

2001 BILL Pr2

First Session, 25th Legislature, 50 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA 

BILL Pr2

BURNS MEMORIAL TRUST ACT

MR. LORD

First Reading

Second Reading

Committee of the Whole

Third Reading

Royal Assent

Bill Pr2
Mr. Lord

BILL Pr2

2001

BURNS MEMORIAL TRUST ACT

(Assented to , 2001)

Preamble

WHEREAS *The Burns Memorial Trust Act*, being chapter 64 of the Statutes of Alberta, 1956, as amended by chapter 81 of the Statutes of Alberta, 1981, provides that Royal Trust Company is authorized and directed to distribute annually any monies received by it as Trustee of the Burns Memorial Trust, after certain deductions, equally among the following Beneficiaries:

The Sisters of Charity of Providence of Calgary;

The Governing Council of the Salvation Army, Canada West;

The Trustees for the Poor, Indigent and Neglected Children of the City of Calgary;

The Trustees for the Widows and Orphans of Members of the Police Force of the City of Calgary; and

The Trustees for the Widows and Orphans of Members of the Fire Brigade of the City of Calgary;

WHEREAS Royal Trust Corporation of Canada is the lawful successor to the Royal Trust Company;

WHEREAS the branch of the Salvation Army having its headquarters in the City of Calgary, in the Province of Alberta, as described in the will of the late Honourable Patrick Burns, has changed its name from The Governing Council of the Salvation Army, Canada West to The Governing Council of the Salvation Army in Canada;

WHEREAS the name of The Trustees for the Poor, Indigent and

Neglected Children of the City of Calgary has been changed to The Burns Memorial Fund for Children;

WHEREAS the name of The Trustees for the Widows and Orphans of Members of the Police Force of the City of Calgary has been changed to The Burns Memorial Police Fund;

WHEREAS the name of The Trustees for the Widows and Orphans of Members of the Fire Brigade of the City of Calgary has been changed to The Burns Memorial Fire Fund;

WHEREAS because of changed social and financial conditions, Royal Trust Corporation of Canada, as Trustee, wishes to have the authority to invest the assets of the Burns Memorial Trust according to prudent investor standards and in accordance with a total return investment policy;

WHEREAS each of the named Beneficiaries have consented to the enlargement of the Trustee's authority; and

WHEREAS a petition has been presented praying that the Act 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) "Beneficiaries" means the 5 named charitable organizations in section 3 that are to benefit from the Trust;
- (b) "Trust" means the Burns Memorial Trust;
- (c) "Trustee" means the Royal Trust Corporation of Canada.

Property of Trust

2 All property that formed any part of the property of the Trust prior to the coming into force of this Act continues to be the property of the Trust.

Objects of Trust

3 The Trust is perpetual and its assets shall be used to generate a reasonable rate of return in the form of monies for the benefit of and equal distribution, on the terms provided for in this Act, among the

following charitable organizations as Beneficiaries of the Trust:

- (a) The Sisters of Charity of Providence of Calgary,
- (b) The Governing Council of the Salvation Army in Canada,
- (c) The Burns Memorial Fund for Children,
- (d) The Burns Memorial Police Fund, and
- (e) The Burns Memorial Fire Fund.

Powers and
duties with
respect to
investment

4(1) Any rules and principles of law or equity that impose a duty on a trustee exercising a power of investment continue to apply except to the extent that they are inconsistent with this Act.

(2) The Trustee shall invest the Trust property with a view to obtaining a reasonable financial return while avoiding undue risk, having regard to the circumstances of the Trust.

(3) The Trustee shall evaluate the expected return and risk associated with investment strategies or decisions within the context of the overall property of the Trust, rather than by focusing on particular investments in isolation.

(4) The Trustee shall review the Trust property at reasonable intervals for the purpose of confirming that such property continues to be appropriate to the circumstances of the Trust.

(5) Without restricting the matters that the Trustee may consider, in planning the investment of Trust property, the Trustee shall consider the following matters, insofar as they are relevant to the circumstances of the Trust:

- (a) the purposes and duration of the Trust and the total value of the Trust's assets;
- (b) the special relationship or value of an asset to the purposes of the Trust;
- (c) the possible effect of inflation or deflation;
- (d) the need to maintain the real value of the capital or income of the Trust;
- (e) the need to maintain within the property of the Trust a

balance that is appropriate to the circumstances of the Trust between

- (i) risk,
- (ii) expected total return from income and the appreciation of capital,
- (iii) liquidity, and
- (iv) regularity of income;
- (f) the importance of diversifying the portfolio to an extent that is appropriate to the circumstances of the Trust;
- (g) the role that different investments or courses of action play within the overall portfolio; and
- (h) the costs, such as commissions and fees, and expected tax consequences of investment decisions or strategies.

Trustee liability

5(1) The Trustee is not liable for a loss in connection with the investment of the property of the Trust if the loss arises from a decision or course of action that a trustee of reasonable skill and prudence acting in accordance with section 4 might have made or adopted.

(2) A court assessing damages payable by the Trustee for a loss to the Trust arising from the investment of the property of the Trust may take into account the overall performance of the investments.

Delegation of investment authority

6(1) In this section, “agent” includes a stockbroker, investment dealer, investment counsel and any other person to whom investment responsibility is delegated by the Trustee.

(2) The Trustee may delegate to an agent the degree of authority with respect to investment of the property of the Trust a prudent investor might delegate in accordance with ordinary investment practice.

(3) The Trustee in delegating authority under subsection (2) shall exercise prudence in

- (a) selecting the agent,
- (b) establishing the terms of the delegated authority, and

(c) monitoring the performance of the agent to ensure compliance with the terms of the delegation.

(4) The Trustee in delegating authority to an agent under subsection (2) in compliance with subsection (3) is not liable for the decisions or actions of that agent.

(5) Where investment authority has been delegated to an agent by the Trustee, and the Trust suffers a loss because of the agent's breach of the agency contract, or through negligent acts or any other actionable series of events, damages for the loss may be recovered from the agent in an action

(a) by the Trustee, or

(b) by a Beneficiary, if the Trustee fails to commence an action within a reasonable time after acquiring knowledge of the breach or fails to reasonably pursue such action after its commencement.

Purchase of mutual fund units not delegation

7 Investment in a security issued by a mutual fund or similar investment vehicle is not a delegation of investment authority with respect to the investment of the property of the Trust.

Application of Trust property

8(1) Once in each fiscal year, the Trustee shall pay an amount from income or capital, determined in accordance with the regulations dealing with the disbursement quotas for private foundations in the *Income Tax Act* (Canada), in equal portions to the Beneficiaries.

(2) Subsequent to the payments required under subsection (1), the remaining funds of the Trust shall be invested as provided for by this Act.

Recovery of costs and fees by Trustee

9 Administrative fees and expenses incurred by the Trustee as approved by a court of competent jurisdiction shall be charged against the income of the Trust.

No new trust created

10 The Trust is a continuation of the original trust established under the will of the late Honourable Patrick Burns and this Act does not create a new trust.

Application of the *Trustee Act*

11 The provisions of the *Trustee Act* will apply to the Trust except insofar as they conflict with the provisions of this Act, in which

case, the provisions of this Act will prevail.

Repeals SA
1956 c64

12 *The Burns Memorial Trust Act* is repealed.