
VANCOUVER FOUNDATION ACT

CHAPTER 21

Assented to May 16, 2024

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Section 1

Preamble

WHEREAS the Vancouver Foundation was established as a corporation by the *Vancouver Foundation Act*, S.B.C. 1950, c. 94;

AND WHEREAS the Vancouver Foundation is a registered charity under the *Income Tax Act* (Canada);

AND WHEREAS the Vancouver Foundation, to effectively conduct its affairs as a modern charitable organization, desires that the *Vancouver Foundation Act*, R.S.B.C. 2000, c. 1, be repealed and replaced with a new Act that continues the Vancouver Foundation, clarifies its capacity, provides for its administration, including governance by a board of directors, and makes other incidental changes;

AND WHEREAS the Vancouver Foundation has by the foundation's petition requested that it be enacted as follows, and it is expedient to grant the request in the petition;

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

PART 1 – DEFINITIONS**Definitions**

1 In this Act:

“**board**” means the board of directors established under section 6;

“**bylaws**” means bylaws of the foundation made under section 11;

“**contributed capital**” means, for a particular fund at a particular time, the dollar value of all contributions that were made to the fund before the particular time, other than contributions that were subsequently withdrawn from the fund;

“**custodian**” means a person appointed under section 5 (1);

“**director**” means a person appointed under section 7 (1);

“**distributable amount**” means, for a particular fund at a particular time, the amount by which the fair market value of the fund at the particular time exceeds the contributed capital of the fund at the particular time;

“**donation**” includes a bequest, devise, gift, grant or legacy;

“**endowment**” means a fund that is subject to restrictions that require the capital of the fund to be preserved;

“**foundation**” means the Vancouver Foundation continued under section 2;

“fund” means the following funds:

- (a) a common fund established under section 16 (1) (a);
- (b) a separately managed fund established under section 16 (1) (b).

PART 2 – VANCOUVER FOUNDATION

Vancouver Foundation continued

- 2 The Vancouver Foundation is continued as a corporation, without share capital, consisting of the board.

Objects of foundation

- 3 (1) The objects of the foundation, all of which are deemed to be charitable, are the following:
- (a) to provide care for needy men, women and children and, in particular, to the sick, aged, destitute and helpless;
 - (b) to promote educational advancement and scientific or medical research for the increase of human knowledge and the alleviation of human suffering;
 - (c) to support the relief of poverty;
 - (d) to promote recreational activities and the conservation of human, natural and heritage resources;
 - (e) to support any other charitable purposes that the board considers to be of benefit to communities;
 - (f) to make grants to qualified donees within the meaning of the *Income Tax Act* (Canada).
- (2) The foundation is to carry out its objects primarily in British Columbia, but the foundation may
- (a) accept donations that are subject to terms or conditions that the donations be used to carry out the foundation’s objects outside of British Columbia, and
 - (b) use those donations, in whole or in part, to carry out its objects in any part of Canada in accordance with the donor’s directions.

Capacity and powers of foundation

- 4 (1) The foundation has the capacity and powers of a natural person of full capacity.
- (2) For certainty, and without limiting subsection (1), the foundation has the following powers:
- (a) to receive donations of property of every kind and description;
 - (b) to refuse to accept any donation, as determined by the foundation in its sole discretion;

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- (c) to hold legal and beneficial title to property of any kind and description and to control, administer and deal with property of every kind and description, wherever situated;
 - (d) to establish, manage and administer any funds that are appropriate to advance the objects of the foundation;
 - (e) if not in contravention of a specific term of the donation under which it is received, to convert property of any kind or description received or held by the foundation into any other kind and, for this purpose, to dispose of the property;
 - (f) to pay the expenses of administering the foundation and its affairs and property, and to allocate these expenses appropriately against the funds and other property of the foundation.
- (3) Subject to any specific direction to the contrary in any Act or in the terms of a donation, the powers conferred on the foundation under this Act may be exercised in respect of all property held by the foundation, whether such property was received by the foundation before or after this section came into force.
- (4) Despite the terms of a donation that require that the income of a fund is to be disbursed for charitable purposes, the foundation may
- (a) retain and accumulate the income in a particular year, or any portion of a particular year, without distribution and add it to the fund, so that the income is available for distribution in a future year, and
 - (b) reinvest any accumulated income as a contribution to the capital of the fund.
- (5) The powers conferred on the foundation under subsection (4) do not apply to a fund if the terms of the fund require that income must be distributed to a particular organization, unless the organization consents to the exercise of those powers.

Custodian

- 5 (1) The foundation may appoint one or more of the following persons as custodians of a fund or other property of the foundation:
- (a) a trust company;
 - (b) any other corporation that is authorized by law to provide custodial services in Canada.
- (2) The foundation may enter into an agreement with a custodian.
- (3) A custodian
- (a) may be entrusted with the custody of any amount of a fund or other property determined by the foundation,
 - (b) must hold that amount of the fund or other property in the manner determined by the foundation, and

- (c) must perform any other obligations imposed on the custodian
 - (i) under this Act, or
 - (ii) by an agreement between the custodian and the foundation.
- (4) The foundation may, at any time, revoke the appointment of a custodian and resume custody of a fund or other property of the foundation.

PART 3 – GOVERNANCE

Board of directors

- 6**
- (1) The foundation is to be managed by a board of directors consisting of at least 10 and no more than 18 persons.
 - (2) A vacancy on the board does not affect the board's authority to carry out its duties and exercise its powers or impair the power of the remaining directors to act on behalf of the foundation.

Appointment of directors

- 7**
- (1) The board may appoint a person as a director, by resolution passed by a majority vote of the directors.
 - (2) The board must not appoint a person as a director under subsection (1) unless the person is qualified by meeting the following requirements:
 - (a) the person is at least 18 years of age;
 - (b) the person is ordinarily resident in British Columbia;
 - (c) subject to subsection (3), the person has not been found by any court, in Canada or elsewhere, to be incapable of managing the person's own affairs;
 - (d) the person is not an undischarged bankrupt;
 - (e) either
 - (i) the person has not been convicted of an offence involving fraud or an offence in connection with the promotion, formation or management of a corporation or unincorporated entity, or
 - (ii) if the person has been convicted of an offence referred to in subparagraph (i), in respect of the conviction, a pardon has been granted, or a record suspension has been ordered, under the *Criminal Records Act* (Canada) and the pardon or record suspension has not been revoked or ceased to have effect;
 - (f) any other requirement set out in the bylaws.
 - (3) The limitation in subsection (2) (c) does not apply in relation to a person who has been found by a court, in Canada or elsewhere, to be incapable of managing the person's own affairs if a court, in Canada or elsewhere, has subsequently found otherwise.

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- (4) A person who no longer meets the requirements set out in subsection (2) ceases to be a director.
- (5) The foundation may, in accordance with the bylaws,
 - (a) pay the remuneration of a director, and
 - (b) reimburse a director for travel and out-of-pocket expenses reasonably incurred while managing the affairs of the foundation or supervising those affairs.

Duties and powers of board

- 8 The board must manage the affairs of the foundation, or supervise the management of those affairs, in accordance with this Act and the bylaws.

Duties of directors

- 9 (1) A director, when exercising the powers and performing the duties of a director, must
 - (a) act honestly and in good faith with a view to the best interests of the foundation,
 - (b) exercise the care, diligence and skill of a reasonably prudent person in comparable circumstances, and
 - (c) act with a view to the objects of the foundation.
- (2) For certainty, a director is in compliance with subsection (1) if the director, when exercising the powers and performing the duties of a director, reasonably and in good faith relies on the following submitted to the board by the foundation's staff:
 - (a) documents, including, without limitation, financial statements, professional reports or opinions;
 - (b) submissions or reports.

Liability protection

- 10 (1) No legal proceeding for damages lies or may be commenced or maintained against a director because of anything done or omitted
 - (a) in the performance or intended performance of any duty under this Act, or
 - (b) in the exercise or intended exercise of any power under this Act.
- (2) Subsection (1) does not apply to a director in relation to anything done or omitted by that person in bad faith.
- (3) Subsection (1) does not absolve the foundation from vicarious liability for an act or omission by a director for which the foundation would be vicariously liable if this section were not in force.
- (4) The foundation may indemnify directors and former directors against liabilities and costs that are incurred as a result of proceedings brought against such persons by reason of being or having been a director of the foundation.

- (5) The foundation may purchase and maintain insurance for the benefit of directors and former directors against any liability that may be incurred by a director or former director by reason of being or having been a director of the foundation.

Bylaws

- 11** (1) The foundation must have bylaws that contain provisions respecting the internal affairs of the foundation, including provisions respecting the following:
- (a) subject to section 6 (1), the number of directors that are to hold office;
 - (b) any additional requirement in respect of the composition of the board;
 - (c) any additional requirement a person must meet to be qualified to be appointed as a director;
 - (d) the manner in which directors are selected, appointed and removed, and the manner in which any vacancy on the board is filled;
 - (e) the terms of office of directors;
 - (f) the remuneration payable and expenses reimbursable to directors;
 - (g) the appointment of a chair of the board;
 - (h) the manner of executing documents on behalf of the foundation;
 - (i) any investments that are not permitted;
 - (j) the fiscal year of the foundation;
 - (k) the appointment of an auditor, the conduct of the annual audit and the publication of the report of the auditor;
 - (l) any other matters that the board considers advisable for the efficient administration of the foundation and the effective carrying out of the objects of the foundation and this Act.
- (2) A bylaw must not contain a provision that is contrary to this Act or any other enactment of British Columbia or Canada.
- (3) If a bylaw contains a provision that is contrary to this Act or any other enactment of British Columbia or Canada, the bylaw's provision has no effect.
- (4) A bylaw, or an amendment or repeal of a bylaw, must be passed by resolution by at least 75% of the directors.
- (5) A bylaw is made, amended or repealed on the date that a resolution to make, amend or repeal the bylaw has passed or on a later date specified in the resolution.

Advisory committees

- 12** (1) The board may establish one or more advisory committees to assist the board in the management of the affairs of the foundation or supervision of the management of those affairs.

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- (2) The board may, in accordance with the bylaws,
 - (a) pay the remuneration of a member of an advisory committee established under subsection (1), and
 - (b) reimburse a member of an advisory committee for travel and out-of-pocket expenses reasonably incurred in carrying out the duties of a member of the advisory committee.

Officers and employees

- 13 (1) The board may, on behalf of the foundation, appoint officers and hire employees necessary for the board to perform its duties and exercise its powers.
- (2) The board may establish the remuneration and the other terms and conditions of officers and employees.
- (3) The board may delegate to a specific officer or employee the authority
 - (a) to hire employees, and
 - (b) to establish the remuneration and the other terms and conditions of the employees.

Expenses

- 14 The board may incur expenses incidental to the conduct of the affairs of the foundation and the carrying out of the foundation's objects, as the board considers reasonable.

PART 4 – MANAGEMENT BY BOARD**Division 1 – Investment and Funds****Power of investment**

- 15 (1) The foundation may invest its funds and other property in any form of investment that the board considers appropriate in the circumstances, subject to any specific restriction set out
 - (a) in the bylaws,
 - (b) in an instrument that effects a donation to the foundation or creates a condition on funds to be administered by the foundation, or
 - (c) in an order of the Supreme Court.
- (2) The board must establish investment policies for the foundation.
- (3) The board may
 - (a) appoint one or more qualified persons as investment managers for the foundation, and
 - (b) delegate its powers of investment under this section to an investment manager appointed under paragraph (a).

- (4) A delegation under subsection (3) (b) must be in writing and may
 - (a) include any limits or conditions the board considers appropriate, and
 - (b) be varied or revoked.
- (5) The board may establish the remuneration and the other terms and conditions of an investment manager appointed under subsection (3) (a).
- (6) The board may delegate to an officer or employee the power to appoint an investment manager and to set the terms and conditions of the appointment.
- (7) The board, and any officer or employee who appoints an investment manager,
 - (a) may supervise the investment manager in exercising the powers of investment under this section that are delegated to the investment manager, and
 - (b) must exercise reasonable diligence in appointing and supervising an investment manager.

Establishment of funds

- 16** (1) Subject to this Act and any specific written direction by a donor of property to the foundation, the board may
- (a) establish one or more common funds in which money or other property of the foundation is combined for the purposes of facilitating investment or for any other purpose the board considers appropriate, and
 - (b) establish one or more separately managed funds when there is a specific written direction by a donor, made on or before the date on which a donation is made, that the property included in the donation must be included in a separately managed fund.
- (2) The foundation may do the following in respect of funds established under subsection (1):
- (a) determine the properties of the foundation to be included in a fund and those to be withdrawn from a fund;
 - (b) determine the method of valuation of investments in funds and the date or dates on which the valuation may be made;
 - (c) make regulations concerning the operation of funds.

Division 2 – Distribution and Donations**Distribution**

- 17** (1) The board must develop retention and distribution policies.
- (2) When developing a policy under subsection (1), the board must consider the following:
- (a) the foundation's need to maintain a reasonable balance between the contributed capital of a fund and the fund's fair market value;

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- (b) existing and anticipated requirements;
 - (c) the short-term and long-term needs of the foundation;
 - (d) the foundation's disbursement quota requirements under any applicable taxation legislation;
 - (e) any other factors the board considers relevant.
- (3) The foundation may, from time to time, but not less often than once in each fiscal year, distribute from each of its funds a portion of the distributable amount, as determined in accordance with the retention and distribution policies referred to in subsection (1).

Emergency encroachment on funds

- 18** (1) In this section, “**unforeseeable circumstances**” means unforeseeable adverse circumstances affecting the general public, such as a natural disaster, public health emergency, war, significant global conflict or widespread economic recession.
- (2) Subject to subsection (3) and the *Income Tax Act* (Canada), if the board determines that it is reasonable due to unforeseeable circumstances, the board may, by a resolution passed by at least 80% of the votes cast by the directors, authorize the foundation to encroach on the contributed capital of a fund, including an endowment, to allow for emergency disbursements consistent with one or more of the objects of the foundation.
- (3) The foundation may encroach on the contributed capital of a fund under subsection (2) only up to an amount equal to 7% of the contributed capital of a fund determined as of December 31 of the immediately preceding fiscal year.
- (4) Nothing in this section is intended to limit the ability of the foundation from encroaching on the contributed capital of a fund, including an endowment, to the extent permitted by the instrument effecting a donation.

Duty to carry out directions of donors

- 19** (1) In this section, “**originating document**” means an instrument that
- (a) creates a condition on a fund to be administered by the foundation, or
 - (b) effects a donation to the foundation.
- (2) If the lawful directions of a donor, in respect of a donation or conditions applicable to a donation, are set out in an originating document that was finalized on or before the date on which an applicable condition or donation set out in the originating document was accepted by the foundation, the foundation must comply with the directions of the donor or the conditions applicable to the donation, as the case may be.

- (3) Despite subsection (2), if, in the foundation's opinion,
- (a) the directions or conditions applicable to a donation are, singly or jointly, inconsistent with the proper characterization of the donation as a gift at law, or
 - (b) complying with such directions or conditions would jeopardize the foundation's registration as a charity under the *Income Tax Act* (Canada),
- the foundation may depart from the directions or conditions to the extent the board considers necessary to remove the inconsistency or to maintain registration.
- (4) The foundation may, to the extent required as determined by the board in its sole discretion, depart from the directions of the donor or from the conditions attaching to property if
- (a) the donor is deceased or is otherwise not available to clarify the directions or conditions, or in the case of a corporate donor, the corporation has been dissolved, and
 - (b) it is no longer reasonable for the board to carry out those directions or conditions.
- (5) Subject to subsection (6), a decision of the board under subsection (4) is final and binding on all persons affected.
- (6) A person affected by a decision under subsection (4) may, within 60 days after the decision was made, apply to the Supreme Court for a review of the decision, and the court may make an order it considers reasonable in the circumstances.
- (7) The foundation is not required to carry out the directions or conditions imposed or sought to be imposed on a donation after the donation has been accepted by the foundation, whether such directions or conditions are imposed or sought to be imposed by the donor or another party.

Use of donations if specific directions not given by donor

- 20** (1) In the absence of any specific written direction by the donor,
- (a) a donation to the foundation is unrestricted, and
 - (b) the board may administer and deal with the donated property in a manner it determines in its sole discretion is best to carry out the objects of the foundation.
- (2) For the purposes of subsection (1), a donation is considered to be made without specific written direction by the donor if
- (a) the donation is made to the foundation by the donor without any written direction, qualification or explanation designating the application of the donated property, or the intended purpose or use of the donation, at or before the time that the donated property is transferred to the foundation, or

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- (b) it is evident from the express or implied terms of the donation that the donation is for use by the foundation in its sole discretion.
- (3) All powers, authority and discretion exercisable by the board under this section may be exercised, in the sole discretion of the board, by a majority vote of the board, and any decision of the board is final and conclusive.

General provisions relating to donations

- 21 (1) Any form of words is sufficient to constitute a donation to the foundation for the purpose of this Act, so long as the donor indicates an intention to presently or prospectively donate property to the foundation or a fund administered by the foundation.
- (2) The rule against perpetuities does not apply to donations to the foundation of property of any kind or description or to funds established by the foundation to administer such donations.

Donations to take effect in future

- 22 If a donation of any property is made to the foundation in an instrument and is to take effect in the future, the board may accept and exercise
 - (a) any powers of appointment, settlement or distribution in the instrument with respect to the income that is in whole or in part derivable from the property in the interim, and
 - (b) any power to nominate executors and trustees in the manner provided in the instrument.

Division 3 – Management of Funds for Other Charities**Management of funds for other charities**

- 23 If a charity is
 - (a) established, or authorized to operate, under the laws of Canada or the laws of a province or territory in Canada, and
 - (b) registered as a charity under the *Income Tax Act* (Canada),the foundation may, on terms agreeable to the foundation and the charity, manage and invest the funds on behalf of the charity.

PART 5 – COURT ORDERS**Court order changing terms on which property is held**

- 24 (1) The foundation may apply to the Supreme Court for an order under this section in relation to property the foundation holds, whether on conditions, as trustee or otherwise, if the objects for which the property was held, or any of the applicable conditions, have become, in the foundation's view, substantially unachievable.

- (2) On an application under this section, the Supreme Court may make any order that it sees fit to make, including an order
- (a) altering the conditions or trust terms applicable to the property,
 - (b) directing the property to be used by the foundation for the charitable purposes specified in the order, or
 - (c) directing the property to be used for the objects of the foundation generally, as determined in the board's sole discretion.

PART 6 – AUDIT

Annual audit

- 25 (1) The board must
- (a) appoint an independent person or firm who is a chartered professional accountant member in good standing within the meaning of the *Chartered Professional Accountants Act* as the foundation's auditor for the current fiscal year to conduct an audit of the foundation's annual financial statements, and
 - (b) promptly fill any vacancy in the office of auditor created by resignation, removal, death or otherwise.
- (2) The board and a custodian must give full information and permit the necessary inspection to enable the audit to be made.
- (3) The board must make copies of the auditor's report available to the general public on request.

Repeal of former Act

- 26 The *Vancouver Foundation Act*, R.S.B.C. 2000, c. 1, is repealed.

Commencement

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