

AN ACT TO INCORPORATE COQUITLAM FOUNDATION

CHAPTER 27

Assented to June 5, 1992.

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 District of Coquitlam;

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 *Coquitlam 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 Coquitlam 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;

“custodian” means a company incorporated, registered or deemed to be registered under the provisions of the *Trust Company Act* which is authorized to act as an executor and administrator in the Province of British Columbia and has been approved by a resolution of the board;

“court” means the Supreme Court of British Columbia or any judge or local judge of that court;

“donation” means any gift made to the foundation, and includes testamentary dispositions, deeds of trust, funds, shares, stocks, bonds or any other property whether real or personal, and wherever situated;

“foundation” means “Coquitlam Foundation”;

“fund” means a common trust fund established by the foundation in which property received by the foundation under bequests, devises and donations is combined for the purpose of facilitating investment;

“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;

“resolutions” means a resolution passed by the board at a duly constituted meeting, by a simple majority of the votes cast in person.

Foundation established

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

Composition and limited liability

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 of the foundation

5. The objects of the foundation are to use the donations entrusted to it for such charitable purposes as will, in the sole discretion of the board, best promote the well being of mankind regardless of race, colour or creed, including but without restricting the generality of the foregoing:

- (a) providing care for needy men, women and children, and in particular for the sick, aged, destitute and helpless;
- (b) promoting the betterment of underprivileged, disadvantaged or delinquent persons;
- (c) promoting educational advancement and scientific or medical research for the increase of human knowledge and the alleviation of human suffering;
- (d) promoting recreational activities and the conservation of human heritage or natural resources;
- (e) providing for such cultural, educational or other charitable purposes as may be desirable,

and primarily to benefit inhabitants of the District of Coquitlam.

Management - board of directors

6. The board shall consist of 12 individual persons who have reached the age of majority.

Composition of board

7. The board shall be composed of
 - (a) the 6 founders, being the petitioners for this Act, 2 for a term of 2 years, 2 for a term of 3 years and 2 for a term of 4 years,
 - (b) 6 persons to be appointed for terms of 4 years by the majority of the remainder of the board in succession to the founders on expiration of their terms and thereafter,
 - (c) the Mayor of the District of Coquitlam,

- (d) the Chairperson of the Board of School Trustees of School District #43 (Coquitlam),
- (e) the President of the Chamber of Commerce serving Coquitlam, Port Coquitlam and Port Moody, and
- (f) 3 residents of Coquitlam initially appointed by the founders and thereafter by a majority of members of the board.

Terms of office of members

- 8.** (1) The term of office of a member of the board shall run from the date on which this Act comes into effect or the date of his or her appointment or qualification, as the case may be.
- (2) No person shall be appointed as a director for more than 2 consecutive 4 year terms of office.
- (3) A member of the board whose term expires and any former member of the board is eligible for appointment or reappointment subject to eligibility under sections 7 and 8

Acting members

- 9.** A member of the board may designate a person to act as his or her representative at a meeting or meetings of the board.

Vacancies

- 10.** When the term of office of any board member is terminated by death, disability, resignation or required resignation under section 10, a new member shall be appointed by a resolution of the remaining members of the board to fill the vacancy created within 60 days after that termination for the unexpired term of that member.

Quorum

- 11.** All powers, authority and discretion of the board may be exercised by resolution of a majority of the members of the board present at any duly constituted meeting of the board at which not less than 6 members are present, which shall be a quorum.

Powers of the foundation

- 12.** The foundation may by resolution
- (a) receive donations, and own, hold, control, administer and manage property of every kind and description and wherever situated and refuse to accept such donations in the sole discretion of the board,
 - (b) accept and carry into effect trusts consistent with the objects of the foundation,

- (c) convert any property at any time, or from time to time received or held by the foundation, into any other form, if not in contravention of an express term of the instrument under which a donation is received, and for such purpose may sell, dispose of, assign, transfer, lease or exchange the property,
- (d) retain as an authorized investment all or part of any property donated to the foundation for such length of time as the board may in its absolute discretion determine, whether or not such property is in the form of an investment authorized by law for the investment of trust funds,
- (e) lease any lands at any time held by the foundation for purposes consistent with the objects of the foundation,
- (f) subject to any specific direction by a donor or a judge of the court, invest its funds and other property, and the funds and property entrusted to it in properties or securities in which life insurance companies are permitted to invest their funds under the *Canadian and British Insurance Companies Act* (Canada) but without regard to any percentage limitation as to the diversification within the authorized class thereof set forth in the relevant enactment,
- (g) abandon any property held by the foundation which the board considers not advisable to retain,
- (h) do such acts and make such agreements as may be necessary to carry out the objects of the foundation,
- (i) administer and distribute property, funds, capital or income in its possession in accordance with the objects of the foundation and this Act,
- (j) pay the expenses of establishing and administering the foundation and to apportion such expenses in such manner as the board in its discretion deems appropriate,
- (k) provide for a common seal for the foundation, and
- (l) direct that 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 manner authorized by the bylaws of the foundation.

Common trust fund

13. (1) Notwithstanding anything in this Act contained, the foundation may establish a fund.
- (2) The board may, by resolution passed by a majority of the board, make regulations from time to time concerning
- (a) the operation of the fund,

- (b) the method of valuation of investments in the fund and the date or dates on which the valuation may be made,
 - (c) the distribution of the income of the fund, and
 - (d) the property that may be included in the fund.
- (3) A direction in writing by a donor that property included in a donation, bequest or devise shall not be included in the fund is binding on the board.

**Power to court to direct transfer to
the foundation of certain trust properties**

14. 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 on 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.

**Power to court to change trusts
on which properties are held**

15. (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, it 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 under this section, on 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.

Donations to take effect in future

16. Where a donation is made to the foundation in trust of any property to take effect in the future, the board is empowered to accept 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, and also power to nominate executors and trustees in the manner provided in the instrument creating the trust.

Management of other funds

17. A charitable organization

- (a) established under the law of the Province, or
- (b) authorized to operate under the law of the Province and registered under the *Income Tax Act* (Canada)

may entrust funds to the foundation and the foundation may, on terms agreeable to both of them, manage and invest the funds.

Appointment of custodian

18. (1) The board may by resolution appoint a custodian to have possession and custody of a donation or a part thereof, and may make any agreement with respect to the management and administration of such donation or part thereof.
- (2) Any appointment or agreement under subsection (1) shall be consistent as much as practicable with the written directions or desires of the donor of the donation.
- (3) The board may by resolution at any time revoke any appointment under subsection (1) and appoint instead a new custodian.
- (4) The title to any property donated to the foundation shall be in the foundation unless the board shall otherwise determine.

Duties of custodian

19. Each custodian acting for the foundation shall

- (a) have possession and custody of all property entrusted to it by the foundation,
- (b) give effect to and observe all directions of the board with respect to any property entrusted to it by the foundation,
- (c) distribute or pay from the funds in its possession such sums and in such manner as the board may at any time or from time to time direct,
- (d) remit sufficient property, funds, capital or income to the board to fulfill the objects of the foundation under this Act, and

- (e) give full information and permit the necessary inspections required for the audit under section 26.

Distribution

- 20.** (1) The board may use and distribute all or part of the annual income of the foundation for purposes consistent with the annual income of the foundation and, subject only to subsections (2) and (3), the discretion of the board in so doing is absolute.
- (2) In determining the manner in which income shall be used or distributed, the board shall be governed by all terms and conditions expressed by the donor in the instrument by which property is donated to the foundation, subject only to subsection (3).
- (3) After the death of a donor or the winding up of a corporate donor, the board may, in its absolute discretion, depart from the terms or conditions expressed by the donor to the extent necessary to further the objects of the foundation.
- (4) In the absence of any terms or conditions expressed by the donor, a donation shall be used to further the objects of the foundation in accordance with this Act.

Distribution outside District of Coquitlam

- 21.** Where property is donated to the foundation, and the donor indicates in the instrument by which the property is donated a desire that all or part of the capital or income be used for charitable purposes outside the District of Coquitlam, the board may accept the donation and give effect to those desires consistent with the objects of the foundation.

Distribution of capital

- 22.** The board may distribute part of the capital of property vested in the foundation in order to further the objects of the foundation, provided that
- (a) the distribution is required by the express provisions of the instrument by which the donation of that property is received, or
 - (b) the distribution is authorized by the unanimous resolution of all members of the board, in which case
 - (i) no more than 5% of the entire amount of all capital held by the foundation at the time shall be thus distributed,
 - (ii) the capital thus distributed shall be replaced with income unless provided for by a donation for that purpose, and
 - (iii) no subsequent distribution of capital shall be made until the amount of capital distributed has been replaced.

Bylaws

- 23.** The board may by resolution, make, amend and repeal bylaws consistent with this Act to provide for the management of the property and affairs of the foundation.

Borrowing powers

- 24.** 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,
 - (b) borrowing for the purpose of obtaining money which, in the discretion of the members of the board as determined by ordinary resolutions, 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, and
 - (c) subject to paragraphs (a) and (b) the board may borrow money in such manner and amount, on such security including the issue of debentures, from such sources and on such terms and conditions as may be determined by ordinary resolution of the board.

Service of documents on the foundation

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

Audit

- 26.** The board shall cause an audit to be made at least once in every fiscal year by an independent auditor of the financial transactions of the foundation, and shall cause to be published in a newspaper of general circulation in the District of Coquitlam highlights of the annual audited financial statements of the foundation. The highlights shall refer to the availability of complete audited financial statements from the foundation, and shall indicate whether the auditor's opinion on the financial statements was qualified or unqualified.

**Rule against perpetuities
and rule against accumulations**

- 27.** The rule against perpetuities and the rule against accumulations do not apply to donations made to the foundation or property held by the foundation.

Appointment of officers and employees

- 28.** (1) The board may by resolution appoint such officers and engage such employees, including an executive director, a secretary treasurer and a legal advisor, at such salaries or for such remuneration as the board may deem proper and necessary.
- (2) No salaries or other expenditures shall be paid unless payment is approved by resolution of the board.

Provisions relating to donations

- 29.** Any form of words shall be 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 for the general character indicated in this Act.

Residents' advisory committees

- 30.** The board may by resolution establish voluntary advisory committees composed of residents of the Province to assist the board in the conduct of the affairs of the foundation.

Provisions of winding up, dissolution or revocation

- 31.** In the event of winding up or dissolution or in the event that the registration of the foundation is revoked according to the terms of the *Income Tax Act* (Canada), any assets of the foundation remaining after the payment of its debts and expenses shall be transferred to such organization(s) concerned with promotion of the well being of mankind or organization(s) promoting the same objects as the foundation, as may be determined by resolution of the board at the time of winding up, dissolution or revocation; provided that such organization referred to herein shall be a charitable organization, private foundation or public foundation recognized by the Department of National Revenue of Canada as being qualified as such under the provisions of the *Income Tax Act* (Canada) from time to time in effect.

Other Acts

- 32.** (1) Notwithstanding section 3 (1) of the *Company Act*, the provisions of the *Company Act* do not apply to the foundation.
- (2) Notwithstanding section 2 of the *Company Clauses Act*, the provisions of the *Company Clauses Act* do not apply to the foundation.
- (3) The provisions of the *Society Act* do not apply to the foundation.
- (4) 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*.

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