



BY-LAW 2009-01

A by-law relating generally to the transaction of the affairs of
The Conestoga College Institute of Technology and Advanced Learning
be it enacted as a by-law of
the Board of Governors of
The Conestoga College Institute of Technology and Advanced Learning

June 29, 2009

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1.0 DEFINITIONS

In this by-law:

- (a) “Act” means the Ontario Colleges of Applied Arts and Technology Act, 2002;
- (b) “Board” means the Board of Governors of The Conestoga College Institute of Technology and Advanced Learning;
- (c) “Chair” means the chairman or chairwoman of the Board or any committee thereof, as the case may be;
- (d) “Conestoga” means The Conestoga College Institute of Technology and Advanced Learning ;
- (e) “Council” means The College Compensation and Appointments Council;
- (f) “ex officio” members of the Board or its committees are voting members because of the office he or she holds;
- (g) “external members” means those governors appointed in the manner provided in the Regulations, none of whom shall be a full-time employee or a spouse of a full-time employee of a college of applied arts and technology;
- (h) “governor” means a member of the Board;
- (i) “internal members” means those governors duly elected in accordance with procedures established by the Board after consultation with the students and with academic, administrative and support staff and set out in a by-law of the Board;
- (j) “Minister” means the Ontario Minister of Training, Colleges and Universities;
- (k) “Ministry” means the Ontario Ministry of Training, Colleges and Universities;
- (l) “President” means the President of Conestoga;
- (m) “Regulations” means the regulations made and amended from time to time pursuant to the Act;
- (n) “spouse” means a spouse as defined in the Family Law Act, R.S.O. 1990;
- (o) “Vice-Chair” means the vice-chairman or vice-chairwoman of the Board or any committee thereof, as the case may be; and
- (p) all other definitions and expressions contained in Section 1 of Ontario Regulation 34/03 made pursuant to the Act are hereby adopted and used herein with the same meaning.

2.0 HEAD OFFICE

The head office of Conestoga shall be in the Regional Municipality of Waterloo, in the Province of Ontario, and at such place therein as the Board may from time to time determine.

3.0 SEAL

The seal, an impression whereof is stamped in the margin hereof, shall be the corporate seal of Conestoga.

4.0 BOARD OF GOVERNORS

4.1 Board of Governors

The affairs of Conestoga shall be directed by a Board of Governors composed of:

- (a) twelve appointed external members;
- (b) the President of Conestoga, by virtue of office, as a voting member; and
- (c) Up to four internal members comprised of one student, one academic staff member, one administrative staff member and one support staff member, each of whom shall be elected by the students or by the relevant staff group as provided for in the Regulations and guidelines and rules established by the Board from time to time.

4.2 Appointment of Governors

The Council shall appoint the members of the Board except the President, who is a member by virtue of office, and the members elected under subsection 4.1(c).

No person shall be a member of the Board under subsection 4.1(c) unless the person is duly elected in accordance with procedures and conditions established in writing by the Board in consultation with the students and the staff referenced in subsection 4.1(c).

4.3 Members of Conestoga

The members of Conestoga shall consist of, and be limited to, such persons as are from time to time elected or appointed as governors, in accordance with the provisions of this by-law and who have not been removed from the Board in accordance with the provisions of this by-law or any other applicable law. Each governor shall automatically become a member of Conestoga upon his or her appointment as a governor. The interest shall not be transferrable and shall lapse and cease when he or she ceases to be a governor in accordance with this by-law, any other by-law of Conestoga, or as provided in any applicable statute or regulation.

4.4 Term of Office

The members shall take office on the 1st day of September in the year of their appointment or election, as the case may be.

A member of the Board appointed under subsection 4.1(a) or elected under subsection 4.1(c), other than a member elected by the students, shall hold office for a term not to exceed three years and shall not serve for more than six years consecutively, but is eligible for reappointment or re-election, as the case may be, after two years absence from the Board for successive terms not to exceed six years in total.

A member of the Board elected by the students under subsection 4.1(c) shall normally be appointed to hold office for a term of one year and may be re-appointed for up to two successive terms of one year each.

Notwithstanding the six year limit for an external member, if the Council fails to appoint a successor for an external member before the member's term of office expires, the member may remain in office until his or her successor is appointed.

4.5 Election of Chair and Vice-Chairs

The Board shall elect at each annual meeting from among its external members a Chair and two Vice-Chairs, and they shall be eligible for re-election.

4.6 Powers

The Board shall administer the affairs of Conestoga and exercise all powers and do all such acts and things as Conestoga is authorized to exercise and do pursuant to the Act, the Regulations and the Corporations Act.

The Board shall establish the overall goals, objectives and strategic direction of Conestoga and shall, through its oversight and stewardship, ensure that Conestoga operates efficiently and effectively and is developing in ways that are congruent with the above stated goals, objectives and strategic direction. The Board will ensure continuity of high quality leadership by its attention to succession planning.

The Board shall administer the affairs of Conestoga in all things, and make or cause to be made for Conestoga, in its name, any kind of contract which Conestoga may lawfully enter into.

Without limiting the role of the Board described above, the Board shall annually do or cause to be done the following:

- (a) review and approval of the business plan of Conestoga;
- (b) review and approval of the budget of Conestoga;
- (c) review and approval of the annual report of Conestoga;

- (d) approval of the auditors' report and the audited financial statements of Conestoga;
- (e) appointment of the auditors of Conestoga; and
- (f) designation of persons to act on behalf of Conestoga under section 6.6 of this by-law.

4.7 Remuneration of Governors

The Board may approve allowances for Board members for travelling and living expenses incurred by members while engaged in the business of the Board, but members shall otherwise not be remunerated by the Board for undertaking the responsibilities of a Board member.

For the purposes of this section, a member of the Board includes a member of a committee or sub-committee of the Board.

4.8 Indemnities to Governors

Every governor and his/her heirs, executors and administrators, shall from time to time and at all times, be indemnified and saved harmless, out of the funds of Conestoga, from and against all costs, charges and expenses whatsoever which such governor sustains or incurs in or about any action, suit or proceeding which is brought, commenced or prosecuted against him/her for or in respect of any act, deed, matter or thing whatsoever made, done or permitted by him/her in or about the execution of the duties of his/her office except such costs, charges and expenses as are occasioned by his/her failure to exercise the powers and discharge the duties of his/her office honestly and in good faith with a view to the best interests of Conestoga or with the care, diligence and skill that a reasonable prudent person would exercise in comparable circumstances.

Conestoga shall also indemnify any governor in such circumstances as the Act or law requires. Nothing in this by-law shall limit the right of any person entitled to indemnity to claim indemnity apart from the provisions of this by-law to the extent permitted by the Act or law.

4.9 Protection of Governors and Officers

No governor or officer for the time being of Conestoga shall be liable for the acts, receipts, neglects or defaults of any other governor, or officer or employee, or for joining in any receipt or act for conformity or for any loss, damage or expense happening to Conestoga, through the insufficiency or deficiency of title to any property acquired by Conestoga or for or on behalf of Conestoga, or for the insufficiency or deficiency of any security in or upon which any of the monies of or belonging to Conestoga shall be placed out or invested, or for any loss or damage arising from the bankruptcy, insolvency or tortious act of any person, firm or institution with whom or which any monies, securities or effects shall be lodged or deposited or for any other

loss, damage or misfortune whatever which may happen in the execution of the duties of his/her respective office or trust, or in relation thereto, unless the same shall happen by or through his/her failure to exercise the powers and discharge the duties of his/her office honestly and in good faith with a view to the best interests of Conestoga and in connection therewith to exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances.

4.10 Conflict of Interest

Every governor who is in any way directly or indirectly interested in a proposed contract or an existing contract with Conestoga, shall declare his/her interest at a meeting of the Board. In the case of a proposed contract, the declaration required by this section shall be made at the meeting of the Board at which the question of entering into the contract is first taken into consideration or, if the governor is not at the date of that meeting interested in the proposed contract, at the next meeting of the Board held after he/she becomes so interested, and, in a case where the governor becomes interested in a contract after it is made, the declaration shall be made at the first meeting of the governors held after he/she becomes so interested. For the purposes of this section, a general notice given to the Board by a governor to the effect that he/she has a direct or indirect interest in any person, firm, institution or other legal entity or is a member thereof and is to be regarded as interested in any contract made with such other person, firm, institution or other legal entity, shall be deemed to be a sufficient declaration of interest in relation to a contract so made, but no such notice is effective unless it is given at a meeting of the Board or the governor takes reasonable steps to ensure that it is brought up and read at the next meeting of the Board after it is given. If a governor has made a declaration of his/her interest in a proposed contract or existing contract in compliance with this section and has not voted in respect of the contract he/she is not accountable to Conestoga or to any of its members or creditors for any profit realized from the contract, and the contract is not voidable by reason only of his/her holding that office or of the fiduciary relationship established thereby. Notwithstanding anything in this section, a governor is not accountable to Conestoga or the Board or to any of their members or creditors for any profit realized from such contract, and the contract is not, by reason only of his/her interest therein, voidable if it is confirmed by a majority of votes cast at a general meeting of the members of the Board duly called for that purpose, and if his/her interest in the contract is declared in the notice calling the meeting.

Every governor will be bound by and subject to conflict of interest guidelines as issued from time to time by the Council, the Ministry and Management Board of Cabinet.

4.11 Membership

The membership of a governor, other than the President, is vacated when:

- (a) such governor resigns or ceases to be eligible for appointment or election to the Board;

- (b) such governor becomes incapable of acting as a governor and the Board declares such membership vacant; or
- (c) such governor, other than a governor having been granted a leave of absence by the Board, attends less than 50 percent of the regular Board meetings in any 12-month period or is absent for 4 consecutive Board meetings and the Board declares such membership vacant.

The Board shall have the right in its sole and absolute discretion to declare a governor's membership, other than the President's membership, on the Board vacant where a governor has not met the standard of conduct referred to in section 4.12.

The Board's declaration that a governor's membership on the Board is vacated shall be made by resolution of the Board carried by at least two-thirds of the votes cast by the governors at a meeting of the Board held not less than 30 days after written notice of the proposed declaration of the Board and the reasons therefore have been delivered by ordinary mail to the address of the governor as it appears in the records of the Board. The said governor shall be given an opportunity to address the said meeting prior to the vote on said resolution.

The resolution declaring the vacancy on the Board shall be entered in the minutes of the Board and shall be conclusive evidence of the vacancy.

4.12 Standard of Conduct

Governors shall be expected:

- (a) to meet the standard of conduct applicable to governors of Conestoga including, without limitation, the duty to exercise all powers and to carry out all functions diligently, honestly and in good faith and in the best interests of Conestoga, consistent with its objects, mission and by-laws, rather than in the interests of any other person, entity or constituency; and
- (b) to respect their duty of confidentiality with respect to Board matters.

4.13 Vacancies

Vacancies on the Board, however caused, shall be filled as provided in the Act and the Regulations and any guidelines issued from time to time by the Ministry or the Council.

5.0 MEETINGS

5.1 Meetings of the Board

Except as otherwise required by law, the Board may hold its meetings at such place or places as it may from time to time determine. No formal notice of any such meeting shall be necessary if all the governors are present or if those absent have signified their

consent to the meeting being held in their absence. Meetings of the Board may be formally called by the Chair or a Vice-Chair, Secretary, Treasurer or Secretary-Treasurer, or on the direction in writing of four governors. Notice of such meeting shall be delivered, telephoned, telecopied or by such other means of electronic communication to each governor not less than two days before the meeting is to take place. The statutory declaration of the Secretary, Treasurer, Secretary-Treasurer or Chair that notice has been given pursuant to this by-law shall be sufficient and conclusive evidence of giving of such notice. The Board may appoint a day or days in any month or months for regular meetings at an hour to be named in respect of such regular meetings and, in such case, no notice need be sent. The governors may consider or transact any business, either special or general, at any meeting of the Board.

The Chair or, in the case of the absence or illness of the Chair, a Vice-Chair shall preside at all meetings of the Board. In the case of the absence or illness of the Chair and both Vice-Chairs or there being vacancies in those offices, the Board may appoint an external member to act as Chair for the time being and the governor so appointed shall act and have all the powers of the Chair.

5.2 Annual Meeting

An annual meeting of the Board shall be held each calendar year at a time and place determined by the Board but in any event not more than fifteen months after the holding of the last preceding annual meeting.

5.3 Notice and Holding of Board Meetings

Whenever under the provisions of the by-laws of Conestoga, notice is required to be given, such notice may be given either personally, by telecopier or by such other means of electronic communication or by mail addressed to the governor or officer at a home or business address as the same appears on the books of Conestoga. A notice or other document so sent by mail shall be held to be sent at the time when the same was deposited in a post office or public mail box, or if transmitted by telecopier or by such other means of electronic communication, upon completion of such transmission. For the purpose of sending any notice, the address of any governor or officer shall be his/her last address as recorded on the books of Conestoga.

A schedule of meetings of the Board shall be placed in Conestoga's Library Resource Centre for public access.

All meetings of the Board shall be open to the public, and no person shall be excluded from any such meeting except for improper conduct as determined by the Board. Where a matter determined by the Board to be confidential to Conestoga is to be considered, the part concerning such confidential matter may be held in an in camera session of the Board. Where a matter of a personal nature concerning an individual may be considered at a meeting of the Board, the part of the meeting concerning such individual shall be held in camera unless such individual requests, and the Board agrees, that such part of the meeting be open to the public.

5.4 Electronic Attendance at Meetings

Where all governors have consented thereto, any governor may participate in a meeting of the Board by means of conference telephone or other communications equipment by means of which all persons participating hear and address such other. A governor participating in a meeting pursuant to this section shall be deemed to be present in person at the meeting.

5.5 Quorum

A quorum for a Board meeting shall be eleven members.

A quorum for a standing committee or ad hoc committee of the Board, shall consist of a majority of the committee members of such committee.

5.6 Errors in Notice

No error or omission in the giving of such notice for a meeting of the Board shall invalidate such meeting or invalidate or make void any proceeding taken or had at such meeting, and any governor may at any time waive notice of such meeting and may ratify and approve of any or all proceedings taken or had thereat.

5.7 Voting

Questions arising at any meeting of the Board shall, unless otherwise required by this by-law, be determined by a majority of votes, and in the case of equality of votes the Chair shall cast the deciding vote. All votes at any such meeting shall be taken by ballot if so demanded by any governor present, but if no demand be made, the vote shall be taken in the usual way by assent or dissent. A declaration by the Chair that a resolution has been carried and entry to that effect in the minutes shall be admissible in evidence as prima facie proof of the fact without proof of the number or proportion of the votes recorded in favour of or against such resolution.

5.8 Adjournment

Any meetings of the Board may be adjourned to any time and from time to time, and such business may be transacted at such adjourned meeting as might have been transacted at the original meeting from which such adjournment took place. No notice shall be required of any such adjourned meeting.

Such adjournment may be made notwithstanding that no quorum is present.

6.0 OFFICERS

6.1 Officers

In addition to a Chair and two Vice-Chairs, the Board shall appoint a President, a Secretary and a Treasurer or a Secretary-Treasurer and such other officers as the Board may determine from time to time by resolution.

6.2 Duties of the Chair

The Chair shall preside at all meetings of the Board and shall be an ex officio member of all committees of the Board. The Chair shall have all the duties and responsibilities customarily associated with this office.

6.3 Duties of the Vice-Chair

During the absence, inability to act, or on the request of the Chair, his/her duties and powers may be exercised by a Vice-Chair.

6.4 President

The Board shall appoint a President. The process used by the Board in relation to the appointment, review and removal of the President shall be subject to the approval of the Minister. The Board shall delegate to the President, as chief executive officer, full authority to direct the business and affairs of Conestoga (except such matters and duties as by law must be transacted or performed by the Board) and to appoint, classify, promote, suspend, transfer, reclassify or remove administrative, teaching and non teaching personnel of Conestoga, or, may delegate to any such personnel any lesser power. The President shall conform to all lawful orders given by the Board and shall, at all reasonable times, provide to the governors all information they may require regarding the affairs of Conestoga.

6.5 Duties of Other Officers

The duties of officers of Conestoga shall be such as the terms of their engagement call for or as the Board and/or the President may require of them.

6.6 Signing Authorization

Any two individuals holding the position of Chair, Vice-Chair, Secretary, Treasurer, or Secretary-Treasurer of the Board, President, and such other officers or employees as the Board may authorize by resolution from time to time will be signing officers of Conestoga.

Contracts in the ordinary course of Conestoga's operations may be entered into on behalf of Conestoga by any two of the signing officers of Conestoga subject to the Act, the Regulations and any requirements issued by the Ministry.

The Chair, President, Secretary, Treasurer or Secretary-Treasurer, or any two of them, or any person or persons from time to time designated by the Board may transfer any and all shares, bonds or other securities from time to time standing in the name of Conestoga in its individual or any other capacity or as trustee or otherwise may accept in the name and on behalf of Conestoga transfers of shares, bonds, or other securities from time to time transferred to Conestoga, and the Secretary, Treasurer or Secretary-Treasurer of the Board may affix the corporate seal to any such transfers or acceptances of transfer, and may make, execute, and deliver under the corporate seal any and all instruments in writing necessary or proper for such purposes, including the appointment of an attorney or attorneys to make or accept transfers of shares, bonds or other securities on the books of any company or corporation.

Notwithstanding any provisions to the contrary contained in the by-laws of Conestoga, the Board may at any time by resolution direct the manner in which, and the persons by whom, any particular instrument, contract or obligation of Conestoga may or shall be executed.

6.7 Vacancies

If the office of Chair, Vice-Chair, President, Secretary, Treasurer or Secretary-Treasurer become vacant for any reason, the Board shall elect or appoint an officer to fill such vacancy.

7.0 COMMITTEES AND SUB-COMMITTEES

7.1 Executive Committee

The Board shall appoint an Executive Committee of the Board which will advise and assist the governors in carrying on the affairs of Conestoga in connection with the matters hereinafter set forth and shall have the following powers and duties:

Purpose

To deal with matters within the terms of reference below, and any matters which may arise requiring immediate attention or during periods when a quorum of the Board cannot be obtained or when the Board is not meeting.

Committee Membership

- (a) Chair – Committee Chair
- (b) Two Vice-Chairs
- (c) President

- (d) Past Chair, if still a member of the Board
- (e) Such other governors or officers as deemed appropriate by the Board

Terms of Reference

- (a) To consider urgent matters and direct action thereon subject to Board ratification at the next meeting
- (b) To review, at least once per year, the performance of the President and make recommendations to the Board
- (c) To review, annually, and approve the salary changes for the President and administrative staff reporting to the President and report thereon to the Board for information purposes
- (d) To conduct a search for a President when required
- (e) To recommend the appointment of a President to the Board

Meetings

Meetings will be held as directed by the Chair.

7.2 College Council

The Board shall ensure that a College Council is established, the purpose of which is to provide a means for students and staff of Conestoga to offer advice and feedback to the President on matters of importance to students and staff. The terms of reference for the Council shall be approved by the Board and in accordance with guidelines established by the Minister.

7.3 Other Committees

The Board may, from time to time, appoint standing or ad hoc committees from among its members and others it deems appropriate, to act in an advisory capacity to the Board in connection with the terms of reference of such committees as determined by the Board.

Such standing committees may include, without limitation, the following committees:

- (a) Finance and Audit
- (b) Property and Plant
- (c) Human Resources
- (d) Program Advisory Committees
- (e) Academic and Student Affairs

8.0 GENERAL

8.1 Books and Records

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

8.2 Financial Year

Unless otherwise ordered by the Ministry, the fiscal year of Conestoga shall terminate on the 31st day of March in each year.

8.3 Cheques, etc.

All cheques, bills of exchange or other orders for the payment of money, notes or other evidences of indebtedness issued in the name of Conestoga shall be signed by such authorized signing officer or officers of Conestoga as defined in section 6.6, and any one of such officers may alone endorse notes and cheques for deposit with Conestoga's bankers for the credit of Conestoga, or the same may be endorsed by such officer or designated employees "for collection" or "for deposit" with the bankers of Conestoga by using Conestoga's rubber stamp for the purpose. Any one of such officers or employees may arrange, settle, balance and certify all books and accounts between Conestoga and Conestoga's bankers and may receive all paid cheques and vouchers and sign all the bank's forms of settlement or balances and release or verification slips.

8.4 Deposit of Securities for Safekeeping

The securities of Conestoga shall be deposited for safekeeping with one or more institutions allowed by the Financial Administration Act (Ontario) to be selected by the Board. Any and all securities so deposited may be withdrawn, from time to time, only upon the written order of Conestoga signed by such officer or officers, employee or employees of Conestoga, and in such manner, as shall from time to time be determined by resolution of the Board and such authority may be general or confined to specific instances. The institutions which may be so selected as custodians of the Board shall be fully protected in acting in accordance with the directions of the Board and shall in no event be liable for the due application of the securities so withdrawn from deposit or the proceeds thereof in accordance with such directions.

8.5 Borrowing

The Board may from time to time:

- (a) borrow money on the credit of Conestoga; or
- (b) issue, sell or pledge securities of Conestoga; or

- (c) charge, mortgage, hypothecate or pledge all or any of the real or personal property of Conestoga, including book debts, rights, powers, franchises and undertaking to secure and securities or any money borrowed, or other debt or any other obligation or liability of Conestoga.

From time to time, the Board may authorize any member, officer or employee of Conestoga or any other person to make arrangements with the monies borrowed or to be borrowed as aforesaid and as to the terms and conditions of the loan thereof and as to the securities to be given therefore with power to vary or modify such arrangements, terms and conditions and to give such additional securities for any monies borrowed or remaining due by Conestoga as the Board may authorize, and generally to manage, transact and settle the borrowing of the money by Conestoga.

8.6 Budget Approval

The Board shall not approve an annual budget prepared in respect of a fiscal year of Conestoga that would provide for an accumulated deficit at the end of such fiscal year without prior written approval of the Minister.

8.7 Auditors

The Board shall appoint one or more auditors licenced under the Public Accountancy Act to audit the accounts and transactions at least once a year. The auditor shall be instructed to prepare, for submission to the Board and the Minister, an audited financial statement for the preceding fiscal year in accordance with guidelines issued by the Ministry.

9.0 BY-LAWS

9.1 Amendments

The terms of any by-laws may be amended from time to time by ordinary resolution of the Board and in the manner required by law. Such resolution shall explicitly state its purpose is to amend such by-law.

9.2 Interpretation

In this by-law and all other by-laws of Conestoga hereafter passed, unless the context otherwise requires, words imparting the singular number or a specific gender shall include the plural number or other gender, as the case may be, and vice versa, and references to persons shall include firms and corporations.

9.3 Repeal

All previous by-laws are repealed upon the passage of this by-law.

9.4 Conflict with Legislation

Conestoga and the Board were established under the Act, but the powers and duties of the Board are also defined under other Acts of the Ontario Legislature and by Regulations made under these Acts including:

- (a) Corporation Act
- (b) Colleges Collective Bargaining Act
- (c) Crown Agency Act
- (d) Freedom of Information and Protection of Privacy Act

Should any provision of this by-law or any other by-laws enacted by the Board conflict with any such legislation, the conflicting provision shall be ineffective to the extent of such conflict without invalidating the remaining provisions of the affected by-laws.

Enacted pursuant to the Corporations Act (Ontario) by the governors in their capacity as directors of the Board of Governors and sealed with the corporate seal this 29th day of June, 2009.



Chair



Secretary

Confirmed pursuant to the Corporations Act (Ontario) by the governors in their capacity as members of the Board of Governors and sealed with the corporate seal this 29th day of June, 2009.



Chair



Secretary