.* ONCA formerly required that telephonic or electronic Board meetings permit all participants to communicate adequately with each other at the meeting. Hospitals that adopted the 2021 OHA Prototype By-law prior to October 1, 2023 are likely already using technology that enables all persons attending the meeting to communicate with each other simultaneously and instantaneously. These hospitals will likely need to amend their By-law to reflect this change at the next reasonable opportunity, and in the interim should continue to comply with the amendment.

⁷⁵ ONCA, s. 34(9), effective as of October 1, 2023 provides: *A person who, through telephonic or electronic means, attends a meeting of directors is deemed for the purpose of this Act to be present in person at the meeting.*

⁷⁶ The Board may decide the amount of notice it wishes to give to the Directors for Board meetings.

- (b) Notice of an adjourned Board meeting is not required to be given if all of the following are announced at the time of an adjournment:
- (i) the time of the continued meeting;
 - (ii) if applicable, the place of the continued meeting; and
 - (iii) if applicable, instructions for attending and participating in the continued meeting by the telephonic or electronic means that will be made available for the meeting, including, if applicable, instructions for voting by such means at the meeting.⁷⁷

4.4 Quorum

A majority of the Directors shall constitute a quorum, provided that a majority of the Directors present are elected Directors.⁷⁸

4.5 First Board Meeting after Annual Meeting

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

4.6 Persons Entitled to be Present

Guests may attend Board meetings with the consent of the meeting on the invitation of the Chair or Chief Executive Officer. The Board may adopt a policy from time to time on the attendance of the public at Board meetings.⁷⁹

4.7 Voting

- (a) Each voting Director in attendance at a Board meeting shall be entitled to one vote on each matter.

⁷⁷ ONCA, s. 34(5), effective as of October 1, 2023. If it is the hospital's preference to prohibit telephonic or electronic Board meetings, then we recommend amending section 4.3(b) as follows: *Notice of an adjourned Board meeting is not required to be given if all of the following are announced at the time of an adjournment: (a) the time of the continued meeting; and (b) the place of the continued meeting.* Note that ONCA, s. 34(10), effective as of October 1, 2023 provides: *For clarity, this section as it read immediately before the day subsection 3(2) of Schedule 22 to the Less Red Tape, Stronger Economy Act, 2023 comes into force, continues to apply to a notice that was given before that day in respect of a meeting of the directors to be held on or after that day.* This means that ONCA, s. 34(5), as it read prior to October 1, 2023 would apply to notices given before October 1, 2023 in respect of Board meetings to be held on or after that day. ONCA, s. 34(5), prior to October 1, 2023 provides: *Notice of a meeting that continues an adjourned meeting of directors is not required to be given if the time and place of the continued meeting is announced at the meeting that is adjourned.* Hospitals that adopted the 2021 OHA Prototype By-law prior to October 1, 2023 will likely need to amend their By-law to reflect this change at the next reasonable opportunity and in the interim should comply with the amendment, which imposes additional requirements.

⁷⁸ ONCA does not prescribe a minimum quorum.

⁷⁹ The Board meetings policy could cover open versus closed board meetings; *in camera* sessions; and informal sessions of Directors without the presence of the *ex-officio* Directors (the latter of which does not form part of the formal Board meeting).

- (b) As required by the regulations under the *Public Hospitals Act*, the Directors referred to in section 3.1(b) shall not be entitled to vote as Directors but shall otherwise be entitled to notice of, to attend, and to participate in, Board meetings and to receive the materials that are distributed to voting Directors.⁸⁰
- (c) A Director shall not be entitled to vote by proxy.⁸¹
- (d) Every question arising at a Board meeting⁸² shall be determined by a majority of votes cast, unless otherwise specifically provided by statute or by this By-law.
- (e) If there is a tie vote at a Board meeting, the chair of the meeting shall not have a second vote to break the tie.
- (f) The vote on any question shall be taken by secret ballot if so demanded by any Director in attendance and entitled to vote. The chair of the meeting shall count the ballots. Otherwise, a vote shall be by a show of hands. For clarity, in either case such vote may be conducted by telephonic or electronic means or by any combination of voting in person and by telephonic or electronic means, if the Corporation makes these means available.⁸³
- (g) Unless a ballot is demanded, an entry in the minutes of a meeting to the effect that the chair of the meeting declared a resolution to be carried or defeated is, in the absence of evidence to the contrary, proof of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.⁸⁴

4.8 Written Resolutions in Lieu of Meeting

- (a) A resolution signed by all of the Directors entitled to vote⁸⁵ on that resolution at a Board meeting is as valid as if it had been passed at a Board meeting.
- (b) A resolution signed by all of the Board committee members entitled to vote on that resolution at a Board committee meeting is as valid as if it had been passed at a Board committee meeting.⁸⁶

⁸⁰ This is new language intending to clarify the rights of *ex-officio* non-voting Directors.

⁸¹ ONCA, s. 23(5) provides: *No person shall act for an absent director at a meeting of directors.*

⁸² The Board may require a higher threshold for Board committee meetings, if desired.

⁸³ ONCA, s. 34(3), and (6)-(10), effective as of October 1, 2023 enables directors to attend and participate in Board meetings by telephonic or electronic means unless the articles or by-laws expressly provide otherwise. The following sentence in section 4.7(f) does not need to be included in the By-law but has been added for clarity purposes: *For clarity, in either case such vote may be conducted by telephonic or electronic means or by a combination of telephonic and electronic means and voting in person, if the Corporation makes these means available.* If it is the hospital's preference to prohibit telephonic or electronic participation in Board meetings, we recommend striking this sentence from the By-law.

⁸⁴ ONCA, s. 53.

⁸⁵ ONCA, s. 35(1) provides: *A resolution, signed by all the directors entitled to vote on that resolution at a meeting of directors or of a committee of directors is as valid as if it had been passed at a meeting of directors or of a committee of directors.* Note that *ex-officio* non-voting Directors do not need to sign written resolutions for them to be valid but they must receive notice of them in accordance with section 4.7(b) of this By-law.

⁸⁶ ONCA, s. 35(1). Note that some Board committee members might be non-Directors.

4.9 Consent and Dissent of Director

- (a) A Director who is present at a Board or Board committee meeting is deemed to have consented to any resolution passed or action taken at the meeting, unless:
- (i) the Director's dissent is entered in the meeting minutes;
 - (ii) the Director requests that their dissent be entered in the meeting minutes;
 - (iii) the Director gives their dissent to the secretary of the meeting before the meeting is terminated; or
 - (iv) the Director submits their written dissent to the Corporation immediately after the meeting is terminated.⁸⁷
- (b) A Director who votes for or consents to a resolution is not entitled to dissent under this section.⁸⁸
- (c) A Director who was not present at a meeting at which a resolution was passed or action taken is deemed to have consented to the resolution or action unless within seven days after becoming aware of the resolution, the Director:
- (i) causes their written dissent to be placed with the meeting minutes; or
 - (ii) submits their written dissent to the Corporation.⁸⁹

4.10 Adjournment of the Meeting

If within one-half hour after the time appointed for a Board meeting a quorum is not present, the meeting shall stand adjourned until a day within two weeks to be determined by the chair of the meeting.⁹⁰

⁸⁷ ONCA, s. 45(1). Note this significant addition to the law under ONCA. ONCA, General Regulation (O Reg. 395/21), s. 7(1)(4) requires the dissent of a Director given to the Secretary of a meeting at which a resolution was passed or action taken referred to in section 45(1)(c) of the Act to be given in writing. ONCA, General Regulation (O Reg. 395/21), s. 7(8) requires the written dissent to be sent by registered mail or delivered to the registered office or may be given by electronic means.

⁸⁸ ONCA, s. 45(2).

⁸⁹ ONCA, s. 45(3).

⁹⁰ See section 4.3 for notice requirements in the event of an adjournment.

Article 5

Conflict of Interest Disclosure⁹¹

5.1 Disclosure of Conflict⁹²

- (a) A Director or officer who:
- (i) is a party to a material contract or transaction or proposed material contract or transaction with the Corporation; or
 - (ii) is a director or officer of, or has a material interest in, any person who is a party to a material contract or transaction or proposed material contract or transaction with the Corporation,
- shall disclose to the Corporation or request to have entered in the minutes of Board meetings the nature and extent of their interest.⁹³
- (b) The disclosure required by section 5.1(a) must be made, in the case of a Director:
- (i) at the meeting at which a proposed contract or transaction is first considered;⁹⁴
 - (ii) if the Director was not then interested in a proposed contract or transaction, at the first meeting after the Director becomes so interested;
 - (iii) if the Director becomes interested after a contract is made or transaction is entered into, at the first meeting after the Director becomes so interested; or
 - (iv) if an individual who is interested in a contract or transaction later becomes a Director, at the first meeting after the individual becomes a Director.⁹⁵
- (c) The disclosure required by section 5.1(a) must be made, in the case of an officer who is not a Director:⁹⁶
- (i) forthwith after the officer becomes aware that the contract or transaction or proposed contract or transaction is to be considered or has been considered at a Board meeting;

⁹¹ Note that there are significant changes to the conflict provisions under ONCA.

⁹² This Article mirrors ONCA, s. 41. Note its new application to officers. ONCA, General Regulation (O Reg. 395/21) requires the disclosures made by Directors and officers and referred to in sections 41(1) and (4) of ONCA to be made in writing.

⁹³ ONCA, s. 41(1).

⁹⁴ This applies whether or not the Director was in attendance at the meeting.

⁹⁵ ONCA, s. 41(2).

⁹⁶ ONCA, s. 41(6). Note new requirements for officers. ONCA defines officer as follows: “officer”, in respect of a corporation, means an officer of the corporation appointed under clause 42(1) (a), including, (a) the chair of the board of directors of the corporation and a vice-chair of the board of directors of the corporation, (b) the president, a vice-president, the secretary, an assistant secretary, the treasurer, an assistant treasurer and the general manager of the corporation, and (c) any other individual who performs functions for the corporation similar to those normally performed by an individual listed in clause (a) or (b). This ONCA provision applies to those officers designated and appointed by the Board (e.g.,

- (ii) if the officer becomes interested after a contract is made or transaction is entered into, forthwith after the officer becomes so interested; or
 - (iii) if an individual who is interested in a contract or transaction later becomes an officer, forthwith after the individual becomes an officer.⁹⁷
- (d) If the contract or transaction or proposed contract or transaction in respect of which a disclosure is required to be made for the purposes of section 5.1(a) is one that, in the ordinary course of the Corporation's business, would not require approval of the Board or Members, then the Director or officer shall disclose to the Corporation, or request to have entered in the minutes of Board meetings, the nature and extent of their interest forthwith after the Director or officer becomes aware of the contract or transaction or proposed contract or transaction.⁹⁸
- (e) Except as permitted by the Act, a Director referred to in section 5.1(a) shall not attend any part of a Board meeting during which the contract or transaction is discussed, and shall not vote on any resolution to approve the contract or transaction.⁹⁹
- (f) If no quorum exists for the purposes of voting on a resolution to approve a contract or transaction only because one or more Director(s) are not permitted to be present at the meeting by virtue of section 5.1(e), the remaining Directors are deemed to constitute a quorum for the purpose of voting on the resolution.¹⁰⁰
- (g) For the purposes of section 5.1, a general notice to the Board by a Director or officer disclosing that the individual is a director or officer of, or has a material interest in, a person, or that there has been a material change in the Director's or officer's interest in the person, and is to be regarded as interested in any contract or transaction entered into with that person, is sufficient disclosure of interest in relation to any such contract or transaction.¹⁰¹
- (h) A contract or transaction for which disclosure is required under section 5.1(a) is not void or voidable, and the Director or officer is not accountable to the Corporation or the Members for any profit or gain realized from the contract or transaction, because of the Director's or officer's interest in the contract or transaction or because the Director was present or was counted to determine whether a quorum existed at the Board or Board committee meeting that considered the contract or transaction, if:
 - (i) disclosure of the interest was made in accordance with this section;
 - (ii) the Board approved the contract or transaction; and

Chair, Vice Chair, Secretary, and CEO). Nonetheless, other officers (e.g., the CEO's senior management team) should keep in mind that the principle underlying disclosure is to protect the integrity of the decision-making process and consider if they have a conflict that ought to be disclosed.

⁹⁷ ONCA, s. 41(3).

⁹⁸ ONCA, s. 41(4).

⁹⁹ ONCA, s. 41(5). The exceptions under the Act relate to the Director's indemnity or insurance, and contracts with affiliates.

¹⁰⁰ ONCA, s. 41(6).

¹⁰¹ ONCA, s. 41(8).

(iii) the contract or transaction was reasonable and fair to the Corporation when it was approved.¹⁰²

(i) The provisions of this Article are in addition to any Board-approved conflict of interest policy.¹⁰³

Article 6

Protection and Indemnification of Directors, Officers, and Others¹⁰⁴

6.1 Indemnities to Directors and Others¹⁰⁵

(a) The Corporation shall indemnify a Director or officer of the Corporation, a former Director or officer of the Corporation, or an individual who acts or acted at the Corporation's request as a director or officer, or in a similar capacity, of another entity, against all costs, charges, and expenses, including an amount paid to settle an action or satisfy a judgment, reasonably incurred by the individual in respect of any civil, criminal, administrative, investigative, or other action or proceeding in which the individual is involved because of that association with the Corporation or other entity.¹⁰⁶

(b) The Corporation may advance money to an individual referred to in section 6.1(a) for the costs, charges, and expenses of an action or proceeding referred to in that section, but the individual shall repay the money if the individual does not fulfil the conditions set out in section 6.1(c).¹⁰⁷

(c) The Corporation shall not indemnify an individual under section 6.1(a) unless:

(i) the individual acted honestly and in good faith with a view to the best interests of the Corporation or other entity, as the case may be; and

(ii) if the matter is a criminal or administrative proceeding that is enforced by a monetary penalty, the individual had reasonable grounds for believing that their conduct was lawful.¹⁰⁸

(d) The indemnity provided for in section 6.1(a) shall not apply to any liability that a Director or officer, or former Director or officer, of the Corporation, or individual, may sustain or incur as the result of any act or omission as a Professional Staff member.

¹⁰² ONCA, s. 41(9). This provision does not need to be included in the By-law but is provided for comprehensiveness.

¹⁰³ These provisions should be supplemented by a conflict of interest policy that provides processes to deal with situations where a Director or officer has, or feels another Director or officer has, a conflict of interest or conflict of duty.

¹⁰⁴ The 2018 Prototype Corporate By-law provision on Directors' Liability was removed. The new indemnification provisions in ONCA offer Directors and officers greater protection than those found in the *Corporations Act*.

¹⁰⁵ ONCA, s. 46 includes a new required indemnity in s. 46(5), in addition to the permissive indemnity in s. 46(1) and the ability to advance costs in s. 46(2). This is similar to what is enabled by for-profit business corporations statutes. This By-law is drafted to achieve maximum indemnification of Directors and officers.

¹⁰⁶ ONCA, s. 46(1). Note the new reference to former Directors and officers.

¹⁰⁷ ONCA, s. 46(2). Note this new provision.

¹⁰⁸ ONCA, s. 46(3). See also *Charities Accounting Act*, R.S.O. 1990, C. C.10 Regulation 4/01 ss. 2 (1), (2).

Article 7

Committees

7.1 Committees

The Board may, from time to time, establish:

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

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

The Board shall provide for the functions, duties, responsibilities, and powers of the Board committees in the Board resolution by which a Board committee is established or in Board-approved terms of reference or general committee policy.¹⁰⁹

7.3 Board Committee Members, Chair

- (a) Unless otherwise provided by by-law or by Board resolution:
 - (i) the Board shall appoint the chair, vice chair (if any), and members of each Board committee;¹¹⁰
 - (ii) each chair and vice chair of a Board committee shall be a Director;¹¹¹
 - (iii) the Board committees may include members who are not Directors (other than a committee referred to in section 7.5 or an audit committee¹¹², if any);

¹⁰⁹ The Board may wish to include Committee Terms of Reference in the By-law, but including them will require a By-law amendment in order to alter them, which would not otherwise be required. Examples of Committee Terms of Reference are included in the *Guide to Good Governance*. ONCA, s. 83(3) provides: *If the corporation has an audit committee, the audit committee shall review the financial statements of the corporation before they are approved by the directors.* A hospital may wish to review its Executive Committee Terms of Reference (e.g., non-delegable Board powers) and Audit Committee Terms of Reference (e.g., committee composition requirements, duties, and notice to auditors) for ONCA compliance.

¹¹⁰ ONCA, s. 80(1) provides: *A corporation may have an audit committee and, if it does, the majority of the committee must not be officers or employees of the corporation or of any of its affiliates.* Section 80(2) provides: *The corporation shall give the auditor ... notice of the time and place of any meeting of the audit committee. The auditor ... is entitled to attend the meeting at the expense of the corporation and be heard, and shall attend every meeting of the committee if requested to do so by one of its members.* Section 80(3) provides: *The auditor ... or a member of the audit committee may call a meeting of the committee.*

¹¹¹ Exceptions are enabled by the preamble to this provision.

¹¹² ONCA, s. 80(1), effective as of October 1, 2023 provides: *A corporation may have an audit committee comprising one or more directors and the majority of the committee must not be officers or employees of the corporation or any of its affiliates.* This provision formerly provided “*A corporation may have an audit committee and, if it does, the majority of the committee must not be officers or employees of the corporation or of any of its affiliates*”. While there is a lack of consensus on this issue and guidance is not yet available, it appears that the effect of this amendment is that only directors may serve on the audit committee (if any) of a corporation. Non-directors with finance or audit expertise could attend audit committee meetings as invited guests without a vote where necessary to ensure

- (iv) a majority of the members of any Board committee shall be elected Directors; and¹¹³
 - (v) the Chair and Chief Executive Officer shall be an *ex-officio* member of all Board committees.
- (b) The Board may remove any chair, vice chair, or Board committee member from any Board committee at any time.

7.4 Procedures at Committee Meetings

Procedures at and quorum for Board committee meetings shall be determined by the chair of each Board committee, unless established by this By-law, Board resolution, or in Board-approved terms of reference or general committee policy.¹¹⁴

7.5 Delegation to a Committee¹¹⁵

The Board may delegate to any committee comprised entirely of Directors any of the Board's powers, other than the following powers:

- (a) to submit to the Members any question or matter requiring the Members' approval;
- (b) to fill a vacancy among the Directors or in the position of auditor;
- (c) to appoint additional Directors;
- (d) to issue debt obligations, except as authorized by the Board;
- (e) to approve any annual financial statements; or¹¹⁶
- (f) to adopt, amend, or repeal by-laws.

that the audit committee has sufficient expertise to perform its function. Hospitals that adopted the 2021 OHA Prototype By-law prior to October 1, 2023, and in particular, section 7.3(a)(iii), will likely need to amend their By-law and/or governance documents at the next reasonable opportunity to reflect this change and in the interim should comply with the amendment.

¹¹³ Board committees conduct the work of the Board. This is suggested as best practice; however, exceptions are enabled by the preamble to this provision.

¹¹⁴ Note that sections 4.3 and 4.9 of this By-law apply to Board committees. Both are specifically enabled by ONCA, ss. 34(6) (telephonic or electronic meetings) and 35 (written resolutions in lieu of meeting).

¹¹⁵ ONCA, s. 36 and PHA, s. 15. Note that Member approval is not required for this delegation. Section 36 also includes a reference to establishing Members' contributions or dues but this By-law provides there shall not be any Members' fees so that reference is not included.

¹¹⁶ ONCA, s. 83(1) provides: *The directors shall approve annual financial statements of the corporation that relate to the period that began immediately after the end of the last completed financial year and ended not more than six months before the annual meeting or, if the corporation has not completed a financial year, that began on the date the corporation came into existence and ended not more than six months before the annual meeting.*

Article 8

Officers

8.1 General

- (a) Subject to the Act, the Articles, and this By-law, the Board may designate the offices of the Corporation, appoint officers, specify their duties, and delegate to them powers to manage the activities and affairs of the Corporation, except powers to do anything referred to in section 7.5.¹¹⁷
- (b) The officers shall include the Chair and Secretary, and may include one or more Vice Chairs and other officers as the Board may determine.
- (c) The Board shall appoint the officers at its first meeting following the annual Members' meeting at which the Directors are elected or at other times when a vacancy occurs. A Director may be appointed to any office of the Corporation.¹¹⁸ The Chief Executive Officer shall be the Secretary.¹¹⁹ The same individual may hold more two or more offices¹²⁰ (except one individual may not hold the offices of Chair and Vice Chair).¹²¹ The Board shall appoint the Chair¹²² and Vice Chair(s)¹²³ from among the elected Directors.

8.2 Terms of Office

- (a) Unless otherwise provided in this By-law, the officers shall hold office for a one-year renewable term from the date of their appointment or until their successors are appointed in their stead. The Board may remove any officer at any time.
- (b) The Chair shall be appointed annually and shall be eligible for re-appointment, provided that:
 - (i) the Chair shall serve no longer than two consecutive years; and

¹¹⁷ ONCA, ss. 42(1)(a) and 42(2). Apart from the Chair, which office is prescribed in s. 42(2), ONCA does not prescribe specific offices. ONCA defines officer as follows: "officer", in respect of a corporation, means an officer of the corporation appointed under clause 42(1) (a), including, (a) the chair of the board of directors of the corporation and a vice-chair of the board of directors of the corporation, (b) the president, a vice-president, the secretary, an assistant secretary, the treasurer, an assistant treasurer and the general manager of the corporation, and (c) any other individual who performs functions for the corporation similar to those normally performed by an individual listed in clause (a) or (b).

¹¹⁸ ONCA, s. 42(1)(b).

¹¹⁹ This is common practice but is not required.

¹²⁰ ONCA, s. 42(1)(c).

¹²¹ The language in parenthesis is suggested for succession planning purposes, as it is typically contemplated that a Vice Chair would succeed to the office of Chair.

¹²² ONCA, s. 42(2).

¹²³ The addition of Vice Chair is suggested for succession planning purposes, as it is typically contemplated that a Vice Chair would succeed to the office of Chair.

- (ii) where a Director has served as Chair for two consecutive years, the Board may, by resolution passed by at least two-thirds of the votes cast at a Board meeting, provide that such Director is eligible for re-appointment for a maximum of two additional one-year terms as Chair.¹²⁴

8.3 Duties of Chair

The Chair shall, when present, preside at all Board and Members' meetings and shall represent the Corporation and the Board as may be required or appropriate and shall have those other powers and duties as the Board may specify. Unless otherwise provided by by-law or by Board resolution, the Chair shall be an *ex-officio* member of all Board committees.

8.4 Duties of Vice Chairs

A Vice Chair shall, in the absence, disability, or unwillingness of the Chair, perform the duties and exercise the powers of the Chair and shall perform those other duties as the Board may specify. Where two or more Vice Chairs are appointed they shall be designated First Vice Chair, Second Vice Chair, and so on. The Chair, or failing the Chair, the Board, shall designate which of the Vice Chairs shall exercise the powers and perform the duties of the Chair as contemplated in this section.

8.5 Duties of Secretary

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

8.6 Other Officers

The Board shall determine the powers and duties of all other officers from time to time. Any of the powers and duties of an officer to whom an assistant has been appointed may be exercised and performed by the assistant unless the Board otherwise directs.¹²⁵

¹²⁴ In many cases, a term of only one year is thought to be too short for a Chair. Many Boards provide for a Chair to serve a term of two or three years. This By-law allows for a slightly longer term but it is an optional provision, at the discretion of the Board.

¹²⁵ The 2018 Prototype Corporate By-law includes a provision on the appointment and duties of the Chief Executive Officer as an officer. A hospital may choose to retain this reference. This By-law addresses only officers of the Board and not officers of the Corporation. The Chief Executive Officer's duties would be set out in their position description and employment agreement. Certain duties remain described in the definition, in accordance with the PHA.

Article 9

Organization and Financial

9.1 Seal

The Board shall determine the form of the seal of the Corporation, if any.¹²⁶

9.2 Execution of Documents

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

9.3 Banking Arrangements

The Corporation shall transact the banking business of the Corporation or any part of it with those banks, trust companies, or other financial institutions as the Board may determine from time to time.¹²⁷

9.4 Financial Year

Unless otherwise determined by the Board and subject to the *Public Hospitals Act*, the financial year end of the Corporation shall be March 31 in each year.¹²⁸

9.5 Appointment of Auditor

- (a) The Members shall, at each annual meeting, appoint an auditor to audit the accounts of the Corporation and to report to the Members at the next annual meeting.¹²⁹

¹²⁶ ONCA, s. 13 provides: *A corporation may have a corporate seal, but is not required to have one.* ONCA, Names and Filings Regulation (O Reg. 394/21), s. 41 provides: *If a corporation has a seal, it may set out the seal on any form in paper format.*

¹²⁷ ONCA, s. 32(1)(f).

¹²⁸ HMR, s. 8.

¹²⁹ ONCA, s. 68(1). ONCA, s. 77(1) provides: *An auditor of a corporation ... shall examine the financial statements that are required by section 130 to be placed before the members as is necessary to enable the auditor ... to report on the financial statements.* Section 78(1) provides: *After conducting an audit ..., the auditor or other person shall report on the financial statements required by section 130 to be placed before the members.* Section 77(2) provides: *The auditor ... shall report on the financial statements in accordance with the regulations and with generally*

- (b) The auditor shall be duly licensed under the *Public Accounting Act, 2004* (Ontario) and shall be independent of the Corporation and its Directors and officers.¹³⁰
- (c) The auditor shall hold office until the close of the next annual meeting,¹³¹ provided that the Board shall immediately fill any casual vacancy in the office of auditor for the unexpired term.¹³²
- (d) The Board shall fix the remuneration of the auditor.¹³³

9.6 Borrowing Power

Subject to the Articles,¹³⁴ the Board may, without authorization of the Members:

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

9.7 Investments

The Corporation may invest its funds as the Board thinks fit, subject to the Articles or any limitations accompanying a gift.¹³⁵

accepted auditing ... standards, as the case may be. ONCA, General Regulation (O Reg. 395/21), s. 9 requires the corporation to give notice in writing of the appointment of an auditor to the auditor immediately after the appointment is made.

¹³⁰ ONCA, s. 69(1) provides: *In order to be an auditor of a corporation ..., a person must be permitted to conduct an audit ... of the corporation under the Public Accounting Act, 2004 and be independent of the corporation, any of its affiliates, and the directors and officers of the corporation and its affiliates.* ONCA, s. 69(2) provides: *For the purpose of this section, (a) independence is a question of fact; and (b) a person is deemed not to be independent if that person or their business partner, (i) is a business partner, a director, an officer or an employee of the corporation or any of its affiliates, or is a business partner of any director, officer or employee of the corporation or any of its affiliates, (ii) beneficially owns or controls, directly or indirectly, a material interest in the debt obligations of the corporation or any of its affiliates, or (iii) has been a receiver, receiver-manager, liquidator or trustee in bankruptcy of the corporation or any of its affiliates within two years before the person is proposed to be appointed as auditor of the corporation or to conduct a review engagement of the corporation. An auditor who becomes disqualified must immediately resign after becoming aware of the disqualification.*

¹³¹ ONCA, s. 68(1) provides for this term.

¹³² ONCA, s. 72(1) provides: *Subject to subsection (3), the directors shall immediately fill a vacancy in the position of auditor or of a person appointed to conduct a review engagement.* Section (3) refers to any provisions in the Articles that reserve this right to the Members. Section 72(4) provides: *An auditor ... appointed to fill a vacancy may act for the unexpired term of the auditor's ... predecessor.*

¹³³ ONCA, s. 68(4) provides: *The remuneration of an auditor may be fixed by ordinary resolution of the members or, if not so fixed, shall be fixed by the directors.*

¹³⁴ This language mirrors ONCA, s. 85(1). It is no longer necessary for hospitals to have a by-law provision to enable the Board's borrowing power; however, many hospitals will have limits on borrowing power in their Articles, which will supersede the ONCA provision. This section reminds the Hospital to refer to its Articles for any limits on borrowing.

¹³⁵ This language mirrors ONCA, s. 88. It does not need to be included in the By-law but can serve as a reminder.

9.8 Records¹³⁶

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

Article 10

Confidentiality

10.1 Confidentiality

Every Director, officer, Professional Staff member, Board committee member, employee, and agent¹³⁷ of the Corporation shall respect the confidentiality of matters:

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

10.2 Board Spokesperson

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

Article 11

Matters Required by the *Public Hospitals Act* and other Applicable Legislation

11.1 Professional Staff

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

¹³⁶ ONCA, s. 92 sets out certain record retention requirements (e.g., Articles; by-laws; Board, Board committee and Members' meeting minutes; written resolutions; registers of directors, officers, and members; accounting records (for six years); land registration records; Director's consents). The registers must contain prescribed information. ONCA, General Regulation (O Reg. 395/21), s. 6 sets out what is prescribed for corporate registers. ONCA now explicitly sets out the requirement to keep Board committee meeting minutes.

¹³⁷ The reference to agent could include a volunteer. Third-party subcontractors and agents are more conventionally bound by the confidentiality provisions of their services/subcontracting agreements with the Corporation.

11.2 Required Committees and Programs

The Board shall ensure that the Corporation establishes the committees and undertakes the programs that are required pursuant to applicable legislation, including the *Public Hospitals Act* and the *Excellent Care for All Act, 2010*, including a medical advisory committee, a fiscal advisory committee, and a quality committee.¹³⁸

11.3 Fiscal Advisory Committee

The Chief Executive Officer shall appoint the members of the fiscal advisory committee required to be established pursuant to the regulations under the *Public Hospitals Act*.¹³⁹

11.4 Chief Nursing Executive

The Chief Executive Officer shall ensure that there are appropriate procedures in place for the appointment of the Chief Nursing Executive.¹⁴⁰

11.5 Nurses and other Staff and Professionals on Committees

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

- (a) the participation of the Chief Nursing Executive, nurse managers, staff nurses, staff, and other professionals of the Corporation in decision making related to administrative, financial, operational, and planning matters; and
- (b) the election or appointment of the Chief Nursing Executive, nurse managers, staff nurses, and other staff and professionals of the Corporation to those administrative committees approved by the Chief Executive Officer to have a nurse or other staff or professional representation.¹⁴¹

11.6 Retention of Written Statements

The Chief Executive Officer shall cause to be retained for at least 25 years, all written statements made in respect of the destruction of medical records, notes, charts, and other material relating to patient care and photographs thereof.¹⁴²

11.7 Occupational Health and Safety Program

- (a) Pursuant to the regulations under the *Public Hospitals Act*, there shall be an occupational health and safety program for the Corporation, which shall include procedures for:
 - (i) a safe and healthy work environment;

¹³⁸ HMR, ss. 5 and 7; *Excellent Care for All Act, 2010*, s. 3.

¹³⁹ HMR, s. 5.

¹⁴⁰ HMR, s. 4(1)(a)(viii).

¹⁴¹ HMR, s. 4(1)(f).

¹⁴² HMR, s. 21(3).

- (ii) the safe use of substances, equipment, and medical devices;
 - (iii) safe and healthy work practices;
 - (iv) the prevention of accidents to individuals on the premises; and
 - (v) the elimination of undue risks and the minimizing of hazards inherent in the Corporation environment.
- (b) The Chief Executive Officer shall designate an individual to be in charge of occupational health and safety in the Corporation, who shall be responsible to the Chief Executive Officer or their delegate for the implementation of the occupational health and safety program.
- (c) The Chief Executive Officer shall report to the Board as necessary on the occupational health and safety program.¹⁴³

11.8 Health Surveillance Program

- (a) Pursuant to the regulations under the *Public Hospitals Act*, there shall be a health surveillance program for the Corporation, which shall be in respect of all individuals carrying on activities in the Corporation and include a communicable disease surveillance program.
- (b) The Chief Executive Officer shall designate an individual to be in charge of health surveillance in the Corporation, who shall be responsible to the Chief Executive Officer or their delegate for the implementation of the health surveillance program.
- (c) The Chief Executive Officer shall report to the Board as necessary on the health surveillance program.¹⁴⁴

11.9 Organ Donation

Pursuant to the regulations under the *Public Hospitals Act*, the Board shall approve procedures to encourage the donation of organs and tissues including procedures to identify potential donors and make potential donors and their families aware of the options of organ and tissue donations, and shall ensure that these procedures are implemented in the Corporation.¹⁴⁵

¹⁴³ HMR, s. 4 (1)(d).

¹⁴⁴ HMR, ss. 4(1)(e), (2).

¹⁴⁵ HMR, s. 4(1)(g).

Article 12

Rules of Order and Policies¹⁴⁶

12.1 Rules of Order

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

12.2 Policies

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

Article 13

Notices

13.1 Notice¹⁴⁷

- (a) Whenever under the provisions of the by-laws of the Corporation notice is required to be given, unless otherwise provided, the notice may be given in writing and delivered or sent by prepaid mail or personal delivery, or by electronic means,¹⁴⁸ if there is a record that the notice has been sent,¹⁴⁹ addressed to the Director, officer, Board committee member, Member, or auditor, at the address, as the case may be, as the same is shown in the records of the Corporation.

¹⁴⁶ References to Rules were deleted as generally most Boards adopt Policies. If the Board adopts Rules, the references to them can remain in addition to Policies. Professional Staff Rules and Regulations are addressed in the Professional Staff By-law. Consider if your Board Policies will require revision to comply with ONCA (e.g., Conflict of Interest Policy, Code of Conduct, Audit Committee Terms of Reference, Executive Committee Terms of Reference, Annual Declaration and Consent, etc.).

¹⁴⁷ ONCA, s. 196.

¹⁴⁸ ONCA refers to the *Electronic Commerce Act, 2000* for an understanding of providing notices by “electronic means”. The *Electronic Commerce Act, 2000* provides the following definition of “electronic”: “*electronic*” includes created, recorded, transmitted or stored in digital form or in other intangible form by electronic, magnetic or optical means or by any other means that has capabilities for creation, recording, transmission or storage similar to those means.

¹⁴⁹ The ONCA definition of “electronic means” requires notice to be “transmitted”, with a record of transmission. Accordingly, Board portal uploads alone, without further prompts (for example, an email referring to a meeting for which meeting materials have been uploaded), would not be sufficient notice of a Board meeting that was not otherwise a regularly scheduled meeting.

- (b) Notice of a Board or Members’ meeting need not specify the place of the meeting if the meeting is to be held entirely by telephonic or electronic means.¹⁵⁰ If a person may attend a Board or Members’ meeting by telephonic or electronic means, the notice of the meeting must include instructions for attending and participating in the meeting by the telephonic or electronic means that will be made available for the meeting, including, if applicable, instructions for voting by such means at the meeting.¹⁵¹
- (c) Any notice sent by the following means shall conclusively be deemed to be received as provided below:
 - (i) if by electronic means, on the next business day after transmission;
 - (ii) if delivered, at the time of delivery; and
 - (iii) if by prepaid mail, subject to section 13.1(c), on the fifth¹⁵² business day following its mailing.
- (d) Notwithstanding the foregoing provisions with respect to mailing, if it may reasonably be anticipated that, due to any strike, lock out, or similar event involving an interruption in postal service, any notice will not be received by the addressee by no later than the fifth business day following its mailing, then the mailing of the notice shall not be an effective means of sending it but rather any notice must then be sent by an alternative method that may reasonably be anticipated will cause the notice to be received reasonably expeditiously by the addressee.¹⁵³
- (e) The Secretary may change or cause to be changed the recorded address of any Director, officer, Board committee member, Member, or auditor in accordance with any information believed by them to be reliable.¹⁵⁴

¹⁵⁰ ONCA, s. 34(3.1), and section 55(1.1), effective as of October 1, 2023. If telephonic or electronic Board and Members’ meetings are expressly prohibited in the By-laws, we recommend deleting this provision. Note that ONCA, s. 34(10) and s. 55(9) provides: *For clarity, this section as it reads immediately before the day subsection 5(3) of Schedule 22 to the Less Red Tape, Stronger Economy Act, 2023 comes into force, continues to apply to a notice that was given before that day in respect of a meeting of the Board or Members to be held on or after that day.* Accordingly, section 13.1(b) would not apply to a notice that was provided before October 1, 2023 in respect of a meeting of the Board or Members’ to be held on or after that day. Note that if it is the hospital’s preference to prohibit telephonic or electronic participation in Board and Members’ meetings, then we recommend striking section 13.1(b) from the By-law.

¹⁵¹ ONCA, s. 34(3.2), and section 55(1.2), effective as of October 1, 2023, provides that if the directors or the members (as applicable) may attend a director or members’ meeting (as applicable) by telephonic or electronic means, the notice of the meeting must include instructions for attending and participating in the meeting by the telephonic or electronic means that will be made available for the meeting, including, if applicable, instructions for voting by such means. Hospitals that adopted the 2021 OHA Prototype By-law prior to October 1, 2023 will likely need to amend their By-law to reflect this change at the next reasonable opportunity and in the interim should comply with the amendment, which imposes additional requirements.

¹⁵² ONCA, s. 197(4); ONCA, General Regulation (O Reg. 395/21), s. 10(2).

¹⁵³ This is not an ONCA requirement but is retained as a best practice.

¹⁵⁴ ONCA, s. 196(3) provides: *If a corporation gives a notice or other document to a member in accordance with subsection (1) and the notice or document is returned on three consecutive occasions because the member cannot be found, the corporation is not required to give any further notices or other documents to the member until the member provides the corporation with a document setting out the member’s address.* This provision is optional and is intended to enable the Secretary to “find the member” and amend their recorded address (for example, where a Member or a non-Director committee member moves but does not inform the Corporation of their change of address and where the Secretary finds the new address). Note, however, that ONCA does not put a burden on the Secretary to attempt to find the Member.

13.2 Computation of Time

In computing the date when notice must be given under any provision of the by-laws requiring a specified number of days' notice of any meeting or other event, the date of giving the notice shall be excluded and the notice period shall terminate at midnight of the last day of the notice period, except if the last day is a holiday, the period shall terminate at midnight of the next day that is not a holiday.¹⁵⁵

13.3 Omissions and Errors

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

13.4 Waiver of Notice

Any Member, Director, officer, Board committee member, or the auditor of the Corporation, may, in writing, waive any notice required to be given to them under any provision of the *Public Hospitals Act*, the Act, or the Articles or by-laws of the Corporation, either before or after the meeting to which it refers, and the waiver, whether given before or after the meeting or other event of which notice is required to be given, shall cure any default in giving the notice.¹⁵⁶ Attendance and participation at a meeting constitutes waiver of notice, unless the attendance is for the express purpose of objecting to the transaction of any business on the grounds the meeting was not lawfully called.¹⁵⁷

Article 14

By-laws

14.1 By-laws and Amendments¹⁵⁸

- (a) The Board may make, amend, or repeal any by-law that regulates the activities or affairs of the Corporation, except in respect of a by-law:
- (i) to add, change, or remove a provision respecting the transfer of a membership;
 - (ii) to change the manner of giving notice to Members; or
 - (iii) to change the method of voting by Members not in attendance at a Members' meeting.

¹⁵⁵ ONCA, s. 2.

¹⁵⁶ ONCA, s. 198. ONCA, General Regulation (O Reg. 395/21), s. 7(1)(18) requires the waiver to be given in writing, and s. 12 allows it to be sent by electronic means.

¹⁵⁷ ONCA, ss. 34(4) (for Directors) and 55(3) (for Members).

¹⁵⁸ These provisions mirror ONCA, s. 17(1).

- (b) The Board shall submit the by-law, amendment, or repeal to the Members at the next Members' meeting, and the Members may confirm, reject, or amend the by-law, amendment, or repeal by ordinary resolution.
- (c) Subject to section 14.1(f), the by-law, amendment, or repeal is effective from the date of the Board resolution.¹⁵⁹
- (d) If the by-law, amendment, or repeal is confirmed or confirmed as amended by the Members, it remains effective in the form in which it was confirmed.
- (e) The by-law, amendment, or repeal ceases to have effect if the Board does not submit it to the Members as required under section 14.1(b) or if the Members reject it.
- (f) If a by-law, amendment, or repeal ceases to have effect, a subsequent Board resolution that has substantially the same purpose or effect is not effective until it is confirmed or confirmed as amended by the Members.
- (g) In any case of rejection, amendment, or refusal to approve the by-law or part of the by-law in effect in accordance with this section, no act done or right acquired under any by-law is prejudicially affected by any rejection, amendment, or refusal to approve.

14.2 Amendments to Professional Staff By-law

Prior to submitting all or any part of the Professional Staff By-law to the process established in section 14.1, the procedures set out in the Professional Staff By-law shall be followed.

¹⁵⁹ The 2018 Prototype Corporate By-law also provides "or from such future time as may be specified in the motion". While the 2021 language mirrors ONCA, ONCA can reasonably be interpreted to contemplate a Board resolution proposing a future effective date.

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