

SECHELT INDIAN BAND

LAW NO. 1988-02

A LAW REGARDING TESTATE SUCCESSION

WHEREAS Part III of the Band Constitution empowers the Band Council to make laws in relation to devolution, by testate succession, of real property of Band Members on Sechelt Lands and personal property of Band Members ordinarily resident on Sechelt Lands;

NOW THEREFORE the Council of the Sechelt Indian Band, in open meeting assembled, enacts as follows:

1. This law may be cited for all purposes as the "Testate Succession Law".
2. This law applies to the devolution, by testate succession, of real property of Band Members on Sechelt Lands and personal property of Band Members ordinarily resident on Sechelt Lands when the death of a Band Member occurs after the 1st day of June, 1988.
3. Notwithstanding that the deceased is a Band Member, the Supreme Court of British Columbia may exercise the jurisdiction and authority in relation to testate succession ordinarily vested in that Court unless an election to administer the estate in accordance with the Indian Act and amendments thereto is made pursuant to section 5 hereof.
4. For the purpose of the exercise by the Supreme Court of British Columbia, pursuant to section 3, of the jurisdiction and authority in relation to testate succession ordinarily vested in that Court:
 - (a) those laws of British Columbia set out in Schedule 1 and amendments thereto are adopted as applicable to all devolutions by testate succession of real property of Band Members on Sechelt Lands and personal property of Band Members ordinarily resident on Sechelt Lands;
 - (b) for greater certainty, the common law of British Columbia in relation to testate succession may be considered and applied by that Court; and

- (c) any law of British Columbia, statutory or common law, which conflicts with sections 87 or 89 of the Indian Act and amendments thereto, is inapplicable.
5. An estate may be administered in accordance with the Indian Act and amendments thereto if all of the following requirements are satisfied:
- (a) within thirty (30) days of this law being adopted by the Band Council, or within thirty (30) days of assuming his or her office, whichever is later, the Executor or Executrix gives notice in the manner prescribed in paragraph (b) and in the form set out in Schedule 2 of his or her intention to administer the estate in accordance with the Indian Act and amendments thereto;
 - (b) the notice referred to in paragraph (a) is posted in the Band Office and in all such meeting places or public places where notices are usually posted or given to the Band, is published in a newspaper which circulates on the Sunshine Coast and, when so ordered by the Band Council, is published in such other place or manner as is deemed expedient; and
 - (c) when paragraphs (a) and (b) have been complied with, the Band Council, upon the application by the Executor or Executrix, gives its consent to the election by the Executor or Executrix to administer the estate in accordance with the Indian Act and amendments thereto.
6. For greater certainty, if the Executor or Executrix does not make an election pursuant to section 5, or if the Band Council does not give its consent pursuant to paragraph 5(c), the laws of British Columbia as adopted in section 4 shall apply to the devolution, by testate succession, of real property of Band Members on Sechelt Lands and personal property of Band Members ordinarily resident on Sechelt Lands.
7. Consents and notices given pursuant to section 5 are irrevocable.

Read a First time this 15th day of September, 1988.

Read a Second time this 15th day of September, 1988.

Read a Third time this 15th day of September, 1988.

Reconsidered, finally passed and adopted by the Band Council and signed by the Chief on the 16th day of September, 1988.

Thomas Paul
Chief

SCHEDULE 1

Estate Administration Act, R.S.B.C. 1979, c. 114, in toto
Evidence Act, R.S.B.C. 1979, c. 116, in toto
Income Tax Act, R.S.B.C. 1979, c. 190, in toto
Infants Act, R.S.B.C. 1979, c. 196, section 40
Insurance Act, R.S.B.C. 1979, c. 200, sections 141 - 147
Law and Equity Act, R.S.B.C. 1979, c. 224, sections 43, 46, 46.1 and
46.2
Patients Property Act, R.S.B.C. 1979, c. 313, section 24
Perpetuity Act, R.S.B.C. 1979, c. 321, in toto
Power of Attorney Act, R.S.B.C. 1979, c. 334, in toto
Probate Recognition Act, R.S.B.C. 1979, c. 339, in toto
Supreme Court Rules 61 and 62, Appendix C Tarrif
Survivorship and Presumption of Death Act, R.S.B.C. 1979, c. 398, in
toto
Trustee Act, R.S.B.C. 1979, c. 414, in toto
Wills Act, R.S.B.C. 1979, c. 434, in toto
Wills Variation Act, R.S.B.C. 1979, c. 435, in toto

SCHEDULE 2

NOTICE REGARDING PROBATE OF WILL

TAKE NOTICE that the Executor/Executrix herein is applying to the Council of the Sechelt Indian Band to have the Indian Act, instead of the laws of British Columbia, apply to the administration of the estate of _____ (name of deceased).

Anyone having any objections to this application should make their concerns known, by letter, to the Council of the Sechelt Indian Band before the Council meets on _____ (date) to consider this application.

EXECUTOR/EXECUTRIX