

AN ACT TO INCORPORATE CHILLIWACK FOUNDATION**CHAPTER 62**

Assented to June 28, 1985.

Preamble

WHEREAS it is desirable to create a perpetual body to receive donations in trust so that the net annual income from such donations will be devoted perpetually to charitable purposes principally within or near the Regional District of Fraser Cheam in British Columbia.

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

1. This Act may be cited as the *Chilliwack Foundation Act*.

Interpretation

2. In this Act

- "auditor" includes a firm of auditors;
- "Board" means the Board of Directors for the time being of Chilliwack Foundation;
- "by-laws" means the by-laws 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 "Chilliwack 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;
- "Regional District of Fraser Cheam" means and includes that geographical area so designated and having the boundaries specified in the Letters Patent issued to the Regional District of Fraser Cheam upon its incorporation pursuant to the provisions of the *Municipal Act*, notwithstanding any changes in those boundaries or the formal existence or otherwise of that Regional District;
- "trust company" means any trust company licenced to do business in British Columbia which is authorized to act as an executor in the Province.

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 "Chilliwack 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 provide care for needy men, women, and children, and in particular the sick, aged, destitute, and helpless; to promote educational advancement and scientific or medical research for the increase of human knowledge and the alleviation of human suffering; to better underprivileged or delinquent persons; to promote recreational activities and the conservation of such human, natural and heritage resources as are not political in nature; and to provide for such other charitable purposes as may in the discretion of the Board appear to contribute to the cultural, recreational, religious, or physical well-being of the inhabitants of the Regional District of Fraser Cheam.

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 in the discretion of the Board the Foundation 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 by selling, assigning, transferring, leasing, granting options on, exchanging, or otherwise disposing of or dealing with the same, if such change does not contravene an express 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 express written term of any specific charitable bequest, devise, or donation, which is deemed by resolution of the Board to be required in addition to the ordinary cost of administration, is to 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 investment held subject to the express 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 annual 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 express 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 or 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 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 and 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*

of 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 9 individual persons who are residents of the Regional District of Fraser Cheam or who have a substantial interest in a business or profession located within the Regional District of Fraser Cheam, and who have reached the age of majority.

17. Composition of the Board is now and after this will be determined as follows:

- (a) The Mayor of the District of Chilliwack for the time being will hold 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 a member of the Board in his or her place for such term as the said Mayor may decide, not exceeding his or her own term of office as Mayor;
- (b) The Chairperson of the Board of School Trustees of School District No. 33 (Chilliwack) will hold 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, to hold office as a member of the Board in the place of the said Chairperson for such term as that Chairperson may decide, not exceeding his or her own term of office as Chairperson;
- (c) One person who is the holder of an elected public office that is broadly representative of a large number of the residents of the Regional District of Fraser Cheam, shall be appointed by a majority of those persons holding office pursuant to paragraph (d) to hold office as a member of the Board so long as he or she holds such office, but at any time and from time to time that member may appoint another person, who otherwise qualifies, to hold office as a member of the Board in place of the said member, for such term as that member may decide, not exceeding his or her own term of office as such member;
- (d) The 6 Founders who petitioned for this Act will be members of the Board upon incorporation, and of that number the terms of 2 Founders will expire in 2 years, the terms of another 2 will expire in 3 years, and the terms of the remaining 2 will expire in 4 years, and when the initial term of each Founder expires on dates determined by the Board, the vacancy will be filled for succeeding 4 year terms by such persons as are elected by all the members of the Board whose terms do not expire at the same time.

18. Except as provided for shortened initial terms of office in section 17 (d), the persons nominated and appointed for membership on the Board under that subsection will remain members for the term of 4 years unless any has been appointed to fill a vacancy arising under section 21, in which case the term of office 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 (d) shall be a member of the Foundation or a member of the Board for more than 2 consecutive full or partial terms under that subsection.

20. Any member of the Board, other than one who is a member by virtue of his or her office pursuant to section 17 (a), (b), and (c) of this Act or his or her respective nominee, may be 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, other than those holding office pursuant to section 17 (a), (b), and (c), is terminated by death, disability, change of residence, resignation, or required resignation under section 20, a new member is to be appointed by the remaining members of the Board to fill the vacancy created within 60 days after that termination for the unexpired term of that member.

22. All powers, authority, and discretion of the Board may be exercised by a majority of the members of the Board present at any duly constituted meeting of the Board at which not less than 5 members are present, which shall be a quorum.

23. (1) The Board may appoint such officers and engage such employees, including an Executive Director, a secretary-treasurer, and a legal adviser, 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 must be approved by resolution of the Board.

24. No salary, reward, profit, gift, or advantage of any kind is to 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 by-laws 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 Foundation may have a common seal as determined by resolution of the Board 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 ordinary 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 must 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 portions 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 must have custody of all property entrusted to it by the Foundation and must make all investments, reinvestments, conversions, sales, or dispositions of that property as the Board may direct in writing from time to time, and must 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 this 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 composed of persons who are residents of the Regional District of Fraser Cheam or who have a substantial interest in a business or profession within the Regional District of Fraser Cheam to assist the Board in the conduct of the affairs of the Foundation.

34. The Board must 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 it is to be distributed for charitable purposes for the benefit of citizens of places other than the Regional District of Fraser Cheam or the Province of British Columbia 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, all contributions to the Foundation are to be invested and the net income devoted in perpetuity for charitable purposes as provided in this Act.

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 ordinary 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, is to 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 ordinary 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 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) The Foundation must cause an audit to be made at least once in every fiscal year by an independent auditor of the receipts and disbursements of the Foundation, and must cause to be published in a newspaper of general circulation in the Regional District

of Fraser Cheam a balance sheet and statement of income and expenditure duly certified by such auditor.

(2) Any trust company appointed by the Board under this Act must 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.

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