

## Hamilton Community Foundation

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| <b>POLICY:</b><br><b>DONATION ACCEPTANCE</b> | <b>NUMBER:</b><br><b>4.2</b>                     | <b>PAGE:</b><br>1 of 12               |
| <b>Section:</b><br><b>Asset Development</b>  |  |                                       |
| <b>ESTABLISHED:</b><br>April 10, 2001        | <b>REVISED/REAFFIRMED:</b><br>September 15, 2015 | <b>SUBJECT TO REVIEW:</b><br>May 2016 |

### **Preamble:**

A donation acceptance policy ensures that donations are used to further the mission of the Foundation and include appropriate consideration of donor interests and objectives. It provides clarification of roles, responsibilities and expectations of both the Foundation and its donors in relation to donations.

A donation acceptance policy sets out certain limitations to control risks associated with the acceptance of donations. It ensures that donations to the Foundation are made in accordance with legal and ethical regulations and guidelines. The policy enables the Foundation to respond consistently and on a timely basis, to anticipate potential issues with donations and for the Board to exercise its fiduciary responsibility. It protects the Foundation from potential liabilities related to donations that come with (sometimes unforeseen) financial consequences.

A donation acceptance policy can help to enhance long term relationships with donors and encourage donors and Foundation representatives to work together to provide the most effective benefits to our community consistent with donors' broad philanthropic wishes.

### **Policy Statement:**

To determine if a donation should be accepted, all proposed donations will be assessed using the following factors:

1. **Values** – Would acceptance violate any of the stated values of HCF?
2. **Compatibility** – Is there alignment between the donor's goals and the mission/ vision of HCF? Should the donor be directed to a different charity?
3. **Operation of fund** – Will the cost of operating the fund be reasonable compared to the benefit generated?
4. **Public relations** – Will acceptance damage the reputation of HCF?

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5. **Consistency** – Is acceptance consistent with prior practices or would acceptance establish a precedent going forward?
6. **Form** – Is the donation in a form that HCF can use without incurring substantial expense or difficulty? Does it qualify for a tax receipt under CRA rules (legally a donation, etc.)?
7. **Effect on future donations** – Will this donation encourage future donations?

The results of this review will be used to assess and inform the decision of accepting a donation or not.

Details related to these factors are further elaborated below in the specific comments on various matters related to acceptance of a donation.

1. **Protection of Donors’ Interests:** Foundation board, committees, volunteers and staff will always consider the interests of the donors as a high priority in fund development activities. HCF staff will confirm with the donor that HCF is the most appropriate vehicle to carry out the donor’s charitable goals. The Foundation will inform, serve, guide or otherwise assist donors who wish to support the Foundation’s activities, but under no circumstances pressure or unduly persuade a donor to make a donation which is inappropriate in light of the donor’s personal or financial situation or the donor’s known philanthropic interests. HCF staff will confirm that HCF is the most appropriate charity to match the donor’s goals. HCF staff will take all reasonable steps to ensure the donor is competent to make the decision to commit to a donation.
2. **Donor Recognition:** The Foundation is prepared to provide donors with recognition to a degree consistent with the recognition afforded donors of donations of similar magnitude, immediacy of effect (outright or deferred donation) and degree of restriction (imposed by the donor) in accordance with the Foundation’s Donor Recognition program and in accordance with the donors wishes. See also #12 below.

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3. **Executor / Trustee:** The Foundation is not able, because of the potential for a conflict of interest, to serve as executor of a donor's will or as trustee of a charitable remainder trust. The Foundation will provide the donor with a list of possible institutions that are able to provide this service to the donor.

#### THE NATURE OF THE DONATION TO BE GIVEN TO THE FOUNDATION

4. **Types of donations:** The Foundation encourages donors to make outright and/or deferred donations.
- a) **Current donations:** The form of current donations accepted by the Foundation should be property that is readily marketable at reasonable cost. This would include cash, deposit instruments of a government in Canada or financial institution, publicly traded securities, life insurance policies, and any other property that the Foundation may invest in consistent with its investment policies.
- b) **Deferred donations:** The form of deferred donations accepted by the Foundation may include bequests, donations of residual interests, charitable remainder trusts, donations of life insurance policies and proceeds, retirement income accumulations and such other donation arrangements as the Board of Directors may approve from time to time.
5. **Other Forms of Property:** The Foundation recognizes that donors occasionally will wish to give it property that is not described in the previous paragraph such as real estate, tangible personal property, shares in publicly traded corporations that are not listed on prescribed stock exchanges or dealing networks, shares in private corporations, residuary interests in trusts, debentures, partnership interests or other property interests not readily negotiable or valued.

While the Foundation is generally pleased to accept donations, it has to be careful to evaluate whether there may be "hidden costs" in accepting such property. It, therefore, reserves the discretion to decline a donation of property because of the nature of the property that is being offered. Matters the Foundation will take into account are:

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- (a) The difficulty in valuing the property or the likelihood that the value of the property will be a matter of differing opinions. The Foundation does not wish to become involved in valuation disputes with Canada Revenue Agency;
- (b) The possibility that the property will not sell in a reasonable period of time;
- (c) The potential carrying cost and environmental risk associated with owning the property;
- (d) The potential for controversy associated with owning the property;
- (e) Whether a satisfactory arrangement can be made with the donor with respect to the absorption of the costs of valuation, maintenance and disposition of the property.

6. **Source of Property:** The Foundation also reserves the right to refuse to accept property the origin of which may bring the Foundation into disrepute.
7. **Donations that Create Liabilities:** Tax laws for foundations prohibit them from incurring debts; therefore the Foundation is unable to accept the following types of donations.
  - (a) Donations of Annuities, whether reinsured or reserve based.
  - (b) Property that is required to be paid back (such as an interest free loan).
8. **Donation Expenses:** All expenses associated with making a donation, such as the cost of an appraisal, legal and accounting expenses, the cost of an environmental report and the like, shall be paid for by the donor. Expenses incurred by the Foundation in accepting a donation, such as legal expenses, costs of maintenance and disposition of the property, shall be charged against the fund when the fund is established.
9. **Property Valuation:** While the donor is responsible for providing an independent appraisal of the property being offered as a donation, the Foundation reserves the right to secure and rely on its own appraisal in determining the acceptability of the donation and the value for the receipt for income tax purposes.

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**10. Timing of Issuance of Receipt:** The Foundation cannot issue a receipt for a donation until it is legally the property of the Foundation and must issue the receipt for the value of the property as of the date it becomes the Foundation's property. In the case of publicly traded securities, the receipt will be determined by the closing price on the day the securities are received into the Foundation's brokerage account which is generally the day notice of the donation is received by the Foundation.

**11. Disposition of Donations:** All donations of property will be sold as soon as possible and the proceeds invested in accordance with the Foundation's investment policy, unless an express agreement has been made with the donor concurrent with the transfer of the property. Donations of marketable securities may, on the recommendation of the professional investment manager, be added to one of the HCF investment portfolios.

**12. Requests for Anonymity:** Donor's requests for "privacy" or "anonymity" will be honoured on a 'best efforts' basis. However, the President & CEO may choose to confer with the Donation Acceptance Committee regarding the acceptance of such a donation. If this consultation is required, it will be disclosed to the donor. [See Appendix A for background paper on 'anonymity'].

### GENERAL PROVISIONS AND AUTHORIZATIONS

**13. Fit with Foundation Mission:** All donations must be consistent with the overall vision/ mission/ values and strategic intents of the Foundation and must not in any way compromise the Foundation's integrity and non-partisan status in the community or its classification as a registered public foundation under the regulations of the Income Tax Act of Canada.

**14. Delegation of Authority:** The President & CEO is responsible for the decision to accept donations and to negotiate straight forward donation agreements.

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**15. Donation Acceptance Committee:** The Donation Acceptance Committee will be an ad hoc committee providing advice and counsel to the President & CEO. The Committee will be comprised of the Board Chair and one other member with the appropriate skills and knowledge for the circumstances.

**16. Consultation:** The President & CEO may choose to consult with the Donation Acceptance Committee before undertaking to accept the following:

- Donations from donors requesting anonymity from the Board as a whole
- Shares in privately-owned companies
- Shares in publicly-traded companies that are not listed on prescribed exchanges or dealing networks
- Real estate
- Tangible personal property
- Partnership interests
- Other property interests that are not readily negotiable or valued
- Residual interest trust
- Charitable remainder trusts
- Debentures
- Mortgages
- Donations of significant size
- Donations-in-kind
- Any other donation where there is reason to question the validity of the donation, the liability that might come with it, the wisdom of accepting it or that falls outside the stated policies of the Foundation.

For clarity, the following must be considered in assessing the appropriateness of accepting any donation:

- Alignment with the HCF mission, vision and values.
- Results of the review using factors listed in this policy
- Consistency with the overall Strategic plan
- Consideration of any 'red flag' or issues outlined in the discussion paper in Appendix B

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In addition to receiving advice and counsel from the Donation Acceptance Committee, there may be circumstances when acceptance is still questionable. In such cases, the President & CEO may choose to request the Board to make the decision.

**MONITORING**

The policy is to be reviewed annually by the Board at the Board meeting closest to the anniversary of its adoption.

## **Introduction**

We appreciate when donors make financial contributions and we always ask them about their wishes regarding the level of recognition they would be comfortable with. For some of our donors, they prefer to limit those who might know about their donation. They may choose to be “anonymous” in a variety of ways and in varying degrees.

Think of ‘society’ as various concentric circles. At the centre is the donor and HCF spreading outward as follows:

- President & CEO
- Donation Acceptance Committee
- Development staff
- Board Executive
- Other Board members
- Other staff

A donor may choose to limit any knowledge of their donation to within one of these concentric circles, meaning that anyone outside that circle should not be privy to the information.

Outside the HCF circle, circles would continue in the following order,

- Grantee of the fund
- Stakeholders of the grantee (staff, Board, public)
- General public

## **In the past, HCF has had experience with the following levels of anonymity.**

- Donor is known only to CEO (and accounting)
- Donor is known only to Development staff (including CEO)
- Donor is known only within HCF (staff and/or Board)
- Limited information of donor’s donation known outside HCF

## **Different methods are used to protect the donor’s privacy depending on the level of desired “anonymity”**

- Putting a name on the fund that does not include the family’s name (Dream weaver, Angel fund, etc.)
- When grants are distributed to recipient organizations, letter specifies an “anonymous donor” has established the fund.
- Not being listed in the annual report as a “contributor”
- Fund name is listed in annual report but no amount is shown

## **Background**

The Policy on Donation Acceptance delegates to the President & CEO the responsibility for the decision for acceptance of a donation, and the negotiation of donation agreements.

The CEO may choose to seek advice from a Donation Acceptance committee comprised of the Board Chair and one other senior Board member. If the decision is still uncertain, the issue would be taken to the full Board for their decision. This working paper outlines the parameters to be considered in making the decision to accept these donations or funds.

## **Approach**

- 1. Components:** When designing a fund, it is usually helpful to differentiate between the 'donation' and the 'fund'. This may be helpful in these consultations. In addition, there can be circumstances about the 'donor' that require consideration.
- 2. Risks:** In general, Board approval means that risks have been reviewed and considered to be within acceptable limits. What are the risks associated with establishing a fund? What are acceptable limits for those risks?
- 3. Other factors:** What other factors need to be considered? Are there any that preclude acceptance? Are there any factors that should be considered by the Board for their judgment in each instance?

The following charts set out a "checklist" of issues or concerns regarding Donations, Donors and Funds to guide the review process. .

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 Overview of Risk Factors related to Donation and Fund acceptance  
 Discussion paper

**1. Donation**

| Description                             | Checks and balances in place     | “Red flag” or issues   |
|---|----------------------------------|--|
| 'A' list donation (1)                   | Finance controls tax receipting  | Size of donation could put HCF 'offside' on public foundation test   |
| 'B' list donation (2)                   | Finance involved in negotiations | Valuation, 'moving parts', liquidity, first time for type of donation, potential liability associated with donation (e.g. real estate) |
| Contributions from 'third party' events | Policy in place                  | Principals not willing to comply with policy. Volume and size of contributions not manageable for reasonable fee.                      |
| Other (3)                               |                                  | CF not allowed to receive by provincial law  |

1. Most desired type of donation: cash, marketable securities, bequest, RSP's, insurance
2. Acceptable but involve complexities: CRT, residual value of asset, private company shares, real estate, personal property [art work, jewelry, etc.]
3. Annuities. Not allowed by provincial law for CF's

**2. Donor**

| Description   | Checks and balances in place  | “Red flag” or issues                        |
|---|---|---|
| Part of HCF family (1)                                | Values appear to align with those of HCF<br>Donor is working with appropriate charity | Concerns over competency of individual      |
| Known to HCF  | As above  | As above                                    |
| New to HCF and referred by PA <u>known</u> by HCF     | As above  |   |
| New to HCF and referred by PA <u>not known</u> by HCF | As above plus 'reference' check of PA is reasonable                                   |   |
| New to HCF ('walk in')                                | As above<br>'Reference' check of  | No credible reference<br>Source of funds is |

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|   | individual is reasonable   | unknown or suspect<br>'Newspaper' reality check<br>"Smell" test |
| Anonymous to HCF-<br>donation through lawyer's<br>trust account | Lawyer known to HCF,<br>well respected and need<br>for anonymity explained | Lawyer not known or<br>vague reasons for<br>anonymity           |

1. Current donor, holder of existing fund, Board or past board member, volunteer, staff, etc.

**3. Fund**

| <b>Description</b>     | <b>Checks and balances in place</b>   | <b>"Red flag" or issues</b>   |
|------------------------|---|---|
| Community fund         | Recognition only.   | Subject to Donation/<br>donor considerations  |
| Field of interest fund | Purpose aligned with HCF<br>mission<br>'illegal' matters are vetted by<br>staff (human rights, charitable<br>intent, etc. )   | Field too narrow to<br>identify beneficiary<br>Purpose does not benefit<br>the Hamilton community<br>Unusual or illegal purpose   |
| Designated fund        | Beneficiaries are known to HCF<br>and may be past grantees or<br>likely to be in the future.<br>Variance clause designed to<br>allow action if difficulties<br>encountered. | Unworkable variance<br>clause<br>Beneficiary unknown to<br>HCF<br>Beneficiary not a qualified<br>donee<br>No reason for HCF to be<br>involved in donation/<br>grant transaction           |
| Scholarship/ Bursary   | Beneficiaries identified using<br>existing models (Chaney,<br>Carpenter, etc.)  | Process to identify<br>beneficiary is unwieldy  |
| Donor Advised Fund     | Purpose is generally broad.<br>Approval of specific grants<br>each year.  | Donor is not comfortable<br>with legal requirements of<br>process of grant<br>recommendations.<br>Values do not align with<br>HCF.<br>Purpose does not benefit<br>the Hamilton community. |

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| Agency          |                    | Expectations to grow fund are not reasonable<br>Agency is reluctant to give up control of assets<br>Agency has insufficient reserve funds or is not fiscally sound<br>Variance clause is unworkable. |
| General matters | Terms are standard | Terms are not standard (e.g. Fees, spending, investment, etc.)   |