

SECHELT INDIAN BAND

LAW NO. 1991-01

A LAW REGARDING THE DIVISION OF MATRIMONIAL PROPERTY

WHEREAS Part III of the Band Constitution confers on the Band Council the exclusive authority to make laws in relation to access to and residence on Sechelt Lands;

AND WHEREAS Part 3 and sections 77, 78 and 79 of the Family Relations Act of British Columbia are not laws of general application applying to Sechelt Band Members with regard to the regulation of the right to ownership and possession of interests in real property located on Sechelt Lands;

AND WHEREAS the Sechelt Indian Band wishes Part 3 and sections 77, 78 and 79 of the Family Relations Act to apply in their entirety to Sechelt Band Members;

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 "MATRIMONIAL PROPERTY LAW".
2. Unless otherwise specified in this law, Part 3 and sections 77, 78 and 79 of the Family Relations Act of British Columbia and amendments thereto are hereby adopted as applicable to Members, including those Members who were in a common law marriage as defined in section 3 (b) herein notwithstanding anything to the contrary in the Family Relations Act and amendments thereto, with regard to the regulation of the right to ownership and possession of interests in real property located on Sechelt Lands.
3. For the purposes of this law, Part 3 and sections 77, 78 and 79 of the Family Relations Act of British Columbia are hereby amended as follows:
 - (a) "spouse" shall include a man or woman not married to each other who lived together as husband and wife for a period of not less than 2 years;
 - (b) "common law marriage" shall mean a relationship whereby a man and a woman not married to each other lived together as husband and wife for a period of not less than 2 years;
 - (c) for the purposes of sections 43(4), 44 and 45(4), "marriage", "marriages" and "married" shall include a common law marriage;

- (d) delete from sections 43(3)(b) and 51 the term "marriage agreement" and substitute "marriage agreement or a cohabitation agreement"; and
- (e) add the following section:

"Cohabitation Agreements

- 48.1 (1) This section defines cohabitation agreement for the purposes of this Part and this definition applies to common law marriages entered into, cohabitation agreements made and property of a spouse acquired before or after this section comes into force.
- (2) A cohabitation agreement is an agreement entered into by a man and a woman prior to or during their common law marriage to each other to take effect on the date of their common law marriage or on the execution of the agreement, whichever is later, for
 - (a) management of family assets or other property during the common law marriage; or
 - (b) ownership in, or division of, family assets or other property during the common law marriage, or on the making of a declaratory judgment under section 44.
 - (3) A cohabitation agreement, or an amendment or rescission of a cohabitation agreement, must be in writing, signed by both spouses, and witnessed by one or more other persons.
 - (4) Except as provided in this Part, where a cohabitation agreement is made in compliance with subsection (3), the terms described by subsection (2) (a) and (b) are binding between the spouses whether or not there is valuable consideration for the cohabitation agreement.
 - (5) A minor who has capacity to marry has, with the prior consent of the Supreme Court, capacity to enter into a valid cohabitation agreement.
 - (6) Where a minor who has capacity to marry has purported to enter into a cohabitation agreement without the consent required under subsection (5), the Supreme Court may at any time order that the cohabitation agreement is binding on and is for the benefit of the minor.

- (7) In a cohabitation agreement, a dum casta provision applicable where the spouses are living separate and apart is null and void.
- (8) A provision of a cohabitation agreement that is void or voidable is severable from the other provisions of the cohabitation agreement.
- (9) Where a cohabitation agreement provides that specific gifts made to one or both spouses are not disposable without the consent of the donor, the donor shall be deemed to be a party to the cohabitation agreement for the purpose of enforcement or amendment of the provision."

4. (1) "Band Housing Unit", for the purposes of this section, means:
 - (a) a structure or building on Sechelt Lands held by the Sechelt Band Housing Authority pursuant to the Declaration of Trust dated September 18, 1980; or
 - (b) a structure or building on Sechelt Lands in which the Sechelt Band Housing Authority has an interest by way of a Mortgage or Purchase Agreement.
- (2) "Approved Owner" means a person who has been declared by the Sechelt Band Housing Authority to be entitled to hold an interest in a Band Housing Unit.
- (3) When an Order is made pursuant to paragraph 52(2)(a) of the Family Relations Act declaring that a person who is not an Approved Owner is entitled to the ownership of or a right to possession of a Band Housing Unit, the Court shall also make an Order of Sale pursuant to paragraph 52(2)(d) unless an Order regarding the Band Housing Unit is made pursuant to paragraph 52 (2)(e).
- (4) Paragraph 52(2)(b) of the Family Relations Act is not applicable to Band Housing Units when the title to the Band Housing Unit has been granted to a person who is not an Approved Owner.
- (5) Paragraph 52(2)(d) of the Family Relations Act regarding partition of property does not apply to Band Housing Units.
- (6) Where an Order of Sale of a Band Housing Unit is made pursuant to paragraph 52(2)(d) of the Family Relations Act, the Order shall state that the Band Housing Unit shall be sold to the Sechelt Band Housing Authority or to a purchaser approved by the Sechelt Band Housing Authority.

- (7) Paragraph 52(2)(e) of the Family Relations Act applies only if the child is a Sechelt Band Member.
- (8) Paragraph 52(2)(g) of the Family Relations Act does not apply to Band Housing Units.
- (9) Subsection 52(3) of the Family Relations Act does not apply to Band Housing Units with regard to Orders vesting all or a portion of a Band Housing Unit in, or in trust for, a person who is not an Approved Owner. In this circumstance, the Court may instead order a sale pursuant to paragraph 4(6) herein.
- (10) Notwithstanding section 2 herein, Part 3 of the Family Relations Act and amendments thereto are not applicable with regard to the allotment by the Sechelt Band Council to Sechelt Band Members of the right to possession of Sechelt Lands.

Read a First time this 10th day of April, 1991.

Read a Second time this 10th day of April, 1991.

Read a Third time this 10th day of April, 1991.

Reconsidered, finally passed and adopted by the Band Council and signed by the Chief on the _____ day of _____, 1991.


Chief Thomas Paul