

**Memorandum of Understanding**  
**Between**  
**Minister of Heritage, Sport, Tourism and Culture Industries**  
**and**  
**Chair of McMichael Canadian Art Collection**

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The parties to this memorandum of understanding agree to the following:

## 1. Purpose

- a. The purpose of this memorandum of understanding (MOU) is to:
  - Establish the accountability relationships between the Minister of Heritage, Sport, Tourism and Culture Industries and the Chair of McMichael Canadian Art Collection on behalf of the Agency.
  - Clarify the roles and responsibilities of the Minister, the Chair, the Deputy Minister, Agency Executive Director, and the Agency's Board of Trustees.
  - Clarify the operational, administrative, financial, staffing, auditing and reporting arrangements between McMichael Canadian Art Collection and the Ministry of Heritage, Sport, Tourism and Culture Industries.
- b. This MOU should be read together with the *McMichael Canadian Art Collection Act*. This MOU does not affect, modify or limit the powers of the Agency as set out under the *McMichael Canadian Art Collection Act*, or interfere with the responsibilities of any of its parties as established by law. In case of a conflict between this MOU and any act or regulation, the act or regulation prevails.
- c. This MOU replaces the memorandum of understanding between the parties dated July 4, 2011.

## 2. Definitions

In this MOU:

- a. "AAD" means the Treasury Board/Management Board of Cabinet Agencies & Appointments Directive;
- b. "Act" means the *McMichael Canadian Art Collection Act*, R.S.O. 1990, c. M.4, that governs the Agency;
- c. "Agency" or "provincial Agency" means McMichael Canadian Art Collection;
- d. "Annual Business Plan" means the annual business plan described under article 10.1 of this MOU.
- e. "Annual Report" means the annual report referred to in article 10.2 of this MOU.
- f. "Applicable Government Directives" means the government directives, policies, standards and guidelines that apply to the Agency, as may be amended or replaced from time to time, which are listed in Appendix 2 to this MOU.

- g. "Appointee" means a member appointed to the Agency by the Lieutenant Governor in Council, but does not mean an individual employed or appointed by the Agency as staff;
- h. "Board" means the Board of Trustees of McMichael Canadian Art Collection;
- i. "Chair" means the Chair of McMichael Canadian Art Collection;
- j. "Constituting instrument" means the *McMichael Canadian Art Collection Act* that established the Agency;
- k. "Deputy Minister" means the Deputy Minister of the Ministry of Heritage, Sport, Tourism and Culture Industries;
- l. "Executive Director" means the person holding the position of Executive Director of McMichael Canadian Art Collection;
- m. "Executive Council Act" means the *Executive Council Act*, R.S.O. 1990, c. E. 25, as amended;
- n. "FIPPA" means the *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c.F.31, as amended;
- o. "Fiscal Year" means the period from April 1 to March 31 of the following year;
- p. "Government" means the Government of Ontario;
- q. "MBC" means the Management Board of Cabinet;
- r. "Member" means a member of McMichael Canadian Art Collection;
- s. "Minister" means the Minister of Heritage, Sport, Tourism and Culture Industries or such other person who may be designated from time to time as the responsible Minister in relation to this MOU in accordance with the *Executive Council Act*, R.S.O. 1990, c.E.25, as amended;
- t. "Minister of Finance" means the Minister of Finance or such other person who may be designated from time to time under the *Executive Council Act*;
- u. "Ministry" means the Ministry of Heritage, Sport, Tourism and Culture Industries or any successor to the Ministry;
- v. "MOU" means this memorandum of understanding signed by the Minister and the Chair;
- w. "President of the Treasury Board" means the President of the Treasury Board or such other person who may be designated from time to time under the *Executive Council Act*;
- x. "PSC" means the Public Service Commission;

- y. "PSOA" means the *Public Service of Ontario Act, 2006*, S.O. 2006, c. 35, Sched. A, as amended;
- z. "TBS" means the Treasury Board Secretariat;
- aa. "TB/MBC" means the Treasury Board/Management Board of Cabinet.

### **3. Agency's Legal Authority and Mandate**

- a. The legal authority of McMichael Canadian Art Collection is set out in the *McMichael Canadian Art Collection Act*, R.S.O. 1990, c. M.4.
- b. The provincial Agency's mandate is set out in the *McMichael Canadian Art Collection Act*, which states that the Agency's objects are to: (a) acquire and preserve art works, objects and related documentary materials for the collection, by or about artists who have made or are making a contribution to the development of Canadian art, with a focus on the Group of Seven and their contemporaries and on the aboriginal peoples of Canada; (b) exhibit art works, objects and documentary materials, including but not limited to the collection; (c) conduct research on and provide documentation for the collection; (d) stimulate interest in the collection; (e) conduct activities in order to enhance and complement the collection; (f) hold, maintain and use the land described in the Schedule to the *McMichael Canadian Collection Act*, being chapter 259 of the Revised Statutes of Ontario, 1980, as a permanent site for a public gallery and related facilities for the collection; and (g) hold and maintain the parcel of land established as a cemetery, as described in the Order Approving Cemetery certificate no. 68-2-2 issued under *The Cemeteries Act*, being chapter 47 of the Revised Statutes of Ontario, 1960, in accordance with the *Funeral, Burial and Cremation Services Act, 2002* and any other applicable legislation.

### **4. Agency Type and Public Body Status**

- a. The Agency is designated as a board-governed provincial Agency (operational enterprise) under the Agencies and Appointments Directive.
- b. The Agency is prescribed as a public body in accordance with Ontario Regulation 146/10 under the *Public Service of Ontario Act, 2006*. It is not organizationally part of the Ministry, but it is considered to be within government.

## 5. Corporate Status and Crown Agency Status

- a. The Agency is a Crown Agency within the meaning of the *Crown Agency Act*. Section 6 of the Act states that the Agency is a Crown Agency.
- b. The provincial Agency does not have the capacity, rights, power and privileges of a natural person for carrying out its objects, subject.
- c. Subsection 2(1) of the Act states that the Agency is a corporation without share capital.
- d. Subsection 2(5) of the Act states that the *Corporations Act* does not apply to the Agency.

## 6. Guiding Principles

The parties agree to the following principles:

- a. The Minister recognizes that the Agency exercises powers and performs duties in accordance with its legal mandate under the *McMichael Canadian Art Collection Act*.
- b. The Minister recognizes that the Agency plays a meaningful role in the development of the policies and programs of the Government of Ontario, as well as in the implementation of those policies and delivery of programs.
- c. The Board of Trustees acknowledge that it is accountable, through the Minister, to the Legislative Assembly in exercising its mandate. Accountability is a fundamental principle to be observed in the management, administration and operations of the Agency. The Board of Trustees acknowledges that it is accountable to the Minister, through the Chair, for governance and oversight of the Agency.
- d. As an Agency of the Government of Ontario, the Agency conducts itself according to the management principles of the Government of Ontario. These principles include ethical behaviour; prudent, effective and lawful use of public resources; fairness; high quality service to the public; and openness and transparency to the extent allowed under the law.
- e. The Minister and the Board of Trustees, through the Chair are committed to a strong Agency that is empowered to fulfill its statutory mandate efficiently and effectively. They share the goal of establishing and maintaining a co-operative relationship that facilitates the efficient administration of the Agency and fulfillment of its statutory responsibilities.
- f. The Agency and the Ministry agree to avoid duplication of services wherever possible.
- g. The Agency and the Ministry will work together in a mutually respectful manner.

## **7. Accountability Relationships**

### **7.1 MINISTER**

The Minister is accountable:

- a. To Cabinet and the Legislative Assembly for the Agency's fulfilment of its mandate and its compliance with government policies, and for reporting to the Legislative Assembly on the Agency's affairs.
- b. For reporting and responding to Treasury Board/Management Board of Cabinet on the Agency's performance and compliance with government's applicable directives and operational policies.
- c. To the Cabinet for the performance of the Agency and its compliance with the government's operational policies and broad policy directions.

### **7.2 CHAIR**

The Chair, acting on behalf of the Board of Trustees, is accountable:

- a. To the Minister for the Agency's performance in fulfilling its mandate, and for carrying out the roles and responsibilities assigned to the Chair by the Act, this MOU, and applicable TB/MBC, PSC and government directives.
- b. For reporting to the Minister, as requested, on the Agency's activities.
- c. For ensuring timely communications with the Minister regarding any issue that affects, or can reasonably be expected to affect, the Minister's responsibilities for the Agency.

### **7.3 BOARD OF TRUSTEES**

The Board of Trustees is accountable, through the Chair, to the Minister for the oversight and governance of the Agency; setting goals, objectives and strategic direction for the Agency within its mandate; and for carrying out the roles and responsibilities assigned to it by the Act, this MOU, and applicable TB/MBC, PSC and other government directives.

### **7.4 DEPUTY MINISTER**

The Deputy Minister is accountable to the Secretary of the Cabinet and the Minister for carrying out the roles and responsibilities assigned by the Minister, the Act, this MOU, and applicable TB/MBC, PSC and government directives.



The Deputy Minister is also accountable for attesting to TB/MBC on the Agency's compliance with applicable TB/MBC directives.

## **7.5 EXECUTIVE DIRECTOR**

The Executive Director is accountable to the Board for the management and administration of the Agency, the supervision of Agency staff, and carrying out the roles and responsibilities assigned by the Board, the Agency's constituting instrument, this MOU and government directives. The Executive Director works under the direction of the Chair to implement policy and operational decisions. The Executive Director reports the Agency's performance results to the Board, through the Chair.

## **8. Roles and Responsibilities**

### **8.1 MINISTER**

The Minister is responsible for:

- a. Reporting and responding to the Legislative Assembly on the affairs of the Agency.
- b. Reporting and responding to TB/MBC on the Agency's performance and compliance with applicable TB/MBC directives, the government's operational policies and policy directions.
- c. Recommending to TB/MBC, where required, the merger, any change to the mandate, or dissolution of the Agency.
- d. Recommending to TB/MBC the powers to be given to, or revoked from, the Agency when a change to the Agency's mandate is being proposed.
- e. Meeting with the Chair to discuss issues relating to the fulfilment of the Agency's mandate.
- f. Review the advice or recommendation of the Chair on candidates for appointment or re-appointment to the Board.
- g. Making recommendations to and taking direction from Premier's Office for appointments, reappointments and revocations to the Agency, pursuant to the process for Agency appointments established by legislation and/or by TB/MBC through the AAD,
- h. Determining at any time the need for a review or audit of the Agency, directing the Chair to undertake reviews of the Agency on a periodic basis, and recommending to TB/MBC any change(s) to the governance or administration of the Agency resulting from any such review or audit.

- i. When appropriate or necessary, taking action or directing that the Agency take corrective action with respect to the Agency's administration or operations.
- j. For receiving the Agency's annual report and approving the report within 60 calendar days of receiving it.
- k. For tabling the annual report within 30 calendar days of approving it.
- l. For ensuring that the Agency's annual report is made available to the public after it is tabled and within 30 calendar days of approving it.
- m. Informing the Chair of the government's priorities and broad policy directions for the Agency.
- n. Consulting, as appropriate, with the Chair (and others) on significant new directions or when the government is considering regulatory or legislative changes for the Agency.
- o. Developing the Agency's MOU with the Chair, as well as any amendments to it, and signing the MOU into effect after it has been signed by the Chair.
- p. Reviewing and approving the Agency's annual business plan.
- q. Recommending to TB/MBC any provincial funding to be allocated to the Agency.
- r. Outlines the high-level expectations, key commitments and performance priorities for the Agency at the beginning of the annual business planning cycle through the Agency mandate letter.

## **8.2 CHAIR**

The Chair is responsible to support the Board of Trustees for:

- a. Providing leadership to the Agency by working with the Board of Trustees to set the goals, objectives and strategic directions within its mandate.
- b. Providing leadership to the Agency's Board of Trustees and ensuring that the Board carries out its responsibilities for decisions regarding the Agency
- c. Chairing Board meetings, including the management of the Board's agenda.
- d. Reviewing and approving claims for per diems and travel expenses for appointees to the Board.
- e. Seeking strategic policy direction for the Agency from the Minister.
- f. Ensuring timely communications with the Minister regarding any issues or events that may concern or can reasonably be expected to concern the Minister in the exercise of his/her responsibilities relating to the Agency.

- g. Consulting with the Minister in advance regarding any activity, which may have an impact on the government and Ministry's policies, directives or procedures, or on the Agency's mandate, powers or responsibilities as set out in the Agency's constituting instrument.
- h. Reporting to the Minister, as requested, on the Agency's activities within agreed upon timelines, including an annual letter confirming the Agency's compliance with all applicable legislation, directives, and accounting and financial policies.
- i. Ensuring that the Agency operates within its approved budget allocation in fulfilling its mandate, and that public funds are used for the purpose intended with integrity and honesty.
- j. Developing the Agency's MOU with the Minister and signing it on behalf of the Board.
- k. Submitting the Agency's business plan, budget, annual report and financial reports, on behalf of the Board, to the Minister in accordance with the timelines specified in the applicable TB/MBC and government directives, and Appendix 1 of this MOU.
- l. Providing the Minister with every external audit report (including third-party audits), a copy of the Agency's response to each report, and any recommendation in the report. The Minister may share the audit reports with the Minister of Finance and the President of Treasury Board.
- m. Advising the Minister annually on any outstanding audit recommendations per direction of the Board of Trustees.
- n. Ensuring that members are informed of their responsibilities under the PSOA with regard to the rules of ethical conduct, including the political activity rules.
- o. Ensuring appropriate management systems are in place (financial, information technology, human resources) for the effective administration of the Agency.
- p. Ensure effective public communications and relations for the Agency, in accordance with the Public Communications Protocol.
- q. Cooperating with any review or audit of the Agency directed by the Minister or TB/MBC.
- r. Fulfilling the role of ethics executive for government appointees to the Agency, promoting ethical conduct and ensuring that all members of the Agency are familiar with the ethical requirements of the PSOA and the regulations and directives made under that Act, including in respect of conflict of interest, political activity and the protected disclosure of wrongdoing.
- s. Signing the MOU for the Agency as authorized by the Board.

- t. Keeping the Minister informed of upcoming appointment vacancies and providing recommendations for appointments or re-appointments.
- u. Ensuring compliance with legislative, TB/MBC policy obligations, and accounting and financial policies.

### **8.3 BOARD OF TRUSTEES**

The Board of Trustees is responsible for:

- a. Establishing the goals, objectives, and strategic directions for the Agency within its mandate as defined by the Act, government policies, as appropriate, and this MOU.
- b. Governing the affairs of the Agency within its mandate as set out in the Act, its approved business plan as described in section 10.1 of this MOU, and the policy parameters established and communicated in writing by the Minister.
- c. Directing the development of, and approving the Agency's business plans for submission to the Minister within the timelines agreed upon with the Ministry or this MOU.
- d. Directing the preparation of, and approving the Agency's annual reports for submission to the Minister for approval within the timelines established by the Agency's constituting instrument or the AAD, as applicable.
- e. Making decisions consistent with the business plan approved for the Agency and ensuring that the Agency operates within its budget allocation.
- f. Ensuring that the Agency uses public funds with integrity and honesty, and only for the business of the Agency based on the principle of value for money, and in compliance with applicable legislation and TB/MBC directives.
- g. Ensuring that the Agency is governed in an effective and efficient manner according to accepted business and financial practices, and in accordance with applicable TB/MBC directives.
- h. Establishing such Board committees or oversight mechanisms as may be required to advise the Board on effective management, governance or accountability procedures for the Agency.
- i. Approving the Agency's MOU, and any amendments to the MOU, in a timely manner and authorizing the Chair to sign the MOU, or any amendments to the MOU, on behalf of the Agency.
- j. Approving the Agency's reports and reviews that may be requested by the Minister from time to time for submissions to the Minister within agreed upon timelines.

- k. Directing the development of an appropriate risk management framework, a risk management plan and arranging for risk-based reviews and audits of the Agency, as needed.
- l. Where applicable, ensuring that conflict of interest rules that the Agency is required to follow, as set out in Ontario Regulation 381/07 (or as have been approved and published by the Conflict of Interest Commissioner on the Commissioner's website) are in place for the members of the Board and employees of the Agency.
- m. Establishing performance measures, targets and management systems for monitoring and assessing the Agency's performance.
- n. Directing corrective action on the functioning or operations of the Agency, if needed.
- o. Cooperating with and sharing any relevant information on any risk-based or periodic review directed by the Minister or TB/MBC.
- p. Consulting, as appropriate, with stakeholders on the Agency's goals, objectives and strategic directions.
- q. Providing advice to the Minister, through the Chair, on issues within or affecting the Agency's mandate and operations.
- r. Setting and reporting on the strategic direction for the Agency according to the Minister's Agency mandate letter, Agency's proposed business plan, and the Agency's annual report.
- s. Setting performance objectives for the Executive Director and remuneration terms linked to these objectives for the Executive Director which give due weight to the proper management and use of public resources.

#### **8.4 DEPUTY MINISTER**

The Deputy Minister is responsible for:

- a. Advising and assisting the Minister regarding the Minister's responsibilities for the Agency, including informing the Minister of policy direction, policies and priorities of relevance to the Agency's mandate.
- b. Advising the Minister on the requirements of the AAD and other directives that apply to the Agency.
- c. Recommending to the Minister, as may be necessary, the evaluation or review, including a risk-based review, of the Agency or any of its programs, or changes to the management framework or operations of the Agency.
- d. Facilitating regular briefings and consultations between the Chair and the Minister, and between the Ministry staff and the Agency staff as needed.

- e. Attesting to TB/MBC on the provincial Agency's compliance with the mandatory accountability requirements set out in the AAD and other applicable TB/MBC directives, the government's operational policies and policy directions based on the annual Certificate of Attestation from the Agency Chair to the Minister.
- f. Ensuring that the Ministry and the Agency have the capacity and systems in place for on-going risk-based management, including appropriate oversight of the Agency.
- g. Ensuring that the Agency has an appropriate risk management framework and a risk management plan for managing risks that the Agency may encounter in meeting its program or service delivery objectives.
- h. Undertaking timely risk-based reviews of the Agency, its management or operations, as may be directed by the Minister or TB/MBC.
- i. Establishing a framework for reviewing and assessing the Agency's business plans and other reports.
- j. Supporting the Minister in reviewing the performance targets, measures and results of the Agency.
- k. Advising the Minister on documents submitted by the Agency to the Minister for review or approval, or both.
- l. Submitting to the Minister, as part of the annual planning process, a risk assessment and management plan for each risk category.
- m. Undertaking reviews of the Agency as may be directed by the Minister.
- n. Cooperating with any review of the Agency as directed by the Minister or TB/MB.
- o. Monitoring the Agency on behalf of the Minister while respecting the Agency's authority, identifying needs for corrective action where warranted, and recommending to the Minister ways of resolving any issues that might arise from time to time.
- p. Negotiating a draft MOU with the Chair of the Agency, as well as any amendments to the MOU, as directed by the Minister.
- q. Consulting with the Agency's Executive Director or Chair, as needed, on matters of mutual importance including services provided by the Ministry and compliance with TB/MBC directives and Ministry policies.
- r. Meeting with the Executive Director or Chair, as needed, or as directed by the Minister, or upon the request of the Chair or Executive Director.
- s. Arranging for administrative, financial and other support to the Agency, as specified in this MOU.

- t. Reporting to TBS on the Agency and Ministry's compliance with the AAD, as required.
- u. Informing the Executive Director or Chair, in writing, of new government directives and any exceptions to, or exemptions in whole or in part from TB/MBC directives, government policies, or Ministry administrative policies.
- v. When required, submitting a report to the Secretary of TB/MBC on the wind-down of the Agency, following the disposition of any assets, completion of any outstanding responsibilities by the Agency, and the termination of any appointments.

## **8.5 AGENCY EXECUTIVE DIRECTOR (ED)**

The Executive Director is responsible for:

- a. Managing the day-to-day financial, analytical, and administrative affairs of the Agency in accordance with the mandate of the Agency, TB/MBC and government directives, accepted business and financial practices, and this MOU.
- b. Advising the Chair on the requirements of and the Agency's compliance with the AAD, as well as other TB/MBC and government directives and policies, and Agency by-laws and policies, including annually attesting to the Chair on the Agency's compliance with mandatory requirements.
- c. Applying policies and procedures so that public funds are used with integrity and honesty.
- d. Providing leadership and management to the Agency staff, including human and financial resources management, in accordance with the approved business plan, accepted business and financial practices and standards, the Agency's constituting instrument, and government directives.
- e. Establishing and applying a financial management framework for the Agency in accordance with applicable Minister of Finance/Treasury Board controllership directives, policies and guidelines.
- f. Translating the goals, objectives and strategic directions of the Board into operational plans and activities in accordance with the Agency's approved business plan.
- g. Ensuring that the Agency has the oversight capacity and an effective oversight framework in place for monitoring its management and operations.
- h. Keeping the Board, through the Chair, informed with respect to implementation of policy and the operations of the Agency.

- i. Establishing and applying systems to ensure that the Agency operates within its approved business plan.
- j. Establishing and applying the Agency's risk management framework and risk management plan in place as directed by the Chair/Board.
- k. Supporting the Chair and the Board in meeting their responsibilities, including compliance with all applicable legislation, directives, policies, procedures and guidelines.
- l. Carrying out in-year monitoring of the Agency's performance and reporting on results to the Board through the Chair.
- m. Keeping the Ministry and the Chair advised on issues or events that may concern the Minister, the Deputy Minister and the Chair in the exercise of their responsibilities.
- n. Seeking support and advice from the Ministry, as appropriate, on Agency management issues.
- o. Establishing and applying a system for the retention of Agency documents and for making such documents publicly available when appropriate, for complying with the *Freedom of Information and Protection of Privacy Act* and the *Archives and Recordkeeping Act*, where applicable.
- p. Undertaking timely risk-based reviews of the Agency's management and operations.
- q. Consulting with the Deputy Minister, as needed, on matters of mutual importance, including services provided by the Ministry, and on TB/MBC and government directives and Ministry policies.
- r. Cooperating with a periodic review directed by the Minister or TB/MBC.
- s. Fulfilling the role of ethics executive for public servants, other than government appointees, who work in the Agency. Promoting ethical conduct and ensuring that all members of the Agency are familiar with the ethical requirements of the PSOA and the regulations and directives made under that Act, including in respect of conflict of interest, political activity, and the protected disclosure of wrongdoing.
- t. Keeping the Board, through the Chair, informed about operational matters.
- u. Preparing the Agency's annual reports and business plans, as directed by the Board.
- v. Preparing financial reports for approval by the Board.
- w. Preparing, for approval by the Board, a performance review system for staff and implementing the system.



- x. Attesting to the compliance of the Agency to applicable directives and policies and support the Board of Trustees to provide the stating of compliance of the Agency.

## **9. Ethical Framework**

The members of the Board who are appointed by the Lieutenant Governor in Council are subject to the conflict of interest provisions of the AAD and the conflict of interest provisions of the PSOA and its regulations.

Board members shall not use any information gained as a result of their appointment to or membership on the Board for personal gain or benefit. A member who has reasonable grounds to believe that he or she has a conflict of interest in a matter before the Board, or a committee of the Board, shall disclose the nature of the conflict to the Chair at the first opportunity and shall refrain from further participation in the consideration of the matter. The Chair shall cause to be recorded in the minutes of the meeting of the Board any declared conflicts of interest.

The Chair, as the ethics executive for the provincial Agency, is responsible for ensuring that appointees of the Agency are informed of the ethical rules to which they are subject, including the rules on conflict of interest, political activity and protected disclosure of wrongdoing that apply to the Agency.

The Executive Director, as the Ethics Executive for the Agency's staff, is responsible for ensuring that staff of the Agency are informed of the ethical rules to which they are subject, including the rules on conflict of interest, political activity and protected disclosure of wrongdoing that apply to the Agency.

## **10. Reporting Requirements**

### **10.1 BUSINESS PLAN**

- a. The Chair will ensure that the Minister is provided annually with the Agency's business plan covering a minimum of three (3) years from the current fiscal year. The annual business plan shall be in accordance with the requirements set out in the AAD and include a financial budget, a risk assessment, management plan, and key priorities and risks of the long-term capital plan, for approval by the Minister.
- b. The annual business plan is to be submitted to the Ministry's Assistant Deputy Minister responsible for Agency oversight or designated equivalent within three months prior to the Agency's fiscal year-end.
- c. The Chair is responsible for ensuring that the Agency's business plan includes a system of performance measures and reporting on the achievement of the

objectives set out in the business plan. The system must include performance goals, how they will be achieved, and targeted results and timeframes.

- d. The Chair will ensure that the business plan includes a risk assessment and risk management plan to assist the Ministry in developing its own risk assessment and risk management plan as required by the AAD in order to assess risks, develop and maintain necessary records, and report to TB/MBC.
- e. The Chair will ensure that publicly posted business plans do not disclose personal information, sensitive employment and labour relations information, solicitor-client privileged information, Cabinet confidential information, trade secrets, information that would prejudice the financial or commercial interests of the provincial Agency in the marketplace, and information that would otherwise pose a risk to the security of the facilities and/or operations of the provincial Agency.
- f. The Minister will review the Agency's annual business plan and will promptly advise the Chair whether or not he/she concurs with the direction proposed by the Agency. The Minister may advise the Chair where and in what manner the Agency's plan varies from government or Ministry policy or priorities as may be required, and the Chair, on behalf of the Board of Trustees, will revise the Agency's plan accordingly. Business plans are only to be considered valid once the responsible Minister has approved the plan and the approval has been expressed in writing.
- g. In the absence of a Minister-approved business plan, the agency is to continue its business according to standard operating procedures without engaging in new initiatives referenced in the business plan until Minister's approval is received.
- h. In addition, TB/MBC may require the Minister to submit the Agency's business plan to TB/MBC for review at any time.
- i. The Chair, through the ED, will ensure that its Minister-approved business plan is made available to the public in an accessible format, in both official languages, on the Agency's website within 30 calendar days of Minister's approval of the plan.

## **10.2 ANNUAL REPORTS**

- a. The Chair is responsible for ensuring that the Agency's annual report is prepared and submitted to the Minister for approval within 120 calendar days after the Agency's fiscal year end or, where the Auditor General is the auditor of record, within 90 calendar days of the Agency's receipt of the audited financial statement.
- b. The annual report shall be in accordance with the requirements set out in the AAD.
- c. The Chair, through the ED, will ensure that the annual report is prepared as a text document, without images or graphics, with the exception of the provincial and Agency logos on the front page.

- d. The Chair will ensure that publicly posted annual reports do not disclose: personal information, sensitive employment and labour relations information, solicitor-client privileged information, Cabinet confidential information, trade secrets, information that would prejudice the financial or commercial interests of the provincial Agency in the marketplace, and information that would otherwise pose a risk to the security of the facilities and/or operations of the provincial Agency.
- e. The Minister will receive and review the Agency's annual report and will approve the report within 60 calendar days after the day of receipt. .
- f. The Minister will, within 30 calendar days of approval, table the report in the Legislative Assembly.
- g. The Chair, through the ED, will ensure that its annual report is publicly posted in an accessible format, in both official languages, on the Agency's website after the report has been tabled in the Legislature and within 30 calendar days of Minister approval.
- h. When distributing annual reports, digital formats and channels for distribution must be used unless otherwise required (e.g. by directive, legislation).

### **10.3 OTHER REPORTS**

The Chair is responsible on behalf of the Board of Trustees for:

- a. Ensuring that the reports and documents set out in Appendix 1 to this MOU are submitted for review and approval by the Minister in accordance with the prescribed timelines.
- b. Supplying specific data and other information, at the request of the Minister or the Deputy Minister, that may be required from time-to-time for the purpose of the Ministry's administration.

### **11. Public Posting Requirements**

- a. The provincial Agency, through the Chair on behalf of the Board of Trustees, will ensure that the following approved governance documents are posted in an accessible format, in both official languages, on the Agency's website within the specified timelines:
  - Memorandum of understanding and any letter of affirmation – 30 calendar days of signing by both parties
  - Agency mandate letter – no later than the corresponding annual business plan
  - Annual business plan – 30 calendar days of Minister's approval

- Annual report – 30 calendar days of Minister’s approval (the report must first be tabled in the Legislature).
- b. Posted governance documents should not disclose personal information, sensitive employment and labour relations information, solicitor-client privileged information, Cabinet confidential information, trade secrets or scientific information, information that would prejudice the financial or commercial interests of the provincial Agency in the marketplace, and information that would otherwise pose a risk to the security of the facilities and/or operations of the provincial Agency
- c. The provincial Agency, through the Chair on behalf of the Board of Trustees, will ensure that the expense information for appointees and senior management staff are posted on the Agency’s website, in accordance with the requirements of the MBC Travel, Meal and Hospitality Expenses Directive.
- d. The provincial Agency, through the Chair on behalf of the Board of Trustees, will ensure that any other applicable public posting requirements are met.

## **12. Communications and Issues Management**

The parties to this MOU recognize that the timely exchange of information on the operations and administration of the Agency is essential for the Minister to meet his/her responsibilities for reporting and responding to the Legislative Assembly on the affairs of the Agency. The parties also recognize that it is essential for the Chair on behalf of the Board of Trustees to be kept informed of the government initiatives and broad policy directions that may affect the Agency’s mandate and functions.

The Minister and the Chair on behalf of the Board of Trustees, therefore, agree that:

- a. The Chair will keep the Minister advised, in a timely manner, of all planned events or issues, including contentious matters, that concern or can be reasonably expected to concern the Minister in the exercise of his/her responsibilities.
- b. The Minister will consult with the Chair in a timely manner, as appropriate, on broad government policy initiatives or legislation being considered by the government that may impact on the Agency’s mandate or functions, or which otherwise will have a significant impact on the Agency.
- c. The Minister and the Chair will consult with each other on public communication strategies and publications. They will keep each other informed of the results of stakeholder and other public consultations and discussions.
- d. The Minister and the Chair will meet at least annually, or as requested by either party, to discuss issues relating to the fulfillment of the Agency’s mandate, management and operations.

- e. The Deputy Minister and the Executive Director will meet at least biannually, or as requested by either party, to discuss issues relating to the delivery of the Board's mandate and the efficient operation of the Agency, and the provision of services by the Ministry to the Agency, if applicable. The DM and the Executive Director shall provide timely information and advice to each other concerning significant matters affecting the Agency's management or operations.
- f. The Agency will adhere to the Public Communications Protocol as established by the Ministry.

### **13. Administrative Arrangements**

#### **13.1 APPLICABLE GOVERNMENT DIRECTIVES**

- a. The Chair, on behalf of the Board of Trustees, is responsible for ensuring that the Agency operates in accordance with all applicable TB/MBC, PSC and government directives, as well as applicable Ministry financial and administrative policies and procedures. Appendix 2 to this MOU provides a list of applicable directives and policies.
- b. The Ministry will inform the Agency of amendments or additions to directives, policies and guidelines that apply to the Agency; however, the Agency is responsible for complying with all directives, policies and guidelines to which it is subject.
- c. In addition to complying with the MBC Realty Directive, the Agency shall comply with the Ministry of Infrastructure Realty Policy including any appendices to this policy when acquiring space for accommodation and program purposes. The Ministry will ensure that the Agency is provided with any updates to this policy.
- d. The inclusion of alcohol in the provision of hospitality is integral to the business of the Agency. Any such expenses shall be in compliance with, and receive prior approval from, the appropriate authority according to the Travel, Meal and Hospitality Expenses Directive. The Agency's mandate may require the inclusion of alcohol in providing hospitality as part of business practices. An industry standard is to offer hospitality at the kind of celebratory events the Agency hosts for sponsors, donors and members. These events are integral to the Agency's ability to raise funds from sponsors and donors, recognize them for their support, and attract new supporters and members. The Agency does not incur expenses for alcohol. The Agency has sponsorships with suppliers of beer and wine who provide the alcohol as per their agreements.

#### **13.2 ADMINISTRATIVE AND ORGANIZATIONAL SUPPORT SERVICES**

- a. The Deputy Minister is not responsible for providing the Agency with any administrative and organizational support services. The Board has the authority and

responsibility for the Agency's administrative services and the Board is accountable to the Minister for those administrative services.

### **13.3 LEGAL SERVICES**

- a. The Agency retains its own legal services.

### **13.4 CREATION, COLLECTION, MAINTENANCE AND DISPOSITION OF RECORDS**

- a. The Chair, on behalf of the Board of Trustees, is responsible for ensuring that a system is in place for the creation, collection, maintenance and disposal of records.
- b. The Board, through the Chair, is responsible for ensuring that the provincial Agency complies with all government legislation, directives and policies related to information and records management.
- c. The ED, the Chair and the Board shall protect the legal, fiscal and other interests of the Agency by implementing reasonable measures to ensure the ongoing viability, integrity, preservation and security of all official records created, commissioned or acquired by the Agency. This includes, but is not limited to, all electronic records, such as emails, information posted on the Agency's website(s), database data sets, and all records stored on personal computers and shared drives.
- d. The Chair, on behalf of the Board of Trustees, is responsible for ensuring measures are implemented requiring the Agency's employees to create full, accurate and reliable records that document and support significant business transactions, decisions, events, policies and programs.
- e. In accordance with s. 10 of the *Auditor General Act*, the Auditor General is entitled to have free access to all books, accounts, financial records, electronic data processing records, reports, files and all other papers, things or property belonging to or used by the Agency of the Crown that the Auditor General believes to be necessary to perform his or her duties under this Act. 2004, c. 17, s. 13.

### **13.5 INTELLECTUAL PROPERTY**

- a. The Chair, on behalf of the Board of Trustees, is responsible for ensuring that the legal, financial and other interests of the government related to intellectual property are protected in any contract that the Agency may enter into with a third party that involves the creation of intellectual property.

### **13.6 FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY**

- a. The Chair and the Minister acknowledge that the Agency is bound to follow the requirements set out in the *Freedom of Information and Protection of Privacy Act*

(FIPPA) in relation to the collection, retention, security, use, distribution and disposal of records.

- b. The Executive Director is the institution head for the purposes of the FIPPA.

### **13.7 SERVICE STANDARDS**

- a. The provincial Agency shall establish customer service and quality standards that are consistent with the appropriate standards of the government, the Ministry and the Ontario Public Service.
- b. The Chair will ensure that the Agency delivers its services at a quality standard that reflects the principles and requirements of the OPS Service Directive.
- c. The Agency has in place a formal process for responding to complaints about the quality of services received by clients/customers of the Agency consistent with the government's service quality standards.
- d. The Agency's annual business plan will include performance measures and targets for client/customer service and the Agency's response to complaints.
- e. The provincial Agency shall comply with the *Accessibility for Ontarians with Disabilities Act*.

## **14. Financial Arrangements**

### **14.1 GENERAL**

- a. All financial procedures for the provincial Agency shall be in accordance with applicable TB/MBC and Ministry of Finance directives and guidelines, Ministry corporate financial and administrative policies and procedures, and other Government of Ontario guidelines, directives and policies, as set out in Appendix 2 of this MOU.
- b. When ordered to do so by the Minister of Finance and/or the President of the Treasury Board, pursuant to Section 16.4 of the *Financial Administration Act*, the Agency shall pay into the Consolidated Revenue Fund (CRF) any money that the Minister of Finance and/or the President of the Treasury Board determines is surplus to its requirements.
- c. Pursuant to Section 28 of the *Financial Administration Act*, the Agency shall not enter into any financial arrangement or commitment, guarantee, indemnity or similar transaction that may increase, directly or indirectly, the indebtedness or contingent liabilities of the Government of Ontario without the written approval of the Minister of Finance and/or the President of the Treasury Board. The Minister's approval is required before seeking statutory approval from the Minister of Finance.

- d. The provincial Agency's approved operating and capital allocations may be adjusted in a given year if in-year fiscal constraints are ordered by Cabinet or the Minister. The Agency will be provided with notice of changes to its allocation as soon as is reasonably possible. Where the Agency must reallocate resources as a result of its operating and/or capital allocations being adjusted, the Agency shall inform and discuss this with the Ministry before making such changes.

## **14.2 FUNDING**

- a. The Agency is funded by the Government of Ontario, out of the Consolidated Revenue Fund pursuant to an appropriation authorized by the Legislative Assembly, and is subject to adjustments made by the Minister, TB/MBC or the Legislative Assembly.
- b. The Executive Director will prepare estimates of the Agency's expenditures for inclusion in the Ministry's business plan for presentation to the Legislative Assembly. The Chair will deliver these estimates to the Minister in sufficient time to be analyzed and approved by the Minister.
- c. The estimates provided by the Chair may, after appropriate consultation with the Chair, be altered as required. The parties acknowledge that TB/MBC has final decision-making authority.
- d. Financial procedures of the Agency must be in accordance with TB/MBC and Ministry of Finance directives and guidelines and other applicable government direction.
- e. The provincial Agency shall maintain a bank account in its own name and manage its financial activities, including leasing, investment and management of cash in accordance with the Ontario Financing Authority's policy directions

## **14.3 FINANCIAL REPORTS**

- a. The Chair, on behalf of the Board of Trustees, will provide to the Minister audited annual financial statements, and will include them as part of the Agency's annual report. The statements will be provided in a format that is in accordance with the province's stated accounting policies issued by the Office of the Provincial Controller Division.
- b. The Agency will submit its salary information to the Minister of Finance and/or the President of the Treasury Board, through the Ministry, in accordance with the *Public Sector Salary Disclosure Act, 1996*.
- c. Where an Agency meets the criteria for consolidation in the Province's accounts, the Agency will complete and submit consolidation templates to the Ministry.



## **14.4 TAXATION STATUS: HARMONIZED SALES TAX (HST)**

### Collection/Remittance of HST

- a. The Agency is responsible for complying with its obligations as a supplier under the federal *Excise Tax Act* to collect and remit HST in respect of any taxable supplies made by it.

### Payment/Recovery of HST

- b. The Agency is responsible for paying HST where applicable, in accordance with the *Excise Tax Act* (Canada).
- c. The Agency is not entitled to claim HST government rebates.
- d. The Agency is expected to claim any refunds, input tax credits or other rebates under the *Excise Tax Act* (Canada) for which it is eligible.
- e. Should the Agency intend to make application to be added to Schedule “A” of the Canada-Ontario Reciprocal Taxation Agreement.

If the Agency’s application is accepted, then:

- i) the Agency would be entitled to claim HST government rebates in respect of any HST paid by it, subject to any restrictions specified by Finance Canada.
- ii) the Agency will not claim an HST government rebate in respect of tax for which it has claimed a refund, input tax credit or other rebate under the *Excise Tax Act* (Canada).
- iii) the Agency is responsible for providing the Ministry of Finance or the Canada Revenue Agency, upon request, with any information necessary to determine the amount of an HST government rebate

## **15. Audit and Review Arrangements**

### **15.1 AUDITS**

- a. In accordance with section 9 of the *Auditor General Act*, the Agency is audited annually by the Auditor General of Ontario.
- b. The Agency is subject to periodic review and value-for-money audit by the Auditor General of Ontario under the *Auditor General Act* or by the Ontario Internal Audit Division of Treasury Board Secretariat.

- c. The Ontario Internal Audit Division may also carry out an internal audit, if approved to do so by the Ministry's Audit Committee or by the Government Corporate Audit Committee.
- d. Regardless of any previous or annual external audit, the Minister may direct that the Agency be audited at any time.
- e. The Agency will promptly provide a copy of every external audit report (including third-party audits) to the Minister, who may share it with the Minister of Finance/President of Treasury Board. The Agency will also provide a copy of its response to the audit report and any recommendations therein. The Agency will advise the minister annually on any outstanding audit recommendations.
- f. The Chair, on behalf of the Board of Trustees, may request an external audit of the financial transactions or management controls of the Agency, at the Agency's expense.

## **15.2 OTHER REVIEWS**

- a. The Agency is subject to periodic review initiated at the discretion and direction of TB/MBC or the Minister. The review may cover such matters relating to the Agency that are determined by TB/MBC or the Minister, and may include the mandate, powers, governance structure and/or operations of the Agency.
- b. In requiring a periodic review, the Minister or TB/MBC shall determine the timing and responsibility for conducting the review, the roles of the Chair, the Board of Trustees, and the Minister, and how any other parties are involved.
- c. A mandate review of the provincial Agency will be conducted at least once every seven years.
- d. The Minister will consult the Chair, on behalf of the Board of Trustees, as appropriate during any such review.
- e. The Chair, Executive Director and Board will cooperate in any review.
- f. In the event of a review initiated at the direction of the Minister, the Minister shall submit any recommendations for change that are developed from the results of the review regarding the Agency to TB/MBC for consideration.

## **16. Staffing and Appointments**

### **16.1 STAFFING REQUIREMENTS**

- a. Agency employees are employed by the Agency pursuant to subsection 5(3) of the Act.

- b. Employees of the Agency are not public servants for the purposes of Part III of the *Public Service of Ontario Act, 2006*. Employees are public servants for the purposes of Parts I, IV, V and VI of the *Public Service of Ontario Act, 2006*

## **16.2 APPOINTMENTS**

- a. The Chair and vice-Chair are appointed by the Lieutenant Governor in Council on the recommendation of the Premier pursuant to subsections 3(1) and 3(4) of the Act for a fixed term of three years and may be re-appointed for one or more further terms.
- b. The members are appointed by the Lieutenant Governor in Council on the recommendation of the Premier pursuant to subsection 3(1) of the Act for a fixed term of three years and may be re-appointed for one or more further terms.
- c. The maximum number of members is 23, as set out in subsection 3(1) of the Act. There is no minimum number of members.

## **16.3 REMUNERATION**

- a. The Board members serve without remuneration in accordance with section 10 of the Act. They are, however, reimbursed for allowable expenses.
- b. Travel expenses of Board members must comply with the TB/MBC Travel, Meal and Hospitality Expenses Directives. Reasonable expenses shall be reimbursed.

## **17. Risk Management, Liability Protection and Insurance**

### **17.1 RISK MANAGEMENT**

- a. The Chair, on behalf of the Board of Trustees, is responsible for ensuring that a risk management strategy is developed for the provincial Agency, in accordance with the OPS Risk Management process.
- b. The Agency shall ensure that the risks it faces are dealt with in an appropriate manner.

### **17.2 LIABILITY PROTECTION AND INSURANCE**

- a. The Agency is covered under the Government's protection program for claims by third parties for bodily injury, property damage and personal injury.
- b. The Agency maintains directors' and officers' errors and omissions insurance.
- c. The Agency is covered under the government's automobile insurance policies. The Agency pays the necessary premiums on an annual basis.

- d. The Agency is responsible for purchasing and maintaining sufficient insurance for the buildings on the premises and for the art that the Agency owns.
- e. The Agency is responsible for purchasing and maintaining sufficient insurance for the art that is loaned to the Agency.

#### **18. Effective Date, Duration and Periodic Review of the MOU**

- a. This MOU becomes effective on the date it is signed by the Minister as the last party to execute it (“Original Effective Date”) and continues in effect until it is revoked or replaced by a subsequent MOU signed by the parties.
- b. A copy of the signed MOU and any successor MOU must be provided to the Secretary, Treasury Board/Management Board of Cabinet.
- c. Upon a change in the Minister or Chair, both parties must affirm by letter that this MOU will continue in force without a review (and attach the signed letter to the MOU); or alternatively, they may agree to revise it and sign a new MOU within six (6) months of the change.
- d. A copy of the letter of affirmation, or a new MOU between the Minister and Chair must be provided to the Secretary, Treasury Board/Management Board of Cabinet within six months of the new party or parties’ commencement.
- e. Either the Minister or the Chair, on behalf of the Board of Trustees, may initiate a review of this MOU by written request to the other.
- f. If either of the parties deems it expedient to amend this MOU, they may do so only in writing. Any amendment shall only be effective after approval by the parties.
- g. A full review and replacement of this MOU will be conducted immediately in the event of a significant change to the Agency’s mandate, powers or governance structure as a result of an amendment to the *McMichael Canadian Art Collection Act*.
- h. At a minimum, this MOU will be reviewed at least once every 5 years to ensure it is current and consistent with government expectations.

## Appendix 1: Summary of Agency Reporting Requirements

DUE DATE	REPORT / DOCUMENT	NAMES OF RESPONSIBLE OFFICIALS
Submitted annually within three (3) months prior to the Agency's fiscal year end	Agency Business Plan a. Prepares b. Approves c. Provides to Minister	a. Executive Director b. Board c. Chair
Annual Reports to be submitted annually within 120 calendar days of the provincial Agency's fiscal year-end when the auditor of record is not the Auditor General. When the Auditor General is the auditor of record, submit their annual report to the Minister within 90 calendar days of completing the financial audit.	Annual Report a. Prepares b. Approves c. Provides to Minister	a. Executive Director b. Board c. Chair
Semi-annually or as requested by the Ministry	Multi-Year Planning, Budget and Public Accounts consolidation forms (where applicable)	Director of Finance and Operations
Annually –following end of fiscal year	Annual Executive Compensation Compliance Report Form	Chair or equivalent highest-ranking officer
Annually	Audited Financial Statements Certificate of Attestation	Independent Auditor Chair
As a best practice, reviewed at least once every 5 years	Memorandum of Understanding	Chair and Minister
45 calendar days following the close of a quarter; or as requested by the Ministry	The Quarterly Governance Package shall include the following requirements (unless agreed otherwise with the Ministry):	Executive Director;

DUE DATE	REPORT / DOCUMENT	NAMES OF RESPONSIBLE OFFICIALS
	<ul style="list-style-type: none"> <li>a. a balance sheet;</li> <li>b. income statement (forecast vs budget);</li> <li>c. a Statement of Changes in cash position;</li> <li>d. Statement of changes to reserve fund balance (forecast vs actual)</li> <li>e. Segmented/departmental information describing actual vs. budgeted information regarding revenues and expenses;</li> <li>f. An explanation to the satisfaction of the Minister regarding any major variances from the Recipient's approved operating budget.</li> <li>g. Capital payment request and updates report (applicable if Agency receives capital funding)</li> <li>h. As required, One-time operating grant funding compliance reporting requirements</li> <li>i. Risk assessment and management plan</li> <li>j. Reporting on Agency performance measures</li> <li>k. All Board Packages for the most recent quarter</li> </ul> <p>Other Reports and Documents – At the request of the Minister or Deputy Minister, the Recipient will supply specific data and other information that may be required.</p>	

## **Appendix 2: Applicable Government of Ontario Directives**

1. The following TB/MBC and Government directives, guidelines and policies apply to the Agency:

- Agencies & Appointments Directive
- Accountability Directive
- Advertising Content Directive
- Open Data Directive
- Perquisites Directive
- Procurement Directive, as it applies in whole or in part to “Other Included Entity”
- Procurement Directive on Advertising, Public and Media Relations and Creative Communications Services
- Realty Directive
- Transfer Payment Accountability Directive (if applicable)
- Travel, Meal and Hospitality Expenses Directive
- Visual Identity Directive
- Distributing and Pricing Government Information (Intellectual Property)

2. The above directive list is not exhaustive. The Agency is responsible for complying with all directives, policies, guidelines and public communications protocols, to which it is subject, irrespective of whether it is included on the list above.

The Ministry will inform the Agency of amendments or additions to directives, policies, guidelines, and public communications protocols that apply to the Agency.