

2006 Bill Pr3

Second Session, 26th Legislature, 55 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL Pr3

**EDMONTON COMMUNITY FOUNDATION
AMENDMENT ACT, 2006**

MR. LUKASZUK

First Reading

Second Reading

Committee of the Whole

Third Reading

Royal Assent

BILL Pr3

2006

EDMONTON COMMUNITY FOUNDATION AMENDMENT ACT, 2006

(Assented to _____, 2006)

WHEREAS the Edmonton Community Foundation was incorporated by the *Edmonton Community Foundation Act*, chapter 117 of the Statutes of Alberta, 1971, which was amended by *An Act to Amend the Edmonton Community Foundation Act*, chapter 82 of the Statutes of Alberta, 1974, and further amended by the *Edmonton Community Foundation Amendment Act, 1989*, chapter 26 of the Statutes of Alberta, 1989; and

WHEREAS the Foundation has presented a petition that the Act be further amended and it is deemed 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:

Amends SA 1971 c117

1 The *Edmonton Community Foundation Act* is amended by this Act.

2 Section 2 is amended

(a) by adding the following after clause (a):

(a.1) “Committee of Nominators” means the committee established under section 8;

(b) in clause (d) by striking out “section 7(1)” and substituting “section 8(1)”.

3 Section 3 is repealed and the following is substituted:

Constitution of Foundation

3(1) 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 constituted and established as 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 alter or change the same at pleasure.

(2) The objects of the Foundation are to receive, invest, administer and distribute monies gifted to it for such charitable, educational, recreational, cultural, historical 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 Edmonton Community.

4 Section 4.1 is amended

(a) in subsection (1) by adding the following after clause (b):

(b.1) minutes of every meeting of the Committee of Nominators,

(b) in subsection (2)(a) by striking out “the Sponsors,”.

5 Sections 5 to 9 are repealed and the following is substituted:

Powers

5 To effect the objects of the Foundation, the Foundation has, in addition to the powers set out in other sections of this Act, the following powers:

- (a) to accept, in trust or otherwise, gifts, grants, legacies, devises or bequests of real or personal property of every nature and wheresoever situate, for the general uses and 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 objects of the Foundation,

- (c) to accept, hold and administer funds on behalf of other charitable organizations,
- (d) to contract and be contracted with, sue and be sued, implead and be impleaded with, answer and defend in all courts and places whatsoever,
- (e) 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,
- (f) to invest any money of, or in possession of, the Foundation in such investments as are from time to time authorized by law for trustees by the *Trustee Act*, as amended from time to time, or as may be directed by the donor,
- (g) to pass on and entrust to one or more trust companies, banks, or other financial 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,
- (h) to lease any lands at any time held by the Foundation, and
- (i) to have all other powers and privileges and immunities vested by law in a corporation, necessary or proper for the carrying out of its objects which, without limiting the foregoing, shall include the power to open and operate current savings or trust accounts with a member institution whose deposits are insured by the Canada Deposit Insurance Corporation pursuant to the *Canada Deposit Insurance Corporation Act* (Canada) or a Treasury Branch of Alberta, and to engage counsellors, consultants and advisors.

Board of Directors

6(1) The property, powers and management of the Foundation shall be vested in and exercised by a Board, which shall be known as the Board of Directors of the Foundation, consisting of that number of members determined from time to time by the Board, which shall be any number, not fewer than 11 nor greater than 19, appointed as set out in this Act from among individuals normally resident in and having evinced an interest in the welfare of the Edmonton Community.

(2) A committee established by the Board pursuant to section 11(1)(d) shall have at least one Director among its members.

(3) If the Board establishes an executive committee, it shall have not fewer than 6 members, all of whom shall be Directors.

(4) To assist the Board in the conduct of the affairs of the Foundation, the Board may establish regional advisory committees whose members need not be members of the Board or normally resident in the Edmonton Community.

(5) The quorum for a meeting of any committee shall be a majority of its members.

Board appointments

7(1) All members of the Board shall be appointed by a Committee of Nominators.

(2) At the time of the coming into force of Bill Pr3, *Edmonton Community Foundation Amendment Act, 2006*, the members of the Board shall be deemed to have been appointed by the Committee of Nominators from the date of their original appointment.

Committee of Nominators

8(1) Each of the following shall be Governors of the Foundation and each may appoint one member to the Committee of Nominators:

- (a) the Mayor of the City of Edmonton,
- (b) the Chair of the Board of the Edmonton Chamber of Commerce,
- (c) the President of the Edmonton and District Labour Council, and

(d) the senior Justice resident in Edmonton of the Court of Queen's Bench of Alberta.

(2) Each of the following organizations may, by resolution of its governing body, appoint one member to the Committee of Nominators:

(a) the United Way of the Alberta Capital Region,

(b) the University of Alberta, and

(c) the Edmonton Bar Association.

(3) If

(a) any office holder designated in subsection (1) declines or is unable to carry out the functions of a Governor, or the designated office or organization ceases to exist, or becomes known by another name or is reconstituted, or

(b) an organization named in subsection (2) fails to nominate a person or ceases to exist, or becomes known by another name or is reconstituted,

the Board, by resolution approved by a majority of the Governors holding office at the time, may temporarily or permanently substitute for the offices or organizations named in subsection (1) or (2) such other offices or organizations as may in their belief most nearly meet the original intent of this Act.

(4) The Chair of the Board shall fix a date for the first meeting of the Committee of Nominators within 2 months of the coming into force of Bill Pr3, *Edmonton Community Foundation Amendment Act, 2006*, and shall fix dates, at least once in each year, for the meetings of the Committee of Nominators at which the Committee of Nominators shall appoint members to the Board as are required to fill any vacancies and to succeed members whose terms have expired.

(5) Five members present shall form a quorum for the operation of the Committee of Nominators.

(6) The Committee of Nominators may act by a majority of its members present at a meeting so long as a quorum is present.

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

(8) A resolution in writing signed by all members of the Committee of Nominators shall be as valid and have the same force and effect as if it were passed at a meeting of the Committee of Nominators.

(9) Subject to subsection (12), the term of office of each member of the Committee of Nominators shall be 3 years provided that when completing the first Committee of Nominators following the coming into force of Bill Pr3, *Edmonton Community Foundation Amendment Act, 2006*, the Committee of Nominators shall by lot determine the first term of office for each member of the Committee of Nominators so that the term of 2 of the members shall be one year, 2 shall be for 2 years and the remainder shall be for 3 years.

(10) A retiring member shall be eligible for reappointment, provided that no member shall serve more than 2 consecutive terms.

(11) When a new member has been appointed to complete the unexpired portion of the term of a previously serving member, the new member shall be considered to have served an entire 3 year term where the appointment is for greater than 18 months of the unexpired portion of the previous member's term.

(12) The term of office of a member of the Committee of Nominators shall terminate

- (a) upon death, resignation or ceasing to be normally resident in the Edmonton Community, or
- (b) if the Governor or organization appointing the member revokes the appointment.

(13) Where there is a vacancy on the Committee of Nominators, the remaining members of the Committee of Nominators may continue to act if the quorum of the members of the Committee of Nominators remains in office.

Term of office

9(1) Subject to subsection (2), the term of office of a member of the Board shall be 3 years, provided that when a new member has been appointed to complete the unexpired portion of the term of a previously serving member, the new member shall serve only to complete such unexpired term.

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

- (a) upon death, resignation or ceasing to be normally resident in the Edmonton Community,
- (b) in the event of absence without excuse acceptable to the Board from 3 consecutive meetings of the Board,
- (c) by resolution of the Board when, in the opinion of the Board, the member has been guilty of gross misconduct,
- (d) by resolution of the Board, for any cause which in the opinion of the Board may prevent the member from properly discharging the duties of a Director for 6 months or more, or
- (e) if the Committee of Nominators, in its discretion, revokes the appointment.

(3) Where there is a vacancy on the Board, the remaining Directors may continue to act if a quorum of Directors remains in office.

(4) Upon a vacancy occurring in the Board, the Secretary shall give notice to the Committee of Nominators requesting the appointment of a replacement.

(5) A retiring member of the Board shall be eligible for reappointment, provided that no member shall serve more than 2 consecutive terms.

(6) Where a new member has been appointed to complete the unexpired portion of the term of a previously serving member and the unexpired portion of the term exceeds 18 months, that new member shall be deemed to have served an entire 3 year term upon completion.

6 Section 11 is amended by

(a) repealing subsection (3)(b);

(b) repealing subsection (6) and substituting the following:

(6) For greater certainty, the Board shall have and shall be deemed always to have had the power to pass by-laws authorizing the Board to enter into an agreement with any Director, employee, officer or member of any committee of the

Board, indemnifying such person, their heirs and legal representatives against all costs, charges and expenses, including an amount paid to settle an action or to satisfy a judgment, reasonably incurred by them in respect of any civil, criminal or administrative action or proceeding to which they are made a party by reason of being or having been a Director, officer or employee of the Foundation or a member of any committee of the Board of the Foundation if

- (a) such person 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 individual had reasonable grounds for believing that his or her conduct was lawful.

(7) The Foundation may indemnify an individual referred to in subsection (6) in respect of an action by or on behalf of the Foundation to procure judgment in its favour, to which they are made a party by reason of being or having been a Director, officer or employee of the Foundation or a member of any committee of the Board of the Foundation, against all costs, charges and expenses reasonably incurred by them in connection with the action if they fulfill the conditions set out in subsection (6)(a) and (b).

(8) Notwithstanding this section, a person referred to in subsection (6) is entitled to an indemnity from the Foundation in respect of all costs, charges and expenses reasonably incurred by them in connection with the defence of any civil, criminal or administrative action or proceedings to which they are made a party by reason of having been a Director, officer or employee of the Foundation or a member of any committee of the Board of the Foundation, if the person seeking the indemnity

- (a) was substantially successful on the merits in his or her defence of the action or proceeding,
- (b) fulfills the conditions set out in subsection (6)(a) and (b), and
- (c) is fairly and reasonably entitled to the indemnity.

(9) For greater certainty, the Foundation shall have and shall be deemed always to have had the power to purchase and maintain insurance for the benefit of any person referred to in subsection (6) against any liability incurred by them

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

(10) The Foundation or the individual referred to in subsection (6) may apply to the court for an order approving an indemnity under this subsection and the court may so order and make any further order it thinks fit.

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

- (a) financial statements of the Foundation represented to them 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 the lawyer, accountant, engineer, appraiser or other person whose profession lends credibility to a statement made by them.

7 Section 12(5) is repealed.

8 Section 17(2) is amended by striking out “Section 5” and substituting “section 3”.

9 Section 23 is amended by adding “or such other basis as the Board considers equitable” after “pro rata basis”.

Explanatory Notes

1 Amends chapter 117 of the Statutes of Alberta, 1971.

2 Section 2

(a) adds definition of “Committee of Nominators”;

(b) clause (d) presently reads:

(d) *“Governors” means those persons provided with a power of appointment under section 7(1);*

3 Section 3 presently reads:

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 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 alter or change the same at pleasure and with the following powers:

- (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 objects 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 any money of or in the possession of the Foundation in such investments as are from time to time authorized by law either for trustees or for Canadian Life Insurance Companies, or as may be directed by the donor;*
- (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, which, without limiting the*

foregoing, shall include the power to open and operate current, savings, or trust accounts with a member institution whose deposits are insured by the Canada Deposit Insurance Corporation pursuant to the Canada Deposit Insurance Corporation Act of Canada, or a Treasury Branch of Alberta, and to engage counsellors, consultants and advisors.

4 Section 4.1 presently reads:

4.1(1) The Foundation shall maintain at its registered office records containing

- (a) minutes of every meeting of the Governors,*
- (b) minutes of every meeting of the Board,*
- (c) a copy of every Policy By-law,*
- (d) a copy of every by-law,*
- (e) a copy of the annual audited financial statements of the Foundation required under section 21, and*
- (f) a copy of every notice required to be filed with the Registrar of Corporations.*

(2) During normal business hours,

- (a) the Sponsors, the Governors, the Directors and the auditors of the Foundation may examine the records referred to in subsection (1), and*
- (b) any person may examine the records referred to in subsection (1)(c), (d), (e) and (f).*

5 Sections 5 to 9 presently read:

5 The objects of The Foundation are:

- (a) to accept, hold, use and administer property and funds for charitable, recreational, educational, 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 on the Edmonton Community;*
- (f) *to encourage and promote the co-ordination and correlation of charitable campaigns and causes within 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 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;*
- (k) *to promote educational advancement in scientific or medical research for the increase of human knowledge and the alleviation of human suffering;*
- (l) *to better underprivileged or needy persons; and*

- (m) *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.*

6(1) The property, powers, and management of the Foundation shall be vested in and exercised by a board, which shall be known as the Board of Directors of the Foundation, consisting of 12 members appointed as herein set out from among individuals normally resident in and having evinced an interest in the welfare of the Edmonton Community.

(2) If the Board recommends to the Governors an increase in the number of members of the Board, the Governors shall determine in their sole discretion whether or not to make the increase and if so they shall designate the authority for appointment of the increased number of Directors.

(3) A Committee established by the Board pursuant to section 11(1)(d) shall have at least one Director among its members.

(4) If the Board establishes an Executive Committee, it shall have not less than 6 members all of whom shall be Directors.

(5) To assist the Board in the conduct of the affairs of the Foundation, the Board may establish regional advisory committees whose members need not be members of the Board or normally resident in the Edmonton Community.

(6) A quorum for a meeting of any committee shall be a majority of its members.

7(1) Each of the following shall be Governors of the Foundation, and each may appoint one member to the Board:

- (a) the Mayor of the City of Edmonton;*
- (b) the President of the Edmonton Chamber of Commerce;*
- (c) the President of the Edmonton and District Labour Council;*
- (d) the senior Justice resident in Edmonton of the Court of Queen's Bench of Alberta.*

(2) Each of the following organizations shall, by resolution of its governing body, be entitled to appoint one member of the Board:

- (a) The United Way of Edmonton and Area;*
- (b) The University of Alberta;*
- (c) The Edmonton Bar Association.*

(3) Until September 1, 1994 the Sponsors, by majority decision among their number, shall be entitled to appoint 2 members to the Board.

(4) The remaining positions on the Board shall be filled by appointment by the Board, including representatives, if any, pursuant to section 13(1).

(5) If

- (a) any office holder designated in subsection (1) declines or is unable to carry out functions of a Governor, or the designated office or organization ceases to exist, or becomes known by another name, or is reconstituted, or*
- (b) an organization named in subsection (2) fails to nominate a person or ceases to exist, or becomes known by another name, or is reconstituted,*

the Board, by resolution approved by a majority of the Governors holding office at the time, may temporarily or permanently substitute for the offices or organizations names in subsections (1) or (2), such other offices or organizations as may in their belief most nearly meet the original intent of this Act.

8(1) The Secretary of the Foundation shall forthwith canvass the Governors, the organizations listed in section 7(2), and the Sponsors for nominees and so soon as 5 nominees have been appointed the existing members of the Board shall be deemed to have retired and a Board consisting of the nominees shall be deemed constituted and operative.

(2) From October, 1, 1989 the Board may appoint further members of the Board pursuant to section 7(4).

9(1) Subject to subsection (2), term of office of a member of the Board shall be 3 years, provided that

- (a) when completing the Board pursuant to section 8(2) the Board shall by lot determine the first term of office of each member of the Board, save any appointed by the Sponsors, so that the term of 4 of the members shall be one year, of 2 shall be 2 years, and of the remainder shall be 3 years;*
- (b) a member appointed by the Sponsors shall serve at their pleasure, but in any event no longer than September 1, 1994;*
- (c) when a new member has been appointed to complete the unexpired portion of the term of a previously serving member, the new member shall serve only to complete such unexpired term;*

- (d) *the Board may from time to time by by-law prescribe procedures for the orderly appointment and rotation of Directors.*
- (2) *The term of office of a member shall terminate*
- (a) *upon death, resignation, or ceasing to be normally resident in the Edmonton Community;*
 - (b) *in the event of absence without excuse acceptable to the Board from 3 consecutive meetings of the Board;*
 - (c) *by resolution of the Board, when, in the opinion of the Board, the member has been guilty of gross misconduct;*
 - (d) *by resolution of the Board, for any cause which in the opinion of the Board may prevent the member from properly discharging the duties of a Director for 6 months or more;*
 - (e) *where the member has been appointed by a Governor or an organization described in section 7(2), if that Governor or that organization revokes the appointment.*
- (3) *Where there is a vacancy on the Board, the remaining Directors may continue to act if a quorum of Directors remains in office, or, if the remaining Directors are not a quorum, for the purposes of filling the vacancy.*
- (4) *Upon a vacancy occurring in the Board the Secretary shall, if the incumbent was appointed under section 7(1), (2) or (3), give notice to the person or organization that appointed the incumbent requesting the appointment of a replacement.*
- (5) *If no appointment is made pursuant to subsection (4) within 30 days of the notice, or if a vacancy occurs in a position that is to be filled pursuant to section 7(4) the Secretary may call a special meeting of the Board to make an appointment to fill the vacancy and shall call a special meeting for that purpose if the numbers of the Board have fallen below 5 members.*
- (6) *A retiring member of the Board shall be eligible for reappointment, provided that no member shall serve more than 2 consecutive terms.*

6 Section 11 presently reads in part:

11(3) The Board

(b) shall pass any Policy By-law proposed by a majority of the Sponsors before September 1, 1994 that is not inconsistent with a Policy By-law in force.

(6) No policy By-law is effective unless confirmed by a majority of the Governors.

7 Section 12 presently reads in part:

12(4) If in the course of time and after the death of a donor, or if the donor was a corporation after its dissolution, liquidation or winding-up, conditions arise whereby in the opinion of the Board a departure from the terms of the original instructions would further the intent and purpose of the donor, the Board may in its discretion make such a departure from the instructions to the extent necessary to further the intent and purpose of the donor, and if such changed conditions make it no longer possible or practical, in the opinion of the Board, to meet the expressed wish of the donor, the Board may in its discretion use and apply the funds for such purposes as are in its opinion most clearly related to the original intent and purpose of the donor.

(5) No resolution of the Board pursuant to subsection (4) shall be effective unless confirmed by a majority of the Governors.

8 Section 17(2) presently reads:

17(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.

9 Section 23 presently reads:

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