

1971 Bill PR. 2

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Fourth Session, 16th Legislature, 20 Elizabeth II

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THE LEGISLATIVE ASSEMBLY OF ALBERTA

**BILL Pr. 2**

**The Edmonton Community Foundation Act**

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MR. SIMPSON

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First Reading

Second Reading

Third Reading

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Printed by L. S. Wall, Queen's Printer, Edmonton

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## THE EDMONTON COMMUNITY FOUNDATION ACT

- Preamble        WHEREAS certain citizens of the City of Edmonton have by their Petition prayed for the passing of an Act incorporating The Edmonton Community Foundation, and that the said Foundation be empowered to receive and administer donations in trust for the purposes hereinafter described;
- 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 Alberta, enacts as follows:
- Short title        **1.** This Act may be cited as The Edmonton Community Foundation Act.
- Inter-pretation        **2.** In this Act,  
                  (a) "Board" means the Board of Directors of the Foundation as constituted pursuant to this Act;  
                  (b) "Edmonton Community" means the City of Edmonton and such part or parts of the surrounding area as, in the opinion and sole discretion of the Board, the Board deems to be included in the said City from time to time for the purposes of this Act;  
                  (c) "Foundation" means The Edmonton Community Foundation incorporated by this Act.
- Constitution of Foundation        **3.** His Worship Ivor C. Dent, Mayor of the City of Edmonton, the Honourable Ethel Wilson, Cabinet Minister, the Honourable Ernest C. Manning, Executive, Tevie H. Miller, Q.C., Barrister and Solicitor, Joseph H. Forest, Executive, E. Keith Cumming, Executive, Michael H. English, Executive, Ernest A. James, Bank Manager, Anthony C. C. Hedge, Trust Company Manager, Ross Munro, Publisher, all of the City of Edmonton, in the Province of Alberta, or such other persons as may from time to time become members of the Board, are hereby

## **Explanatory Notes**

constituted and established a body corporate and politic, under the name of "The Edmonton Community Foundation", and by that name shall have perpetual succession and a common seal with power to change, alter, and renew the same when and so often as it shall be proper, for and with the following objects, powers, purposes, namely:

- (a) to accept, in trust, gifts, grants, legacies, devises or bequests, 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, gifts, 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 invest all monies 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 such investments;
- (f) 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 proportions as the Board may deem proper, and enter into agreements with such trust companies, banks, or other fiscal institutions in regard thereto;
- (g) to lease any lands at any time held by the Foundation; and
- (h) 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.

Application  
of The  
Companies  
Act

4. The Foundation is exempted from each of sections 6, 73, 74, 79, 118, 146 and 287 of The Companies Act, Revised Statutes of Alberta 1970, and amendments thereto, or substitutions therefor.



**5.** The objects of The Foundation are:

- (a) to accept, hold, use and administer property and funds for charitable, recreational, educational, athletic, cultural, historical and other purposes which may be for the benefit or advantage of members of the Edmonton Community;
- (b) to use funds entrusted to it for the acquisition and development of historical and cultural objects and endeavours designed to enrich the cultural heritage and cultural well being of the inhabitants of the Edmonton Community and to promote, encourage, co-ordinate and assist in the orderly, artistic or cultural development of the Edmonton Community;
- (c) to hold title to lands, buildings, property and funds acquired or designated for the use of any organization or group in the community which may be for the benefit or advantage of groups or categories of persons who are members of the Edmonton Community;
- (d) to accept, hold, use and administer funds and property for the encouragement and support of any cultural activity such as symphony, opera, ballet, drama, singing, dancing, art, sculpture, theatre, handicrafts, talents, skills or other activities that may contribute to the quality of life in the Edmonton Community;
- (e) to accept, hold, use and administer donations and gifts intended to promote the arts, music, theatre, religion, and any other worthwhile activity that may benefit any group in the Edmonton Community;
- (f) to use funds entrusted to it for such purposes as will, in the sole discretion of the Board, most effectively encourage and promote recreation and sporting activities which may prove beneficial to the inhabitants of the Edmonton Community;
- (g) to accept, hold, use and administer donations and gifts intended to promote and assist any worthwhile community endeavour and any activity that may improve the quality of life for any group or class of citizens in the Edmonton Community;
- (h) to accept, hold, use and administer funds and property for any purpose designated by the donor which the Board deems worthy;
- (i) to promote and encourage gifts, donations and bequests of funds and real and personal property, both from private agencies, religious organizations, service clubs, community bodies, corporations and



persons and to hold and administer such funds and property as well as properties which are made available to private agencies either in part or in total by Government or City grants, whether such grants be in cash, land or buildings;

- (j) to receive grants or gifts from the Government of Canada, the Government of the Province of Alberta, the council or governing body of any municipality, the Canada Council, or from any source whatsoever, for the promotion and assistance of artistic or cultural activities in the Edmonton Community and to enter into any one or more agreements respecting the use or distribution of such grants or gifts;
- (k) to use the funds entrusted to it for such purposes as will in the sole discretion of the Board most effectively provide care for needy men, women and children, and in particular the sick, aged, destitute and helpless;
- (l) to promote educational advancement in scientific or medical research for the increase of human knowledge and the alleviation of human suffering;
- (m) to better underprivileged or needy persons; and
- (n) to provide for such other services as may in the discretion of the Board appear to contribute to the mental, moral, cultural and physical improvement of the inhabitants of the Edmonton Community.

Board of  
Foundation

6. (1) Subject to the provisions of section 7, the members of the Board of the Foundation shall consist of the following persons:

- (a) the person, from time to time holding each of the following offices:
  - (i) the mayor of the City of Edmonton;
  - (ii) the President of The Edmonton Chamber of Commerce;
  - (iii) the President of the United Community Fund of Greater Edmonton;
  - (iv) the President of the Edmonton District Labour Council;
- (b) the person nominated by each of the following organizations:
  - (i) the Edmonton Bar Association;
  - (ii) the Trust Companies Association of Canada, Alberta Section.
  - (iii) the Edmonton Clearing House, Canadian Bankers Association.
- (c) Three persons elected by those members described in clauses (a) and (b).





(2) In the event that any office holder or member as designated above refuses or is unable to carry out his duties as a member of the Board, or in the event that any such office or organization ceases to exist, or becomes known by another name, or that any such office or organization is reconstituted, or in the event that an organization named in clause (b) of subsection (1) above fails to nominate a person, the Board, by resolution unanimously approved, may temporarily or permanently substitute for the offices or organizations named in the preceding subsection such other offices or organizations as may in their belief more nearly meet the original intent of this Act, and shall file a copy of such resolution with the Registrar of Companies.

Powers and  
tenure of  
First Board

**7.** (1) The First Board shall consist of the petitioners named in this Act and shall possess all of the powers given to the Board hereunder and shall be governed by all of the provisions of this Act relating to the Board.

(2) Each member of the First Board shall serve for a term of two calendar years and thereafter subsequent Boards shall be constituted as provided in this Act.

Board of  
Directors

**8.** The Foundation shall, subject to the provisions of this Act, be managed and administered by the Board.

Tenure of  
office

**9.** (1) Each member of the Board shall serve,

- (a) In the case of those members described in section 6, subsection (1), clause (a), for so long as he continues in office and is willing and able to act;
- (b) In the case of those members described in section 6, subsection (1), clause (b) and section 6, subsection (1), clause (c), for a term of two calendar years, except that when a member has been nominated or elected 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 and in no event shall he serve for more than three consecutive terms.

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

- (a) upon his death, resignation, or removal from the Edmonton Community; or
- (b) in the event of his absence without excuse acceptable to the Board from three consecutive meetings of the Board; or
- (c) by resolution of the Board, when in the opinion of the Board a member is guilty of gross misconduct;  
or



(d) by resolution of the Board, because of incapacity for any cause which in the opinion of the Board may prevent him from discharging his duty for nine months or more.

(3) Upon any vacancy occurring in the Board the Chairman of the Board may call a special meeting of the Board 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 five members.

Board  
meetings

**10.** (1) The Board shall meet at least once in every calendar year.

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

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

(4) A resolution in writing, signed in one instrument or in counterpart by all the members of the Board without their meeting together, shall be as valid and effectual as if it had been passed at a meeting of the Board duly called and constituted, and shall be deemed to relate back to any date therein stated to be the effective date thereof.

Powers of  
Board

**11.** The powers of the Foundation are vested in and shall be exercised by the Board, and without restricting the generality of the foregoing, the Board may:

(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 appointment 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) use, invest or distribute all or any portion or portions of the funds which are available to it, according to the provisions of this Act;

(d) act by such Committee 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 the Board, and also in respect of all matters pertaining to the business, meetings and proceedings of the Board; and
- (f) exercise in its full and absolute discretion all powers and authority that under this Act, and all other applicable statutes are exercisable by the Foundation or the Board.

Distribution  
of fund

**12.** (1) The Board is empowered subject to the provisions of this Act, to use and distribute such portions of the funds available to the Foundation as it may deem proper, to advance the objects of the Foundation.

(2) To advance the objects of the Foundation, the funds may be used for the assistance of such persons, 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 which persons, institutions, organizations, agencies or bodies, whether or not the same are within the Edmonton Community, are to benefit by that assistance in each year, and to what extent.

Property  
held in  
trust

**13.** 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 person as Trustee may upon notice to the Foundation apply to a Judge of the Trial Division of The Supreme Court of Alberta in the Judicial District of Edmonton, 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.

Appoint-  
ment of  
trustee

**14.** (1) The Foundation, after a donation has been received, may 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

**13.** This section is intended to cover the situation where a Trustee finds it difficult or impossible to carry out the terms of the Trust imposed upon him. If the purpose of such a Trust were similar to the objects of the Foundation, and rather than have such a Trust fail completely, it is hoped that this section would provide such a Trustee with a viable alternative. It would be encumbant upon such a Trustee and not on the Foundation to make such an Application. The section is intended to provide a rather simple vehicle for the application of the Cy-pres Doctrine.

or portions thereof as may be allotted by the Board to such trust companies, banks or other fiscal institutions, to act as trustees for the Foundation.

(2) The Foundation may at any time, by resolution of the Board, vote 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 in place thereof as trustee, as the Board may deem advisable.

Transfer,  
etc. of  
property

**15.** 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

**16.** 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, reinvestments, 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 reinvestments in any property or security other than security in which a Trustee or trust company may invest monies under the laws of the Province of Alberta, or any applicable 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 the 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) contribute from the monies 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 may direct in writing.





Donations

**17.** (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 and legacies for the objects and purposes set forth in Section 5 hereof, and will in case of any failure on the part of the Foundation, or otherwise howsoever, do what is necessary to carry out the true intent and purpose of this Act.

Rule against  
perpetuities  
inapplicable

**18.** The rule against perpetuities shall not apply to donations made to the Foundation.

Donations  
in trust

**19.** When a donation of any property has been made to the Foundation in trust to take effect in future, the Board is empowered to accept and exercise any powers of appointment, settlement or distribution with respect to income in whole or in part derivable from such property in the interim, and also empowered to nominate executors and trustees in the manner provided in the instrument creating the trust.

Donations  
outside  
district

**20.** Where property has been donated to the Foundation and the donor is desirous that a part of the income derivable therefrom shall be distributed for the benefit of citizens of other municipalities and so indicates in the instrument creating the trust, the Board may accept and exercise the trust in respect of the distribution of such part as fully and effectually as in respect of the remainder.

Annual  
audit

**21.** (1) The Foundation shall cause an audit of the receipts and disbursements of the Foundation to be made at least once in every fiscal year by an independent auditor, and shall file with the Registrar of Companies a certified statement by such auditor showing the investments made of all funds donated to and invested in trustees for the Foundation, the amount of income received during the preceding fiscal year, the purpose for which the income has been used, and a classified statement of the expenses of the Trustees and of the Board.

(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 audit to be made.

**17.** This section varies the existing law to the extent that it allows the Courts to liberally construe the words of donation so long as it is evident that the donor intended to make a gift or legacy of the general character indicated in the Act and for the objects and purposes set forth in Section 5 thereof. The purpose is to give the Courts some leeway in construing a gift or legacy where in the first instance it appears that the words used are somewhat vague or otherwise technically imperfect. It should be pointed out that the ultimate decision in any event, rests with the Courts.

**18.** It is against public policy that property should be settled on private trusts for an indefinite period, so as to prevent it from being freely dealt with; and, consequently, the power of so doing has been curtailed by a rule known as The Rule Against Perpetuities. The Rule normally does not apply to public charitable trusts and section 18 of this Act may be redundant in that respect. Whether or not a Trust is a public or private Trust, depends on the circumstances in each case. Rather than having the matter litigated at some future time when it appears that the Rule may be offended, this section is designed to avoid such litigation by providing that the Rule does not apply to donations made to the Foundation in any event. It is hoped that the Foundation will exist for many, many years and will always be available to accept and administer, for the public good, gifts that do not actually vest in the Foundation until sometime well in the future. Section 18 of this Act is exactly the same as Section 19 of The Calgary Beautification Foundation Act, being Chapter 119 of 1970 Statutes of Alberta.

Reports to  
Registrar of  
Companies

**22.** The Secretary of the Board shall, once in each calendar year, file with the Registrar of Companies the following:

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

Administra-  
tive costs

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

Coming into  
force.

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

