

BILL

No. 3 of 1955

An Act to Incorporate the Calgary Community Foundation,
and to Empower such Foundation to Receive and Admin-
ister Donations in Trust for Charitable Purposes.

(Assented to _____, 1955)

WHEREAS certain citizens of the City of Calgary have Preamble
by their petition prayed for the passing of an Act in-
corporating the Calgary Community Foundation, and that
the said Foundation be empowered to receive and admin-
ister donations in trust for charitable purposes; and

Whereas it is expedient to grant the prayer of the said
petition;

Therefore Her Majesty, by and with the advice and
consent of the Legislative Assembly of the Province of
Alberta, enacts as follows:

Short Title

1. This Act may be cited as "*The Calgary Community* Short title
Foundation Act".

Interpretation

- 2.** In this Act, Interpreta-
tion
- (a) "Foundation" means the Calgary Community "Founda-
tion"
Foundation incorporated by this Act;
 - (b) "Calgary district" means the City of Calgary and "Calgary
district"
such part of the surrounding areas as, in the
opinion of the Board, are readily accessible thereto;
 - (c) "Board" means the Board of Directors as consti- "Board"
tuted pursuant to this Act;
 - (d) "Nominators" means the Committee of Nominators "Nomin-
ators"
constituted pursuant to this Act.

Constitution of Foundation

3. J. W. Grant MacEwan, Alderman, Vernon L. Hawkes, Constitution
of
Foundation
Realtor, and Edward M. Bredin, Solicitor, all of the City
of Calgary, in the Province of Alberta, and such other
persons as are from time to time appointed members of
the Board are hereby constituted and established a body
corporate and politic, under the name of the "Calgary
Community Foundation", and by that name shall have per-
petual succession and a common seal with power to change,
alter, break and renew the same when and so often as it
shall think proper, for and with the following objects,
powers and purposes, namely:

- (a) to accept gifts, grants, legacies, devises or bequests, in trust, of real or personal property of every nature and wheresoever situate, for the objects of the Foundation, and according to the terms and conditions set forth in this Act;
- (b) to acquire by purchase, gift, transfer or otherwise real or personal property of every nature and wheresoever situate, and have, hold, possess, enjoy, take and receive the same for the general uses and purposes of the Foundation;
- (c) to contract and be contracted with, sue and be sued, implead and be impleaded with, answer and defend in all courts and places whatsoever;
- (d) to, from time to time, give, sell, exchange, convey, transfer, assign, mortgage, encumber, demise or otherwise dispose of all or any of the property, real or personal of the Foundation, or any interest therein, and of all or any property held in trust, subject only to the provisions of this Act;
- (e) to borrow, raise or secure the payment of, money for any of the purposes of the Foundation in such manner as it deems expedient, and, in particular, by negotiable instruments and by the issue of debentures, bonds, mortgages or obligations, charged upon all or any of the property of the corporation, and may purchase, redeem or pay off any such securities in whole or in part;
- (f) to invest all moneys of, or in possession of, the Foundation arising from or connected with its objects or operations, or any of them, in such securities, real or personal, as by law or statute in force in the Dominion of Canada, trustees may lawfully make investments;
- (g) to pass on and entrust to one or more trust companies, banks or other fiscal institutions the custody and management of all or any portion of the property at any time or from time to time received or held by the Foundation, in such manner and in such portions as the Board may deem proper, and enter into agreements with such trust companies, banks or other fiscal institutions in regard thereto;
- (h) to lease any lands at any time held by the corporation; and
- (i) to have all the other powers and privileges and immunities vested by law in a corporation, necessary or proper for the carrying out of its objects.

Exemptions from Sections of The Companies Act

Application
of *The*
Companies
Act

4. The Foundation is exempt from each of sections 7, 76, 77, 81, 107, 117 and 255 of *The Companies Act* and amendments thereto or substitutions therefor.

Objects of the Foundation

5. The objects of the Foundation are to use the funds entrusted to it for such charitable purposes as will in the sole discretion of the Board most effectively assist, encourage and promote the well-being of mankind, and primarily the inhabitants of the district of Calgary, regardless of race, color or creed. Objects

Committee of Nominators

6. (1) The Board of the Foundation shall be nominated and appointed, in conformance with the provisions of this Act, by a Committee of Nominators, which shall be the persons from time to time holding the following offices: Committee of Nominators

- (a) the Mayor of the City of Calgary, who shall be chairman;
- (b) the senior judge, resident in Calgary, of the District Court;
- (c) the President of the Calgary Chamber of Commerce;
- (d) the President of the Council of Social Agencies of Calgary; and
- (e) the Senior Bencher, resident in the district, of the Law Society of Alberta.

(2) In the event that any officeholder as designated above refuses or is unable to carry out his duties as a member of the Committee of Nominators, or in the event that any such office ceases to exist, or becomes known by another name, or that any such office is reconstituted, the Board, by resolution unanimously approved, and with the approval of a two-thirds vote of the Nominators, may temporarily or permanently substitute for the offices named in the preceding subsection such other offices as may in their belief more nearly meet the original intent of this Act, and shall file a copy of such resolution as approved by the Nominators with the Registrar of Companies.

First Meeting of the Committee of Nominators

7. (1) Within six weeks of the coming into force of this Act the first named of the petitioners shall call the Nominators to meet with himself and the other petitioners named in this Act, and the Nominators shall thereupon nominate and appoint a first Board for the Foundation, with the advice of the petitioners, who shall not vote in the matter. First committee meeting

(2) After selection of the first Board the Nominators shall determine by lot the terms of the members of the Board, so that the term of one member shall expire in each successive year.

Meetings of the Nominators

Committee meetings

8. (1) The Committee of Nominators shall meet thereafter at least once in each calendar year, on the call of the Chairman of the Board, and during the quarter within which the anniversary of their first meeting shall fall, for the purpose of nominating and appointing such number of persons as are required to fill vacancies and to succeed members whose terms expire.

(2) The committee may act by a majority of its members present at a meeting, but shall not act unless a majority of the committee are present.

(3) Each member of the committee shall have one vote.

The Board of Directors

Board of Directors

9. (1) The Foundation shall, subject to the provisions of this Act, be managed and administered by a governing board of not less than five and not more than nine members, nominated and appointed by the Committee of Nominators from among men and women who in the opinion of such Nominators have evinced an interest in the welfare of the community, which shall be known as the Board of Directors of the Foundation.

(2) The Board may recommend to the Nominators an increase or decrease in the number of members of the Board, but the said Nominators shall have sole discretion to act or not act on such recommendation.

Tenure of Members of the Board

Tenure of office

10. (1) Each member of the Board shall with the exception of the members of the first board serve for as many years as there are members for the time being of the Board, except that when a member has been nominated and appointed to complete the unexpired portion of a previously serving member's term, he shall serve only for as many years as are required to complete such term.

(2) In the event that the number of members of the Board is increased or decreased, the terms of all continuing serving members of the Board shall be increased or decreased by a like number of years, so that at all times the term of at least one member of the Board shall expire in each year.

(3) No member of the Board shall serve for more than ten continuous years; but any member who has so served shall be eligible for re-nomination and re-appointment after one year's absence from the Board, for a further period of five years.

(4) The term of office of members of the Board shall begin on the first day of May of the year of their appointment, and shall terminate on the last day of April of the year in which their term expires.

(5) The term of office of any member of the Board shall immediately terminate:

- (a) upon his death, resignation, or removal from the Calgary district;
- (b) upon his having served ten continuous years, or a total of fifteen years as a member of the Board;
- (c) in the event of his absence without excuse acceptable to the Board from three consecutive meetings of the Board; or
- (d) by resolution of the Board, when in the opinion of the Board, a member is guilty of gross misconduct; or
- (e) by resolution of the Board, because of incapacity for any cause which in the opinion of the Board may prevent him from discharging his duties for nine months or more.

(6) Upon any vacancy occurring in the Board the Chairman of the Board shall notify the Chairman of the Committee of Nominators.

(7) The Chairman of the Committee of Nominators may call a special meeting of the Nominators to nominate and appoint a suitable person to fill such vacancy for the unexpired portion of the term, and shall call a special meeting for such purpose if the numbers of the Board have by such vacancy fallen below a majority of the full Board.

Meetings of the Board

11. (1) The Board shall meet at least once in each ^{Board} quarter of the year. _{meetings}

(2) The Board shall act by a majority of its members present at a meeting, but shall not act unless a majority of the Board are present.

(3) Each member of the Board shall have one vote.

Powers of the Board

12. The powers of the Foundation are vested in and shall be exercised by the Board, and without restricting ^{Powers of} the generality of the foregoing, the Board may: _{Board}

- (a) elect its own President and Vice-President, and appoint a Treasurer and a Secretary, or a Secretary-Treasurer, and such other officers and employees of the Foundation as it deems expedient, and may prescribe their respective duties, powers and authority, and may determine the tenure of each such office or the period of employment of each such employee; and such officers and employees, other than the President and Vice-President of the Board, need not be members of the Board;

- (b) fix and determine the remuneration of officers and employees of the Foundation, provided that members of the Board shall receive no compensation for their services except reasonable expenses;
- (c) in each quarter, use and distribute such portion of the funds that become available to the Foundation in the preceding quarter, according to the provisions of this Act;
- (d) act by such committees of, or appointed by, the Board as it deems proper to constitute or appoint;
- (e) make by-laws, resolutions, rules and regulations, not inconsistent with any of the provisions of this Act, touching or respecting any or all of the aforesaid powers of the Foundation or of the Board, and also in respect of all matters pertaining to the business, meetings and proceedings of the Board; and
- (f) subject only to the provisions of this Act, shall exercise in its full and absolute discretion all powers and authority that under this Act are exercisable by the Foundation or the Board, saving such as are vested in the Committee of Nominators.

Distribution
of funds

13. (1) The Board is empowered subject to the provisions of this Act, to use and distribute in each quarter such portions of the funds available to the Foundation from the preceding quarter, as it may deem proper, to advance the objects of the Foundation.

(2) To effect the objects of the Foundation the funds may be used for the assistance of such institutions, organizations, agencies, and bodies as may be engaged in the promotion or advancement of the objects of the Foundation or any of them; and the Board may determine what institutions, organizations, agencies or bodies, whether or not the same are within the Calgary district, are to benefit by that assistance in each year, and to what extent.

Wishes of Donor

Application
of donations

14. (1) The Board shall, in deciding the manner in which funds shall be used or applied, respect and be governed by any trust imposed by the donor in the instrument creating the trust or effecting any gift to the Foundation.

(2) If, however, in the course of time and after the death of such donor, or if the donor was a corporation, after the winding-up thereof, either voluntarily or otherwise, conditions arise whereby in the opinion of the Board, the departure from the terms of the original trust would further the true intent and purpose of the donor, the Board may in its absolute discretion make such a departure to the extent necessary to further the true intent and purpose of such trust.

(3) If, further, changed conditions make it no longer possible, wise or practical in the opinion of the Board, to meet the expressed wish of the donor, the Board may in its absolute discretion use and apply such funds for such purposes as are in their opinion most nearly related to the original intent and purpose of the donor.

(4) If no conditions are imposed by a donor with regard to the use of his gift, the Board may in its absolute discretion use and apply such gift for such purposes as it may deem proper having regard to the provisions of this Act.

(5) This section of this Act shall be deemed to have been assented to by every donor to the Foundation, as a condition to accepting his gift.

Property Held in Trust

15. Where any person holds any property in trust for any purpose of a nature similar to the objects of the Foundation, and by reason of the object of the trust having ceased to exist, or the trust having for any cause become incapable of performance, or the trust having for any cause become difficult to perform, such a person as trustee may upon notice to the Foundation apply to a judge of the District Court of the District of Southern Alberta for an order directing him to hand over such property to the Foundation to be used by the Foundation in the same manner and for the same purposes as other donations made to the Foundation under this Act; and such judge is hereby empowered to make such order for the handing over of such property to the Foundation; and any trustee complying with such an order shall thereupon be relieved and discharged of all further responsibility in respect of such property.

Property
held in
trust

Appointment of Trustees

16. (1) The Foundation, as soon as practicable after a donation has been received, shall appoint, subject to the provisions of any trust imposed by the donor, one or more trust companies, banks or other fiscal institutions authorized to carry on business in the Province, to assume the custody and management of the property comprising such donation, or such portion or portions thereof as may be allotted by the Board to such trust companies, banks or other fiscal institutions, and to act as trustees for the Foundation.

Appoint-
ment of
trustees

(2) The Foundation may at any time, by resolution of the Board, revoke the appointment of any trust company, bank, or other fiscal institution as such trustee, and may appoint such other trust company, bank or other fiscal institution as trustee in place thereof, as the Board may deem advisable.

Transfer, Etc., of Property

Transfer,
etc., of
property

17. All transfers, assignments or conveyances of property by the Foundation shall be executed by and on behalf of the Foundation in such manner as the Foundation may from time to time by resolution prescribe, and shall further be executed by the trustee for the time being of the property to be so transferred, assigned or conveyed.

Powers of Trustees

Powers of
trustees

18. Every trust company, bank or other fiscal institution during its continuance in office as trustee for the Foundation shall:

- (a) have the custody of and efficiently manage all property entrusted to it by the Foundation or by any donor on behalf of the Foundation and make all investments, re-investments, conversions, sales or dispositions thereof which may at any time or from time to time appear necessary or desirable, but no trust company shall make any new investments or re-investments in any property or security other than securities in which a trustee or trust company may invest trust moneys under the laws of the Dominion of Canada;
- (b) observe, carry out, perform and give effect to all terms, provisions and conditions expressed in any instrument creating a trust;
- (c) give effect to and observe all directions with regard to any property entrusted to it by the Foundation under the provisions of this Act, which may at any time or from time to time be given in writing by the Board, provided such directions are consistent with the provisions of this Act;
- (d) distribute from the moneys in its possession such sums and in such manner as the Board shall at any time or from time to time by resolution direct;
- (e) pay all such accounts and expenses of the Foundation as the Board shall direct in writing.

Donations

Donations

19. (1) Any form of words shall be sufficient to constitute a donation for the purposes of this Act as 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.

(2) This Act is to be construed liberally and in furtherance of the idea that the courts of the Province will assist in making effective gifts for charitable purposes, and will in case of any failure on the part of the Foundation or those entrusted with the powers of appointing the Board, or otherwise howsoever, do what is necessary to carry out the true intent and purpose of this Act.

Rule Against Perpetuities Not to Apply

20. The rule against perpetuities shall not apply to donations made to the Foundation. Rule against perpetuities inapplicable

Donations in Trust with Future Effect

21. When a donation has been made to the Foundation in trust of any property to take effect in 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. Donations in trust

Donations for Use Outside the Calgary District

22. Where property has been donated to the Foundation and the donor is desirous that the donation shall be used in accordance with the objects of the Foundation but in whole or in part for the benefit of persons not resident in the Calgary district, the Board may accept and exercise the trust in respect of such donation as fully and effectually as if it were made for the benefit of residents of the Calgary district. Donations outside district

Annual Audit

23. (1) The Foundation shall cause an audit to be made at least once in every fiscal year of the receipts and disbursements of each separate donation, by an independent auditor, and shall cause to be published in a daily newspaper published in the city of Calgary a certified statement by such auditor showing the investments made of all funds donated to and vested in trustees for the Foundation, the amount of income received during the preceding fiscal year, and the purpose for which the income has been used, and a classified statement of the expenses of the trustees and of the Board. Annual audit

(2) It shall be the duty of the trustees to give such auditor full information and permit him to make all necessary inspections to enable such audits to be made.

Reports to Registrar of Companies

24. The Secretary of the Board shall, once in each calendar year, file with the Registrar of Companies the following: Reports to Registrar of Companies

- (a) a statement in the form of a balance sheet, audited and signed by the Foundation's auditor, and containing general particulars of its liabilities and assets, revenue and expenditure;

- (b) a list of members for the time being of the Board, with their addresses and occupations; and
- (c) a copy of any resolution made in the preceding year required by this Act to be filed with the Registrar.

Administrative Costs

Administra-
tive costs

25. Reasonable administrative expenses incurred by the Board may be charged against all trusts, on a *pro rata* basis.

Coming into Force

Coming into
force

26. This Act comes into force on the day upon which it is assented to.

APPENDED NOTE

Section 5 of the foregoing Bill exempts the Foundation from sections 7, 76, 77, 81, 107, 117 and 255 of *The Companies Act*, chapter 240, R.S.A. 1942, section 5 of which provides:

“Every company heretofore or hereafter incorporated by Act of the Legislature, to which *The Insurance Act* or *The Railway Act* does not apply, shall be subject to and shall comply with sections 7, 76, 77, 81, 87 to 96, 107, 117, and 255 of this Act, and in the case of any conflict between those sections and any section of the Act of incorporation those sections shall prevail, unless the Act of incorporation expressly exempts the company from any such section.”

As the body corporate created by the proposed Bill is a non-profit corporation and has no share capital, it is suggested that it should be made clear that all of the sections of *The Companies Act* referred to in section 5 thereof should be excluded excepting sections 87 to 96 of *The Companies Act* which relate to, and provide for the registration with the Registrar of Companies of any debenture or floating charge mortgage.

If the Foundation referred to in the Bill should raise money by such type of mortgage it is suggested that it should comply with sections 87 to 96 of *The Companies Act* insofar as applicable.

THIRD SESSION
TWELFTH LEGISLATURE
4 ELIZABETH II
1955

BILL

An Act to Incorporate the Calgary
Community Foundation, and to
Empower such Foundation to Re-
ceive and Administer Donations in
Trust for Charitable Purposes

Received and read the

First time.....

Second time.....

Third time.....

MR. H. B. MACDONALD
