

# VANCOUVER FOUNDATION AMENDMENT ACT, 1998

## CHAPTER 48

*Assented to July 30, 1998*

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of British Columbia, enacts as follows:

- 1 *Section 1.1 of the Vancouver Foundation Act, S.B.C. 1950, c. 94, is repealed and the following substituted:*

### Interpretation

1.1 In this Act:

“**common trust fund**” means a fund established under section 7.1 (1);

“**Community Chest and Council of Greater Vancouver**” includes the United Way of the Lower Mainland or its successor;

“**Endowment**” means

- (a) the Community Fund,
- (b) the United Way of the Lower Mainland Endowment Fund, and
- (c) any other donation, devise or bequest to the Foundation
  - (i) on trust terms that expressly or impliedly create a trust, or
  - (ii) on terms under which expressly or impliedly the Foundation has the discretion to create a trust and does so;

“**Fund**” includes a common trust fund and an independent trust fund;

“**independent trust fund**” means a fund established under section 7.1 (5);

“**net appreciation**” means the difference between

- (a) the initial dollar value of a Fund and the dollar value of each subsequent contribution to it, and
- (b) the fair market value, inclusive of income, of the Fund from time to time;

“**returns**” means net appreciation arising before or after this section comes into force.

- 2 *Section 7 is amended*

(a) *by repealing subsection (1) (e) and substituting the following:*

- (e) To pay the expenses of administering the Foundation and the properties received or held by the Foundation, and to charge these expenses against the returns arising from each Fund in the proportion that the returns arising from each Fund bears to the total returns of the Foundation., *and*

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***(b) by adding the following subsections:***

- (3) Subject to any express direction to the contrary in an Act or in the terms of a gift, the Board may delegate its powers of investment, whether arising under this or any other Act, at law or under the terms of a gift, to any person or body (the "delegate") to any extent for any period on any terms, including terms as to the payment of the delegate, and in such manner as it thinks fit.
- (4) As limits on the authority under subsection (3), the Board
  - (a) is subject to the obligations to which it would normally be subject in selecting and supervising delegates and, for these purposes, a review by the Board of the performance of a delegate conducted at least twice in each fiscal year is deemed to satisfy the Board's obligation to supervise unless the contrary is proven, and
  - (b) shall not in any contract with a delegate relieve the delegate from the obligation to exercise the degree of care that the delegate would be required to exercise at law.
- (5) Subject to any express direction to the contrary in any Act or terms of a gift, the powers conferred on the Board may be exercised in respect of all funds held from time to time by the Foundation whether the funds were received by the Foundation before or after this section came into force.

**3    *Section 7A is repealed and the following substituted:*****Establishment of trust funds**

- 7.1** (1) Despite anything contained in another provision of this Act, but subject to subsection (4), the Board may establish one or more common trust funds in which property of its Endowments is combined for the purposes of facilitating investment or for such other purposes as the Board considers advisable.
- (2) The Board may from time to time
    - (a) determine which property is to be included in or which property is to be withdrawn from a common trust fund,
    - (b) determine the method of valuation of investments in common trust funds and the date or dates on which the valuation may be made, and
    - (c) make regulations concerning the operation of common trust funds.
  - (3) The Board may invest the property that is held in a common trust fund in any investments that the Board considers advisable and may do so
    - (a) in such a way as to enhance the returns of the Fund, and
    - (b) without regard to the fact that the terms of Endowments having property in the Fund provide for distribution of income only.

- (4) An express direction in writing by a donor made on or before the date on which a donation, bequest or devise is made, that the property included in the donation, bequest or devise shall not be included in a common trust fund, is binding on the Foundation.
- (5) The property of an Endowment that is not combined in a common trust fund shall be held in an independent trust fund established by the Board for the purposes of investment.

#### **Distribution of returns**

- 7.2 (1) The Board may from time to time, but not less often than once in each fiscal year, distribute the portion of the returns from each of its Funds to its Endowments that it considers proper.
- (2) In exercising its powers under subsection (1), the Board shall develop retention and distribution policies, and in doing this shall take into account
    - (a) the Foundation's need to maintain a reasonable balance between the capital value of its Funds and the amounts to be distributed from time to time,
    - (b) the estimated total return on investments,
    - (c) existing and anticipated requirements,
    - (d) the short and long term needs of the Foundation,
    - (e) the Foundation's disbursement quota requirements under any applicable taxation legislation, and
    - (f) any other factors the Board considers relevant.
  - (3) If a Fund includes property of more than one Endowment, the Board shall make regulations to provide for the making of appropriate adjustments in the value of the interests of Endowments in the Fund when the amounts distributed to all Endowments are not in the same proportion to the value of their interests in the Fund.
  - (4) The amount distributed under subsection (1) is deemed to be the income of the Endowments to which it is distributed and shall be used in accordance with the terms of those Endowments.
  - (5) Subject to subsections (6) and (7), this section applies in respect of all donations, devises and bequests to the Foundation, and all property held from time to time by the Foundation, whether the donations, devises and bequests were made or the property was received before or after this section came into force.
  - (6) This section does not apply if the terms of a particular donation, endowment, devise or bequest expressly provide for a different distribution than that provided for in the section.
  - (7) The terms of a particular donation, endowment, devise or bequest shall not be construed as providing for a different distribution solely because

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- (a) the donation, devise or bequest creating the Endowment is designated expressly or by implication as an endowment, or
- (b) the donation, endowment, devise or bequest contains a direction or an authorization to use only "income", or "interest", or "dividends", or to "preserve capital", or any term or terms of similar import.

4 *Section 14 is repealed.*

5 *The marginal note for section 19 is struck out and the following substituted:*

**Part of income for the benefit of places outside British Columbia .**

6 *Section 22 (3) is repealed and the following substituted:*

- (3) The Chief Justice of the Supreme Court of British Columbia may appoint a Judge of the Supreme Court, or any other person, to hold office as a member of the Board in the place of the Chief Justice for a term the Chief Justice determines.

7 *Section 24 (1) is amended by striking out "Vancouver Life Insurance Managers' Bureau" and substituting "Canadian Institute of Chartered Life Underwriters and Chartered Financial Consultants, Lower Mainland Chapter".*

8 *Section 29 (1) is amended by striking out "including an Executive Director, a secretary-treasurer and a legal advisor,".*

9 *The following section is added:*

**Protection of the members of the board**

- 30.1 A member of the Board is not personally liable for loss or damage suffered by a person as a result of anything done or not done in good faith in acting or purporting to act on behalf of the Vancouver Foundation.

10 *Section 32 (1) is repealed and the following substituted:*

- (1) The Board shall cause an audit of the financial statements of the Foundation to be made at least once in every fiscal year by an independent auditor and shall make copies of the auditor's report available to the general public on request.