

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

ROYAL TRUST CORPORATION OF CANADA

REGISTERED
13/7/86
JUL 28 1986
PETITIONER
VICTORIA REGISTRY

AND:

SIDNEY AND NORTH SAANICH MEMORIAL PARK SOCIETY
BENEFICIARIES OF THE TRUST

RESPONDENTS

ORDER

BEFORE THE HONOURABLE JUDGE) ON TUESDAY, THE 15TH DAY
COW, LOCAL JUDGE OF THE)
SUPREME COURT) OF JULY, 1986.

THE APPLICATION of the Petitioner, Royal Trust Corporation of Canada, coming on for hearing before me on the 14th and 15th days of July, 1986; AND UPON hearing R. Allan W. Trann, Esq., Counsel for the Petitioner, AND Nicholas Lott, Esq., Counsel for the Respondent, Sidney and North Saanich Memorial Park Society, AND Norman Wright on his own behalf, John Kingerlee on his own behalf, Constance Kingerlee on her own behalf, Johanna Coward on her own behalf; AND UPON having read the pleadings herein;

THIS COURT ORDERS THAT the Royal Trust Corporation of Canada be relieved of its duties as Trustee of the North Saanich Memorial Park;

THIS COURT FURTHER ORDERS THAT the Sidney and North Saanich Memorial Park Society be substituted as Trustee and in place of the Royal Trust Corporation of Canada;

AND THIS COURT FURTHER ORDERS THAT the assets of the North Saanich Memorial Park Trust presently held by the Royal Trust Corporation of Canada be conveyed to and do vest in the North Saanich Memorial Park Society, In Trust;

AND THIS COURT FURTHER ORDERS THAT the lands and premises situate in the Town of Sidney, in the Province of British Columbia, more particularly known and described as:

FIRST: That part of Lot "A"
Sections 10 and 11
Range 3 East
North Saanich District
Plan 1479
EXCEPT those parts thereof included within the boundaries of Plan 1321 R.W. and Plan 2137 R.W.

SECOND: Lot 4
Sections 10 and 11
Range 3 East
North Saanich District
Plan 541
EXCEPT that part thereof included in Plan 5781 and
EXCEPT those parts thereof included within the boundaries of Plan 2137 R.W.

THIRD: Lot "A"
Sections 10 and 11
Range 3 East
North Saanich
Plan 15203

FOURTH: Lot "B"
Section 10
Range 3 East
North Saanich District
Plan 15203

be conveyed to and do vest in the North Saanich Memorial Park Society, free and clear of any right, title, interest, estate or claim of all other parties herein;

AND THIS COURT FURTHER ORDERS THAT the Royal Trust Corporation of Canada be at liberty to pass its accounts from the 1st day of September 1984 to completion of transfer of the assets from the Royal Trust Corporation of Canada to Sidney and North Saanich Memorial Park Society.

AND THIS COURT FURTHER ORDERS THAT the parties filing Appearances and retaining counsel to make submissions on their behalf at the hearing of the Petition herein be paid costs on a party and party basis from those funds currently held in trust by the Royal Trust Corporation of Canada.

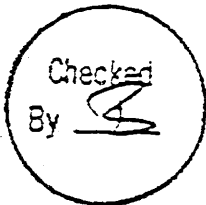
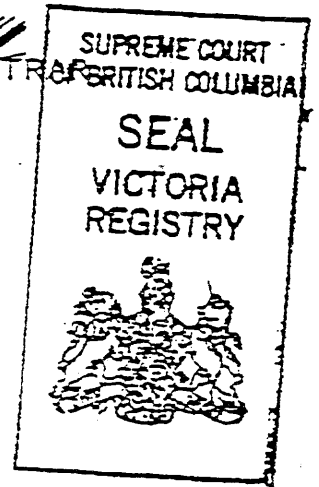
AND THIS COURT FURTHER ORDERS THAT the parties filing Appearances herein and appearing on their own behalf be paid reasonable

expenses incurred for the purpose of making submissions to the Court at the hearing of the Petition herein.

BY THE COURT

[Handwritten signature]
S.A.L.

[Handwritten signature]
DEPUTY DISTRICT REGISTRAR



TRUST INDENTURE

THIS INDENTURE made the 31st day of December, 1965

BETWEEN:

SIDNEY AND NORTH SAANICH WAR MEMORIAL
PARK SOCIETY, a Society duly incorporated
under the laws of the Province of British
Columbia, hereinafter called "the Society"

OF THE FIRST PART

- and -

THE ROYAL TRUST COMPANY of Victoria,
British Columbia, hereinafter called
"the Trustee"

OF THE SECOND PART

WHEREAS:

- A. The Society owns certain lands and premises.
- B. The Society is desirous that said lands and premises continue to be used in perpetuity by the residents of the northern portion of the Saanich peninsula in accordance with the expressed aims and objects of the Society.
- C. The Society and the Trustee agree that the lands and premises shall bear the name of The North Saanich Memorial Park.

NOW THEREFORE WITNESSETH that in consideration of the sum of One Dollar (\$1.00) (the receipt whereof is hereby acknowledged) and other good and valuable consideration the Society DOTH GRANT unto the said Trustee its successors and assigns forever ALL AND SINGULAR the lands and premises situate in the Victoria Assessment District and the Village of Sidney and Province of British Columbia and more particularly known and described as:

FIRSTLY: Lot A
Sections 10 and 11
Range 3 East
North Saanich District
Plan 15203

SECONDLY: Lot 4
Sections 10 and 11
Range 3 East
District North Saanich
Plan 541
EXCEPT that part thereof included in Plan 5781

THIRDLY: Lot "A"
Sections 10 and 11
Range 3 East
North Saanich District
Amended Plan 1479

(hereinafter collectively referred to as "the Lands and Premises")

to have and to hold the same in trust for residents (hereinafter referred to as "the Residents") of the Electoral District of Saanich whose names appear from time to time on the then current list of voters of the said Electoral District prepared under the Provincial Elections Act and who reside north of the present North boundary of the Municipality of Central Saanich (as defined in Section 5 of the Provincial Elections Act, 1960) for community, cultural, athletic and recreational purposes subject to the terms and conditions hereinafter recited.

1. That portion of the Lands and Premises so conveyed more particularly known and described as:- All that portion of the said Lot A of Sections 10 and 11, Range 3 East, North Saanich District, Amended Plan 1479 lying to the north of a line drawn parallel and perpendicularly distant 75 feet from the northerly boundary of said Lot A and to the west of the line drawn parallel and perpendicularly distant 250 feet from the westerly boundary of said Lot A (hereinafter referred to as "the Cenotaph Area") shall hereinafter be known as the "Cenotaph Area" and shall be held in trust to preserve the same as a site for the memorial cairn with suitable floral decorations but for no other purpose whatever.

2. All the remainder of the said Lands and Premises (hereinafter referred to as "the Park") shall be held by the Trustee subject to the terms and conditions hereinafter recited.

3. The Trustee shall have the power to lease the Park or any part thereof for a term not exceeding five (5) years subject to the terms and conditions of this Indenture to a Tenant or Tenants as hereinafter defined in paragraph 4 hereof PROVIDED THAT every Tenant shall first undertake in writing to permit the Park to be used by the Residents for community, cultural, athletic and recreational purposes and that the Tenant will encourage such use and that the Tenant will maintain the Cenotaph Area in good repair.

4. In this Indenture the word "Tenant" shall mean:

- (a) any society incorporated under the provisions of the Societies Act of the Province of British Columbia or any statute enacted in place thereof.
- (b) any company incorporated or registered pursuant to the Companies Act of the Province of British Columbia or the Companies Act of the Dominion of Canada or any statute enacted in place thereof.
- (c) any municipal corporation incorporated pursuant to the Municipal Act of the Province of British Columbia or any statute enacted in place thereof.
- (d) any legal entity created by an Act of the Legislature of the Province of British Columbia or by any Act of the Parliament of Canada.

5. A Tenant may grant a lease or license of all or any part of that portion of the Park being leased by the Tenant to any person, firm or organization for not more than seven (7) consecutive days in each calendar year for any purpose consistent with the Tenant's written undertaking given under Clause 3 hereof PROVIDED THAT a Tenant may with the prior consent in writing of the Trustee grant a lease or license of all or any part of that portion of the Park being leased by the Tenant to any person, firm or organization for a period in excess of seven (7) consecutive days.

6. The Trustee or any Fifteen (15) Residents may at any time call a public meeting of the Residents pursuant to clause 20

hereof for the purpose of passing a resolution requesting the Trustee to conduct an investigation to determine whether any Tenant is carrying out the terms of the undertaking given by the Tenant pursuant to clause 3 hereof PROVIDED THAT there shall first be deposited with the Trustee a sum of money which the Trustee considers sufficient to defray the cost of such an investigation.

7. Upon receipt of a resolution passed by a majority of those present and voting at a public meeting convened pursuant to the immediately preceding clause 6 hereof the Trustee shall conduct the said investigation and the Trustee shall prepare a report of its findings and send by mail a copy of such report to any Resident who requests the same provided that the Resident is on record as having attended the said meeting.

8. In the event of a breach by any Tenant of the undertaking given under clause 3 hereof and upon the Trustee receiving notice of the said breach the Trustee may upon thirty days written notice to the Tenant committing such breach determine the tenancy.

9. The Trustee or any Fifteen (15) Residents may at any time call a public meeting of the Residents pursuant to clause 20 hereof for the purpose of passing a resolution requesting the Trustee to conduct a referendum amongst the Residents on the question of whether the Residents favour the determination of the then subsisting lease or leases of the Park and the granting of a lease to a municipality incorporated within the Electoral District of Saanich north of the North boundary of the Municipality of Central Saanich PROVIDED THAT there shall first be deposited with the Trustee a sum of money which the Trustee considers sufficient to defray the cost of such a referendum.

10. Upon receipt of a resolution passed by a majority of those present and voting at a public meeting convened pursuant to the immediately preceding clause 9 hereof the Trustee shall conduct the said referendum and the Trustee shall prepare a report of the results of the referendum and send by mail a copy of such report to any Resident who requests the same provided that the Resident is on record as having attended the said meeting.

11. If a majority of those voting on the referendum conducted pursuant to clause 10 hereof favour the determination of the then subsisting lease or leases of the Park and the granting of a lease to a municipality incorporated within the Electoral District of Saanich north of the North boundary of the Municipality of Central Saanich then the Trustee shall determine the then subsisting tenancies upon thirty days written notice and shall forthwith grant a lease of said Park to the Municipality.

12. If all or any part of the Lands and Premises shall be expropriated then the Trustee shall use the proceeds of such expropriation after the payment of its just fees and expenses upon the following trusts:-

- (a) For the purchase of such other lands and premises (hereinafter referred to as the "Substituted Premises") as shall be chosen in accordance with the procedure set forth in clause 13 hereof, the Substituted Premises to be held by the Trustee upon the same trusts as the Lands and Premises so expropriated.
- (b) To hold the balance of the proceeds in trust for the maintenance and improvement of the Substituted Premises.

13. Pursuant to clause 12 hereof the Trustee or any Fifteen (15) Residents may call a public meeting of the Residents pursuant to clause 20 hereof for the purpose of passing the following resolutions:-

- (a) To appoint a committee to select one or more alternative Substituted Premises to be purchased by the Trustee to replace the Lands and Premises expropriated under clause 12 hereof.
- (b) To request the Trustee to conduct a referendum amongst the Residents in order to determine which of the alternative lands and premises selected by the said committee appointed pursuant to the immediately preceding sub-clause (a) hereof shall be purchased by the Trustee as the Substituted Premises.

14. The Trustee shall prepare a report of the results of the referendum conducted pursuant to clause 13 hereof and send by mail a copy of such report to any Resident who requests the same provided that the Resident is on the record as having attended the meeting convened pursuant to clause 12 hereof.

15. Clauses 12, 13 and 14 hereof shall apply mutatis mutandis to any expropriation of any Substituted Premises acquired by the Trustee.

16. The Trustee may at any time call a public meeting of the Residents pursuant to clause 20 hereof for the purpose of obtaining directions with respect to the management of the Lands and Premises or any other purpose whatsoever.

17. Subject to the trusts of this Indenture the Trustee shall have the following further ENABLING POWERS:-

- (a) To grant options to renew any lease for a further term not exceeding five (5) years on whatever terms the Trustee shall see fit.
- (b) To grant easements and rights-of-way over and under the Lands and Premises and releases of easements and rights-of-way on whatever terms the Trustee shall see fit.
- (c) To authorize the demolition of any of the existing buildings or structures situated on the Lands and Premises.
- (d) To authorize the construction and alteration of buildings and structures on the Lands and Premises.
- (e) To authorize the repair of the Lands and Premises.
- (f) To insure the Lands and Premises against such risks and in such amounts as the Trustee may decide.
- (g) To accept additional properties adjacent to the Lands and Premises upon these same trusts.
- (h) To accept monies upon trust to be used for the maintenance and improvement of the Lands and Premises or the

purchase of additional lands and premises or Substituted Premises.

- (i) To invest any monies held by the Trustee in pursuance of these Trusts and to accumulate any surplus income arising from the capital so invested by investing the same and the resulting income thereof as an accretion to the said capital.

18. The Trustee for the time being of these trusts may at any time make an application to the Supreme Court of British Columbia to be relieved of its duties as Trustee of these trusts and for the appointment by the Court of another trustee in its place.

19. Any Fifteen (15) Residents may call a public meeting of the Residents pursuant to clause 20 hereof for the purpose of passing a resolution to make an application to the Court for the removal of the then Trustee of these trusts and the appointment by the Court of another Trustee in its place PROVIDED THAT such a resolution shall require the assent of 75% of those Residents present and voting at the said meeting.

20. Notice of any public meeting which may be called pursuant to the terms of this Indenture shall be given in the following manner:-

- (a) Notice of the time and place of the meeting shall be delivered to the Trustee at least one week prior to such meeting.
- (b) Notice of the time and place of the meeting shall be delivered to each Tenant of the Park at least one week prior to the meeting.
- (c) Notice of the time and place of the meeting shall be published at least one week prior to such meeting in a newspaper published and circulating in the Electoral District of Saanich lying to the North of the North boundary of the Municipality of Central Saanich or if no newspaper is published in the said area then in a newspaper circulating in the said area.

21. It is understood and agreed that the Royal Trust Company is contracting hereunder only as trustee and not personally and that all obligations, covenants and warranties on the part of the said Trustee herein contained or otherwise arising or implied are and shall be subject to the limitations and provisions following, namely, that the said Trustee shall be liable upon any covenant or warranty only to the extent of the assets of the trust available for the purpose of meeting same but not further or otherwise, and that the said Trustee shall not be liable upon any such obligation, covenant or warranty in the absence of such assets and shall not be personally liable upon any such obligation, covenant or warranty in any case.

IN WITNESS WHEREOF the parties have hereunto caused their Corporate Seals to be affixed in the presence of their duly authorized officers the day and year first above written.

The Corporate Seal of
SIDNEY AND NORTH SAANICH
WAR MEMORIAL PARK SOCIETY

was hereunto affixed in
the presence of:

[Handwritten signature]

[Handwritten signature]



The Corporate Seal of THE
ROYAL TRUST COMPANY was
hereunto affixed in the
presence of:

[Handwritten signature]

[Handwritten signature]

MANAGER VICTORIA BRANCH
SECRETARY VICTORIA BRANCH