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c Pr32 Hamilton Community Foundation Act, 1994

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CHAPTER Pr32

**An Act respecting
Hamilton Community Foundation**

Assented to June 23, 1994

Preamble	<p>The Hamilton Foundation has applied for special legislation to alter its name, objects and powers and the composition of its board of directors and nominating committee. The applicant represents that is was incorporated by special Act in 1954 as a corporation without share capital under the name The Hamilton Foundation and that the objects of the Foundation were to receive, maintain, manage, control and use donations for charitable purposes within Ontario.</p> <p>It is appropriate to grant the application.</p> <p>Therefore, Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:</p>	<p>(7) A member of the board who has been appointed to fill a vacancy for less than four years may be reappointed for a further term of less than four years if the total of the two terms does not exceed four years.</p> <p>(8) A member of the board who has completed a full four-year term or a further term of less than four years as set out in subsection (7) may be reappointed for an additional term of one year.</p> <p>(9) Except as provided in subsections (7) and (8), no member of the board shall be eligible for reappointment to the board until one year has elapsed from the end of his or her term of office.</p>	<p>Reappointment</p> <p>Same</p> <p>Same</p>
Foundation continued	<p>1. The Hamilton Foundation is continued as a corporation without share capital under the name "Hamilton Community Foundation" and it consists of the members of its board of directors.</p>	<p>(10) Members of the board shall serve without remuneration, but are entitled to reimbursement for reasonable expenses.</p>	<p>Remuneration</p>
Objects	<p>2. The objects of the Foundation are to receive, maintain, manage, control and use donations for charitable purposes within Canada.</p>	<p>(11) The board may, by resolution, terminate the term of office of a member of the board who refuses or is unfit to act as a member of the board.</p>	<p>Termination</p>
Board of directors	<p>3. (1) The board of directors of the Foundation shall be composed of not less than 12 members and not more than 20 members.</p>	<p>4. (1) There shall be a nominating committee for the purpose of appointing members of the board of directors of the Foundation, which committee shall be composed of the following persons:</p>	<p>Nominating committee</p>
Transition	<p>(2) The members of the board on the day this Act comes into force continue to hold office until the completion of their terms.</p>	<p>1. The chair of the council of The Regional Municipality of Hamilton-Wentworth.</p>	
Appointment	<p>(3) The members of the board shall be appointed by the nominating committee established under section 4.</p>	<p>2. The mayor of the City of Hamilton.</p>	
Term	<p>(4) Subject to subsections (6), (7) and (8), the members of the board shall be appointed for a term of four years.</p>	<p>3. The president of the Hamilton and District Chamber of Commerce.</p>	
Rotation	<p>(5) The members of the board shall be appointed so that, as nearly as possible, the terms of one-quarter of the members expire each year.</p>	<p>4. The president of the Hamilton Law Association.</p>	
Vacancy	<p>(6) A vacancy on the board shall be filled by appointment by the nominating committee, and the new member shall hold office for the unexpired portion of the term of the member he or she is replacing.</p>	<p>5. The president of the Hamilton and District United Appeal or its successor organization.</p> <p>(2) If a person referred to in subsection (1) is unable or unwilling to act as a member of the nominating committee, the other members of the committee may appoint another person in his or her place.</p>	<p>Substitute members</p>

Additional member (3) The nominating committee may appoint one additional person to be a member of the committee.

Meetings (4) The nominating committee shall meet at least once a year, upon the call of the secretary of the board of directors at the direction of the chair of the board, or upon the call of the chair of the nominating committee.

Rules (5) The nominating committee may make rules governing its procedure, including the appointment of a chair.

Quorum (6) A quorum of the nominating committee shall be three members present in person and a majority vote of all the members of the committee shall be required for the appointment of a member of the board of directors.

Failure of nominating committee (7) If the nominating committee fails to appoint a person to fill a vacancy in the membership of the board of directors within 90 days after the board has requested such an appointment, the remaining members of the board shall appoint a person to fill the vacancy.

By-laws 5. (1) The board of directors of the Foundation may pass by-laws necessary to conduct the business and carry out the objects of the Foundation.

Same (2) Without limiting the generality of subsection (1), the board may pass by-laws,

- (a) regulating the calling of and the procedure at meetings of the board, and fixing the time and place of the meetings;
- (b) fixing the quorum of the board;
- (c) regulating the appointment, functions, powers, duties, remuneration and removal of officers, employees and agents of the Foundation.

Approval (3) A by-law of the board shall not take effect until it is approved by a majority of the members of the board given in person at a meeting or in writing.

Powers 6. The Foundation has the following powers:

- 1. To receive and use donations of property, whether by gift, testamentary disposition, deed or trust.
- 2. Unless otherwise provided by a donor, to convert any property held by or on behalf of the Foundation into any other form and for that purpose to sell or otherwise dispose of it.
- 3. To enter into agreements with trust corporations for the custody and management of property held by the Foundation in the manner the board of directors considers advisable.

4. To direct any trust corporation to manage as a single fund any one or more donations held by the trust corporation for the Foundation under a testamentary document, deed of trust or otherwise.

5. To lease any lands held by the Foundation.

6. To apply the net income from all funds held directly or indirectly by the Foundation towards such charitable purposes within Canada as the board of directors considers advisable.

7. To distribute any part of the capital of the funds held directly or indirectly by the Foundation towards such charitable purposes within Canada, as the board of directors considers advisable, but,

- i. unless otherwise specifically provided by the donor of any sum, not more than a total of 10 per cent of the balance of the capital of the sum shall be so distributed during any fiscal year of the Foundation, and
- ii. no distribution of capital shall be made without the approval of two-thirds of the members of the board of directors given in person at a meeting or, if not present at the meeting, in writing within 60 days after the meeting.

8. Except as otherwise provided, to control the management and investment of all its funds, but the custody of all securities and the accounting of them may be entrusted to any trust corporation, which shall invest and reinvest the securities in accordance with a general investment policy established by the board of directors.

9. To direct the investment of all its funds in investments authorized for the investment of funds by life insurance companies in Canada, but the board of directors may authorize and direct the retention of any specific assets donated or bequeathed to the Foundation by a testamentary document, deed of trust or otherwise for such length of time as the board in its sole discretion considers advisable even if it does not consist of assets in which the Foundation is authorized to invest by this Act, and the Foundation, the members of the board and a trust corporation or trustee acting on the instructions of the board shall under no circumstances be liable for

any loss or damage incurred by reason of the retention of any assets or the investment of any money in accordance with the power given the Foundation under this paragraph.

10. To charge the operating expenses of the Foundation, including employees' compensation, to the income or capital, or both, of the funds of the Foundation, as the board of directors considers advisable.
11. To set aside or refrain from setting aside any part of the income received by the Foundation from securities taken or purchased as part of the funds of the Foundation at a premium, as a sinking fund to retire or amortize such premium.
12. To determine in respect of all funds of the Foundation what shall be treated as income and what shall be treated as capital and to charge or apportion any losses or expenses to capital or income as the board of directors considers advisable.
13. Subject to the *Charitable Gifts Act*, to carry on a related business or a business donated to the Foundation, and to use the net profits from the business solely for the purposes of the Foundation.
14. Subject to the *Accumulations Act*, to accumulate net income with the intention of distributing the accumulation for the purposes of the Foundation.
15. To compromise, compound and adjust claims in favour of or against property, as the board of directors considers advisable.
16. To set up a special fund for the relief of persons or families who suffer from death, injury or calamitous deprivation of the necessities of life, health or education as a result of disasters, fires, floods or accidents of major proportions within Ontario and as part of such activity, to solicit, receive and disburse funds for such relief and for the expenses of advertising and operating the fund, and for these purposes the restrictions on the distribution of capital set out in paragraph 7 do not apply and any surplus in a special fund may be transferred to the general capital funds of the Foundation.
17. To refuse to accept any bequest, devise or donation.

Future vesting

7. When a donation has been made to the Foundation, in trust, of any property to take effect in the future, the board of directors may

accept and exercise any powers of appointment, settlement or distribution with respect to the income, in whole or in part, derivable from the property in the interim, and may nominate executors and trustees in the manner provided in the instrument creating the trust.

8. (1) Despite any other provision of this Act, the Foundation may establish a common trust fund in which property received by the Foundation under bequests, devises and donations is combined for the purpose of facilitating investments.

Common trust fund

(2) The board of directors may, by resolution passed by a majority of the board, make regulations concerning the operation of the common trust fund, including the appointment of agents for investment management purposes, the method of valuation of investments in the fund and the date or dates upon which the valuation may be made, the distribution of the income of the fund and the property that may be included in the fund.

Powers re fund

(3) Reasonable administrative expenses incurred by the Foundation may be charged against all trusts in the common trust fund on a proportional or other basis as the board considers equitable.

Charges

(4) A direction in writing by a donor that property included in a donation, bequest or devise shall not be included in the common trust fund is binding on the board.

Direction of donor

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

Application of funds

(2) 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 considers proper having regard to the provisions of this Act.

Same

(3) The board may apply to a judge of the Ontario Court (General Division) without notice, or on notice to the persons and in the manner that the judge may direct, for a variation of the terms of a trust or gift if,

Variation of trust

- (a) the donor is deceased or is unable or unwilling to consent to a change in the original trust or gift, or is a corporation that has been wound up; and
- (b) in the opinion of the board,

- (i) conditions have arisen such that a departure from the terms of the original trust or gift would further

	the true intent and purpose of the donor, or		
	(ii) conditions have changed so that it is no longer possible, wise, practical or legal to meet the expressed wishes of the donor.	(2) A judge receiving an application under subsection (1) may make an order for the handing over of the property to the Foundation and any trustee complying with such an order shall be discharged of all further responsibility in respect of the property.	Same
Variation orders	(4) The judge may make the following orders:	13. (1) Subject to subsection (2), all donations made directly or indirectly to the Foundation may be treated for all purposes as a general fund and, in the absence of any direction by the donor, all contributions shall be deemed to be received as capital and shall be invested and the net income from the capital shall be devoted for charitable purposes as provided in this Act.	General fund
	1. That the board may make a departure from the terms of the original trust or gift to further the true intent and purpose of the donor.		
	2. That the board may use and apply the funds for such purposes as are, in the board's opinion, closest to the original intent and purpose of the donor.	(2) If a donor requests that a donation be maintained as a designated fund, the board of directors may set up a separate fund for the donation and a separate accounting shall be made of the separate fund every year.	Separate fund
Deemed assent by all donors	(5) This section shall be deemed to have been assented to by every donor of the Foundation as a condition of the Foundation accepting the gift.	14. (1) The Foundation shall cause an audit of the financial records to be made at least once in every fiscal year by an independent auditor licensed under the <i>Public Accountancy Act</i> .	Audit
Waiver	(6) Subsection (5) may be waived by the board at the time of acceptance of a gift.	(2) The audited financial statement shall consist of a balance sheet and statements of income, expenditures, fund balances and cash flows, in accordance with generally accepted accounting principles.	Contents of statement
Donation for specific purpose	10. (1) The Foundation may accept donations either directly or indirectly subject to the condition that the income or capital or both shall be applied to a specific charitable purpose, either for a specific or an indefinite period of time.	(3) The Foundation shall publish in the newspaper published in the City of Hamilton that has the largest circulation in Hamilton a summary of the financial position of the Foundation as at the fiscal year end and the results of operations for the fiscal period then ended derived from the financial statement described in subsection (2).	Publication of statement
Donation for purpose outside Canada	(2) The Foundation may accept a donation even if some portion of the benefit of the donation is directed to be applied to charitable purposes outside Canada, but the recipient of such portion of the benefit must be a registered charity under the <i>Income Tax Act</i> (Canada).	(4) The board of directors and any trust corporation or other trustee holding funds in trust for the Foundation shall give full information and permit all necessary inspections to enable the audit required by subsection (1) to be made.	Information and inspection
Management of funds of other organizations	(3) Despite any other provision of this Act, the Foundation may receive, invest and manage endowment and capital funds previously held by or anticipated to be received for the account of another Canadian charitable organization, in accordance with the arrangement between the Foundation and the organization, and the Foundation shall, upon request, return to the organization all or any part of such organization's assets held by the Foundation.	15. Any power conferred on the Foundation by this Act shall not be exercised in respect of any donation in contravention of any express provision to the contrary in the document of trust governing such donation unless so directed by a judge of the Ontario Court (General Division).	Priority of document of trust
Form of words	11. Any form of words is sufficient to constitute a donation for the purposes of this Act if the donor indicates an intention to contribute to the Foundation.	16. Upon the dissolution of the Foundation 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 as the board of directors in its discretion thinks will best carry	Dissolution
Transfer of assets from other trusts	12. (1) Where any person holds property in trust for a purpose similar, in whole or in part, to the objects of the Foundation, that person, as trustee, with the consent of the Foundation, may apply to a judge of the Ontario Court (General Division) for an order directing the trustee to hand over the property to the Foundation to be used as provided under this Act.		

out the intentions of the individual donors and the purposes of the Foundation.

Repeal

17. *The Hamilton Foundation Act, 1954 and The Hamilton Foundation Act, 1980* are repealed.

18. This Act comes into force on the day it receives Royal Assent. Commence-
ment

19. The short title of this Act is the *Hamilton Community Foundation Act, 1994*. Short title