

SECHELT INDIAN BAND

LAW NO. 1999-01

A LAW REGARDING INTESTATE SUCCESSION

WHEREAS Part III of the Band Constitution empowers the Band Council to make laws in relation to devolution, by intestate 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 "Intestate Succession Law".
2. This law applies to the devolution, by intestate 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 on or after the 1st day of November, 1999.
3. The Band Council shall have the exclusive authority to appoint an Administrator for the estate of a deceased Band Member who dies intestate by posting a notice in writing at the Band Office within 14 days of being notified of the death. Such appointment shall take effect on the date of the notice.
4. Notwithstanding that the deceased is a Band Member, the Supreme Court of British Columbia may exercise the jurisdiction and authority in relation to intestate 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 6.
5. For the purpose of the exercise by the Supreme Court of British Columbia, pursuant to section 4, of the jurisdiction and authority in relation to intestate 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 intestate succession of real property of Band Members on Sechelt Lands and personal property of Band Members ordinarily resident of Sechelt Lands;
 - (b) for greater certainty, the common law of British Columbia in relation to intestate succession may be considered and applied by that Court in the interpretation of those laws of British Columbia set out in Schedule 1 and amendments thereto; and
 - (c) notwithstanding the foregoing, 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.
6. An estate may be administered in accordance with the Indian Act and amendments thereto if all of the following requirements are satisfied:
- (a) within 30 days of being appointed as the Administrator pursuant to section 3, the Administrator gives notice in the manner prescribed in subsection 6(b) and in the form set out in Schedule 2, of his intention to administer the estate in accordance with the Indian Act and amendments thereto;
 - (b) the notice referred to in subsection 6(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 and 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 subsections 6(a) and 6(b) have been complied with, the Band Council, upon the application by the Administrator, gives its consent to the election by the Administrator to administer the estate in accordance with the Indian Act and amendments thereto.
7. For greater certainty, if the Administrator appointed pursuant to section 3 does not give the prescribed notice, or if the Band Council does not give its consent pursuant

to subsection 6(c), the laws of British Columbia as adopted in section 5 shall apply to the devolution, by intestate succession, of real property of Band Members on Sechelt Lands and personal property of Band Members ordinarily resident on Sechelt Lands.

8. Notwithstanding section 2, if a Band Member dies intestate in the 12 month period immediately preceding the effective date of this law, one of the following people may, by notice in writing to the Band Council, elect to have the Supreme Court of British Columbia exercise the jurisdiction and authority in relation to intestate succession ordinarily vested in that Court, notwithstanding that the deceased is a Band Member:

- (a) the deceased's widow or widower, or if the deceased is not survived by a widow or widower then,
- (b) one of the deceased's children who is 18 years of age or over, or if the deceased has no such surviving children then,
- (c) one of the deceased's parents, or if the deceased has no surviving parents then,
- (d) one of the deceased's next of kin.

9. For the purpose of the exercise by the Supreme Court of British Columbia, pursuant to section 8, of the jurisdiction and authority in relation to intestate 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 intestate succession of real property of Band Members on Sechelt Lands and personal property of Band Members ordinarily resident of Sechelt Lands;
- (b) for greater certainty, the common law of British Columbia in relation to intestate succession may be considered and applied by that Court in the interpretation of those laws of British Columbia set out in Schedule 1 and amendments thereto; and
- (c) notwithstanding the foregoing, 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.

10. Consents and notices given pursuant to sections 6 and 8 are irrevocable.
11. This law shall become effective at 12:01 a.m. on the 1st day of November, 1999.

Read a First time this 25th day of October, 1999.

Read a Second time this 25th day of October, 1999.

Read a Third time this 25th day of October, 1999.

Reconsidered, finally passed and adopted by the Band Council and signed by the Chief on the _____ day of October, 1999.

Chief Garry Feschuk
Chief Garry Feschuk

SCHEDULE 1

Adoption Act, R.S.B.C. 1996, c.5, section 37

Estate Administration Act, R.S.B.C. 1996, c. 122 in toto

Evidence Act, R.S.B.C. 1996, c. 124, in toto

Income Tax Act, R.S.B.C. 1996, c. 215, in toto

Insurance Act, R.S.B.C. 1996, c. 226, sections 48, 51-54

Law and Equity Act, R.S.B.C. 1996, c. 253, sections 46, 49, 50 and 51

Patients Property Act, R.S.B.C. 1996 c. 349, section 24

Perpetuity Act, R.S.B.C. 1996, c. 358, in toto

Power of Attorney Act, R.S.B.C. 1996 c. 370, in toto

Probate Recognition Act, R.S.B.C. 1996 c.376, in toto

Supreme Court Rules 61 and 62, Appendix B Tarrif

Survivorship and Presumption of Death Act, R.S.B.C. 1996, c. 444 in toto

Trustee Act, R.S.B.C. 1996, c.464, in toto

SCHEDULE 2

NOTICE REGARDING GRANT OF ADMINISTRATION

TAKE NOTICE that the undersigned, who is entitled to give notice pursuant to section 6 of the Intestate Succession Law, 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 the 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.

[Name of Administrator]