

## BY-LAW NUMBER 1

A by-law relating generally to the conduct of the affairs of

### TORONTO WINDSURFING CLUB (the Corporation)

#### 1. GENERAL

##### 1.1 Definitions

In this by-law and all other by-laws of the Corporation, unless the context otherwise requires:

- (a) **Act** means the *Canada Not-for-profit Corporations Act* S.C. 2009, c.23 including the Regulations made pursuant to the *Act*, and any statute or regulations that may be substituted, as amended from time to time;
- (b) **Arbitration** means a form of alternative dispute resolution outside of the court system, whereby the matter is referred to an arbitrator whose decision is binding on the parties. Schedule “A” to these by-laws constitutes an arbitration agreement for the purposes of the *Arbitration Act, 1991*, S.O. 1991, c. 17, as amended from time to time.
- (c) **Articles** means the original or restated articles of incorporation or articles of amendment, amalgamation, continuance, reorganization, arrangement or revival of the Corporation;
- (d) **Board** means the board of directors of the Corporation;
- (e) **By-laws** means this by-law and any other by-laws of the Corporation as amended and which are in force and effect;
- (f) **Complainant** means a person initiating mediation in accordance with these By-laws.
- (g) **Defendant or Respondent** means the party defending a claim or responding to an application initiated by a Plaintiff or Applicant in an arbitration proceeding.
- (h) **Director** means a member of the Board;
- (i) **Mediation** means a form of alternative dispute resolution with the assistance of a mediator. A mediator seeks to assist the parties in achieving a voluntary settlement. Unlike arbitrators, a mediator does not make decisions which bind the parties.
- (j) **Meeting of members** includes an annual meeting of members or a special meeting of members;

- (k) **Ordinary resolution** means a resolution passed by a majority of the votes cast on that resolution;
- (l) **Plaintiff or Applicant** means a party initiating an arbitration proceeding as a claim or application in accordance with these bylaws.
- (m) **Special meeting of members** includes a meeting of any class or classes of members and a special meeting of all members entitled to vote at an annual meeting of members;
- (n) **Special resolution** means a resolution passed by a majority of not less than two-thirds of the votes cast on that resolution.
- (o) **Proposal** means a proposal submitted by a member of the Corporation that meets the requirements of section 163 of the *Act*;
- (p) **Regulations** means the Regulations made under the *Act*, as amended, restated or in effect from time to time; it does not include regulations passed by the Corporation and which are referred to as “regulations” in this by-law.
- (q) **Rules and Procedures** means the documents published as approved by the Board from time to time, in accordance with the By-laws, governing internal matters of the Corporation pursuant to and subject to the provisions of the Act, the Articles and the By-laws; and

## 1.2 Interpretation

In the interpretation of this By-law, words in the singular include the plural and vice-versa, words in one gender include all genders, and **person** includes an individual, body corporate, partnership, trust and unincorporated organization.

Other than as specified in 1.1 above, words and expressions defined in the *Act* have the same meanings when used in these By-laws.

Where reference is made in this By-law to any statute or section of a statute, such reference is deemed to extend and apply to any amendments to the statute or section of the statute or re-enactment of the statute or section of the statute, as the case may be.

## 1.3 Corporate Seal

The Corporation may have a corporate seal in the form approved from time to time by the Board. If a corporate seal is approved by the Board, the secretary of the Corporation shall be the custodian of the corporate seal.

#### **1.4 Execution of Documents**

Deeds, transfers, assignments, contracts, obligations and other instruments in writing requiring execution by the Corporation shall be signed by any two of its officers or directors. In addition, the Board may from time to time direct the manner in which the person or persons by whom a particular document or type of document shall be executed. Any person authorized to sign any document may affix the corporate seal (if any) to the document. Any signing officer may certify a copy of any instrument, resolution, by-law or other document of the Corporation to be a true copy thereof.

The directors may give the Corporation's power of attorney to any registered dealer in securities for the purposes of the transferring of and dealing with any stocks, bonds, and other securities of the Corporation. All contracts, documents and instruments in writing having a consideration greater than one thousand dollars (\$1,000) must receive the prior approval of the Board.

#### **1.5 Financial Year End**

The financial year end of the Corporation shall be the last day of December in each year.

#### **1.6 Banking Arrangements**

The banking business of the Corporation shall be transacted at such bank, trust company credit union or other firm or corporation carrying on a banking business in Canada or elsewhere as the Board may designate, appoint or authorize from time to time by resolution. The banking business or any part of it shall be transacted by an officer or officers of the Corporation and/or other persons as the Board may by resolution from time to time designate, direct, or authorize.

#### **1.7 Annual Financial Statements**

The Corporation may, instead of sending copies of the annual financial statements and other documents referred to in subsection 172(1) of the *Act* to the members, publish a notice to its members stating that the annual financial statements and documents provided in subsection 172(1) are available at the registered office of the Corporation and any member may, on request, obtain a copy free of charge at the registered office or by prepaid mail.

#### **1.8 Borrowing Powers**

The directors of the Corporation may, without authorization of the members,

- (a) borrow money on the credit of the Corporation;
- (b) issue, reissue, sell, pledge or hypothecate debt obligations of the Corporation;
- (c) give a guarantee on behalf; and

- (d) mortgage, hypothecate, pledge or otherwise create a security interest in all or any property of the Corporation, owned or subsequently acquired, to secure any debt obligation of the Corporation.

## **2. MEMBERSHIP**

### **2.1 Membership Qualifications and Admittance to the Membership**

Subject to the Articles, there shall be one class of members in the Corporation.

Membership in the Corporation shall be limited to persons interested in furthering the objects of the Corporation and shall consist of anyone whose application for admission as a member has received the approval of the board of directors of the Corporation. The Board has unfettered discretion to refuse a membership application, when, in its opinion, granting of the membership would not be in the best interests of the Corporation.

Former members whose membership has expired and whose application for renewal has been declined shall not commence any legal proceeding challenging the Corporation's decision to decline admission to the membership. Should such former member commence a legal proceeding, then the former member agrees to indemnify the Corporation for any and all costs incurred, including legal costs, to respond to the law suit, and the former member consents to an order dismissing the court proceeding. Nor shall such former member have recourse under Section 11 of these By-laws.

Any approval to admit someone to the membership is conditional upon payment of membership fees in place from time to time, as determined by resolution of the Board.

Pursuant to subsection 197(1) (Fundamental Change) of the Act, a special resolution of the members is required to make any amendments to this section of the by-laws if those amendments affect membership rights and/or conditions described in paragraphs 197(1)(e), (h), (l) or (m).

### **2.2 Annual Term of Membership and Application Process**

Membership expires April 30 of each year.

The Board shall consider, and subject to the exercise of the Board's discretion to decline membership under section 2.1, approve applications for membership in the following order and priority:

- (a) First, renewal applications from current members and whose application for renewal is received before April 30 of that year;
- (b) Second, renewal applications from members who held a membership in the preceding year, but whose membership has expired, and whose application for renewal is received after April 30 of that year;
- (c) Third, applications for membership from persons who were not members in the preceding year.

### **2.3 Transfer of Membership**

Membership in the Corporation cannot be transferred.

Pursuant to Section 197(1) (Fundamental Change) of the Act, a special resolution of the members is required to make any amendment to add, change or delete this section of the by-laws.

### **2.4 Notice of Meeting of Members**

Notice of the time and place of a meeting of members shall be given to each member entitled to vote at the meeting by the following means:

- (a) by mail, courier or personal delivery to each member entitled to vote at the meeting, during a period of 21 to 60 days before the day on which the meeting is to be held; or
- (b) by telephonic, electronic or other communication facility to each member entitled to vote at the meeting, during a period of 21 to 35 days before the day on which the meeting is to be held.

Pursuant to subsection 197(1) (Fundamental Change) of the Act, a special resolution of the members is required to make any amendment to the by-laws of the Corporation to change the manner of giving notice to members entitled to vote at a meeting of members.

### **2.5 Absentee Voting by Mailed-in Ballot or Electronic Ballot**

Pursuant to section 171(1) of the Act, a member entitled to vote at a meeting of members may vote by mailed-in ballot or by means of a telephonic, electronic or other communication facility if the Corporation has a system that:

- (a) enables the votes to be gathered in a manner that permits their subsequent verification, and
- (b) permits the tallied votes to be presented to the Corporation without it being possible for the Corporation to identify how each member voted.

Pursuant to subsection 197(1) (Fundamental Change) of the Act, a special resolution of the members is required to make any amendment to the By-laws of the Corporation to change this method of voting by members not in attendance at a meeting of members.

### **2.6 Absentee Voting by Proxy**

Pursuant to Section 171(1) of the Act, a member entitled to vote at a meeting of members may vote by proxy by appointing in writing a proxy holder, and one or more alternate proxy holders, who are not required to be members, to attend and act at the meeting in the manner and to the extent authorized by the proxy and with the authority conferred by it.

- (a) Any notice to members of the time and place of a meeting of members may either enclose a form of proxy or contain a reminder of the right to appoint a proxy holder.
- (b) The directors may from time to time make Rules and Procedures not inconsistent with the Act regarding proxies, including, but not limited to, fixing the time prior to any meeting or adjourned meeting of members before which time proxies must be deposited with the Corporation.
- (c) Pursuant to Section 197(1) of the Act, a special resolution of the members is required to make any amendment to the articles or By-laws of the Corporation to change this method of voting by members not in attendance at a meeting of members.

### **3. MEMBERSHIP DUES AND TERMINATION**

#### **3.1 Membership Dues**

Membership fees for each class of members shall be as determined by resolution of the Board each year. Members shall be notified in writing of the membership dues at any time payable by them and, if any are not paid within one calendar month of the membership renewal date, the members in default shall automatically cease to be members of the Corporation.

#### **3.2 Expiration**

Membership expires April 30 of each year

#### **3.3 Processing of Application**

The Board shall consider and, subject to the exercise of the Board's discretion under clause 2.1, accept applications for membership in the following order and priority:

- (a) applications for the succeeding year's membership from existing members in good standing during the year directly ending April 30 and received before April 30 of that year;
- (b) applications from persons received after expiry of any previous membership of those persons in the Corporation; and
- (c) applications for membership in the Corporation from the community at large.

#### **3.4 Termination of Membership**

A membership in the Corporation is non-transferable and is terminated and automatically lapses when any one of the following events occurs:

- (a) the member dies;
- (b) a member ceases to be in good financial standing as described in section 3.1 of these By-laws;

- (c) the member resigns by delivering a written resignation to the head office of the Corporation, in which case such resignation shall be effective on the date specified in the resignation, or if no date is specified, on the date it is received;
- (d) the member is expelled in accordance with Section 3.5, below, or the members' membership is otherwise terminated in accordance with the Articles or By-laws;
- (e) the member's term of membership expires; or
- (f) the Corporation is liquidated or dissolved under the *Act*.

Subject to the Articles, upon any termination of membership, the rights of the member, including any rights in the property of the Corporation, automatically cease to exist.

### **3.5 Discipline of Members** (as amended on November 25, 2017)

#### **a. General**

The Board shall have authority to discipline, suspend or expel any member from the Corporation for any one or more of the following grounds:

- (a) violating any provision of the Articles, By-laws, or written policies of the Corporation;
- (b) carrying out any conduct which may be detrimental to the Corporation as determined by the Board in its sole discretion;
- (c) for any other reason that the Board in its sole and absolute discretion considers to be reasonable, having regard to the purpose of the Corporation.

#### **b. Regular Process**

In the event that the Board determines that a member should be disciplined, expelled or suspended from membership in the Corporation, the president, or such other officer as may be designated by the Board, shall provide 15 days' notice of the proposed discipline, suspension or expulsion to the member and shall provide reasons for the proposed discipline, suspension or expulsion. The member may make written submissions to the president, or such other officer as may be designated by the Board, in response to the notice received not less than 5 days before the end of the 15 day period. In the event that no written submissions are received by the president, the president, or such other officer as may be designated by the Board, may proceed to notify the member that the member has been disciplined, suspended or expelled from membership in the Corporation. If written submissions are received in accordance with this section, the Board will consider such submissions in arriving at a final decision and shall notify the member concerning such final decision within the 15 day notice period. The Board's decision shall be final and binding on the member, without any further right of appeal. The Board may give notice to the members of any discipline, expulsion or suspension from membership.

**c. Probation**

As part of any discipline or together with any suspension under the preceding paragraph, the Board may place a member on probation. In the event of further incidents involving a member on probation, the process shall be the same as under the preceding paragraph except that the Board must only provide 5 days' notice and any written submission from the member to oppose the notice must be received not less than 2 days before the end of the 5 day notice period.

**d. Immediate Temporary Suspension**

In addition to its powers under Sections 3.5 (a), (b) and (c) above, the Board may also immediately suspend a member for the duration of the notice period in cases where it believes that there is a reasonable risk that the member's presence at the premises of the Corporation, or anywhere the activities of the Corporation or its members take place, might result in: i) physical or emotional harm to others; ii) damage to, or theft of, the personal property of others; iii) a significant adverse effect on the programs or activities of the Corporation; or iv) damage to, or theft of, the property, chattels or fixtures of the Corporation.

**e. Automatic Suspension: Initiation of Civil Proceedings**

Unless commenced after mediation and in connection with an arbitration under these by-laws and in accordance with the *Arbitrations Act, 1991*, S.O. 1991, c. 17, should a member of the Corporation commence any civil proceeding against the Corporation relating to the activities of the Corporation; or should any member of the Corporation act contrary to his or her obligations under section 11, then his or her membership shall be immediately suspended and such suspension shall continue until the civil proceeding is dismissed and the member has paid any legal fees owing to the Corporation in connection with that dismissal.

**4. MEMBERSHIP LISTS**

Any member who complies with the statutory formalities required by Section 23(2) of the *Act* shall be entitled to receive from the Corporation a list of members setting out the information prescribed by the *Act*. Email addresses will only be provided if the member has consented to receiving information or documents by electronic means.

**5. MEETING OF MEMBERS**

**5.1 Place of Members' Meetings**

Subject to compliance with Section 159 of the *Act*, meetings of the members shall be held in Toronto. The Board or the president or vice-president shall have power to call, at any time, a general meeting of the members of the Corporation.



## **5.2 Persons Entitled to be Present**

The only persons entitled to be present at a meeting of members shall be those entitled to vote at the meeting, the directors and the public accountant of the Corporation and such other persons who are entitled or required under any provision of the *Act*, Articles or By-laws of the Corporation to be present at the meeting. Any other person may be admitted only on the invitation of the chair of the meeting or by ordinary resolution of the members.

## **5.3 Waiving Notice**

A member and any other person entitled to attend a meeting of members may in any manner and at any time, whether before or after the meeting, waive notice of the meeting. The member's or other person's attendance at the meeting is a waiver of notice of the meeting, unless the member or such person, as the case may be, attends the meeting for the express purpose of objecting to the transaction of any business on the grounds that the meeting is not lawfully called.

## **5.4 Chair of the Meeting**

The president will chair a meeting of the members. If the president and the vice-president are absent, then the members who are present and entitled to vote at the meeting shall choose one of their number to chair the meeting.

## **5.5 Quorum**

A quorum at any meeting of the members (unless a greater number of members are required to be present by the *Act*) shall be twenty-one members. If a quorum is present at the opening of a meeting of members, the members present may proceed with the business of the meeting even if a quorum is not present throughout the meeting. For the purpose of determining quorum, a member may be present in person, or, if authorized under Section 5.9 of this By-law, by telephone or by other electronic means.

## **5.6 Votes to Govern**

At any meeting of members every question shall, unless otherwise provided by the Articles or By-laws or by the *Act*, be determined by a majority of the votes cast on the question. In case of an equality of votes either on a show of hands or on a ballot or on the results of electronic voting, the chair of the meeting in addition to an original vote shall not have a second or casting vote.

## **5.7 Show of Hands**

Subject to the *Act* and this By-law, except where a ballot is demanded, voting on any question proposed for consideration at a meeting of members shall be by show of hands, and a declaration by the chair of the meeting as to whether or not the question or motion has been carried and an entry to that effect in the minutes of the meeting shall, in the absence of evidence to the contrary, be evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the motion.

### **5.8 Ballots**

For any question proposed for consideration at a meeting of members, either before or after a vote by show of hands has been taken, the chair of the meeting, or any member or proxyholder may demand a ballot, in which case the ballot shall be taken in such manner as the chair directs and the decision of the members on the question shall be determined by the result of such ballot.

### **5.9 Participation by Electronic Means at Meetings of Members**

If the Corporation chooses to make available a telephonic, electronic or other communication facility that permits all participants to communicate adequately with each other during a meeting of members, any person entitled to attend such meeting may participate in the meeting by means of such telephonic, electronic or other communication facility in the manner provided by the *Act*. A person participating in a meeting by such means is deemed to be present at the meeting. Notwithstanding any other provision of this By-law, any person participating in a meeting of members pursuant to this section who is entitled to vote at that meeting may vote, in accordance with the *Act*, by means of any telephonic, electronic or other communication facility that the Corporation has made available for that purpose.

## **6. DIRECTORS**

### **6.1 Election and Term**

Subject to the Articles, the members will elect the directors at the first meeting of members and at each succeeding annual meeting at which an election of directors is required, and the directors shall be elected to hold office for a term expiring not later than the close of the next annual meeting of members following the election. A retiring director shall remain in office until the dissolution or adjournment of the meeting at which his/her retirement is accepted and his/her successor is elected.

### **6.2 Number of Directors**

The Board shall consist of the number of directors specified in the articles. If the articles provide for a minimum and maximum number of directors, the Board shall be comprised of the fixed number of directors as determined from time to time by the members by ordinary resolution or, if the ordinary resolution empowers the directors to determine the number, by resolution of the board. In the case of a soliciting corporation the minimum number of directors may not be fewer than three, at least two of whom are not officers or employees of the Corporation or its affiliates.

### **6.3 Books and Records**

The directors shall see that all necessary books and records of the Corporation required by the By-laws of the Corporation or by any applicable statute or law are regularly and properly kept.

#### **6.4 Vacancy in Office**

The office of director shall be automatically vacated:

- (a) if a director shall resign his/her office by delivering a written resignation to the secretary of the Corporation;
- (b) if he/she is found by a court to be of unsound mind;
- (c) if he/she becomes bankrupt or suspends payment or compounds with his/her creditors;
- (d) if at a special general meeting of members an ordinary resolution is passed by the members that he/she be removed from office;
- (e) on death;
- (f) if a director is absent from 3 consecutive Board meetings without leave of the Board;  
or
- (g) If a director ceases to be a member of the Corporation, for any reason

If any vacancy shall occur, the Board by a majority vote may, by appointment, fill the vacancy for the balance of the former director's term.

#### **6.5 Remuneration**

The directors shall serve as such without remuneration and no director shall directly or indirectly receive any profit from his/her position as such; provided that a director may be paid reasonable expenses incurred by him/her in the performance of his/her duties as approved by the president and the treasurer. Nothing herein contained shall be construed to preclude any director from serving the Corporation as an officer or in any other capacity and receiving compensation therefor.

### **7. INDEMNITIES TO DIRECTORS AND OTHERS**

#### **7.1 Indemnity**

Subject to the limitations contained in the *Act*, but without limiting the right of the Corporation to indemnify any individual to the fullest extent permitted by law, every present and former director and officer of the Corporation and his or her heirs, executors, administrators, or other legal personal representative and his or her estate and effects, respectively, shall from time to time and at all times, be indemnified and saved harmless by the Corporation 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 proceeding in which the individual is involved because of that association with the Corporation or other entity provided the individual to be, indemnified:

- (a) acted honestly and in good faith with a view to the best interests of the Corporation or, as the case may be, to the best interests of the other entity for which the individual acted as director or officer or in a similar capacity at the Corporation's request; and
- (b) in the case of a criminal or administrative action or proceeding that is enforced by a monetary penalty, had reasonable grounds for believing that their conduct was lawful.

## **7.2 Advance of Costs**

The Corporation may advance money to a director, an officer or other individual for the costs, charges and expenses of a proceeding referred to in Section 7.1. The individual shall repay the money if the individual does not fulfill the conditions of Section 7.1.

## **7.3 Insurance**

The Corporation may purchase and maintain insurance for the benefit of an individual referred to in Section 7.1 against any liability incurred by the individual (a) in the individual's capacity as a director or an officer of the Corporation; or (b) in the individual's capacity as a director or an officer, or in a similar capacity, of another entity, if the individual acts or acted in that capacity at the Corporation's request.

# **8. MEETINGS OF DIRECTORS**

## **8.1 Calling of Meetings**

Meetings of the Board may be called by the president of the Corporation or any two directors at any time. If the Corporation has only one director, that director may call and constitute a meeting.

## **8.2 Notice of Meeting**

Unless sent by regular mail, 48 hours' notice of a meeting of the Board shall be given to each director. Notice of any such meeting that is sent by regular mail shall be served in the manner specified in Section 12.1 of this By-law to every director of the Corporation not less than 7 days before the time when the meeting is to be held. Notice of a meeting shall not be necessary if all of the directors are present, and none objects to the holding of the meeting, or if those absent have waived notice of or have otherwise signified their consent to the holding of such meeting, whether such waiver or consent is given before or after the meeting. Notice of an adjourned meeting is not required if the time and place of the adjourned meeting is announced at the original meeting. No notice of meeting need specify the purpose or the business to be transacted at the meeting except that a notice of meeting of directors shall specify any matter referred to in subsection 138(2) of the *Act* that is to be dealt with at the meeting.

### **8.3 First Meeting of New Board**

Provided that a quorum of directors is present, a newly elected Board may, without notice, hold its first meeting immediately following the meeting of members at which such Board is elected.

### **8.4 Regular Meetings**

There shall be at least one meeting per year. The Board may appoint a day or days in any month or months for regular meetings of the Board at a place and hour to be named. A copy of any resolution of the Board fixing the place and time of such regular meetings of the Board shall be sent to each director forthwith after being passed, but no other notice shall be required for any such regular meeting except if subsection 136(3) of the *Act* requires the purpose thereof or the business to be transacted to be specified in the notice.

### **8.5 Chair of Meeting**

In the event that the president of the Corporation and the vice-president of the Corporation are absent, the directors who are present shall choose one of their number to chair the meeting.

### **8.6 Votes to Govern**

At all meetings of the Board, every question shall be decided by a majority of the votes cast on the question. In case of an equality of votes the question is lost.

### **8.7 Quorum**

A majority of the Board shall constitute a quorum for meetings of the Board. Any meeting of the Board at which a quorum is present shall be competent to exercise all or any of the authorities, powers and discretions by or under the By-laws of the Corporation. Questions arising at any meeting of directors at which there is quorum shall be decided by a majority vote of those present.

### **8.8 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 ordinary resolution of the Board.

### **8.9 Participating Directors Meetings by Electronic Means**

A director may, in accordance with the Regulations, if any, and if all the directors of the Corporation consent, participate in a meeting of directors or of a committee of directors by means of a telephonic, an electronic or other communication facility that permits all participants to communicate adequately with each other during the meeting. A director so

participating in a meeting is deemed for the purposes of this *Act* to be present at that meeting.

### **8.10 Resolution in Lieu of Meeting**

A resolution in writing, signed by all the directors entitled to vote on that resolution at a meeting of directors or committee of directors, is as valid as if it had been passed at a meeting of directors or committee of directors.

## **9. POWERS AND DUTIES OF THE BOARD**

Subject to the *Act* and the Articles, the Board shall manage or supervise the management of the activities and affairs of the Corporation and in connection with the management and operation of the Corporation, the Board may, subject to these bylaws, prescribe such rules and regulations not inconsistent with the By-laws of the Corporation it deems expedient.

The directors of the Corporation may administer the affairs of the Corporation in all things and make or cause to be made for the Corporation, in its name, any kind of contract which the Corporation may lawfully enter into and, save as hereinafter provided, generally, may exercise all such other powers and do all such other acts and things as the Corporation is by its charter or otherwise authorized to exercise and do.

The directors shall have power to authorize expenditures on behalf of the Corporation.

The directors shall have the power to enter into a trust arrangement with a trust company for the purpose of creating a trust fund in which the capital and interest may be made available for the benefit of promoting the interest of the Corporation in accordance with such terms as the Board may prescribe.

The board of directors may appoint such agents and engage such employees as it shall deem necessary from time to time and such persons shall have such authority and shall perform such duties as shall be prescribed by the board of directors at the time of such appointment.

## **10. OFFICERS**

### **10.1 Description of Officers**

Unless otherwise specified by the Board, which may, subject to the *Act*, modify, restrict or supplement such duties and powers, the officers of the Corporation, if designated and if appointed, shall be as follows and have the following duties and powers associated with their positions, provided that the Board may by resolution designate other officers of the Corporation:

- (a) **President** – The president be the chief executive officer of the Corporation, shall, when present, preside at all meetings of the Board and of the members. He shall have the general and active management of the affairs and shall see all orders and resolutions of the Board are carried into effect.

- (b) **Vice-president** -- The vice-president shall, in the absence or disability of the president, perform the duties and exercise the powers of the president and shall perform such other duties as shall from time to time be imposed upon him/her by the Board.
- (c) **Secretary** – The secretary, when in attendance, shall be the secretary of all meetings of the Board, members and committees of the Board. The secretary shall enter or cause to be entered in the Corporation's minute book, minutes of all proceedings at such meetings; the secretary shall give, or cause to be given, as and when instructed, notices to members, directors, the public accountant and members of committees; the secretary shall be the custodian of all books, papers, records, documents and other instruments belonging to the Corporation.
- (d) **Treasurer** – The treasurer shall be responsible for ensuring the custody of the funds and securities of the Corporation, the keeping of full and accurate accounts of all assets, liabilities, receipts and disbursements of the Corporation in the books belonging to the Corporation and the deposit of all monies, securities and other valuable effects in the name and to the credit of the Corporation in such chartered bank or trust company, or, in the case of securities, in such registered dealer in securities as may be designated by the Board from time to time. He/she shall be responsible for the disbursement of the funds of the Corporation as may be directed by proper authority taking proper vouchers for such disbursements, and shall render to the directors at the regular meeting of the Board, or whenever the Board may require it, an accounting of all the transactions and a statement of the financial position, of the Corporation. He/she shall also perform such other duties as may from time to time be directed by the Board. The treasurer, shall, if required by the Board, be bonded for the sum of \$50,000.00

The powers and duties of all other officers of the Corporation shall be such as the terms of their engagement call for or the Board or president requires of them. The Board may, from time to time and subject to the *Act*, vary, add to or limit the powers and duties of any officer.

## 10.2 Appointment

Officers of the Corporation shall be appointed by ordinary resolution of the Board at the first meeting of the Board following an annual meeting of members.

## 10.3 Holding Multiple Offices

Except for the offices of president and the vice-president, Any two offices may be held by the same person and officers need not be directors.

## 10.4 Remuneration

Officers shall receive no remuneration for serving as such, but are entitled to reasonable expenses incurred in the exercise of their duty.

## 10.5 Term and Removal

The officers of the Corporation shall hold office for one year from the date of appointment

or election or until the earlier of their successors are elected or appointed in their stead, their resignation, their ceasing to be a director (if a necessary qualification of appointment) or their death. Any officer shall be subject to removal by ordinary resolution of the Board at any time.

#### **10.6 Vacancy in Office**

If the office of any officer of the Corporation shall be or become vacant, the directors may, by ordinary resolution, appoint a person to fill such vacancy.

### **11. MEDIATION AND ARBITRATION**

#### **11.1 General**

Any disputes between the Corporation's members related to activities of the Corporation, or any disputes between the Corporation and its members relating to the Corporation's activities, shall be submitted to a mediator for mediation; failing successful resolution of the dispute through mediation, it may then be determined by arbitration in accordance with these By-laws and related Schedules.

The mediation and arbitration provisions of this By-law do not apply to matters that are solely between members and which do not arise from activities of the Corporation or the Corporation's agents, directors, or volunteers, or others who may act on behalf of the Corporation from time to time.

If the Corporation or a member begins arbitration without first seeking to mediate the dispute in accordance with these By-laws, the party initiating the arbitration consents to an order of the arbitrator to stay the arbitration pending the outcome of the mediation. The party initiating the arbitration shall be liable to any other party named in the arbitration for all legal costs the other parties may incur to obtain any such order.

Where the Corporation is empowered by this By-law and any related Schedule to establish a roster of mediators or arbitrators, the Board shall consider the following when approving the rosters. The mediator's or arbitrator's

- (a) Designations, training and qualifications;
- (b) experience generally and with non-profit membership based organizations;
- (c) their fees;
- (d) possible conflicts of interest or bias related to the Corporation. The Corporation shall not include in its roster any current or former counsel to the Corporation. A mediator or arbitrator shall not be considered to be in a conflict of interest or potentially biased, merely because the mediator or arbitrator has been approved by the Corporation for the purposes of this By-law.



The Corporation shall seek to maintain a roster of five to ten mediators or arbitrators and shall annually review the list for currency.

For the purposes of this section of the By-laws, a member is defined to include former members of the Corporation. By accepting membership in the Corporation, members accept that if their membership expires and is not renewed or is declined by the Board further to a renewal application, that they are still bound by Section 11 of the By-laws for disputes relating to the Corporation and any of its agents, members, directors or volunteers who act on behalf of the Corporation; except that such former members accept they have no recourse to challenge the decision not to readmit the member either in a court of law or by procedures outlined in Section 11 of these By-laws.

## **11.2 Mediation**

### **a. Deposit**

To proceed with mediation, the Complainant must pay a deposit toward the mediator's fee, as established by the Corporation through ordinary resolution of the Board. All parties to the mediation are expected to co-operate in scheduling the mediation and to attend the mediation.

### **b. Request for mediation**

The person requesting mediation will give a written request for mediation to the Corporation's Secretary, with the name of any member who the person requesting the mediation is claiming against and sufficient detail about the dispute for the responding parties to understand the nature of the issues to be resolved and responded to.

### **c. Fees**

Unless further agreement about payment of mediator's fees is made at the mediation, the Complainant's deposit shall be used towards payment of the Complainant's proportionate share of the mediation fees and all parties will pay their proportionate share of the mediator's fees.

### **d. Notice of mediation**

The Secretary will give notice of the mediation request to the Corporation's President or any member named in the mediation request within 10 business days of receiving the request. Notice shall be sent by regular mail to the addresses in the records for the Corporation. Where the notice of mediation names a former member as a party to the mediation, the Complainant is responsible for delivering the notice of mediation to the former member by any means available to the Complainant. The Corporation is not responsible for providing notice to former members.

### **e. Selection of mediator**

The Corporation will maintain an approved list of available mediators, with their fees. The parties are free to choose another professional mediator, however, if the parties to the

mediation cannot agree on the choice of a mediator within 10 business days from the day the Secretary gives notice of the mediation, the Corporation within 5 business days shall choose a mediator by lot, removing from the list of candidates only those names for which there is a possible conflict of interest or bias or apprehension of bias. Subject only to the mediator's acceptance of and availability for the mediation, the choice of mediator by lot is final.

**f. Location and date of mediation, mediation agreement**

The mediation will take place in Toronto at a location and date selected by the mediator, in consultation with the parties to the mediation. The parties to the mediation will co-operate with the mediator. The parties to the mediation will sign any mediation agreement requested by the mediator which is consistent with this mediation procedure.

**g. Documents**

The parties to the mediation will give the mediator and all other parties copies of any documents which are being relied on and a written explanation of what the party wants, at least seven business days before the scheduled date of the mediation. The parties will attend the mediation for at least three hours, unless a settlement is earlier agreed, but any party is free to withdraw from the mediation after three hours.

**h. Confidential process**

The parties to the mediation understand that the process and any settlement discussion is confidential and that documents prepared for the mediation and discussions during the mediation shall not be disclosed. However, documents and facts that are public knowledge or available to the membership are not confidential simply because they were used in the mediation.

**11.3 Arbitration**

In the event of a failed mediation pursuant to these By-laws, if the Complainant alleges a civil wrong for which relief is available at law, then the Complainant may initiate arbitration, as a Plaintiff or Applicant, as the case may be.

Schedule "A" to these bylaws constitutes the Arbitration Agreement between the parties to the claim and the parties agree to be bound by the *Arbitrations Act, 1991*, S.O. 1991, c. 17, unless a provision of the Arbitration Agreement indicates otherwise and the law so allows.

**12. NOTICE**

**12.1 Method of Giving Notices**

Any notice (which term includes any communication or document) to be given (which term includes sent, delivered or served), pursuant to the *Act*, the Articles, the By-laws or otherwise to a member, director, officer or member of a committee of the Board or to the public accountant shall be sufficiently given:

- (a) if delivered personally to the person to whom it is to be given or if delivered to such person's address as shown in the records of the Corporation or in the case of notice

to a director to the latest address as shown in the last notice that was sent by the Corporation in accordance with section 128 (Notice of directors) or 134 (Notice of change of directors); or

- (b) if mailed to such person at such person's address as shown in the records of the Corporation by prepaid ordinary or air mail; or
- (c) if sent by courier to such person at such person's address as shown in the records of the Corporation; or
- (d) if sent to such person by telephonic, electronic or other communication facility at such person's address for that purpose as shown in the records of the Corporation; or
- (e) if provided in the form of an electronic document in accordance with Part 17 of the *Act*.

A notice so delivered shall be deemed to have been given when it is delivered personally or to the recorded address as aforesaid; a notice so mailed shall be deemed to have been given when deposited in a post office or public letter box; a notice so sent by means of courier shall be deemed to have been given on the second day that is not a holiday that follows the day that the courier was given the notice; and a notice so sent by any means of transmitted or recorded communication shall be deemed to have been given when dispatched or delivered to the appropriate communication company or agency or its representative for dispatch. The secretary may change or cause to be changed the recorded address of any member, director, officer, public accountant or member of a committee of the Board in accordance with any information believed by the secretary to be reliable. The declaration by the secretary that notice has been given pursuant to this By-law shall be sufficient and conclusive evidence of the giving of such notice. The signature of any director or officer of the Corporation to any notice or other document to be given by the Corporation may be written, stamped, type-written or printed or partly written, stamped, type-written or printed.

## **12.2 Invalidity of any provisions of this By-law**

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.

## **12.3 Omissions and Errors**

The accidental omission to give any notice to any members, director, officer, member of a committee of the Board or public accountant, or the non-receipt of any notice by any such person where the Corporation has provided notice in accordance with the By-laws or any error in any notice not affecting its substance shall not invalidate any action taken at any meeting to which the notice pertained or otherwise founded on such notice.

**13. RULES AND PROCEDURES**

Should the board of directors enact any rule, regulation or Corporation policy relating to the rights and obligations of all members, or to the operation of Corporation premises or to Corporation activities generally, such rule, regulation or policy shall have effect from its adoption by the board of directors to the next annual general meeting of the members. At such annual general meeting, the board of directors shall present such rule, regulation or policy to the members for the members' consideration as to future continuation, amendment or repeal of such rule, regulation or policy.

**14. BY-LAW AMENDMENTS**

The Board may not make, amend or repeal any By-laws that regulate the activities or affairs of the Corporation without having the By-law, amendment or repeal confirmed by the members by ordinary resolution. The By-law, amendment or repeal is only effective on the confirmation of the members and in the form in which it was confirmed.

This section does not apply to a By-law that requires a special resolution of the members according to subsection 197(1) (fundamental change) of the *Act*.

**15. REPEAL OF PRIOR BY-LAWS**

All prior By-laws of the Corporation shall be repealed in their entirety upon the coming into force of this By-law, without prejudice to any actions taken by or on behalf of the Corporation under or by the authority of such prior By-laws. Neither the enactment of this By-law nor the repeal of the prior By-laws of the Corporation shall invalidate any past act of any director, officer, member or other person, including, without limitation, resolutions of the Board or of the members enacted or passed pursuant to any prior By-law, it being the intention that this By-law shall speak only from the date it comes into force and effect, without in any way affecting any resolution duly passed or any act done, or any right existing, acquired, established, accruing or accrued, under any prior By-law of the Corporation.

**16. EFFECTIVE DATE**

This By-law shall come into force and effect on the date that the Corporation is continued under the *Act*. Section 3.5 of this By-law was amended by special resolution at the annual general meeting of the members on November 25, 2017.

## SCHEDULE "A"

### Arbitration Agreement

#### **17. APPLICABILITY OF ARBITRATIONS ACT, 1991**

The provisions of *Arbitrations Act, 1991*, S.O. 1991, c. 17 apply to this arbitration except where a provision of the Agreement applies otherwise.

#### **18. DEFINITIONS**

"Act" means the *Arbitrations Act, 1991*, S.O. 1991 c. 17.

"Corporation" means the Toronto Windsurfing Club.

"By-laws" means By-law Number 1 of the Toronto Windsurfing Club.

"Deliver" means delivery of a document by regular mail, courier, e-mail or facsimile. "Member" includes a former member of the Corporation, unless otherwise indicated.

"Rules" means the Rules of Civil Procedure, R.R.O. 1990, Reg. 194, as amended.

#### **19. GENERAL PROVISIONS**

The parties agree that no arbitration shall be initiated until mediation has been completed in accordance with the By-laws of the Corporation and that no arbitrator has jurisdiction to hear a dispute until mediation is completed.

The Rules of Civil Procedure govern the arbitration proceeding, and modified only by the terms of this Arbitration Agreement.

Wherever the Rules refer to a "Judge", "Master", "Registrar" or "Court" it shall be read as if it reads "the arbitrator".

Facsimiles over 20 pages must not be delivered by fax without the prior consent of the recipient.

#### **20. NOTICE OF ARBITRATION**

Arbitration is commenced when one party serves on the other party notice demanding arbitration under the Agreement.

#### **21. PLEADINGS**

The parties agree they will not have pleadings or a Notice of Application as described in the Rules, but do agree to exchange written statements (**Statements**) which indicate their positions, the points at issue and the relief sought. Any Statement must provide contact information, including a mailing address, telephone number, and email address. The parties may also provide a facsimile number.

In addition to filing a notice demanding arbitration, the Plaintiff/Applicant will give his or her Statement to the Corporation's Secretary, who will, within 10 business days of receiving the written

statement, deliver it to the Corporation's President and any current member named as a Defendant/Respondent in the Statement. The Plaintiff/Applicant shall be responsible for delivering the statement to any former member named in the Statement.

The Defendant/Respondent will deliver to the Plaintiff/Applicant a Statement in response within 30 days of receiving the Plaintiff/Applicant's Statement.

The Plaintiff/Applicant may deliver a reply Statement within 10 days of receiving the Defendant/Respondent's Statement only if he or she intends to prove a version of facts different from that given by the Defendant/Respondent, and may not deliver a reply if the Plaintiff/Respondent has already pleaded those facts the Plaintiff/Respondent's Statement. If no reply is delivered, the Plaintiff/Respondent will be deemed to deny the allegations of fact made in the Defendant/Respondent's Statement.

The parties agree that the exchanged Statements shall be used in the Arbitration.

## **22. ISSUES IN DISPUTE**

The parties agree to submit to binding arbitration all matters arising between them relating to the Corporation's activities, as defined in the Corporation's By-laws.

The Plaintiff/Applicant may limit the issues to be arbitrated to a subset of the issues arising between the parties. However, if the Plaintiff/Applicant seeks to limit the issues to be arbitrated, then the Plaintiff/Applicant must clearly articulate which issues are intended to be pursued and which will be abandoned. In addition, the Plaintiff/Applicant must acknowledge that the Plaintiff/Applicant is waiving any claims related the issues not intended to be pursued and must provide a release of liability related to those issues, acceptable to the Defendant/Respondent.

## **23. SELECTING AN ARBITRATOR**

The parties shall seek to mutually agree upon the selection of an arbitrator within 20 business days of receiving the Plaintiff/Applicant's Statement.

If the parties are unable to agree within 20 business days, the Corporation will, within 5 business days thereafter, choose an arbitrator by random lot from a list of arbitrators maintained by the Corporation, removing from the list of possible arbitrators those names for which there is an alleged conflict of interest or alleged bias or an alleged apprehension of bias, including anyone who served to mediate the dispute between the parties. Subject only to the arbitrator's acceptance of and availability for the arbitration, the choice of arbitrator by lot is final.

## **24. TIME AND LOCATION OF ARBITRATION HEARING**

The arbitration hearing shall take place in the City of Toronto, at a location to be selected by the arbitrator, in consultation with the parties.

The arbitrator shall set the dates for the hearing after consultation with the parties.

**25. MOTIONS AND INTERIM MATTERS**

The parties agree that the arbitrator shall rule on all procedural matters arising before the first hearing date, including jurisdiction to arbitrate the matter, if in dispute between the parties. All such matters shall be submitted to the arbitrator in writing, and a brief written decision within 10 business days of the receipt of the parties' submissions. No hearing on these matters shall be permitted, unless specifically requested by the arbitrator. Interim decisions of the arbitrator are final.

**26. EXAMINATION FOR DISCOVERIES**

The parties agree they will not conduct examinations for discovery.

**27. SUMMARY TRIAL AND EXCHANGE OF AFFIDAVITS**

The hearing shall be conducted in summary fashion in accordance with Rule 76.12.

The parties agree to exchange copies of all affidavits they intend to rely upon at the arbitration hearing no later than 30 business days prior to the arbitration hearing. Any further evidence will not be permitted without leave of the arbitrator.

**28. REMEDIAL POWERS OF THE ARBITRATOR**

The arbitrator shall be limited in his or her remedial powers to

1. Awarding general damages to a maximum of \$10,000.
3. Punitive or aggravated damages shall not be awarded.
4. Awarding prejudgment interest in accordance with the *Court of Justice Act*, R.S.O. 1990, c. C.43

**29. OFFERS TO SETTLE**

Rule 49 applies to these proceedings subject to the following:

For an offer to be operative it must be served on the other party within 15 business days of the first hearing date.

**30. REASONS OF THE ARBITRATOR**

The arbitrator is to give brief written reasons for his or her decision and award, if any.

**31. AWARD OF COSTS**

The arbitrator shall have all the power of a judge of the Superior Court of Justice to award costs, including the determination of the quantum, subject to the following:

1. The maximum counsel fee at hearing shall be \$1,500 per full day of hearing.

**32. FEES OF THE ARBITRATOR**

The parties acknowledge that each of them is directly liable to the arbitrator to pay one half of his/her fees and disbursements; however, the arbitrator may, in his/her award of costs, order one

party to reimburse the other party for part or all of that party's share of the fees and disbursements of the arbitrator.

**33. TRANSCRIPTS OF HEARING**

The evidence at the arbitration hearing is not to be transcribed.

**34. NO RIGHTS OF APPEAL**

The parties agree that the decision of the arbitrator is final and binding upon the parties and no appeal to a Court is allowed.

**35. CONFIDENTIALITY**

The parties agree to keep the outcome of these arbitration proceedings strictly confidential, except as it may be necessary to implement or enforce the arbitrator's award.

The parties agree that the arbitration proceedings shall not be open to the public or the media.