

FBGA By-laws with proposals for amendments. To be presented to the AGM in February 2009. Those words proposed to be removed are ~~crossed out~~ and additions are in *red*. Proposed changes have been prepared by M. Dillon, assisted by George Strunz and Graham Allen, in November/December 2008. An apparent error in numbering from Article 8 onward has been corrected.

## **THE FREDERICTON BOTANIC GARDEN ASSOCIATION INC.**

### **BY-LAWS**

#### Article 1 NAME

- 1.01 The name of the Corporation shall be “The Fredericton Botanic Garden Association Inc./L’Association des jardins botaniques de Fredericton Inc.” referred to throughout these by-laws as the “Association”.

#### Article 2 OBJECTS

- 2.01 The objects of the Association are:
- a) to guide the establishment, development and maintenance of the Fredericton Botanic Garden;
  - b) to serve as liaison with other similar efforts in the region;
  - c) to foster in the people of New Brunswick an awareness and appreciation of the beauty, fascination and utility of plants.

2.02 In order to achieve its objects the Association may:

- a) develop and implement policies designated for the establishment, management, promotion and continued maintenance of the Fredericton Botanic Garden;
- b) purchase, lease, accept by gift or trust, or otherwise acquire any real or personal property of any kind which the Association may deem necessary for the purpose of establishing, managing, promoting and maintaining the Fredericton Botanic Garden;
- c) receive money by way of gift or otherwise and accept, hold, sell or administer funds, gifts, legacies and benefits to property of any sort, without limitation as to amount, value or source, and use the income or any part of the principal of the funds of the Association to achieve the objects of the Association;
- d) employ staff to carry out research and any other functions which are deemed necessary for establishing, managing, promoting and maintaining the Fredericton Botanic Garden;
- e) enter into contracts, Joint management agreements, arrangements or agreements of any kind with any corporation, partnership, individual, group of individuals, government or authority whether federal, provincial, municipal, local or otherwise, which are conducive in the opinion of the Association to the achievement of the objects of the Association, and obtain from them or any of them any property, rights, privileges, concessions or assistances which the Association may deem desirable, and

f) do all such things as are incidental or conducive to attaining the objects and exercising the powers of the Association including, without limiting the generality of the foregoing, the exercise of all powers given by section 14 of the Companies Act.

2.03 It is declared that the Association is a non-profit, charitable corporation which shall not carry on any business or trade for the profit of its members; and the Association shall hold the property it may acquire in trust for application to the attainment of the objects of the Association.

### Article 3 MEMBERSHIP

3.01 Any person who subscribes to the objects of the Association may apply for membership.

3.02 Any corporation, partnership or society which subscribes to the objects of the Association shall be eligible for associate membership. Each associate member shall be deemed to be one member, and may designate any person as its representative at any meetings of the Association and that person shall be eligible to vote.

3.03 Application for membership in the Association shall be made to the Board of Trustees of the Association which may either accept or reject the application.

3.04 Honorary members of the Association may be appointed by the Board of Trustees of the Association but shall not be eligible to vote.

3.05 All members shall have the right to speak and make representations at meetings of the Association and, with the exception of honorary members, all members shall have the right to vote and to hold office.

3.06 The rights of membership in the Association are subject to the payment of all annual and special dues levied in accordance with Article 7 of these by-laws.

3.07 The Board of Trustees of the Association by unanimous vote at any meeting duly called may terminate the membership of any members, but such action shall have no force or affect until approved by at least two thirds of the votes cast at a special general meeting of the members of the Association duly called for considering the same.

#### Article 4 BOARD OF TRUSTEES

4.01 The property, business and affairs of the Association shall be managed by a body to be called the "Board of Trustees".

4.02 The Board of Trustees shall consist of ~~twelve~~ *nine elected members, except in 2009 not more than eleven elected members ,and in 2010 and 2011 not more than ten elected* members of the Association elected as follows:

a) ~~at the inaugural meeting of the Association there shall be an election of a Board of Trustees consisting of~~

a) ~~four members of the Association who shall hold office for a term of three years;~~

b) ~~four members of the Association who shall hold office for a term of two years, and~~

c) ~~four members of the Association who shall hold office for a term of one year.~~

b) at each annual general meeting of the Association ~~following the inaugural meeting,~~ the members of the Association shall elect, for a term of three, *two or*

- one* years each, ~~four~~ *enough* members of the Association to the Board of Trustees to replace those members whose term has expired *or have resigned, to make a Board of nine elected members. The lengths of the terms of the elected members shall be such that three members end their terms each year;*
- b) *the immediate Past President shall be a voting member of the Board of Trustees;*
- c) in the event that a vacancy occurs on the Board of Trustees, the remaining Trustees may appoint a Trustee to serve until the next Annual General Meeting; at which Annual General Meeting a Trustee shall be elected by the members to complete the scheduled term of the Trustee whose position on the Board of Trustees became vacant;
- d) no Trustee shall serve more than three consecutive three year terms; after a lapse of one year a former Trustee may be reelected.

4.03 At the first meeting of the Board of Trustees after the Annual General Meeting the Board of Trustees shall elect from among its members an executive composed of a President, Vice-President, Secretary and Treasurer in accordance with the provisions of Article 5. ~~The election of President and Secretary on odd years and the election of Vice-President and Treasurer on even years.~~

4.04 There shall be a minimum of eight meetings of the Board of Trustees per year. Additional meetings of the Board of Trustees shall be called by the President of the Association or by the Secretary of the Association if requested by at least four members of the Board of Trustees.

4.05 A quorum shall consist of 50% plus one of *elected and voting* members of the Board for a meeting of the Board of Trustees.

4.06 The Board of Trustees may create such committees as it may deem desirable and may delegate, in writing, any of its powers to any such committee except the following powers:

- a) to call special meetings of the members of the Association whenever it is deemed necessary;
- b) to elect any members of the executive, to prescribe their duties and to determine their compensation;
- c) to establish, levy and assess collection of dues;
- d) to enter into agreements for property acquisition and use and to approve all land purchases of the Association;
- e) to adopt and publish rules governing the use of acquired properties and the personal conduct of people thereon; and
- f) to mortgage or pledge any assets of the Association.

*4.07 There shall be a Site Development Committee, the Chairman of which shall be a non-voting member of the Board of Trustees by virtue of the office. The powers of the Site Development Committee shall be assigned by the Board of Trustees within the limits of subsection 4.06.*

4 078 Executive Committee

- a) There shall be an Executive Committee which shall consist of the Officers of the Association, namely, the President, the Vice-President, the Secretary, the Treasurer, and the Past President. The president shall be the chairman of the Executive Committee;

- b) the Executive Committee shall have the power to transact all regular business of the Association during the periods between regular meetings of the Board of Trustees, subject to limitations contained in the By-Laws or unless otherwise specified by the Board of Trustees, and to carry out such other functions as directed by the Board of Trustees from time to time;
- c) the Executive Committee shall report its actions to the Board of Trustees at its next meeting.

#### Article 5 OFFICERS

5.01 The President of the Association shall hold office for two years, shall preside over all meetings of the Association and the Board of Trustees, shall have general supervision of the affairs of the Association, and shall perform such other duties as may be assigned by the Board of Trustees.

5.02 The Vice-President of the Association shall hold office for a period of two years, shall preside over any meeting of the Association or the Board of Trustees in the absence of the President, and shall perform such other duties as may be assigned by the Board of Trustees.

5.03 The Treasurer of the Association shall hold office for a period of two years, shall maintain all books of account of the Association, shall have custody of all funds, including trust funds, of the Association, shall cause to be prepared an annual audited financial report and other reports as requested by the Board of Trustees and shall perform such other duties as may be assigned by the Board of Trustees.

5.04 The Secretary of the Association shall hold office for a period of two years, shall have custody of the corporate seal, shall keep the minutes of all general meetings of the Association and all meetings of the Board of Trustees, shall maintain all records of the Association as may be required by the Companies Act or by similar legislation, and shall perform such other duties as are assigned by the Board of Trustees.

5.05 The positions of Treasurer and Secretary may be combined in one person.

5.06 The Board of Trustees may elect such other executive members and appoint such other officers of the Association as in its discretion it deems advisable. The Board of Trustees may determine the term in office, remuneration and the duties to be assigned any officer or executive member appointed in accordance with this paragraph.

5.07 An Executive Director of the Association shall be a *non-voting* member of the Board of Trustees by virtue of the office.

5.08 The immediate past President of the Board of Trustees shall be a member of the executive of the Board of Trustees by virtue of the office.

5.09 The President or members of the Board of Trustees designated by the President shall act as spokespersons for the Association.

5.10 No officers of the Board of Trustees shall be eligible to serve more than two consecutive terms in the same office.

5.11 The term of any Officer may be terminated by resolution of the Board of Trustees in which case Board of Trustees may appoint another Trustee to fill that position so vacated.

5.12 Officers shall serve as such without remuneration and no Officer shall directly or indirectly receive any profit from his/her position as such, provided that an Officer may be paid reasonable expenses incurred by him/her in the performance of his/her duties.

#### Article 6 SIGNING AUTHORITY

6.01 The signing officers of the Association for the certification or endorsement of all legal documents, bills of exchange, promissory notes, and other negotiable or transfer instruments shall be any two of the President, Vice-President, Secretary, Treasurer and Executive Director of the Association.

#### Article 7 MEETINGS

7.01 The annual general meeting of the Association shall be held in each year within three months of the fiscal year end of the Association.

7.02 Special general meetings of the Association may be called by the President or the Board of Trustees as they in their discretion may deem advisable. The President shall call a special general meeting of the Association when petitioned, in writing, by any twenty members of the Association.

#### Article 8 NOTICE OF MEETINGS

8.01 Notice of all annual general meetings or special general meetings of the Association shall be given in accordance with paragraph 98.03.

8.02 The provisions of paragraph 98.03 shall apply, with the necessary changes in points of detail, to meetings of the Board of Trustees, provided that the auditor of the Association need not be given notice of the meetings of the Board of Trustees.

8.03 Notice of meetings of the Association shall be given in accordance with the following conditions:

- a) the notice shall be printed, written or typewritten and shall state the day, hour and place of meeting and the general nature of the business to be transacted;
- b) the notice shall be served either personally, or by sending through the post, in a prepaid wrapper or letter, or by electronic mail to each member of the Association entitled to such a notice, and, save otherwise provided, to the auditor of the Association;
- c) the notice shall be served at least ten days (exclusive of the day of mailing and of the day for which notice is given) before the date of the meeting;
- d) the notice shall be directed to such address of each member and auditor of the Association as appears on the books of the Association. If no address is given therein, the notice shall be directed to the last address of each such member as may be known to the Secretary, and to the auditor at his/her business address;
- e) a meeting of members of the Association may be held for any purpose at any date and time at any place within the Province of New Brunswick without notice if all members entitled to notice of such meeting are present in person at the meeting or if not present in person shall have signified their assent in writing to such meeting being held;

- f) the auditor of the Association need not be given notice of special general meetings of the Association; and
- g) notice of any meeting or irregularity in the notification of any meeting may be waived by any member and by the auditor of the Association.

8.04 The non-receipt of a notice of any meeting shall not invalidate any resolution passed or any proceedings taken at any meeting.

#### Article 9 FISCAL YEAR

9.01 The fiscal year for 1997 shall be from May to December 31/97. Commencing in 1998 the fiscal year of the Association shall be from January 1<sup>st</sup> of each year to December 31 pursuant to provincial legislation respecting incorporations.

#### Article 10 LIABILITY

10.01 Every member of the Board of Trustees and their heirs, executors, administrators, successors and assigns, and estate and effects, shall be indemnified and saved harmless out of the funds of the Association from and against all costs, charges and expenses which shall or may be sustained or incurred in any action or proceeding which is brought or prosecuted against him/her for or in respect of any act, deed, matter or thing made, done or permitted by him/her in or about the execution of the duties of the office, and also from and against all other costs, charges and expenses which shall be sustained or incurred in or about or in relation to the affairs thereof, except such costs, charges and

expenses as are occasioned by his/her own willful neglect or default or deliberate misrepresentation.

#### Article 11 CHARITABLE STATUS

11.01 No part of the income of the Association shall be payable to or otherwise available for the personal benefit of any member or officer of the Association, and the Association shall not be operated for the pecuniary profit of its members or officers Nothing herein shall derogate from the powers of the Board of Trustees to grant remuneration to those staff, executive members and officers engaged for the purposes of the Association pursuant to Articles 2.02 d) and 5.06 of these by-laws.

#### Article 12 CORPORATE SEAL

12.01 The corporate seal of the Association shall consist of a circular press imprinting the words “THE FREDERICTON BOTANIC GARDEN ASSOCIATION INC./  
L’ ASSOCIATION DES JARDINS BOTANIQUES DE FREDERICTON INC.” or may be in such other form or contain such other words as the Board of Trustees may from time to time determine.

#### Article 13 HEAD OFFICE

13.01 The head office of the Association shall be at the City of Fredericton in the Province of New Brunswick.

#### Article 14 AMENDMENTS

14.01 These by-laws may be amended or repealed and new by-laws may be enacted by the board of Trustees at any meeting of the Board of Trustees; but no new by-law nor any repeal or amendment of an existing by-law shall have any effect:

- a) until approved at a general or special meeting of the members of the Association who shall have been given notice of the proposed repeal, amendment or addition in accordance with Article 98.03; and
- b) until receipt of approval of the appropriate provincial or federal authority as may be required in the circumstances.

#### Article 15 INTERPRETATION

15.01 In these by-laws unless the context requires otherwise:

- a) “year” shall mean from one annual general meeting to the next;
- b) words importing the plural number include the singular number and vice versa;  
and
- c) “by-laws” include these by-laws and all amends thereto.

As accepted on February 17, 2001