

2000 BILL Pr5

Fourth Session, 24th Legislature, 49 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL Pr5

CALGARY FOUNDATION ACT

MRS. BURGNER

First Reading

Second Reading

Committee of the Whole

Third Reading

Royal Assent

Bill Pr5
Mrs. Burgener

BILL Pr5

2000

CALGARY FOUNDATION ACT

(Assented to , 2000)

Preamble

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

WHEREAS the Calgary Community Foundation became the Calgary and District Foundation pursuant to *The Calgary and District Foundation Act*, being chapter 98 of the Statutes of Alberta, 1973;

WHEREAS the Calgary and District Foundation became The Calgary Foundation pursuant to the *Calgary Foundation Act*, being chapter 83 of the Statutes of Alberta, 1981, which statute repealed *The Calgary and District Foundation Act*;

WHEREAS the *Calgary Foundation Act* was amended by chapter 21 of the Statutes of Alberta, 1989 and chapter 37 of the Statutes of Alberta, 1992;

WHEREAS a petition has been presented 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:

Definitions

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) “Committee of Nominators” means the Committee of Nominators established pursuant to section 8;
- (e) “Director” means a member of the Board;
- (f) “Foundation” means The Calgary Foundation continued by section 2.

Continuation **2** The Calgary Foundation is continued as a body corporate under the name of “The Calgary Foundation”, and all property that was property of the Foundation prior to the coming into force of this Act continues to be property of the Foundation.

Objects **3** The objects of the Foundation are to use the funds entrusted to it for such educational, recreational, cultural and benevolent purposes as are charitable and which 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.

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, from time to time, but not less often than once in each fiscal year, to use and distribute 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 lend money with or without interest to such institutions, organizations, agencies and bodies as may be in need of financial aid and may be engaged in the promotion or advancement of the objects of the Foundation upon such terms as to payment and with or without security as the Board may determine;
- (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 counsellors 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.

Investment powers

6(1) In addition to the powers of the Foundation set out in section 5, but subject to any specific direction by a donor or any order of the Court of Queen's Bench, the Board may invest the Foundation's funds and other property and the funds and property entrusted to or vested in it in any form of property or security as the Board sees fit but in so doing, the Board must exercise the care, skill, diligence and judgment that a prudent investor would exercise in making investments.

(2) The Board is not liable for a loss to the Foundation arising from the investment of the Foundation's funds and other property if the conduct of the Board that led to the loss conformed to a plan or strategy for the investment of the Foundation's funds and other property, comprising reasonable assessments of risk and return, that a prudent investor could adopt under comparable circumstances.

(3) Subject to any express direction to the contrary in the terms of a gift or in any trust imposed by the donor, the Board may delegate its powers of investment to any person or body, including a stockbroker, investment dealer or investment manager, to any extent, for any period, and on any terms, including terms as to the payment of such delegate, that the Board considers reasonable, provided that such delegation is such that a prudent investor might make in accordance with ordinary business practice of a foundation.

(4) If the Board delegates authority under subsection (3), the Board

- (a) is subject to the obligations to which it would normally be subject in selecting the delegate and in establishing the terms of the authority delegated;
- (b) is subject to the obligations to which it would normally be subject in supervising the delegate and, for this purpose, a review by the Board of the performance of a delegate conducted at least twice in each fiscal year shall be deemed to satisfy the Board's obligation to supervise the delegate, unless the contrary is proven; and
- (c) shall not in any contract with a delegate relieve the delegate from the obligation to exercise the degree of care that the delegate would be required to exercise at law.

(5) The Board may, from time to time, make resolutions concerning the investment policy for the Foundation provided that such policy shall be in accordance with the investment powers set out in this section.

Application of
Companies
Act

7 The Foundation is exempt from sections 6 and 146 of the *Companies Act*.

Board

8(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 chair;
- (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 Benchler, 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 that person's duties as a member of the Committee of Nominators or in the event that the person's 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 Committee of Nominators, with the Registrar of Corporations.

(4) The existing members and chair of the Board of the Foundation shall be the chair and members of the Board of The Calgary Foundation immediately prior to the coming into force of this Act.

Committee of
Nominators

9(1) The chair of the Board shall 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) Three members present shall form a quorum for the operation of the Committee of Nominators.

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

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

(5) Notwithstanding subsections (1) to (4), the Committee of Nominators may, in lieu of holding a meeting, act by way of written resolution signed by all of its members, provided that such resolution may be signed in counterparts, and each counterpart may be delivered to the Foundation by facsimile transmission.

Board of
Directors

10(1) A Director shall be a resident of the Calgary district nominated and appointed by the Committee of Nominators.

(2) The Board shall consist of not less than 11 nor more than 19 Directors as determined from time to time by the Board with the approval of the Committee of Nominators.

Tenure of
Board

11(1) The term of office of each member of the Board shall be 3 years, provided that

- (a) the Committee of Nominators shall determine 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 that previous member's term, the new member's 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 the member's death, resignation or ceasing to reside in the Calgary district;
- (b) upon the member's having served 9 years as a member of the Board, whether consecutively or not;
- (c) in the event of the member's 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 the member from discharging the member's duties for 9 months or more.

No remuneration for Board

12 A member of the Board may not receive remuneration for the member's services except the reimbursement of reasonable expenses.

Powers of Board

13(1) 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) appoint an executive director, treasurer, secretary or secretary-treasurer, chief financial officer 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;
- (b) fix and determine the remuneration of officers and employees of the Foundation, subject to section 12;
- (c) make by-laws, resolutions, rules and policies 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, any or all matters pertaining to the business, meetings and proceedings of the Board, and any or all other matters pertaining to the operations of the Foundation.

(2) Notwithstanding section 12, the Foundation shall indemnify any Director or officer of the Foundation, any person who acts or has acted at the Foundation's request as a Director or officer of the Foundation and the heirs and legal representatives of such person against all costs, charges and expenses, including an amount paid to settle an action or satisfy a judgment, reasonably incurred by that person in respect of any civil, criminal or administrative action or proceeding to which the person is made a party by reason of being or having been a Director or officer if

- (a) such Director or officer acted honestly and in good faith with a view to the best interests of the Foundation, and
- (b) in the case of a criminal or administrative action or proceeding that is enforced by a monetary penalty, the Director or officer had reasonable grounds for believing that the conduct was lawful.

(3) Notwithstanding section 12, the Foundation shall indemnify a person referred to in subsection (2) in respect of an action by or on behalf of the Foundation to procure a judgment in its favour, to which the person is made a party by reason of being or having been a Director or officer of the Foundation, against all costs, charges and expenses reasonably incurred by the person in connection with the action if the person fulfills the conditions set out in subsection (2).

(4) Notwithstanding section 12, the Foundation may purchase and maintain insurance for the benefit of any person referred to in subsection (2) against any liability incurred by that person

- (a) in the person's capacity as a Director or officer of the Foundation except when the liability relates to the person's failure to act honestly and in good faith with a view to the best interests of the Foundation, or
- (b) in the person's capacity as a Director or officer of another body corporate if the person acts or acted in that capacity at the Foundation's request, except when the liability relates to the person's failure to act honestly and in good faith with a view to the best interests of the Foundation.

(5) A Director is not liable for any breach of duty to the Foundation if the Director relies in good faith on

- (a) financial statements of the Foundation represented to the Director by an officer of the Foundation or in a written report of the auditor of the Foundation fairly to reflect the financial condition of the Foundation, or
- (b) an opinion or report of a lawyer, accountant, engineer, appraiser or other person whose profession lends credibility to a statement made by such person.

Wishes of donor

14(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) Where a donor is deceased or otherwise not available to provide directions with respect to the use of the donor's gift or to clarify directions previously given by the donor and

(a) conditions arise whereby in the opinion of the Board, a departure from the terms of the gift would further the intent and purpose of the donor, or

(b) there is, in the opinion of the board, an ambiguity in the directions given by the donor,

the Board may, in its sole discretion, deal with the property as the Board thinks fit.

(4) If no conditions are imposed by the donor with regard to the use of the donor's 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) In the absence of any direction by the donor but subject to the other provisions of this section and to the disbursement quota requirements of the *Income Tax Act (Canada)* and the regulations thereunder, it shall be deemed that all contributions are to be invested and devoted in perpetuity for charitable purposes as provided in this Act.

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

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

Managed
funds

15(1) A charitable organization established under the law of the Province of Alberta or authorized to operate under the law of the Province of Alberta and registered under the *Income Tax Act (Canada)* may entrust funds to the Foundation and the Foundation may, on terms agreeable to both parties, manage and invest the funds.

(2) This section is deemed to have come into force on January 1, 1990.

Property held
in trust

16(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 the person 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

17(1) The Foundation shall, by resolution of the Board, appoint one or more trust companies, banks or other fiscal institutions authorized to carry on business in the Province of Alberta to assume the custody of the property comprising donations, 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, reinvestments, 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 money 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 the auditor to make such inspections as are necessary to carry out the audit of the Foundation.

Investment
manager

18(1) The Foundation shall, by resolution of the Board, appoint one or more trust companies, banks, investment counsellors or other fiscal agents authorized to carry on business in the Province of Alberta to assume the management of the property comprising donations 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
funds

19(1) Notwithstanding any other provision of this Act, the Foundation may establish one or more common trust funds 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 or for such other purposes as the Board considers advisable.

(2) The Board may make resolutions from time to time concerning

- (a) the property that may be included in the funds,
- (b) the operation of the funds,
- (c) the distribution of the income of the funds, and
- (d) the method of valuation of the property in the funds and of any property being transferred into the funds.

Donations

20(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 of Alberta 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.

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 as determined from time to time by resolution of the Board.

(2) The Foundation shall appoint an independent auditor who shall carry out an audit of the Foundation's annual financial statements in accordance with generally accepted auditing standards.

(3) The Board may, at its discretion, publish in a newspaper circulated in Calgary, a summarized financial statement with the auditor's report thereon.

(4) A copy of the complete audited annual financial statements shall be provided to any person upon request.

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

Reports to
Registrar of
Corporations

24(1) The secretary of the Foundation shall, once in each calendar year, file with the Registrar of Corporations the following:

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

(2) The secretary of the Foundation shall file with the Registrar of Corporations a copy of the by-laws of the Foundation and of any amendments or additions to the by-laws.

Administration
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.

Repeals SA
1981 c83

26 The *Calgary Foundation Act* is repealed.