



General Operating By-law

The Institute of Law Clerks of Ontario

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General Operating By-law

THE INSTITUTE OF LAW CLERKS OF ONTARIO ("ILCO")

A By-law relating to the transaction of the activities and affairs of ILCO.

Be it enacted as a By-law of ILCO as follows:

ARTICLE 1 INTERPRETATION

1.01 Definitions

In this By-law, unless the context otherwise requires:

- (a) **"Act"** means the *Not-for-Profit Corporations Act, 2010* (Ontario) and where the context requires, includes the regulations made under it, as amended from time to time;
- (b) **"Articles"** means any instrument that incorporates ILCO or modifies its incorporating instrument, including articles of incorporation, restated articles of incorporation, articles of amendment, articles of amalgamation, articles of arrangement, articles of continuance, articles of dissolution, articles of reorganization, articles of revival, letters patent, supplementary letters patent or special act;
- (c) **"Board"** means the board of directors of ILCO;
- (d) **"By-law"** means this by-law of ILCO and all other by-laws of ILCO;
- (e) **"Certified Expert"** means a Law Clerk who (i) has ten (10) years of consecutive work experience in an area of law, and (ii) meets the necessary certification requirements as set out herein;
- (f) **"Code of Ethics"** means the code of ethics set out at Section 2.01;
- (g) **"Director"** means an individual elected or appointed to the Board;
- (h) **"Law Clerk"** means a person, qualified through education, training and work experience, who is employed or retained by a Lawyer, law office, government agency, or other entity in a capacity or function which involves the performance, under the ultimate direction and guidance of a Lawyer and/or of specifically-delegated substantive legal work which requires a sufficient knowledge of legal concepts that in the absence of a Law Clerk the Lawyer would perform;

- (i) “**Lawyer**” means (i) a person who is licensed to practice law as a barrister or solicitor in Ontario or any other the Province or Territory of Canada, and whose license is in good standing;
- (j) “**LSO**” means The Law Society of Ontario;
- (k) “**Members**” means members of ILCO as described in Article 3 namely Student Members, Ordinary Members, Associate Members, Fellow Members, Extra-provincial Members, Honorary Members, Independent Members, and Business Partner Members, provided that where references are made to “Members” in this by law in respect of meetings of Members and votes by Members, the reference shall be only to that class or classes of Members entitled to receive notice of, attend and vote at such meeting or vote on such matters;
- (l) “**Membership Year**” means the period of July 1st to June 30th of each year;
- (m) “**officer**” means any of the individuals appointed pursuant to Article 8 of this By-law as an officer;
- (n) “**ordinary resolution**” means a resolution that is submitted to a Members’ meeting and passed at the meeting, with or without amendment, by at least a majority of the votes cast, or is consented to by each Member entitled to vote at a Members’ meeting or the Member’s attorney;
- (o) “**person**” includes an individual, sole proprietorship, partnership, unincorporated association, unincorporated syndicate, unincorporated organization, trust, body corporate and a natural person in their capacity as trustee, executor, administrator, or other legal representative;
- (p) “**Policies**” means a rule or a policy adopted by the Board in accordance with section 5.11 of this By-law;
- (q) “**Principal**” means the Lawyer, Lawyers or the firm of Lawyers employing or supervising Law Clerks whose duties are performed under such supervision;
- (r) “**Qualifying Employment**” means being engaged in the performance of the duties of a Law Clerk in Ontario and/or a Province or Territory of Canada, and includes a Law Clerk employed or retained by Parliament or a federal court or the Government of Canada (including any of its corporations or agencies);
- (s) “**special resolution**” means a resolution that is submitted to a special Members’ meeting duly called for the purpose of considering the resolution and passed at the meeting, with or without amendment, by at least two-thirds of the votes cast, or consented to by each Member entitled to vote at a Members’ meeting or the Member’s attorney;
- (t) “**Statutory Declaration**” means a declaration duly executed by the Law Clerk and commissioned by a Principal or Lawyer; and

- (u) **“telephonic or electronic means”** means any means that uses the telephone or any other electronic or other technological means to transmit information or data, including telephone calls, voice mail, fax, email, an automated touch-tone telephone system, computer or computer networks.

1.02 Interpretation

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

1.03 Severability

The invalidity or unenforceability of any provision of this By-law shall not affect the validity or enforceability of the remaining provisions of this By-law.

ARTICLE 2 ORGANIZATION AND FINANCIAL

2.01 Code of Ethics

All Members shall be bound to the Code of Ethics set out below:

- (a) The duties performed by the Law Clerk shall at all times be subject to the supervision of that person's Principal. The Law Clerk shall at no time represent himself or herself to a client as a Lawyer (as defined below). The Law Clerk shall not counsel or give legal advice to a client without the authority of the Principal.
- (b) The Law Clerk must discharge his or her duty to the Principal and to the client of the Principal with honesty and integrity.
- (c) The Law Clerk shall serve the Principal in a conscientious, diligent and efficient manner and shall provide a quality of service at least equal to that which Lawyers generally would expect of a competent Law Clerk.
- (d) The Law Clerk has a duty to hold in strict confidence all information acquired in the course of the professional relationship concerning the business and affairs of the Principal and the Principal's clients and the Law Clerk shall not divulge any such information unless expressly authorized by the Principal or required by law to do so. The Law Clerk owes a duty to the Principal to observe all relevant rules and laws regarding the preservation and safekeeping of the property of the client entrusted to the Principal.

- (e) The Law Clerk shall assist in maintaining the integrity of the legal profession and shall participate in its activities within the limits imposed by the LSO or other governing body.
- (f) The Law Clerk's conduct toward the Principal and other Lawyers shall be characterized by courtesy and good faith.
- (g) The Law Clerk shall abide by the rules of conduct set out in this Code of Ethics in the spirit as well as in the letter.
- (h) Any business cards used by the Law Clerk shall include the name of the Law Clerk's employer and specify the occupation of the Law Clerk or such other description as shall from time to time be approved by ILCO, LSO and/or the Principal.

2.02 Registered Office

ILCO shall at all times have a registered office in Ontario in accordance with the Act. ILCO may change the location of the registered office within a municipality or geographic township by resolution of the Directors. ILCO may change the municipality or geographic township in which the registered office is located to another place in Ontario by special resolution.

2.03 Seal

ILCO's seal, if any, shall be in the form determined by the Board.

2.04 Financial Year

Unless otherwise determined by the Board, ILCO's fiscal year end shall be the 30th day of June in each year.

2.05 Execution of Documents

- (a) Subject to subsection 2.05(b) of this By-law, deeds, transfers, assignments, contracts, agreements, mortgages, conveyances, obligations, certificates or any other instruments or documents requiring ILCO's signature (each a "**Document**"), shall be signed by the President or the Vice-President and one (1) other Director, and all Documents so signed shall be binding upon ILCO without any further authorization or formality.
- (b) The Board may from time to time, by resolution, direct the manner in which and the person or persons by whom any particular Document may or shall be signed. Any signing officer may affix ILCO's seal to any Document, and may certify a copy of any Document, resolution, or By-law of ILCO to be a true copy.

2.06 Auditor and Financial Review

ILCO shall be subject to the requirements relating to the appointment of an auditor or person to conduct a review engagement and level of financial review required by the Act.

ARTICLE 3 MEMBERSHIP

3.01 Classes of Membership

Subject to the Articles, there shall be eight (8) classes of Members:

- (a) Student Members,
- (b) Ordinary Members,
- (c) Associate Members,
- (d) Fellow Members,
- (e) Extra-provincial Members,
- (f) Honorary Members,
- (g) Independent Members, and
- (h) Business Partner Members.

3.02 Conditions of Membership

The following conditions of membership shall apply:

(a) Student Members

- (i) A person may be admitted as a Student Member if that person:
 - (A) is not in Qualifying Employment at the time of seeking admission;
 - (B) has attained the age of eighteen (18) years; and
 - (C) is enrolled in a recognized Law Clerk certificate/diploma course or the equivalent thereof offered by a Canadian educational institution or is enrolled in a course in preparation for the Associate Member's examination or examinations provided by ILCO, at the time of seeking admission as a Student Member.
- (ii) At the Board's discretion, a person may continue as a Student Member for up to two (2) years following completion of graduation of a Law Clerk program.

- (iii) Each Student Member shall be entitled to receive notice of and attend, but not vote at, Members' meetings.

(b) Ordinary Members

- (i) A person may be admitted as an Ordinary Member if that person:
 - (A) is in Qualifying Employment at the time of seeking admission;
 - (B) has attained the age of eighteen (18) years;
 - (C) provides a completed Statutory Declaration; and
 - (D) has satisfied all of the requirements which may be set from time to time by the Board for enrolment.
- (ii) Each Ordinary Member shall be entitled to receive notice of and attend, but not vote at, Members' meetings.

(c) Associate Members

- (i) A person may be admitted as an Associate Member if that person:
 - (A) has been in Qualifying Employment for a period of not less than three (3) consecutive years immediately prior to the date of seeking such admission;
 - (B) has attained the age of twenty-one (21) years;
 - (C) provides a completed Statutory Declaration;
 - (D) has passed the Associate Member's examination or examinations approved by ILCO; and
 - (E) has satisfied all of the requirements which may be set from time to time by the Board for enrolment.
- (ii) The Board may issue an Associate Member certificate to every Associate Member.
- (iii) Each Associate Member shall be entitled to receive notice of, attend and vote at all Members' meetings and each such Associate Member shall be entitled to one (1) vote at such meetings.

(d) **Fellow Member**

- (i) A person may be admitted as a Fellow Member if that person:
 - (A) has been in Qualifying Employment for a period not less than seven (7) consecutive years immediately prior to the date of seeking such admission;
 - (B) has been admitted as an Associate Member and has passed the Fellow's examination or examinations provided by ILCO;
 - (C) has attained the age of twenty-five (25) years;
 - (D) provides a completed Statutory Declaration; and
 - (E) has satisfied all of the requirements which may be set from time to time by the Board for enrolment.
- (ii) Notwithstanding the provisions of subsection 3.02(d)(i), the Board, in its absolute discretion, may admit an applicant as a Fellow Member, where the Board is satisfied that the applicant:
 - (A) is a resident of the Province of Ontario;
 - (B) is in Qualifying Employment at the time of seeking admission as a Fellow Member; and
 - (C) has been admitted by examination as a Fellow Member or has qualified by a comparable examination in any other common law jurisdiction.
- (iii) Fellow Members are entitled to use after their respective names the distinguishing letters "LCF" (representing the words "Law Clerk Fellow").
- (iv) The Board may issue a Fellow Member certificate to every Fellow Member.
- (v) Each Fellow Member shall be entitled to receive notice of, attend and vote at all Members' meetings and each such Fellow Member shall be entitled to one (1) vote at such meetings.

(e) **Extra-provincial Member**

- (i) A person may be admitted as an Extra-provincial Member if that person:
 - (A) is in Qualifying Employment, employed in Canada, excluding the Province of Ontario, at the time of seeking admission;
 - (B) has attained the age of eighteen (18) years; and

(C) provides a completed Statutory Declaration.

- (ii) Each Extra-provincial Member shall be entitled to receive notice of, attend, but not vote at, Members' meetings.

(f) **Honorary Members**

- (i) The Board in its discretion may appoint, as an Honorary Member, a person who by contribution to the development or welfare of Law Clerks, directly or indirectly, is considered worthy of recognition for such service. An Honorary Member shall be appointed only by the unanimous vote of all Directors present at the Board meeting. An Honorary Member shall not be required to pay any membership fees.
- (ii) Each Honorary Member shall be entitled to receive notice of and attend, but not vote at, Members' meetings.

(g) **Independent Members**

- (i) A person may be admitted as an Independent Member if that person:
- (A) has been in Qualifying Employment for a period of not less than three (3) consecutive years immediately prior to the date of seeking such admission;
- (B) has attained the age of twenty-one (21) years;
- (C) provides a completed Statutory Declaration for Independent Members signed by any Principal or Lawyer supervising the Independent Member's work; and
- (D) has satisfied all of the requirements which may be set from time to time by the Board for enrolment.
- (ii) Each Independent Member shall be entitled to receive notice of and attend, but not vote at, Members' meetings.

(h) **Business Partner Members**

- (i) The Board in its discretion may approve, as a Business Partner, a business who is directly or indirectly involved in the promotion of the Law Clerk profession.
- (ii) Each Business Partner Member shall be entitled to receive notice of and attend, but not vote at, Members' meetings.

3.03 Retirement

Notwithstanding any other provision of this By-law, Ordinary Members, Associate Members, Fellow Members, Extra-Provincial Members or Independent Members may, on retirement and upon approval by the Board, continue in such class of membership occupied on the date of retirement.

3.04 Application for Membership

- (a) Every application for membership shall be made in such form as may from time to time be prescribed by the Board.
- (b) Membership applications shall be reviewed by the Board. The Board, in its sole discretion, shall determine whether an applicant meets all membership conditions for a class of membership as set out in Section 3.02 and may accept applicants to a different membership class than applied for or decline the application for membership.

3.05 Paralegals

- (a) A paralegal is not eligible for any membership if they are a licensed practicing paralegal.
- (b) A paralegal may be eligible to become an Ordinary Member, an Associate Member or a Fellow Member if they are classified with the LSO as “not providing legal services” or equivalent and are practicing under the supervision of a Lawyer. If during the Membership Year the paralegal’s status changes to a licensed practicing paralegal, the paralegal must notify ILCO immediately and such membership will cease with no refund of any paid membership fees.

3.06 Certified Experts

- (a) A person admitted as an Associate Member, Fellow Member, Extra-provincial Member or Independent Member may apply to the Board to be recognized as a Certified Expert in their primary area of practice if that person:
 - (i) is in Qualifying Employment at the time seeking admission as a Certified Expert in their area of practice, for a period of not less than ten (10) consecutive years prior to the date of seeking such admission;
 - (ii) has completed a mandatory ethics course, recognized by ILCO, prior to submitting all required application documentation; and
 - (iii) has paid the applicable one-time application fee.
- (b) Once the applicant has been admitted as a Certified Expert, the applicant will be required to complete, in each Membership Year, a minimum of five (5) approved professional continuing legal education hours as determined by the Board, in its

absolute discretion, together with one (1) ethics course as approved by ILCO every five (5) Membership Years.

- (c) Certified Experts shall be entitled to describe themselves as a “Certified Expert” in their area of practice and to use after their respective name the relevant trade-mark of ILCO and the words “Certified by ILCO as an expert in [insert area of practice]”.
- (d) The Board shall issue to every Certified Expert a Certified Expert’s certificate.
- (e) A Certified Expert shall cease to be certified upon the occurrence of any of the following:
 - (i) if a Certified Expert ceases to be a Member; or
 - (ii) if a Certified Expert fails to obtain the required number of continuing legal education hours in a Membership Year; or
 - (iii) if a Certified Expert fails to complete an ethics course as approved by ILCO within five (5) Membership Years; or
 - (iv) if a Certified Expert ceases to be in Qualifying Employment in the area of practice in which they are certified.

3.07 Transferability

A membership may only be transferred to ILCO.

3.08 Membership Fees

The Board may fix and vary the membership fees from time to time. Membership fees are not pro-rated and not refundable under any circumstances including resignation or termination of membership. The membership fees are due and payable on the date of admission or on the membership renewal date in each Membership Year. A separate renewal fee is payable by a Certified Expert in conjunction with the annual membership renewal.

- (a) If any fees are not paid within three (3) calendar months of the membership renewal date, any Members in default will automatically cease to be a Member or Certified Expert, as applicable, and will be required to apply for membership and Certified Expert recognition in accordance with these By-laws.
- (b) Honorary Members are not required to pay membership fees.

3.09 Membership Renewals

- (a) A membership must be renewed on or before the membership renewal date in each Membership Year through the online portal available on the website of ILCO. All membership renewal applications must include a Statutory Declaration signed by a

Principal or Lawyer with the law society of the relevant province and align with the appropriate level of membership.

- (b) Membership renewals are subject to audit by the Board and may be declined by the Board in its sole discretion.
- (c) If a membership has expired or is not renewed, the Member will automatically cease to be a Member and will be required to apply for membership in accordance with these By-laws.

3.10 Termination of Membership

The rights of a Member lapse and cease to exist when the membership terminates for any of the following reasons:

- (a) the Member dies or in the case of a partnership, trust or body corporate, is dissolved;
- (b) the Member ceases to maintain the conditions for membership set out in section 3.02 of this By-law;
- (c) the Member resigns by delivering a written resignation to the President in which case such resignation shall be effective on the date specified in the resignation;
- (d) the Member is expelled or the Member's membership is otherwise terminated in accordance with the Articles or this By-law;
- (e) the Member's term of membership expires, if any; or
- (f) ILCO is liquidated or dissolved under the Act.

Subject to the Articles or By-law, upon any termination of membership, the Member's rights, including any rights in ILCO's property, automatically cease to exist.

3.11 Member Discipline or Expulsion

- (a) The Board or a committee of the Board shall have the power to discipline or expel a Member in the following circumstances:
 - (i) the Member violates any provision of the Articles, By-law, including the Code of Ethics, or Policies; or
 - (ii) the Member is carrying out any conduct which may be detrimental to ILCO as determined by the Board in its sole discretion; or
 - (iii) the Member's conduct damages ILCO's property, or the property of a Member, Director, officer, employee, contractor, agent, authorized user or registered participant of ILCO at the ILCO facilities or during an ILCO program or event; or

- (iv) the Member interferes with the membership entitlements of other Members or the rights and privileges of users of ILCO's facilities or participants in ILCO's programs; or
 - (v) for any other reason that the Board in its sole and absolute discretion considers to be reasonable, having regard to the purposes of ILCO.
- (b) In the event a disciplinary or expulsion action is taken against a Member, the Member shall be provided:
 - (i) at least fifteen (15) days' notice of said disciplinary action or termination, with reasons; and
 - (ii) an opportunity to be heard by the Board, orally or in writing, not less than five (5) days before the disciplinary action or termination of membership becomes effective.
- (c) The provisions of this section 3.11 of this By-law are in addition to any Policies adopted by the Board from time to time.

ARTICLE 4 MEMBERS' MEETINGS

4.01 Place of Meetings

Members' meetings shall be held at ILCO's registered office or at any place in Ontario as the Board may determine.

4.02 Annual Meetings

The Board shall call an annual meeting of the Members within six (6) months of the financial year end and not later than fifteen (15) months after the last annual meeting.

4.03 Special Meetings

The Board may call, at any time, a special meeting of the Members.

4.04 Special Business

In accordance with the Act, all business transacted at a special meeting of the Members and all business transacted at an annual meeting of the Members is special business except for consideration of the financial statements; consideration of the audit or review engagement report, if any; an extraordinary resolution to have a review engagement instead of an audit or to not have an audit or a review engagement; election of Directors; and reappointment of the incumbent auditor or person appointed to conduct a review engagement.

4.05 Notice of Meetings

- (a) Notice of the time and place of a Members' meeting shall be given in accordance with section 11.01 of this By-law:

- (i) to each Director,
- (ii) to each Member entitled to receive notice, and
- (iii) to ILCO's auditor or the person appointed to conduct a review engagement of ILCO,

not less than ten (10) days and not more than fifty (50) days prior to the meeting.

- (b) Notice of a Members' meeting is not required to specify a place of the meeting if the meeting is to be held entirely by one or more telephonic or electronic means. If a person may attend a meeting of the Members by telephonic or electronic means, the notice of the meeting must include instructions for attending and participating in the meeting by the telephonic or electronic means that will be made available for the meeting, including, if applicable, instructions for voting by such means at the meeting.
- (c) Notice of a Members' meeting at which special business is to be transacted must:
- (i) state the nature of that business in sufficient detail to permit a Member to form a reasoned judgment on the business; and
 - (ii) state the text of any special resolution to be submitted to the meeting.
- (d) Not less than twenty-one (21) days, or the prescribed number of days under the *Act*, before each annual meeting or before the signing of a resolution in lieu of the annual meeting, ILCO shall give a copy of the Board-approved financial statements, auditor's report, and any further information respecting the financial position of ILCO and the results of its operations required by the Articles or this By-law to all Members who have informed ILCO that they wish to receive a copy of those documents.

4.06 Adjournments

- (a) If within one-half (½) hour after the time appointed for a Members' meeting, the meeting has not commenced because a quorum is not present, the Members present may adjourn the meeting to a fixed time and place, but may not transact any other business.
- (b) If a Members' meeting is adjourned for less than thirty (30) days, no meeting notice that continues the adjourned meeting is required if all of the following are announced at the time of the adjournment:

- (i) the time of the continued meeting;
 - (ii) if applicable, the place of the continued meeting; and
 - (iii) if applicable, instructions for attending and participating in the continued meeting by the telephonic or electronic means that will be made available for the meeting, including, if applicable, instructions for voting by such means at the meeting.
- (c) If a Members' meeting is adjourned by one or more adjournments for an aggregate of more than thirty (30) days, notice of the meeting that continues the adjourned meeting shall be given in accordance with section 4.05 of this By-law.

4.07 Persons Entitled to be Present

The only persons entitled to attend a Members' meeting are the Members, the Directors, the auditor or the person who has been appointed to conduct a review engagement of ILCO, if any, and others who are entitled or required under any provision of the Act or the Articles or the By-laws to be present at the meeting. Any other person may be admitted only if invited by the chair of the meeting or with the majority consent of the Members present at the meeting.

4.08 Chair of the Meeting

The chair of Members' meetings shall be:

- (a) the President; or
- (b) the Vice President, if the President is absent, unable, or unwilling to act; or
- (c) a Director elected by the Members present if the President and Vice President are absent or unable to act. The Secretary, if one has been appointed and present at the meeting, shall preside at the election of the meeting chair, but if the Secretary is not present, the Members, from those present, shall choose a Director to preside at the election.

4.09 Quorum

A quorum for the transaction of business at a Members' meeting is fifteen (15) Members entitled to vote at the meeting, including persons present by telephonic or electronic means or by proxy if permitted by the By-law. If a quorum is present at the opening of a Members' meeting, the Members present may proceed with the meeting's business, even if quorum is not present throughout the meeting.

4.10 Meetings Held by Electronic Means

A meeting of the Members may be held entirely by one or more telephonic or electronic means or by any combination of in-person attendance and by one or more telephonic or

electronic means, if ILCO makes such means available and provided that those means must enable all persons entitled to attend the meeting to reasonably participate and a person participating in the meeting by those means is deemed to be present at the meeting. A vote at a meeting of the Members may be conducted entirely by one or more telephonic or electronic means or by a combination of one or more telephonic or electronic means and voting in person.

4.11 Voting of Members

- (a) Each Member entitled to vote and in attendance at a meeting shall have the right to exercise one (1) vote on each matter.
- (b) At all Members' meetings, every question shall be determined by a majority of votes cast unless otherwise specifically provided by the Act or, subject to the Act, by either the Articles or this By-law.
- (c) Every question submitted to any Members' meeting shall be decided in the first instance by a show of hands and the chair of the meeting shall have a vote.
- (d) An abstention shall not be considered a vote cast.
- (e) Before or after a show of hands has been taken on any question, the chair of the meeting may require, or any Member or proxyholder may demand, a written ballot. A written ballot so required or demanded shall be taken in such manner as the chair of the meeting shall direct. Members or proxyholders may withdraw a demand for a ballot.
- (f) If there is a tie vote, the chair of the meeting shall require a written ballot and shall not have a second or casting vote. If there is a tie vote upon written ballot, the motion is lost.

4.12 Absentee Voting by Mail or by Telephonic or Electronic Means

Members entitled to vote at a Members' meeting may vote by mail or by telephonic or electronic means in accordance with the Act.

4.13 Absentee Voting by Proxy

ILCO may send, or otherwise make available, a form of proxy to each Member who is entitled to receive meeting notice concurrently with or before giving the Members' meeting notice. Directors may, by resolution, fix a time (not exceeding 48 hours, excluding Saturdays and holidays) before any meeting or continuance of an adjourned Members' meeting before which time proxies to be used at that Members' meeting must be deposited with ILCO, and such time shall be specified in the meeting notice. A proxyholder shall be a Member.

ARTICLE 5 DIRECTORS

5.01 Duties and Responsibilities

Subject to the Act and the Articles, the Board shall manage or supervise the management of the activities and affairs of ILCO.

5.02 Number of Directors

- (a) In accordance with the Articles, the Board shall consist of seven (7) to eleven (11) Directors who satisfy the criteria set out in section 5.03 of this By-law and shall be elected by the Members entitled to vote in accordance with section 5.04 of this By-law or appointed in accordance with section 5.05 of this By-law.
- (b) The number of Directors of ILCO and the number of Directors to be elected at the annual Members' meeting must be the number determined from time to time by special resolution or, if a special resolution empowers the Directors to determine the number, by Board resolution. No decrease in the number of Directors shall shorten the term of an incumbent Director.
- (c) All Directors must be Members, but no more than two (2) Directors shall be Ordinary Members and the remaining Directors must be Fellow Members or Associate Members.
- (d) In any financial year that ILCO is a public benefit corporation as defined in the Act, no more than one-third (1/3) of the Board may at any time be comprised of employees of ILCO or its affiliates.

5.03 Director Qualifications

An individual is disqualified from being a Director if they:

- (a) are under eighteen (18) years old;
- (b) are a person who has been found under the *Substitute Decisions Act*, 1992 or under the *Mental Health Act* to be incapable of managing property;
- (c) are a person who has been found to be incapable by any court in Canada or elsewhere;
- (d) have the status of a bankrupt;
- (e) have not been a Member for at least two (2) Membership Years; or
- (f) have not been on an ILCO committee prior to seeking election.

A Board decision as to whether or not an individual is qualified to be a Director is final.

5.04 Election of Directors and Term

The Directors shall be elected for a term of up to three (3) years provided that each such Director shall hold office until the earlier of the date on which their office is vacated pursuant to section 5.08 of this By-law or until the end of the meeting at which their successor is elected or appointed. It is not necessary that all Directors elected at a meeting be elected to hold office for the same term. An election of Directors is not required to take place at each annual Members' meeting.

5.05 Appointments and Filling Vacancies

So long as there is a quorum of Directors in office, any vacancy occurring in the Board may be filled by the Directors then in office, provided that a Director appointed to fill a vacancy shall be only appointed for the unexpired portion of the term of such Director's predecessor.

In the absence of a quorum of Directors, or if the Members have failed to elect the number of Directors (or the minimum number of Directors provided for in the Articles), the Directors then in office shall without delay call a Members' meeting to fill the vacancy.

So long as there is a quorum of Directors in office, Directors may appoint one or more additional Directors to hold office for a term expiring not later than the close of the next annual Members' meeting, but the total number of Directors so appointed shall not exceed one-third (1/3) of the number elected at the previous annual Members' meeting.

5.06 Director Consent to Serve as a Director

An individual elected or appointed to hold office as a Director shall consent in writing to such election or appointment before or within ten (10) days after the election or appointment unless such Director has been re-elected or reappointed where there is no break in the Director's term of office. If an elected or appointed Director consents in writing after the ten (10) day period referred to in this section, the election or appointment is valid.

5.07 Nomination Procedure for Election of Directors

The Board shall, in each year, appoint a nominations committee composed of three (3) Associate, Fellow, retired Associate or retired Fellow Members who are not Directors.

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

- (a) by the nominations committee, in accordance with the Policies and procedures established by the Board; and
- (b) in accordance with the process set out in the Act, by not less than five percent (5%) of the Members entitled to vote at the Members' meeting at which the election is to occur.

The Board decision as to whether a candidate is qualified to stand for election is final.

5.08 Vacation of Office

- (a) The office of a Director shall be automatically vacated if the Director:
 - (i) dies;
 - (ii) resigns in writing;
 - (iii) is removed by the Members in accordance with subsection 5.08(c) of this By-law; or
 - (iv) becomes disqualified under section 5.03 of this By-law.
- (b) A resignation of a Director becomes effective at the time the resignation is received by ILCO or at the time specified in the resignation, whatever is later.
- (c) The Members may, by ordinary resolution at a special Members' meeting, remove from office any Director or Directors and may elect a qualified individual to fill the resulting vacancy for the remainder of the term of the Director(s) so removed.
- (d) A Director is not entitled to give ILCO a statement giving reasons for resigning or for opposing the removal of the Director if a meeting is called for that purpose.
- (e) Where there is a Board vacancy, the remaining Directors may exercise all the Board powers so long as a quorum remains in office.

5.09 Directors Remuneration

The Directors shall serve as such without remuneration and no Director shall directly or indirectly receive any profit from their position as such provided that a Director may be reimbursed reasonable expenses incurred by the Director in the performance of their duties.

5.10 Books and Records

The Directors shall ensure that all necessary books and records of ILCO required by the Act, the By-laws, or by any applicable statute or law are regularly and properly kept.

5.11 Policies

The Board may, from time to time, make such Policies as it may deem necessary or desirable in connection with the management of ILCO's activities and affairs and the conduct of the Directors, officers and Members, provided however that any such Policy shall be consistent with the provisions of the Act and the By-laws.

ARTICLE 6 BOARD MEETINGS

6.01 Calling of Meetings

Meetings of the Board may be called by the President, the Vice-President, or by a majority of the number of Directors at any time.

6.02 Place of Meetings

Meetings of the Board may be held at the registered office of ILCO or at any other place within or outside of Canada, as the Board may determine.

6.03 Notice of Meetings

- (a) Notice of meetings, other than meetings described in sections 6.04 and 6.05 of this By-law, shall be given to all Directors at least 48 hours prior to the meeting. A meeting may be called on less notice, by such means as are deemed appropriate, provided that notice is given to all Directors and the majority of the Directors consent to the holding of such meeting.
- (b) Notice of a Board meeting is not necessary if all Directors are present and none objects to the holding of the meeting, or if those absent have waived notice or otherwise signified their consent to the holding of the meeting. Notice of an adjourned Board meeting is not required if the time and place of the adjourned meeting is announced at the original meeting.
- (c) Unless the By-law otherwise provides, notice of a Board meeting need not specify the purpose of the business to be transacted at the meeting, unless the meeting is intended to deal with a matter referred to in section 7.01 of this By-law, in which case the notice must specify that matter.
- (d) Notice of a meeting of Directors need not specify a place of the meeting if the meeting is to be held entirely by one or more telephonic or electronic means. If the Directors may attend a meeting by telephonic or electronic means, the notice of the meeting must include instructions for attending and participating in the meeting by the telephonic or electronic means that will be made available for the meeting, including, if applicable, instructions for voting by such means at the meeting.

6.04 Meeting of Board after Annual Meeting

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

6.05 Regular Meetings

The Board may appoint one (1) or more days for regular Board meetings at a place and time named. A copy of any Board resolution fixing the place and time of regular Board

meetings shall be given to each Director forthwith after being passed, but no other notice shall be required for any such regular meeting except if notice is required to be given because the meeting is intended to deal with a matter referred to in section 7.01 of this By-law, in which case the notice must specify that matter.

6.06 No Alternate Directors

No person shall act for an absent Director at a meeting of the Board. A Director shall not be entitled to vote by proxy.

6.07 Participation at Meeting by Telephone or Electronic Means

A meeting of Directors may be held entirely by one or more telephonic or electronic means or by any combination of in-person attendance and by one or more telephonic or electronic means, provided that all persons attending the meeting are able to communicate with each other simultaneously and instantaneously. A Director participating in the meeting by those means is deemed to be present at the meeting.

6.08 Quorum

A majority of the Directors shall constitute a quorum.

6.09 Votes to Govern

Each Director present at a Board meeting shall be entitled to one (1) vote on each matter. Any question arising at any Board meeting or any committee meeting, shall be determined by a majority of votes. In case of an equality of votes, the meeting chair shall not have a second vote.

6.10 Ballots

The vote on any question shall be taken by secret ballot if so demanded by any Director present and entitled to vote. Such ballots shall be counted by the meeting chair. Otherwise a vote shall be taken by a show of hands. Unless a ballot is demanded, an entry in the minutes to the effect that the meeting chair declared that a resolution has been carried, or carried by a particular majority, or defeated, shall be conclusive in the absence of evidence to the contrary.

6.11 Dissent of Director at Meeting

A Director who is present at a meeting of the Board or of a committee of Directors is deemed to have consented to any resolution passed or action taken at the meeting, unless:

- (a) the Director's dissent is entered in the meeting minutes;
- (b) the Director requests that their dissent be entered in the meeting minutes;

- (c) the Director gives their dissent to the meeting secretary before the meeting is terminated; or
- (d) the Director submits their written dissent immediately after the meeting is terminated to ILCO.

A Director who votes for or consents to a resolution is not entitled to dissent under this section.

6.12 Dissent of Absent Director

A Director who was not present at a meeting at which a resolution was passed or action taken is deemed to have consented to the resolution or action unless within seven (7) days after becoming aware of the resolution, the Director has:

- (i) caused their written dissent to be placed with the meeting minutes; or
- (ii) submitted their written dissent to ILCO.

6.13 Persons Entitled to be Present

Guests may attend Board meetings with the meeting's consent on the invitation of the President.

6.14 Meeting Adjournment

- (a) If within one-half ($\frac{1}{2}$) hour after the time appointed for a Board meeting a quorum is not present, the meeting shall stand adjourned until a day to be determined by the meeting chair.
- (b) Notice of a meeting that continues an adjourned meeting of Directors is not required to be given if all of the following are announced at the time of the adjournment:
 - (i) the time of the continued meeting;
 - (ii) if applicable, the place of the continued meeting; and
 - (iii) if applicable, instructions for attending and participating in the continued meeting by the telephonic or electronic means that will be made available for the meeting, including, if applicable, instructions for voting by such means at the meeting.

6.15 Written Resolutions in Lieu of Meeting

A resolution, signed by all of the Directors entitled to vote on that resolution at a Board meeting or a committee of Directors is as valid as if it had been passed at a Board meeting or of a committee of Directors. ILCO shall keep a copy of every written resolution of the Board or a committee of Directors with the minutes of Board meetings or of a committee of Directors.

ARTICLE 7 COMMITTEES

7.01 Delegation – Executive Committee

The Board may appoint from their number a managing director or a committee of Directors (which may be referred to as an executive committee) and delegate to the managing director or committee any of the powers of the Board except those which may not be delegated by the Board in accordance with subsection 36(2) of the Act as follows:

- (a) to submit to the Members any question or matter requiring the Members' approval;
- (b) to fill a vacancy among the Directors or in the position of auditor or of a person appointed to conduct a review engagement of ILCO;
- (c) to appoint additional Directors;
- (d) to issue debt obligations except as authorized by the Directors;
- (e) to approve any annual financial statements;
- (f) to adopt, amend or repeal By-laws; or
- (g) to establish contributions to be made, or dues to be paid, by Members.

Unless otherwise determined by the Board, such a committee shall have the power to fix its quorum at not less than a majority of its members, to elect its chair, and to otherwise regulate its procedures.

7.02 Other Committees

The Board may from time to time appoint any committee or other advisory body as it deems necessary or appropriate for such purposes and, subject to the Act, with such powers as the Board shall see fit. Any such committee may formulate its own rules of procedure, subject to such regulations or directions as the Board may from time to time make. Any committee member may be removed by resolution of the Board.

7.03 Audit Committee

If the Board adopts any audit committee, the following provisions shall apply:

- (a) the audit committee shall be comprised of one or more Directors and the majority of the audit committee members must not be officers or employees of ILCO or of any of its affiliates;
- (b) the audit committee shall review ILCO's financial statements before they are approved by the Directors; and

- (c) the auditor or person appointed to conduct a review engagement is entitled to notice of the time and place of any audit committee meeting.

ARTICLE 8 OFFICERS

8.01 Officers

- (a) ILCO's officers shall include:
 - (i) the President, who shall also be the chair of the Board for the purposes of the Act;
 - (ii) a Vice-President;
 - (iii) a Secretary;
 - (iv) a Treasurer;
 - (v) a Registrar;

and may include any such other officers as the Board may by resolution determine.

8.02 Appointment

- (a) Subject to the Articles and the By-laws, the Board may specify the duties of officers and delegate to them powers to manage ILCO's activities and affairs, except the power to do anything referred to in section 7.01 of this By-law.
- (b) The President, Vice-President, Secretary, Treasurer and Registrar must be Directors who have served as Director for at least two (2) years. All other officers need not be Directors, but all officers must be Members. The President and Vice-President must be an Associate Member or a Fellow Member. A person may hold more than one office.

8.03 Description of Office

- (a) **President** – The President shall, when present, preside at all meetings of the Board and of the Members. The President shall perform such other duties as may be prescribed by the By-laws or the Board. The President shall be an ex-officio member of all committees.
- (b) **Vice-President** – The Vice-President shall, in the President's absence or disability, perform the President's duties and exercise the President's powers and shall perform such other duties as shall from time to time assigned to the Vice-President by the Board.
- (c) **Secretary** – The Secretary shall give or cause to be given all notices required to be given to any Members, Directors or committee members. The Secretary shall attend

all meetings of ILCO and shall enter or cause to be entered in books kept for the purpose minutes of all proceedings at such meetings. The Secretary shall be the custodian of the seal of ILCO and of its books, records and documents and shall perform such other duties as may from time to time be prescribed by the Board.

- (d) **Treasurer** – The Treasurer shall keep full and accurate books of account in which shall be recorded all receipts and disbursements of ILCO and, under the direction of the Board, shall control the deposit of money, the safekeeping of the securities and the disbursement of the funds of ILCO. The Treasurer shall render to the Board at the meetings thereof, or whenever required, an account of all such transactions as Treasurer and of the financial position of ILCO and shall perform such other duties as may from time to time be prescribed by the Board.
- (e) **Registrar** - The Registrar shall keep a complete and accurate register of ILCO membership and of applicants thereof and record or cause to be recorded dates of:
 - (i) receipt of forms or applications for membership or renewal of membership or application for the designation of a Certified Expert;
 - (ii) approval or rejection of applications including those for the designation of a Certified Expert; and
 - (iii) receipt of payment of dues, and such other information as may be directed by the Board.

The Registrar shall report to the Board any violation by any person of the conditions of membership and the Code of Ethics of ILCO that shall be brought to the Registrar's attention through the keeping of such records or by other means.

- (f) **Other Officers** – The powers and duties of all other officers shall be such as the Board may from time to time determine. Any of the powers and duties of an officer to whom an assistant has been appointed may be exercised and performed by such an assistant unless the Board otherwise directs.

8.04 Terms of Office

- (a) Unless otherwise provided in this By-law, officers shall be appointed by the Board at the first meeting of the Board immediately following the annual meeting of Members and shall hold their position for a period of one (1) year or until their successors are appointed. Officers shall be subject to removal by Board resolution at any time.

ARTICLE 9 CONFLICT OF INTEREST

9.01 Declaration of Conflict

A Director or officer who is a party to a material contract or transaction or proposed material contract or transaction with ILCO or is a director or officer of, or has a material interest in, any person who is a party to a material contract or transaction or proposed material contract or transaction with ILCO shall make the disclosure required by the Act. Except as provided by the Act, no such Director shall attend any part of a meeting of Directors during which the contract or transaction is discussed or vote on any resolution to approve any such contract or transaction.

9.02 General and Continuing Disclosure of Interest

For the purposes of section 9.01 of this By-law, a general notice to the Directors by a Director or officer declaring that the Director or officer is a director or officer of or has a material interest in a person, or that there has been a material change in the Director's or officer's interest in the person, and is to be regarded as interested in any contract or transaction entered into with that person is sufficient declaration of interest in relation to any contract or transaction so made.

ARTICLE 10 PROTECTION OF DIRECTORS, OFFICERS AND OTHERS

10.01 Standard of care

Every Director and officer in exercising their powers and discharging their duties to ILCO shall,

- (a) act honestly and in good faith with a view to ILCO's best interests; and
- (b) exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances.

10.02 Liability of Directors and Officers

No Director, officer or committee member of ILCO is liable for the acts, neglects or defaults of any other Director, officer, committee member or employee of ILCO or for joining in any receipt or for any loss, damage or expense happening to ILCO through the insufficiency or deficiency of title to any property acquired by resolution of the Board or for or on behalf of ILCO or for the insufficiency or deficiency of any security in or upon which any of the money of or belonging to ILCO shall be placed out or invested or for any loss or damage arising from the bankruptcy, insolvency or tortious act of any person, firm or corporation with whom or which any moneys, securities or effects shall be lodged or deposited or for any other loss, damage or misfortune whatever which may happen in the execution of the duties of their respective office or trust provided that they have:

- (a) complied with the Act, the Articles and By-laws; and
- (b) exercised their powers and discharged their duties in accordance with the Act.

10.03 Indemnification of Directors and Others

- (a) Every Director or officer or former Director or officer of ILCO or an individual who acts or acted at ILCO's request as a director or officer, or in a similar capacity, of another entity, shall be indemnified and saved harmless out of ILCO's funds from and against all costs, charges and expenses, including an amount paid to settle an action or satisfy a judgment, reasonably incurred by the individual in respect of any civil, criminal, administrative, investigative or other action or proceeding in which the individual is involved because of that association with ILCO or other entity.
- (b) ILCO may advance money to an individual referred to in subsection 10.03(a) of this By-law for the costs, charges and expenses of an action or proceeding referred to in that subsection, but the individual shall repay the money if the individual does not fulfil the conditions set out in subsection 10.03(c) of this By-law.
- (c) ILCO shall not indemnify an individual under subsection 10.03(a) of this By-law unless:
 - (i) the individual acted honestly and in good faith with a view to ILCO's best interests or other entity, as the case may be; and
 - (ii) if the matter is a criminal or administrative proceeding that is enforceable by a monetary penalty, the individual had reasonable grounds for believing that their conduct was lawful.

10.04 Insurance

Subject to the Act and applicable laws, ILCO may purchase and maintain insurance for the benefit of an individual referred to in section 10.03 of this By-law, against any liability incurred by that individual in the individual's capacity as a Director or an officer of ILCO, or, in the individual's capacity as a director or officer, or in a similar capacity, of another entity if the individual acts or acted in that capacity at ILCO's request.

ARTICLE 11 NOTICES

11.01 Method of Giving Notice

- (a) Whenever under the provisions of the By-law notice is required to be given, unless otherwise provided such notice may be given in writing and delivered or sent by prepaid mail, by personal delivery or by electronic means to:
 - (i) each Director at their latest address as shown in ILCO's records or in the most recent notice or return filed under the *Corporations Information Act*, whichever is the more current;

- (ii) to each Member, officer, or committee member at their latest address as shown in ILCO's records; or
- (iii) to ILCO's auditor or the person appointed to conduct a review engagement of ILCO at its business address.

A notice so delivered shall be deemed to have been received when it is delivered personally or to the address as aforesaid; a notice so mailed shall be deemed to have been received on the fifth (5th) day after it was deposited in a post office or public letter box, or as otherwise prescribed by the Act; and a notice so sent by any electronic means shall be deemed to have been sent and received in the manner and at the time specified in the *Electronic Commerce Act, 2000*.

- (b) The Secretary may change or cause to be changed the recorded address of any Member, Director, officer, auditor or committee member in accordance with any information believed by them to be reliable.

11.02 Computation of Time

In computing the date or time when notice must be given under any provision requiring a specified number of days' notice of any meeting or other event, the date of giving the notice shall be excluded.

11.03 Omissions and Errors

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

11.04 Waiver of Notice

Any Member, Director, officer, committee member, or ILCO's auditor may, in writing, waive or consent to abridge the time for giving any notice required to be given to them or it under any provision of the Act, the Articles or ILCO's By-law, and such waiver or consent to abridgment, whether given before or after the meeting or other event of which notice is required to be given, shall cure any default in giving such notice. Attendance and participation at a meeting constitutes waiver of notice unless such attendance is for the express purpose of objecting to the transaction of any business on the grounds the meeting was not lawfully called.

ARTICLE 12 AMENDMENTS TO ARTICLES AND BY-LAWS

12.01 Amendment of Articles

Pursuant to the Act, a special resolution of the Members is required to make any amendment to the Articles of ILCO with respect to the matters listed in section 103(1) of the Act.

12.02 Amendment of By-law

- (a) Unless the Articles or the By-laws otherwise provide, the Directors may by resolution make, amend or repeal any By-law that regulates the activities or affairs of ILCO, except in respect of a matter referred to in sections 103 (1) (g), (k) or (l) of the Act.
- (b) The Directors shall submit the By-law, amendment or repeal to the Members at the next meeting of the Members, and the Members may confirm, reject or amend the By-law, amendment or repeal by ordinary resolution.
- (c) The By-law, amendment or repeal is effective from the date of the resolution of the Directors. The By-law, amendment or repeal ceases to have effect if it is not submitted by the Directors to the Members or if it is rejected by the Members. If confirmed or confirmed as amended by the Members, it remains effective in the form in which it was confirmed. If rejected by the Members, it thereupon ceases to have effect and ILCO shall revert to the By-law in force immediately prior thereto, provided that no act done or right acquired under any such By-law is prejudicially affected by any such rejection or refusal to approve. If a By-law, amendment or repeal ceases to have effect, a subsequent resolution of the Directors that has substantially the same purpose or effect is not effective until it is confirmed or confirmed as amended by the Members.

ARTICLE 13 EFFECTIVE DATE AND REPEAL

13.01 Effective Date

This By-law is effective on the date shown in the certificate of amendment issued by the Director appointed under section 6 of the Act.

13.02 Repeal of Previous By-law

All previous By-laws of ILCO related to the subject matter of this By-law are repealed as of the date specified in section 13.01 of this By-law. Such repeal shall not affect the validity of any act done or right or privilege, obligation or liability acquired or incurred under such By-law prior to its repeal. All officers and persons acting under any By-law so repealed shall continue to act as if appointed under the provisions of this By-law and all resolutions of the Directors or Members with continuing effect passed under any repealed By-law shall

continue to be good and valid except to the extent inconsistent with this By-law and until amended or repealed.

CERTIFIED to be the General Operating By-law of ILCO effective as of the date specified in section 13.01 of this By-law.

President

Secretary