

Title: Tuesday, April 25, 2006 Private Bills Committee

Date: 06/04/25

Time: 8:30 a.m.

[Dr. Brown in the chair]

The Chair: Good morning. We'll call the meeting to order. There are a number of people that have other engagements, so we'll try and move through the agenda quickly this morning.

The first order of business is to approve the agenda. You have before you a revised agenda, which you will notice has only one bill, Pr. 3, on it. We'll discuss the reasons that Pr. 4 is no longer there under Other Business. So with that comment in mind, could I have a motion to approve the agenda as revised and circulated? Mr. Mitzel. All in favour? Any opposed? That's carried.

The next order of business is the approval of the committee meeting minutes from April 11, 2006. Those have been circulated. I presume that everybody has had an opportunity to review those. Could I have a motion to approve the minutes as circulated? Mr. Eggen. Any discussion? All in favour? Anyone opposed? That's carried.

The next order of business is Pr. 3, the Edmonton Community Foundation Amendment Act, 2006. Before we invite the petitioner's representatives to come in, Ms Dean, our Parliamentary Counsel, has asked to give us a briefing on that bill.

Ms Dean: Thank you, Mr. Chairman. I just wanted to remind members that when we met a number of weeks ago at the organizational meeting, there was an issue with respect to this petition because it had not fulfilled the advertising requirements. I can advise that since that time it has fulfilled the advertising requirements, so all Standing Orders have been met. I also want to advise the committee that we have not received any notice from any person that they are opposed to the principles of this bill.

I'd like to briefly summarize the main purpose of the bill. It is an amending bill. It will update the corporate governance provisions of the Edmonton Community Foundation. The chief amendment is the creation of something called a committee of nominators that would deal with appointing members to the board of directors. Currently the Edmonton Community Foundation has four governors and three appointing organizations, the four governors being the mayor, the Chamber of Commerce, the district labour council, and the Chief Justice that's resident in Edmonton. There are also three appointing organizations: the University of Alberta, the United Way, and the Edmonton Bar Association. Currently they have the power to appoint directly to the board, but what the Community Foundation is proposing is a committee of nominators that apparently will better suit its needs.

I would also like to highlight some of the material that was provided to you prior to this meeting. The Community Foundation has canvassed its governors and its nominating organizations and has provided six letters of support in connection with this proposed bill. The missing letter of support is from the Edmonton Bar Association, and I understand that the foundation will address that in their comments this morning.

Finally, I did provide a copy of the Calgary Foundation Act, which is a more recent private act that sets out the governance of a charitable foundation, so you have it for your reference if you want to compare what's being proposed here to something that's reasonably recent that has been approved by the Assembly.

Those are my comments, Mr. Chairman.

The Chair: Are there any questions of Ms Dean before we call in the petitioner's representatives? Okay.

[Mr. Garber-Conrad and Mr. Cruickshank were sworn in]

The Chair: Good morning and welcome. Before we proceed, I would ask the representatives of the petitioner to please introduce themselves for the record.

Mr. Garber-Conrad: Good morning. Martin Garber-Conrad, chief executive officer, Edmonton Community Foundation.

Mr. Cruickshank: Richard Cruickshank. I'm a partner with Fraser Milner Casgrain. I'm a former secretary of the Edmonton Community Foundation.

The Chair: Please continue with the introductions.

[The following members introduced themselves: Ms DeLong, Mr. Eggen, Mr. Elsalhy, Mr. Groeneveld, Mr. Johnson, Mr. Lindsay, Mr. Mitzel, Mr. Prins, Mr. Rogers, and Mr. Webber]

Ms Marston: Good morning. Florence Marston, assistant to the committee.

The Chair: I'm Neil Brown. I'm chair of the committee.

Ms Dean: Shannon Dean, Parliamentary Counsel.

The Chair: Gentlemen, before we proceed, I will just make a few brief comments. I'm sure that you're well familiar with the procedure for petitioners on private bills as outlined in our guide to private bills procedure.

First of all, we'll be asking you as petitioners to make a brief presentation to the committee. This, I presume, will outline not only the substantive content of the bill but the reasons why you believe that it needs to proceed by way of a private bill and the reason why it cannot be done through a public bill. There'll then be an opportunity for members to question the petitioners regarding the content and the reasons for the bill.

The role of our committee is only to recommend to the Legislature, as you're aware. We will recommend that the bill proceed as it was initially introduced in the House on first reading, that it should proceed with amendments as recommended by the committee, or that it should not proceed. There will not be a decision of the committee made today. We will reconvene on May 2 to deliberate on this and some other bills that we have before us. It will not be necessary for you to appear on that occasion, but we will inform you promptly when the decision is made as to the disposition of the bill.

With that, I will ask you to make your presentation to the committee.

Mr. Garber-Conrad: Thank you very much. The reason that we've brought forward this amendment to our act and are asking that it proceed is primarily around modernizing and clarifying the governance structure of the foundation. The primary issue is around the role of the governors of the foundation, which are the six people and organizations that currently, individually and separately, appoint board members to the foundation. What we are asking to be substituted for that is a committee of nominators that would be appointed by those same governors but would collectively appoint board members. The point of this is to have a better chance at getting on the whole board the appropriate composition in terms of skills and interests for the foundation in our current day. We've certainly had a long history of individually quite excellent board members, but to try to get the appropriate balance of skills and

interests is much more difficult with each governor appointing separately and without consultation.

8:40

This format or method of having the governors appoint a committee of nominators is a quite common contemporary governance practice, and we're confident that it will work better both for us as an organization and for the community we serve. Most of the other changes are in support of that primary change although there is also some modernization and simplification of the sections that deal with the objects of the foundation, again to use more contemporary language and, I think, to speak a little less specifically about particular actions that the foundation can undertake and, rather, speak more broadly in the way that contemporary objects of organizations are formulated.

I think those are the most substantial changes that we're asking for, and we would be most grateful if this could go ahead so that we can continue to serve this community in the 21st century.

Do you have anything to add, Rick?

Mr. Cruickshank: All I would add, perhaps, is that this work was begun by the Governance Committee of the Edmonton Community Foundation back in September of 2000. If I could provide you with a little bit of background, it was chaired by Bill Grace. Joan MacGillivray and David Steeves sat on that along with our current chair, Greg Jaycock, and Doug McNally, who was the director of the foundation at the time. Also, later on Harold Roozen, one of the board members, joined us.

We started this review back in September of 2000 largely because the original Community Foundation Act was passed in 1971, establishing the foundation. It was largely dormant; there was no activity for many, many years. It wasn't until a group of serious individuals in the Edmonton community got together and petitioned for some amendments to the act, which took place in 1989, that the Community Foundation really began to take flight.

The reason that we determined that we would try to pursue this through the Governance Committee is that a lot of the legislation did date back to 1971, with some cosmetic amendments that were done back in 1974, so there hadn't been a wholesale review of the act for a great period of time. In that period of time there were changes to the corporations act in Alberta and the Trustee Act in Alberta to modernize both pieces of legislation to bring them into more of a current framework in terms of governance and the ability of a corporation, for example, to have all the powers of a natural person. This legislation preceded that type of concept, so where we were looking to try and bring the foundation was in line and in step with current legislation that governs other organizations within the province, which was to give them largely all the powers within the objects of the foundation to have the ability to do that which the board determines in its discretion is in the best interests of the community.

Mr. Garber-Conrad: A final piece that I would add. As you'll note from your package, we have included letters of support from five of the six governors and have had for some time verbal support from the sixth governor, namely the Edmonton Bar Association. But for reasons that are not entirely clear to a nonlawyer like myself, we don't in fact have a letter from them although this has been pursued through at least two administrations there, and my office will continue to seek that. We have met face to face with them, and they have indicated their support for this change.

Thank you.

The Chair: Probably the answer is the fact that the organization is primarily a social organization and perhaps doesn't have the administrative capacity to generate letters.

Mr. Garber-Conrad: Well, thank you. That's very helpful for me to understand this.

The Chair: Questions from the committee? Mr. Groeneveld.

Mr. Groeneveld: Yeah. Thank you for your presentation. Okay; this could appear to be a purging of the board. I suspect that that's not what your problem is. Have you had a problem getting people to the board, or do you just feel that you haven't got the proper people with the proper qualifications to the board?

Mr. Garber-Conrad: All the board positions have been filled. They've been filled on time. We often have a wide range of people to select from for the appointments that are made directly by the board, so it's not the quality or availability of individual board members who are put forward by the governors but, rather, being able to better balance the composition of the whole board.

Mr. Groeneveld: Would you anticipate changing the whole board in the next round, or is this as you slowly go forward?

Mr. Garber-Conrad: Definitely not. We have three-year terms, a maximum of two terms, and they're scheduled for orderly turnover. So in a given year there are two or three appointments that are made, assuming everybody serves out their terms. So this will not in fact result in any turnover of the board beyond the normal sort of rotation.

Mr. Groeneveld: Thank you.

The Chair: I have a couple of questions, gentlemen. First of all, can you explain what the reasoning is behind the proposed amendment to the charging of administrative expenses with respect to, perhaps, comments on the difference between equitable basis and pro rata basis and why that change is desired?

Mr. Cruickshank: Yes. We have a number of different funds that we administer that are established within the foundation. Normally, across the board I think the administrative costs have been running a little under 1 per cent annually. The word "pro rata." There was a concern definitionally. This was the lawyers getting involved. What we wanted to try and do for small funds, for example, where it didn't make any sense to have administrative charges at a given year applicable to them, is that we wanted the ability to exempt them from any portion of administrative costs if that makes sense to the organization. So it was really just to give them a bit more scope to allocate the costs in a way that they felt was more appropriate to the funds they were managing.

The Chair: My second question relates to the reference to sponsors and their ability to examine the records of the foundation. As I understand it, the present provision is that anyone that donated a million dollars or more would have the right to look at the books of the foundation, and you're proposing to remove that ability. Could you perhaps comment on that? Am I correct in my assumption there?

Mr. Cruickshank: It's a little broader than that, actually. The concept of sponsor we're actually recommending be removed in its

entirety because it really relates to the interim phase, when the first sponsors became involved in setting up the foundation. We've moved on past them. They have no role with the foundation anymore. In fact, in all the amendments we are recommending today – include a couple more in consultation with Shannon – all references to sponsors be removed.

8:50

The Chair: Well, let me ask the question in a different way then. Is there an ability on behalf of the major benefactors of the foundation to have access to the books of the foundation?

Mr. Cruikshank: Absolutely. In fact, the reports are made public. There's an annual report that is distributed each year at an annual meeting. Copies of the annual reports and the financials are delivered each year to all donors with respect to that.

The Chair: Well, I'm not asking about whether or not they receive a report or a written report. I'm asking whether or not there's an ability to examine the records of the foundation for the major benefactors.

Mr. Garber-Conrad: It's certainly not something that has ever been requested, and I think it's the kind of thing that is less likely to be found in contemporary memoranda and bylaws than it was, perhaps, at one time. To the best of my knowledge that power on the part of benefactors has never been exercised or asked for.

The Chair: I take it that your books would be audited in any event by the counsel.

Mr. Garber-Conrad: That's required, and that has been our practice since the beginning.

The Chair: With respect to the appointment of auditors, who would have that . . .

Mr. Garber-Conrad: The annual meeting appoints auditors each year.

The Chair: Questions? Ms Dean.

Ms Dean: Thank you, Mr. Chairman. For the benefit of committee members I just want to note that I have had some discussions with both Mr. Garber-Conrad and Mr. Cruikshank in connection with this concept of the sponsors. Perhaps you can shed some light on this. I understand that sponsors came into being in the 1989 amendments because you were looking to get this dormant foundation active. Perhaps you can clarify for the committee whether sponsors are still an active concept with respect to the organization of the committee. I'm operating under the assumption that they are not, and as a result of reviewing the bill quite closely, I think that there are further changes that are required to remove the reference to sponsors, which would necessitate an amendment approved by the committee.

Anyway, if you can just elaborate on those issues.

Mr. Garber-Conrad: That was certainly our intention: to move beyond that concept. You have rightly noticed that there was still one reference in one subsection as well as the definition. We're

certainly in favour of having that removed as well. The sponsors, in their role as sponsors, have no current role in the operation of the foundation and haven't, probably, since a couple of years after the 1989 reactivation.

The Chair: Any further questions for the petitioners?

Well, I think that concludes the presentation. Thank you very much for coming this morning. As I said, we will be reconvening on May 2 to deliberate on this and the other bills that we have before us.

Mr. Garber-Conrad: Thank you very much for your time and interest. We really appreciate it. We'll look forward to hearing how it goes on May 2 and thereafter.

Thank you very much.

The Chair: Okay. The next item on the agenda is Other Business. Ms Dean, do you want to make a few comments on the absence of Pr. 4 from our agenda today?

Ms Dean: I'd be happy to, Mr. Chairman, unless the sponsor would like to make some comments.

Ms DeLong: Sure, I'll handle it. That's fine. Essentially what's happened is that with the COP private member's bill coming forward, the city of Calgary had a look at it. They had some concerns about it, so they got together with COP, and they are trying to work out a revised wording to handle their concern. It was a concern, actually, that had been brought up by one of the MLAs also, and that is the concern that if part of COP is commercialized, then the general consensus is that that part of COP shouldn't be nontaxable. So they're just working on the wording for that at this point.

The Chair: Ms Dean, do you have anything further? Any further comments?

Ms Dean: Yes, Mr. Chair. Just to elaborate on those comments, the bill was also sent to the Department of Municipal Affairs for comment, and they expressed concerns as well. They had spoken to the city of Calgary officials with respect to the exemption wording, and again the concern was expressed that it was perhaps too broad. The ministry also voiced some concerns about the bill, and they would be looking for an impact assessment before supporting the bill to proceed.

Finally, Mr. Chairman, I just want to clarify for committee members what the status of the bill is. There is no hearing. Currently on the Order Paper the bill stands referred to the committee, but the committee is not required to make a decision with this bill. If there is no fall sitting and the bill is not going to be proceeded with, the bill will simply die on the Order Paper. If the association wants to bring it back next year, then they'll just have to reapply.

Those are my comments.

The Chair: Any questions?

I will entertain a motion to adjourn. Mr. Lindsay. All in favour? Anyone opposed? It's carried.

[The committee adjourned at 8:57 a.m.]

