



BILL NO. 11

Private Bill

*1st Session, 62nd General Assembly
Nova Scotia
62 Elizabeth II, 2013*

An Act Respecting the Sir William Young's Benevolent and Charitable Fund

CHAPTER 32
ACTS OF 2013

**AS ASSENTED TO BY THE LIEUTENANT GOVERNOR
DECEMBER 10, 2013**

Joachim Stroink
Halifax Chebucto

*Halifax, Nova Scotia
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An Act Respecting the Sir William Young's Benevolent and Charitable Fund

WHEREAS pursuant to the Last Will and Testament of Sir William Young dated April 7, 1887, and pursuant to the Grant of Probate dated May 12, 1887, the Sir William Young's Benevolent and Charitable Fund was created;

AND WHEREAS 10 charities in the Halifax Regional Municipality have annually, since 1887, shared equally in the income, dividends and interest earned on the initial \$100,000 endowment that established the Fund;

AND WHEREAS the terms of the Fund were amended by order of the Supreme Court of Nova Scotia dated July 31, 2008;

AND WHEREAS the Trustees and the Beneficiaries wish to expand the Trustees' power to permit the disposition of the Fund's capital and the winding up of the Fund;

THEREFORE be it enacted by the Governor and Assembly as follows:

1 In this Act,

(a) "Beneficiaries" means the beneficiaries of the Fund listed in Schedule "A" to the Order;

(b) "Fund" means the Sir William Young's Benevolent and Charitable Fund established in 1887 and continued by this Act;

(c) "Order" means the order of the Supreme Court of Nova Scotia dated July 31, 2008, Schedule "A" of which is set out in the Schedule to this Act;

(d) "Trustees" means the trustees of the Fund.

2 (1) The Sir William Young's Benevolent and Charitable Fund established in 1887 is hereby continued.

(2) The Fund continues to be subject to the terms set out in Schedule "A" to the Order, the text of which is set out in the Schedule to this Act.

3 (1) In addition to the Trustees' powers set out in the Schedule to this Act, the Trustees may, in their absolute discretion, make charitable donations of all or part of the capital of the Fund equally to the Beneficiaries.

(2) Notwithstanding subsection (1), the Trustees may, in their absolute discretion, make donation of a Beneficiary's equal part to an entity identified by the Trustees as the recipient of the equal part.

(3) The costs and expenses incurred in connection with the making of charitable donations in accordance with subsection (1) must be paid out of the Fund.

4 In addition to the Trustees' powers set out in the Schedule to this Act, the Trustees may, in their absolute discretion wind up the Fund within a reasonable time following the donation of the capital in accordance with Section 3, and the costs and expenses incurred in connection with the wind-up must be paid out of the Fund.

5 (1) No later than six months following the wind-up of the Fund, the Trustees shall submit the Fund's final accounts to the Beneficiaries.

(2) Within 30 days of receipt of the final accounts, a Beneficiary may present an objection in writing to the Trustees regarding the accounts.

(3) Where no objection is made pursuant to subsection (2), the final accounts are deemed to be approved and the Trustees are discharged of their functions and the exercise of their powers.

(4) Where an objection is made pursuant to subsection (2), the Trustees shall attempt to resolve the objection.

(5) Where an objection is not resolved pursuant to subsection (4), the Beneficiary or the Trustees may apply to the Supreme Court of Nova Scotia with regard to the objection or approval of the final accounts and regarding the discharge of the Trustees' functions and exercise of powers.

6 For greater certainty, nothing in this Act means or shall be construed to mean that a new trust has been created.

SCHEDULE

SIR WILLIAM YOUNG'S BENEVOLENT AND CHARITABLE FUND

FUND TERMS

WHEREAS pursuant to the Last Will and Testament of Sir William Young dated April 7, 1887 (the "Will") a Grant of Probate in respect of which was given by her Majesty's Court for the Probate of Wills and Granting Letters of Administration in and for the County of Halifax, Province of Nova Scotia on May 12, 1887, Sir William Young established a charitable trust known as Sir William Young's Benevolent and Charitable Fund (the "Fund");

AND WHEREAS the terms governing the Fund as set out in the Will are as follows:

Having been for many years conversant with the integrity and skill with which the gratuitous services of many of our leading citizens have been freely bestowed on the numerous societies for Benevolent and Charitable purposes which distinguish our City I have come to the conclusion that a considerable portion of my funds cannot be employed to a better use than to enlarge the means and ability of ten of these Societies of the largest scope embracing obvious needs and extending to all nationalities and creeds but omitting perhaps others equally meritorious. These Ten are the following, The North British Society, The Halifax Infants' Home, The Deaf and Dumb Institution, The Halifax School for the Blind, The Home for the Aged, The Protestant Industrial School, The Halifax Visiting Dispensary, The Halifax Association for improving the Condition of the Poor, The Charitable Irish Society, and the Halifax Sailors' Home. With a view therefore to their permanence and greater efficiency I have decided on founding a benefaction to be known as "Sir William Young's Benevolent and Charitable Fund" to be managed by three Trustees. And for the purpose of carrying out this my intention I do in the first place direct that so soon after my decease as convenient my said executors shall mutually choose and appoint three suitable persons by a writing under their hands and seals to be wit-

nessed by two credible witnesses and to be filed in the office of the Registrar of Probate for the County of Halifax who shall act as and be the Managers and Trustees of said Fund under the terms of this my Will.

And I further direct that so soon after said appointment as the same can be conveniently realized my executors shall transfer and pay over to said Trustees the sum of One Hundred Thousand Dollars of lawful money of Canada, to be administered by them on the following trusts, viz:-

In trust to invest said money with all convenient speed in safe and reliable securities of like character as heretofore expressed respecting the general investments of my estate, and to keep the same invested, and from the income, dividends, and interest to accrue therefrom in the first place to pay and reimburse themselves all charges and costs incurred by them in and about the management of said funds, and also a reasonable annual commission for themselves in connection therewith not to exceed a sum equal to five per cent on said income.

And in the next place to pay over in half yearly payments the balance of said annual income, interest and dividends to the said ten societies or institutions above mentioned, share and share alike to be paid to the President, Secretary, Treasurer, or other proper officer of such Society authorized to receive the same to be applied by such society to the general purposes of its benevolent and charitable work. And in the event of either or any of such Institution or Societies at any time hereafter ceasing to exist as an organized body the proportion of said annual income which would have been payable to it if still an organization shall thereafter be paid in the manner above mentioned to those of said ten Societies that shall retain their organization.

And I further direct that said Trustees shall annually prepare and publish in one or more of the newspapers published in this City an account of their dealings with said fund showing the various receipts and expenditures and giving a short abstract of the investments of said Fund, which account shall be annually audited by two of the Treasurers of said Societies to be taken alternately.

And I further direct that so often as any one of the said Trustees shall die or resign his office or become incapable of acting as such trustee a new Trustee shall be appointed to fill the vacancy made by such death, resignation, or incapacity such appointment to be made by the joint nomination, and act of the Chief Justice of the Supreme Court of this Province, The Provincial Secretary of the Province and the Mayor of the City of Halifax, for the time being.

AND WHEREAS in the many years since the establishment of the Fund there have been changes affecting certain of the beneficiaries of the Fund, including changes to names and changes arising from legislation;

AND WHEREAS the manner of appointing new trustees of the Fund is not practical or appropriate, and amendments to provide for more transparency and better governance consistent with modern business practices are desirable;

FOR PURPOSES of clarifying, modernizing and updating the terms governing the Fund, the wording and provisions of the Fund be and are amended as follows:

1. The current beneficiaries of the Trust are:
 - (a) The Scots: The North British Society, formerly known as The North British Society;
 - (b) The Halifax, The City of Dartmouth and The Municipality of the County of Halifax Protestant Infants Foundation, commonly known as The Halifax Protestant Infants Association and formerly known as The Halifax Infants' Home;
 - (c) The Sir Frederick Fraser Institute, as successor to The Deaf and Dumb Institution;
 - (d) The Sir Frederick Fraser Institute, as successor to The Halifax School for the Blind;
 - (e) Victoria Hall, formerly known as The Home for the Aged;
 - (f) The Halifax Youth Foundation, sometimes known as The Protestant Industrial School and formerly known as the Halifax Industrial School;
 - (g) The Halifax Visiting Dispensary;
 - (h) The Halifax Association for Improving the Conditions of the Poor, presently carrying on business under the registered business name Halifax Assistance Fund;

- (i) The Charitable Irish Society; and
- (j) The Halifax Branch of the Navy League of Canada, as successor by amalgamation to The Halifax Sailors' Home and commonly known as The Navy League of Canada, Halifax Branch.

(hereinafter referred to collectively as the "Beneficiaries" or individually as a "Beneficiary").

2. *Investment.* The Trustees of the Fund are authorized to invest the Fund's property in the manner contemplated pursuant to Section 3 of the *Trustee Act*, R.S.N.S. 1989, c. 479, as amended (the "Act") and are further authorized to employ the services of a financial institution or other entity offering financial or investment services to act as investment manager to assist with management and administration of the Fund and are authorized to obtain and act upon advice received from such investment manager in respect of investments of the Fund's property.
3. *Investment Manager.* The Trustees shall retain the services of a financial institution or other entity offering financial or investment services to act as investment manager to assist with the management and administration of the Fund upon such terms and conditions as the Trustees may determine provided, however, that no fees or other remuneration shall be paid to such investment manager in an amount exceeding the higher of (i) a sum equal to five percent on the income, dividends and interest to accrue from the Fund, or (ii) fees which might be fixed by the Supreme Court of Nova Scotia (the "Court") pursuant to the Act and the Practice Memoranda issued by the Court, or (iii) an amount negotiated between the investment manager and the Trustees that is approved in advance by at least 70% of the Beneficiaries. TD Waterhouse Private Investment Counsel shall be retained by the Fund as the investment manager of the Fund for a period of two (2) years from the date of the Order of the Court approving these Trust Terms (the "Order"), unless the Trustees and TD Waterhouse Private Investment Counsel are unable to agree upon fees and other remuneration within the parameters set out above, or in the event the Trustees determine within that period there is just cause to dismiss TD Waterhouse Private Investment Counsel as the investment manager.
4. *Number of Trustees.* There shall be five (5) Trustees of the Fund, each appointed for a term of five (5) years.
5. *Selection of Trustees.* The first five (5) Trustees of the Fund (collectively the "Initial Trustees" or individually an "Initial Trustee") shall be as set out in the Order, the same having been selected by the Beneficiaries. The end of the Term of a Trustee shall coincide with the fiscal year end of the Fund. As and from the end of the term of the Initial Trustee whose term first expires, a successor Trustee shall be appointed annually by a Beneficiary in the order set out below:
 1. The Scots: The North British Society;
 2. The Halifax Protestant Infants Foundation;
 3. The Sir Frederick Fraser Institute;
 4. The Sir Frederick Fraser Institute;
 5. Victoria Hall;
 6. The Halifax Youth Foundation;
 7. The Halifax Visiting Dispensary;
 8. The Halifax Assistance Fund;
 9. The Charitable Irish Society; and
 10. The Navy League of Canada, Halifax Branch.

Successor Trustees shall be appointed for a period of five (5) years, so that following the end of the Term of Appointment of Initial Trustee appointed with a Term of Appointment of one (1) year, each Beneficiary shall appoint a Trustee once every ten (10) years with the order of appointment of trustees having been determined as aforesaid. In the event a Beneficiary ceases to exist as an organized body, the manner of appointment of Trustees shall be modified and the Trustee, if any, who was appointed by the Beneficiary which has ceased to exist as aforesaid shall resign or otherwise be removed as a trustee and, if required thereafter, the appointment of a replacement Trustee by the next Beneficiary whose turn it is to make the next Trustee appointment shall be accelerated.

6. *Replacement Trustees.* In the event a Trustee appointed by a Beneficiary is unable or unwilling to complete his or her term as Trustee, the Beneficiary who made such appointment shall appoint a replacement Trustee to serve for the remainder of the term of the Trustee who is being replaced.
7. *Meeting of Trustees.* The Trustees shall meet not less than twice a year or more frequently as may be necessary to properly manage the Fund. Three (3) Trustees, personally present, or participating in a meeting remotely via conference call or other digital or electronic communication technology that allows those Trustees personally present and those not personally present to hear and to speak to the other Trustees participating in the meeting,

or represented by proxy, shall be entitled to vote and shall be a quorum for a meeting of Trustees. No business shall be transacted unless a quorum is present or represented as aforesaid. All resolutions of Trustees must be approved by a majority consisting of at least three (3) Trustees. Notwithstanding the foregoing, the Trustees may transact the business and affairs of the Trust by a written resolution signed by all the then current Trustees which shall be as valid as if it were passed at a meeting of Trustees.

8. *Selection of Chair.* The Trustees shall choose a Chair annually at their first meeting following the regular annual appointment of a new Trustee. In the event of the absence of the Chair at any meeting of Trustees, the Trustees present or represented as aforesaid at the meeting shall choose a replacement or replacements for purposes of the meeting.
 9. *Circulation of Minutes of Trustees.* The minutes from each meeting of the Trustees shall be circulated to each Beneficiary within thirty (30) days of the meeting of the Trustees.
 10. *Responsibility of Trustees.* The Trustees shall be responsible for setting and revising an investment policy, choosing an investment manager to assist with the management and administration of the Fund, setting that entity's remuneration within the parameters referenced herein, choosing an auditor on an annual basis, considering annual financial statements, authorizing the distribution of income to Beneficiaries, and taking reasonable steps to ensure the efficient and orderly management and distribution of the Fund.
 11. *Power to Make Elections.* The Trustees may make or refrain from making any election or elections, any determination or determinations, and any designation or designations permitted by the Act or by any other statute or statutes or regulation or regulations enacted by the Parliament or Government of Canada, by the legislature or government of any province of Canada, or by any other legislative or government body of any other country, province, state or territory.
 12. *Power to Engage Outside Assistance.* The Trustees may at any time in the management or administration of the Fund engage solicitors, accountants, a person to act as the Fund's Secretary and point of contact or other agents and pay all reasonable fees and expenses in conjunction therewith out of the income of the Fund.
 13. *Audit.* The Fund shall be audited by a public or chartered accountant selected by the Trustees from time to time on an annual basis.
 14. *Publication of Financial Statements.* The Trustees shall provide Financial Statements of the Fund to the Beneficiaries of the Trust not less than once per year. This shall be in lieu of the requirement for an annual publication in a newspaper of the financial status of the Fund.
 15. *Expenses of Trustees.* The Trustees shall be entitled to reimbursement of reasonable personal expenses incurred with attending Trustee meetings and to other business relating to the Fund, but shall not be entitled to any remuneration for acting as Trustees.
 16. *Expenses of the Fund.* All reasonable costs for the administration of the Fund, including without limitation those related to the expenses of the investment manager and expenses referred to in paragraphs 12, 13, 14 and 15 herein, shall be expenses of the Fund and shall be paid by the Fund.
 17. *Exoneration.* No Trustee, provided he or she acts in good faith, shall be liable for any loss occasioned to the Fund except for loss caused by his or her own dishonesty, gross negligence or willful breach of trust. The Trustees shall not be responsible for any loss or damage which may be occasioned by relying upon advice of the investment manager or any solicitors, accountants or other agents retained by the Fund.
 18. *Other Terms.* The other terms of the Fund as set forth in the Will not varied herein shall be maintained.
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