

UNIVERSITY OF VICTORIA FOUNDATION ACT

CHAPTER 23

Assented to March 10, 2005

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

Interpretation

1 In this Act:

“**common trust fund**” means a common trust fund established or invested in by the foundation to facilitate combined investment of donations received by the foundation;

“**donation**” includes a gift, bequest or devise, whether in trust or otherwise;

“**foundation**” means the University of Victoria Foundation continued under section 2;

“**foundation board**” means the board of the foundation under section 4;

“**members**” means the members of the foundation board;

“**property**” means real or personal property of any kind;

“**resolution**” means a resolution passed by a simple majority of votes duly cast by the members at a meeting of the foundation board;

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“returns” includes all dividends, interest, capital gains and losses, both realized and unrealized, and all other receipts of income or capital, whether arising before or after this definition came into force;

“total return investment policy” means the investing of assets so as to obtain the maximum return without regard to whether the return is characterized as income or capital;

“trust company” means a trust company or extraprovincial trust corporation authorized to carry on deposit business under the *Financial Institutions Act*;

“university” means the University of Victoria;

“university board” means the board of governors of the university.

University of Victoria Foundation continued

- 2 (1) The University of Victoria Foundation, created by the *University of Victoria Foundation Act*, S.B.C. 1954, c. 67, as the Victoria College Foundation and continued by the *University of Victoria Foundation Act, 1979*, S.B.C. 1979, c. 38, is continued as a corporation.
- (2) The foundation is comprised of the members of the foundation board and is to be managed by the foundation board.

Purposes of foundation

- 3 The purpose of the foundation is to encourage the financial support of the university by
- (a) soliciting and receiving donations, endowments and other acquisitions of funds and property for the purposes of
 - (i) furthering the interests and objectives of the university,
 - (ii) providing funds to the university for fellowships, scholarships and bursaries,
 - (iii) providing the university with real property and providing, constructing, renovating and acquiring buildings and equipment and personal property for university facilities, and
 - (iv) providing funds for chairs, capital acquisitions and projects, research projects and general operations in furtherance of the interests and objectives of the university,
 - (b) investing, administering and distributing donations, endowments, funds and property, and
 - (c) doing all other things that are incidental and necessary to furthering the purposes referred to in this section.

Foundation board

- 4 (1) The foundation board is to consist of not fewer than 8 and not more than 20 members, being

- (a) the president of the university and the chief financial officer of the university,
 - (b) 4 to 6 members appointed by the university board, and
 - (c) the remaining members elected by the other members of the foundation board.
- (2) The foundation must, by bylaw, do the following:
 - (a) establish the number of members of the foundation board;
 - (b) establish the number of members to be appointed by the university board;
 - (c) establish the term of office of each member of the foundation board;
 - (d) provide for a nominating committee to make recommendations for the election of members.
- (3) Subject to subsection (4), a member may be reappointed or re-elected as the case may be.
- (4) No member, other than the president or chief financial officer of the university, may hold office for more than 9 consecutive years.
- (5) A member who does not attend at least half of the regular meetings of the foundation board in any fiscal year may be removed from office by resolution of the foundation board.
- (6) Members must serve without remuneration other than the payment of expenses incurred in the carrying out of their duties under this Act.
- (7) A member is not personally liable for loss or damage suffered by a person as a result of anything done or not done in good faith in acting or purporting to act on behalf of the foundation.

President and other officers of foundation

- 5** (1) The foundation must, by bylaw, provide for the appointment of a president and other officers of the foundation.
- (2) The chief development officer of the university must be appointed as president of the foundation, and the president may participate in but not vote at meetings of the foundation board.

Duties and powers of foundation

- 6** (1) Subject to section 7, the foundation must, for the benefit of the university, its faculty and students,
 - (a) receive donations and administer and manage donated property, and
 - (b) accept and carry into effect trusts.
- (2) Subject to section 7, the foundation may do any or all of the following:
 - (a) subject to the provisions of a donation, convert, exchange and dispose of property received or held under the donation;

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- (b) lease land held by the foundation;
- (c) pay out of its funds all expenses incidental to the management of the foundation and the management of donated property;
- (d) refuse to accept a donation, or renounce or abandon property donated to it, if in the opinion of the foundation board it is not in the interests of the foundation to accept, receive or retain the property;
- (e) establish one or more common trust funds;
- (f) unless otherwise specifically directed in writing by
 - (i) the express terms of a donation, or
 - (ii) a court,combine all or part of the property and investments, or the proceeds of the property and investments, received or held by the foundation in a common trust fund for investment in accordance with a total return investment policy.

Control of donations

- 7 Subject to the provisions of a trust, all donations to or for the benefit of the university that are
- (a) made at any time to the university, Victoria University, Victoria College, the University Development Board of Victoria College or any other person or body the name of which indicates the university, its students or its faculties,
 - (b) made to no other trustee, and
 - (c) accepted by the university
- vest in the university or the foundation as the university board directs.

Distributions by foundation

- 8 (1) The foundation board may from time to time, but not less often than once in each fiscal year, distribute the percentage of its common trust funds that it considers proper.
- (2) In exercising its powers under subsection (1), the foundation board must develop retention and distribution policies, and in doing this may take into account the following:
- (a) the foundation's need to maintain a reasonable balance between the inflation adjusted capital value of its funds and the amounts to be distributed;
 - (b) the estimated return on investments based on a total return investment policy;
 - (c) existing and anticipated requirements;
 - (d) achieving stability in the amounts to be distributed;

- (e) the foundation's disbursement quota requirements under any applicable taxation legislation;
 - (f) any other factors the board considers relevant.
- (3) The foundation board may, by resolution, determine the manner in which the money available in each year is to be used and distributed for the benefit of the university, its faculty and its students, and must, in determining this, be governed by the provisions of the particular donation, except as otherwise provided in this section and section 9.
- (4) The terms of a particular donation or endowment must not be construed as providing for a different distribution than the percentage distribution established under subsection (1) solely because
 - (a) the donation creating the endowment is designated expressly or by implication as an endowment, or
 - (b) the donation or endowment contains a direction or an authorization to use only "income" or "interest" or "dividends" or to "preserve capital" or any term or terms of similar import.
- (5) This section applies in respect of all donations to the foundation and all property held by the foundation, whether the donations were made or the property was received before or after this section came into force.

Court order changing trust on which property is held

- 9** (1) This section applies if
- (a) in relation to a specific charitable trust held by the foundation,
 - (i) the object of the trust has ceased to exist,
 - (ii) the trust has become substantially incapable of performance, or
 - (iii) the trust cannot be administered for any reason, and
 - (b) the foundation cannot vary the terms of the trust to provide for alternative objects by agreement with the donor or the donor's personal representatives within a reasonable time as determined by resolution of the foundation board.
- (2) By resolution of the foundation board, the foundation, as trustee, may use the property for the purposes that the board determines most closely reflect the donor's original intention.
- (3) Subject to an order under subsection (5), a decision of the board under subsection (2) is final and binding on all persons affected.
- (4) A person affected by a decision under subsection (2) may, within 60 days after the decision was made, apply to the Supreme Court for an order to revoke or alter the resolution of the foundation board, and section 86 of the *Trustee Act* applies to the application.

- (5) On an application under subsection (4), the court may make any order it considers reasonable in the circumstances.

Investment of trust property

- 10** (1) In addition to the powers provided in this Act, the foundation board has the investment powers of a trustee under sections 15.1 to 15.6 of the *Trustee Act*.
- (2) The foundation may, by resolution, appoint a trust company
- (a) to have custody of all or a part of the property held or received by the foundation, and
 - (b) to carry out duties that the foundation board directs.
- (3) The foundation may, by resolution, revoke at any time the appointment of a trust company under this section and may appoint another trust company in its place.

Annual audit

- 11** (1) Unless the Auditor General has been appointed under the *Auditor General Act* to audit the foundation's financial statements, the foundation must engage an independent auditor to audit its financial statements once in every fiscal year.
- (2) Section 206 of the *Business Corporations Act* applies to the appointment of an auditor under subsection (1).

Bylaws

- 12** The foundation may make bylaws regulating the carrying out of the duties that are assigned to it or to the foundation board by this Act, and without restricting the generality of the foregoing, may make bylaws as follows:
- (a) establishing the fiscal year of the foundation;
 - (b) establishing times of distribution and audit;
 - (c) respecting meetings of the foundation board;
 - (d) regulating the business of the foundation board, including establishing policies for the administration of endowments and other donations;
 - (e) respecting any other matters that are necessary or convenient for the carrying out of the objects of this Act.

Repeal

- 13** The *University of Victoria Foundation Act, 1979*, S.B.C. 1979, c. 38, is repealed.

Commencement

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