

Proficiency Testing Canada By-Law

December 16, 2019
Version 1.0

A by-law relating generally to the conduct
of the affairs of
Proficiency Testing Canada
(the "Corporation")

BE IT ENACTED as a by-law of the Corporation as follows, which by-law shall replace and supersede all by-laws previously enacted by the Corporation:

1. **Definitions In this by-law as amended from time to time, 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. **"articles"** means the original or restated articles of incorporation or articles of amendment, amalgamation, continuance, reorganization, arrangement or revival of the Corporation;
- c. **"board"** and "board of directors" means the board of directors of the Corporation and "director" means a member of the board;
- d. **"by-law"** means this by-law as amended from time to time, in force and effect;
- e. **"meetings of members"** includes an annual meeting of members or a special meeting of members; "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;
- f. **"member"** means a member of the Corporation in good standing at the relevant time;
- g. **"ordinary resolution"** means a resolution passed by a majority of not less than 50% plus 1 of the votes cast on that resolution;
- h. **"proposal"** means a proposal submitted by a member of the Corporation that meets the requirements of section 163 (Right to Submit and Discuss) of the Act;
- i. **"Regulations"** means the regulations made under the Act, as amended, restated or in effect from time to time; and

j. "**special resolution**" means a resolution passed by a majority of not less than two-thirds (2/3) of the votes cast on that resolution.

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 above, words and expressions defined in the Act have the same meanings when used in these by-laws.

3. **Execution of Documents:** Deeds, transfers, assignments, contracts, obligations and other instruments in writing requiring execution by the Corporation may be signed by any officer, unless otherwise specified by the board of directors. In addition, the board may from time to time direct the manner in which and the person or persons by whom a particular document or type of document shall be executed. 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.

4. **Financial Year:** Unless otherwise ordered by the board of directors, the fiscal year-end of the Corporation shall be December 31.

5. **Banking Arrangements:** The banking business of the Corporation shall be transacted at such bank, trust company or other firm or corporation carrying on a banking business in Canada or elsewhere as the board of directors 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 of directors may by resolution from time to time designate, direct or authorize.

6. **Borrowing Powers:** The directors of the Corporation may, without authorization of the members,

i. borrow money on the credit of the Corporation;

ii. issue, reissue, sell, pledge or hypothecate debt obligations of the Corporation;

iii. give a guarantee on behalf of the Corporation to secure performance of an obligation of any person; and

iv. 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;

with covenants and conditions at such times, in such sums, to such an extent and in such manner as the board of directors in its discretion may deem expedient.

7. **Annual Financial Statements:** The Corporation shall send to the members a copy of the annual financial statements and other documents referred to in the Act or a copy of a publication of the Corporation reproducing the information contained in the documents. Instead of sending the documents, the Corporation may send a summary to each member along with a notice informing the member of the procedure for obtaining a copy of the documents themselves free of charge. The Corporation is not required to send the documents or a summary to a member who, in writing, declines to receive such documents.
8. **Membership:** Membership will be comprised of one class of members, that being all members of the Board of Directors of the Canadian Association for Laboratory Accreditation (CALA) and members of the Board of Directors of Proficiency Testing Canada Inc., which shall be entitled to one vote each at all meetings of the members of the Corporation.

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.

9. **Membership Transferability:** Membership is non-transferable. A special resolution of the members is required to make any amendment to add, change or delete this section of the by-laws.
10. **Notice of Members Meeting:** Notice of the time and place of a meeting of members shall be given to each member entitled to vote at the meeting by, 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. If a member requests that the notice be given by non-electronic means, the notice will be sent by mail, courier or personal delivery, during a period of 21 to 60 days before the day on which the meeting is to be held.
11. **Members Calling a Members' Meeting:** The board of directors shall call a special meeting of members on written requisition of members carrying not less than 25% of the voting rights. If the directors do not call a meeting within twenty-one (21) days of receiving the requisition, any member who signed the requisition may call the meeting.
12. **Absentee Voting at Members' Meetings:** 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 subject to the following requirements:

- a. A proxy is valid only at the meeting in respect of which it is given or at a continuation of that

meeting after an adjournment;

- b. a member may revoke a proxy by depositing an instrument or act in writing executed or, in Quebec, signed by the member or by their agent or mandatory
 - i. at the registered office of the Corporation no later than the last business day preceding the day of the meeting, or the day of the continuation of that meeting after an adjournment of that meeting, at which the proxy is to be used, or
 - ii. with the chairperson of the meeting on the day of the meeting or the day of the continuation of that meeting after an adjournment of that meeting;
- c. a proxy holder or an alternate proxy holder has the same rights as the member by whom they were appointed, including the right to speak at a meeting of members in respect of any matter, to vote by way of ballot at the meeting, to demand a ballot at the meeting and, except where a proxy holder or an alternate proxy holder has conflicting instructions from more than one member, to vote at the meeting by way of a show of hands;
- d. if a form of proxy is created by a person other than the member, the form of proxy shall
 - i. indicate, in bold-face type,
 - A. the meeting at which it is to be used,
 - B. that the member may appoint a proxy holder, other than a person designated in the form of proxy, to attend and act on their behalf at the meeting, and
 - C. instructions on the manner in which the member may appoint the proxy holder,
 - ii. contain a designated blank space for the date of the signature,
 - iii. provide a means for the member to designate some other person as proxy holder, if the form of proxy designates a person as proxy holder,
 - iv. provide a means for the member to specify that the membership registered in their name is to be voted for or against each matter, or group of related matters, identified in the notice of meeting, other than the appointment of a public accountant and the election of directors,
 - v. provide a means for the member to specify that the membership registered in their name is to be voted or withheld from voting in respect of the appointment of a public accountant or the election of directors, and
 - vi. state that the membership represented by the proxy is to be voted or withheld from voting, in accordance with the instructions of the member, on any ballot that may be called for and that, if the member specifies a choice under subparagraph (iv) or (v) with respect to any matter to be acted on, the membership is to be voted accordingly;

- e. a form of proxy may include a statement that, when the proxy is signed, the member confers authority with respect to matters for which a choice is not provided in accordance with subparagraph (d)(iv) only if the form of proxy states, in bold-face type, how the proxy holder is to vote the membership in respect of each matter or group of related matters;
 - f. if a form of proxy is sent in electronic form, the requirements that certain information be set out in bold-face type are satisfied if the information in question is set out in some other manner so as to draw the addressee's attention to the information; and
 - g. a form of proxy that, if signed, has the effect of conferring a discretionary authority in respect of amendments to matters identified in the notice of meeting or other matters that may properly come before the meeting must contain a specific statement to that effect.
13. **Termination of Membership:** A membership in the Corporation is terminated when:
- a. the member dies or resigns;
 - b. the member is expelled or their membership is otherwise terminated in accordance with the articles or by-laws;
 - c. the member's term of membership expires; or
 - d. the Corporation is liquidated and dissolved under the Act.
14. **Effect of Termination of Membership:** 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.
15. **Discipline of Members:** The board shall have authority to expel (which shall mean that the membership of the member is terminated) 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. failure to execute, or failure to comply with, the terms of the Corporation's Code of Ethics, as may be determined and amended by the board of directors from time to time;

In the event that the board determines that a member should be expelled from membership in the Corporation, the Chair, or such other officer as may be designated by the board, shall provide twenty (20) days' notice of expulsion to the member and shall provide reasons for the proposed expulsion. The member may make written submissions to the Chair, or such other officer as may be designated by the board, in response to the notice received within such twenty (20) day period. In the event that no written submissions are received by the Chair, the Chair, or such other officer as may be designated by the board, may proceed to notify the member that the member is 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 a further twenty (20) days from the date of receipt of the submissions. The board's decision shall be final and binding on the member, without any further right of appeal.

16. **Proposals Nominating Directors at Annual Members' Meetings:** Any proposal may include nominations for the election of directors if the proposal is signed by not less than 5% of members entitled to vote at the meeting at which the proposal is to be presented.
17. **Cost of Publishing Proposals for Annual Members' Meetings:** The member who submitted the proposal shall pay the cost of including the proposal and any statement in the notice of meeting at which the proposal is to be presented unless otherwise provided by ordinary resolution of the members present at the meeting.
18. **Place of Members' Meeting:** Meetings of the members may be held at any place within Canada determined by the board or, if all of the members entitled to vote at such meeting so agree, outside Canada.
19. **Persons Entitled to be Present at Members' Meetings:** The only persons entitled to be present at a meeting of members shall be those holding membership in any member class, the directors, proxy holders (both members and non-members) 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 resolution of the members.
20. **Chair of Members' Meetings:** In the event that the chair of the board and the vice-chair of the board are absent, the members who are present and entitled to vote at the meeting shall choose one of their members to chair the meeting.
21. **Quorum at Members' Meetings:** A quorum at any meeting of the members shall be 25 per cent of the members eligible to vote at the meeting. 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.

22. **Votes to Govern at Members' Meetings:** At any meeting of members every question shall be determined by a majority of the votes cast on the questions, unless otherwise provided by the articles or by-laws or by the Act. The Chair of the meeting only votes in the event of a tie.
23. **Participation by Electronic Means at Members' Meetings:** If the Corporation chooses to make available an 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 electronic or other communication facility. 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 by means of any electronic or other communication facility that the Corporation has made available for that purpose.
24. **Members' Meeting Held Entirely by Electronic Means:** If the directors or members of the Corporation call a meeting of members, those directors or members, as the case may be, may determine that the meeting shall be held entirely by means of an electronic or other communication facility that permits all participants to communicate adequately with each other during the meeting.
25. **Directors:** All directors, elected or appointed, must be individuals, 18 years of age or over with power under law to contract. The Board shall be comprised of between three and five elected directors and a maximum of two additional directors appointed by the elected directors provided that no more than one third of the board is filled by the appointments. No director, elected or appointed, may serve more than six consecutive years in any capacity.
26. **Term of Office of Elected Directors:** Elected directors shall hold office for a term expiring not later than the close of the third annual meeting of members following their election. Elected directors may be eligible for re-election for a second three-year term as long as this will not violate the six consecutive year maximum. The director will not be eligible for re-election or appointment for at least one year after the end of their second (2nd) consecutive term.
27. **Term of Office of Appointed Directors:** An appointed director's term shall expire at the close of the next annual meeting of members. Appointed directors will not be eligible for re-appointment or election for at least one year after the end of their sixth (6th) consecutive term.
28. **Calling of Meetings of Board of Directors:** Meetings of the board may be called by the chair of the board, the vice-chair of the board or any two (2) directors at any time.
29. **Notice of Meeting of Board of Directors:** Notice of the time and place for the holding of a meeting of the board shall be given in the manner provided in the section on giving notice of meeting of directors of this by-law to every director of the Corporation not less than 10 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. Notice of an adjourned meeting is not required if the time and place of the adjourned meeting is announced at the original meeting. Unless the by-law otherwise provides, 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 under Limits on Authority of the Act that is to be dealt with at the meeting.

30. **Participation by Electronic Means at Meeting of Board of Directors:** If the Corporation chooses to make available an electronic or other communication facility that permits all participants to communicate adequately with each other during a meeting of the Board of Directors, any person entitled to attend such meeting may participate in the meeting by means of such 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.
31. **Regular Meetings of the Board of Directors:** 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.
32. **Votes to Govern at Meetings of the Board of Directors:** At all meetings of the board of directors, a quorum shall be 50 per cent plus one (for example, the quorum would be 2 for a 3 member board). At all meetings of the board, every question shall be decided by a majority (50 per cent plus one) of the votes cast on the question. The Chair of the meeting only votes in the event of a tie.
33. **Committees of the Board of Directors:** The board may from time to time appoint any committee or other advisory body, as it deems necessary or appropriate for such purposes and with such powers as the board shall see fit. In the absence of committee terms of reference, 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 of directors.
34. **Appointment of Officers:** The officers of the Corporation shall be a Board Chair, Vice-Chair (if the Board has more than three members), Secretary, Treasurer and the Executive Director Proficiency Testing Canada, and any other officers as the board of directors may by by-law determine. Any two offices may be held by the same person. Except as otherwise provided in this By-law, officers need not be directors, nor members, of the Corporation. The officers of the Corporation shall hold office from the date of appointment or election for the terms provided in this By-Law or until successors are elected or appointed in their stead. Officers shall be subject to removal by resolution of the board of directors at any time.

The Board Chair, Vice-Chair, Secretary and Treasurer shall be appointed by resolution of the board of

directors at the first meeting of the board of directors following the relevant office becoming vacant.

The Board Chair and Vice-Chair shall be members of the board of directors and shall hold office for a term of one year from the date of their respective appointments, unless a shorter period is specified by the board of directors. At the discretion of the board of directors, the term for the Board Chair or Vice-Chair may be extended. The Secretary and the Treasurer shall be members of the board of directors of the Corporation and shall hold office for a term of two years, from the date of his or her appointment, or until his or her term as a director expires, whichever occurs first.

No person is disqualified from being appointed Secretary or Treasurer solely because he or she holds or has held either position.

The Executive Director Proficiency Testing Canada shall be appointed by the board of directors and need not be a director nor a member of the Corporation. The Executive Director Proficiency Testing Canada shall hold office for a term to be specified by the board of directors at the time of appointment, or until a successor is duly appointed, provided that the directors may remove the Executive Director Proficiency Testing Canada from office at any time by resolution of the directors.

35. **Description of Offices:** Unless otherwise specified by the board (which may modify, restrict or supplement such duties and powers), the offices of the Corporation, if designated and if officers are appointed, shall have the following duties and powers associated with their positions:
- a. Chair of the Board – The chair of the board, if one is to be appointed, shall be a director. The chair of the board, if any, shall, when present, preside at all meetings of the board of directors and of the members. The chair shall have such other duties and powers as the board may specify.
 - b. Vice-Chair of the Board – The vice-chair of the board, if one is to be appointed, shall be a director. If the chair of the board is absent or is unable or refuses to act, the vice-chair of the board, if any, shall, when present, preside at all meetings of the board of directors and of the members. The vice-chair shall have such other duties and powers as the board may specify.
 - c. Executive Director – If appointed, shall be responsible for implementing the strategic plans and policies of the Corporation. The Executive Director shall, subject to the authority of the board, have general supervision of the affairs of the Corporation.
 - d. Secretary – If appointed, the secretary shall attend and 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.

- e. Treasurer – If appointed, the treasurer shall have such powers and duties as the board may specify.

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 requires of them. The board may from time to time, vary, add to or limit the powers and duties of any officer.

36. **Vacancy in Office:** In the absence of a written agreement to the contrary, the board may remove, whether for cause or without cause, any officer of the Corporation. Unless so removed, an officer shall hold office until the earlier of:

- a. the officer's successor being appointed,
- b. the officer's resignation,
- c. such officer ceasing to be a director (if a necessary qualification of appointment) or
- d. such officer's death.

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

37. **Method of Giving Any Notice:** Any notice (which term includes any communication or document), to be given (which term includes sent, delivered or served) pursuant to the Act, 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;
- b. if mailed to such person at such person's recorded address by prepaid ordinary or air mail;
- c. if sent to such person by electronic or other communication facility at such person's recorded address for that purpose; or
- d. if provided in the form of an electronic document.

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; 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.

38. **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.

Where the Act allows to override, it is intended for the by-law to govern. Otherwise, the by-law is pursuant to the Act.

39. **Omissions and Errors:** The accidental omission to give any notice to any member, 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.

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**By-laws and Effective Date:** Subject to the articles, the board of directors may, by resolution, make, amend or repeal any by-laws that regulate the activities or affairs of the Corporation. Any such by-law, amendment or repeal shall be effective from the date of the resolution of directors until the next meeting of members where it may be confirmed, rejected or amended by the members by ordinary resolution. If the by-law, amendment or repeal is confirmed or confirmed as amended by the members it remains effective in the form in which it was confirmed. The by-law, amendment or repeal ceases to have effect if it is not submitted to the members at the next meeting of members or if it is rejected by the members at the meeting.

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 because such by-law amendments or repeals are only effective when confirmed by members.