

# BTC Board of Directors: Governance Update

By Warren Bell, Anjlee Patel and Rob Graham

**We know reading about governance on the BTC Board of Directors isn't everyone's idea of a real "page turner" but we wanted to share some proposals with you. Before we do, perhaps some context would be helpful.**

As you know, government legislation concerning endangered species, the Greenbelt and the protection of biospheres impacts the BTC like never before. We know people are an essential part of biodiversity. Together our work has strengthened access to, and the protection of, the Niagara Escarpment Biosphere. We have been doing this for a half-century. Meanwhile, population growth and urbanization in Southern Ontario are accelerating. Our mission, values and strategies are as important now as they have ever been.

At the same time, government regulation for not-for-profit organizations continues to evolve. It's in the backdrop of these challenges that the BTC's Board of Directors approved changes to its by-laws on February 4, 2017 as part of a two-year review of our governance, in an effort to strengthen our Board, to ensure our own regulatory compliance and to grow our fundraising to preserve more of the Bruce Trail.

Thousands of us volunteer our time, and a great many of us donate our retirement lives, to the Bruce Trail Conservancy. Most of us belong to one of our nine Clubs. The Clubs are the backbone of the BTC. To put it succinctly, we propose changing the way Directors come on to the Board, while maintaining Club representation on the Board, and without making any changes to the way the Clubs govern themselves.

In a nutshell these proposed changes codify a nominations and an elections process for all BTC Members wishing to serve on the Board of Directors while reserving nine of the nineteen seats on the Board, one for each Club. These proposed by-law changes are subject to the Membership's approval at the BTC's Annual General Meeting (AGM) on September 23, 2017.

To facilitate the governance review,

the Board sought external legal counsel from the law firm Fasken Martineau that specializes in not-for-profit (NFP) law and that worked closely with our Board's Governance Committee; the cost of this was donated. In addition, one of our Directors works as in-house legal counsel at Infrastructure Ontario and advises on general corporate and governance matters. Professional legal advice helped guide the Board's work and carefully brings us into line with existing legal requirements and anticipated new provincial legislation. These changes pass all legal tests.

It's proposed all nominees will stand for election to the Board subject and to the same minimum requirements – those mandated by the Province of Ontario and those proposed in the BTC's own by-laws and policies. A complete reading of these may be found on our website. Here are the basic requirements:

1. *"To be eligible and qualify to serve as a Director, a person:*

*shall be a Member in good standing of the BTC;*

*shall be at least 18 years of age;*

*shall not be an undischarged bankrupt;*

*shall not be found under the Substitute Decisions Act, 1992 or under the Mental Health Act to be incapable of managing property;*

*shall not be found to be incapable by any court in Canada or elsewhere; and shall not be an "ineligible individual" under the Income Tax Act."*

Also;

2. *"When the Nominating Team has advertised for vacancies, all nominees must have delivered to the registered office of the BTC a completed application form signed by three BTC Members before the end of business on a date determined by the Nominating Team. The nominee must be a Member of the BTC. The nominee must not be an employee of the BTC. All nominees, recommended or not, shall go through the nominations process and, in the very least, be compliant with the nomination requirements of Provincial law and the by-laws of the BTC."*

From time to time the Board will require specialized skills. These might be in areas including law, finance or government relations. Where skill gaps are identified, the nominations process will work to fill them. At the same time, the human resources of any Club must, and always will, be taken into account. *In other words, if for example a Club doesn't happen to have an accountant and the Board is looking to recruit one, the Club's nominee will not be excluded because of this.*

In the unlikely event a Club's nominee was somehow not accepted by the BTC Board (e.g. a nominee did not meet minimum standards set out in provincial law or the BTC's by-laws and policies) then the Club would be asked to submit another nominee. In the even more unlikely event a second nominee was somehow not acceptable to the Board for the same reasons then, as a last resort, a Director would be found to develop ties with the Club or the Club President would be invited to attend BTC Board meetings and voice the Club's perspective until a suitable nominee is found.

According to provincial law, only the Membership of the BTC may elect and remove Directors to the BTC Board. Making changes to the governance structure of every Club to get around this basic legal requirement would entail mandating governance changes throughout the Clubs leading to more complex governance structures and voting procedures. It's more straightforward to modify the rules of the BTC Board by treating everyone the same.

The nominations process contemplates having the Board put forward a recommended slate of nominees where the number of candidates equals the number of vacancies on the Board. Consider a year in which two Directors retire, one from a Club, the other not from a Club. This would result in two vacancies on the Board. Once the Board follows the proposed nominations process and endorses two candidates, ensuring one from the Club, another not, these names are placed on the recommended slate of candidates for election at the AGM. At the AGM, a motion will be moved to elect the Board's recommended slate; if



Photo: Jackie Bandle

Voting at the 2016 Annual General Meeting

the motion passes, the two nominees are elected and that's the end of the process.

Suppose, however, the recommended slate was voted down by the Membership at the AGM and that, besides the two candidates on the recommended slate, there were two other candidates who weren't recommended by the Board but who still wanted to run and had gone through the nominations process, making four candidates in total. Then the election would go to an open ballot with the four candidates' names. In this scenario it's possible a candidate on the recommended slate may not be elected, hence the reason for using the recommended slate to assist the Clubs in the election process. The Board recommended slate signals to the BTC Membership a proposed Board for the upcoming year that appropriately represents Club interests and reflects a necessary skills composition.

As mentioned, a complete reading of the proposed changes may be found on the BTC website and are included below. The by-laws will appear in the next *Bruce Trail Magazine* before the Annual General Meeting. It might not be this summer's bestseller, but we want to keep you fully informed. Should you have any questions or feedback, please contact Rob Graham by email at [rgraham@derwyn.ca](mailto:rgraham@derwyn.ca).

Enjoy your summer on the Bruce Trail and thanks for reading this!

*Warren Bell, BTC Board Chair*

*Anjlee Patel, BTC Board Director*

*Rob Graham, BTC Board Director*

## GOV.07.01 Nominations for the Board Policy

### Policy

1. In furtherance of its mission, the Board of the Bruce Trail Conservancy (BTC) strives to be among the most skilled, balanced and successful not-for-profit Boards in Canada. Achieving the highest standards of governance, the Board works as a team to drive forward the mission, values and strategies of the BTC. The nominations process to be followed by the BTC is detailed in this Nominations Policy and should be read in conjunction with the BTC Elections Policy.
2. The BTC has a robust and transparent nominations process; this process is geared towards the identification and nomination of a diverse, skills-based slate of candidates and to ensure that all candidates have been selected through the same process.

### Director Vacancy

3. The number of vacancies to be filled at any Annual Meeting will be determined by the number of Directors who have left the Board or have completed a first or second term. Interim appointees who are filling a position created by a mid-year vacancy must also go through the subsequent nominations and elections processes to remain on the Board.

### Core Competencies and Desired Skills

4. Provincial law and the by-laws of the BTC set forth minimum standards for all nominees. There are core competencies a Director is reasonably expected to have. Core competencies are complemented by additional desired skills that can vary from year-to-year based on the changing needs of the Board. The nominations process strives to match the best mix of nominees' attributes to the needs of the Board.
5. The Governance Committee is responsible for administering Board, peer and self-assessment to identify performance and skill gaps used to populate the Board.

### Nominating Team

6. The Governance Committee appoints a Nominating Team comprised of members of the Governance Committee, which may include a minority of other Board members or BTC members. The Nominating

Team shall not include Directors seeking election. Members of the Governance Committee seeking election shall recuse themselves from the nominations process.

7. The duty of the Nominating Team is to perform the preliminary work necessary to assist in the nominations process, including advertising, interviewing and other functions as required by the Governance Committee and to submit a report (including a slate of recommended nominees) to the Governance Committee for its consideration; the Governance Committee then recommends a slate of nominees to the Board for its consideration. The Board, in turn, presents a "recommended slate" of nominees to the BTC members at the Annual Meeting.
8. The Nominating Team shall publish a report in an issue of the Bruce Trail Magazine (or any successor thereto) and on the BTC website prior to the Annual Meeting listing the names and a brief profile of individuals on the recommended slate and of any other nominees.

### Recommended Slate

9. The nominations process shall determine a recommended slate consisting of nominees recommended through the nominations process and approved by the Board whose core competencies and desired skills best match the requirements of the Board. The number of these nominees will match the number of vacancies on the Board. This slate is recommended to the Membership at the Annual Meeting for election.
10. Individuals who have gone through the nominations process who are not selected to be on the recommended slate may appear on the ballot as 'other nominees'.

### Existing Directors Seeking Re-election

11. Directors are elected to three-year terms. There is no automatic right to renewal for existing Directors to another term. Every Director wishing to run for a second or third three-year term will go through the nominations

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process contemplated in this BTC Nominations Policy. The Governance Committee may, at its discretion, recommend, or not recommend, an existing Director standing for a second or third term based on the skill requirements of the Board, diversity and Director performance.

12. Existing Directors encouraged by the Governance Committee and recommended to stand for a second or third term shall run for re-election on the recommended slate at the Annual Meeting. Directors not recommended for re-election are, nevertheless, able to run as 'other nominees' at the Annual Meeting as long as they meet the minimum requirements as set out in Provincial law and in the BTC by-laws.

## Clubs and Board Composition

13. There shall be nineteen Directors on the BTC Board, who serve at the pleasure of the BTC Membership and owe fiduciary duties to the BTC. There is only one type of Director. In the spirit of ensuring Board composition includes sufficient affinity to the nine BTC Clubs, each Club has the right to propose a candidate to the nominations process who has sufficient ties with the Club to be a Director of the BTC.
14. Each Club is encouraged to participate in the nominations process. While the nominations process needs to balance the human resource capabilities of a Club with the needs of the Board, the nomination process follows the same process for all nominees taking into account core competencies and desired skills, the Provincial law and BTC by-laws.
15. In the event that a Club is unable to nominate a candidate that satisfies the core competencies and desired skills, the Board shall ask the Club to submit another nominee for the Governance Committee's consideration; if the Governance Committee is not satisfied with this second nominee, the Governance Committee shall be tasked with finding a nominee with the necessary core competencies and desired skills who shall be asked to represent the Club at the Board. This Director shall be expected to actively engage with the Club. The Board's skill requirements shall be communicated to the Club Presidents as soon as possible in the nominations process.

## Nominee Requirements

16. When the Nominating Team has advertised for vacancies, all nominees must have delivered to the registered office of the BTC a completed application form signed by three BTC Members before the end of business on a date determined by the Nominating Team. The nominee must be a Member of the BTC. The nominee must not be an employee of the BTC. All nominees, recommended or not, shall go through the nominations process and, in the very least, be compliant with the nomination requirements of Provincial law and the by-laws of the BTC.

## GOV.08.01 Elections to the Board Policy

### Policy

1. This Bruce Trail Conservancy (BTC) Elections Policy shall be posted on the BTC website for public knowledge. The elections process to be followed by the BTC is detailed in this Elections Policy. The BTC Elections Policy should be read in conjunction with the BTC Nominations Policy.

### Board Vacancy

2. The number of vacancies to be filled at the Annual Meeting will be determined by (i) the number of Directors seeking re-election to a second or third term and (ii) the number of Directors who have left the Board, and/or (iii) the requirement that any interim appointees filling a mid-year vacancy go through the subsequent nominations and elections processes to remain on the Board. If there are no vacancies in a given year, there is no election.

### Elections Process

3. The process for the election of Directors at the Annual Meeting shall be as follows:
  - a) The election shall be supervised by an election officer appointed by the Governance Committee, subject to the general authority of the Board Chair or delegate.
  - b) In the case of an election where a ballot is cast, the election officer shall be responsible for the balloting process and shall act as scrutiner.

### First Election Motion

4. At the start of the election, the first motion put to the Members shall be a vote on the



2016 Annual General Meeting

Photo: Kevin Duffy

recommended slate as a whole, comprised of the recommended nominees whose number matches the number of vacancies on the Board.

5. If the Members approve the recommended slate, that is the end of the process and the recommended slate is elected.
6. If the Members reject the recommended slate, the election moves to a vote on each nominee.
7. In this case, a ballot will contain the names in alphabetical order of nominees on the recommended slate and any other nominees.
8. As the decision to elect Directors must be made by resolution of the Members, where there is a tie, both good governance and applicable laws require the Members to use run off votes until the Board has been elected.
9. The results of the election shall be posted and announced immediately upon the conclusion of the election.
10. In accordance with the by-laws, only Members who have held membership for at least fifty (50) days prior to the date of the Annual Meeting may vote in the election.

The vigorous nominations process underpinning the elections policy has been put in place to ensure all Clubs have a presence on the BTC Board. Where contested elections arise and a specific Club finds they do not have ties to a Director, the Club must notify the Chair of the Board and efforts must be made to (1) have an existing Director to develop links to the Club at issue, or (2) where (1) is not appropriate, to ensure the Club President is an invitee to all Board meetings until such time where a Director with sufficient ties is put in place. •