

2005 Bill Pr1

First Session, 26th Legislature, 54 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL Pr1

BOW VALLEY COMMUNITY FOUNDATION ACT

MRS. TARCHUK

First Reading

Second Reading

Committee of the Whole

Third Reading

Royal Assent

Bill Pr1
Mrs. Tarchuk

BILL Pr1

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BOW VALLEY COMMUNITY FOUNDATION ACT

(Assented to , 2005)

Preamble

WHEREAS certain citizens of the Town of Canmore and surrounding community by their petition have prayed for the passing of an Act incorporating the Bow Valley Community Foundation and that it be empowered to receive and administer donations in trust for charitable purposes as 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:

Definitions

1 In this Act,

- (a) “Board” means the Board of Directors of the Foundation;
- (b) “Bow Valley community” means that area of the Bow Valley from the eastern border of Banff National Park to the western border of the Stoney First Nations Reserve;
- (c) “custodian” means one or more trust companies, banks or other financial institutions authorized to carry on business in the Province of Alberta;
- (d) “Director” means a member of the Board;

- (e) “Foundation” means the Bow Valley Community Foundation;
- (f) “funds” include any form of real or personal property that may be received by the Foundation;
- (g) “Governor” means those persons provided with a power of appointment under section 6(3).

Constitution

2 Albert F. Holthuis, retired dentist; Marvin W. Phillips, retired chartered accountant; Edward G. Latvala, semi-retired businessman; Werner Scheidler, retired businessman; Brenda Caston, registered social worker; Richard Hester, chartered accountant; John Davis, retired businessman; all of the Bow Valley community 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 as a body corporate and politic under the name of “Bow Valley Community Foundation”, and by that name shall have perpetual succession and a common seal.

Objects

3 The objects of the Foundation are to use the funds entrusted to it to promote such charitable, philanthropic, humanitarian, educational, recreational, cultural and benevolent purposes as will most effectively assist, encourage and promote the well-being of humankind, primarily the inhabitants of the Bow Valley community regardless of race, national origin, color 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 are to benefit by that assistance in each year, and to what extent.

Powers of Foundation

5 In addition to the powers vested in the Foundation 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 kind and wheresoever situated;

- (b) to invest and administer various types of endowment funds in accordance with the wishes of the donors, or where a donor so requests, invest and administer funds where the income and principal are to be used;
- (c) to invest and administer the endowment funds of other charitable organizations;
- (d) subject to the provisions of this Act, 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;
- (e) to invest any money of or in the possession of the Foundation in any property in which a trustee may invest trust money in accordance with the prudent investor rules under the *Trustee Act* or in which a life insurance company may invest funds under the *Insurance Companies Act* (Canada), subject to any instruction of the person who donated the money or to any order of a court.

Appointment of Board

- 6(1)** The Board shall consist of 10 Directors, each entitled to one vote.
- (2)** The Board shall be appointed from among individuals residing in the Bow Valley community who have evidenced an interest in the welfare and well-being of the residents of the Bow Valley community, and the purposes and objectives of the Foundation.
- (3)** Each of the following shall be Governors of the Foundation and each may appoint one member to the Board:
 - (a) mayor of the Town of Canmore,
 - (b) reverend of the Ralph Connor Memorial United Church situated in the Town of Canmore,
 - (c) chief of medical staff at Canmore General Hospital,
 - (d) president of the Canmore Rotary Club, and
 - (e) president of the Canmore Seniors Association.
- (4)** Within 4 weeks of the coming into force of this Act, each Governor shall, under the rules established by its organization, appoint one Director to the Board.

- (5) The Directors appointed under subsection (4)
- (a) shall meet within 8 weeks of the coming into force of this Act, and
 - (b) fill the remaining positions on the Board by appointing Directors from the public at large.

(6) If

- (a) any office holder designated in subsection (3) declines or is unable to carry out the functions of a Governor, or the designated office ceases to exist, or becomes known by another name, or
- (b) an organization named in subsection (3) fails to nominate a person or ceases to exist, or becomes known by another name, or is reconstituted,

the Board, by resolution approved by 75% of the Directors, may temporarily or permanently substitute for the offices or organizations named in subsection (3), such other offices or organizations as may in their belief most nearly meet the original intent of this Act.

Tenure of Board

7(1) The term of office of each member of the Board shall be 3 years except in the following circumstances:

- (a) the Governors shall determine the term of office for the initial members of the Board by lot so that 4 members serve for a term of 1 year, 4 members serve for a term of 2 years and 2 members serve for a term of 3 years, and
- (b) when a member has been nominated and appointed in place of a previous member who did not complete his or her 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 Bow Valley community,
- (b) upon the member having served 6 consecutive years as a Director,

- (c) in the event of the member's absence from 3 consecutive meetings of the Board without reasons satisfactory to the Board,
- (d) by resolution of the Board when, in the opinion of the Board, a member
 - (i) is subject to an incapacity which may prevent the member from discharging his or her duties for 6 months or more,
 - (ii) has been found guilty of criminal conduct or other conduct detrimental to the purposes and objectives of the Foundation, or
 - (iii) has failed to disclose a conflict of interest in accordance with section 9.

(3) A Director may resign upon giving written notice to the secretary of the Foundation and such resignation shall take effect upon receipt of such notice.

(4) When a Director's term of office is terminated pursuant to subsection (2)(d), the termination shall take effect upon the Director receiving written notice of the Board's resolution from the secretary of the Foundation.

No remuneration for Board

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

Conflict of interest

9(1) For the purposes of this Act,

- (a) a Director is in a conflict of interest if the Director takes part in a decision in the course of carrying out the Director's duties knowing that the decision might further a private interest of the Director or a person directly associated with the Director, and
- (b) a person is directly associated with a Director if that person is
 - (i) the Director's spouse or adult interdependent partner,

- (ii) a corporation having share capital and carrying on business or activities for profit or gain and the Director is a director or senior officer of the corporation,
 - (iii) a private corporation carrying on business or activities for profit or gain and the Director owns or is the beneficial owner of shares of the corporation,
 - (iv) a partnership having not more than 20 partners,
 - (A) of which the Director is a partner, or
 - (B) of which one of the partners is a corporation directly associated with the Director by reason of subclause (ii) or (iii),
- or
- (v) a person or group of persons acting as the agent of the Director and having actual authority in that capacity from the Director.

(2) When a matter before the Board may give rise to a conflict of interest for a Director, the Director shall disclose the conflict of interest and abstain from voting on the matter.

Powers of Board

10 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) establish criteria for the receipt, investment and donation of funds;
- (b) establish committees of the Board, the terms of reference of such committees, and include in the committee membership persons who are not Directors of the Foundation;
- (c) establish policies, resolutions, rules and regulations consistent with the provisions of this Act, respecting any or all of the powers of the Foundation or of the Board, and also in respect of all matters pertaining to the operation of the Foundation;
- (d) at its first meeting, and at each annual meeting thereafter, appoint an auditor of the Foundation;

- (e) approve the audited financial statements, the annual budget and the annual report of the Foundation;
- (f) elect its own chair and vice-chair, and appoint or elect an executive director or manager, a treasurer and a secretary or secretary-treasurer, and such other officers and employees as it deems expedient, and may prescribe their respective duties, powers and authority and may determine the tenure of each office or the period of appointment of each such employee;
- (g) fix and determine the remuneration of employees;
- (h) 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;
- (i) encourage the contribution of funds from any person, corporation, municipality or government agency which the Board in its discretion deems advisable;
- (j) accept gifts, grants, legacies, devises or bequests of real or personal property of every nature and kind whatsoever and wherever situate;
- (k) have the custody and management of all or any of the property of the Foundation carried out in such manner as the Board may deem proper;
- (l) lease any real property held by the Foundation;
- (m) have all the powers, privileges and immunities vested in a society registered under the *Societies Act*;
- (n) receive, hold in trust and invest any money from any charitable organization registered under the *Income Tax Act* (Canada) for and on behalf of such organization at a fee to be determined by the Board, such funds to be referred to as “managed funds”;
- (o) reject gifts, grants, legacies, devises or bequests of every nature or kind when such gifts, grants, legacies, devises or bequests or the terms under which they are proposed to be given to the Foundation are not consistent with the purposes and objectives of the Foundation;
- (p) if no direction for the use of a gift is given by a donor, use and apply the gift for such purposes as it may deem proper

and consistent with the objects and purposes of the Foundation and the provisions of this Act.

Honorary Directors

- 11(1)** The Board may appoint Honorary Directors of the Foundation in recognition of service to the Foundation or status in the Bow Valley community.
- (2)** An appointment under this section shall be subject to any terms or conditions determined by the Board.
- (3)** Honorary Directors shall be invited to attend meetings of the Board and participate in its discussions but shall not be entitled to vote.
- (4)** Honorary Directors shall not have the authority to act on behalf of the Board or the Foundation.
- (5)** An Honorary Director is not entitled to remuneration except for reimbursement of reasonable expenses incurred on behalf of the Foundation and approved by the Board.

Meetings

- 12(1)** The notice period for any meeting of the Directors of the Foundation shall not be less than 21 days' written notice unless another notice period is specifically set out in this Act and must specify the day, hour and place of the meeting.
- (2)** Subject to notice requirements in subsection (1), the annual general meeting of the Foundation shall be held not later than 90 days following the Foundation's fiscal year end, the time and place of which to be determined by the Board and shall be open to the public and no person may be excluded from the meeting except for improper conduct.
- (3)** The Board shall meet at least once in each quarter of the year.
- (4)** Six voting Directors shall constitute a quorum for any meeting of the Board.
- (5)** Except as provided for in subsection (7), Directors must vote in person on any matter before the Foundation and proxies are not allowed.
- (6)** Resolutions of the Board must be approved by not less than two-thirds of its members present at a meeting.

(7) A resolution consented to in writing, including by electronic transmission, by all of the Directors shall be as valid and effective from the date of such resolution as if it had been passed at a meeting of the Board duly constituted.

By-laws

13(1) The Board may make by-laws, resolutions and rules not contrary to law, a special Act or this Act for

- (a) the resignation of a member's term of office;
- (b) all matters pertaining to business meetings and proceedings of the Board;
- (c) the appointment of any custodian in relation to a donation, or such portion or portions of it, as investment manager, subject to the provisions of any trust imposed by that donor;
- (d) the revocation of the appointment of any custodian as an investment manager, and the replacement of that custodian;
- (e) the provision of authorization to the custodian to make such 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.

(2) Changes to the by-laws may only be made at the annual general meeting of the Foundation and require 60 days' written notice and approval from 70% of the Directors.

Funds

14(1) Funds available to the Foundation shall be used solely to give effect to the purposes and objectives of the Foundation.

(2) Funds are to be treated as endowment funds, unless otherwise specified by the donor, and only a portion of the income will be disbursed in each year, as determined by the Directors, and shall be required to comply with the *Income Tax Act* (Canada) from time to time as it applies to community foundations.

(3) The Board may make rules from time to time concerning

- (a) the property that may be included in any fund;
- (b) the investment, operation and management of a fund;

- (c) the distribution of income, if any, from a fund;
- (d) the method of evaluation of the property in a fund and of any property being transferred into that fund.

(4) Subject to subsection (3), in deciding the manner in which funds shall be used or applied for the purposes and objectives of the Foundation, the Board shall use its best efforts to respect and follow any direction of the donor respecting the use of the gift by the Foundation.

(5) If at any time after the receipt of a gift, conditions arise where in the opinion of the Board a departure from the express wishes of the donor 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 donor within the purposes and objectives of the Foundation.

(6) If at any time after receipt of a gift, conditions change making it no longer possible, wise or practical, in the opinion of the Board, to meet the express wishes of the donor, the Board may in its absolute discretion use and apply the funds for such purposes and objectives of the Foundation as are in its opinion closest to the original intent and purpose of the donor.

(7) No donor shall be entitled to the return of all or any portion of a gift in the event that the expressed wishes of the donor are unable to be met by the Foundation.

(8) Where the donor desires that a donation to the Foundation shall be used in accordance with the purposes and objectives of the Foundation but in whole or in part for the benefit of a donee not situate in the Bow Valley community, the Board may accept and use the gift as fully and effectually as if the donee was situated or resided in the Bow Valley community.

Custodian

15(1) The Foundation may, as soon as practical after a donation has been received, by resolution of the Board, appoint one or more trust companies, banks or other financial institutions authorized to carry on business in the Province of Alberta to assume the custody of the funds comprising such donation or such portion or portions of it as may be allotted by the Board to such trust company, bank or other financial 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 custodian and may appoint another 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 Board 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 to

- (a) 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 which at any time or from time to time the custodian considers necessary or desirable,
- (b) give effect to and observe all directions with regard to any property entrusted to it by the Foundation which may at any time or from time to time be given in writing by the Board,
- (c) 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, and
- (d) give such books and records of the Foundation to the auditor of the Foundation and permit such auditor to make such inspections as are necessary to carry out the audit of the Foundation.

Donations in trust

16 When a donation of funds of any kind has been made to the Foundation by a trust to take effect at a future date, 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 funds in the interim and also the power to nominate executors and trustees in the manner provided in the instrument creating the trust.

Other community foundations

17 The Foundation may use another community foundation to invest and administer its funds.

Investment fees and administrative expenses

18(1) Investment management fees, as approved by the Board, shall be charged to each endowment fund or trust on a pro-rata basis or on such other equitable basis as the Board may decide.

(2) Reasonable administrative and operational expenses, as established in the annual administrative and operational budget of the Foundation and approved by the Board, will be funded only by the disposable portion of an administrative endowment fund established and funded for the purpose of covering administrative costs or funds raised specifically for this purpose.

Granting program

19 A formal granting program must be established whereby the Foundation will accept applications with supporting documentation from qualified donees, as defined in the *Income Tax Act* (Canada), and will approve such applications that, in the opinion of the Board, best satisfy the Foundation's purposes and objectives.

Donations

20(1) Any donation which, by its terms is given, conveyed, transferred, demised, bequeathed, devised or otherwise disposed of shall be sufficient if made in any form of words to constitute a donation for the purposes of this Act, as long as the donor indicated an intention to contribute presently or prospectively to a fund or foundation of the general character indicated in this Act.

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

Audit and fiscal year

21(1) The Board 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 submit such audited financial statements to the annual general meeting of the Foundation.

(2) The Board shall

- (a) cause a summary of the audited statements to be printed in a newspaper published in the Town of Canmore, and
- (b) provide a copy to any person or government agency which the Board in its discretion deems advisable.

(3) The fiscal year of the Foundation shall commence on January 1 in each year.

(4) Each Director shall be entitled to examine the books and records of the Foundation at any time during regular business hours.

(5) It shall be the duty of the custodian to give the auditor full and complete information and permit the auditor to make all necessary inspections to complete the audit.