

1981 BILL PR 13

Third Session, 19th Legislature, 30 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL PR 13

THE CALGARY FOUNDATION ACT

MR. MUSGREAVE

First Reading
Second Reading
Committee of the Whole
Third Reading
Royal Assent

Bill PR 13
Mr. Musgreave

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THE CALGARY FOUNDATION ACT

(Assented to , 1981)

Preamble WHEREAS the Calgary Community Foundation was incorporated by *The Calgary Community Foundation Act* being chapter 81 of the Statutes of Alberta, 1955, which was amended by chapter 98 of the Statutes of Alberta, 1973;

WHEREAS the Foundation has presented a petition praying that it be enacted as herein set forth and 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 Alberta, enacts as follows:

Interpretation **1** In this Act

- (a) "Board" means the Board of Directors of the Foundation;
- (b) "Calgary" means the City of Calgary;
- (c) "Calgary district" means the City of Calgary and such part of the surrounding area in the Province as in the opinion of the Board is readily accessible to Calgary;
- (d) "Director" means a member of the Board;
- (e) "Foundation" means The Calgary Foundation continued by section 2.

Continuation of Operation **2** The Calgary Community Foundation is continued as a body corporate under the name of "The Calgary Foundation".

Objects

3 The objects of the Foundation are to use the funds entrusted to it for such charitable, educational, recreational, cultural and benevolent purposes as will, in the sole discretion of the Board, most effectively assist, encourage and promote the well-being of mankind, primarily the inhabitants of the Calgary district, regardless of race, national origin, colour or religion.

Application of funds

4 To effect the objects of the Foundation the funds available to it 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 they are within the Calgary district, are to benefit by that assistance in each year, and to what extent.

Powers

5 In addition to the powers vested in the corporation pursuant to *The Interpretation Act* the Foundation has the power

(a) to accept gifts, grants, legacies, devises or bequests of real or personal property of every nature wherever situated;

(b) subject to the provisions of this Act, to use and distribute before June 30 in each year, such portions of the funds available to the Foundation as the Board deems proper, to advance the objects of the Foundation;

(c) to pledge, mortgage or otherwise encumber any of the property of the Foundation or any interest in it including property held in trust, subject to the further provisions of this Act;

(d) to borrow, raise or secure the payment of money for any of the objects of the Foundation by any means whether or not charged upon the property of the Foundation and to redeem or pay off any such obligation;

(e) to invest any money of or in the possession of the Foundation in any property in which a trustee may invest trust money or in which a life insurance company may invest funds under the *Canadian and British Companies Act, 1932*, subject to any instruction of the person who donated the money or to any order of a Judge of the Court of Queen's Bench;

(f) to have the custody and management of all or any of the property of the Foundation carried out by one or more trust companies, banks, investment counselors or other financial institutions or agents in such manner as the Board may deem proper;

(g) to lease any real property held by the Foundation;

(h) to have all the powers, privileges and immunities vested in a corporation by law.

Application of The Companies Act

6 The Foundation is exempt from sections 7, 76, 77, 81, 107, 117 and 255 of *The Companies Act*.

Board

7(1) The Board shall be nominated and appointed by a Committee of Nominators.

(2) The Committee of Nominators shall be

- (a) the Mayor of Calgary, who shall be Chairman;
- (b) the Senior Judge resident in Calgary of the Court of Queen's Bench;
- (c) the President of the Calgary Chamber of Commerce;
- (d) the Chancellor of the University of Calgary; and
- (e) the Senior Bencher, resident in Calgary, of the Law Society of Alberta.

(3) In the event that any of the persons listed in subsection (2) refuses or is unable to carry out his duties as a member of the Committee of Nominators or in the event that his office ceases to exist or becomes known by another name or is reconstituted, the Board, by unanimous resolution and with the approval of 2/3 of the other members of the Committee of Nominators may either temporarily or permanently substitute for the office such other office as may in their belief as nearly as possible meet the original intent of this Act and shall file a copy of the resolution when approved by the nominators, with the Registrar of Companies.

(4) The first members and Chairman of the Board of the Foundation shall be the chairman and members of the board of The Calgary Community Foundation immediately prior to the coming into force of this Act.

Committee of Nominators

8(1) The Chairman of the Board shall fix a date for the first meeting of the Committee of Nominators within 6 weeks of the coming into force of this Act and shall thereafter fix a date once in each year for a meeting of the Committee of Nominators and at the meeting the Committee shall nominate and appoint such members of the Board as are required to fill any vacancies and to succeed members whose terms have expired.

(2) 3 members present shall form a quorum for the operation of the Committee.

(3) The Committee may act by a majority of its members present at a meeting.

(4) Each member of the Committee shall have one vote on the nomination and appointment of each office to be filled.

Board of Directors

9 The Board shall consist of 9 residents of the Calgary district nominated and appointed by the Committee of Nominators from

among the individuals who in the opinion of the Committee have evinced an interest in the welfare of the community.

Tenure of Board

10(1) The term of office of each member of the Board shall be 3 years, provided that

(a) after appointing the first Board to be appointed following the coming into effect of this Act, the Committee of Nominators shall determine by lot the term of office of each member of the Board so that the term of office of 1/3 of the members shall be one year, 1/3 of the members shall be 2 years, and 1/3 of the members shall be 3 years;

(b) when a member has been nominated and appointed in place of a previous member who did not complete his term, his appointment shall be for the balance of the previous member's term.

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

(a) upon his death, resignation, or ceasing to reside in the Calgary district;

(b) upon his having served 9 years as a member of the Board whether consecutively or not;

(c) in the event of his absence from 3 consecutive meetings of the Board without reason satisfactory to the Board;

(d) by resolution of the Board, when in the opinion of the Board, a member is guilty of gross misconduct whether in connection with Foundation affairs or otherwise or is in a serious position of conflict of interest;

(e) by resolution of the Board, because of any incapacity which in the opinion of the Board may prevent him from discharging his duties for 9 months or more.

Meetings of the Board

11(1) The Board shall meet at least once in each quarter of the year in Calgary.

(2) A quorum of the Board is 5 members.

(3) The Board may act by a majority of its members present at a meeting.

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

(5) A member of the Board may not receive remuneration for his services except the reimbursement of reasonable expenses.

Powers of the Board

12 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 Chairman and one or more Vice-Chairmen from among its members;
- (b) appoint an Executive Director, Treasurer, Secretary or 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 employee;
- (c) fix and determine the remuneration of officers and employees of the Foundation, subject to section 10(5);
- (d) establish such committees of Board members as it deems proper to establish;
- (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) open and operate an account with any bank or trust company and deposit in it such funds as may be required from time to time to pay the costs of administering the affairs of the Foundation and to pay the costs from the account.

Wishes of donor

13(1) In deciding the manner in which funds shall be used or applied, the Board shall respect and be governed by any trust imposed by the donor in the instrument creating the trust or effecting the gift of the funds to the Foundation.

(2) If, after the death of a donor, or if the donor was a corporation, after its winding-up, 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 the trust.

(3) If, after the death of a donor, or if the donor was a corporation, after its winding-up, either voluntarily or otherwise, 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 the funds for such purposes as are in their opinion closest to the original intent and purpose of the donor.

(4) If no conditions are imposed by the donor with regard to the use of his gift, the Board may in its absolute discretion use and apply the 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 of the Foundation, as a condition of the Foundation accepting the gift.

(6) Subsection (5) may be waived by the Board at the time of acceptance of a gift.

Honorary Directors **14(1)** The Board may appoint Honorary Directors of the Foundation in recognition of their service to the Foundation or their status in the Calgary district.

(2) Any such appointment may be for any term of years or for life as the Board may determine and may be terminated by resolution of the Board at any time.

(3) Honorary Directors shall be invited to attend meetings of the Board and participate in its discussions but shall not be entitled to vote.

Property held in trust **15(1)** Where any person holds any property in trust for any purpose of a nature similar in whole or in part 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 become difficult to perform, such a person as trustee may upon notice to the Foundation apply to a Judge of the Court of Queen's Bench for an order directing him to hand over such property to the Foundation to be used under this Act.

(2) A judge receiving an application pursuant to subsection (1) has the power to make such order for the handing over of the 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.

custodian **16(1)** The Foundation, as soon as practical after a donation has been received, shall by resolution of the Board, 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 of the property comprising such donation, or such portion or portions of it as may be allotted by the Board to such trust company, bank or other fiscal institution, to act as custodian for the Foundation and if desired, as investment manager of it.

(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 custodian, and may appoint any other trust company, bank or other fiscal institution as custodian in its place.

(3) 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 prescribe by resolution, and shall further be executed by the custodian for the time being of the property to be so transferred, assigned or conveyed.

(4) The Foundation shall authorize and require the custodian, during its continuation in office as custodian

(a) to have the custody of 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 of it which at any time or from time to time the investment manager considers necessary or desirable;

(b) to observe, carry out, perform and give effect to all terms, provisions and conditions expressed in any instrument creating any trust;

(c) to 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;

(d) to distribute from the monies in its possession such sums and in such manner as the Board shall at any time or from time to time direct in writing;

(e) to give to the auditor of the Foundation all information and permit him to make such inspections as is necessary to carry out the audit of the Foundation.

Investment
Manager

17(1) The Foundation, as soon as practical after a donation has been received, shall, by resolution of the Board, appoint, subject to the provisions of any trust imposed by the donor, one or more trust companies, banks, investment counsellors or other fiscal agents authorized to carry on business in the Province to assume the management of the property comprising such donation or such portion or portions of it as may be allotted by the Board to the trust company, bank or investment counsellor or other fiscal agent.

(2) The Foundation may at any time, by resolution of the Board, revoke the appointment of any trust company, bank, investment counsellor or other fiscal agent as such investment manager and may appoint any other trust company, bank, investment counsellor or other fiscal agent as investment manager in its place.

(3) The Foundation shall require the investment manager, during its continuance in office as investment manager for the Foundation, to make all investments, reinvestments, conversions, sales or dispositions of the property which it is managing and which it may, at any time and from time to time, consider necessary or desirable and which the Foundation is empowered to make.

Common Trust
Fund

18(1) Notwithstanding anything in this Act contained, the Foundation may establish a Common Trust Fund, in which property received by the Foundation is, subject to the provisions imposed by the donor on any such property, combined for the purpose of facilitating the investment and administration of such property.

- (2) The Board may make regulations from time to time concerning:
- (a) the property that may be included in the Fund;
 - (b) the operation of the Fund;
 - (c) the distribution of the income of the Fund; and
 - (d) the method of valuation of the property in the Fund and of any property being transferred into the Fund.

Donations

19(1) Any donation which, by its terms, is given, conveyed, transferred, demised, bequeathed, devised or otherwise disposed of to any of the following:

- (a) Calgary Community Foundation;
- (b) Calgary and District Foundation,

is hereby declared to be altered and amended insofar as may be necessary so that such donations shall be effective as a donation to The Calgary Foundation as fully and effectively as though the name "The Calgary Foundation", was included in the terms of the donation in the place and stead of such other name and upon the ex parte application of the Foundation to the Court of Queen's Bench requesting an order that the society or corporation referred to in such a donation is The Calgary Foundation, the Court may make an order confirming the recipient of the donation as The Calgary Foundation.

(2) 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.

(3) 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
inapplicable

20 Neither *The Perpetuities Act* nor the common law rule known as the rule against perpetuities shall apply to donations made to the Foundation.

Donations in trust

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 outside 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.

Annual audit

23(1) The fiscal year of the Foundation shall be the 12 months ending on June 30 in each calendar year.

(2) The Foundation shall cause an audit to be made at least once in every fiscal year of its receipts and disbursements by an independent auditor and shall cause to be published in a newspaper published in Calgary, a certified statement by such auditor showing the investments made of all funds donated to and vested in the Foundation, the amount of income received during the preceding fiscal year, and the purposes for which the income has been used, and a classified statement of the expenses of the Foundation.

(3) It shall be the duty of the custodian 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 Foundation 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 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

25 Subject to any conditions imposed by a donor, reasonable administrative expenses incurred by the Board may be charged against all trusts, on a pro rata or such other basis as the Board considers equitable.

26 *The Calgary and District Foundation Act* is repealed.

Coming into force

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