

AN ACT TO INCORPORATE THE VANCOUVER MUSEUM FOUNDATION

CHAPTER 37

Assented to June 26, 1987.

Preamble

WHEREAS it is desirable to create a perpetual body to encourage and receive donations to be used for the development of collections, the capital needs and for the development of endowment funds of the Vancouver Museum and other associated institutions in the Greater Vancouver Region.

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

Citation

1. This Act may be cited as the *Vancouver Museum Foundation Act*.

Interpretation

2. In this Act

"auditor" includes a firm of auditors;

"board" means the Board of Directors for the time being of the Vancouver Museum Foundation;

"bylaws" means the bylaws of the foundation as passed or amended from time to time by resolution approved by a simple majority of the members of the board;

"court" means the Supreme Court of British Columbia or any Judge or Local Judge of that court;

"foundation" means the Vancouver Museum Foundation;

"founders" means the applicants for incorporation of the foundation;

"fund" means the common trust fund established by the foundation to facilitate combined investment of donations received by the foundation;

"member" means any member of the board for the time being including any member appointed ex officio or otherwise by virtue of his or her office;

"Vancouver Museum" means the operating division of the Vancouver Museums and Planetarium Association, or of the successor organization of the Vancouver Museums and Planetarium Association, that has as its mandate the provision of a museum devoted to exploring the Lower Mainland of British Columbia, its natural environment, its origins, its development and the cultural heritage of its peoples.

Foundation established

3. There is hereby created a non-profit corporation which shall be a body politic and corporate, without share capital, under the name of "Vancouver Museum Foundation".

4. The foundation is composed of the members for the time being of the board, and a member is not, in his individual capacity, liable for a debt or liability of the foundation.

Objects and powers

5. The objects of the foundation, all charitable, are to encourage, receive, administer and distribute donations for the Vancouver Museum, and other associated institutions in the Greater Vancouver Region as may be determined from time to time by

the board, for the purposes of building collections, for capital needs and for the development of an endowment.

6. The foundation has power to receive bequests, devises and donations of every kind and description whatsoever which are expressly designated to be held or used for any of the charitable objects of the foundation, and to own, hold, control, administer and deal with all kinds of property whether real or personal and wherever it is situated, but at the discretion of the board of the foundation which may refuse to accept any such bequest, devise or donation.

7. The foundation has power to earn income from and to change the form of any property or investment received, held or administered by the foundation into any other form of property or investment if such change does not contravene an expressed written term of any specific charitable bequest, devise or donation by which the property or investment is received by the foundation or the provisions of section 27 of this Act.

8. Any special costs of administration or distribution incurred by the foundation by reason of an expressed written term of any specific charitable bequest, devise or donation, which are deemed by resolution of the board to be required in addition to the ordinary cost of administration, shall be charged against the income from the money, property or investment separately held as required by that bequest, devise or donation, and the decision of the auditor as to the extent of the special costs is final.

9. (1) The foundation may pay all other costs ("ordinary costs") of administering the foundation and any money, property or investment received or held by the foundation and charge that cost against the income received by the foundation from all the money, property or investments held from time to time, but all ordinary costs charged against the income from any money, property or investments held subject to the expressed written terms of any specific charitable bequest, devise or donation must be in the proportion that the annual income arising from each such separately held money, property or investment bears to the total income of the foundation as certified by the auditor.

(2) Notwithstanding the provisions of subsection (1), the foundation may pay the costs of establishing the foundation and the costs of administration for its first fiscal year out of capital assets held by or on behalf of the foundation.

10. Subject to the provisions of section 27 of this Act and any order or direction of the court, the foundation has the right and power to invest in any way the board considers fit and prudent, all money and other property entrusted to or vested in the foundation, as if the foundation were a person of full age and capacity beneficially entitled to that money and property.

11. (1) The foundation has the power to establish the fund as defined in section 2 of this Act.

(2) Unless otherwise specifically directed in writing by the expressed terms of a specific charitable devise, bequest or donation, or by the court, all property or investments received by the foundation may be combined in the fund established by the foundation to facilitate investment.

(3) By resolution the board may make regulations concerning the operation of the fund, the method of valuation of investments in the fund, the date or dates on which such valuation may be made, the distribution of the income of the fund and the money or property that may be included in the fund.

12. Any person, firm, corporation or association including any board of management of any public body or institution consisting of appointed members or directors, now or at

any time holding property in trust for any charitable purpose for the benefit of any charitable institution, or for any purpose similar to the objects of the foundation, wishing for any reason to be discharged from the administration of that trust, may apply to the court upon notice to the foundation, for an order that the property subject to that trust may be transferred, assigned, set over and conveyed to the foundation subject to the terms of the trust and such other terms and conditions as may be ordered by the court, and if the foundation is ordered to accept the same by the court, any trustee complying with the terms of the court order will be fully relieved and discharged of all further responsibility in respect of the property so handed over pursuant to the order.

13. (1) If the object of any specific charitable trust held by the foundation has ceased to exist, or if the trust has become substantially incapable of performance, or if the trust cannot be administered for any reason, and if the foundation cannot vary the terms of the specific trust to provide for alternative objects by agreement with the donor or his or her successors or personal representatives within a reasonable time as determined by resolution of the board, the foundation, as trustee, by resolution of the board, may thereafter use the property held on such trust for such charitable purposes in such manner as other donations that may be made to the foundation under this Act, and the decision of the board shall be final and binding on all persons affected.

(2) A person affected by a decision made under this section, upon proper notice to the foundation and within 60 days after the decision was made, may apply to the court for an order to revoke or alter the resolution of the board, and on such application the court may make any order it considers reasonable in the circumstances.

14. Where a donation is made to the foundation in trust of any property to take effect in future, the board is empowered to accept the same and exercise any powers of appointment, settlement or distribution with respect to the income in whole or in part derivable from such property in the interim, as well as any power to nominate executors and trustees in the manner provided in the instrument creating the trust.

15. A charitable organization established under the law of the Province or authorized to operate under the law of the Province which is registered under the *Income Tax Act* (Canada) may entrust funds to the foundation and the foundation may manage and invest the funds on terms agreeable to such organization and the foundation.

Management – Board of Directors

16. The board will consist of not more than 14 individual persons who are residents of the Province of British Columbia, and who have reached the age of majority.

17. Composition of the board is now and after this shall be determined as follows:

- (a) the Mayor of the City of Vancouver holds office as a member of the board by virtue of his or her office, but at any time and from time to time, the said mayor may appoint another person, who otherwise qualifies, as member of the board in his or her place for such term as the mayor may decide, to terminate upon written request from the mayor or upon the swearing in of a successor mayor;
- (b) the Chairperson of the Board of School Trustees of School District No. 39 (Vancouver) holds office as a member of the board by virtue of his or her office, but at any time and from time to time, that chairperson may appoint another person, who otherwise qualifies, as member of the board in his or her place for such term as that chairperson may decide, to terminate upon written request from the chairperson or upon the swearing in of a successor chairperson;

- (c) one Member of the Board who is otherwise qualified, may be appointed by the minister of the government of the Province of British Columbia who is charged with the responsibility for the cultural or historic affairs of the government of the Province of British Columbia and such member of the board shall serve at the pleasure of the minister for a term not to exceed 3 years;
- (d) the Chairman of the Vancouver Museum holds office as a member of the board by virtue of his or her office;
- (e) the immediate Past Chairman of the Vancouver Museum holds office as a member of the board for as long as the current Chairman of the Vancouver Museum holds his or her position. If, for any reason, the immediate Past Chairman of the Vancouver Museum is unable or unwilling to serve as a member of the board, the position on the board shall remain vacant;
- (f) the 3 Founders who, in addition to the Chairman and Past Chairman of the Vancouver Museum, petitioned for this Act will be members of the board upon incorporation, and of that number the term of one shall expire in one year, the term of another shall expire in 2 years and the term of the third shall expire in 3 years and when the initial term of each founder expires on dates determined by the board, the vacancy will be filled for succeeding 3 year terms by such persons as are elected by all the members of the board other than those whose terms are not then expiring;
- (g) not more than 6 persons who may be appointed by the board for initial terms that shall not exceed 3 years to provide for the terms of 2 of these individuals to mature in each of the 3 years subsequent to the date of incorporation and the vacancies will be filled for succeeding 3 year terms by such persons as are elected by all the members of the board other than those whose terms are not then expiring.

18. Except as provided for the shortened initial terms of office in section 17 (f) and (g), the persons nominated and appointed for membership on the board under these sections will remain members for the term of 3 years unless any has been appointed to fill a vacancy arising under section 21, in which case the term will expire on the date upon which the predecessor's term would ordinarily have ended.

19. Any elected member of the board whose term expires and any former member of the board is eligible for election or re-election, but in order to ensure periodic changes in board personnel, no person elected under section 17 (f) or (g) shall be a member of the board for more than 2 full consecutive terms unless one of those terms was for less than 3 years in which case the member may serve for a third term.

20. Any member of the board appointed pursuant to section 17 (f) or (g) of this Act is required to resign as a member of the board on the request in writing signed by a majority of the members of the board.

21. When the term of office of any board member appointed pursuant to section 17 (f) and (g) is terminated by death, disability, change of residence, resignation or required under section 20, the remaining members of the board may appoint a new member to fill the vacancy created for the unexpired term of that member.

22. All powers, authority, discretion of the board may be exercised by a resolution of the majority of the members of the board present at any duly constituted meeting of the board. A quorum shall be the lesser of 50% of the number serving as members of the board or 5 members of the board.

23. (1) The board may appoint such officers and engage such employees at a remuneration considered proper and necessary by the board.

(2) The board may incur the expenditures it considers are required to conduct the affairs of the foundation and to carry out its objects.

(3) All payments of any kind made under this section shall be approved by resolution of the board.

24. No salary, reward, profit, gift or advantage of any kind shall be paid or given to any member of the board or any member of an advisory committee appointed by the board

25. The board may pass bylaws regulating the operation of the foundation and the board, including determination of the fiscal year of the foundation, the time or times of distribution of income from investments, audit and publication required, appointment of a chairman, and such other matters as may be considered advisable to permit the convenient and efficient operation of the foundation under this Act.

26. The board may, by resolution, provide for a common seal and all transfers, assignments or conveyances of property by the foundation must be executed by and on behalf of the foundation by a member or members of the board in the way authorized by resolution of the board.

Investment of funds

- application of revenue

27. Subject to section 34 of this Act, the foundation may invest all its assets and all assets entrusted to the foundation in any manner that is authorized by the *Trustee Act* at the discretion of the board, including the deposit of any money held or received in any chartered bank, trust company or credit union in British Columbia, with power to retain all or any part of property received in the form in which it may be upon receipt even though it may not be an authorized investment for trustees, and in addition the foundation may acquire and hold an estate in fee simple in land as an authorized investment, and the board may direct investment of money or other property entrusted to a trust company at the discretion of the board subject to the same restrictions.

28. As soon as practicable after any devise, bequest or donation is received the foundation shall determine the investment of the money or other property received by resolution of the board.

29. The foundation may appoint one or more trust companies to have custody of the money or property included in any devise, bequest or donation, or such portion or portion of it as may be allotted to each trust company appointed, which must act as trustee of that money or property for the foundation under the direction and control of the board.

30. At any time, by resolution of the board, the foundation may revoke the appointment of any trust company as a trustee and appoint another trust company in its place.

31. (1) A trust company appointed as trustee by and for the foundation shall have custody of all property entrusted to it by the foundation and shall make all investments, reinvestments, conversions, sales or dispositions of that property as the board may direct in writing from time to time, and shall distribute from the money in its possession as trustee for the foundation, such sums in such manner as the board directs by resolution.

(2) A trust company is not accountable for any act or omission if that act or omission was authorized in writing by the board

32. Subject to section 34 of the Act, the board may use and distribute all or part of the income of the foundation whenever it is received as the board considers proper for any of the objects of the foundation.

33. The board may establish voluntary advisory committees to assist the board in the conduct of the affairs of the foundation.

34. The board shall carry out the directions of donors where definite directions in writing are given at the time of donation as part of the instrument of devise, bequest or donation for charitable purposes pursuant to section 6 of this Act.

35. (1) If a donor is deceased or otherwise not available to clarify directions given with respect to the use of a bequest, devise or donation, the board may exercise its discretion in cases of doubt to determine the intention of the donor and deal with the property in any way the board may decide by resolution, and the decision of the board shall be final and binding on all persons affected.

(2) A person affected by a decision made under this section, upon proper notice to the foundation and within 60 days after the decision was made, may apply to the court for an order to revoke or alter the resolution of the board, and the court may on such application make any order it considers reasonable in the circumstances.

36. Where property is donated to the foundation and the donor desires that a part of the income from shall to be distributed for charitable purposes that are not consistent with the objects of the foundation and so indicates in the instrument creating the trust, the board may accept the donation and exercise the trust in respect of the distribution of that part of the income as fully and effectually as with respect to the remainder.

37. In the absence of any directions in writing by the donor, contributions to the foundation may be used at the discretion of the board for such purposes as are consistent with the objects of the foundation.

Borrowing powers

38. The power of the foundation to borrow is restricted to

- (a) borrowing for the purpose of obtaining money to administer the foundation and to pay the expenses incurred in carrying out the objects of the foundation, and
- (b) borrowing for the purpose of obtaining money which, in the discretion of the members of the board as determined by resolution, is required to protect or preserve any assets held by the foundation, but the cost of borrowing and the security given for money borrowed to protect or preserve any assets separately held on the express written terms of any specific charitable devise, bequest or donation, shall be charged against or limited to the assets separately held on those express terms.

39. Subject to section 38 the board may borrow money in such manner and amount, on such security including the issue of debentures, from such sources and upon such terms and conditions as may be determined by resolution of the board.

Other Acts

40. Notwithstanding section 3 (1) of the *Company Act*, the provisions of the *Company Act* do not apply to the foundation.

41. The provisions of the *Society Act* do not apply to the foundation.

42. Notwithstanding section 2 of the *Company Clauses Act*, the provisions of the *Company Clauses Act* do not apply to the foundation.

43. With the necessary changes and in so far as applicable, this Act, the foundation and the board are subject to the provisions of the *Trustee Act*.

General provisions

44. A document may be served on the foundation by personally serving any member of the board or any officer of the foundation.

45. (1) Within 4 months after the end of each fiscal year the foundation shall cause an audit to be completed by an independent auditor. Such audit shall include the examination of the receipts and disbursements of the foundation, and a balance sheet and statement of income and expenditure duly certified by such auditor shall be available for public scrutiny at the principal office of the Vancouver Museum within 6 months after the end of each fiscal year.

(2) Any trust company appointed by the board under this Act shall give full information and permit necessary inspections to enable such audit to be made.

46. Any form of words is sufficient to constitute a donation for the purpose of this Act so long as the donor indicates an intention to contribute presently or prospectively to a fund or foundation of the general character indicated in this Act.

47. The rule against perpetuities shall not apply to donations of the character indicated in this Act.