

VICTORIA FOUNDATION ACT**CHAPTER 35**

Assented to June 26, 1987.

WHEREAS The Victoria Foundation was incorporated by an Act to incorporate The Victoria Foundation, Chapter 70 of the Statutes of British Columbia, 1936, which was amended by Chapter 70 of the Statutes of British Columbia, 1966; and

WHEREAS it is deemed desirable to revise *The Victoria Foundation Act*; and

WHEREAS The Victoria Foundation has by its petition prayed that *The Victoria Foundation Act* be enacted as hereinafter set forth; and

WHEREAS it is expedient to grant the prayer of the petition;

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 Victoria Foundation Act*.

Interpretation

2. In this Act

"appointors" means those persons designated in section 6;

"board" means the Board of Directors appointed pursuant to section 5;

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

"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;

"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 The Victoria 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;

"property" includes real property and personal property.

Foundation continued

3. The foundation as constituted under *The Victoria Foundation Act*, S.B.C. 1936, is hereby continued as a corporation under the name of "The Victoria Foundation".

Objects

4. 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 County of Victoria.

Composition and board

5. (1) The foundation shall be 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.

(2) The board will consist of 9 residents of the County of Victoria, of whom the Mayor of the City of Victoria for the time being by virtue of his office shall be one.

(3) The other members of the board shall be appointed by the appointors under section 6.

(4) The term of office of the members of the board shall be fixed by the bylaws of the foundation, but shall not be less than 2 years nor more than 5 years.

(5) The members of the board shall not be entitled to any remuneration for their services.

Appointors

6. (1) The appointors shall consist of the persons who from time to time and for the time being hold the following offices, namely:

- (a) a County Court Judge of the County of Victoria;
- (b) the Mayor of the City of Victoria;
- (c) the President of the Board of Directors of the United Way of Greater Victoria;
- (d) the President of the Victoria Medical Society;
- (e) the President of the Victoria Chamber of Commerce.

(2) A majority of the appointors shall be a quorum at a meeting.

(3) The appointors shall appoint members of the board to fill any vacancy by a resolution of a majority of them at a meeting to be held in accordance with the bylaws of the foundation.

(4) All of the appointors shall themselves be eligible for appointment as members of the board.

Powers of the foundation

7. The foundation may

- (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, and
- (j) pay the expenses of administering the foundation and to apportion such expenses in such manner as the board in its discretion deems appropriate.

Common trust fund

8. (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 upon 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

9. 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.

Power to court to change trusts upon which properties are held

10. (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 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.

Donations to take effect in future

11. 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

12. (1) 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

13. (1) The board shall appoint a custodian to have possession and custody of a donation or a part thereof, and may make any agreement which the board in its sole discretion deems appropriate 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 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

14. 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 21.

Distribution

15. (1) The board may use and distribute all or part of the annual income of the foundation for purposes consistent with the objects 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 Victoria

16. 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 County of Victoria, the board may accept the donation and give effect to those desires consistent with the objects of the foundation.

Distribution of capital

17. 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

18. The board may, by special 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

19. 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 section 19 (a) and (b) the board may borrow money in such a 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.

Service of documents on the foundation

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

Audit

21. 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 Victoria newspaper of general circulation 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

22. 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

23. (1) The board may 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 expenditure shall be paid unless payment is approved by the board.

Provisions relating to donations

24. 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 of the general character indicated in this Act.

Residents' advisory committees

25. The board may establish voluntary advisory committees composed of residents of the Province to assist the board in the conduct of the affairs of the foundation.

Provisions on winding up, dissolution or revocation

26. 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 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.

Continuation**27.** Subject to this Act,

- (a) the members of the board prior to the enactment of this Act shall continue to compose the board after the enactment of this Act, and
- (b) all bylaws enacted by the board prior to the enactment of this Act shall remain in effect after the enactment of this Act.

Repeal of previous Act

28. *The Victoria Foundation Act*, being Chapter 70 of the Statutes of British Columbia, 1936, as amended by Chapter 70 of the Statutes of British Columbia, 1966, is repealed.

Other Acts

29. (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.

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