

Westbank First Nation

Constitution

Summary

April 11th 2003

Part 1 Principles

The principles set the tone for the Constitution and governance at Westbank. They describe in general terms the vision for Westbank and can be used to interpret the Constitution. The principles include statements about Westbank's relationship with the Okanagan Nation, the acknowledgement that Westbank shares aboriginal rights and title. This Part identifies the objective of Westbank to protect the lands, resources and culture by recognizing aboriginal rights and making Westbank a prosperous and healthy community for its Members.

Part II Definitions and Interpretation

Where a term is used in the Constitution that requires more explanation a definition has been included. The definitions are consistent with the Self-government Agreement and with Westbank Laws.

Part III Membership Rules

The objective of this Part is to maintain, in the interim, the status quo over Membership under the *Indian Act* with the WFN having the ability to develop, at its own pace, Membership Rules that will be voted on in accordance with the Constitution. It is expected this will be done within two years of ratification. Nobody loses or gains Membership as a result of the Constitution, however, there is one departure from the status quo in the Membership Rules set out in the Constitution. This difference is in the manner in which transfers from another First Nation to WFN may take place. Under the Constitution there is a requirement that the community vote on transfers at a special Membership meeting. This procedure on transfers is a change from the *Indian Act* and gives more decision making power to the community

Part IV Duties and Responsibilities of the Council

This Part sets out how Council must act and what is expected of Councillors and the Chief. Given that the Constitution has recall provisions to remove the Chief or a Councillor, this is an important Part that will be looked to in assessing the performance of elected officials.

The main theme of this Part is that elected officials should act always in the best interest of the community and represent the community to the best of their abilities. There are special duties for the Chief including to acting as the Chair of meetings and community meetings and as liaison with the Elders.

Part V Officers and Employees

This Part provides for the appointment of senior management positions at Westbank (Director of Operations, Director of Finance, Director of Lands, Membership Administrator). The Constitution also establishes the principles of affirmative action in developing the hiring policy for Westbank First Nation. Preference will be given to qualified Westbank Members while having proper consideration for the primary responsibility of Westbank government to provide effective and efficient services to its Members and residents.

Part VI Elections

This Part sets out the process for electing the Chief and Council. Under the Constitution the number of Councillors is fixed at four with one Chief. The term of office is set at three years.

Any Member can run for elected office whether they live on-reserve or not however there are some new restrictions. Members who have been convicted of an indictable offence in the last ten years can not run for office.

The Constitution clearly sets out rules for conducting the elections, such as the posting of notices, secret ballots, etc. There is a system for mail-in-ballots because under the Constitution all Members get to vote whether they live on or off reserve. The Constitution sets out rules for removing a Council Member who violates the Constitution, their duties or the Oath of Office that all elected Officials will be required to swear. Twenty percent of the Members can start the process of removal by filing a petition with the Arbitrator and paying a fee of \$2,000.00 The fee is intended to prevent frivolous appeals.

A Member may also appeal an election result to an Arbitrator. The Arbitrator will decide whether there were grounds for the Election appeal and will deliver a ruling in a timely manner. The Arbitrator is independent of the Chief and Council.

If WFN staff run for office they will be entitled, under the Constitution, to unpaid leave for one term while they are serving on Council.

Part VII Council Procedures and Meetings

This Part sets out when and how the Council meets including matters such as quorum, attendance, agenda and how decisions are made. This Part also sets out the rules for holding Membership Meetings. It requires a General Membership Meeting once every three months and Special Membership Meetings where Westbank First Nation needs to make an important decision. There is also provision for the Council to call a Special Membership Meeting if 40 Electors sign a petition.

Councillors are expected to attend Council and Membership meetings. If a Council Member misses three Council or Membership Meetings in a year without prior approval or just cause, this can be grounds for removal under the recall provisions.

The Chair, generally the Chief or a Councillor, will be allowed to vote. Where because of conflict of interest or other circumstances the Director of Operations acts as Chair, the Chair will not vote. Council meetings are open to all Members unless that part of the Council meeting is closed for reasons of confidentiality. To ensure Members have the opportunity to attend there is a requirement for all Council meetings to be held on Westbank Lands. All meetings must be properly recorded and the record available to Members.

Part VII Law Enactment Procedures

Westbank Laws are passed pursuant to the Constitution procedures and must be within the powers set out in the Self-government Agreement. Laws can be initiated by Council Resolution or by Members through a petition. All laws have to be presented to the Membership at a Membership Meeting. Laws that deal with the introduction of a new tax must be approved by the Members in a referendum held in accordance with the Constitution.

There will be three readings of Laws; the first in Council at which time the law is introduced, the second at a Special Membership Meeting and third, at Council where the law is enacted or the law referred to community vote or referendum. All Westbank Laws will be kept in a public register and must comply with the *Canadian Charter of Rights and Freedoms* and the *Canadian Human Rights Act*.

Part IX Conflict of Interest

Council members are not allowed to be involved in decisions where they or a close relative have an interest. This means that where a matter being dealt with by Council involves the Chief or a Councillor or their immediate family member, that Council member must not participate in any discussion or decision on that matter. There is a process set out in the Constitution for disclosure of conflict of interest. This Part also includes the rules concerning Council members using the property of Westbank First Nation, accepting gifts and competing in business with Westbank First Nation. A Council member who violates breaks the Conflict of Interest rules may be removed from office under the recall provision.

Part X Financial Management and Accountability

Council is responsible for protecting the financial resources of Westbank First Nation and is required to maintain a Department of Finance. The Constitution requires appointment

of a Director of Finance. This is only one of four administrative management positions created under the Constitution (the others being Director of Operations, Director of Lands and Membership Administrator) all of whom have special responsibilities to Westbank First Nation independent of Council. This Part provides that Council may receive reasonable pay for their duties and that this pay and any other benefits must be reported annually to the Membership.

There is a requirement for an annual budget, with a provisional budget to be prepared by December 15th of each year and then provided to the Membership at a Membership Meeting. Special rules are identified for local revenues (i.e., property tax), where no deficit is allowed. With respect to other WFN revenues WFN can not operate under a deficit unless consent has been given by the Members through a vote at a Special Membership Meeting.

The Constitution sets out restrictions on expenditures so that only expenditures that have been budgeted can be made. It also makes provision for expenditures over \$5000,000 having to be declared at a Special Membership Meeting. There is also a requirement that there is periodic reporting to the Members of the finances of the WFN and yearly audits, which are to be available to all Members.

WFN financial statements are to be audited in accordance with generally accepted accounting principles. Statements are to be reported to Members in accordance with the rules set out in the Constitution. There are also provisions for Members to file a complaint about financial expenditure.

The Constitution puts controls in place for the types of investments the WFN can make and the amount of debt the WFN can incur. The investment of WFN funds is limited to low risk investments to ensure the integrity of WFN assets. For debt there are restrictions on the amount of debt and how it is incurred to ensure that the WFN can not take on commitments that it can not meet.

There is also a section in this Part which provides penalties if a Member of Council participates in a decision or authorises the expenditure of monies in violation of the Constitution. In such circumstances the Council Member is personally liable and may be removed from office.

Part XI Land Rules

This Part sets out the Land Rules that govern the administration and management of Westbank Lands. The Constitution provides that there must be a Land Use Plan to be developed within two years and approved by the Membership in a referendum.

This Part establishes the types of interests that can be granted and registered in Westbank Lands. All existing interests (such as Certificates of Possession and leases are protected). Future interests are created in accordance with the Land Rules. In the future, Allotments

to Members of Community Lands will only be made following the passage of, and in accordance with, a WFN Law setting out a fair and transparent process for Allotments.

With regards to development of Community Lands (Lands that have not been Allotted to Members), the Land Rules provide that community approval is needed for long term leases/licenses (anything over 15 years). Subject to WFN Laws, approvals are no longer required from Council for private land transaction (e.g. leases & transfers).

Interests in Westbank Lands will continue to be registered in the Reserve Land Register maintained by Canada. Westbank has the option of establishing its own Land Registry in the future. WFN will continue to administer on behalf of Minister land instruments created prior to the Self-Government Agreement in accordance with their terms and conditions.

Westbank is required to develop a Law on the treatment of interest in Westbank Lands on marriage breakdown within one year of Self-Government.

Provision is also made for a community review of the Land Rules within two years.

Part XII Referendum Procedures

This Part sets out the process for holding a community referendum and follows the rules for holding an election. As with Elections this Part allows all Members to participate in referendums and makes provision for main-in-ballots. There is also an appeal procedure.

Part XIII Amendment of Constitution

The Constitution can only be amended by a referendum of the people where 50% plus 1 of those electors voting in the referendum vote in favour of the amendments. There is also provision for Members to initiate amendments to the Constitution.

Part XIV General

Sets out that Canada remains responsible for all its actions prior to Self-Government and states that the date when the Constitution comes into force is the date that the act of Parliament which confirms, implements and gives effect to the Self-government is passed by Canada.