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Bill Pr20

An Act respecting The Thunder Bay Foundation

Mr. Gravelle

Private Bill

1st Reading May 22, 2003
2nd Reading
3rd Reading
Royal Assent

Printed by the Legislative Assembly of Ontario



EXPLANATORY NOTE

The purpose of the Bill is set out in the Preamble.

An Act respecting The Thunder Bay Foundation

Preamble

The Board of Trustees of The Thunder Bay Foundation has applied for special legislation to change the Foundation's name to the Thunder Bay Community Foundation, to amend the powers of the Board of Trustees and to amend the requirements respecting filling vacancies on the Board of Trustees, investment, the public recognition of donors and the publication of the Foundation's financial statements. The applicant represents that The Thunder Bay Foundation was constituted as a body corporate by special legislation in 1971.

It is appropriate to grant the application.

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

1. Section 1 of *The Thunder Bay Foundation Act, 1971* is repealed and the following substituted:

Foundation continued

1. (1) The Thunder Bay Foundation is continued as a corporation without share capital under the name Thunder Bay Community Foundation.

Head office

(2) The head office of the Foundation shall be in the City of Thunder Bay.

2. Section 4 of the Act is repealed and the following substituted:

Composition of nominating committee

4. (1) There shall be a nominating committee composed of,

- (a) the mayor of the City of Thunder Bay;
- (b) the president of the Thunder Bay Chamber of Commerce; and
- (c) the president of the Lakehead Social Planning Council.

Alternates

(2) In the event that a person described in subsection (1) is unable or unwilling to act as a member of the nominating committee, the remaining members or mem-

ber of the nominating committee shall appoint another person or persons to act in their place.

Meetings

(3) The nominating committee shall meet annually and whenever it is necessary to fill a vacancy in the Board, upon the call of the secretary of the Board, if any, or upon the call of the chair of the nominating committee.

Rules

(4) The nominating committee may make rules governing its procedure, including the appointment of a chair, as it considers advisable.

Appointment by Board

(5) If the nominating committee fails to appoint a person to fill a vacancy in the membership of the Board within 90 days after the vacancy occurs, the remaining members of the Board, so long as they form a quorum of the Board, may, by a two-thirds vote of those members present at a meeting of the Board, appoint a person to fill the vacancy.

3. Section 6 of the Act is repealed and the following substituted:

Powers of Foundation

6. (1) The Foundation has the capacity, rights, powers and privileges of a natural person for the purpose of carrying out its objects.

Same

(2) Without limiting the generality of subsection (1), the Foundation may,

- (a) receive, directly or indirectly, by any means, donations of real and personal property of every kind and description wherever situated, hold, control and administer such property and use and expend or direct the using and expending of such property or the income from such property;
- (b) except as otherwise provided, convert any property at any time and from time to time received or held by or on behalf of the Foundation into any other form and, for that purpose, sell or otherwise dispose of the property or cause the property to be sold or otherwise disposed of;

- (c) subject to the *Trustee Act*, engage one or more trust corporations, chartered banks, stock brokerage firms or professional money managers who have been approved by the Board to act as portfolio managers for the Foundation;
- (d) pass on and entrust to one or more portfolio managers engaged by the Foundation the custody and management of all or any part of the property at any time and from time to time received or held by or on behalf of the Foundation in the manner and proportions that the Board considers proper, and enter into agreements with such portfolio managers with respect to property management;
- (e) direct any portfolio manager to manage and administer as a single fund and in the manner the Board considers advisable any one or more donations held by the portfolio manager for the Foundation;
- (f) subject to the *Charities Accounting Act*, lease any property at any time held by or on behalf of the Foundation;
- (g) distribute the portions that the Foundation considers advisable of the net income in each year from all funds held directly or indirectly by the Foundation to and for the objects of the Foundation as described in section 2;
- (h) distribute the portions that the Foundation considers advisable of the capital of the funds held directly or indirectly by it to and for the objects of the Foundation as described in section 2, with the approval of two-thirds of the members of the Board given in person at a meeting of the Board or, if not present at a meeting, then in writing within 60 days after the meeting;
- (i) except as otherwise provided, and subject to the *Trustee Act*, control the management and investment of all the Foundation's funds, but, where a portfolio manager is specifically appointed as manager of any fund by any testamentary document or deed of trust or otherwise,
 - (i) the portfolio manager shall have the physical custody of the fund and, subject to the specific terms of any such appointment, shall invest and reinvest the same within the general policy of investment established by the Board, and
 - (ii) the custody of all securities and the accounting for them may be entrusted by the Board to one or more portfolio managers, and any such portfolio manager shall invest and reinvest the same within the general policy of investment established by the Board;
- (j) direct the investment of all the Foundation's funds by the Board, or by a committee of the Board when authorized by the Board, or by any portfolio manager or, subject to the *Charitable Gifts Act* and the *Charities Accounting Act*, authorize and direct the retention of any specific assets donated

or bequeathed to the Foundation for such length of time as the Board in its sole discretion considers advisable;

- (k) engage such person or persons, including portfolio managers, and take such other action as the Foundation considers advisable for the more efficient carrying out of the objects of the Foundation, and such persons may be paid such reasonable compensation out of, and the Board may charge the expenses of any such other action to, the income or capital, or both, of the funds of the Foundation as the Board considers advisable;
- (l) set aside, or in the Foundation's discretion refrain from setting aside, any part of the income received by it 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 and determine in its uncontrolled discretion in respect of all funds of the Foundation what shall be treated as income and what shall be treated as capital as to each respective transaction and charge or apportion any losses or expenses to capital or income as it considers best;
- (m) compromise, compound and adjust claims in favour of or against the property held or intended to be held by or on behalf of the Foundation, upon the terms and conditions that it considers just, expedient and proper.

Investment powers

(3) Section 27 of the *Trustee Act* applies with necessary modifications to investments authorized under clause (2) (j).

4. Sections 11, 12 and 13 of the Act are repealed and the following substituted:

General fund

11. (1) Subject to subsection (2), all donations made directly or indirectly to the Foundation, except those for specific purposes described in section 7, may be treated for all purposes as a general fund.

Separate funds

(2) A donor who donates \$100,000 or more in any one fiscal year may require that such donation be maintained as a separate fund, in which case a separate accounting of that fund shall be set out each year in the annual audited report.

Acknowledgment of donations

12. (1) Unless otherwise directed by testamentary document or deed of trust or otherwise, all donations of \$5,000 or more in any one fiscal year from any one donor shall be publicly acknowledged, in the year following that in which they are made, by being set out in the annual audited report.

Same

(2) For the purpose of subsection (1), if one donor makes more than one donation, then only the total of that

donor's donations, as they may be from time to time, need be set out in the annual audited report.

Audit

13. (1) The Foundation shall annually appoint an auditor licensed under the *Public Accountancy Act* to audit the books and records of the Foundation.

Same

(2) The audit shall include an examination or confirmation of all assets held by the Foundation or by any portfolio manager on its behalf and, despite the fact that any such assets may be held pursuant to the provisions of a testamentary document or deed of trust, an accounting of all the assets shall be given to the auditor of the Foundation.

Public notice

(3) The Foundation shall cause to be published in a newspaper having general circulation in the City of Thunder Bay a notice indicating that the financial statements of the Foundation are available for review during normal office hours.

Contents of statements

(4) The audited financial statements shall consist of a balance sheet wherein the assets, liabilities and equity of the Foundation are disclosed, an operating statement reporting the revenues and expenses for the current fiscal year and explanatory notes, as well as the report of the

auditor expressing the auditor's conclusion based on the results of the audit.

Same

(5) The audited financial statements shall separately disclose the assets and liabilities, as well as the revenues and expenses of any segregated fund.

Same

(6) The audited financial statements shall disclose in detail the revenues and expenses of the Foundation in accordance with accounting principles generally accepted in Canada and applied on a consistent basis.

Assistance to auditor

(7) The Board and any portfolio manager holding funds for the Foundation shall give the auditor full information and permit the auditor all necessary inspection to enable the auditor to conduct the audit.

Commencement

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

Short title

6. The short title of this Act is the *Thunder Bay Community Foundation Act, 2003*.