

1983

## c Pr36 Heritage Windsor Act, 1983

Ontario

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## CHAPTER Pr36

**An Act to incorporate Heritage Windsor***Assented to December 16th, 1983*

Whereas Henry Clifford Hatch, Charles Joseph Clark, David Ireland McWilliams, Albert Howard Weeks, Ronald William Ianni, Sylvia Evelyn Ruth Curry, Gerald Freed, Albert Henry Fast and Alexander William McCrindle hereby represent that it is desirable and in the public interest to create a perpetual body to receive, maintain and manage, control and use donations for charitable purposes in the Windsor district; and whereas the applicants hereby apply for special legislation for such purposes; and whereas it is expedient to grant the application;

Preamble

Therefore, Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

**1. In this Act,**Interpre-  
tation

- (a) "Board" means the Board of Directors of Heritage Windsor;
- (b) "director" means a member of the Board;
- (c) "donor" means any person, firm, corporation or estate who, which or that may make any gift or grant of any real or personal property of any nature and wherever situate to Heritage Windsor;
- (d) "Windsor district" means the City of Windsor and such part of the surrounding area in the Province as in the opinion of the Board is readily accessible to Windsor.

**2.—(1)** There is hereby established a corporation without share capital under the name "Heritage Windsor".

Heritage  
Windsor  
incorporated

(2) Heritage Windsor shall be composed of the members for the time being of the Board.

Composition

**3.** The objects of Heritage Windsor are to receive, maintain, manage, control and use the funds entrusted to it for

Objects

charitable purposes within Ontario and, without restricting the generality of the foregoing, to provide for such other charitable purposes relating to welfare and cultural matters as may, in the discretion of the Board, appear to contribute to the mental, moral, cultural and physical improvement of the inhabitants of the Windsor district.

Assistance to  
other  
institutions

**4.** To carry out the objects of Heritage Windsor, the funds available to it may be used for the assistance of such institutions, organizations, agencies and bodies as may be engaged in the promotion or advancement of the objects of Heritage Windsor or any of them and the Board may determine what institutions, organizations, agencies or bodies, whether or not they are within the Windsor district, are to benefit by that assistance in each year, and to what extent.

Powers  
R.S.O. 1980,  
c. 95

**5.** In addition to the powers, privileges and immunities vested in a corporation under the *Corporations Act*, Heritage Windsor is empowered,

- (a) to accept gifts, grants, legacies, devises or bequests of real or personal property of every nature wherever situate or to refuse such gifts, grants, legacies, devises or bequests;
- (b) subject to any other provision of this Act, to use and distribute such portions of the funds available to Heritage Windsor as the Board deems proper, in order to advance the objects of Heritage Windsor;
- (c) subject to any other provision of this Act, to pledge, mortgage or otherwise encumber any of the property of Heritage Windsor or any interest in it including property held in trust;
- (d) to borrow, raise or secure the payment of money for any of the objects of Heritage Windsor by any means whether or not charged upon the property of Heritage Windsor and to redeem or pay off any such obligation;
- (e) to have the custody and management of all or any of the property of Heritage Windsor carried out by one or more trust companies, banks, investment counselors or other financial institutions or agents in such manner as the Board may consider proper;
- (f) to lease any real property held by Heritage Windsor;

- (g) subject to the *Charitable Gifts Act*, to carry on a related business or a business donated to Heritage Windsor and to use the net profits of such business for the purposes of Heritage Windsor and to dispose of such business; R.S.O. 1980,  
c. 63
- (h) to accumulate any unused net annual income from Heritage Windsor for its purposes; and
- (i) to receive, invest and manage endowment and capital funds previously held by or expected to be received for the account of another Canadian charitable, educational or cultural organization, in accordance with an arrangement between Heritage Windsor and the organization and, upon request, to return such funds.

**6.—**(1) The rule against perpetuities and the rule against accumulations do not apply to donations made to or moneys held by Heritage Windsor and the *Accumulations Act* does not apply to donations made to or moneys or property held by it. Non-application of certain rules of law  
R.S.O. 1980,  
c. 5

(2) The *Corporations Act* applies to Heritage Windsor except to the extent that it is inconsistent with this Act. Application of R.S.O.  
1980, c. 95

(3) The *Charitable Gifts Act* and the *Charities Accounting Act* apply to Heritage Windsor and to all donations made to or moneys or property held by it. Application of R.S.O.  
1980, cc. 63,  
65

**7.—**(1) The affairs of Heritage Windsor shall be managed by the Board and, after the term of the first members, shall consist of nine persons who at the time of their appointment are residents of the Windsor district nominated and appointed by the Committee of Nominators from among those persons who, in the opinion of the Committee, have demonstrated an interest in the welfare of the community. Board of Directors

(2) The first members of the Board shall be Henry Clifford Hatch, who shall be the first chairman of the Board, Charles Joseph Clark, David Ireland McWilliams, Albert Howard Weeks, Ronald William Ianni, Sylvia Evelyn Ruth Curry, Gerald Freed, Albert Henry Fast and Alexander William McCrindle and the first Board shall serve for a period of three years after the coming into force of this Act. First Board

**8.—**(1) The Board shall be nominated and appointed by a Committee of Nominators consisting of the following: Committee of Nominators

1. The Mayor of the City of Windsor.

2. The Senior Judge of the County Court of the County of Essex.
3. The chief elected representative of the Windsor Chamber of Commerce, however designated.
4. The chief elected representative of the Windsor and District Labour Council, however designated.
5. The President of the University of Windsor.
6. The President of the Essex Law Association.
7. One resident of the Windsor district who is not a director and who shall be chosen by the members of the Committee referred to in paragraphs 1 to 6,

and the Committee shall elect a chairman from among its members.

*Idem*

(2) If any of the persons listed in subsection (1) refuses or is unable to carry out his or her duties as a member of the Committee of Nominators or if his or her office ceases to exist or becomes known by another name or is reconstituted, two-thirds of the other members of the Committee of Nominators, may either temporarily or permanently substitute for the office such other office as may in their belief as nearly as possible meet the original intent of this Act.

*List to be maintained*

(3) The Board shall maintain a current list of the names of the members of the Committee of Nominators and shall make a copy of the list available to members of the public on request.

*Ineligible persons*

(4) No member or former member of the Committee of Nominators shall be nominated or appointed to the Board until a period of six years has elapsed after such member has ceased to be a member of the Committee of Nominators.

*Duties*

(5) The chairman of the Committee of Nominators shall convene the first meeting of the Committee not less than six weeks before the term of the first directors appointed under subsection 7 (2) expires and shall thereafter fix a date once in each year for a meeting of the Committee of Nominators, and at the meeting, the Committee shall nominate and appoint such members of the Board as are required to fill any vacancies and to succeed members whose terms have expired.

*Quorum, etc.*

(6) Four members present shall form a quorum for the business of the Committee of Nominators and the Committee may act by a majority of its members present at a meeting.

(7) Each member of the Committee of Nominators shall have one vote on the nomination and appointment of each office to be filled. Votes

**9.**—(1) The term of office of a director shall be three years but at the time of nominating and appointing the directors to succeed the first directors appointed under subsection 7 (2), the Committee of Nominators shall determine by lot the term of office of each of the directors so that one-third of the directors shall retire in each succeeding year. Term of office of directors

(2) A person appointed to fill a vacancy in the office of a director shall serve for the remainder of the unexpired term of the director whose office is vacant. Vacancy

(3) A director may be re-appointed but, upon having served nine years, whether or not consecutively, as a director, the person shall cease to be eligible to serve as a director. Re-appointment

(4) The term of office of a director terminates immediately upon the death or resignation of the person or upon the assumption of an office referred to in paragraphs 1 to 6 of subsection 8 (1). Termination of office

(5) The Board may by resolution terminate the term of office of a director, Idem

- (a) who fails to attend three consecutive Board meetings without reasonable excuse;
- (b) who, in the opinion of the Board, is guilty of misconduct, whether in connection with Heritage Windsor affairs or otherwise, which adversely affects the reputation of Heritage Windsor; or
- (c) who suffers from an incapacity that, in the opinion of the Board, may prevent the director from discharging his or her duties for more than eight months.

**10.**—(1) The Board shall meet at least once in each quarter of the year in the Windsor district or at such convenient place as the Board may determine. Board meetings

(2) A quorum of the Board is five members and the Board may act by a majority of its members present at a meeting, but the affirmative votes of six members shall be required for a resolution to apply to amend this Act or to approve the expenditure of Heritage Windsor funds for a specific project or purpose. Quorum, etc.

- Votes (3) Each member of the Board shall have one vote.
- Remuneration (4) A member of the Board shall not receive remuneration for his or her services except the reimbursement of reasonable expenses.
- Powers of Board **11.**—(1) The powers of Heritage Windsor are vested in and shall be exercised by the Board, and without restricting the generality of the foregoing, the Board may,
- (a) elect its own chairman and one or more vice-chairmen from among its members;
  - (b) appoint an executive director, treasurer, secretary or secretary-treasurer and such other officers and employees of Heritage Windsor as it deems expedient and may prescribe their respective duties, powers and authority, and may determine the tenure of each such office, or the period of employment of each employee;
  - (c) subject to subsection 10 (4), fix and determine the remuneration of officers and employees of Heritage Windsor;
  - (d) establish such committees of Board members as it deems proper to establish and to disband such committees;
  - (e) make by-laws, resolutions, rules and regulations not inconsistent with any provision of this Act, touching or respecting any or all of the aforesaid powers of Heritage Windsor or of the Board, and also in respect of all matters pertaining to the business, meetings and proceedings of the Board;
  - (f) open and operate an account with any bank or trust company and deposit in it such funds as may be required from time to time to pay the costs of administering the affairs of Heritage Windsor and to pay the costs from the account;
  - (g) establish by by-law such classifications of non-voting associate members on such terms as it may think will further the objects of Heritage Windsor and to vary such classifications from time to time;
  - (h) invest and reinvest, or cause to be invested and reinvested, all of its funds in investments authorized for the investment of funds of life insurance companies

in Canada but the Board may authorize and direct the retention of any specific assets donated, devised or bequeathed to Heritage Windsor by any testamentary document or deed of trust or otherwise for such length of time as the Board in its sole discretion considers advisable notwithstanding that it does not consist of assets in which Heritage Windsor is authorized to invest by this Act, and Heritage Windsor and the members of the Board shall, under no circumstances, be liable, nor shall any trust company or other trustee acting on the instructions of the Board be liable for any loss or damage that may be suffered by reason of the retention of any such assets or the investments of any such moneys in accordance with the power and authority given in this clause;

- (i) compromise, compound and adjust claims in favour of or against the property or funds held or intended to be held by Heritage Windsor upon such terms and conditions as it considers just, expedient and proper;
- (j) accumulate net income from year to year with the intention of distributing such accumulation for the purposes of Heritage Windsor; and
- (k) pay, apply and distribute such portion of the net annual income arising from the investment of the funds of Heritage Windsor and such portion of the capital of the funds of Heritage Windsor as the Board may decide or as the *Income Tax Act* (Canada) may from time to time require for such charitable purposes as the Board may consider advisable.

R.S.C. 1952,  
c. 148

(2) The Board shall not make loans to the directors, officers or employees of Heritage Windsor and shall not give, directly or indirectly, by means of loan, guarantee, the provision of security or otherwise, any financial assistance for the purpose of, or in connection with, a purchase made or to be made by a director, officer or employee of Heritage Windsor.

Restriction

**12.**—(1) In deciding the manner in which and the extent to which funds shall be used or applied, the Board shall respect and be governed by any trust imposed by the donor in the instrument creating the trust or effecting the gift of the funds to Heritage Windsor and the requirements of the *Income Tax Act* (Canada).

Matters to be  
considered

(2) If, after the death of a donor, or if the donor was a corporation, after its winding-up, either voluntarily or otherwise,

Variation



- (a) conditions arise whereby, in the opinion of the Board, the departure from the terms of the original trust or gift would further the true intent and purpose of the donor; or
- (b) changed conditions make it no longer possible, wise, practical or lawful, in the opinion of the Board, to meet the expressed wish of the donor,

the Board may apply to a judge of the Supreme Court, *ex parte*, or on notice to such persons as the judge may direct, for an order that the Board may,

- (c) make such departure to further the true intent and purpose of the trust or gift; or
- (d) use and apply the funds for such purposes as are, in the opinion of the Board, closest to the original intent and purpose of the donor.

Application  
of donations

(3) If no conditions are imposed by the donor with regard to the use of the donor's gift, the Board may in its absolute discretion use and apply the gift for such purposes as it may deem proper having regard to the provisions of this Act.

Deemed  
assent by  
donors

(4) This section shall be deemed to have been assented to by every donor of Heritage Windsor as a condition of Heritage Windsor accepting the gift.

Waiver

(5) Subsection (4) may be waived by the Board at the time of acceptance of a gift.

Honorary  
directors

**13.—**(1) The Board may appoint honorary directors of Heritage Windsor in recognition of their service to Heritage Windsor or their status in the Windsor district and any such appointment may be for any such years, or for life, as the Board may determine and may be terminated by resolution of the Board at any time.

Idem

(2) Honorary directors shall be invited to attend meetings of the Board and participate in its discussions but shall not be entitled to vote.

Transfer of  
assets from  
other trusts

**14.—**(1) Where any person holds any property in trust for any purpose of a nature similar in whole or in part to the objects of Heritage Windsor, and by reason of the object of the trust having ceased to exist, or the trust having for any cause become incapable of performance, or the trust having become difficult to perform, the person, as trustee may, upon notice to Heritage Windsor, apply to a judge of the Supreme

Court of Ontario for an order directing the trustee to hand over such property to Heritage Windsor to be used under this Act.

(2) A judge receiving an application under subsection (1) <sup>Idem</sup> has the power to make an order for the handing over of the property to Heritage Windsor and any trustee complying with such an order shall thereupon be relieved and discharged of all further responsibility in respect of such property.

**15.**—(1) Heritage Windsor, as soon as practical after a donation has been received, shall by resolution of the Board, appoint, subject to the provisions of any trust imposed by the donor, one or more trust companies, banks or other fiscal institutions authorized to carry on business in Ontario to assume the custody of the property comprising such donation, or such portion or portions of it as may be allotted by the Board to such trust company, bank or other fiscal institution, to act as custodian for Heritage Windsor and if desired, as investment manager of it. <sup>Custody of donations</sup>

(2) Heritage Windsor may at any time, by resolution of the Board, revoke the appointment of any trust company, bank or other fiscal institution as custodian, and may appoint any other trust company, bank or other fiscal institution as custodian in its place. <sup>Revocation of appointment</sup>

(3) All transfers, assignments or conveyances of property by Heritage Windsor shall be executed by and on behalf of it in such manner as the Board may from time to time prescribe by resolution, and shall further be executed by the custodian for the time being of the property to be so transferred, assigned or conveyed. <sup>Execution of transfers, etc.</sup>

(4) Heritage Windsor shall authorize and require the custodian during its continuation in office as custodian, <sup>Duties of custodian</sup>

- (a) to have the custody of all property entrusted to it by Heritage Windsor or by any donor on behalf of Heritage Windsor and make all investments, reinvestments, conversions, sales or dispositions of it which at any time or from time to time the investment manager considers necessary or desirable;
- (b) to observe, carry out, perform and give effect to all terms, provisions and conditions expressed in any instrument creating any trust;
- (c) to give effect to and observe all directions with regard to any property entrusted to it by Heritage Windsor under the provisions of this Act, which may

at any time or from time to time be given in writing by the Board;

- (d) to distribute from the moneys in its possession such sums and in such manner as the Board shall at any time or from time to time direct in writing; and
- (e) to give to the auditor of Heritage Windsor all information and permit him to make such inspections as is necessary to carry out the audit of Heritage Windsor.

Management of donations

**16.**—(1) Heritage Windsor, as soon as practical after a donation has been received, shall by resolution of the Board appoint, subject to the provisions of any trust imposed by the donor, one or more trust companies, banks, investment counsellors or other fiscal agents authorized to carry on business in Ontario to assume the management of the property comprising such donation or such portion or portions of it as may be allotted by the Board to the trust company, bank or investment counsellor or other fiscal agent.

Revocation of appointment

(2) Heritage Windsor may at any time, by resolution of the Board, revoke the appointment of any trust company, bank, investment counsellor or other fiscal agent as such investment manager and may appoint any other trust company, bank, investment counsellor or other fiscal agent as investment manager in its place.

Duties of investment managers

(3) Heritage Windsor shall require the investment manager, during its continuance in office as investment manager for Heritage Windsor, to make recommendations for consideration and acceptance by the Board for all investments, reinvestments, conversions, sales and dispositions of the property which it is managing and which it may, at any time and from time to time, consider necessary or desirable and which Heritage Windsor is empowered to make.

Common investment account

**17.**—(1) Notwithstanding any other provision of this Act, Heritage Windsor may establish a common investment account in which property received by Heritage Windsor is, subject to the provisions imposed by the donor on any such property, combined for the purpose of facilitating the investment and administration of the property.

By-laws

(2) The Board may pass by-laws from time to time concerning,

- (a) the property that may be included in the common investment account;

- (b) the operation of the common investment account;
- (c) the distribution of the income of the common investment account; and
- (d) the method of valuation of the property in the common investment account and of any property being transferred into the account.

(3) Subject to any conditions imposed by a donor, reasonable administrative expenses incurred by the Board may be charged against all trusts, on a *pro rata* basis or on such other basis as the Board considers equitable. Charges

**18.** Any form of words shall be sufficient to constitute a donation for the purposes of this Act as long as the donor indicates an intention to contribute presently or prospectively to a fund or foundation of the general character indicated in this Act. Form of words

**19.** When a donation has been made to Heritage Windsor, in trust, of any property to take effect in the future, the Board is empowered to accept and exercise any powers of appointment, settlement or distribution with respect to the income in whole or in part derivable from such property in the interim, and also power to nominate executors and trustees in the manner provided in the instrument creating the trust. Future vesting

**20.** Where property has been donated to Heritage Windsor and the donor wishes that the donation be used in accordance with the objects of Heritage Windsor but in whole or in part for the benefit of persons not resident in the Windsor district, the Board may accept and exercise the trust in respect of such donation as fully and effectually as if it were made for the benefit of residents of the Windsor district. Gifts for benefit of person outside Windsor district

**21.—(1)** The fiscal year of Heritage Windsor shall be the twelve months ending on the thirtieth day of June in each year. Fiscal year

(2) The Board shall at each annual meeting appoint one or more auditors to hold office until the next annual meeting and, if an appointment is not so made, the auditor in office shall continue until a successor is appointed. Audit

(3) The directors may fill any casual vacancy in the office of the auditor but, while such vacancy continues, the surviving or continuing auditor, if any, may act. Vacancies

## Restriction

(4) No person shall be appointed as auditor of Heritage Windsor who is a partner, employer or employee of any member of the Board or officer or employee of Heritage Windsor.

## Publication of statement

(5) Heritage Windsor shall cause an audit to be made at least once in every fiscal year of its receipts and disbursements by its auditor or auditors and shall cause to be published in a newspaper in Windsor, a certified statement by the auditor or auditors showing the investments made of all funds donated to and vested in Heritage Windsor, the amount of income received during the preceding fiscal year, the purposes for which the income has been used and a classified statement of the expenses of Heritage Windsor.

## Dissolution

**22.** Upon the dissolution of Heritage Windsor and after payment of all its debts and liabilities, its remaining property shall be transferred, subject to any trust affecting any portion of the property, to such charitable organization or organizations in the Windsor district as the Board in its discretion thinks will best carry out the intentions of the individual donors and the purposes of Heritage Windsor.

## Commencement

**23.** This Act comes into force on the day it receives Royal Assent.

## Short title

**24.** The short title of this Act is the *Heritage Windsor Act, 1983*.