

WINE COUNCIL OF ONTARIO

By-Law No. 9

A by-law relating generally to the transaction of the business and affairs of the WINE COUNCIL OF ONTARIO (the "Council"):

IT IS ENACTED as By-Law No. 9 of the Wine Council of Ontario as follows:

Part 1

1. Definitions

- (a) "Act" means the *Corporations Act* (Ontario), together with the regulations made pursuant thereto;
- (b) "Board" means the board of directors of the Council;
- (c) "by-laws" means this by-law and all other by-laws of the Council as amended from time to time, and in force and effect;
- (d) "case of wine" means nine (9) litres of wine sold in Ontario;
- (e) "craft winery" means a winery that sells less than four thousand (4,000) cases of wine in a fiscal year, or such other amount of wine determined by the Board from time to time and approved by the members;
- (f) "equity share" means a share of a class of shares that carries a voting right either under all circumstances or under some circumstances that have occurred and are continuing;
- (g) "fiscal year" of the Council is from April 1 in each calendar year to the following March 31;
- (h) "large winery" means a winery that sells more than forty thousand (40,000) of wine in a fiscal year, or such other amount of wine determined by the Board from time to time and approved by the members;
- (i) "medium winery" means a winery that sells more than twenty thousand (20,000) cases of wine to a maximum of forty thousand (40,000) cases of wine in a fiscal year, or such other amount of wine determined by the Board from time to time and approved by the members;
- (j) "meeting of members" means any meeting of members, whether the annual general meeting of members, a general meeting of members or a special meeting of members, unless stated to the contrary in this by-law;

(k) “member” means, (i) a large, medium, small or craft winery that meets the criteria for regular membership, (ii) a person who meets the criteria for an associate membership, and (iii) an individual who meets the criteria for a director member as set out in this by-law; and whose application for membership has been accepted by the Board;

(l) "person" means and includes an individual, sole proprietorship, partnership, unincorporated association, unincorporated syndicate, unincorporated organization, trust, body corporate, and a natural person in his capacity as trustee, executor, administrator, or other legal representative;

(m) "small winery" means a winery that sells more than four thousand (4,000) cases of wine but less than twenty thousand (20,000) cases of wine in a fiscal year, or such other amount of wine determined by the Board from time to time and approved by the members;

(n) "special resolution" means a resolution passed by the Board and confirmed with or without variation by at least two-thirds of the votes cast at a meeting of members duly called for that purpose;

(o) “winery” means an entity that has been awarded a manufacturing licence by the Alcohol and Gaming Commission of Ontario and produces primarily wine from grapes save and except as expressly determined by the Board to the contrary, at any time, or from time to time;

(p) “winery class” means either a craft winery, a small winery, a medium winery or a large winery.

2. Interpretation

This by-law, unless the context otherwise requires, shall be construed and interpreted in accordance with the following:

(a) where appropriate, words importing the singular number include the plural and *vice versa*;

(b) words importing gender include the masculine, feminine and neuter genders; words importing persons include individuals, corporations, partnerships, trusts and unincorporated organizations;

(c) save and except as expressly set out in this by-law, words and terms appearing in this by-law shall have the same definitions and application as in the Act;

(d) the headings used in this by-law are inserted for reference purposes only and are not to be considered or taken into account in construing the terms or provisions thereof or to be deemed in any way to clarify, modify or explain the effect of any such terms or provisions;

(e) in the event of any dispute, the intent or meaning of any word shall be that given to it by the Board, and any reference in this by-law to statute shall, unless otherwise expressly stated, be deemed a reference to such statute as the same may from time to time be amended, restated, re-enacted or replaced.

Part 2

3. Membership Classes

There shall be three (3) classes of membership in the Council: (a) regular, (b) associate; and (c) director.

4. Regular Members

Regular members shall consist of large, medium, small or craft wineries that meet the criteria for membership as set out in this by-law. Save and except as otherwise expressly provided for in this by-law, the Board shall prescribe the terms and conditions for any of the aforesaid classes.

5. Regular Membership Admission

(1) The Board may admit as a regular member of the Council any applicant who or which is nominated for membership by two (2) members of the Council and who or which satisfies the Board that,

- (a) the Council's application forms and authorizations have been filed with the Council and have been found by the Board to be acceptable;
- (b) the applicant holds a manufacturer's licence from the Alcohol and Gaming Commission of Ontario or similar regulatory authority to operate a winery in Ontario;
- (c) the applicant has a business plan for the sale of at least one hundred (100) cases of grape wine in Ontario in a fiscal year that immediately follows the date of the application for membership;
- (d) more than sixty percent (60%) of the applicant's production is grape-based wine;
- (e) the applicant has signed an agreement authorizing the Board to have access to the information referred to in Section 9(b) of this by-law that is required to determine annual levies and sales analyses;
- (f) a site visit to the applicant has been satisfactorily completed; and,
- (g) the applicant's membership in the Council would promote the objects of the Council and is otherwise in the Council's interests.

(2) Every member that is a corporation shall notify the Board in writing within thirty (30) days after the issue or the entry of a transfer of any shares of its capital stock where such issue or transfer results in any shareholder that is a member, or that shareholder and any other shareholder that is a member associated with the shareholder, acquiring or accumulating at least twenty-five percent (25%) of the total number of all issued and outstanding equity shares of such stock, or after such knowledge came to the attention of its officers or directors, whichever occurs first.

(3) A regular member shall have a vote at meetings of members and shall be entitled to participate in the Council's activities.

6. Other Members

(1) The Board may admit as an associate member of the Council a person who or which is not a winery but who or which is nominated for association by two (2) members of the Council and who or which satisfies the Board that:

- (a) the applicant's association with the Council would promote the objects of the Council and is otherwise in the Council's interests; and
- (b) the applicant has an interest in the advancement of a healthy Ontario wine industry.
- (c) For greater certainty, an associate member may or may not be a winery.

(2) An associate member has no vote at meetings of members and is not entitled to participate in the Council's activities.

(3) Save and except as otherwise expressly provided for in this by-law, the Board shall prescribe the terms and conditions for any of the aforesaid classes.

(4) Every director on the Board shall automatically be a director member during his or her term of office on the Board and shall not have a vote at meetings of members but shall be entitled to otherwise participate in the Council's activities.

(5) Any person who or which was a member of the Council immediately before this by-law took effect shall be deemed to be a member under this by-law, subject to all of the provisions herein provided their membership is in good standing at such time.

7. Suspension and Termination of Membership

(a) The Board may suspend or terminate the membership of any regular member or associate member who or which, in the opinion of the Board, no longer meets or complies with the criteria for such membership established by this by-law.

(b) Notwithstanding Section 7(a), above, a regular member or an associate member's membership automatically terminates in the case of,

- (i) a member who does not sell at least one hundred (100) cases of wine in any fiscal year of the Council, in which cases membership ceases on the first (1st) day of the next fiscal year, or,
- (ii) a regular member or associate member who fails to pay any outstanding fees or levies within thirty (30) days of receiving written notice of non-payment of such fees or levies, unless the Board determines otherwise.

8. Resignation or Death of a Member

A regular member or associate member may resign by submitting a resignation in writing to the President of the Council upon no less than ninety (90) days' notice, and the regular membership or associate membership is thereupon terminated effective on the resignation date expressly set out in such notice, but the former regular member or associate member remains liable for any unpaid fee and levy incurred during membership or association. For greater certainty, any unpaid fees, levies or other charges owing as of the resignation date shall remain due and

payable, in whole and not in part by such member notwithstanding the resignation, including but not limited to any and all annual payments due and owing which may be payable by way of installments in accordance with Part 3 herein or as otherwise determined by the Council. The interest of any member who is an individual is not transferable and ceases to exist upon that member's death.

Part 3

9. Fees and Levies

(a) Regular members and associate members shall pay to the Council an annual fee in such amount and for such periods as the Board shall determine from time to time. The annual fee is for each fiscal year is due and payable, in whole and not in part, and in advance, on April 1.

(b) Regular members shall also pay to the Council an annual levy, which is based upon the amount of cases of 100% Ontario grape based wine sold in Ontario during a fiscal year, established by the Board shortly after the end of the fiscal year, payable for the following fiscal year.

(c) The annual levy is due and payable , in whole and not in part, and in advance, on April 1.

(d) The Board may determine additional fees or levies. However, any such additional fees or levies may be challenged at a meeting of the members called for that purpose.

Part 4

10. Directors

(1) Subject to the Act, there shall be a Board responsible for the direction and management of the business and affairs of the Council who may exercise all such powers and do all such acts and things as may be exercised or done by the Council and are not by the by-laws or any resolution of the Council or by statute expressly directed or required to be done by the Council at a meeting of members provided that in directing and managing the business and affairs of the Council, as aforesaid, the Board shall at all times do so on the basis that the Council is a non-profit trade association committed to realizing the goals and vision of wineries that produce VQA wines in the Province of Ontario through its role as an advocate with government and its agencies, growers, consumers and all other industry stakeholders and, to achieve this vision, the Council will take a leadership role in building partnerships with all stakeholders in the wine supply chain, from primary agricultural inputs, through processing and packaging, distribution and retail, to the consumer.

(2) Subject to the Act and Subsection 6(3), above, no person shall be elected and act as a director (including an *ex officio* director) unless he or she is a member.

(3) The members of the Board shall be:

- (a) two (2) persons elected by members from among large winery members;
- (b) two (2) persons elected by members from among medium winery members,
- (c) three (3) persons elected by members from among small winery members,
- (d) three (3) persons elected by members from among craft winery members,
- (e) three (3) persons elected by members from among any class of winery members, and,
- (f) the President who is an *ex officio* non-voting member of the Board.

(4) The immediate Past Chair of the Board shall be an *ex officio*, non-voting member of the Board.

(5) A member may nominate any member of the Board, of any class, except themselves or any person associated with their winery.

(6) Where a regular member or associate member holds more than twenty-five percent (25%) of the equity shares of any other winery member or members, only one (1) representative from such related winery member(s) may be elected to the Board.

(7) When a person who is not a regular member, associate member or director member holds more than twenty-five (25%) of the equity shares of two (2) or more winery members, only one (1) representative from such related winery members may be elected to the Board.

(8) All voting members in good standing are entitled to vote to elect directors from all wineries.

(9) Subject to the Act, a vacancy on the Board, howsoever caused, may be filled for the remainder of its term of office either by the members at a meeting of members called for the purpose or, provided that the remaining directors constitute a quorum, by the Board, or at the next meeting of members at which directors are elected.

(10) All directors, other than *ex officio* directors, shall be elected and retire in rotation. At the first (1st) annual meeting of members held for the election of directors pursuant to this by-law the following directors will be elected:

- (a) three (3) board members from any class of winery, and one (1) of whom shall hold office until the third (3rd) annual meeting of members after such date, one (1) of whom shall hold office until the second (2nd) annual meeting of members after such date, one (1) of whom shall hold office until the first (1st) annual meeting of members after such date; and
- (b) two from craft winery members, one (1) of whom shall hold office until the third (3rd) annual meeting of members after such date and one (1) of whom shall hold office until the first (1st) annual meeting of members after such date; and
- (c) one (1) from a small winery member who shall hold office until the third (3rd) annual meeting of members after such date; provided that if the sales of the director's winery changes so that the winery falls into a different class of winery while a director that represents that winery is in office, the director may continue to represent that class of winery for which he or she was last elected until the director's term expires or is otherwise terminated in accordance with this by-law.

(11) Directors may be elected for consecutive terms without any limitation on the number of re-elections.

(12) Notwithstanding anything to the contrary in this Section 10, including the provisions set out in Subsection 10(10), above, those directors appointed to the positions of Chair, Vice-Chair or immediate Past Chair may continue on and be re-elected to the Board to complete their terms of service as officers, and members of the Board, beyond any term limits imposed by this by-law.

11. Suspension and Termination of Office

(1) The position of a person as a director on the Board shall automatically be suspended if the winery member that the person represents has been suspended as a member and the person shall not attend or vote at any meeting of the Board until the suspension of the winery is no longer in effect.

(2) The position of a person as a director on the Board shall be automatically terminated if:

(a) the director makes an assignment under the *Bankruptcy and Insolvency Act* (Canada) or a receiving order is made against the director.

(b) the director becomes of unsound mind or is judged by a qualified medical practitioner to be a mentally incompetent person or incapable of managing his or her affairs;

(c) the director dies;

(d) by notice in writing to the Council, the director resigns his or her office (which resignation shall be effective at the time it is received by the Secretary of the Council, or otherwise in accordance with its term, whichever is later);

(e) in the opinion of the Board, expressed by a majority of the directors in office and confirmed by the members, the director consistently fails to perform the duties reasonably requested of a director;

(f) the director is in breach of the conflict of interest guidelines of the Council

(g) in the opinion of the Board, not including the subject director, the past or current conduct of the director affords grounds to believe that he or she,

(i) has not been, is not, or will not be, financially responsible in the conduct of his or her business affairs,

(ii) has not conducted, is not conducting, or will not conduct, him or herself in accordance with the law and with integrity and honesty,

(h) the winery that the person represents has ceased to be a winery member or the person ceases to be employed by or otherwise have authority from the winery,

(i) in the case of an *ex officio* director, the person ceases to hold the position by virtue of which he or she holds office.

(3) A director who is removed from office becomes ineligible for re-election, but the member who or which appointed him or her may appoint another individual as a director to fill the uncompleted term of the director who is removed from office.

12. Fees and Expenses

(1) No remuneration shall be paid to a director for the discharge of his or her duties or office, but the Council may reimburse directors for traveling and other expenses properly and reasonably incurred in the discharge of his or her office.

(2) No director shall be paid reimbursement other than for expenses of \$25 or less unless the request for reimbursement is supported by properly submitted vouchers or receipts and the expenditure has had prior approval.

Part 5

13. Board Meetings

(1) The Board shall hold,

- (a) regular meetings, which shall be called by the Chair from time to time, and
- (b) special meetings, which may be called by any five (5) directors who deposit with the President of the Council a written requisition for the meeting containing the matters or resolutions for decision at the meeting.

(2) Meetings of the Board shall take place in Ontario at a place, date and time designated by the Chair, or the five (5) directors calling a special meeting, but, if a place, date or time is not designated or is incompatible with the by-laws, the president shall select a place, date and time for the meeting which is,

- (a) compatible with the by-laws of the Council or, if compatibility with the by-laws is not possible, as compatible as he or she can reasonably make the place, date and time with the by-laws, and
- (b) as close as he or she can reasonably select to the place, date and time designated by the person or people calling the meeting.

(3) No formal notice is required for a meeting of the Board.

(4) The President of the Council shall cause each director to be notified in writing of the place, date and time of each directors' meeting by sending such notification not less than,

- (a) fourteen (14) days before a regular meeting, and
- (b) five (5) days before a special meeting.

(5) When the President of the Council sends notification of a special meeting, he or she shall cause the matters or resolutions for decision at the meeting to be included in or with the notification.

(6) The Chair shall organize an agenda for each meeting of the Board and shall cause the agenda to be circulated or distributed to each director before the meeting.

(7) The Chair or his or her appointee from among the directors shall preside over meetings of the Board.

(8) A majority of the directors then in office is a quorum to transact any matter and pass any resolution of the Board.

(9) Subject to the Act and the common law, if all the directors consent, a meeting of the Board may be held by means of such telephonic, electronic or other communication facilities as permit all persons participating the meeting to hear each other simultaneously and instantaneously and a director participating in such meeting by such means is deemed to be present at that meeting.

14. Board Minutes

(1) The Chair shall cause the resolutions and decisions at each meeting of the Board to be recorded in writing.

(2) When the written record of a meeting of the Board has been accepted at a subsequent meeting of the Board, the record is conclusive proof that the resolutions and decisions recorded in it were passed or taken by the directors at the meeting, subject to any corrections in the written record of the subsequent meeting of the Board.

15. Board Voting

(1) Unless otherwise required by law, every resolution or other question which properly comes before the Board shall be decided by a simple majority of the votes cast at the meeting.

(2) No individual may speak or vote at a meeting of the Board unless he or she is a director.

(3) The Board shall elect from among its members one (1) Chair to preside at meetings of the Board or of meetings of members. The Chair may only cast a vote in the event of a tie.

(4) Every director shall have one vote.

(5) Subject to Subsection 15 (7); below, every vote at a directors' meeting shall be by a show of hands.

(6) When there has been a vote by a show of hands, the Chair shall announce, and the recording officer shall record, whether the resolution has been passed or defeated, but the number of votes for or against the resolution need not be announced and shall not be recorded in the written record of the meeting of the Board.

(7) Any two (2) directors may require a recorded vote.

(8) When a recorded vote is required, the Chair shall cause the number of votes for and against the resolution, and abstaining from the voting, to be counted, announced and recorded in the written record of the meeting of the Board.

(9) Any director may instruct the recording officer to indicate in the written record of the meeting of the Board how that director voted on any resolution if the instruction is provided shortly after the voting.

Part 6

16. Officers and Committees

(1) At the first meeting of the Board after an annual general meeting of members, the Board shall elect a Chair as contemplated by Subsection 15(3), above, a Vice-Chair and, if there are no such officers then in office, a Secretary and a Treasurer.

(2) The Board may remove any officer from office and appoint a replacement.

(3) If an officer dies or is removed from office, the Board shall appoint a replacement.

(4) The appointment of an officer appointed under this Section 16 expires at the first (1st) meeting of the Board following the annual general meeting each year, subject to Subsection 16(5), below.

(5) If an appointment of an officer is not made at the first meeting of the Board in a fiscal year, the appointment of the officer for the prior fiscal year continues until his or her successor is appointed.

17. President

(1) The President is the chief operating officer of the Council and shall administer and manage the day-to-day operations of the Council.

18. Committees

(1) The Board shall establish such committees of the Council as it considers desirable and subject to this by-law, it shall prescribe the duties of any such committees.

(2) The Board shall appoint an Executive Committee, a Nominating Committee, and a Finance/Audit Committee.

(3) The Chair and the immediate Past Chair of the Board are *ex officio*, non-voting members of all committees of the Council.

(4) A director shall act as the chair of each committee of the Council established by the Board whenever possible.

- (5) (a) The Executive Committee shall exercise the powers of the board between meetings of the board, and any other duties assigned by the board.
- (b) A member of the Executive Committee may be removed on a majority vote by a resolution of the board.
- (c) A quorum shall be a majority of the members of the Executive Committee.
- (d) The Executive Committee shall be comprised of the officers appointed by the Board, the immediate Past Chair, and the President of the Council who shall be an *ex officio*, non-voting member.
- (6)(a) The Nominating Committee shall be chaired by the immediate Past Chair of the Board. The Nominating Committee shall propose to the Council from time to time the names of persons it considers to be eligible candidates for election to the Board and for appointment to any committees of the Council. The Nominating Committee shall provide a slate of proposed membership for Committees of the Council other than the Executive, Nominating, and Finance/Audit Committees, for consideration at each annual general meeting of the members.
- (b) The Nominating Committee shall include a representative from each class of member.
- (c) In respect of selecting candidates for election to the Board or for appointment to committees of the Council, the Nominating Committee shall consult members of all winery classes and identify nominees from each of those classes based, in part, on the needs of the committees of the Council and the skills and strengths of each proposed candidate for the election to the Board or nominee for a committee of the Council.
- (d) In respect of all nominations, the Nominating Committee shall ensure that there is appropriate balance from each winery class and wine region.
- (e) In addition to nominations offered by the Nominating Committee, any two (2) members may nominate another member for election to the Board, provided that notice of any such nomination is given in writing to the President of the Council at least one (1) week prior to the annual general meeting of members.
- (7) The appointment of every Committee member automatically expires at the annual general meeting of members, but a Committee member whose appointment expires may be reappointed to the committee without any limitation on the number of re-appointments.
- (8) Policy and budgetary recommendations made by Committees of the Council must be ratified by the Board.

Part 7

19. Members' Meetings

- (1) The Chair shall call an annual general meeting of members every year, within ninety (90) days of the fiscal year end.
- (2) One-half of the members may requisition a special meeting of members by depositing with the President of the Council a written requisition for the meeting containing the matters or resolutions for decision at the meeting.

20. Member Voting

- (1) A member may appoint an individual to speak and vote for the member at a meeting of members by giving a written appointment to the President of the Council shortly before or shortly after the beginning of the meeting.
- (2) No individual may speak or vote at a meeting of members unless he or she is personally a member or has been appointed to speak and vote for a member as required by Subsection 20(1), above.
- (3) An individual may be appointed to speak and vote for any number of members.
- (4) A member may impose conditions and limitations on an appointment contemplated by Subsection 20(1), above.
- (5) Anyone appointed to speak or vote on behalf of a member must be a senior employee of a company or the appointed representative of another member in good standing.

21. Deemed Application to Members

Subsections 13(3) to (8) and Sections 14 and 15, above, which apply to meetings of the Board, shall also apply with all necessary modifications to meetings of members.

Part 8

22. Administration

Execution of instruments, deeds, transfers, licenses, assignments, contracts, obligations, certificates and other instruments and engagements shall be signed on behalf of the Council by the President of the Council and any other officer together. In addition, the Board may from time to time direct the manner in which and the person or persons by whom any particular instrument or class of instruments may or shall be signed. Any person authorized to sign an instrument on behalf of the Council may affix the corporate seal to it.

23. Banking

The banking business of the Council shall be transacted with such banks, trust companies or other financial institutions as may from time to time be designated by or under the authority of the board. Banking business or any part of it shall be transacted under the agreements, instructions and delegations of powers as the Board may from time to time prescribe or authorize.

24. Borrowing

The Board may from time to time:

- (a) borrow money on the credit of, issue, sell or pledge securities of, and charge, mortgage, hypothecate or pledge all or any of the property of the Council, including book debts and unpaid calls, rights, powers, franchises and undertaking to secure any securities or any money borrowed, or other debt, or any other obligations or liability of the Council; and,
- (b) delegate the powers under this clause to an officer or officers of the Council, as the Board considers appropriate.

25. Reproduction of Signatures

The signature of any director or officer may be printed, engraved or otherwise mechanically reproduced in facsimile under such conditions as the Board may authorize and such signature shall have the same force and effect as if signed in the handwriting of such director or officer.

26. Protection

(1) No director, officer or employee of the Council shall be liable for acts, receipts, neglects or defaults of any other director, officer or employee, or for joining in any receipt or other act for conformity, or for any loss, damage or expense happening to the Council through the insufficiency or deficiency of title to any property acquired by order of the Board for or on behalf of the Council, or for the insufficiency or deficiency of any security in or upon which any of the monies of the Council 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 monies, securities or effects of the Council shall be deposited, or for any loss, damage or misfortune whatever which shall happen in the execution of the duties of his or her office or in relation thereto unless the same are occasioned by his or her own willful neglect or default.

(2) Every director, officer or employee of the Council or other person who has undertaken or is about to undertake any liability on behalf of the Council or any company controlled by it and his or her heirs, executors and administrators and estate and effects, respectively, shall, provided such person acts in good faith, at all times be indemnified and saved harmless out of the funds of the Council from and against:

- (a) all costs, charges and expenses whatsoever that such director, officer, employee or other person sustains and incurs in or about any action, suit or proceeding that is brought, commenced or prosecuted against him or her for or in respect of any act, deed, matter or thing whatsoever made, done or permitted by him or her in or about the execution of the duties of his or her office; and
- (b) all other costs, charges and expenses that he or she sustains or incurs in or about or in relation to the affairs of the Council, except such costs, charges or expenses as are occasioned by his or her own willful neglect or default.

(3) Any director may rely upon the accuracy of any statement or report prepared by the Council's auditors and shall not be responsible or held liable for any loss or damage resulting from acting upon such statement or report.

27. Insurance

The Council shall purchase and maintain such insurance for the benefit of any person referred to in Section 26, above, as the Board may from time to time determine.

Part 9

28. Enactment, Repeal and Amendment of By-laws

By-laws of the Council may be enacted, and the by-laws of the Council repealed or amended, by by-law enacted by a majority of the Board at a meeting of the Board and sanctioned by an affirmative vote of a majority of the members at a meeting of members duly called for the purpose of considering such by-law. A copy of any by-law to be sanctioned at a meeting of members (including a by-law which amends or repeals an existing by-law), shall be sent to every member with the notice of such meeting.

29. Repeal of Existing By-law

Upon this by-law coming into force, By-Law No. 8 of the Council is repealed.

Part 10

30. Effective Date

This by-Law shall be effective when confirmed by the members.

CONFIRMED AT AGM OF WINE COUNCIL OF ONTARIO

March 30, 2010

Niagara on the Lake, Ontario