

SECHELT INDIAN BAND

LAW NO. 1993-02

A LAW TO PROHIBIT INTOXICANTS ON SECHELT LANDS

WHEREAS the Sechelt Indian Band considers it necessary to undertake measures for the protection of the community;

AND WHEREAS the Council of the Band wishes to declare in effect a prohibition against the sale, barter, supply or manufacture of certain intoxicants on Sechelt lands;

AND WHEREAS Part III of the Constitution of the Band and paragraphs 14(1)(a), (o), (t) and (u) of the Sechelt Indian Band Self-Government Act authorize the Council of the Band to make laws in relation to:

- (a) access to and residence on Sechelt lands;
- (b) the prohibition of the sale, barter, supply, manufacture or possession of intoxicants on Sechelt lands and any exceptions to a prohibition of possession;
- (c) the creation of administrative bodies and agencies to assist in the administration of the affairs of the Band; and
- (d) matters related to the good government of the Band or its members;

AND WHEREAS a majority of the electors of the Band who attended a special meeting of the Band on January 28, 1993 for the purpose of considering this law assented to this law;

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

Short Title

1. This law may be cited for all purposes as the "PROHIBITION OF INTOXICANTS LAW".

Definitions

2. In this law,

"Band" means the Sechelt Indian Band;



"Council" means the Council of the Sechelt Indian Band as duly constituted;

"Hearing" means a hearing directed by the Band Council pursuant to section 7;

"Intoxicant" includes a narcotic as that term is defined in the Narcotic Control Act of Canada, as amended, or in any successor statute, and excludes liquor as that term is defined in the Liquor Control and Licensing Act of British Columbia, as amended, or in any successor statute;

"Investigating Officer" means the member of the Band Council appointed pursuant to section 6 to conduct an Investigation;

"Investigation" means an investigation into whether a person has committed or is in the process of committing an Offence;

"Notice of Hearing" means the document described in section 8;

"Offence" means an "Offence" as defined in section 5;

"Officer" means any police officer, police constable or any other person charged with the duty to preserve and maintain the public peace;

"Respondent" means any person who is the subject of an Investigation or Hearing and includes Band Members, their lawfully married spouses, status Indians, lessees and permittees;

"Sechelt lands" means "Sechelt lands" as defined in the Sechelt Indian Band Self-Government Act.

Prohibition

3. No person shall be in possession of an Intoxicant on Sechelt lands.
4. No person shall sell, barter or supply an Intoxicant to anyone or manufacture an intoxicant on Sechelt lands.

Offence

5. Any person who violates sections 3 or 4 commits an Offence.

Investigation

6. (a) The Band Council may, at any time and regardless of whether a complaint has been made, appoint a member of the Band Council as the Investigating Officer to investigate



whether a person has committed or is in the process of committing an Offence.

- (b) The Investigating Officer shall not participate in any decisions of the Band Council with respect to an Investigation, a Hearing, or events following from an Investigation or Hearing.
 - (c) In conducting an Investigation, the Investigating Officer may, in his or her discretion, employ the services of another person or persons to assist in the Investigation.
 - (d) Upon completion of his or her Investigation, the Investigating Officer shall report to the Band Council.
7. Upon receiving a report from the Investigating Officer, the Band Council shall either:
- (a) if it concludes that there are no grounds to believe that an Offence may have been committed, take no further action; or
 - (b) if it concludes that there are grounds to believe that an Offence may have been committed, direct that a Hearing be held and that a Notice of Hearing be served on the Respondent.

Notice of Hearing

8. A Notice of Hearing shall contain the following information:
- (a) a statement setting out the facts in the Band Council's possession and the alleged Offence in sufficient detail to permit the Respondent to understand the facts and allegations and to afford the Respondent a reasonable opportunity to furnish relevant evidence to contradict or explain the facts and allegations;
 - (b) the date, time and place of the Hearing;
 - (c) notice of the procedures and rules to be followed at the Hearing;
 - (d) a statement that the Hearing will be the Respondent's only opportunity to present evidence and call witnesses;
 - (e) a statement of the penalties that may be imposed by the Band Council if it determines that an Offence has been committed;
 - (f) a statement that the Respondent has seven (7) days to notify the Band Council that he or she intends to appear at the Hearing and that failure to so notify shall mean that the Respondent accepts the allegations as being proven.
9. (a) The Notice of Hearing shall be posted in the Band Office and served on the Respondent at least fourteen (14) days prior to the Hearing.



- (b) Service of the Notice of Hearing on the Respondent may be effected by:
 - (i) personally serving the Respondent; or
 - (ii) mailing a copy by registered mail to the Respondent.
- 10. (a) The Respondent shall notify the Band Council in writing within seven (7) days after being served with the Notice of Hearing that he or she intends to appear and be heard at the Hearing.
- (b) Failure on the part of the Respondent to comply with paragraph (a) shall mean that he or she accepts the allegations as being proven, and the only issue determined at the Hearing shall be the penalty pursuant to section 14.

The Hearing

- 11. At a Hearing before the Band Council, the following rules shall apply:
 - (a) The Hearing shall be open to members of the public.
 - (b) The Respondent shall not be entitled to be represented by counsel or an agent at the Hearing but shall be entitled to remain in attendance throughout the Hearing.
 - (c) The Band Council shall not be entitled to have counsel present during the Hearing.
 - (d) The Investigating Officer shall present the case against the Respondent and, in so doing, the Investigating Officer may call witnesses to give evidence.
 - (e) The Respondent shall be entitled to make oral or written submissions in response to the case presented by the Investigating Officer, to call witnesses to give evidence on his or her behalf, and to cross-examine all witnesses giving evidence against him or her.
 - (f) The Investigating Officer shall be entitled to cross-examine all witnesses called by the Respondent.
 - (g) All witnesses giving evidence at the Hearing shall do so under oath administered by the Chief of the Band or other member of the Band Council presiding at the Hearing.
 - (h) The Band Council is not bound by the legal or technical rules of evidence and may refuse to hear evidence it deems irrelevant to the allegations before it.
 - (i) The Band Council may establish such procedures as it deems advisable with respect to the Hearing.
- 12. (a) After the Band Council has heard all testimony and submissions at a Hearing, it shall meet in private to make its findings of fact on the balance of probabilities.
- (b) Within five (5) days following a Hearing, the Band Council shall make a decision to:



- (i) dismiss the allegations contained in the Notice of Hearing; or
 - (ii) find the allegations proven in part or in whole and impose a penalty as provided for in section 14.
- (c) A copy of the Band Council's decision in writing shall be delivered to the Respondent and posted in the Band Office.
13. The decision of the Band Council may be appealed to the Supreme Court of British Columbia within sixty (60) days of the date of the decision.

Penalty

14. (a) In the event the Respondent is found to have committed an Offence, the Band Council may:
- (i) if, in its discretion, it decides that it would be in the best interests of the community, declare that the Respondent is denied the right to access to or residence on Sechelt lands, or both, for a specified period of time or indefinitely, and the Band Council shall order the Respondent to leave Sechelt lands either forthwith or before a specified date;
 - (ii) if the Respondent agrees to undergo treatment approved by the Band Council, the declaration and order made by the Band Council pursuant to subparagraph (i) may be suspended by the Band Council for a specified period of time or permanently.
- (b) A decision made by the Band Council pursuant to subparagraph (a)(i) shall supersede any prior decision by the Band Council with respect to the Respondent's right to access to or residence on Sechelt lands, regardless of whether the prior decision was made pursuant to a law of the Band Council or by way of an agreement with the Respondent.

Enforcement

15. (a) Where a person who has been ordered to leave Sechelt lands pursuant to subparagraph 14(a)(i) fails or refuses to do so, an Officer may take such reasonable measures as may be necessary to remove the person from Sechelt lands.
- (b) No person shall resist or interfere with an Officer acting under paragraph (a).
16. Where this law is contravened, in addition to any other remedy and to any penalty imposed by this law, such contravention may be enjoined or restrained by action in the Supreme Court of British Columbia at the instance of the Band Council.



Severability

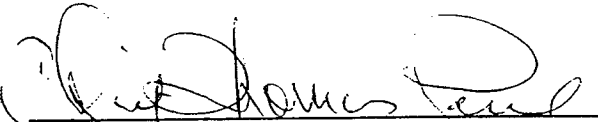
17. (a) If any portion of this law is found invalid by decision of a Court of competent jurisdiction, the invalid portion shall be severed without effect on the remainder of this law.
- (b) Parts and titles are for convenience only and are not to be construed as a part of this law.

Read a First time this 28th day of January, 1993.

Read a Second time this 28th day of January, 1993.

Read a Third time this 11th day of February, 1993.

Reconsidered, finally passed and adopted by the Band Council and signed by the Chief on the 12th day of February, 1993.


CHIEF THOMAS PAUL

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