

# Tsartlip Residency and Community Protection Bylaw

Dated: July 22, 2024

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**WHEREAS** Tsartlip has an inherent right of self-government that emanates from our people, culture, and land and is recognized and affirmed by s. 35(1) of the *Constitution Act, 1982*;

**AND WHEREAS** Tsartlip's inherent right of self-government includes jurisdiction over its reserve lands and citizenship, and the right to determine conditions of residency on its reserve lands, including when any right or privilege of residency can be revoked;

**AND WHEREAS** Tsartlip, since time immemorial, has had traditional laws and teachings regarding the protection of Members, residents, and community, including a custom of banishment where an individual has, through certain actions, lost the trust of the community;

**AND WHEREAS** the *United Nations Declaration on the Rights of Indigenous Peoples* (the "UNDRIP") provides that in exercising their right to self-determination, Indigenous peoples have the right to autonomy or self-government in matters relating to their internal and local affairs (Article 4), and that they have the right to promote, develop and maintain their own juridical systems (Article 34), and that Indigenous peoples have the right to determine the responsibilities of individuals to their communities (Article 35);

**AND WHEREAS** Section 81(1) of the *Indian Act*, R.S.C. 1985, c. I-5, as amended (the "Indian Act") authorizes the Band Council to enact by-laws for the removal and punishment of persons trespassing on reserve lands or frequenting reserve lands for prohibited purposes, for the residence of Members and other persons on reserves and for the observance of law and order and for the prevention of disorderly conduct and nuisance on reserve lands;

**AND WHEREAS** Council has an obligation to protect our Members and Residents, particularly Elders, children, and other vulnerable community members, from acts or threats of acts that may cause harm or diminish the health and safety of our community;

**AND WHEREAS** Council seeks to maintain and protect the safety, health and order of the Tsartlip community;

**AND WHEREAS** it is deemed expedient and in the interest of the Tsartlip to pass this by-law;

**AND WHEREAS** nothing in this by-law may be interpreted as abrogating or derogating from the Indigenous or treaty rights of Tsartlip;

**NOW THEREFORE** Council hereby makes the following by-law:

**1      SHORT TITLE**

1.1      This by-law may be cited as the "*Tsartlip First Nation Residency and Community Protection By-law.*"

## 2 INTERPRETATION

2.1 In this by-law:

**"Affected Resident"** means a Resident who is the subject of a complaint under Part 7 of this by-law;

**"Appeals Administrator"** means the person appointed by Council under section 11.1;

**"Appellant"** means a person who submits an appeal under section 11 of this by-law;

**"Child"** means a person under the age of 19;

**"Complainant"** means a person who submits a complaint under section 7.1 of this by-law;

**"Complaints Administrator"** means the person appointed by Council under section 4.1, or, if Council has not appointed such a person, means the Tsartlip Administrator;

**"Conflict of Interest"** means any interest, relationship, association, or activity that is incompatible with a person's roles and responsibilities under this by-law, or that can compromise that person's impartiality. A Conflict of Interest may be actual or perceived and may be pecuniary or non-pecuniary in nature;

**"Council"** means the duly elected Chief and Council of Tsartlip;

**"Councillors"** means all members of Council, including the Chief, and **"Councillor"** means any single member of Council, including the Chief;

**"Dependent"** means a Child or a person who is over 19 years of age and is under the care of another person due to disability or illness;

**"Dwelling"** means any house, apartment, or mobile home, including a room located therein, or any similar lodging, whether condemned or suitable for habitation;

**"Family Violence"** means any of the following acts or omissions committed by a Spouse against another Spouse, any Child or Dependent in the charge of either Spouse, or any other person who habitually resides in the family home:

- a) an intentional application of force without lawful authority or consent, excluding any act committed in self-defence;
- b) an intentional or reckless act or omission that causes a reasonable fear of bodily harm or damage to property;
- c) sexual assault, sexual abuse, or the threat of either;

- d) forcible confinement without lawful authority; or
- e) criminal harassment;

**"Indictable Offence"** means an indictable offence contrary to the *Criminal Code of Canada* or any other Act of Parliament and includes any hybrid offences that may proceed by way of either indictment or summary conviction, whether or not the Crown counsel decides to proceed by way of indictment or summary conviction;

**"Member"** means a person whose name appears or is entitled to have their name appear on Tsartlip's band membership list or, if Tsartlip develops membership rules, any person who holds or is entitled to hold membership under those rules;

**"Officer"** means:

- a) any person designated in writing by Council to enforce this by-law;
- b) RCMP officers; and
- c) any other person charged by Canada or British Columbia with the duty to preserve and maintain public peace in accordance with their laws;

**"Reserves"** means:

- a) South Saanich Indian Reserve No. 1;
- b) Mayne Island Indian Reserve No 6;
- c) Senanus Island Indian Reserve No. 10; and
- d) any lands which have been set apart as "reserves" within the meaning of the Indian Act for the use and benefit of Tsartlip, other than Goldstream Indian Reserve No. 13

and **"Reserve"** means any of the Reserves, as the context requires.

**"Residency Tribunal"** means the Residency Tribunal established under 5.1 of this by-law;

**"Resident"** means a person residing on a Reserve and includes persons who are temporarily absent from that Reserve because of schooling, work, travel, or similar purposes. For greater certainty, a person who has been removed from a Reserve on an interim basis in accordance with this by-law is deemed to be a Resident;

**"Spouse"** means a person who is married to (either via legal or customary marriage), or who co-habits in a relationship of some permanence and commitment, akin to a conjugal relationship, with another person;

**“Tribunal Member”** means a member of the Residency Tribunal;

**“Tsartlip Administrator”** means the senior-most employee of the Tsartlip administration, whether the title of the position is “Administrator” or otherwise, and, for greater certainty, including any acting Administrator; and

**“Tsartlip”** means the Tsartlip First Nation;

**“Designated Crime”** means any sexual offence listed in Part V of the *Criminal Code*, any offence against the person listed in sections 219-286 of Part VIII of the *Criminal Code*, any offence against property listed in sections 343-344 of Part IX of the *Criminal Code*, and any offence listed in section 85(1) of Part III of the *Criminal Code*.

### **3 APPLICATION**

3.1 This by-law applies to the Reserves.

3.2 This by-law applies to all persons on the Reserves, except:

(a) A Child who is a Member; and

(b) A Child who is not a Member but is under the age of 16.

3.3 If there is any inconsistency between previously enacted Tsartlip by-laws under section 81 of the *Indian Act*, this by-law prevails to the extent of the inconsistency.

### **4 RESPONSIBILITIES OF THE COMPLAINTS ADMINISTRATOR**

4.1 Council shall appoint a Complaints Administrator, who is responsible for:

(a) investigating complaints against Residents in accordance with section 7.3; and

(b) unless otherwise directed by Council by Resolution, presenting evidence and making submissions on behalf of Tsartlip during hearings in accordance with sections 8.8(a), 10.4(a), and 11.11(b), as applicable.

4.2 If Council does not appoint a Complaints Administrator, then the Tsartlip Administrator shall be the Complaints Administrator.

4.3 In fulfilling their roles and responsibilities under this by-law, including with respect to any hearings under Parts 8 and 10, the Complaints Administrator must:

(a) comply with this by-law and any other Tsartlip law, policy, or procedure;

(b) act in a fair, impartial, and objective manner;

- (c) ensure that their mandate is carried out with integrity and dignity; and
  - (d) avoid any Conflict of Interest.
- 4.4 The Complaints Administrator shall, at the first available opportunity, advise Council if they believe they are in a Conflict of Interest with respect to a matter addressed under this by-law and recuse themselves from the matter in question.
- 4.5 Where the Complaints Administrator recuses themselves under section 4.4, Council will appoint another person to fulfill the role of Complaints Administrator in respect of the matter in which the Complaints Administrator is in a Conflict of Interest.

## **5 RESIDENCY TRIBUNAL**

- 5.1 The Residency Tribunal is established as an independent institution of Tsartlip and shall:
- (a) determine whether to hold a hearing respecting any complaint made under section 7.1;
  - (b) conduct hearings and make determinations in respect any complaint made under section 7.1; and
  - (c) investigate and make determinations on re-integration applications in accordance with Part 12 of this by-law
- 5.2 The Residency Tribunal shall be composed at all times of no fewer than three (3) Tribunal Members, all of whom shall be Members.
- 5.3 Tribunal Members may be appointed and removed by Resolution of Council.
- 5.4 Council may appoint alternate Tribunal Members to serve in the event one (1) or more Tribunal Members are unable to participate in a matter dealt with under this by-law.
- 5.5 A Tribunal Member may resign in writing to Council, and the resignation of that Tribunal Member is effective as of the date indicated in that resignation.
- 5.6 Where a Tribunal Member resigns or is removed from the Residency Tribunal, Council will, at the first reasonable opportunity, appoint a replacement Tribunal Member by Resolution.
- 5.7 Unless otherwise specified by Council in the appointing Resolution, the term of office for each Tribunal Member shall be from the date of appointment until that Tribunal Member resigns or is removed by Council.

- 5.8 A Tribunal Member must not participate in any matter dealt with under this by-law if by doing so that Tribunal Member is in a Conflict of Interest, and in that event, the Tribunal Member must, disclose the Conflict of Interest to the Residency Tribunal at the first available opportunity, and recuse themselves from the matter in question.
- 5.9 The Residency Tribunal may establish additional rules governing the conduct of its procedures and hearings, provided such additional rules are not inconsistent with this by-law.

## **6 GROUNDS FOR REMOVAL FROM THE RESERVES**

- 6.1 A Resident may be ordered to leave one or more Reserves and, subject to Part 17, be prohibited from entering one or more Reserves on a temporary basis where there are reasonable and probable grounds to believe that:
- (a) the Resident has committed an Indictable Offence, and
    - (i) the Resident has been or will be charged with committing an Indictable Offence;
    - (ii) the Resident's charges have not yet been brought to trial or otherwise resolved; and
    - (iii) the presence of the Resident on one or more of the Reserves presents a danger to or is likely to endanger the life or safety of one or more persons present on one or more Reserves or poses a risk of damage to property on one or more Reserves; or
  - (b) the Resident has committed Family Violence, and
    - (i) the presence of the Resident on one or more Reserves presents or is likely to present an immediate and imminent danger to any person who is at risk of harm or property that is at risk of damage; and
    - (ii) the seriousness or urgency of the situation requires the immediate protection of a person who is at risk of harm or property that is at risk of damage; or
  - (c) the Resident, within any period of two (2) years while residing on a Reserve, has been found by Tsartlip to have committed more than five (5) breaches of a duly enacted Tsartlip by-law or law.
- 6.2 For greater certainty, an order under section 6.1 may be made regardless of whether the Resident has been or will be charged with committing an Indictable Offence and whether or not an application for an emergency protection order has been or will be made under the *Family Homes on Reserves and Matrimonial Interests or Rights Act*.



- 6.3 A Resident may be ordered to leave one or more Reserves and, subject to Part 17, be prohibited from entering one or more Reserves on a temporary or permanent basis where the presence of the Resident on said Reserve or Reserves presents or is likely to present a danger to the health or safety of the Tsartlip community and:
- (a) the Resident has been convicted of an Indictable Offence for which a pardon has not been granted, and which offence has endangered the life or safety of one or more persons; or
  - (b) the Resident, within any period of two (2) years while residing on a Reserve, has been convicted of two (2) or more criminal offences against the person or property of another person, for which a pardon has not been granted.

## **7 COMPLAINTS - INITIAL REVIEW AND INVESTIGATION**

- 7.1 Any person may bring a complaint against a Resident to the Complaints Administrator on the basis that the grounds for removal from the Reserve under sections 6.1, 6.3 or 10.1 apply to that Resident.
- 7.2 The Complaints Administrator shall be responsible for receiving any complaints under section 7.1 and will open a file in respect of the complaint.
- 7.3 The Complaints Administrator shall investigate to determine whether a complaint is credible and could reasonably meet the grounds for interim or permanent removal from the Reserves under sections 6.1, 6.3 or 10.1, which investigation may include, but is not limited to:
- (a) contacting the Affected Resident or other parties who may have relevant knowledge about the complaint;
  - (b) consulting with law enforcement or other agencies; and
  - (c) examining the Affected Resident's background and record, including any previous complaints made against the Affected Resident which have been kept on file pursuant to section 7.9.
- 7.4 If, after investigating, the Complaints Administrator determines that the complaint was clearly incorrect, frivolous, vexatious, or submitted in bad faith, the Complaints Administrator will dismiss the complaint, and provide written notification of the dismissal to the person who submitted the complaint, with or without reasons.

- 7.5 If, after investigating, the Complaints Administrator determines that a complaint against a Resident is credible and could reasonably meet the criteria for interim or permanent removal from the Reserves under sections 6.1 or 6.3 or 10.1, the Complaints Administrator shall provide a written report to the Residency Tribunal recommending that the Residency Tribunal:
- (a) hold a hearing pursuant to Part 8; or
  - (b) where the circumstances as set out in section 10.1 appear to exist, hold a special emergency hearing pursuant to Part 10.
- 7.6 Except to the extent reasonably necessary to properly investigate the complaint, during the investigation process, the Complaints Administrator shall keep the complaint confidential.
- 7.7 Where the Residency Tribunal receives a report from the Complaints Administrator under section 7.5, it may, by order:
- (a) hold a hearing pursuant to Part 8;
  - (b) decline to hold a hearing; or
  - (c) where circumstances warrant, hold a special emergency hearing pursuant to Part 10.
- 7.8 If the Residency Tribunal declines to order a hearing under section 7.7(b), the Residency Tribunal shall close the complaint and notify the Complainant and the Affected Resident that the complaint has been closed.
- 7.9 If the Residency Tribunal closes a complaint under section 7.8, the complaint and report of the Complaints Administrator will be kept on file at the Tsartlip administration office for five (5) years after the date that the Residency Tribunal closed the complaint.
- 7.10 Only the Residency Tribunal, the Complaints Administrator, and Council shall have access to any record kept on file under section 7.9.

## **8 HEARING**

- 8.1 Following the issuance of an order to hold a hearing pursuant to section 7.7(a), the Residency Tribunal shall hold a hearing as soon as is reasonably practicable.
- 8.2 Notwithstanding section 8.1, the Residency Tribunal may, in its sole discretion, grant reasonable adjournments of the hearing at the request of the Affected Resident, the Complaints Administrator, or on its own initiative.

- 8.3 At least fourteen (14) days prior to a hearing under section 8.1, the Complaints Administrator shall ensure that:
- (a) the Affected Resident is personally served with a written notice, setting out:
    - (i) the date, time, and place of the hearing;
    - (ii) that the Affected Resident has a right to present written and oral submissions to the Residency Tribunal and to participate fully in the hearing, including to have submissions made on their behalf; and
  - (b) a copy of the notice to the Affected Resident is posted publicly in the Tsartlip administration building.
- 8.4 If it is impractical for the Affected Resident to be served by personal service, the Complaints Administrator may serve the Affected Resident with a copy of the written notice referred to under section 8.3(a) by:
- (a) posting a copy of the notice on the front door of the known Dwelling of the Affected Resident, such notice which shall be deemed to be served after 24 hours of the time of posting; or
  - (b) mailing a copy of the notice by registered mail to the known Dwelling of the Affected Resident, such notice which shall be deemed to be served one (1) week later on the same day of the week as the day of mailing.
- 8.5 If an Affected Resident is incarcerated, service of the written notice referred to under section 8.3(a) will be deemed sufficient if it is sent to the attention of the Affected Resident at the applicable correctional facility, such notice shall be deemed to be served one (1) week later on the same day of the week as the day of mailing.
- 8.6 Unless the Complaints Administrator recuses themselves under section 4.4, or Council otherwise directs by Resolution, the Complaints Administrator will be responsible for presenting evidence and making submissions on behalf of Tsartlip in respect of the grounds for removal from the Reserve as set out in sections 6.1 or 6.3.
- 8.7 Where Council appoints a person other than the Complaints Administrator to present evidence and make submissions on behalf of Tsartlip, the responsibilities of the Complaints Administrator as set out in this by-law shall apply to that person for the purposes of the hearing.

8.8 At the hearing, the Residency Tribunal:

- (a) shall provide the Affected Resident and the Complaints Administrator an opportunity to present evidence and to make oral or written submissions, or both; and
- (b) may, in its discretion, and acting reasonably, provide any Residents, or other persons present at the hearing, with an opportunity to be heard insofar as time and circumstances reasonably permit.

## **9 DECISION**

9.1 As soon as is reasonably practicable after a hearing is held pursuant to section 8.1, the Residency Tribunal shall meet in private to consider the evidence and submissions presented at the hearing, and shall determine whether, in the opinion of the Residency Tribunal, the relevant grounds in section 6.1 or 6.3 are established.

9.2 Where the Residency Tribunal conducts a hearing under section 8.1 that involves grounds for removal listed in section 6.1, it shall dispose of the matter as follows:

- (a) If it is satisfied, on a balance of probabilities that the grounds for removal in section 6.1 exist, and the factors set out in section 9.6 weigh in favour of issuing a removal order, by issuing an order removing the Affected Resident from any or all of the Reserves and, subject to Part 17, prohibiting the Affected Resident from entering any or all of the Reserves on a temporary basis, pending the final resolution of the charges, if any; or
- (b) If it is not satisfied, on a balance of probabilities, that the grounds for removal exist, or the factors set out in section 9.6 weigh against issuing a removal order, or, in the case of an Affected Resident who is a Member, where there are reasonable and available alternatives to a removal order as set out in section 9.4, by dismissing the complaint.

9.3 Where the Residency Tribunal conducts a hearing under section 8.1 that involves grounds for removal listed in section 6.3, it shall dispose of the matter as follows:

- (a) If it is satisfied, on a balance of probabilities, that the grounds for removal listed in section 6.3 exist, and the factors set out in section 9.6 weigh in favour of issuing a removal order, by issuing an order
  - (i) removing the Affected Resident from any or all of the Reserves and, subject to Part 17, prohibiting the Affected Resident from entering any or all of the Reserves, either permanently or for a defined period; or

- (ii) extending any defined period for which the Affected Resident is prohibited from entering any or all of the Reserves; or
  - (b) If it is not satisfied on a balance of probabilities that the grounds for removal exist, or, the factors set out in section 9.6 weigh against issuing a removal order, or, in the case of an Affected Resident who is a Member, where there are reasonable and available alternatives to a removal order as set out in section 9.4, by dismissing the complaint.
- 9.4 The Residency Tribunal shall not issue an order removing an Affected Resident who is a Member from the Reserve where it is satisfied that there are reasonable and available alternatives that would allow the Member to continue to reside on the Reserve and which would preserve the safety and security of the Tsartlip community.
- 9.5 If the Affected Resident holds a certificate of possession for lands on any of the Reserves, any order of the Residency Tribunal must allow the Affected Resident to enter onto and occupy the Affected Resident's certificate of possession lands.
- 9.6 The Residency Tribunal shall consider the following factors when making an order under section 9.2, 9.3, or 10.5:
- (a) whether the Affected Resident has family members who are resident on a Reserve, and how removing the Affected Resident from one or more of the Reserves would affect those family members;
  - (b) the best interests of any Child that would be affected by the removal;
  - (c) if the Affected Resident is a Member, their degree of connection to the Tsartlip community and Tsartlip culture;
  - (d) if the Affected Resident is a Member, other personal circumstances or compassionate considerations, including the degree of reliance of the Affected Resident on Tsartlip programs and services;
  - (e) the history and nature of Family Violence, if any; and
  - (f) whether complaints have previously been made against the Affected Resident under this by-law or the Affected Resident has been previously removed from any or all of the Reserves under this by-law.
- 9.7 In disposing of a hearing under sections 9.2 or 9.3, the Residency Tribunal may make such further or other orders in respect of the Affected Resident's residency as the Residency Tribunal deems appropriate and necessary, including in respect of:
- (a) ensuring the health and safety of the community; or

- (b) facilitating the Affected Resident's access to Tsartlip services or programs, if applicable; and
  - (c) Any conditions the Affected Resident needs to meet in order that an order under section 9.2(a), 9.3(a) or 10.5(a) be cancelled.
- 9.8 Orders made by the Residency Tribunal pursuant to section 9.2 or 9.3 shall be in writing and incorporate written reasons.
- 9.9 Where the Residency Tribunal issues an order pursuant to sub-section 9.2(a), such order shall expire:
- (a) on the date the charges result in an acquittal or stay of proceedings after trial and any resulting appeals;
  - (b) 30 days from the date the charges result in a conviction after trial and any resulting appeals and where no further order has been issued by the Residency Tribunal pursuant to section 7.7 in respect of the Affected Resident; or
  - (c) where the charges result in a conviction and the Residency Tribunal issues an order pursuant to section 7.7 in respect of the Affected Resident, on the date set out in that order.
- 9.10 The Residency Tribunal shall send copies of an order issued pursuant to section 9.2 or 9.3 to the RCMP, the Complaints Administrator, and the Affected Resident, and shall post the order publicly in a conspicuous location in the Tsartlip administration building for one (1) month following the date of the order.
- 9.11 The Complaints Administrator and may send a copy of an order issued pursuant to section 9.2 or 9.3 to the owner of any premises where the Affected Resident was last known to reside.

## **10 SPECIAL EMERGENCY HEARINGS**

- 10.1 Upon receipt of a report from the Complaints Administrator recommending a special emergency hearing under section 7.5(b), or on the Residency Tribunal or Council's own initiative, the Residency Tribunal may, by order, hold a special emergency hearing where the following grounds for removal exist:
- (a) a Resident has been charged with a Designated Crime; and
  - (b) that Resident's continued residence on any or all of the Reserves may put the safety and security of the community at risk.

- 10.2 At least forty-eight (48) hours prior to a special emergency hearing, the Complaints Administrator shall ensure that:
- (a) the Affected Resident is personally served with a written notice setting out:
    - (i) the date, time, and place of the hearing;
    - (ii) a statement that the Affected Resident may appear at the hearing and make written or oral submissions in support of their position, or have submissions made on their behalf; and
  - (b) a copy of the written notice is posted in a conspicuous location in the Tsartlip administration building.
- 10.3 If it is impractical for the Affected Resident to be personally served as required by subsection 10.2(a), the Complaints Administrator may serve the Affected Resident with a copy of the written notice referred to under section 10.2 by posting a copy of the notice on the front door of the Affected Resident's known Dwelling, which shall be deemed to be served after 24 hours of being posted.
- 10.4 At a special emergency hearing, the Residency Tribunal:
- (a) shall provide the Affected Resident and the Complaints Administrator with an opportunity to present evidence and to make oral and written submissions, or both, in support of their position at the hearing; and
  - (b) may, but is not obligated to, provide any Resident present at the hearing with an opportunity to be heard.
- 10.5 After the conclusion of a special emergency hearing, the Residency Tribunal shall dispose of the matter as follows:
- (a) If it is satisfied, on a balance of probabilities, that the grounds for removal listed in section 10.1 exist, and the factors set out in section 9.6 weigh in favour of issuing a removal order, by issuing an order
    - (i) removing the Affected Resident from any or all of the Reserves and, subject to Part 17, prohibiting the Affected Resident from entering any or all of the Reserves, either permanently or for a defined period; or
    - (ii) extending any defined period for which the Affected Resident is prohibited from entering any or all of the Reserves; or

- (b) If it is not satisfied on a balance of probabilities that the grounds for removal exist, or, the factors set out in section 9.6 weigh against issuing a removal order, or, in the case of an Affected Resident who is a Member, where there are reasonable and available alternatives to a removal order as set out in section 9.4, by dismissing the complaint.
- 10.6 In disposing of a hearing under section 10.5, the Residency Tribunal may make such further or other orders in respect of the Affected Resident's residency as the Residency Tribunal deems appropriate and necessary, including in respect of:
  - (a) ensuring the health and safety of the community; or
  - (b) if the Affected Resident is a Member, facilitating the Affected Resident's access to Tsartlip services or programs.
- 10.7 An order made by the Residency Tribunal pursuant to section 10.5 shall be in writing and incorporate written reasons.
- 10.8 Within five (5) days after the Residency Tribunal issues an order in accordance with section 10.5, the Complaints Administrator shall notify the Affected Resident of the Residency Tribunal's decision by providing them with a copy of the order by any of the means of delivery listed in sections 8.3 and 8.4.
- 10.9 As soon as is reasonably practicable after the Residency Tribunal issues an order pursuant to section 10.5, the Complaints Administrator shall provide a copy of the order to the RCMP and post the order publicly in a conspicuous location in the Tsartlip administration building for one (1) month following the date of the order.
- 10.10 An order issued pursuant to section 10.5 shall expire:
  - (a) on the date the charges result in an acquittal or stay of proceedings after trial and any resulting appeals;
  - (b) 30 days from the date the charges result in a conviction after trial and any resulting appeals and where no further order has been issued by the Residency Tribunal pursuant to section 7.7 in respect of the Affected Resident; or
  - (c) where the charges result in a conviction and the Residency Tribunal issues an order pursuant to section 7.7 in respect of the Affected Resident, the date set out in that order.

## **11 APPEALS**

- 11.1 Council shall, by Resolution, appoint an Appeals Administrator who is responsible for receiving and administering appeals.



- 11.2 A Resident who is removed from any or all of the Reserves by a decision of the Residency Tribunal pursuant to sections 9.2(a), 9.3(a), 9.3(a)(ii), or 10.5 may appeal that decision to Council in accordance with this Part 11.
- 11.3 Notwithstanding any right to appeal under this Part, a decision of the Residency Tribunal under this by-law remains effective and in force until and unless set aside in accordance with subsection 11.12(a).
- 11.4 Subject to Part 17, if an order of the Residency Tribunal under this by-law has prohibited an Appellant from entering any or all of the Reserves, the Appellant must not attend on any such Reserves in which they are prohibited from entering unless and until they are directed to attend any appeal hearing, or are expressly permitted in advance by the Complaints Administrator to do so to deliver documents relevant to an appeal.
- 11.5 A person may only bring an appeal under this Part 11 on one or more of the following grounds:
- (a) there is a material change in circumstances which could have reasonably affected the outcome of the Residency Tribunal's decision under sections 9.2(a), 9.3(a), 9.3(a)(ii), or 10.5;
  - (b) the Residency Tribunal's decision contained a palpable and overriding error that was material to the outcome of its decision;
  - (c) the Residency Tribunal's decision was not made on the basis of the grounds for removal set out in section 6.1, 6.3, or 10.1 of this by-law; or
  - (d) the Residency Tribunal did not provide reasons for the decision, or the decision was otherwise procedurally unfair.
- 11.6 A notice of appeal shall:
- (a) be in writing;
  - (b) set out the grounds for the appeal pursuant to section 11.5, and the facts supporting those grounds;
  - (c) include the Appellant's address and contact information;
  - (d) be submitted to the Appeals Administrator within thirty (30) days from the date the Appellant was notified of the decision; and
  - (e) include any supporting documentation.

- 11.7 If, upon receipt of a notice of appeal, the Appeals Administrator determines that the notice of appeal does not reasonably identify the grounds of appeal set out in section 11.5, the Appeals Administrator may return the notice of appeal to the Appellant and request that the Appellant identify with clarity the grounds of appeal or otherwise provide such further information as requested by the Appeals Administrator.
- 11.8 The Appeals Administrator may summarily dismiss an appeal and inform the Appellant, in writing, that the appeal will not receive further consideration, where:
- (a) the appeal has no reasonable prospect of success;
  - (b) the appeal was not made within the prescribed timeframe in section 11.6(d); or
  - (c) the appeal is frivolous, vexatious, or made in bad faith.
- 11.9 If the Appeals Administrator does not dismiss the appeal pursuant to section 11.8, the Appeals Administrator shall, within thirty (30) days of receipt of a completed notice of appeal, submit a request to Council to have the appeal heard at a meeting of Council.
- 11.10 As soon as reasonably practicable following confirmation of a date to hear an appeal pursuant to section 11.9, the Appeals Administrator shall provide the Appellant with written notice of the time, date, and location of the appeal hearing.
- 11.11 At the appeal hearing, Council:
- (a) shall provide the Appellant with an opportunity to present evidence and to make oral or written submissions, or both, in support of their position at the hearing;
  - (b) shall provide the Complaints Administrator, or the person who presented evidence and made submissions on behalf of Tsartlip before the Residency Tribunal, as applicable, with an opportunity to be heard; and
  - (c) may, but is not obligated to, provide any Resident or other person present at the hearing with an opportunity to be heard.
- 11.12 After the conclusion of the appeal hearing, Council shall meet in private and decide whether, on a balance of probabilities, one or more grounds under section 11.5 exist to allow the appeal and shall:
- (a) allow the appeal, and set aside the Residency Tribunal's decision;
  - (b) dismiss the appeal and confirm the Residency Tribunal's decision; or
  - (c) vary the Residency Tribunal's decision and make any consequential orders Council deems appropriate.

- 11.13 Within five (5) days of the appeal hearing, Council shall notify the Appellant and the Residency Tribunal of its decision under section 11.12 in writing with accompanying reasons.
- 11.14 Within five (5) days of the appeal hearing, the Appeals Administrator shall post Council's decision, without reasons, in a conspicuous location in the Tsartlip administration building for one (1) month after the date of the Council decision.
- 11.15 A decision of Council under section 11.12 is final and binding and not subject to further appeal.

## **12 RE-INTEGRATION APPLICATION**

- 12.1 A Resident who is removed from any or all of the Reserves by a decision of the Residency Tribunal pursuant to sections 9.2(a), 9.3(a)(i), 9.3(a)(ii), or 10.5 may apply to the Complaints Administrator for cancellation of the removal order in accordance with this Part 12.
- 12.2 The Complaints Administrator is responsible for receiving any re-integration applications under section 12.1, and will open a file in respect of any application received.
- 12.3 A Resident who wishes to apply for cancellation of a removal order under section 12.1 may not do so until at least one (1) full calendar year from:
- (a) if no appeal was brought within the time permitted in section 11.6, the day the initial removal decision was delivered to the Resident; or
  - (b) if an appeal was brought, the day an appeal decision was delivered to the Resident under section 11.13.
- 12.4 In any application for cancellation of a removal order under section 12.1, the Affected Resident must demonstrate:
- (a) that the Resident no longer presents a risk to the life or safety of any persons present on any Reserve, or no longer poses a risk of damage to property on any Reserve;
  - (b) that the Resident has met any conditions issued by the Residency Tribunal under section 9.7(c), if applicable; and
  - (c) the steps the Resident has taken or will take to ameliorate or mitigate the grounds for which the Resident was issued the removal order, as the case may be.
- 12.5 The Complaints Administrator shall, within 7 days of receipt of a completed application pursuant to section 12.1, determine whether:

- (a) the prescribed amount of time has passed pursuant to section 12.3;
  - (b) the application is complete; and
  - (c) the application is either frivolous in nature or clearly unsubstantiated, and if so, dismiss the application in a written decision that provides the rationale for the Complaints Administrator's decision.
- 12.6 If the Complaints Administrator does not dismiss the application under section 12.5, then they will forward the application to the Residency Tribunal for consideration.
- 12.7 Upon receipt of an application pursuant to section 12.6, the Residency Tribunal will conduct an investigation as soon as is practical and in accordance with the rules of procedural fairness. During the investigation, the Residency Tribunal may:
- (a) contact the Resident or other parties who may have relevant knowledge about the complaint, including any victims of the Resident;
  - (b) if requested by the Resident, provide the Resident with an opportunity to make oral or written submissions;
  - (c) offer any victims in respect of the Resident's conduct the opportunity to provide a written statement for consideration by the Residency Tribunal in the re-integration application;
  - (d) consult with law enforcement or other agencies; and
  - (e) examine the Resident's background and record, including any previous complaints made against the Affected Resident which have been kept on file pursuant to section 7.9.
- 12.8 Within ten (10) days after completing an investigation under section 12.7, the Residency Tribunal will meet in private and decide whether, on a balance of probabilities, the grounds set out in section 12.4 are met and, if so, whether it is in the best interests of the Tsartlip community to allow the application, and
- (a) allow the application, and cancel the removal order;
  - (b) dismiss the application; or
  - (c) vary the initial removal order and make any consequential orders the Residency Tribunal deems appropriate.
- 12.9 A decision of the Residency Tribunal under section 12.8:
- (a) will be in writing,

- (b) will be delivered to the Resident, the Complaints Administrator and Council; and
- (c) is final and binding, and not subject to appeal.

12.10 A Resident who brings an application under section 12.1 may not do so more than once in a calendar year.

### **13 PERSONS NOT AFFECTED BY REMOVAL**

13.1 No removal of an Affected Resident from a Reserve or Reserves by a decision or order under this by-law shall affect any legal entitlement a Spouse, Child, or Dependent of that Resident may have to continue to reside on the Reserve.

### **14 REMOVAL OF NON-RESIDENTS**

14.1 Nothing in this by-law affects the rights, obligations, duties and procedures set out in the *Tsartlip First Nation Trespass By-law*.

### **15 EFFECTIVE TIME OF REMOVAL**

15.1 Where a Resident has been removed from a Reserve or Reserves under this by-law, the effective time of their removal is twenty-four (24) hours from the time that the decision is communicated to them.

### **16 MODE OF HEARINGS**

16.1 Any hearing held pursuant to this by-law may be conducted in person, by telephone, or by videoconference at the discretion of the entity adjudicating the hearing.

16.2 The Residential Tribunal may close any hearing to the public where, in the opinion of the Residency Tribunal:

- (a) a public hearing would present a potential health and safety risk to any person or persons; or
- (b) an individual's interest in the Residency Tribunal's decision outweighs the community's interest in open hearings.

### **17 VISITS**

17.1 Where a person has been removed from the Reserve under this by-law, that person may apply to the Complaints Administrator, in writing, for permission to visit the Reserve for the purposes of family visits, funerals, ceremonies, and other special occasions.

- 17.2 A person making an application under section 17.1 shall include in their application the date(s) upon which they propose to visit the Reserve, the purpose of their visit, where on the Reserve they plan to visit, and any additional information or submissions they want the Complaints Administrator to consider.
- 17.3 The Complaints Administrator shall use their best efforts to consider and determine applications pursuant to section 17.1 expeditiously and in advance of the proposed visitation dates.
- 17.4 The Complaints Administrator may consider and determine applications pursuant to section 17.1 based on the written application and is not required to hold a hearing into the matter.
- 17.5 A decision by the Complaints Administrator under this Part is final and not subject to appeal.

## **18 PERSONAL PROPERTY**

- 18.1 Unless the Residency Tribunal or Council orders to the contrary, a person removed from the Reserve under this by-law must remove all personal property which is of a moveable nature within 24 hours after the Residency Tribunal's decision is delivered to them.
- 18.2 Any personal property of an Affected Resident who is subject to a removal order which has not been removed within the time stipulated in section 18.1 becomes the property of Tsartlip, and is subject to disposal at Tsartlip's discretion, without further notice to the Affected Resident.

## **19 PENALTIES AND ENFORCEMENT**

- 19.1 Any person who fails or refuses to comply with a decision of the Residency Tribunal or Council under this by-law commits an offence.
- 19.2 Any person who contravenes any of the provisions of this by-law commits an offence and is liable on summary conviction to a fine not exceeding one thousand dollars (\$1,000.00) or to imprisonment for a term not exceeding thirty (30) days, or both.
- 19.3 Any Officer has full and sufficient authority to enforce this by-law, including the authority to arrest and/or forcibly remove persons from a Reserve who are subject to a removal order under this by-law, or who are otherwise not authorized to be present upon the Reserve.

## **20 ADDITIONAL POLICIES**

- 20.1 Council may make any additional policies or procedures in respect of this by-law that it deems necessary, providing that any such policies or procedures are consistent with this by-law.

## **21 JUDICIAL REVIEW**

- 21.1 On any application for judicial review in respect of a decision or resolution made pursuant to this by-law, the Court shall take notice of the decision-maker's specialized knowledge about Tsartlip's customary law, history, culture, values, and best interests.

## **22 SEVERABILITY**

- 22.1 Should a court determine that a provision of this by-law is invalid for any reason, the provision shall be severed from the by-law and the validity of the rest of the by-law shall not be affected.

## **23 IMMUNITY**

- 23.1 No action for damages lies or may be instituted against past or present Councillors, Tribunal Members, Tsartlip employees, Members, servants, or agents, or any Officer for:
- (a) anything said, done, or omitted to be said or done by such a person in the performance or intended performance of such person's duties or the exercise of that person's authority under this by-law; or
  - (b) any alleged neglect or default in the performance or intended performance of such person's duty or the exercise of such person's authority under this by-law.
- 23.2 Past and present Councillors, Tribunal Members, and Tsartlip employees, Members, servants, and agents are not liable for any damages or other loss, including economic loss, sustained by any Person or to the property of any Person as a result of neglect or failure, for any reason, to discover or detect any contravention of this by-law or any other Tsartlip by-law, or from the neglect or failure, for any reason or in any manner, to enforce this by-law or any other Tsartlip by-law.
- 23.3 This by-law does not create any duty of care whatsoever on the part of Tsartlip or its elected officials, officers, employees, or agents in respect of enforcement or failure to enforce this by-law. Neither the failure to administer or enforce, nor the incomplete or inadequate administration or enforcement of this by-law or inspections made by Tsartlip staff, agents, or contractors gives rise to a cause of action in favour of any Person.

23.4 Nothing in this Part of the by-law provides a defence where past or present Councillors, Tribunal Members, Tsartlip employees, Members, servants, or agents, or any Officer are guilty of dishonesty, gross negligence, malicious or wilful misconduct, or where the cause of action is in defamation.

**24 AMENDMENTS**

24.1 This by-law may only be amended by Resolution at a duly convened Council meeting.

**25 REVIEW**

25.1 This by-law and proceedings taken under it shall be reviewed annually, or so often as Council may direct, by persons appointed by Council for this purpose, and the product of such reviews shall be laid before Council and made available to any Resident or Member of Tsartlip upon request.

**26 ENACTMENT**

**THIS BY-LAW IS HEREBY** enacted at a duly convened meeting of the Council of Tsartlip this 22<sup>nd</sup> day of July, 2024.

The quorum of Council is five (5) Councillors.

 _____	 _____	
Councillor–Gordon Elliott Ellsworth	Chief Don Tom	
 _____	 _____	 _____
Councillor – Joe Seward	Councillor –Lawrence Bartleman	Councillor – Verna
 _____	 _____	 _____
Councillor – Phillip Tom	Councillor – Phillip Tom	Councillor – Simon Smith, Jr.
 _____	 _____	 _____
Councillor – Jeanine Cooper	Councillor – Curtis Olsen	Councillor – Howard Morris



SAMPLE

**APPENDIX "A" - RESIDENCY TRIBUNAL OATH OF OFFICE**

I \_\_\_\_\_ [*insert name of Residency Tribunal Member*], swear/affirm that:

1. I have read and understood the *Tsartlip Residency and Community Protection By-law*.
2. I will faithfully, truly, and impartially, without fear or favour and to the best of my judgment, skill, and ability, carry out my duties as a member of the Tsartlip First Nation Residency Tribunal in accordance with *Tsartlip Residency and Community Protection By-law*;
3. I will not, except in the discharge of my duties, disclose to any person any of the information or other matters brought before the Residency Tribunal;
4. I will avoid any actual, potential, or apparent Conflict of Interest, as that term is defined in the *Tsartlip Residency and Community Protection By-law*, and I will immediately recuse myself from participating in any matters where I have any such Conflict of Interest; and
5. I will be accountable for adhering to this oath to the best of my knowledge and ability for the duration of my term in office.

Sworn/affirmed before me, at \_\_\_\_\_ )

\_\_\_\_\_ [*city*], \_\_\_\_\_ [*province*], )

on \_\_\_\_\_, 20\_\_\_\_ [*date*]. )

)

)

)

)

)

\_\_\_\_\_  
Printed Name of Person Administering Oath )

)

)

)

)

\_\_\_\_\_  
Signature of Person Administering Oath

\_\_\_\_\_  
Signature of Residency Tribunal Member

**APPENDIX "B" – TEMPLATE RESIDENCY TRIBUNAL ORDER (HEARING)**

Order No. 20\_\_/\_\_\_\_

*Pursuant to section 7.7 of the Tsartlip Residency and Community Protection By-law*

**WHEREAS:**

- A. On [date] a complaint (the "**Complaint**") was submitted to the Complaints Administrator regarding [details of complaint].
- B. On [date] the Complaints Administrator forwarded the complaint and corresponding report (the "**Report**") to the Tsartlip Residency Tribunal (the "**Tribunal**")
- C. The Board has reviewed the Complaint and the Report and has determined that a hearing respecting the complaint will be held pursuant to [Part 8 (regular hearing) OR Part 10 (emergency hearing)]

**THE BOARD THEREFORE ORDERS THAT:**

- 1. A hearing will be held respecting the complaint pursuant to [Part 8 (regular hearing) OR Part 10 (emergency hearing)].
- 2. The Complaints Administrator forthwith provide the Resident(s) concerned with notice of the hearing required under this by-law.
- 3. The Complaints Administrator forthwith post a copy of the notice to the Affected Resident in the Tsartlip administration building.

\_\_\_\_\_  
[Tribunal Member]

\_\_\_\_\_  
[Tribunal Member]

\_\_\_\_\_  
[Tribunal Member]

Date:\_\_\_\_\_

**APPENDIX “C” – TEMPLATE RESIDENCY TRIBUNAL ORDER (REMOVAL FROM RESERVE DECISION)**

Order No. 20\_\_\_/\_\_\_

*Pursuant to section [9.2 or 9.3 (regular hearing) OR 10.5 (emergency hearing)] of the Tsartlip Residency and Community Protection By-law*

**WHEREAS:**

- A. On [date] a complaint (the “**Complaint**”) was submitted to the Complaints Administrator regarding [details of complaint].
- B. On [date] the Complaints Administrator forwarded the complaint and corresponding report (the “**Report**”) to the Tsartlip Residency Tribunal (the “**Tribunal**”).
- C. The Board has reviewed the Complaint and the Report and has determined that a hearing respecting the complaint will be held pursuant to [Part 8 (regular hearing) OR Part 10 (emergency hearing)] (the “**Hearing**”).
- D. On [date] the Resident was served with notice of the Hearing.
- E. On [date] the Hearing was held respecting the Complaint.
- F. After the Hearing, the Board met in private to consider the evidence and submissions presented at the Hearing, and determine whether, in the opinion of the Board, the relevant grounds for removal from the Reserve in section 6.1 or 6.3 of the by-law were established.
- G. The Board has determined that grounds for removal from the Reserve in section [6.1 OR 6.3] [are/are not] established.
- H. Pursuant to section 8.4 of the By-law, an Order made by the Board pursuant to sections 9.2, 9.3, or 10.5 shall be in writing and incorporate written reasons
- I. In coming to its determination, the Board has relied on and considered the following:
  - a. [insert written reasons for decision]
  - b. [...]
  - c. [...]

**THE BOARD THEREFORE ORDERS THAT:**

- 1. [insert details with respect to removal or declining to remove the Resident.]

2. [If the removal is temporary, enter the time period here. If the removal is pursuant to grounds in section 6.1 and the Resident is being removed under section 9.2(a), make sure to specify when prohibition on entering the reserve will end – see section 9.9]

\_\_\_\_\_  
[Tribunal Member]

\_\_\_\_\_  
[Tribunal Member]

\_\_\_\_\_  
[Tribunal Member]

Date: \_\_\_\_\_