

2025 Bill Pr5

First Session, 31st Legislature, 3 Charles III

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL Pr5

**COMMUNITY FOUNDATION OF LETHBRIDGE AND
SOUTHWESTERN ALBERTA ACT**

MEMBER MIYASHIRO

First Reading

Second Reading

Committee of the Whole

Third Reading

Royal Assent

Bill Pr5
Member Miyashiro

BILL Pr5

2025

COMMUNITY FOUNDATION OF LETHBRIDGE AND SOUTHWESTERN ALBERTA ACT

(Assented to _____, 2025)

Preamble

WHEREAS the Lethbridge Foundation was incorporated by *The Lethbridge Foundation Act*, SA 1966 c120, and was renamed the Lethbridge Community Foundation by the *Lethbridge Foundation Amendment Act, 1994*, SA 1994, c51;

WHEREAS the *Community Foundation of Lethbridge and Southwestern Alberta Act*, SA 2010, c25, repealed *The Lethbridge Foundation Act*, and continued the Lethbridge Community Foundation as the Community Foundation of Lethbridge and Southwestern Alberta (“Incorporating Act”);

WHEREAS the Community Foundation of Lethbridge and Southwestern Alberta has presented a petition to repeal and replace the Incorporating Act;

THEREFORE HIS 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 referred to in section 8;
- (b) “community member” means a resident of Southwestern Alberta;

- (c) “directions” means a statement of a donor’s intent directed to the Foundation, which does not constitute legal trust conditions;
- (d) “Director” means a member of the Board appointed under section 8;
- (e) “Foundation” means the Community Foundation of Lethbridge and Southwestern Alberta continued under section 2;
- (f) “Lethbridge” means the City of Lethbridge;
- (g) “Southwestern Alberta” means the geographical area, including all municipalities, cities, towns, villages, hamlets, improvement districts and Indian reserves as those terms are defined in the *Municipal Government Act*, located within the following boundaries:
 - (i) on the north by the northern boundaries of Vulcan County, the Municipal District of Willow Creek No. 26 and the Rural Municipality of Ranchland No. 66;
 - (ii) on the south by the border between Canada and the United States of America;
 - (iii) on the east by the eastern boundaries of the County of Warner No. 5, the Municipal District of Taber No. 14 and Vulcan County;
 - (iv) on the west by the border between the provinces of Alberta and British Columbia.

Continuation

2 The Community Foundation of Lethbridge and Southwestern Alberta is continued, 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 humankind, primarily the inhabitants of Southwestern Alberta.

Applications 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, and the Board may determine what institutions, organizations, agencies or bodies, whether or not they are within Southwestern Alberta, are to benefit by that assistance in each year, and to what extent.

Powers

5 In addition to the powers vested in the Foundation pursuant to the *Interpretation Act*, the Foundation has the following powers:

- (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 interest in it including property held in trust, subject to 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 establish a fund with any other community foundation incorporated in the Province of Alberta;
- (h) to lease any real property held by the Foundation;

- (i) 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 King’s Bench, the Board may invest the Foundation’s funds and other property, and funds and property entrusted to or vested in it, in any form of property or security as the Board sees fit.

(2) An investment for the purposes of subsection (1) includes the transfer of all or a portion of the Foundation’s funds and other property to a fund established under section 5(g).

(3) In exercising a power under subsection (1), the Board must exercise the care, skill, diligence and judgment that a prudent investor would exercise in making investments.

(4) The Board is not liable for a loss to the Foundation arising from the investment of the Foundation’s funds and other property, or any other funds and property entrusted to or vested in it, 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.

(5) 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 another community foundation incorporated in the Province of Alberta, 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.

(6) If the Board delegates authority under subsection (5), 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 delegate’s adherence to the Foundation’s investment

policy, 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.

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

Application of *Companies Act*

7 The Foundation is exempt from the application of sections 6, 146, and 162 of the *Companies Act*.

Board

8(1) The Board of Directors of the Foundation consists of a minimum of 9 Directors appointed by resolution of the Board and in accordance with this section.

(2) An individual is eligible to be appointed to the Board only if the individual, at the time of the individual's appointment, meets each of the following requirements:

- (a) is a community member;
- (b) is at least 18 years of age;
- (c) has not been found by a court, in Canada or elsewhere, to be incapable of managing their own affairs;
- (d) is not an undischarged bankrupt;
- (e) has not been convicted of an offence involving fraud or an offence in connection with the promotion, formation or management of a corporation or unincorporated entity, or a pardon has been granted or a record suspension has been ordered under the *Criminal Records Act* (Canada) in respect of the conviction that has been not been revoked or ceased to have effect;
- (f) any other requirement set out in a policy made by the Board.

(3) An individual appointed by resolution of the Board is considered to not hold office as a Director unless the individual consents to the

appointment by

- (a) being present at the meeting at which the resolution is made and does not refuse the appointment,
- (b) providing written consent, before the appointment or within 10 days after the appointment, to act as Director, or
- (c) acting as a Director under the appointment.

Tenure of Board

9(1) Subject to subsections (2) and (3), the term of office of each Director of the Board is 3 years.

(2) The Board may appoint a Director to one additional 3-year term of office.

(3) If a vacancy occurs on the Board for any of the reasons referred to in subsection (4), the Board may appoint a successor to fill the vacancy and the term of office for that appointment shall be for the balance of the vacated Director's term.

(4) The term of office of a Director shall immediately terminate

- (a) on the Director's death, resignation or ceasing to be a community member,
- (b) on the Director having served 6 years as a Director of the Board, whether consecutively or not,
- (c) by resolution of the Board in the event of the Director's absence from 3 consecutive meetings of the Board without reason satisfactory to the Board,
- (d) by resolution of the Board, if in the opinion of the Board, a Director is guilty of gross misconduct whether in connection with Foundation affairs or otherwise or is in a position of conflict of interest, or
- (e) by resolution of the Board because of any incapacity, which in the opinion of the Board may prevent the Director from discharging the Director's duties for 9 months or more.

No remuneration for Board

10(1) A Director of the Board may not receive remuneration for the Director's services except the reimbursement of reasonable expenses.

(2) The Foundation may, in accordance with the policies made by the Board, reimburse a Director for travel and other expenses reasonably incurred while managing the affairs of the Foundation or supervising those affairs.

Powers of Board

11 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 a president, treasurer, secretary or secretary-treasurer, an executive director and such other officers and employees of the Foundation as it deems prudent, 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 10;
- (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.

Indemnification

12(1) 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

- (a) 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
 - (i) such Director or officer acted honestly and in good faith with a view to the best interests of the Foundation, and
 - (ii) 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, and

- (b) 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 clause (a).
- (2) 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 fairly represented to the Director by an officer of the Foundation or in a written report of the auditor of the Foundation 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 a person.

Liability

13 The Foundation may purchase and maintain insurance for the benefit of any person referred to in section 12 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 interest of the Foundation.

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) The Board may as a condition to accepting any trust imposed by a donor require a term in the instrument creating the trust whereby the Board may depart from the terms of the original trust to the extent necessary to further the true intent and purpose of the donor.

(3) Where a donor has not imposed trust obligations and is deceased or otherwise not available to clarify a direction previously given by the donor and

- (a) conditions arise whereby, in the opinion of the Board, a departure from the direction would further the intent and purpose of the donor, or
- (b) there is, in the opinion of the Board, an ambiguity in the direction given by the donor,

the Board may in its absolute discretion, make a departure from the direction to the extent necessary to further the intent and purpose of the donor.

(4) If no direction is provided 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 provision 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 to further the objects of the Foundation.

(6) This section of this Act shall be deemed to have been assented 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 laws of the Province of Alberta or authorized to operate under the laws 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 the Foundation and a Judge of the Court of King'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 or investment manager on the Foundation's behalf shall, 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 property comprising donations, 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 trust company, bank or other financial institution as custodian, and may appoint any other trust company, bank or other financial 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 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 financial 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 counsel or other financial 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 financial agent as such investment manager and may appoint any other trust company, bank, investment counsellor or other financial 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, provided that an investment, reinvestment, conversion, sale or disposition is not contrary to the powers of the Foundation under this Act.

(4) The Foundation may require the investment manager during its continuance in office as investment manager for the Foundation to retain the services of a custodian on behalf of the Foundation, monitor the services of the custodian and report to the Foundation from time to time on such services.

Common trust funds

19(1) Notwithstanding any other provision of this Act, and subject to directions given by a donor, the Foundation may establish one or more common trust funds in which property received by the Foundation is 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 a common trust fund,
 - (b) the operation of a common trust fund,
 - (c) the distribution of the income of a common trust fund, and
 - (d) the method of valuation of the property in a common trust fund and of any property being transferred into a common trust fund.

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) Lethbridge Community Foundation;
- (b) Lethbridge Foundation;
- (c) Community Foundation of Lethbridge and Southwestern Alberta,

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 Community Foundation of Lethbridge and Southwestern Alberta as fully and effectively as though the name “Community Foundation of Lethbridge and Southwestern Alberta” 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 King’s Bench requesting an order that the society or corporation referred to in such a donation is the Community Foundation of Lethbridge and Southwestern Alberta, the Court may make an order confirming the recipient of the donation as the Community Foundation of Lethbridge and Southwestern Alberta.

- (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 position 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 the 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 the 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 Southwestern Alberta, 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 community members.

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, or other means of publication circulated in Lethbridge or Southwestern Alberta, 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.

Administration costs

24 Reasonable administrative expenses incurred by the Foundation may be charged against all trusts, on a pro rata or such other basis as the Board considers equitable.

Repeal

25 The *Community Foundation of Lethbridge and Southwestern Alberta Act*, SA 2010, c25, is repealed.

RECORD OF DEBATE

Stage	Date	Member	From	To
		Interventions	From	To
Stage	Date	Member	From	To
		Interventions	From	To
Stage	Date	Member	From	To
		Interventions	From	To
Stage	Date	Member	From	To
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