

VICTORIA FOUNDATION AMENDMENT ACT, 2009**CHAPTER 27***Assented to October 29, 2009*

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 of the Victoria Foundation Act, S.B.C. 2000, c. 33, is amended

(a) by adding the following definitions:

“**income**” includes dividends, interest, rents and royalties, but does not include capital gains or losses;

“**substituted property**” means property that is

- (a) substituted for property donated to the foundation, or
- (b) acquired by one, or more than one, further substitution. , **and**

(b) by repealing the definition of “returns”.

2 Section 3 is amended

(a) by adding the following subsection:

(1.1) If the donor indicates in the instrument by which property is donated to the foundation a desire that all or part of the income or capital be used for charitable purposes outside of the County of Victoria, the board may accept the donation and give effect to that desire consistent with the objects of the foundation. , **and**

(b) in subsection (2) by striking out “Without limiting subsection (1), the objects of the foundation under that subsection include” and substituting “Without limiting subsection (1) or (1.1), the objects of the foundation include”.

3 Section 6 is amended

(a) in paragraph (k) by striking out “returns” and substituting “income”, and

(b) by repealing paragraph (l) and substituting the following:

- (l) to pay the expenses of administering the foundation and property owned, held, controlled, administered or managed by the foundation and to charge those expenses, on any basis that the board in its discretion considers appropriate, against the income from or the capital of such property.

4 Section 7 (2) is amended

(a) by striking out “make regulations” and substituting “establish policies”, and

(b) by repealing paragraph (c).

5 Sections 8 and 9 are repealed and the following substituted:**Use and distribution of income**

- 8** (1) Subject to the express provisions of the instrument by which property is donated to the foundation and to sections 9.1 and 17, the board may use or distribute all or part of the income from donated or substituted property in order to further the objects of the foundation, if
- (a) the use or distribution is required to comply with a policy established by the board under section 9.2, and
 - (b) the board, by ordinary resolution, determines the amount that may be used or distributed from time to time under this section.
- (2) This section applies in respect of income from property of the foundation whether the income is received by, or the property is donated to, or received or acquired by, the foundation before or after this subsection comes into force.

Use and distribution of capital

- 9** (1) Subject to the express provisions of the instrument by which property is donated to the foundation and to sections 9.1 and 17, the board may use or distribute part of the capital of donated or substituted property in order to further the objects of the foundation, if
- (a) the use or distribution is required to comply with a policy established by the board under section 9.2, and
 - (b) the board, by ordinary resolution, determines the amount that may be used or distributed from time to time under this section.
- (2) The capital of property of the foundation at the time of a use or distribution of capital under this section is the dollar value of the property
- (a) at the time the property was donated, or
 - (b) if the property is substituted property, at the time the property was substituted,
- less
- (c) any expenses charged under section 6 (1) in respect of the property before the time of that use or distribution of capital, and
 - (d) any amounts of capital used or distributed under this Act in respect of the property before the time referred to in paragraph (c).
- (3) This section applies in respect of capital of property of the foundation whether the property is donated to, or received or acquired by, the foundation before or after this subsection comes into force.

Departure from terms and conditions of donating instrument

- 9.1** If, after the lifetime of a donor or the winding up of a corporate donor, circumstances make it, in the board's opinion, no longer possible or practical to comply with a term or condition of the instrument by which property was donated to the foundation, the board may depart from that term or condition, but
- (a) only to the extent that the board considers necessary to further the objects of the foundation, and
 - (b) if the donation was received by the foundation other than by way of bequest or inheritance, only after a period of not less than 10 years has elapsed from the date on which the donation was received.

Policies concerning retention, use and distribution of income and capital

- 9.2** For the purposes of sections 8 and 9, the board must, by ordinary resolution, establish policies concerning the retention, use and distribution of income and capital that take into account the following:
- (a) the foundation's need to maintain a reasonable balance between the inflation adjusted capital value of property donated to the foundation and the amounts to be used or distributed;
 - (b) the estimated return on investments without regard to whether the return is characterized as income or capital;
 - (c) existing and anticipated requirements;
 - (d) the achievement of stability in the amounts to be used or distributed;
 - (e) the disbursement requirements of any applicable taxation legislation;
 - (f) any other factors the board considers relevant.

6 *Section 10 is repealed.*

7 *Section 11 (a) is amended by striking out "returns" and substituting "income or capital".*

8 *Section 14 (d) is amended by striking out " , funds, capital or returns" and substituting "or funds".*

9 *Section 21 (2) is amended by striking out "Canada Customs and Revenue Agency" and substituting "Canada Revenue Agency".*

Commencement

- 10** This Act comes into force on the date of Royal Assent.