

## MEMORANDUM

March 3, 2017

TO: Malcolm Bromley, General Manager Vancouver Board of Parks and Recreation

FROM: Karin Grubb, Law Department

SUBJECT: Community Centre Investment Fund Legal Opinion

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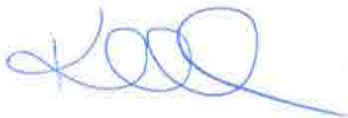
Dear Malcolm,

As requested, we have obtained a legal opinion to consider whether the Community Centre Investment Fund, as proposed in the new draft form of Joint Operating Agreement between the Park Board and Community Centre Associations, poses any legal issues for Community Centre Associations under the Income Tax Act or under the Societies Act (BC).

The legal opinion, provided by Lawson Lundell LLP, dated March 2 2017, is enclosed for your review.

Please do not hesitate to contact me with any questions.

Regards,



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March 2, 2017

EMAILED

City of Vancouver  
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Attention: Karin Grubb, Lawyer

Dear Sirs and Mesdames:

### **Introduction**

The Vancouver Board of Parks and Recreation (*Park Board*) has been negotiating new Joint Operating Agreements (the *JOAs* and each a *JOA*) with the Community Centre Associations (the *CCAs* and each a *CCA*) that operate within the community centres in the City of Vancouver (the *Community Centres*). One section in the *JOAs* has turned out to be rather contentious. Specifically, the section is in relation to the Park Board asking the *CCAs* to contribute to the Community Centre Investment Fund (the *CCIF*). To provide context, the *CCIF* is a fund to be held by the Park Board and to be used to improve the network of Community Centres and achieve public policy goals. The *CCAs* have taken the position that they are not able, for legal reasons, to contribute to the *CCIF*. This letter contains our opinions as to whether the *CCAs* can or cannot make contributions to the *CCIF* under the *JOAs*.

Specifically, are the payments under the *JOAs* by the *CCAs* to the *CCIF* permitted pursuant to

- the *Societies Act*<sup>1</sup>?; and
- the *Income Tax Act*<sup>2</sup> (the *ITA*)?

### **Summary**

Some *CCAs* have received advice that they cannot make payments to the *CCIF* because they are precluded under the *Societies Act* and *ITA* (where applicable, as the *ITA* does not apply to every *CCA*) from making donations to the Park Board. In our opinion, the payments to the *CCIF* under the *JOAs* are payments from the *CCAs* to the Park Board in partial consideration for the right to occupy and use the Community Centres, and not merely donations for the Park Board's

<sup>1</sup> The *Societies Act* of British Columbia [SBC 2015] Chapter 18

<sup>2</sup> The *Income Tax Act* of Canada RSC 1985 (c.1 5<sup>th</sup> Supp.)

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use. As such these payments are permitted uses of funds by the CCAs under the *Societies Act* and are not prohibited under the *ITA*.

### **Facts**

This letter is based on the facts listed below in respect of the Park Board, CCAs and JOAs. Please let us know if any of these facts are incorrect as our opinions may need to be revised.

### ***Park Board***

The Park Board is created under section 485 of the Vancouver Charter<sup>3</sup> (the *Charter*) as follows:

A board of commissioners, to be known as the "Board of Parks and Recreation" or "Park Board," shall be elected as hereinafter provided, and shall consist of seven members or such other number as the Council may by by-law prescribe. The Board has the legal capacity to exercise the powers bestowed on it and to enforce those powers and the exercise thereof by actions, proceeding or prosecution.

Pursuant to section 486 of the Charter, the members of the Park Board are elected by the residents of Vancouver. Pursuant to section 488, the Park Board has exclusive jurisdiction and control of all areas designated as parks within Vancouver.

Section 489 of the Charter provides a lengthy list of the powers granted to the Park Board. Four of the powers are of particular relevance:

- (a) constructing, acquiring, maintaining, equipping, operating, supervising, and controlling such buildings, structures, and facilities as may be required for the recreation, comfort, and enjoyment of the public while within the parks.
- (d) charging and collecting fees for admission to any building or place in the parks set aside for sports or games, whether by spectators or participants.
- (i) establishing, maintaining, and operating indoor and outdoor swimming baths and pools in the parks, and fixing and collecting fees for the use thereof.
- (r) organizing and conducting, and contracting with others to organize and conduct, recreational programs of all kinds, either in parks or in such other locations as may be approved by the Board or any of its employees designated for this purpose, and for fixing and collecting fees for such programs.

For purposes of the *Societies Act* and *ITA*, we have assumed that the Park Board is a separate entity.<sup>4</sup>

### ***Community Centre Associations***

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<sup>3</sup> The Vancouver Charter, SBC 1953, c.55

<sup>4</sup> This assumption seems reasonable and is assumed by the CCAs. We have not, however, conducted a thorough legal review of this assumption.

### ***Community Centre Associations***

Most community centres in Vancouver have a CCA. Each of these CCAs is established under the *Societies Act* and many but not all of them are registered charities under the *ITA*.

For example, the West End Community Centre Association (the *West End CCA*) is formed as a society under provincial law. The West End CCA is a registered charity and a charitable organization for purposes of the *ITA*.

Other than the statuses given to them by virtue of being societies under the *Societies Act* and registered charities under the *ITA*, the CCAs have no other status or legal authority.

### ***The JOA***

The Park Board would like to enter into an identical JOA with each CCA.<sup>5</sup> The JOAs, in its recitals, recognize the following:

D. The City of Vancouver is the sole owner of the assets which are in the possession and control of the Park Board, including designated parks and other land, the community centre buildings and other facilities and improvements located on such lands;

E. The Association is a valuable community-based registered society with an elected Board of Directors that plays an important role in contributing to the success of the Community Centre Network, including by delivering Programming and services which ensure a healthy, engaged and inclusive community;

The primary focus of the JOAs is, as its name implies, to set out the roles and the responsibilities of the Park Board and the CCAs in connection with the Community Centres.

### **Relevant Law**

#### ***The Societies Act***

The CCAs are incorporated under the *Societies Act* and are therefore limited in their actions by restrictions contained in the *Societies Act*. The CCAs have stated that provisions within the *Societies Act* prevent them from contributing to the CCIF. The relevant provision in the *Societies Act* is section 4 which provides as follows:

A society must not distribute any of its money or other property other than

- (a) for full and valuable consideration,
- (b) in furtherance of the purposes of the society,
- (c) to a qualified recipient,
- (d) for a distribution required or authorized by this Act, including, without limitation, a distribution made in accordance with this Act on the society's dissolution, or liquidation and dissolution, or for a distribution otherwise required by law, or

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<sup>5</sup> Each JOA may have unique schedules, which includes terms that are unique to the relationship that the Park Board has with that particular CCA.

- (e) for a distribution that is
  - (i) of a type authorized by the regulations, and
  - (ii) made in accordance with the regulations.

Further, the CCAs have concluded that the Park Board is not a “qualified recipient”. Qualified recipient is defined in section 1 of the Societies Act as follows:

- (a) a society, other than a member-funded society as defined in section 190 [*definitions*],
- (b) a community service cooperative as defined in section 1 (1) [definitions and interpretation] of the Cooperative Association Act,
- (c) a registered charity as defined in section 248 (1) of the Income Tax Act (Canada) or another qualified donee as defined in section 149.1 (1) of that Act,
- (d) trustees on trust for a charitable purpose, or
- (e) a person or other entity that is included in this definition by regulation;

The regulations promulgated under the Societies Act do not include any person or entity within the definition of “qualified recipient”.

### ***The ITA***

Non-profit organizations may apply to the Canada Revenue Agency to become registered charities. The primary advantage of becoming a registered charity is that the organization may issue charity receipts for donations to the organization. Registered charities are divided broadly under the *ITA* into either foundations or charitable organizations. Commonly, foundations donate funds to the charitable organizations. Charitable organizations are those that actually undertake the charitable work. The CCAs that are registered charities are charitable organizations. As a result, the restrictions imposed on charitable organizations within the *ITA* are imposed on the CCAs that are registered charities.

The provisions of concern to the CCAs that are registered charities are contained in section 149 of the *ITA* and provide as follows:

“The Minister may, in the manner described in section 168, revoke the registration of a charitable organization for any reason described in subsection 168(1) or where the organization

...

- (c) makes a disbursement by way of a gift, other than a gift made
  - (i) in the course of charitable activities carried on by it, or
  - (ii) to a donee that is a qualified donee at the time of the gift.”

A qualified donee, other than the United Nations, the federal government or a provincial/territorial government, must be registered with the Canada Revenue Agency as a registered charity or similar organization. Presumably, the City of Vancouver is a registered municipality and is thus a qualified donee. It is for this purpose that the assumption that the Park Board is a separate entity is relevant. For if the Park Board is not a separate entity, then

contributions to the CCIF even if the payments are gifts, are payments to the City of Vancouver which would then be specifically permitted under the ITA.

### **Discussion**

#### ***Advice received by the West End CCA***

The West End CCA has retained Margaret H. Mason of Norton Rose Fulbright to provide legal advice in connection with its negotiation of the JOA to which West End CCA is to be a party to. The West End CCA has shared with the Park Board, the advice it received in a memorandum from Ms. Mason dated January 27, 2017. The memorandum deals with all aspects of the JOA. In respect of the restrictions imposed under the *Societies Act*, Ms. Mason points out that a society may make donations to “qualified recipients” or as consideration for services. Her conclusions on these two points are as follows:

The term "qualified recipient" is defined in the Act and is restricted to other societies, cooperatives, a registered charity or other qualified donee, the trustees of a charitable purpose trust or a person or society included in the definition by regulation. The Park Board is not a qualified recipient (we note that we did check the existing regulations to the Act and there is no reference to the Park Board).

In terms of the contribution to the CCIF, and with reference to section of the [Societies] Act, WECCA is not purchasing services, nor is it expending the funds delivering on its own purposes – it is simply a gratuitous gift to the Park Board for the Park Board’s purposes.

In respect of the *ITA*, in the same memorandum, Ms. Mason concludes as follows:

As we noted in our earlier memorandum, the Income Tax Act restricts registered charities from granting to any organization that is not a qualified donee. The Park Board is not a qualified donee.

#### ***Our View***

In contrast to the approach taken by Ms. Mason, we view the JOAs as existing in the broader context of the relationship between the Park Board and the CCAs. Specifically, given that the CCAs have no right to undertake activities in the Community Centres absent the agreement with the Park Board, consideration flows from the Park Board to the CCAs in the form of an agreement to occupy and use the Community Centres for the purposes and activities as set out in the JOAs. As such payments to the CCIF are specifically allowed under the *Societies Act* as payments for considerations. As well, the payments are allowed under the ITA because the payments are not gifts. Even if the payments are gifts, the ITA permits gifts in furtherance of a charitable purpose. Arguably, the funds in the CCIF are used to further charitable purposes by benefitting the community of the City of Vancouver as a whole.<sup>6</sup>

We note as well that a society may distribute money to another person or entity if the distribution is “in furtherance of the purposes of the society”. Each of the CCAs has its own set of purposes set out in their constitution. The constitution may be changed by following the amendment process sets out in the *Societies Act*. Thus, the objections of some CCAs to payments to the CCIF based on the *Societies Act* merely shows a lack of desire to amend their constitution and not an unsurmountable legal obstacle.

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<sup>6</sup> Community benefit, like relief of poverty or advancement of education, is a recognized charitable purpose.



The process by which any of the CCAs may change its Constitution is as follows<sup>7</sup>:

- The CCA must call a meeting of its members providing the members with sufficient notice of the meeting and the proposed amendment to the Constitution; and
- The amendment must be approved at the meeting by at least two-thirds of the votes cast at the meeting.

We note finally, that the JOA does not specifically provide that the Park Board is giving access to the Community Centres to the CCAs. We recommend that a recital be included in the JOA specifically mentioning this access. Including such a recital will make the conclusions reached in this letter evident to anyone who reads any of the JOAs. In addition, the provision requiring payment to the CCIF should refer to the provisions granting the CCAs access to the facilities.<sup>8</sup>

Yours very truly,

LAWSON LUNDELL LLP



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<sup>7</sup> Common steps to amend a society's constitution. Subject to each CCAs' bylaws, circumstances and processes.

<sup>8</sup> Sections 2 and 17 reference the access being given and the rights of the Park Board to the facilities. These provisions should remain and be incorporated into the provisions relating to the CCIF.