

HOCKEY HALL OF FAME AND MUSEUM

BY-LAW NO. 27

ARTICLE 1 INTERPRETATION

Section 1.1 Definitions.

As used in this By-law, the following terms have the following meanings:

“**Act**” means the *Canada Not-for-Profit Corporations Act* and the regulations under the Act, all as amended, re-enacted or replaced from time to time.

“**Authorized Signatory**” has the meaning specified in Section 2.3.

“**Board**” means the board of directors of the Corporation from time to time.

“**Committee**” means the Corporate Governance Committee constituted under the by-laws of the Corporation from time to time.

“**Corporation**” means Hockey Hall of Fame and Museum.

“**Contribution Agreement**” has the meaning specified in Section 5.2.

“**Fund**” has the meaning specified in Section 2.1.

“**Fund Capital**” means, at any particular time, the aggregate amount of:

- (a) (i) funds from the Corporation’s Internally Restricted Net Assets transferred into the account(s) referred to in Section 2.2 and (ii) donations and contributions of cash and/or other assets from third parties (including those deposited into endowment funds referred to in Section 5.1), deposited into the Fund up until that time; plus
- (b) any Fund Income earned in a year that ended not less than two years prior to the beginning of the current year (including income on funds deposited into endowment funds referred to in Section 5.1) and that has not been withdrawn; minus
- (c) amounts representing Fund Capital withdrawn up until that time.

“**Fund Income**” means the investment returns earned from time to time by the Fund (from the investment of the Fund Capital in accordance with the IPS), whether derived from interest, dividends or capital gains.

“**Internally Restricted Net Assets**” means the cumulative amount of the Corporation’s excess (if any) of core operating revenues over expenditures from time

to time (net of cumulative approved disbursements therefrom), which amount is internally restricted (as specified in the Corporation's audited financial statements) for the purpose of funding additions to capital assets or such other special purposes authorized by the Board in accordance with generally accepted accounting principles for non-profit organizations.

"IPS" has the meaning specified in Section 4.1.

"Payout Rate" has the meaning specified in Section 4.5(1).

"Permitted Purpose(s)" means one or more of the following:

- (a) the acquisition, design, development, fabrication, production, transport, installation, enhancement and/or replacement of exhibits (including those composed of or based on historic artifacts, memorabilia, imagery, audio-visual/multi-media content, interactive games and/or other digital technology) for the Hockey Hall of Fame, wherever displayed, stored or transported;
- (b) the acquisition, design, development, construction, enhancement and/or replacement of premises for the Hockey Hall of Fame, whether for museum, archival or other related purposes, including the installation of improvements and fixtures therein;
- (c) the acquisition, collection, care, repair, enhancement and/or preservation of artifacts, memorabilia, archival materials, artworks and other historic objects for the Hockey Hall of Fame, including the cataloguing and digital archiving/records management thereof;
- (d) the development and/or fulfillment of special outreach initiatives in connection with the Hockey Hall of Fame, whether for travelling exhibitions, educational programs, programs to promote and facilitate youth participation and/or programs to enhance public access to archival and museum collections, including related software development;
- (e) the development and/or production of audio-visual/multi-media content or theatrical presentations for use in connection with the Hockey Hall of Fame, whether for museum, archival, educational, promotional and/or commercial licensing purposes; and
- (f) making payments on account of the Corporation's operating deficits, if any, from time to time.

"person" means a natural person, partnership, limited partnership, limited liability partnership, corporation, limited liability company, unlimited liability company, joint stock company, trust, unincorporated association, joint venture or other entity or governmental or regulatory entity, and pronouns have a similarly extended meaning.

“Ordinary Resolution” means a resolution of the Board or Committee (i) passed by a number of affirmative votes equal to at least a majority of the total votes cast in respect of such resolution at a meeting duly called for the purpose of considering such resolution or (ii) signed by members of the Board or Committee who constitute at least a majority of the membership thereof.

“Special Resolution” means a resolution of the Board passed by a number of affirmative votes equal to at least three quarters of the total votes cast in respect of such resolution at a meeting duly called for the purpose of considering such resolution.

Terms used in this By-law that are defined in the Act have the meanings given to such terms in the Act.

Section 1.2 Interpretation.

The division of this By-law into Articles, Sections and other subdivisions and the insertion of headings are for convenient reference only and do not affect its interpretation. Words importing the singular number include the plural and vice versa. Any reference in this By-law to gender includes all genders. In this By-law the words “including”, “includes” and “include” means “including (or includes or include) without limitation”.

Section 1.3 Subject to Act and Articles.

This By-law is subject to, and should be read in conjunction with, the Act and the articles. If there is any conflict or inconsistency between any provision of the Act or the articles and any provision of this By-law, the provisions of the Act or the articles will govern.

ARTICLE 2 ESTABLISHMENT OF THE HOCKEY HALL OF FAME DEVELOPMENT AND PRESERVATION FUND

Section 2.1 The Fund.

The Corporation is hereby authorized to establish a fund, to be known as the “Hockey Hall of Fame Development and Preservation Fund” (the “**Fund**”) into which (i) funds from the Corporation’s Internally Restricted Net Assets and (ii) donations and contributions of cash and/or other assets from third parties (including those deposited into endowment funds referred to in Section 5.1) may be deposited from time to time and from which funds may be withdrawn and used only for the Permitted Purposes, and subject to the restrictions and conditions, set out in this By-law.

Section 2.2 Separate Account(s)

The cash, investments and other assets constituting the Fund from time to time shall be maintained:

- (a) in one or more accounts with such banks, trust companies or other firms or corporations as the Committee may determine from time to time; and
- (b) separately and apart from, and shall not be combined, comingled or mixed with, any other assets of the Corporation.

Section 2.3 Execution of Instruments and Voting Rights.

Contracts, documents and instruments relating to the Fund may be signed on behalf of the Corporation, either manually or by facsimile or by electronic means, (i) by any two officers or (ii) by any other person authorized by the Committee from time to time (each person referred to in (i) and (ii) is an “**Authorized Signatory**”). Voting rights for securities held by the Corporation in the Fund may be exercised on behalf of the Corporation by any two Authorized Signatories. In addition, the Committee may, from time to time, authorize any person or persons (i) to sign contracts, documents and instruments relating to the Fund generally on behalf of the Corporation or to sign specific contracts, documents or instruments relating to the Fund on behalf of the Corporation and (ii) to exercise voting rights for securities held by the Corporation in the Fund generally or to exercise voting rights for specific securities held by the Corporation in the Fund. Any Authorized Signatory, or other person authorized to sign any contract, document or instrument relating to the Fund on behalf of the Corporation, may affix the corporate seal, if any, to any contract, document or instrument when required.

As used in this Section, the phrase “contracts, documents and instruments relating to the Fund” means any and all kinds of contracts, documents and instruments in written or electronic form that relate to the Fund, including cheques, drafts, orders, guarantees, notes, acceptances and bills of exchange, deeds, mortgages, hypothecs, charges, conveyances, transfers, assignments, powers of attorney, agreements, proxies, releases, receipts, discharges and certificates and all other paper writings or electronic writings.

Section 2.4 Raising Fund Capital.

The Corporation may seek, request and receive donations and contributions of cash and/or other assets for the Fund from any person or persons, and may issue charitable receipts therefor, and shall deposit and place all such cash and/or other assets into the Fund, in all such cases in accordance with applicable laws. Wherever practicable, each such donation and contribution shall be evidenced by a letter of intent, deed of gift, donation pledge form, terms of a bequest or other confirmation of the donor’s intent. The Corporation, where authorized by an Ordinary Resolution of the Board, may transfer funds from its Internally Restricted Net Assets into the Fund.

Section 2.5 Anonymous Donations and Contributions.

Where any person making a donation or contribution to the Fund requests that his, her or its donation or contribution remain anonymous, the Corporation shall, except to the extent required by applicable law, respect and comply with such request.

**ARTICLE 3
USE OF THE FUND**

Section 3.1 Investment of Fund.

The balance of the Fund from time to time may be held only in (i) cash or (ii) investments permitted by and maintained in accordance with the IPS.

Section 3.2 Use of Fund Income for Permitted Purposes.

- (1) Subject to the provisions of Subsections 3.2(2) and 3.2(3) below, and subject to compliance with Section 4.5, Fund Income may be withdrawn from the Fund and used solely for Permitted Purposes and for no other purpose whatsoever.
- (2) Fund Income may not be withdrawn from the Fund and used for the Permitted Purpose described in paragraph (f) of the definition thereof unless authorized by a Special Resolution.
- (3) Where any person has donated or contributed cash and/or other assets to the Fund and has specified to the Corporation that the Fund Income generated by such cash and/or other assets is to be used for a specific purpose that is a Permitted Purpose, and for no other purpose, then the Corporation shall use such Fund Income for such specific purpose unless otherwise authorized by this By-law.

Section 3.3 Use of Fund Capital for Permitted Purposes.

- (1) Where authorized by an Ordinary Resolution of the Board, all or any portion of the Fund Capital deposited from Internally Restricted Net Assets (if any) may be withdrawn from the Fund and used for Permitted Purposes or to restore Internally Restricted Net Assets. Where authorized by a Special Resolution, up to fifty per cent (50%) of each donation or contribution to the Fund Capital from third parties (or up to the remaining balance of such fifty per cent (50%) from time to time if withdrawals from such donation or contribution have previously been made in accordance with this Section 3.3) may be withdrawn from the Fund and used solely for the Permitted Purposes described in paragraphs (a) and (b) of the definition thereof (if and only to the extent that such use involves a major expansion or revitalization of the Hockey Hall of Fame for which such Fund Capital is not greater than the aggregate of all other capital funding commitments designated therefor) and for no other purpose whatsoever; save and except that this shall not apply to a donation or contribution made pursuant to a Contribution Agreement where such withdrawal and use thereof would contravene the provisions of such Contribution Agreement.
- (2) If in any particular fiscal year of the Corporation, the actual rate of return on Fund Capital is less than the Payout Rate for such fiscal year, the Corporation may, where authorized by Ordinary Resolution of the Committee, with a view to stabilizing year-to-year inflation-adjusted amounts available to fund Permitted Purposes, encroach on Fund Capital to the extent of such deficiency. However, if in any particular subsequent fiscal year of the Corporation the actual rate of return on Fund Capital exceeds the Payout Rate for such fiscal year, the excess shall be reinvested

and applied to Fund Capital, up to the amount of Fund Capital prior to such encroachment (after adjusting such amount to reflect changes in the Consumer Price Index published from time to time by Statistics Canada or the appropriate successor index). For purposes of determining the actual rate of return, the Fund shall use a total return on investment approach that does not distinguish between capital and income. Unrealized capital appreciation shall not be considered in determining return on investment because it may not represent actual income available for distribution. Notwithstanding any other provision of this Agreement, however, this Section 3.3(2) shall not apply to a donation or contribution made pursuant to a Contribution Agreement where such encroachment would contravene the provisions of such Contribution Agreement.

ARTICLE 4 INVESTMENT POLICY STATEMENT

Section 4.1 Establishment of IPS.

The Board shall approve, and modify from time to time, in each case by Ordinary Resolution, an investment policy statement that will govern the investment of Fund Capital and Fund Income (the "IPS"). The Committee shall develop a draft IPS with the input and assistance of a reputable and experienced investment manager retained and approved by it as soon as possible after the coming into force of this By-law and present it to the Board for approval.

The IPS shall include, but not be limited to:

- (a) goals for returns based on spending requirements and inflation assumptions;
- (b) the decision-making process and timetable for the Committee, including the holdings of periodic Committee meetings and review periods;
- (c) the roles of the Committee, the Corporation's staff and the investment manager retained by the Corporation;
- (d) approved assets and asset mix by range;
- (e) constraints on investment, including asset quality rating and policies for the preservation of capital;
- (f) strategies for maintaining steady, predictable cash flows;
- (g) benchmarks for evaluating performance; and
- (h) other criteria for reviewing investments (including, if thought applicable, social responsibility measures).

However, in no event may the IPS be inconsistent with any provision of this By-law.

Section 4.2 Criteria for Investment.

The IPS shall set out criteria for the investment of Fund Capital (and, if applicable, Fund Income) including, but not necessarily limited to:

- (a) general economic conditions;
- (b) the possible effects of inflation or deflation;
- (c) the expected tax consequences of investment decisions and strategies;
- (d) the role each investment or course of action has within the Fund's overall portfolio;
- (e) the expected total return of income and growth of capital;
- (f) the need for liquidity, the regularity of income and preservation of appreciation of Fund Income and the preservation of Fund Capital; and
- (g) an asset's special relationship or special value to the Corporation, the Fund or its Permitted Purposes.

However, in no event may any such criterion be inconsistent with any provision of this By-law.

Section 4.3 Appointment of Investment Manager.

The Committee shall appoint a reputable and experienced investment manager to oversee and advise as to the investment of Fund Capital (and, if applicable, Fund Income) in accordance with the IPS and may replace any such manager with another reputable and experienced investment manager from time to time. Each such investment manager shall be given such powers, may exercise such discretion and shall perform such duties as are specified in the IPS from time to time and shall be compensated in accordance with the IPS.

Section 4.4 Annual Review of IPS.

The Committee shall review the IPS not less frequently than once every fiscal year of the Corporation and shall involve the Fund's investment manager in such review. If the Committee, following the completion of such review, concludes that the then prevailing IPS requires modification, the Committee shall seek the approval of the Board to such modification and once such approval is given, the IPS as so modified shall become the Fund's IPS and supersede the previous one.

Section 4.5 Annual Payout Rate and Budget.

- (1) Prior to the commencement of each fiscal year of the Corporation, the Committee shall, by Ordinary Resolution, determine the anticipated rate of return on the investment of Fund Capital for such fiscal year, in accordance with the IPS, whether derived from interest, dividends or capital gains. The "Payout Rate" for any particular year is the greater of (a) the anticipated rate of return for that year, after taking into account investment management fees and other administrative expenses,

and (b) the rate of return that corresponds with the portion of the Corporation's disbursement requirements reasonably allocable to the Fund pursuant to the *Income Tax Act* (Canada). For clarification, establishment of the Payout Rate for any particular fiscal year of the Corporation does not oblige the Committee to authorize or the Corporation to make expenditures from the Fund over such fiscal year in any particular amount.

- (2) Prior to the commencement of each fiscal year of the Corporation, the Committee shall, by Ordinary Resolution, determine (i) the Permitted Purposes for which Fund Income (and, if applicable, Fund Capital) are to be used during such fiscal year (with such degree of specificity as the Committee may deem appropriate), (ii) the amount of Fund Income (and, if applicable, Fund Capital) permitted to be disbursed for each such Permitted Purpose and (iii) where any such Fund Income (or, if applicable, Fund Capital) is derived from any endowment fund established pursuant to Article 5 below, the identity of such fund. The President of the Corporation shall then cause to be prepared for the approval of the Board a budget for such upcoming fiscal year, consistent with such determination of the Committee and providing such other information as the Board may require. Where the proposed use of Fund Income or Fund Capital set out in such budget requires approval under this By-law by way of a Special Resolution, such Fund Income or Fund Capital may not be withdrawn and used for such purpose until such Special Resolution has been made and only for so long as it remains in effect. Once such budget is approved by the Board, the President of the Corporation shall be authorized to:
 - (a) withdraw from the Fund and disburse amounts up to (but not exceeding) the amount set forth in the budget for the category or item of expenditure so authorized for the Permitted Purpose specified in the budget; and
 - (b) with the authority of an Ordinary Resolution of the Committee, withdraw from the Fund and disburse amounts exceeding the amount set forth in the budget for the category or item of expenditure so authorized (but no greater amount than that specified in such Ordinary Resolution) for the Permitted Purpose specified in the budget.

Section 4.6 Annual Financial Reports.

The President of the Corporation shall cause to be prepared for the approval of the Board for each fiscal year of the Corporation, not later than ninety (90) days following the end thereof, an annual financial report for the Fund summarizing and setting out the Fund's performance and specific disbursements of Fund Income (and, if applicable, Fund Capital) during such fiscal year and its assets as at the end of such fiscal year. All pertinent data contained in such report shall be disclosed in the audited financial statements of the Corporation for such fiscal year prepared in accordance with generally accepted accounting principles for non-profit organizations. Once such annual financial report has been approved by the Board, a digital copy thereof shall be made available for dissemination to the public via the Corporation's web site and any other means authorized by an Ordinary Resolution of the Board.

ARTICLE 5
DESIGNATED, NAMED ENDOWMENT FUNDS

Section 5.1 Establishment of Designated, Named Endowment Funds.

The Committee may, by Ordinary Resolution, authorize the establishment by the Corporation of an endowment fund (i) named after a specific donor or donors or bearing a name otherwise agreed between the donor and the Committee and, (ii) if required by the donor, the income (and, if applicable, capital) of which are to be used for specific purposes designated by the donor and accepted by the Committee if it considers the amount to be deposited into such fund an extraordinary donation or contribution, provided in any event that such specific purposes are Permitted Purposes. Where the donor does not require the income of such fund to be used for specific purposes designated by the donor, the Corporation shall use such income solely for Permitted Purposes and the provisions of Article 3 shall apply thereto, *mutatis mutandis*. The income and capital of such funds may be paid into the bank account(s) for the Fund established pursuant to Section 2.2 and shall form part of Fund Income or Fund Capital, as the case may be. However, separate accounting records for the disbursement and use of income (and, if applicable, capital) of such funds shall be prepared, maintained and made available to the donor or contributor of such funds on request.

Section 5.2 Contribution Agreements.

Where an endowment fund is established as contemplated by Section 5.1, the Corporation shall execute and deliver an agreement with the donor and approved by an Ordinary Resolution of the Committee (a "**Contribution Agreement**") that, among other things:

- (a) sets out such information concerning the donor as the Committee may require;
- (b) identifies the name of the fund, if applicable;
- (c) sets out the terms of the donation, including its amount, the timing of payments and any conditions thereto, including any requirement that the income of such fund is to be used for specific purposes (provided that they are Permitted Purposes) designated by the donor and accepted by the Committee (otherwise the provisions of Article 3 shall apply to the use of such income, *mutatis mutandis*);
- (d) sets out any requirements governing the investment of capital (and, if applicable, income) in such fund (otherwise those set out in this By-law applicable to the Fund shall apply, *mutatis mutandis*);
- (e) except to the extent the Committee decides otherwise, contains a provision permitting the Corporation to vary any or all of any specific purpose(s) applicable to the use of such fund if it is determined by the Corporation that it has become impossible or impractical to carry out such purpose(s),

provided in any event that such specific purpose(s), as so varied, remain Permitted Purposes;

- (f) except to the extent the Committee decides otherwise, contains a provision allowing the Corporation to encroach on the capital of such fund in accordance with Section 3.3 or as otherwise permitted by any amendment to this By-law;
- (g) except to the extent the Committee decides otherwise, contains a provision allowing the Corporation to use a portion of the income of such fund to pay fees and charges typically levied by the Corporation, and out-of-pocket administrative costs typically incurred by the Corporation, in each case in connection with carrying out a specific purpose of such fund;
- (h) contains a provision permitting the Corporation to amend the Contribution Agreement with the agreement of the donor (provided that such amendment is not inconsistent with any provision of this By-law); and
- (i) contains a provision recognizing and acknowledging that in accepting, investing and using the donation to such fund, the Corporation is required to, and shall, comply with all applicable laws.

Where any authorized designated, named endowment fund is established by bequest and without any requirement that the income (and, if applicable, capital) of such fund be used for specific purposes designated by the donor, the Corporation shall use such income and (and, if applicable, capital) solely for Permitted Purposes and the provisions of Article 3 shall apply thereto, *mutatis mutandis*.

ARTICLE 6 EFFECTIVE DATE

Section 6.1 **Effective Date.**

This By-law comes into force when made by the directors in accordance with the Act.

This By-law was made by a resolution of the directors passed by the affirmative vote of not less than 75% of the votes cast on November 14, 2017.



John R. Dow, Secretary

This By-law was confirmed by a resolution of the Members passed by the affirmative vote of not less than 75% of the votes cast on March 6, 2018.



John R. Dow, Secretary