



ADMINISTRATIVE REPORT

Report Date: November 15, 2015
Contact: Richard Newirth
Contact No.: 604.871.6455
RTS No.: 11200
VanRIMS No.: 08-2000-20
Meeting Date: January 20, 2016

TO: Standing Committee on Policy and Strategic Priorities
FROM: Acting General Manager of Community Services
SUBJECT: Vancouver Art Gallery Association By-law Amendments

RECOMMENDATION

THAT Council approve amendments to the By-laws of the Vancouver Art Gallery Association as outlined in this report.

COUNCIL AUTHORITY/PREVIOUS DECISIONS

The Vancouver Art Gallery Association By-laws stipulate that no amendment may be made without being approved by City Council.

CITY MANAGER'S/GENERAL MANAGER'S COMMENTS

The Acting General Manager of Community Services recommends approval of the foregoing.

REPORT

Background/Context

This report seeks Council approval for amendments to the By-laws of the Vancouver Art Gallery Association ('VAGA') as outlined in this report.

Founded in 1931, the Vancouver Art Gallery ('Gallery') is an independent not-for-profit cultural organization which, as the largest public art museum in western Canada, collects, preserves and exhibits the City of Vancouver's fine art collection, in trust for the citizens of Vancouver.

VAGA's Constitution sets out the ownership and governance of the assets held and acquired by the Gallery including the collection. To protect the assets and safeguard the intent of the Constitution, VAGA's By-laws require Council approval for any amendments. Specifically, By-law 14.1 provides that:

"No amendment to these By-laws shall be made without being approved by the Council of the City of Vancouver".

The Gallery has worked with City staff to update the VAGA's By-laws to ensure that they meet the By-law conditions for a new art gallery as approved by Council on April 24, 2013, and outlined in the Administrative Report dated April 15, 2013, entitled "A New Vancouver Art Gallery at 688 Cambie Street", and reproduced below:

- A. THAT Council authorize staff to negotiate, for execution by the City Manager, a Memorandum of Understanding for a lease agreement on the following general terms, and such other agreements as may be necessary or appropriate, with the objective of obtaining a new Vancouver Art Gallery (the "Gallery") located on the City-owned site at 688 Cambie, and to report back on same for approval and execution authority once all such agreements have been successfully negotiated pursuant to such Memorandum of Understanding:
 - iii) The Lease to be conditional on:
 - (g) The Constitution and By-laws of the VAGA being amended following discussion with the Board of Trustees so as to allow the Mayor to participate as an honorary member, or liaison to the Board of Trustees, or in such other alternative capacity of the VAGA, as the City determines appropriate, and for Council to appoint up to two voting members of the Board of Trustees of the VAGA and to ensure that there is always one City-appointed Director on the Board's Finance and Audit Committee, all as determined to be requisite by the City
- B. THAT Council approve amendments being made, following discussion with the Board of Trustees, to the Constitution and By-laws of the Vancouver Art Gallery Association, all as determined by the City, for the purpose of allowing the Mayor to participate as an honorary member or liaison to the Board of Trustees, or in such other alternative capacity of the Vancouver Art Gallery Association, as the City determines appropriate, and for Council to appoint up to two voting members of the Board of Trustees of the Vancouver Art Gallery Association and that one of these members be appointed to the Finance and Audit Committee of the Board of Trustees.
- C. THAT Council direct staff to undertake a review of the Constitution and By-laws of The Vancouver Art Gallery Association to address any housekeeping or other amendments to the Constitution and By-laws as requested and approved by the VAGA membership and report back to Council for approval.
- D. THAT Council request that the Vancouver Art Gallery Association appoint one City staff, as designated by the City Manager and the Director of Planning and

Development Services, to each of the VAGA's Building Committee and Architectural Technical Advisory Committee for a new Vancouver Art Gallery.

VAGA's Board of Trustees is seeking Council approval to amend its By-laws to incorporate these requested changes that will facilitate appropriate governance and oversight as the Gallery continues to develop a new art gallery on the site of 688 Cambie Street

As per VAGA's By-laws, all members were invited to an Annual General Meeting at the Gallery on Wednesday, November 4, 2015, at which time the membership unanimously approved the proposed amendments to the By-laws. The complete By-laws with the proposed amendments as approved by the VAGA membership are attached to this report as Appendix 'A'.

Strategic Analysis

While it is critical that the Gallery continues to operate as an arms-length non-profit organization with an autonomous vision, these By-law amendments are seen to be a positive step in supporting this important cultural institution which holds in trust a significant city asset in the permanent collection. The collection includes over 11,000 artworks valued at approximately \$300 million and the Gallery has a unique and special role in its care and stewardship on behalf of the citizens of Vancouver.

The VAGA By-laws have been amended as requested by Council to allow the Mayor to participate as an honorary member or liaison to the Board of Trustees. The amendments also provide for up to two (2) Council-appointed City-voting members to VAGA's Board of Trustees, with one of these members appointed to the Finance and Audit Committee of the Board of Trustees, to protect the City's significant financial commitment through annual operating grants, land contribution for the new gallery and periodic capital support. In respect to the project governance for the building of a new Gallery, both staff and the Gallery agreed that one senior City staff should be appointed to each of the Building Committee and the Architectural Selection Technical Advisory Panel (the latter appointment has previously been made).

In collaboration with the Gallery, staff also completed a general review of the VAGA's Constitution and By-laws to address any administrative changes to the VAGA's Constitution and By-Laws that have been ratified by the Board and membership but not yet approved by Council. It has been determined that no amendment to the Constitution was required to effect the proposed amendments on governance.

Legal and Cultural Services staff have reviewed the proposed amendments and concur that they are appropriate, meet the conditions as outlined by Council and are operationally beneficial to the Gallery.

Legal Implications

Council approval of these By-laws is according to VAG By-law 14.1 and will allow the Gallery to meet the By-law and Constitution conditions for a new art gallery as stipulated in the Council Report RTS 10010. These By-law amendments will also facilitate appropriate governance and oversight of the Gallery as it continues to develop a new art gallery on the site of 688 Cambie St.

CONCLUSION

Staff support the proposed amendments to the Vancouver Art Gallery Association's By-laws which have been approved by the membership and therefore recommend Council APPROVAL.

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SOCIETY ACT
“THE VANCOUVER ART GALLERY ASSOCIATION”
BY-LAWS

Most recent amendment: November 4, 2015

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BY-LAW I – INTERPRETATION

1.1 In these By-laws, unless the context otherwise requires.

“Association” shall mean “The Vancouver Art Gallery Association.”

“Board” or “Board of Trustees” shall mean the properly elected and appointed board of trustees as provided in these By-laws.

“Corporation” shall mean and include a company, firm, association or trust.

“Gallery” shall mean the Vancouver Art Gallery operated by the Association.

“Registered Address” of a member shall mean the address of the member as recorded in the books of the Association.

“Society Act” means the *Society Act of British Columbia* as amended from time to time.

“Special Resolution” shall have the meaning attributed thereto under the *Society Act*.

“Trustee” or “Trustees” shall mean the duly elected or appointed members of the Board.

1.2 In construing these By-laws, reference shall be had to the *Society Act* and words and expressions used in these By-laws shall, so far as the context does not otherwise require, have the same meaning as would be the case when used in the *Society Act*.

1.3 In these By-laws, unless the context otherwise requires, words importing the singular include the plural and vice versa, and words importing the masculine gender include the feminine and neuter.

1.4 The insertion of headings in these By-laws is for convenience only and shall not affect the interpretation thereof.

BY-LAW II – MEMBERSHIP

- 2.1 Any individual or corporation interested in the aims and objectives of the Association shall, upon application in writing and payment of the appropriate fee, be admitted to membership in one of the categories of membership provided by By-law 2.2.
- 2.2 There shall be the following categories of membership in the Association:
- (a) Individual Members
 - (b) Corporate Members
 - (c) Family Members
 - (d) Student Members
 - (e) Honorary Members
- 2.3 Individual Members shall be natural persons of at least 19 years of age. Subject to these By-laws, Individual Members shall be entitled to vote at all meetings of members of the Association and for the election of Trustees. The fees payable by Individual Members, if any, shall be as established from time to time by the Board.
- 2.4 Corporate Members shall be corporations. Subject to these By-laws, Corporate Members shall be entitled to vote at all meetings of members of the Association and for the election of Trustees. Each Corporate Member may designate in writing two individuals from time to time to represent the Corporate Members, and such individuals may each exercise the privileges of membership on behalf of that Corporate Member, but only such individuals may nominate persons for the office of Trustee and vote on behalf of that Corporate Member. The fees payable by Corporate Members, if any, shall be as established from time to time by the Board.

- 2.5 The Family Member category shall be open to families and subject to these By-laws. The Board may from time to time determine what constitutes a family for the purpose of enabling persons to qualify for membership in the Family Member category. Subject to these By-laws, each spouse included in a Family Member shall be a member and entitled to vote at all meetings of members of the Association and for the election of Trustees. A child included in a Family Member shall be a member but shall not be entitled to nominate or second the nominations of persons for the office of Trustee, stand for election as a Trustee, vote at any meeting of members of the Association, or vote for the election of Trustees. No child 19 years of age or older may be included in a Family Member. The fees payable by Family Members, if any, shall be as established from time to time by the Board.
- 2.6 Student Members shall be in full-time attendance at a high school, college, university, art school or other place of education recognized by the Board. Subject to these By-laws, Student Members shall be entitled to vote at all meetings of members of the Association and for the election of Trustees. The fees payable by Student Members, if any, shall be as established from time to time by the Board.
- 2.7 Honorary Members shall be individuals or corporations who are distinguished by contributors to the visual arts and who are designated as such by the Board. The term of membership of an Honorary Member shall be determined by the Board at the time of designation of the Honorary Member. Honorary Members shall be entitled to vote at all meetings of members of the Association and for the election of Trustees. No fees are payable by Honorary Members.
- 2.8 All persons who shall have subscribed or donated money or property to the Association that exceeds the applicable membership fees shall be provided with an Income Tax receipt for the excess amounts so subscribed or donated.
- 2.9 Membership shall terminate:
- (a) in the case of an Individual Member, upon death or resignation, or upon failure to pay applicable membership fees on or before the last day of the calendar month following the calendar month in which the due date occurs;
 - (b) in the case of a Corporate Member, upon dissolution or resignation, or upon failure to pay applicable membership fees on or before the last day of the calendar month following the calendar month in which the due date occurs;
 - (c) in the case of members included in a Family Member, upon the death or

resignation of either spouse included in that Family Member, or upon failure to pay applicable membership fees on or before the last day of the calendar month next following the calendar month in which the due date occurs;

- (d) in the case of a Student Member, upon death or resignation, or upon that Student Member ceasing to be in full-time attendance at a high school, college, university, art school or other place of education recognized by the Board, or upon failure to pay applicable membership fees on or before the last day of the calendar month following the calendar month in which the due date occurs;
- (e) in the case of an Honorary Member, upon death or resignation, or upon the expiration of the term of membership of that Honorary Member.

2.10 Any person who on March 25, 1986 holds membership in the Founder, Life Member, Honorary Life Member, Member Emeritus or any other special class of membership shall retain that membership for the period and upon the terms on which it was originally conferred.

2.11 For the purposes of these By-laws, a member in good standing is a member whose membership at the date on which good standing is to be determined has not terminated pursuant to the provisions of By-law 2.9 or By-law 2.10.

BY-LAW III – MEETINGS OF MEMBERS

- 3.1 In each year the annual general meeting of the Association shall be held as soon as conveniently may be after the close of the fiscal year of the Association on such day (not later than 180 days following the fiscal year end), at such hour and at such place as shall be designated by the Board.
- 3.2 The Board may, whenever it thinks fit, and upon the requisition of not less than 15 members of the Association in good standing, and shall, upon the requisition of 10% or more of the members of the Association in good standing, call an extraordinary general meeting. In the case of a requisition, such meeting shall be convened for a date not more than 90 days after the delivery of the requisition. The requisition shall set forth the purpose of the meeting, be signed by the requisitionists, and shall be delivered or sent by registered mail to the address of the offices of the Association. If the Board does not, within 21 days after the delivery of the requisition call such a meeting of the Association, then the requisitionists may themselves call a meeting.
- 3.3 Every general meeting, other than an annual general meeting, is an extraordinary general meeting.
- 3.4 Notice of a general meeting specifying the place, the day and the hour of meeting, and, in the case of special business, the general nature of that business, shall be given to each member either personally or sent by mail or email to the Registered Address of each member not less than 14 days before the meeting. The accidental omission to give notice of a meeting to, or the non-receipt of notice by, any of the members entitled to receive notice shall not invalidate the proceedings at any meeting.
- 3.5 No business, other than the election of a chairman and the adjournment or termination of the meeting, shall be transacted at any general meeting of the Association unless a quorum of 40 members in good standing is present in person at the time when the meeting proceeds to business, but, subject to By-law 3.10, a quorum need not be present throughout the meeting. If within one hour of the time appointed for a general meeting a quorum is not present, the meeting if convened upon a requisition shall stand dissolved. In any other case, the meeting shall stand adjourned for one week at the same hour and place and, if at the adjourned meeting a quorum is not present within one hour of the time appointed, the members present shall form a quorum.

- 3.6 The Board Chair shall preside over all meetings of the members as chairman. In the absence of the Board Chair, the Vice Chair shall act as chairman. In the absence of the Board Chair and the Vice Chair, the members present shall, by simple majority, elect one of the Trustees present at the meeting to act as chairman of the meeting. In the absence of the Board Chair, the Vice Chair or any other Trustee, the members present shall by simple majority elect one of their number to be chairman.
- 3.7 Every person who is a member in good standing of the Association on the first day of the calendar month immediately preceding the calendar month in which the date of a general meeting of the Association occurs and who is also a member in good standing on the first day of the calendar month in which the date of that general meeting occurs shall be entitled to attend that general meeting of the Association and, unless a child included in a Family Member, shall be entitled to one vote at that general meeting.
- 3.8 A member which is a corporation may vote by an individual representative, who, if authorized in writing, shall be entitled to speak and vote, and, in all other respects, exercise the rights of a member and that representative shall be regarded as a member for all purposes with respect to a general meeting of the Association.
- 3.9 No person shall be entitled to attend or vote at any general meeting of members as the proxy for a member.
- 3.10 If at any time during a general meeting there ceases to be a quorum present, the chairman of the meeting may order that the business then in progress shall be suspended until there is a quorum present or until the meeting is adjourned or terminated.
- 3.11 Unless at any given meeting of the members the chairman determines otherwise, Robert's Rules of Order shall apply to all meetings of the Association.

BY-LAW IV – BOARD OF TRUSTEES

- 4.1 The Association shall be governed by a Board consisting of:
- (a) eighteen Trustees elected by the members of the Association as hereinafter provided (the “Elective Trustees”);
 - (b) up to ten Trustees appointed by the Elective Trustees as hereinafter provided (the “Appointive Trustees”);
 - (c) the Director and, if not otherwise a Trustee, the immediate past Board Chair as ex officio (non-voting) Trustees.
 - (d) the Chair of the Vancouver Art Gallery Foundation.
 - (e) two (2) Trustees appointed by the Council of the City of Vancouver (the “City Trustees”) as hereinafter provided.
- 4.2 Subject to the *Society Act* and these By-laws, the Board may exercise all of the powers of the Association and shall manage or supervise the management of the business and affairs of the Association.
- 4.3
- (a) No individual shall serve as an Elective Trustee, Appointive Trustee or City Trustee for more than eight consecutive years; provided that the Elective Trustees may appoint an individual as a Trustee for an additional consecutive term not exceeding two years in order that such individual may serve as Board Chair, Vice Chair, Secretary or Committee Chair.
 - (b) If an Elective Trustee, Appointive Trustee or City Trustee has been in office for eight consecutive years, or such longer term as permitted under paragraph (a) of this By-law 4.3, that individual may not stand for election or appointment at the end of that individual’s term and must be out of office for at least one year before becoming eligible again to act as Trustee.
- 4.4 Until the conclusion of the annual general meeting held in 1999 the number of Elective Trustees shall be twelve and there may be up to twelve Appointive Trustees.
- 4.5
- (a) At the discretion of the Board of Trustees, any elective Trustee may be appointed an Emeritus Trustee or Officer for life at the expiration of his or her term. Trustees Emeriti and Officers Emeriti shall continue as members of the Association (if not otherwise qualified), and shall have such privileges and

responsibilities as may be provided in the By-laws and as may be prescribed from time to time by the Board of Trustees.

- (b) Trustees Emeriti and Officers Emeriti shall receive notices of and may attend all meetings of the Board as ex-officio (non-voting) Trustees. They shall have no legal responsibilities in the conduct of the affairs of the Association, but may be invited to serve in an advisory capacity on any committee of the Board of Trustees except the Executive Committee.

4.6 (a) The Board of Trustees may, at its discretion, appoint and re-appoint Honorary Trustees or Officers for such terms or terms as it shall prescribe. Honorary Trustees and Honorary Officers shall have such privileges and responsibilities as may be provided in the By-laws and as may be prescribed from time to time by the Board of Trustees.

- (b) Honorary Trustees and Honorary Officers shall be chosen from persons eminently qualified in one or more aspects of the Gallery's activities and interests. Honorary Trustees and Honorary Officers shall not be required to attend meetings of the Board unless specifically invited as ex-officio (non-voting) Trustees, neither shall Honorary Trustees nor Honorary Officers have any legal responsibilities in the conduct of the affairs of the Association, but it is expected that they will be available to the Board for consultation and advice. They shall receive invitations to all major functions of the Gallery and shall receive its regular publications.

4.7 The Board will appoint the Mayor of the City of Vancouver from time to time pursuant to the Vancouver Charter as a trustee (the "Mayor Trustee"). The Mayor Trustee shall have such privileges and responsibilities as may be provided in the By-laws and as may be prescribed from time to time by the Board. The Mayor Trustee may attend all meetings of the Board as an ex-officio (non-voting) Trustee, but shall not be required to attend such meetings and shall have no legal responsibilities in the conduct of the affairs of the Association. If the Mayor Trustee is unable to attend a meeting of the Board, the Mayor Trustee may appoint the acting Mayor, deputy Mayor or an alternate approved in writing by the Board to attend such meeting. The Mayor Trustee shall receive invitations to all major functions of the Gallery and shall receive its regular publications.

BY-LAW V – ELECTION, APPOINTMENT AND REMOVAL OF TRUSTEES

- 5.1 Any individual who is a member in good standing of the Association on the first day of the calendar month in which the date of close of nominations occurs, other than a child included in a Family Member, and an individual who is in receipt of remuneration as a full-time or part-time employee of the Association, who has consented in writing to his nomination and who is:
- (a) nominated by the Nominations Committee; or
 - (b) nominated in writing by one and seconded by five other members of the Association, all of whom were members in good standing on the first day of the calendar month in which the date of close of nominations occurs, and none of whom was child included in a Family Member, is eligible for election to the Board.
- 5.2 At the annual general meeting to be held in 1999 ten members shall be elected in the manner hereinafter provided to serve as Elective Trustees two of whom shall hold office for a term of one year from the conclusion of such annual general meeting and eight of whom shall hold office for a term of two years from the conclusion of such annual general meeting. At each annual meeting thereafter, nine members shall be elected in the manner hereinafter provided to serve as Elective Trustees for a two year term from the conclusion of such annual general meeting and until the conclusion of the second annual general meeting following the date of their election.
- 5.3
- (a) the Board shall, at least 90 days beforehand, set the date, hour and place of the next annual general meeting of the Association and shall, at the same time, set a date and hour for the close of nominations for the office of Elective Trustee which shall not be less than 45 days before the date set for the annual general meeting and shall direct the Nominations Committee to propose a slate of Elective Trustees.
 - (b) The Nominations Committee shall give to all members of the Association notice by posting in a conspicuous public area of the Gallery not later than 60 days before the date fixed for the annual general meeting of the following:
 - (i) the names of the chairman and of the members of the Nominations Committee;
 - (ii) the date and the hour fixed for the annual general meeting and the place where the annual general meeting is to be held;
 - (iii) the date and hour for the close of nominations.

- (c) The Nominations Committee shall publish or bring to the attention of all members of the Association, by whatever means appear to the Nominations Committee to be appropriate, the provisions of these By-laws relating to the election of Trustees not later than 60 days before the date set for the annual general meeting.
- (d) Every nomination and consent referred to in By-law 5.1 shall be in writing, with the names of the member nominating, the members seconding the nomination and the member nominated being clearly legible, and shall be deposited with the chairman of the Nominations Committee by delivery to him personally or to the offices of the Association addressed to him, on or before the date and hour fixed for the close of nominations. If the names on a nomination or consent are not clearly legible then the person who is the subject of that nomination shall be considered not to have been duly nominated in accordance with this By-law.

5.4 The Nominations Committee shall:

- (a) make such nominations in conformity with the provisions of by-law 5.1 as it shall in its discretion determine;
- (b) ensure that at least ten qualified persons in 1999 and at least nine qualified persons in each year thereafter are properly nominated for the office of Elective Trustee;
- (c) within ten days after the date fixed for the close of nominations, publish the names of the persons duly nominated in accordance with this By-law for the office of Elective Trustee by posting and keeping posted the names of such persons in a conspicuous public place in or about the premises of the Gallery until the date of the next ensuing annual general meeting of the Association;
- (d) in the event that the number of nominations and consents deposited with the chairman of the Nominations Committee in 1999 does not exceed ten by the date and hour fixed for the close of nominations, the persons nominated shall, upon the publication by the Nominations Committee of the names of the persons being nominated be deemed to have been duly elected by the members of the Association then qualified to vote as Elective Trustees. Of the Elective Trustees so deemed duly elected, eight shall hold office for a term of two years from the conclusion of the annual general meeting of the Association held in 1999 and two shall hold office for a term of one year from the conclusion of the annual general meeting of the Association held in 1999. The respective terms of the Elective Trustees so deemed duly elected shall be determined by lot.
- (e) In the event that the number of nominations and consents deposited with the Chairman of the Nominations Committee in any year after 1999 does not exceed nine by the date and hour fixed for the close of nominations, the

persons nominated shall, upon the publication by the Nominations Committee of the names of the persons duly nominated, be deemed to have been duly elected by the members of the Association then qualified to vote as Elective Trustees to hold office for a term of two years from the conclusion of the annual general meeting of the Association held in that year.

- 5.5 (a) If there have been deposited nominations and consents in excess of the number of vacancies in the office of Elective Trustees to be filled, the Association shall, by secret ballot, choose the Elective Trustees from among those nominated and the Secretary shall cause to be mailed to each member of the Association who was a member in good standing on the first day of the calendar month in which the date of mailing occurs and who is entitled to vote for the election of Trustees, at least 15 days before the annual general meeting:
- (i) a voting paper containing thereon in an order chosen by lot by the chairman of the Nominations Committee, the names of all members of the Association duly nominated and stating the number of Elective Trustees to be elected;
 - (ii) a plain envelope;
 - (iii) an envelope marked "voting paper", and addressed to the Secretary of the Association at the Association's offices, and containing a place thereon for the signature and name and address of the member.
- (b) For the purpose of voting, a member shall proceed as follows:
- (i) he shall mark "x" or "✓" opposite the name of each candidate on the voting paper for whom he decides to vote;
 - (ii) he shall not vote for more candidates than the number to be elected;
 - (iii) he shall place the marked voting paper in the plain envelope in the envelope marked "voting paper," seal it, and endorse in the appropriate place thereon his signature, his name in block letters and his address, and mail or deliver it to the Secretary.
- (c) If any envelope containing a voting paper is received by the Secretary after 12.00 o'clock noon on the day fixed for the annual general meeting, the voting paper contained therein shall not be counted.
- (d) A voting paper that is not marked in accordance with this By-law shall not be counted.

- (e) Inadvertent omission to mail a ballot to a member of the Association who is entitled to receive a ballot does not invalidate an election.
- 5.6
- (a) The Board shall, prior to the date fixed for the annual general meeting, appoint two members of the Association who, with the Secretary, shall act as scrutineers at the election. In case any scrutineer is absent during the scrutiny, the others may nevertheless proceed therewith.
 - (b) The Secretary shall safely keep unopened all envelopes marked “voting paper” that are received by him before 12 o’clock noon on the day fixed for the annual general meeting.
 - (c) The scrutineers shall examine all envelopes marked “voting paper” that have been received by the Secretary before 12 o’clock noon on the date fixed for the annual general meeting and shall ascertain:
 - (i) whether the said envelopes are properly endorsed with the signatures and names of members entitled to be mailed a voting paper pursuant to clause (a) of By-law 5.5;
 - (ii) whether the envelopes marked “voting paper” are ones that were mailed to members of the Association by the Secretary for the purposes of that election. The decision of a majority of the scrutineers concerning matters referred to in subclauses (i) and (ii) above shall be final and shall not be subject to review by the Association or any member.
 - (d) The scrutineers shall open all the envelopes marked “voting paper” mailed to the members of the Association by the Secretary for the purposes of that election and properly endorsed with the signatures and names of members entitled to receive a voting paper pursuant to clause (a) of By-law 5.5 and shall remove therefrom the plain envelopes containing ballot papers and shall set aside the envelopes marked “voting paper.” The scrutineers shall then open the plain envelopes containing ballot papers and shall examine the ballot papers and shall tally the votes cast for each person thereon.
 - (e) The scrutineers shall not count ballots that are enclosed in envelopes marked “voting paper” that are not sealed and the decision of the majority of the scrutineers as to whether any such envelope is sealed is final and not subject to review by the Association or any member, but a ballot shall not be invalidated by the fact only that a member has enclosed it in an envelope marked “voting paper” without an enclosed plain envelope.
 - (f) The scrutineers shall report in writing to the chairman of the annual general meeting to be held in 1999 at the commencement of the said meeting, the names of the ten persons for whom the most votes were cast and shall keep the ballots and the envelopes marked “voting paper” until the said chairman

gives them instructions with respect to the disposition thereof, and upon the receipt by the chairman of the said report, the persons named therein shall be deemed to have been duly elected as Elective Trustees by the members of the Association then qualified to vote. The respective terms of office of the Elective Trustees shall be determined by the number of votes received, the eight persons receiving the greatest number of votes to hold office for a term of two years from the conclusion of such annual general meeting and the two persons receiving the least number of votes to hold office for a term of one year from the conclusion of such annual general meeting. In the case of an equal number of votes the respective terms shall be determined by lot.

- (g) The scrutineers shall report in writing to the Chairman of the annual general meeting held in each year after 1999 at the commencement of the said meeting the names of the nine persons for whom the most votes were cast and shall keep the ballots and the envelopes marked "Voting Paper" until the said Chairman gives them instructions with respect to the disposition thereof, and upon the receipt by the Chairman of the said written report the persons named therein shall be deemed to have been duly elected as Elective Trustees by the members of the Association then qualified to vote for a term two years from the conclusion of such annual general meeting.

- 5.7
 - (a) Following the coming into force of this By-law, the Elective Trustees shall hold a meeting of the Board for the purposes of receiving the recommendations of the Nominations Committee for Appointive Trustees and for the purpose of appointing up to twelve Appointive Trustees to hold office for a term expiring at the conclusion of the annual general meeting to be held in 1999. If there are less than twelve Appointive Trustees appointed at such meeting, the Board shall have power to appoint additional Appointive Trustees at any time provided that the total number of Appointive Trustees does not exceed twelve and that such Appointive Trustees shall hold office only until the conclusion of the annual general meeting to be held in 1999.
 - (b) Immediately following the annual general meeting to be held in 1999 and in each year thereafter the Elective Trustees shall hold the first meeting of the Board for the purpose of receiving the recommendations of the Nominations Committee for Appointive Trustees and for the purpose of appointing up to ten Appointive Trustees. If there are less than ten Appointive Trustees appointed at such meeting, the Board shall have power to appoint additional Appointive trustees at any time provided that the total number of Appointive Trustees does not exceed ten. All such Appointive Trustees shall hold office for a term expiring at the conclusion of the annual general meeting next ensuing after their appointment.

- 5.8 Following the coming into force of this By-law and immediately following the annual general meeting in each year thereafter, the Council of the City of

Vancouver will make a written recommendation to the Nomination Committee of candidates for City Trustee, which candidates may include Councillors of the City of Vancouver or a member of the public, but may not include an employee of the City of Vancouver. The Nomination Committee will make a selection from among the candidates recommended by the Council of the City of Vancouver and the Trustees shall hold a meeting of the Board for the purpose of receiving the recommendations of the Nomination Committee for City Trustees and approving appointees for City Trustees. Upon completion of the meeting of the Board, the Board will provide written notice to the Council of the City of Vancouver of the individuals approved by the Board for appointment by the City of Vancouver. All such City Trustees shall hold office for a term expiring at the conclusion of the annual general meeting next ensuing after their appointment, provided that prior to the end of such term the Nomination Committee will consult with the Council of the City of Vancouver regarding its appointees for City Trustees and if the Council of the City of Vancouver confirms the continued appointment of such City Trustees, such City Trustees shall be deemed to be re-appointed and shall hold office for a term expiring at the conclusion of the annual general meeting next ensuing. A City Trustee may be re-appointed for multiple consecutive terms in accordance with this By-law 5.8 provided By-law 4.3 is complied with at all times.

- 5.9 A person shall cease to hold the office of a Trustee:
- (a) if he resigns by notice in writing to the Secretary of the Association.
 - (b) If he ceases to be a member in good standing of the Association;
 - (c) If he is absent for more than four consecutive meetings of the Board without the consent of the Board;
 - (d) If he becomes in receipt of remuneration as a full time or part time employee of the Association provided this shall not be applicable to the Director as an ex officio (non-voting) Trustee;
 - (e) If he is otherwise not qualified under these By-laws to hold the office of a Trustee.
- 5.10 The Association may, by Special Resolution, remove any Elective Trustee, Appointive Trustee or City Trustee before the expiration of his term of office and may:
- (a) in the case of an Elective Trustee or Appointive Trustee, at a special meeting of the members of the Association, held at the time of or not less than 21 days after the passing of the Special Resolution removing such Elective Trustee or Appointive Trustee, appoint another person in his stead; or

(b) in the case of a City Trustee, appoint another person in his stead in accordance with the process for filling a vacancy of a City Trustee set forth in By-law 5.11.

- 5.11 In the event that for any reason less than ten Elective Trustees are elected at the annual general meeting to be held in 1999 or less than nine Elective Trustees are elected at any general meeting thereafter, the Board of Trustees shall have power to appoint some member(s) as Elective Trustees to serve the term for which Elective Trustees were to have been elected. In the event of any person ceasing to be a Trustee (other than a City Trustee) pursuant to the provision of By-law 5.9 hereof, the remaining Trustees may appoint some member to fill the vacancy thus occurring for the remainder of the term of such Trustee. In the event of any person ceasing to be a City Trustee pursuant to the provision of By-law 5.9 hereof, the Council of the City of Vancouver may make a written recommendation to the Nomination Committee of candidates to fill the vacancy thus occurring for the remainder of the term of such City Trustee, which candidates may include Councillors of the City of Vancouver or a member of the public, but may not include an employee of the City of Vancouver. The Nomination Committee will make a selection from among the candidates recommended by the Council of the City of Vancouver and the Trustees shall hold a meeting of the Board for the purpose of receiving the recommendations of the Nomination Committee and approving a replacement for such vacancy. Upon completion of the meeting of the Board, the Board will provide written notice to the Council of the City of Vancouver of the individual approved by the Board for appointment by the City of Vancouver.
- 5.12 If the Board at any time determines there is a reasonable likelihood than election of Trustees cannot be effected in accordance with the provisions of these By-laws by reason of an actual or threatened interruption in postal service, the Board may take such steps, do such things and make such rules and regulations with respect to the conduct of that election of Trustees as it considers necessary or advisable including, without limitation, allowing members to deliver voting papers to specified locations, notifying members of the rules and regulations governing that election of Trustees by whatever means the Board considers appropriate, and providing the election of Trustees by a vote conducted at the annual general meeting.

BY-LAW VI – PROCEEDINGS OF THE BOARD

6.1 At the first meeting of the Board following the appointment of Appointive Trustees after each annual general meeting, the Board shall elect from among its members:

- (a) a Board Chair;
- (b) one or two Vice Chair(s);
- (c) a Secretary;
- (d) a Chair of the Finance Committee;
- (e) a Chair of the Nominations Committee; and
- (f) a Chair of the Acquisitions Committee.

To assist the Board in such elections, it shall be the responsibility of the Nominations Committee to present to such meeting its recommendations for such offices; provided that the failure of the Nominations Committee to present such recommendations shall not affect the validity of the elections.

6.2 The Board shall appoint a Director who shall manage, direct and be responsible for the operation of the Gallery and in accordance with and subject to such policies as may be adopted by the Board from time to time, shall report and accountable to the following:

- (a) the appointment, efficiency and discipline of the employees of the Association and the determination of their remuneration;
- (b) the quality, scope, planning and execution of the programme of exhibitions and other activities sponsored or carried on by the Association at the Gallery and elsewhere;
- (c) the security, care and maintenance of the permanent collection and recommendations for the purchase or disposition of works of art;
- (d) recommendations to the Board for major policy changes;
- (e) maintenance of good relations with other art galleries and similar institutions and with such other authorities, institutions and persons who have or may have an interest in the activities of the Association;
- (f) the conduct of the day to day management of the Gallery;
- (g) the preparation of all submissions to the City of Vancouver and to other authorities and institutions with respect to financial matters;
- (h) the exploration of new sources of grants and donations;
- (i) the preparation of financial statements and budgets;

- (j) the maintenance of all accounting and financial records;
- (k) the maintenance of such records and correspondence as may be necessary in connection with the solicitation of funds for the Association;
- (l) the supervision of expenditures so as to ensure that they conform with the applicable budgets approved by the Board;
- (m) the maintenance of records of minutes of meetings of the Board, of the Executive Committee and of other committees of the Board;
- (n) the maintenance of membership records and correspondence;
- (o) the supervision of the Association's premises and the maintenance of all correspondence and other communications with the City of Vancouver and other parties in connection therewith;
- (p) the maintenance of personnel records;
- (q) the administration of all insurance claims;
- (r) recommendations with respect to accounting procedures;
- (s) such other duties and responsibilities as the Board may from time to time assign.

6.3 Subject to the authority vested in the Director from time to time, the Board shall have power to appoint such other officers, employees and servants as it may from time to time determine for the good and proper conduct of the affairs of the Association and to determine the duties of such appointees and remuneration (if any) to be paid to them.

6.4 In addition to those committees for which express provision is made under these By-laws, the Board may from time to time constitute such standing and special committees as in its discretion it shall deem necessary and may delegate any of its powers to any such committees. The chairmen of all such committees shall be members of the Board and all other members of committees shall be members in good standing of the Association but need not be Trustees. Any such committee shall, in the exercise of the powers delegated to it, conform to such regulations as may be imposed upon it by the Board and shall report to the Board at such time and such manner as the Board shall direct.

- 6.5 The Board may meet together from time to time for the dispatch of business, adjourn and otherwise regulate its meetings as it thinks fit. Questions arising at any meeting shall be decided by a majority of votes. In the case of an equality of votes the Board Chair shall have a second or casting vote.
- 6.6 Meetings of the Board shall be held from time to time at the call of the Board Chair or the Vice Chair or may be requisitioned by any three Trustees. The Chair, or in his absence, the Vice Chair, shall forthwith call a meeting upon receipt of such requisition and if he shall fail to do so within 48 hours after receipt of such requisition, the meeting may be called by the requisitioning Trustees. Notice of every meeting so called shall be given to each Trustee not less than 24 hours before the time when the meeting is to be held, save that no notice of a meeting shall be necessary if all Trustees are present or if those absent have waived notice of or otherwise signified their consent to the holding of such meeting.
- 6.7 No business shall be transacted at any meeting of the Board unless a quorum of nine members thereof is present in person at the commencement of that meeting. If within 30 minutes of the time appointed for a meeting of the Board a quorum is not present, the meeting, if convened upon a requisition, shall stand dissolved. In any other case the meeting shall stand adjourned until such day and hour, being not less than four hours nor more than 72 hours thereafter, as the Trustees present at the meeting shall determine, and if at such adjourned meeting a quorum is not present within 30 minutes of the time appointed, those Trustees present shall form a quorum.
- 6.8 The Trustees shall cause records to be kept relating to the affairs of the Association and all resolutions and proceedings of all meetings of the Association, the Board and any committee.
- 6.9 A resolution in writing signed by all Trustees shall have the same force and effect as if regularly passed at a duly constituted meeting of the Board.
- 6.10 The Board Chair (or in his absence, the Vice Chair) shall preside at all meetings of the Board. In the absence of the Board Chair and the Vice Chair, any member duly elected to the chair by the members of the Board present shall preside.
- 6.11 All acts done by any meeting of the Board of Trustees or a committee of the Board

or by any persons acting as Trustees shall, notwithstanding that it be afterwards discovered that there was some defect in the appointment or election of such Trustees or persons acting as aforesaid, or that they or any of them were disqualified, be as valid as if every such person had been duly elected or appointed and was qualified to be a Trustee.

6.12 The Trustees may make such rules and regulations for the conduct of the affairs of the Board and the affairs of the Association as they deem desirable, provided that such rules regulations are not inconsistent with these By-laws or the *Society Act*.

6.13 The Board of Trustees shall adopt a policy for the Association with respect to the acquisition and disposition of works in the permanent collection and shall review and revise such policy from time to time as circumstances dictate.

BY-LAW VII – EXECUTIVE COMMITTEE

- 7.1 There shall be an Executive Committee of the Board comprised of:
- (a) the officers elected or appointed in accordance with By-Law 6.1;
 - (b) up to three members at large from among the Trustees who are approved by resolution of the Board for membership on the Executive Committee.
- 7.2 Between meetings of the Board, the Executive Committee shall possess and may exercise (subject to any regulations which the Board may from time to time impose) all of the powers of the Board in the management or supervision of the management of the business and affairs of the Association.
- 7.3 The Board shall fill vacancies in the Executive Committee by election of appointment from among its number. If and whenever a vacancy exists on the Executive Committee the remaining members may exercise all of its powers so long as a quorum remains in office.

BY-LAW VIII – FINANCE COMMITTEE

- 8.1 There shall be a Finance Committee of the Board comprised of the Chair appointed pursuant to By-law 6.1, one (1) of the City Trustees designated by the Council of the City of Vancouver pursuant to this By-law 8.1, and such additional members as may be proposed by the Chair of the Finance Committee and appointed by resolution of the Board as soon as reasonably possible after each annual general meeting. Upon the Board approving the City Trustees and providing written notice to the Council of the City of Vancouver of same, the Council of the City of Vancouver will designate one such appointee to the Finance Committee.
- 8.2 The Finance Committee shall be responsible to the Board:
- (a) for performance of the functions and duties customarily performed by a Treasurer;
 - (b) for carrying out a preliminary review of the annual operating budget and, if any, capital budget of the Association;
 - (c) for developing recommendations concerning the investment of funds of the Association;
 - (d) for performing the duties customarily performed by an audit committee in the review of the annual audited financial statements of the Association;
 - (e) for exercising generally an administrative role in areas of the Board's financial responsibility and authority; and
 - (f) for performing such other duties as may be delegated to it by the Board.

BY-LAW IX – NOMINATIONS COMMITTEE

- 9.1 There shall be a Nominations Committee appointed by the Board as soon as reasonably possible after each annual general meeting to hold office until the conclusion of the first meeting of the Board following the next succeeding annual general meeting.
- 9.2 The Nominations Committee shall be chaired by a Trustee and shall be comprised of not less than two nor more than six other members of the Association who may be but need not be Trustees.
- 9.3 The Nominations Committee shall function throughout the year:
- (a) to evaluate the contribution of the incumbent Trustees;
 - (b) to develop its nominations for Elective Trustees;
 - (c) to develop its recommendations to the Board for Appointive Trustees and for officers;
 - (d) to identify and seek out qualified and interested candidates for the Board, whether for election or appointment or to fill casual vacancies;
 - (e) to perform such other duties as are stipulated in these By-laws or as may be assigned from time to time by the Board.

BY-LAW X – CONCERNING COMMITTEES

- 10.1 Save where express provision is made in these By-laws concerning a particular committee, the composition and proceedings of all committees shall be established and conducted in accordance with the following rules:
- (a) the chairman of each committee shall be a Trustee and the other members shall be members in good standing of the Association and may be but need not be Trustees;
 - (b) the committees shall be subject to the call of their respective chairmen and written notice shall be given to each member a reasonable time before the date of holding such meeting;
 - (c) the Board Chair and the Director shall be ex officio members of all committees;
 - (d) all committees shall, in the exercise of their powers, conform to such regulations as may be imposed by the Board;
 - (e) unless otherwise stipulated by the Board, a quorum for a meeting of any committee shall be a majority of the members thereof;
 - (f) each committee shall keep minutes of its proceedings report the same to the Board and provide a copy of its minutes to the Secretary;
 - (g) any vacancies in the committee shall be filled by the Board; provided that if and whenever a vacancy exists, the remaining members of the committee may exercise all of its powers so long as a quorum of the committee members remains.

BY-LAW XI – FINANCIAL

- 11.1 Every officer of the Association whose duties include the receipt and discharge of money shall, before entering upon his duties, give such security (if any) as may from time to time be deemed necessary by the Board.
- 11.2 Subject to the provisions of the *Society Act*, the Board shall have power to invest the whole or any part of the funds of the Association as it may from time to time by resolution determine. Funds of the Association shall be invested only with such financial institutions as have been approved for that purpose by resolution of the Board.
- 11.3 The Board may from time to time by resolution authorize the borrowing of money from any chartered bank or from any other person, firm or corporation for the purposes of the Association and, subject to the provisions of the *Society Act*, may secure the repayment of the moneys so borrowed in such manner and on such terms as it may prescribe in and by such resolution.
- 11.4 The Board shall cause proper accounting records to be kept:
- (a) of all sums of money received and expended and the matter in respect of which each such receipt and expenditure has taken place;
 - (b) of the assets and liabilities of the Association; and
 - (c) every other transaction affecting the financial position of the Association.
- 11.5 The books of account shall be kept at the address of the Association and may, for temporary purposes, be kept at such other place or places as the Trustees think fit and shall at all reasonable times be open to the inspection of the Trustees and members.
- 11.6 Effective January 1, 2007 the fiscal period of the Association shall commence January 1, 2007 and shall be for a period of 18 months and shall terminate on June 20, 2008, and each fiscal year of the Association thereafter shall terminate on the 30th day of June.

- 11.7 At each annual general meeting the members shall appoint an auditor to audit the books of the Association for the ensuing year.
- 11.8 The Board shall have power to procure the establishment and maintenance of an Endowment Fund or Funds for the purposes of furnishing money for any of the objects of the Association on such terms, not inconsistent with the objects of the Association, as any donor or donors may prescribe.

BY-LAW XII – SEAL

- 12.1 The seal of the Association shall not be affixed to any instrument except by the authority of a resolution of the Board and in the presence of any two officers of the Association or such other person or persons as the resolution of the Board may appoint for the purpose and the two officers or such other person or persons so appointed shall sign every instrument to which the seal of the Association is so affixed in their presence.
- 12.2 The Board shall provide for the safe custody of the seal of the Association.

BY-LAW XIII – GENERAL PROVISIONS

- 13.1 Subject to the *Society Act*, every trustee, except the Director as ex officio Trustee, and every officer or member of each committee of the Board and his heirs, executors and administrators and estate and effects respectively shall, from time to time and at all times, be indemnified and saved harmless out of the funds of the Association from and against all costs, charges and expenses whatsoever, including an amount paid to settle an action or satisfy a judgement, actually and reasonably incurred by him, in a civil, criminal or administrative action or proceeding to which he is made a party by reason of being or having been a Trustee, officer or member of a committee, including an action brought by the Association, if:
- (a) he acted honestly and in good faith with a view to the best interests of the Association; and
 - (b) in the case of a criminal or administrative action or proceeding he had reasonable grounds for believing that his conduct was lawful.
- 13.2 No Trustee, officer or member of any committee of the Board shall be liable for the acts, receipts, neglects or defaults of any other Trustee, officer or member, or for joining in any receipts or acts for conformity or for any loss or expense happening to the Association through the insufficiency or deficiency of title to any property acquired by order of the Trustee, officer or member for or on behalf of the Association, or for the insufficiency or deficiency of any security in upon which any of the moneys of the Association shall be invested, or for any loss or damage arising from the bankruptcy, insolvency or tortuous act of any person with whom any of the moneys, securities or effects of the Association shall have been deposited or for any loss occasioned by any error of judgement or oversight on his part or for any other loss, damage or misfortune whatever which may happen in the execution thereof unless the same shall happen through his own wilful neglect, default or dishonesty.
- 13.3 Trustees shall serve without remuneration provided that the Board may by resolution from time to time reimburse sums in respect of out-of-pocket expenses out of the funds of the Association to any Trustee who performs any special work or service for or undertakes any special commission on behalf of the Association outside the work or services ordinarily required by a Trustee.
- 13.4 Inasmuch as Trustees are likely to be associated with corporations with which from time to time the Association must or may have business dealings, provided the *Society Act* and these By-laws are complied with, no contract or other transaction between the Association and any other corporation shall be affected

by the fact that Trustees are interested in or are shareholders, directors or officers of such other corporation.

- 13.5 It shall be the duty of every Trustee who is in any way whether directly or indirectly, interested in a contract or transaction or proposed contract or transaction with the Association to fully and promptly disclose such interest to the extent, in the manner, and at the time required by the applicable provisions of the *Society Act* and to abstain from voting in respect of the contract or transaction or proposed contract or transaction as and when prohibited by the *Society Act*. Any such Trustee shall not be counted in the quorum at a meeting of the Board at which the proposed contract or transaction is approved.
- 13.6 Subject to compliance with By-Law 13.5 and the *Society Act*, no Trustee or officer shall be disqualified from contracting with the Association either as a vendor, purchaser, or otherwise, nor shall any contract or arrangement with the Association entered into by any Trustee or officer or in which any Trustee or officer is interested or any transaction on behalf of the Association conducted by any member or officer which transaction is such that the officer or member shall himself be a party or in which he is otherwise personally interested be avoided, nor shall any member or officer so contracting or being so interested be liable to account to the Association for any profit realized by him from or in connection with any such contract or arrangement or transaction by reason of such member or officer holding office in the Association or by reason of the fiduciary relationship thereby established.

BY-LAW XIV – ALTERATION OF BY-LAWS

- 14.1 No amendment to these By-laws shall be made without being approved by the Council of the City of Vancouver.
- 14.2 Subject to By-law 14.1, these By-laws may only be altered amended by Special Resolution.

BY-LAW XV – PROPERTIES OF THE ASSOCIATION

- 15.1 All physical property including pictures, paintings, etchings, statuary or other works of art and all furniture, furnishings, equipment and other like property heretofore or hereafter situate upon or about the premises of the Association in the City of Vancouver or kept elsewhere for and on behalf of the Association and, but for this By-law, belonging to the Association, is and shall remain the property of the City of Vancouver. The Board of the Association and its officers, employees and servants shall be charged with the safe custody, care and maintenance of the same and shall be accountable to the City of Vancouver therefore.

BY-LAW XVI – NOTICES

- 16.1 Any notice or other document to be given by the Association to a member of the Association or of the Board or of any committee thereof or to any officer shall be sufficiently given if delivered personally to the person to whom it is to be given or, if delivered, to the Registered Address, or, if mailed by prepaid ordinary mail in an envelope addressed to him at the Registered Address or if sent by any means of wired or email communication addressed to him at such Registered Address. A notice or document so delivered personally or at the address aforesaid, and a notice or document so mailed shall be deemed to have been given when deposited in a post office or public letterbox and a notice sent by means of wire or email communication shall be deemed to have been given when delivered to the appropriate communication company or agency or its representative for dispatch.

BY-LAW XVII – DUTIES OF SECRETARY

17.1 The secretary shall:

- (a) conduct the correspondence of the Association;
- (b) issue notices of meetings of the Association and Directors;
- (c) keep minutes of all meetings of the Association and Directors;
- (d) have custody of all records and documents of the Association;
- (e) have custody of the common seal of the Association;
- (f) maintain the register of members.