

TERMS OF REFERENCE FOR COUNCIL AND COUNCILLORS

The terms of reference for council and councillors sets out the way in which the council organizes and conducts itself to fulfill its responsibilities, and describes the responsibilities of councillors.

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I. PURPOSE

- A.** The CMPA By-law states: “The Council shall have responsibility to manage and supervise the affairs and activities of the Association.” In practical terms this means council has the responsibility to oversee the conduct of the business of the Association and to direct management, to whom council delegates the responsibility for the day-to-day conduct of business.
- B.** The primary purpose of council is to foster, through sound governance, the long-term success of the Association consistent with its Strategic Plan and responsibilities to the members.
- C.** Council shall be established and act in accordance with Article 4 of the CMPA By-law.

II. COMPOSITION

- A.** Council shall be composed of a minimum of 25 members and a maximum of 35 members elected and in representation in accordance with the CMPA By-law. Members do not have to be in active clinical practice to serve on the CMPA Council.
- B.** The chair of council shall be appointed by council and the president may be, but need not be, the council chair. If applicable, when the chair will be absent, one of the councillors present shall be chosen to act as chair for the purposes of the meeting. If applicable, when the president will be absent, the 1st vice-president, or if unable, the 2nd vice-president will act as chair for the purposes of the meeting.

III. GENERAL LEGAL OBLIGATIONS OF THE COUNCIL

- A.** The Canadian Medical Protective Association is incorporated under *An Act to Incorporate The Canadian Medical Protective Association, 1913*. Additional legal duties are imposed on councillors by operation of the law. Such obligations include but are not limited to employment, environmental, privacy, and financial reporting law, as well as the withholding provisions of taxation law.
- B.** In accordance with Article 8.01 of the CMPA By-law, councillors are under a fiduciary¹ duty to the Association to exercise the powers and carry out the duties of their office:
 - (i) honestly, in good faith and in the best interests of the Association
 - (ii) with the degree of care, diligence, and skill that a reasonably prudent person would exercise in comparable circumstances

1. Without being legally precise, a fiduciary duty is a duty to act for the benefit of another.

IV. AUTHORITIES AND RESPONSIBILITIES

A. Delegation and governance

Subject to the By-law of the Association and *An Act to Incorporate The Canadian Medical Protective Association*, council may constitute, seek the advice of, and delegate authorities and responsibilities to any councillor, committee of council or to the executive director. Council retains the responsibility to:

- (i) Elect and appoint the president, chair of council (if not the president) and the senior governance positions of the Association.
- (ii) Appoint, determine the composition of, and set terms of reference for council committees.
- (iii) Participate in the council approved process for assessing the effectiveness of council as a whole, its committees and the contribution of councillors.
- (iv) Ensure that the Association's governance practices meet the requirements of the Association and its members.
- (v) Void CMPA membership in accordance with Article 2 of the CMPA By-law.
- (vi) Consider any matter brought forward by the executive director involving an application for admission to membership in accordance with Article 2 of the CMPA By-law.
- (vii) Designate the individuals who shall hold the authority to execute instruments such as deeds, transfers, assignments, contracts, obligations, certificates, and other documents and instruments that require the corporate seal of the Association to be affixed thereto.

B. Selection of management

Council has the responsibility to:

- (i) Appoint and replace the executive director and monitor and evaluate the executive director's performance.
- (ii) Approve the executive director's compensation.
- (iii) Provide advice and counsel to the executive director in the execution of the executive director's duties.
- (iv) Acting upon the advice of the executive director and the recommendation of the Human Resources and Compensation Committee, approve the compensation envelope for staff.
- (v) Annually review the executive director's plans for the senior management² group, including specific development plans and career planning.

C. Strategy determination

Council has the responsibility to:

- (i) Ensure there is a strategic planning process in place that is led by senior management and actively involves council.
- (ii) Periodically review and approve the Association's mission, vision and strategic plan.
- (iii) Execute and be accountable for all elements of the risk governance function, delegating responsibilities as appropriate. Fulfilment of this responsibility requires council to:
 - Review and, at least annually, approve the corporate risk assessment prepared by management.
 - Establish risk appetite and tolerance levels as appropriate and as required.
 - Building on the integrated risk assessments provided by the Executive Committee, provide risk direction in support of issue management.
 - Maintain oversight of risk management, with particular emphasis on ensuring alignment between the risk being accepted and the expected performance results.
 - Execute the governance risk management function, including but not restricted to ensuring the appropriate succession planning within council. This should also include ensuring council remains current on best practices in risk governance.
 - Monitor key strategic risks.

² Senior management means those members of management so designated by the executive director.



- (iv) Maintain the financial integrity of the Association by ensuring sufficient long term funding for the implementation of the mission, vision and strategic plan. Fulfilment of this responsibility requires council to:
 - Periodically review and approve the funding model for the CMPA.
 - Annually review and approve the aggregate and type of work fee requirements, by region.
 - Establish and monitor the risk budget under which the Association's portfolio of assets reserved for claims will be invested.
 - Approve the Statement of Investment Policies and Goals.
- (v) Safeguard the Association's resources by approving the annual CMPA Operational Plan and Budget, including capital budgets and significant new projects.

D. Monitoring

Council has the responsibility to:

- (i) Monitor the Association's progress towards the objectives set in the strategic plan, the funding model, the annual operational plan and budget, including capital budgets, and to revise and alter its direction through management in light of changing circumstances.
- (ii) Identify the principal risks of the Association's business and take all reasonable steps to ensure the implementation of appropriate systems to manage these risks.
- (iii) Direct management to ensure systems are in place for maintaining the integrity of and implementing the Association's internal financial control and management information systems.

E. Corporate policy

Council has the responsibility to:

- (i) Approve and ensure compliance with relevant corporate policies.
- (ii) Direct management to implement procedures and systems designed to ensure:
 - The Association operates at all times within applicable laws and regulations and the CMPA By-law.
 - The Association is not harmed by any perceived or real conflicts of interest.
 - The Association operates at all times to the highest ethical and moral standards.
- (iii) Reconsider a decision of the Case Review Committee and/or the Executive Committee regarding CMPA member assistance when asked to do so by a member or a council committee, in accordance with Article 6 of the By-law.

F. Accountability, Association reporting and communications

Council has the responsibility to:

- (i) Ensure the financial performance of the Association is adequately and promptly reported to the members.
- (ii) Ensure financial results are reported fairly and in accordance with generally accepted accounting principles.
- (iii) Ensure timely reporting of any other developments that have a significant and material effect on the performance of the Association and as required under the law.
- (iv) Annually ensure a report for the members is developed on council's stewardship for the preceding year (the CMPA Annual Report).
- (v) Ensure the Association has in place a communications program that enables the Association to communicate effectively with its members and stakeholders.

G. Pension plans

In accordance with the provisions of the Ontario Pension Benefits Act, the CMPA is the administrator of the following pension plans:

- Canadian Medical Protective Association Pension Plan for Staff;
- Canadian Medical Protective Association Pension Plan for Senior Staff, and
- Canadian Medical Protective Association Supplemental Employee Retirement Plan.



In fulfilling their pension-related mandate, Councillors bear a fiduciary responsibility to the members of the pension plans. In carrying out their responsibilities relating to the administration of the pension plans, Councillors shall act with the care, diligence and skill that a person of ordinary prudence would exercise in dealing with the property of another person. In addition, each member shall use all relevant knowledge and skill that the member possesses, or, by reason of the members' profession, business or calling, ought to possess.

Following review of the Pension Committee's recommendations, council has the responsibility to approve the following:

- (i) Plan design and documentation
 - pension plan designs
 - plan text and material³ amendments
- (ii) Plan governance structure and processes
 - Pension governance structure and terms of reference
 - Strategic risk management policy for the Plans
 - Annual appointment of plan auditor
- (iii) Plan funding
 - funding policy (subject to regulatory requirements and actuarial professional standards for the plans)
 - funding deficits with lump sum payment or funding over less than maximum period permitted by regulation
 - Statement of Investment Policies and Goals for the plans

V. PROCEDURES

Council will generally follow all relevant guidelines and procedures outlined in the CMPA By-law and the council administrative guidelines section of the council governance manual.

VI. MEETINGS AND ACTIVITIES

- A.** Council will generally meet 4 times per year, with a provision for special meetings as necessary.
- B.** Council shall hold a meeting within 5 days following any annual meeting of members, for the purpose of organization and the election and appointment of committees.
- C.** Council shall meet at the call of the executive director when directed or authorized by the president, council chair if not the president, or any 12 members of council, and in accordance with the notice provisions outlined in the By-law. A called council meeting may be cancelled at the request of a majority of council members or by decision of the president, or council chair if not the president.

3. A material amendment is an amendment that increases or reduces the liability of the plan by changing the terms governing an eligible employee's pension entitlement. As a result, an amendment that is required solely for regulatory compliance or administrative necessity will frequently be non-material.



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I. ROLE AND OBLIGATIONS

- A.** The councillors shall be the directors of the Association and shall act in accordance with the CMPA By-law and its governance manual.
- B.** As a member of council, each councillor must fulfil the legal requirements and obligations of a councillor, and have a comprehensive understanding of the fiduciary, statutory, and other legal roles. These obligations derive from common law and from corporate statutes such as the *Canada Business Corporations Act*. While acting on behalf of the CMPA, a councillor must exercise due diligence, loyalty, and care.
- C.** Broadly speaking, a councillor has these obligations to the CMPA:
- (i) to act with honesty and in good faith
 - (ii) to act in any circumstance in the best interests of the CMPA
 - (iii) to exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances
 - (iv) to exercise powers properly for the purpose for which they are conferred
 - (v) to avoid conflict of interest
 - (vi) not to fetter the future exercise of councillors' powers, and
 - (vii) to prevent the CMPA from making improper distributions or payments
- D.** A councillor shall place the best interests of the Association above constituent, representative, or personal interests while ensuring the needs of the entire membership are served.
- E.** A councillor must agree to and be bound by the *Code of Conduct and Conflict of Interest Guidelines for Councillors*. A councillor must annually sign the code in acknowledgement of this obligation within 30 days of the annual meeting.

II. DUTIES AND RESPONSIBILITIES

A. Council activity

Each councillor has the responsibility to:

- (i) Exercise good judgment and act with integrity.
- (ii) Use his or her ability, experience and influence constructively.
- (iii) Be available as a resource to management and council.
- (iv) Be available as a resource to members.
- (v) Respect confidentiality by holding in confidence any matters that are designated by the Association to be confidential.
- (vi) Whenever possible, advise the executive director or president in advance of introducing significant and previously unknown information during a council meeting.
- (vii) Understand the difference between governing and managing, and not encroach on management's area of responsibility.
- (viii) Identify potential conflict areas — real or perceived — seek advice, and, if required, ensure they are declared.
- (ix) As necessary and appropriate, communicate with the president and the executive director between meetings concerning issues deemed to be important to council.
- (x) Demonstrate a willingness and availability for individual consultation with the president or executive director.

B. Preparation and attendance

To enhance council and committee meeting effectiveness, each councillor will:

- (i) Prepare for each council and committee meeting by reading the reports and background materials provided for the meeting.
- (ii) Maintain an excellent council and committee meeting attendance record.
- (iii) Acquire adequate information necessary for decision-making.



C. Communication

Communication is fundamental to council effectiveness; therefore each councillor will:

- (i) Actively participate in council and committee deliberations and discussions.
- (ii) Encourage council's free and open discussion of Association affairs.
- (iii) Ask questions in an appropriate and timely manner.
- (iv) Focus inquiries on significant and broad issues related to strategy, policy, implementation and results.
- (v) Stay informed about relevant issues in the councillor's geographic area and bring these issues to the attention of management and council.
- (vi) Bring to council's attention information that will assist council in fulfilling its responsibilities.
- (vii) Bring issues raised by individual members to the attention of the president or executive director.
- (viii) Bring forward Association business, issues or matters of concern to the CMPA's council or applicable council committee for its consideration; it is expected that councillors will generally not submit member motions directly to the annual meeting.

D. Independence

Recognizing that the cohesiveness of council is an important element in its effectiveness, each councillor will:

- (i) Be a positive force with a demonstrated interest in the long-term success of the Association.
- (ii) Speak and act independently, while respecting the opinions of others.

E. Council interaction

Each councillor should establish an effective, independent and respected presence and a collegial relationship with other councillors.

F. Committee work

To assist council committees in being effective and productive, each councillor will:

- (i) Indicate areas of special interest and expertise to the president to assist the president in recommending committee assignments.
- (ii) Contribute potential topics of discussion, through the chair or appropriate staff person.
- (iii) Participate on committees and become knowledgeable about each committee's purpose and responsibilities.
- (iv) Understand the committee work process and the role of management and staff supporting the committee.
- (v) Further the work of each committee, as required.

G. Association and industry knowledge

Recognizing decisions can only be made by well-informed councillors, each councillor will, with support from the Association:

- (i) Become generally knowledgeable about the Association's work and business environment.
- (ii) Develop an understanding of the Association's role within the healthcare community and Canadian society.
- (iii) Maintain an understanding of the regulatory, legislative, social and political environments within which the Association operates.
- (iv) Become acquainted with the Association's senior management.
- (v) Be an effective ambassador and representative of the Association in accordance with the *Councillors Representing the CMPA* policy or as requested by the president.

