

THE HEILTSUK INDIAN BAND

By-Law 20

As amended pursuant to By-Law 20A

Being a by-law respecting the residency of the Heiltsuk Indian Band members and other persons on the reserves of the Heiltsuk Indian Band (the "Band").

WHEREAS sections 81 (1) (p.1) and (p.2) of the Indian Act empower the Council of a band of Indians to make by-laws respecting the residence of band members and other persons on the reserve of the Band and the rights of spouses and children who reside with members of the band on the reserve;

AND WHEREAS the council of the Band desires to make a by-law governing residency on the reserves of the Band in order to maintain and protect the cultural heritage, health, safety, good order and advancement of the people of the Band;

NOW THEREFORE the Council of the Heiltsuk Band of Indians hereby enacts as a by-law thereof as follows:

1. CITATION

This By-Law may be cited as the Heiltsuk Indian Band Residency By-Law.

2. DEFINITIONS AND INTERPRETATION

2.01 Definitions

In this By-Law,

- (a) "Appeal Committee" means an Appeal Committee appointed pursuant to section 11.01 hereof;

- (b) "Band" means the Heiltsuk Band of Indians;
- (c) "Band Registrar" means the person appointed by the Council to be responsible for maintaining the Residency List;
- (d) "Council" means the council of the Band as established pursuant to section 74 of the Indian Act;
- (e) "Limited Stay Permit" means a Limited Stay Permit issued pursuant to Section 6.07 hereof;
- (f) "Minister" means the Minister of Indian Affairs and Northern Development;
- (g) "Register of Limited Stay Permits" means the Register of Limited Stay Permits maintained pursuant to section 3.02 hereof;
- (h) "Reserve" means those lands in and around Bella Bella, British Columbia, the legal title to which is vested in Her Majesty, that have been set apart by her Majesty for the use and benefit of the Band and includes designated lands;
- (i) "Residency List" means the Residency List maintained pursuant to section 3.01 hereof;
- (j) "spouse" means a husband or wife and includes,
 - (a) a man or woman married by Indian custom;

- (b) a man or woman not married to each other, living together as husband and wife.

2.02 Residency

For the purpose of this By-law a person resides on the Reserve if:

- (a) the person lives on the Reserve either on a temporary or permanent basis and where a person sleeps in one place and has his meals or is employed in another place he shall be deemed to reside on the Reserve if he sleeps on the Reserve; or
- (b) the person has a permanent home or residence on the Reserve from which he is temporarily absent and to which he intends to return;

but a person who visits the Reserve for family, friendship, recreational or business purposes for an aggregate period not exceeding thirty (30) days in any calendar year does not reside on the Reserve for the purpose of this By-law by reason only of such visits.

2.03 Indian Act Definitions Apply

Words in this By-law not defined herein but defined in the Indian Act shall have the meanings provided in the Indian Act.

2.04 Number and Gender

In this By-law words importing the singular number only include the plural and vice versa, words importing the masculine gender include the feminine gender and vice versa.

2.05 Headings

The headings appearing in this By-law have been inserted for convenience of reference only, and in no way define, limit or enlarge the scope and meaning of this By-law.

3. RESIDENCY LIST

3.01 Maintenance of Residency List

The Council shall establish and maintain a Residency List in which shall be recorded the names of all persons who, in accordance with this By-law, are entitled to have their names included in the Residency List. The Residency List shall be divided into **two** parts as follows:

- (a) Part 1, in which shall be recorded the names of all persons who are entitled to have their names entered in the Residency List pursuant to section 4.01 hereof; and
- (b) Part 2, in which shall be recorded the names of all persons who become entitled to have their names entered in the Residency List pursuant to an application made under section 4.02 hereof.

3.02 Register of Limited Stay Permits

The Council shall establish and maintain a Register of Limited Stay Permits in which shall be recorded the particulars of all Limited Stay Permits issued pursuant to this By-law.

3.03 Prohibition

No persons may reside on the Reserve at any time unless;

- (a) his name is entered in the Residency List;
- (b) he is entitled to have his name entered in the Residency List; or
- (c) he resides on the Reserve pursuant to and in accordance with the terms of a Limited Stay Permit.

4. PERSONS ENTITLED TO HAVE THEIR NAMES RECORDED
IN THE RESIDENCY LIST

4.01 Automatic Entitlement

Subject to the provisions of Part 7 hereof the following persons are entitled to have their names entered in the Residency List and need not make application for the same pursuant to section 4.02 hereof:

- (a) all members of the Band;
- (b) dependent children of a member of the Band or any children of whom a member of the Band has custody, residing with such member on the Reserve;
- (c) persons residing on the Reserve pursuant to a permit of residency granted by the Minister pursuant to section 28(2) of the Indian Act;

- (d) persons residing on the Reserve pursuant to a lease granted under section 58(3) of the Indian Act;
- (e) persons employed by the Council, the Bella Bella Community School, R.W. Large Memorial Hospital, the Royal Canadian Mounted Police or the Pentecostal or United Churches situate on the Reserve, together with the spouse of any such person and the dependent children of such person or any children of whom he has custody, residing with him, for the duration of such employment.

4.02 Discretionary Entitlement

Subject to the provisions of section 6.08 and 7.03 hereof the following persons may make application in accordance with the procedures established in Part 6 to have their names entered in the Residency List for a one (1) year period:

- (a) the spouse of a member of the Band residing on the Reserve with such member;
- (b) the dependent children of the spouse of a member of the Band or any children of whom a spouse of a member of the Band has custody, residing with such member on the Reserve;
- (c) persons entitled to be registered as an Indian under the Indian Act;

and their entitlement to have their names so entered shall be determined in accordance with the provisions of Parts 6 and 7 hereof.

5. LIMITED STAY PERMIT

5.01 Subject to the provisions of sections 6.09 and 7.03 hereof any person wishing to reside on the Reserve for a temporary purpose may make application for a Limited Stay Permit in accordance with the procedures established in Part 6.

6. APPLICATION PROCEDURES

6.01 Form of Application

All applications to have a name entered in the Residency List pursuant to section 4.02 hereof and all applications for a Limited Stay Permit pursuant to section 5.01 shall be made to the Band Registrar in a form approved by the Band Council for such purpose. The spouse and any dependent children of the applicant, or any children of whom the applicant has custody, who the applicant intends will reside with him on the Reserve, shall be named in the applicant's application form. The application shall include a written commitment by the applicant and his spouse, if applicable, that on becoming resident on the Reserve he will obey the laws of the Band and, in his way of life, to promote the customs, traditions and culture of the Heiltsuk people and the well-being of the Heiltsuk community.

6.02 Referral to Band Council

On receipt of an application made pursuant to section 4.02 or section 5.01 the Band Registrar shall immediately refer it to the Band Council for consideration. The decision whether to enter an applicant's name in the Residency List or to grant a Limited Stay Permit shall be made by majority vote of the Council and may be made subject to such conditions as the Council may determine to be necessary or appropriate in the circumstances.

6.03 Procedure for Review of Applications

The Council may consider and deal with an application pursuant to section 4.02 or 5.01 hereof according to such procedure and at such time as it shall determine in its discretion and, without detracting from the generality of the foregoing, the Council may conduct such interviews and require such evidence as it shall determine in its discretion.

6.04 Council Discretion

The decision whether to grant an application made pursuant to section 4.02 or 5.01 hereof and as to whether or not an application should be granted subject to conditions specified by the Council, shall be within the sole discretion of the Council based on its judgment as to the best interests of the Band having regard to the following factors:

- (a) arrangements that have been made by the applicant for his place of residence on the Reserve;
- (b) the availability of suitable land, housing and ancillary services on the Reserve;
- (c) the applicant's reasons for desiring to reside on the Reserve;
- (d) the previous lifestyle and conduct of the applicant and whether such previous lifestyle and conduct indicates that the applicant's residence on the Reserve would likely be compatible with the culture, society and community of the Band;
- (e) the degree of Heiltsuk blood of the applicant;
- (f) the social, cultural, family and marital ties of the applicant to members of the Band;

- (g) Limited Stay Permits will be granted for temporary purpose residency only;
- (h) any other considerations that, in the opinion of the Council, are relevant to the health, safety, good order and advancement of the Band.

6.05 Decision of Council

A decision of the Council pursuant to section 6.02 shall forthwith be notified to the applicant by mail and a copy of the notice shall be displayed by the Band Registrar in the Band office for not less than 30 days. Subject to the outcome of any appeal under Part 9 a decision of the Council hereunder is final and conclusive.

6.06 Acceptance - Residency List

Where the Council accepts an application made pursuant to section 4.02 the applicant and his spouse and children included in his application shall be permitted to reside on the Reserve for a period of one year from the date of such acceptance (the "Residency Period"), subject to any conditions imposed by the Council. On such acceptance the applicant's name, and the name of his spouse and children included in his application, shall be entered in the Residency List, together with a notation of any conditions of residency imposed by the Council. At the expiration of the Residency Period the names of such persons shall be deleted from the Residency List unless the applicant has re-applied for and been granted a renewal of the Residency Period pursuant to this By-law.

6.07 Acceptance - Limited Stay Permit

Where the Council grants an application made pursuant to section 5.01 the Council shall determine the period of permitted residency (the "Permit Period"), which period shall not exceed one (1) year, and the applicant and his spouse and children included in his

application shall be permitted to reside on the Reserve for the Permit Period subject to any conditions imposed by the Council. On such acceptance the applicant shall be granted a Limited Stay Permit evidencing the permission granted to him and his spouse and children included in his application to reside on the Reserve. Such Limited Stay Permit shall state the dates of permitted residency and any conditions of residency imposed by the Council.

6.08 Re-Application Residency List

If a person's application pursuant to section 4.02 is refused, the applicant may re-apply to have his name entered in the Residency List, but only after the expiration of 2 years from the date his previous application is refused by the Council and provided that a person shall not be entitled to re-apply pursuant to section 4.02 if his application is refused on three (3) consecutive applications.

6.09 Re-Application - Limited Stay Permit

If a person's application pursuant to section 5.01 is refused, the applicant may re-apply for a Limited Stay Permit, but only after the expiration of two (2) years from the date his previous application is refused by the Council and provided that a person shall not be entitled to re-apply pursuant to section 5.01 if his application is refused on three (3) consecutive applications.

6.10 Renewal of Residency Period

A person whose name has been entered in the Residency List pursuant to section 6.06 and who continues to be qualified to make application to have his name entered in the Residency List pursuant to section 4.02, may apply to renew his Residency Period for a further period of one (1) year, provided that he shall not be entitled to so apply until sixty (60) days prior to the expiration of his then current Residency Period. **Subject to section 6.08 and the**

provisions of this section **6.10**, a person shall not be limited in the number of times he may apply to renew his Residency Period. The provisions of sections 6.01, 6.02, 6.03, 6.04, 6.05, 6.06 and 6.08 shall apply to applications to renew a Residency Period mutatis mutandis.

7. TERMINATION OF ENTITLEMENT

7.01 Deletion of Names from Residency List

A person shall cease to be entitled to have his name entered in the Residency List and his name shall be deleted from the Residency List if:

- (a) his reserve residency rights are revoked in accordance with this By-law;
- (b) in the case of a person whose name was entered in the Residency List pursuant to section 4.01 hereof, he ceases to continue to be so entitled pursuant to section 4.01; or
- (c) in the case of a person whose name was entered in the Residency List pursuant to an application made under section 4.02 hereof, on the expiration of his Residency Period including any renewal Residency Period.

7.02 Termination of Limited Stay Permits

A person shall cease to be entitled to reside on the Reserve pursuant to a Limited Stay Permit and the Limited Stay Permit and Permit Period thereunder will be terminated if a Residency committee revokes his Reserve residency rights in accordance with this By-law.

7.03 Re-Entitlement

A person whose Reserve residency rights are revoked pursuant to this By-law shall not be entitled to have his name entered in the Residency List or to be granted a Limited Stay Permit except pursuant to an application pursuant to section 4.02 or 5.01, as applicable, made:

- (a) in the case of subsection (c)(iii) and (e) of section 8.02, after the expiration of three years from the date of the first revocation of his Reserve residency rights. If the Reserve residency rights are terminated again (the "Second Revocation") pursuant to subsections (c)(iii) or (e) of section 8.02, that person shall not be entitled to make application pursuant to section 4.02 or 5.01, as applicable, unless five years have expired from the date of the Second Revocation. If the Reserve residency rights are terminated again pursuant to subsections (c)(iii) or (e) of section 8.02 following the Second Revocation, that person shall not be entitled to have his name entered in the Residency List or to be granted a Limited Stay Permit.

- (b) in the case of all other revocations under this By-law, after the expiration of two years from the date of revocation of his Reserve residency rights.

7.04 Conditions

Where a person applies to have his name re-entered on the Residency List or applies for a Limited Stay Permit in accordance with section 7.03, the Council may impose on the residency of that person on Reserve, such conditions as it considers appropriate in the event that the application is approved.

8. REVOCATION OF RESERVE RESIDENCY RIGHTS

8.01 Residency Review

If the Council considers, in its sole discretion and as often as it shall consider necessary, that the residency of any person should be reviewed, the Council shall appoint a Residency Committee in accordance with Part 10 hereof to review the person's residency rights. The Residency Committee so appointed shall decide whether to revoke the person's Reserve residency rights in accordance with section 8.02, within ninety (90) days of appointment of such Residency Committee.

8.02 Criteria for Revocation

A Residency Committee appointed to review a person's residency rights shall revoke the person's Reserve residency rights pursuant to section 8.01 if it determines that:

- (a) in the case of a person who is subject to the Heiltsuk Indian Band Residency Tax levied by the Council, the person has fallen more than sixty (60) days in arrears in payment of such tax;
- (b) in the case of a person whose name was entered in the Residency List pursuant to an application made under section 4.02 or who is resident on the Reserve pursuant to a Limited Stay Permit, the Council determines that the person has contravened any conditions attached to his permission for residency;
- (c) **the person has engaged in the following behaviour:**
 - (i) **assault against a person or persons residing on the Reserve;**

- (ii) **theft of or damage to property of the Band or a person residing on the Reserve; or**
- (iii) **trafficking on the Reserve of substances which are banned or restricted under the Narcotics Control Act or otherwise;**

and it further determines that the continued residency of such person on the Reserve is not in the best interests of the Band;

- (d) **in the absolute discretion of the Residency Committee the continued residency of such person on the Reserve is detrimental to the future welfare or advancement of the Band or constitutes a threat to the life, safety or physical or mental well-being of residents on the Reserve;**
- (e) **the person has been convicted of trafficking under the Narcotic Control Act in the two years prior to the meeting held to consider that person's Reserve residency rights; or**
- (f) **the person has breached any of the conditions imposed by Council under section 7.04.**

8.03 Notice of Meeting Required

A Residency Committee shall not revoke a person's Reserve residency rights pursuant to section 8.01 unless it has first given such person written notice of a meeting of the Residency Committee at which his Reserve residency rights are to be considered, as follows:

- (a) **in the case of a person whose name is entered in the Residency List, thirty (30) days written notice; or**

- (b) in the case of a person residing on the Reserve pursuant to a Limited Stay Permit, seven (7) days written notice.

Such person shall be entitled to make written representation to the Residency Committee during such notice period and to make representations in person or through an agent or counsel at the meeting of the Residency Committee held pursuant to such notice. The Residency Committee may consider such other evidence in respect of the Reserve residency rights under review as it considers relevant.

8.04 Residency Committee Decision

The decision of a Residency Committee pursuant to section 8.01 shall forthwith be notified by mail to the person whose Reserve residency rights have been reviewed and a copy shall be displayed by the Band Registrar in the Band Office for not less than sixty (60) days. Subject to the outcome of any appeal under Part 9 a Residency Committee's decision is final and conclusive.

8.05 Revocation - Residency List

Where a Residency Committee revokes the Reserve residency rights of a person whose name is entered in the Residency List, the name of such person shall be deleted from the Residency List on the expiration of sixty (60) days from the decision of the Residency Committee unless an appeal of such decision is commenced within such period, in which event such person's name shall not be deleted except in accordance with the decision of the Appeal Committee.

8.06 Revocation - Limited Stay Permit

Where a Residency Committee revokes the Reserve residency rights of a person residing on the Reserve pursuant to a Limited Stay Permit, the right of such person, together with his spouse and children covered in the Limited Stay Permit, to reside on the Reserve shall automatically terminate and the Limited Stay Permit and Permit Period thereunder shall be terminated.

9. APPEALS

9.01 Persons Affected May Appeal

Any persons:

- (a) whose application to have his name entered in the Residency List pursuant to section 4.02 is refused by the Council, or
- (b) whose name is entered in the Reserve Residency List and whose Reserve residency rights have been revoked by the Residency Committee pursuant to section 8.01,

may appeal such decision to the Appeal Committee in accordance with this Part.

9.02 Notice of Appeal

An appeal of a decision of the Residency Committee pursuant to section 9.01 shall be commenced by leaving a written notice of appeal with the Band Registrar within 60 days of the date of the decision of the Residency Committee. Such notice of appeal

shall be displayed by the Band Registrar in the Band office for at least 30 days prior to the hearing of the appeal.

9.03 Referral to Appeal Committee

On receipt of a notice of appeal pursuant to this Part the Band Registrar shall immediately refer it to the Band Council which shall appoint an Appeal Committee in accordance with Part 11 hereof to consider the appeal.

9.04 Review of Decision

The Appeal Committee so appointed shall review the decision of the Residency Committee, the application and any other material submitted by the appellant. The appellant may attend and be heard at the hearing of the appeal by the Appeal Committee. The Appeal Committee may also consider such other matters as it in its discretion considers to be relevant and, in particular, they may rely upon their own judgement of what is in the best interest of the Band.

9.05 Appeal Committee Decision

After completing their review an Appeal Committee shall render a decision either upholding or reversing the Residency Committee's decision. The decision of a majority of an Appeal Committee is final and conclusive. The Band Registrar shall forthwith notify the appellant of the decision by mail and display a copy of it in the Band office for not less than 30 days. The name of the applicant or person whose name is deleted from the Residency List shall be entered in or deleted from the Residency List in accordance with the decision of the Appeal Committee.

10. RESIDENCY COMMITTEE

10.01 Appointment

If the Council determines in its discretion that the Reserve residency rights of any person should be reviewed, the Council shall appoint a Residency Committee which shall consist of the entire Council who shall have the duties and functions set out in this By-law.

10.2 Chairman

A Residency Committee may elect from among its members a chairman of its meetings. If no such chairman is elected, or at any meeting any chairman is not present within thirty (30) minutes after the time appointed for holding the meeting, the members of such Residency Committee may choose one of their number to be chairman of the meeting.

10.03 Quorum

The quorum necessary for the transaction of business at a meeting of a Residency Committee shall be a majority of such Residency Committee. A meeting of a Residency Committee at which a quorum is present shall be competent to exercise all or any of the authorities, powers and discretions for the time being vested in or exercisable by such Residency Committee.

10.04 Procedure

Subject only to the provisions of Part 8 hereof and such regulations and procedures as may be established by the Council for Residency Committees, a Residency Committee may meet, adjourn and consider and deal with reviews referred to it by the Council according to such procedure and at such time or times as it shall determine in its discretion and,

without limiting the generality of the foregoing, may conduct such interviews or require such evidence as it shall determine in its discretion.

10.05 Questions Determined by Majority of Votes

Questions arising at any meeting of a Residency Committee shall be determined by a majority of votes of the members of such Residency Committee present and in the case of an equality of votes, the Chairman shall have a second or casting vote.

10.06 Bias

In selecting members for any Residency Committee, Council will not, to the extent practicable, appoint members of the Council who have or may reasonably be apprehended to have a bias or conflict of interest in connection with the Reserve residency rights review in respect of which such Residency Committee is appointed.

10.07 Discretionary Powers

Each discretionary power conferred upon a Residency Committee under this By-law shall be exercised by such Residency Committee in good faith, without discrimination on the basis of sex and in accordance with its judgment of the best interests and welfare of the Band.

11. APPEAL COMMITTEE

11.01 Appointment

On receipt of a notice of appeal pursuant to section 9.02 the Band Council shall appoint an Appeal Committee consisting of six Heiltsuk Hereditary Chiefs who consent to

serving on such Appeal Committee, which shall have the duties and functions set out in this By-law.

11.02 Chairman

An Appeal Committee may elect a chairman of its meetings. If no such chairman is elected, or if at any meeting the chairman is not present within thirty (30) minutes after the time appointed for holding the meeting the members of such Appeal Committee may choose one of their number to be chairman of the meeting.

11.03 Quorum

The quorum necessary for the transaction for business at a meeting of an Appeal Committee shall be a majority of the members of such Appeal Committee. A meeting of an Appeal Committee at which a quorum is present shall be competent to exercise all or any of the authorities, powers and discretions for the time being vested in or exercisable by such Appeal Committee.

11.04 Procedures

Subject to the provisions of Part 9, an Appeal Committee may meet, adjourn and consider and deal with appeals referred to it by the Band Council according to such procedure and at such time or times as it shall determine in its discretion and without detracting from the generality of the foregoing, may conduct such interviews and require such evidence as it shall require in its discretion.

An appeal shall not constitute a new hearing or a re-hearing but shall be heard and determined on the basis of the transcripts of the meeting (the "Meeting") held by the Residency Committee and all documents considered by the Residency Committee,

unless the Appeal Committee admits new evidence to supplement the evidence at the Meeting, which decision shall be in the sole discretion of the Appeal Committee.

11.05 Questions Determined by Majority of Votes

Questions arising at any meeting of an Appeal Committee shall be determined by a majority of votes of the members present and, in the case of **an equality** of votes, the chairman shall have a second or casting vote.

11.06 Bias

In selecting members for an Appeal Committee, the Council will not, to the extent practicable, appoint to the Appeal Committee persons who have or may reasonably be apprehended to have a bias or conflict of interest in connection with the appeal in respect to which the Appeal Committee is appointed.

11.07 Discretionary Powers

Each discretionary power conferred upon an Appeal Committee under this By-law shall be exercised by such Appeal Committee in good faith, without discrimination on the basis of sex and in accordance with its judgment of the best interests and welfare of the Band.

12. BAND REGISTRAR

12.01 Duties of Band Registrar

The Council shall appoint a Band Registrar who shall be responsible for maintaining the Residency List and Register of Limited Stay Permits and making additions and


deletions thereto in accordance with the provisions of this By-law and who shall have such other functions and duties as are provided in this By-law.


13. PENALTIES

13.01 Any person residing on the Reserve in violation of this By-law, or assisting a person in residing on the Reserve in violation of this By-law, commits an offence and is liable on summary conviction to a fine not exceeding \$1,000.00 or imprisonment for a term not exceeding 30 days, or both.

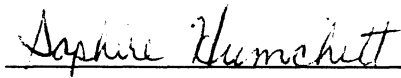
By-law 20, as amended pursuant to By-law 20 A, was approved and passed at a duly convened meeting of the Council of the Heiltsuk Band of Indians this 20 day of November 1997.


Voting in favour of the By-law are the following members of the Council:



CHIEF COUNCILLOR


Councillor



Councillor


Councillor

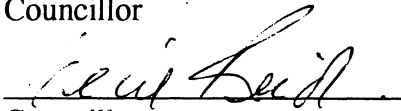

Councillor


Councillor

Councillor


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Councillor

Councillor

being the majority of those members of the Council of the Heiltsuk Indian Band present at the aforesaid meeting of the Council.

The quorum of the Council is 5 members.

Number of members of the Council present at the meeting: 8.

I, Arlene Wilson, Chief Councillor of the Heiltsuk Band, do hereby certify that a true copy of the foregoing by-law was mailed to the Minister of Indian Affairs and Northern Development pursuant to subsection 82(1) of the Indian Act this 21st day of November, 1997.

Sheila Bolton
Witness

Arlene Wilson
Chief Councillor

SHEILA BOLTON
Commissioner For Taking
Affidavits For BC # 95-040