



**The Report  
of the  
Commission of Inquiry  
Concerning Certain  
Matters Associated  
with the  
Westbank Indian Band**

**John E. Hall, Q.C.**

**Commissioner**

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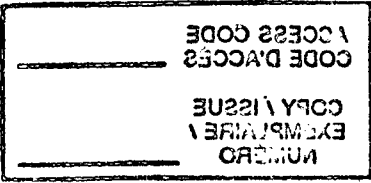
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1988



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Commission of Inquiry  
Concerning Certain Matters  
Associated with  
the Westbank Indian Band



Commission d'enquête  
concernant certaines  
questions liées à la  
bande indienne de Westbank

Commissioner  
John E. Hall, Q.C.

Commissaire  
John E. Hall, c.r.

**TO HER EXCELLENCY  
The GOVERNOR GENERAL IN COUNCIL**

**MAY IT PLEASE YOUR EXCELLENCY**

By Order-in-Council PC-1986-1816 dated August 12, 1986, I was appointed to inquire into certain matters associated with the Westbank Indian Band and certain matters relating to the Department of Indian Affairs and Northern Development. I now beg to submit the attached Report.

Respectfully submitted.

A handwritten signature in cursive script, appearing to read 'J. E. Hall', written in black ink.

Commissioner

April 1988

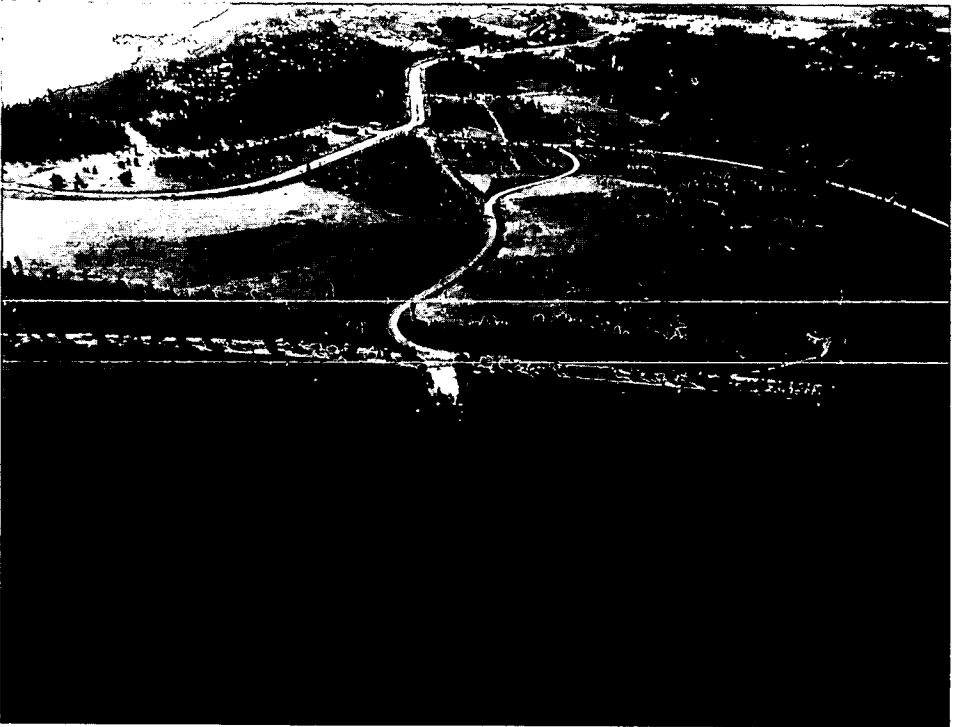


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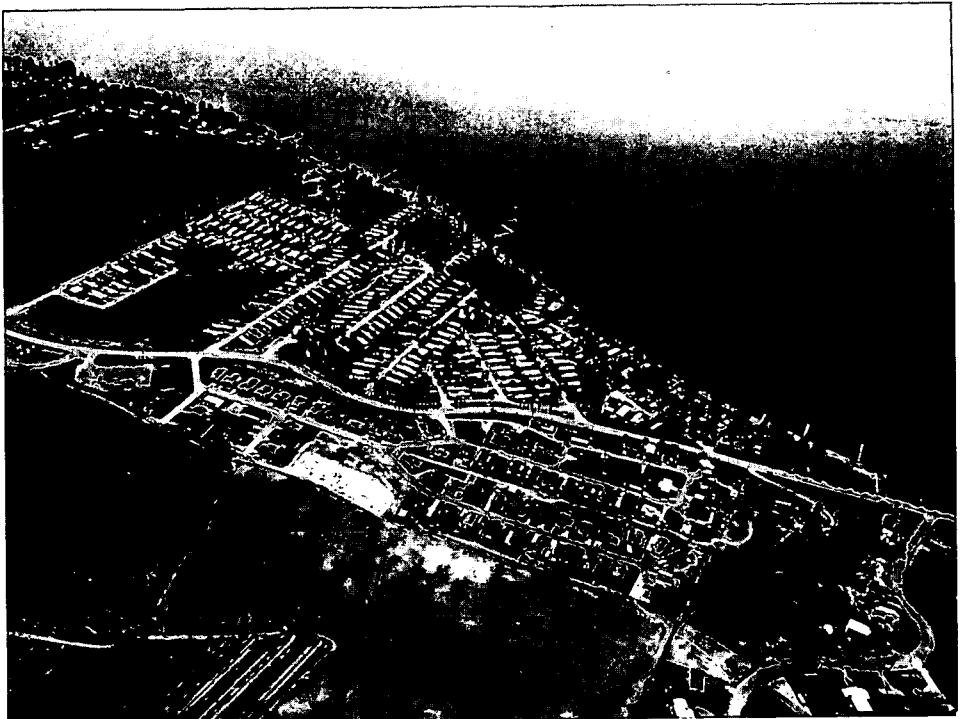
Westbank Reserve 10 looking north along Okanagan Lake. The floating bridge to Kelowna, B.C. is at the right.



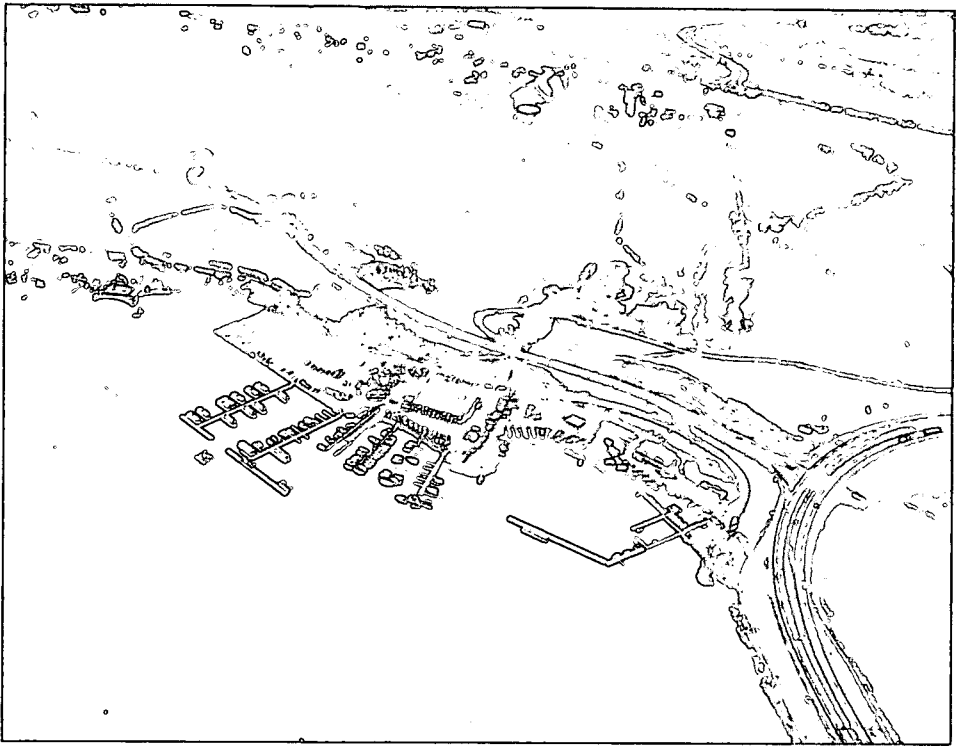
Reserve 10 looking southwest. Highway 97 traverses the Reserve at left centre, passing the new Band office in the middle of the photograph.



Mobile home park development on Westbank Reserve 9. McDougall Creek Estates (Toussowasket) is at centre right and Westview Village (formerly operated by Park Mobile Home Sales Ltd.) is to the left.



Several mobile home park developments on the shores of Okanagan Lake, Reserve 9.



Shelter Bay Marina on Reserve 10 near the Kelowna bridge. Above is the Lakeridge Subdivision developed by the Westbank Band.



Tourist facilities, including Wild' N' Wet Waterslide at centre left, on Reserve 9. The reconstructed Highway 97 is in the foreground.

## SUMMARY

This Commission of Inquiry was assigned two particular tasks. Its first task was to investigate certain matters of controversy surrounding the management of the Westbank Indian Band and the relationship of the Department of Indian Affairs and Northern Development to the Band between the years 1975 and 1986. Additionally, under this heading, the Commission was requested to look into the activities of lessees and residents of the reserve lands of the Westbank Indian Band during the same period.

The second task assigned to the Commission was to consider the Indian Act, R.S., c.I-6, the existing primary legislation governing Indian Affairs, and to recommend any changes to that Act, to the management of Indian lands and monies, or to policies and procedures of the Department of Indian Affairs and Northern Development that were deemed to be appropriate. I was also asked to consider and recommend remedies for any specific problems that might be disclosed during the course of the Inquiry, having regard to the government's policy of supporting and strengthening Indian self-government on Indian lands.

The Order-in-Council establishing this Commission of Inquiry is included in Appendix E of the Report. Therein the terms of reference are fully set out.

The Westbank Indian Band is located just outside of Kelowna, British Columbia. The Department of Indian Affairs and Northern Development (hereinafter referred to as "the Department") is a federal department under the direction of the Minister of Indian Affairs and Northern Development. The Headquarters of this Department is located in Ottawa/Hull and the regional office is located in Vancouver, British Columbia. The district office of the Department which deals with the Westbank Indian Band is located in Vancouver as well.

At the outset of the Inquiry, I decided that it would be desirable to hold hearings in the Westbank area to give those interested the best opportunity to be heard. In addition, I held some hearings in Vancouver. All persons who sought standing before the Inquiry were granted standing, and funding was made available to allow for the legal representation of former executives of the Westbank Indian Band as well as the current executive and members of the Band. The Department of Indian Affairs and Northern Development was represented by counsel throughout the course of the Inquiry. Mr. Fred J. Walchli, formerly the Departmental Regional Director General in British Columbia, was also represented by counsel. The Westbank Indian Band

and its development company had considerable dealings with the failed Northland Bank; accordingly, the liquidator for the Bank sought and was granted standing at the Inquiry.

This Inquiry was not an examination of one specific event, but rather concerned several issues that occurred over a lengthy period. It considered some 11 years in the history of the Westbank Indian Band and the Department of Indian Affairs and Northern Development. Over this 11-year period, the Westbank Indian Band made substantial economic progress. Because of their location, the Reserves of the Westbank Indian Band were well situated for residential development. Between 1975 and 1986, there was a very substantial growth in the number of mobile home parks located in the Okanagan Valley (particularly in the Kelowna area), due to its generally pleasant climate and its location halfway between Vancouver and Calgary. The Westbank Band shared in this growth, with population increases in both B.C. and Alberta and transportation improvements greatly enhancing the value of the Band's lands in recent years. The pictures at the beginning of this Report give an overview of the geography of the inhabited Reserves of the Westbank Band.

The Band's economic progress was aided in 1983 when it received several million dollars from a reserve lands cut-off claim. In the period 1982 to 1984, large sums of money accrued to the Band and more particularly to some Band members, as a result of a project to upgrade the provincial highway which traverses Reserves 9 and 10. Because of the Band's improved economic situation, it was able to be more aggressive in obtaining better banking treatment. It is not always easy for Indian bands or individuals to obtain good financial services. In late 1982, the Band took a substantial share position in the Northland Bank, and began to become an increasingly large depositor. At the same time, the Band and its development company were granted substantial lines of credit and began entering into sizeable loans. Chief Ronald Derrickson was also dealing with the Bank in his personal capacity and became a substantial borrower. In the spring of 1984, Chief Derrickson became a director of the Bank, resigning in August 1985, just prior to the demise of the Bank. The failure of the Bank resulted in the deposits in the Bank (standing to the credit of the Band or the Band company) being put in jeopardy. The Bank ceased paying interest on deposits. The Band thereafter refused to pay interest on loans owed to the Bank. As it turned out, the amount of money on deposit was not vastly different from the amount owing in loans, and that matter is apparently being worked through at the present time, although at the conclusion of the evidence in the Inquiry it had not yet been finally resolved.

The Chief of the Westbank Indian Band between 1976 and 1986 was Ronald M. Derrickson. By accident or design, Mr. Derrickson had become something of a "media figure" over the years. He was viewed by some as a capable administrator and skilled businessman. Others, both

within and outside of the Band, viewed him as a petty tyrant who could bend the Department to his will to the advantage of himself and his family.

When Chief Derrickson came to power in the summer of 1976, he discovered a number of problems. A major development initiative, Lakeridge Park, located on Reserve 10 near Okanagan Lake, was in serious financial trouble. This ambitious residential subdivision had been commenced under the administration of his brother, former Chief Noll Derriksan. It had not progressed nearly as well as had been hoped. When Ronald Derrickson became Chief, the project was heavily in debt and sales of lots were weak. At the same time, his brother Noll's mobile home park (Toussowasket) had just been completed and was having serious financial woes. Built with the assistance of government funds, it was overloaded with debt and had a high vacancy rate. Various other mobile home parks were being operated or contemplated by non-Band members. Some were not well managed and many were returning what seemed to Chief Derrickson to be grossly inadequate rents.

One feature of Indian land that made it desirable to developers was that there was relatively little by-law regulation of the land. Chief Derrickson felt that this was an area that needed study and possible improvement. He believed regulation could generate income and ensure better quality developments. Chief Derrickson was not a man to hide his light under a bushel. He had been relatively aggressive in acquiring land for his own use and he was determined to pursue an aggressive policy in getting a better return on Reserve lands from the lessees operating mobile home parks. Unbeknownst to these lessees, a very new broom indeed had arrived.

As it happened, Mr. Derrickson became Chief at a time when a different system of Departmental administration came into effect. This change was necessitated by the closure of district offices of the Department of Indian Affairs. This was also the time when Mr. Fred J. Walchli took over as Regional Director General in B.C. Mr. Walchli had a background in land management and was keenly interested in improving the economic return on Indian lands.

Chief Derrickson was not viewed with universal acclaim in his own house (the Band). Some members of the Band considered him to be power-hungry and intent on the too rapid development of Band lands. Undoubtedly there was an element of jealousy present for he has been financially successful in the conduct of his own business affairs, but there also appears to have been a feeling of unease by some Band members that the Band was being hurried forward at an unreasonable pace. Some saw opportunity, others foresaw a looming train wreck.

Geographically, Indian reserves are islands that are located in provincial seas. Some provincial laws of general application may apply,

but many do not. Under the Canadian constitution, the federal government has responsibility for Indians and Indian lands. The tenure of Indian land is different from that of non-Indian land. Essentially, Indian land may not be sold by individuals but can only be leased. This can make it desirable for lower cost developments (a developer is not forced to lay out a large sum of purchase money), but it also ensures a continuing relationship of lessor and lessee that can and did lead to friction between Indian locatees and mobile home park operators at Westbank.

One subject that troubled the Westbank Band was the asserted jurisdiction of the B.C. Rentalsman, a functionary who had authority to control rents for residential tenancies in British Columbia in the late 1970's and early 1980's. Chief Derrickson wanted the Rentalsman and all his works banished from the Reserves without delay. Only then, in his view, could Reserve lands return a proper economic rent. Tenants at the mobile home parks fiercely resisted this. A comprehensive rentalsman by-law under which the Band could appoint its own rentalsman was purportedly enacted, but was apparently disallowed by the Department. The jurisdiction of the B.C. Rentalsman was sustained by the courts. This Rentalsman controversy played a large role in the Toussowasket mobile home park story told in Chapter 2 of this Report.

By-laws were enacted to raise revenue and to better control development on the Westbank Reserves. These by-laws predictably brought howls of outrage from some mobile home park operators. Chief Derrickson became the lead negotiator for rents on the Reserve and in many cases also had a personal interest in the land involved. He undertook to raise rents significantly. This too provoked complaints from several lessees. Allegations were made that the Chief wished to bankrupt the park operators so that he could have the improvements in place accrue to himself or the other parties for whom he was negotiating.

A mobile home park owners' association was formed in 1982 in response to a number of initiatives taken by the Chief in 1981. Acrimonious relations existed between the Band executive and a number of park operators. Some park operators questioned the ethics of the Band executive, and in particular, Chief Derrickson. Complaints were conveyed to Members of Parliament and the media carried stories about conflict at Westbank.

In the summer of 1982, an individual assaulted Chief Derrickson at his home in Westbank. The individual was arrested and later sentenced to a substantial term of imprisonment. Shortly after his arrest, the police established that he had acted on the instructions of some third party or parties. Chief Derrickson was certain in his own mind that this "hit-man" had been directed by certain of the mobile home park operators. This incident and the resultant charges created an outburst of



media attention in British Columbia and nationally. Attitudes hardened. Chief Derrickson viewed himself as surrounded by a host of enemies. Mobile home park operators who had entered into agreements with the federal government to lease Indian land viewed transfers of authority over such leases to the Band executive as a failure to live up to the terms of the agreements. There were suspicions that the Department of Indian Affairs was corrupt or negligent. Many park operators came to feel that the Chief was power-hungry and determined to oust them from the Reserve lands and reap the benefits of their improvements.

At the same time that the mobile home park controversies were outstanding, the failure of the Northland Bank in September 1985 occasioned acute anxiety to many Band members who had never really understood or been kept properly apprised of financial transactions. They feared financial ruin from the machinations of the Chief. Many of these machinations existed largely in the minds of certain Band members, but because information on financial matters had been jealously hoarded, a considerable amount of misinformation and rumour was circulating.

In 1986, dissident elements within the Band, spurred into action in part by a non-Indian "consultant", vented their frustrations in some strongly worded petitions to the Minister, suggesting grave improprieties on the part of the Chief and Band administration. It was alleged that the local Department of Indian Affairs was either supine or corrupt and could not be trusted to give an accurate version of affairs at Westbank.

The Department was beset by growing demands from various Indian groups throughout Canada. It was operating under an Indian Act that had not been substantially updated since it was enacted in 1951. This governing statute does not reflect the major changes in Indian society in the past 35 years. The Department was going through a difficult transition period of devolution of power to Indian governments.

During the first 70 years of the twentieth century, Indian issues tended not to be a high profile area, but Indian people became much more vocal and politically active in the 1970's. This was particularly true in British Columbia where there were various controversies and internal quarrels between different groups and factions. The Department came to be viewed by many Indians as a dismal relic of the nineteenth century standing in the way of progress. In 1975, a number of district offices throughout British Columbia were occupied by Indians dissatisfied with the present state of affairs. The Department acted on their demands to close some district offices. Thereafter, matters of local administration were increasingly managed from Vancouver. Modern transportation and communication facilitated this process of more central administration, but clearly some local "on the ground" awareness of conditions at individual reserves would be lost.

On balance, these changes were positive, but at times the Department tended to lose touch with local concerns.

With regard to the Westbank situation, the Department felt it was being pilloried unfairly. It wished to have the air cleared and to have some consideration of new directions in policy, as well as possible statutory change. It had gone through a period of quite dramatic policy change with very little statutory alteration. I comment further on these matters in Section II of this Report.

Previous studies and reports had been commissioned concerning affairs at Westbank, but it was felt that previous investigations had lacked sufficient powers of compelling document discovery and testimony to achieve the best results. It was felt that a full inquiry was needed to resolve the issues at Westbank, as well as to examine certain broader issues of Departmental policy and possible statutory change. This Inquiry was constituted in August 1986 to consider Westbank specifically and the Departmental concerns generally.

I found at Westbank an exemplification of much that causes tension between Indian and non-Indian people in Canada. Indian people were more or less invisible in Canada for much of the twentieth century. Living on reserves, they were a people set apart and were often treated as second class citizens. Given the economics of earlier times, their lands usually were not economically desirable. By and large, they were not a factor in the economic life of Canada.

After World War II, Canadian society underwent a number of changes. Affluence increased, as did social consciousness. Indian lands became more valuable, sometimes as a result of underlying oil or gas deposits, but more usually because of proximity to expanding urban areas. Westbank was in the latter category. Land that had marginal utility became and is becoming more capable of enhanced utilization. There is a progression of leasing from agricultural uses and sign leases, through mobile home parks and recreational uses, to full scale residential and industrial uses.

The process of growth and change is one that always generates a certain amount of controversy and tension. At Westbank, there has been economic tension between Indian lessors and non-Indian lessees. There were jealousies and controversies between different factions in the Band. The Department was in a state of transition from the older "Indian agent" style of management to a new approach of granting greater autonomy to local Indian governments. Westbank had the fortune or misfortune to be rapidly escalating its economic activity at a time when the Department was moving away from active involvement in the management of individual bands. With regard to leases and leasing activity at Westbank, there was a very real vacuum of authority. One witness said Westbank was on the "cutting edge of change". At times, largely because of the personalities involved, it resembled a battle zone.

I heard from most of the Westbank mobile home park operators. Some could get along with Chief Derrickson, some could not. Getting along with the Chief involved what appeared to some to be capitulation. The Department was placed in a difficult position, but by failing to grapple more decisively with troublesome issues, it allowed the situation at Westbank to become increasingly explosive. The increasing wealth and political power of certain members of the Derrickson family caused resentment among some Band members. The Band administration elected to become involved in a major way with the Northland Bank. The collapse of that bank was a catalyst that caused a great amount of controversy to erupt at Westbank. There had been the earlier violent assault on Chief Derrickson that received wide publicity. There were increased calls for an inquiry to discover the real facts at Westbank concerning lessee issues and financial matters of concern to the Band and Band companies.

I found that the mobile home park operators did have some legitimate complaints. The Department was not always adhering to the terms of their leases in the setting of rents. The Band introduced a by-law regime in a chaotic fashion and there appeared to have been an absolute failure by the Band to undertake prior consultation with those affected. The Department failed to make clear to either the park operators or the Band executive what were the spheres of authority of the Department and the Band — confusion persisted and controversy grew.

While Mr. Leonard Crosby, the head of the Mobile Home Park Owners' Association, was far too extravagant in his attribution of evil deeds and motives to Chief Derrickson, there was a core of fact to his allegation of failure by the Band administration and the Department to adhere to lease terms concerning rent revision and to his allegation that the Band rentalsman by-law was misrepresented as being in force when it was not. Unfortunately, some of the highly charged allegations emanating from Mr. Crosby and those members of the Band who comprised an "Action Committee" were viewed too credulously by certain parliamentarians. These individuals, believing their constituents, took an alarmist view of events at Westbank. There were problems at Westbank and in the Department of Indian Affairs, but not of a serious criminal nature.

The most pervasive problem I found was that of conflict of interest. It seemed to be a concept virtually unknown (or wholly ignored) at Westbank. The Department, while professing to have standards in this area, could on occasion demonstrate remarkable lapses in enforcing these standards in the field. The problem is and always will be a source of continuing difficulty in human affairs. It will come to the fore in developing economic societies. The familial nature of many Indian bands makes the conflict situation even more delicate and difficult in Indian government. The problem will be increasingly seen in bands as

they become more active economically. I think the recommendations I make to address this problem in Section II of the Report can contain the problem. The publicity of this Report concerning the obvious lapses at Westbank can also be a powerful force for the application of correctives at the Department and band levels throughout Canada. As I note elsewhere in my Report, Ronald Derrickson failed during his tenure as Chief to be sensitive to conflict of interest issues.

Indian band government must be run in an orderly and businesslike fashion. That is what self-government demands. This will create a climate of confidence among band members and it will ensure better relations between the band and outsiders dealing with the band. Open government which is free from conflict of interest concerns is the ideal to be sought. At Westbank, there was a strong and wilful Chief who failed to act always in a procedurally correct manner. It was the old problem of a government of men and not a government of laws.

I found no corruption in the Department of Indian Affairs, but I did find failures to come to grips with problems and bureaucratic fumbings. The Department was not vigilant in seeing that conflicts of interest were avoided. It failed to answer the concerns of lessees about rent setting difficulties. It should always be remembered that the dramatic changes in Indian Affairs in the period 1975-85 made it an intensely difficult period for Department personnel. I heard faint suggestions from some quarters that the lives of Indians would be improved only if the Department were abolished.

It is quite unrealistic to demand that the Department be abolished. It performs and will continue to perform very valuable functions. Bands that have the ability should be encouraged to accept the fullest measure feasible of self-government, but many bands are going to continue to need wide ranging support from the Department. The key factor to keep in mind is that various groups in Indian society are at very different stages of progress due to accidents of geography and history. Different regions have different needs, and I have made recommendations for some statutory and policy changes to accommodate the differing needs and aspirations of the various groups served by the Department.

There will be inevitable tensions between Indian and non-Indian groups. In practical terms, this means conflict between Indians and governments. Some issues will be susceptible of a political solution, others may become the subject of litigation in the courts. These tensions are and will continue to be painful to all concerned, but they are doubtless a necessary concomitant to the passage of Indian people from a lesser to a greater status in Canadian society. In the second section of my Report, I have made specific recommendations for statutory and policy changes that seem to me appropriate at this time.

A Commission of Inquiry has many functions. I think that most of the participants in this Inquiry have now a greater knowledge of themselves and of the relevant facts. That knowledge will be invaluable to them in their future conduct so that certain errors and excesses of the past may be avoided. Persons in political life will be more conscious of the fact that caution and circumspection are called for when allegations of wrongdoing are made to them. The Department of Indian Affairs is subject to many diverse pressures. Sometimes the noise level exceeds the substance level. I have made suggestions for dispute resolution methods that can hopefully winnow out matters of controversy that should not become high profile political issues.

Indian affairs in Canada were long neglected. In more recent times, they have received a great deal of attention, perhaps in some areas a surfeit of attention. Issues such as self-government cannot be worked through too hastily. There is a necessary process of searching for solutions. This Inquiry, coupled with the current reviews under the aegis of the Office of the Comptroller General, can provide insights and highlight needed changes. The legislative base is rudimentary and not entirely suited to the more complex modern conditions we live in; changes would be very helpful in some areas. Hopefully, the Inquiry has cleared the air at Westbank and can, by its recommendations, indicate some changes and initiatives that will allow better administration in the future.

# **SECTION I**

## **The Westbank Indian Band**

## Chapter 1

# Introduction

This Commission of Inquiry was appointed by Order-in-Council dated August 12, 1986. The Inquiry was asked to investigate certain matters of public controversy concerning the Westbank Indian Band between 1975 and 1986. It was also asked to consider possible changes to the Indian Act and Department of Indian Affairs and Northern Development policy, and to comment on any specific problem areas disclosed during the course of the Inquiry. I held hearings at Westbank, B.C. and at Vancouver, B.C. commencing in late 1986 and continuing through to the summer of 1987. The preamble of the Order-in-Council is as follows:

WHEREAS certain matters associated with the Westbank Indian Band of Kelowna, British Columbia have been the subject of public controversy;

WHEREAS there have been allegations of impropriety on the part of officials of the Department of Indian Affairs and Northern Development (DIAND) and of Councillors of the Westbank Indian Band (Band) in connection with the affairs of the Band;

AND WHEREAS three reviews of these matters have been conducted and the resulting reports have been submitted to Ministers of Indian Affairs and Northern Development without resolving the concerns relating to these matters;

THEREFORE, the Committee of the Privy Council . . . advise that a Commission do issue under Part I of the Inquiries Act . . . appointing Mr. John E. Hall of Vancouver, British Columbia to be Commissioner to inquire into and report on the circumstances of, and factors contributing to, the above-mentioned controversy, allegations and concerns. . . .

The major areas of interest to the Commission included transactions relative to lands at Tsinstikeptum Reserves 9 and 10 of the Westbank Indian Band, Band finances, the structure and exercise of Band government, and the enterprises and activities of commercial lessees of the Reserve lands.

The Westbank Indian Band has been, in British Columbia, one of that group of bands on the "cutting edge" of the changes that are occurring and will continue to occur in matters concerning Native people in Canada. At the same time, it would be no overstatement to say that in the past twenty years there has been a revolution in the thinking of the Department of Indian Affairs and generally, in matters pertaining to Indians. As with all revolutionary change, or indeed any

substantial change, tensions and controversies are created as the old order gives way to the new.

Mr. Cecil Branson, Q.C., counsel for Mr. Fred Walchli, former Regional Director General of the Department of Indian Affairs and Northern Development, put this in vivid terms in his closing submission to me. He said:

When you have devolution or self-government and turn over power to someone else who it is thought ought to have that power, there are bound to be problems in transition — the breakup of the British Empire proved this.

As noted in the Order-in-Council, there have been previous examinations of certain matters concerning the Westbank Indian Band. Reports of these examinations have been submitted to previous Ministers of the Department of Indian Affairs and Northern Development. These reports were available to myself and to counsel.

I read over these reports to generally familiarize myself with the background at Westbank. However, it was the view of the Commission Counsel, Mr. John Rowan, and myself, that the fairest method of dealing with our task was to avoid hearsay and to rely upon direct testimony. This was the basic course we followed. Of course, there were many documents filed from lawyers, departmental officials, and others to furnish a narrative of what was happening in specific areas over the years. If we had insisted on calling a witness to comment on each of those documents, this Inquiry would have extended into the next decade.

We were able, I think, to adhere to the practice of largely avoiding hearsay evidence. That is, we were able to hear and see the witnesses. Cross-examination rights were fully afforded. People were given an opportunity to speak to issues that concerned them. We could have heard more and we could have heard less. Here, as in all matters of human affairs, we had to exercise some judgement as to what was material or useful and what was not. Matters that initially appeared in one guise often appeared very different in light of later and fuller evidence. We endeavoured to make the Inquiry a searching one without prying unduly into the private affairs of individuals. I did not intend to and indeed I could not go into detail on all areas covered. I have selected those I believe material for inclusion in my Report. Here, too, there must be a pruning process or the resultant report would extend to the same length as the evidence.

The findings and recommendations concerning the first phase of the Inquiry on the subject of the Westbank situation are based on the evidence seen and heard during that phase of the Inquiry. The comments and recommendations under the second phase of the Inquiry,



sometimes called Part IV and pertaining to possible changes to the Indian Act and in Department of Indian Affairs and Northern Development policy or procedures, are based on a consideration of written and oral material made available to myself and Commission staff. Certain matters touched on in the first phase obviously provided background information for the second phase.

### **History of the Westbank Indian Band**

In order to appreciate the setting in which relevant events occurred, it is desirable that I set out a brief history of the Westbank Indian Band.

The Westbank Indian Band is one whose reserves, Tsinstikeptum 9 and 10, are situated on lands located opposite the City of Kelowna on the west shore of Okanagan Lake. The Kelowna area was settled by non-Indians about 120 years ago and the initial economic focus revolved around agricultural pursuits. At the present time, the area continues to exhibit considerable agricultural activity, with fruit farming being perhaps the largest sector. But today both Kelowna and the surrounding area are much more than just a farming region, given the very attractive physical environment. The Okanagan Valley has attracted, and will doubtless continue to attract, a growing population. Many people find it to be a good place for retirement living. It is a place with considerable development potential that has grown steadily in the past twenty years.

This growth trend has had obvious implications for the Okanagan Valley generally, and in particular has had a dramatic impact on the use of lands of the Westbank Indian Band and its members. The lands reserved for the Westbank Indian Band, being Tsinstikeptum 9 and 10, were not, until the relatively recent past, particularly desirable tracts of land. These two reserves, comprising about 2400 acres, are located on bench lands above the shore of Okanagan Lake. (A third, distant reserve, Mission Creek Reserve 8, consists of only five acres and is uninhabited.) The land is arid unless irrigated, and while it is possible to grow crops on it, the value of the land has in the past two decades become greatly enhanced by its possibilities of development for housing and business enterprises.

This is a not uncommon pattern in the history of Indian reserves in British Columbia. In many cases lands reserved for Indian bands were perhaps those of less value for agriculture. They may also have been less easily accessible, being on the distant side of a lake or river that had attracted some settlement. However, with the passage of time and the growth of population in the province, many of these lands have become, because of their location near growing urban areas, highly desirable lands and greatly enhanced in value. These situations occur most frequently in the central interior, the Lower Mainland area, and Vancouver Island. Together with the growth of a sense of political

purpose in Indian people, these historic factors have combined to make some quite dramatic alterations in matters relating to Indian bands and Indian lands.

The Westbank Indian Band as a separate entity came into being relatively recently. That may be a factor, albeit a minor one, in certain controversies I examined.

The Westbank Band currently numbers approximately 250 members. It is historically and culturally part of the larger linguistic group of Okanagan Indians. The Okanagans traditionally inhabited an area stretching roughly from the head of Okanagan Lake in British Columbia to Spokane, Washington. In Canada, the Okanagans comprised a number of bands, including the Okanagan Band, the Penticton Band, the Westbank Band, the Osoyoos Band, and the Upper and Lower Similkameen Bands. There are also bands of Okanagan Indians south of the border in Washington State. In 1846, an international boundary divided the Okanagan nation, or people, at the forty-ninth parallel. However, there was a certain amount of intermingling which continued after the boundary was drawn, and cultural and familial ties continue today between the Okanagan people of British Columbia and those in Washington State.

The Westbank Band recently has been recognized as a distinct band under the Indian Act. Prior to 1963, the Westbank group was part of the larger Okanagan Band. In 1963, members of the Okanagan Band living on the reserves near Westbank requested that they be constituted a separate band. On October 18, 1963, pursuant to the provisions of Section 17 of the Indian Act, the federal government provided for separation of the Westbank Band from the Okanagan Band. At the time of that division, the population of the Westbank members approximated 165. That was about 20 percent of the then total Okanagan Band membership (765). Existing reserve lands were divided between the two bands as follows:

Okanagan Band:

Okanagan I.R. 1	25,284.43 ac
Otter Lake I.R. 2	62.00 ac
Harris I.R. 3	148.29 ac
Priests Valley I.R. 6	83.00 ac
Duck Lake I.R. 7	429.15 ac

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26,006.87 ac

Westbank Band:

Mission Creek I.R. 8	5.00 ac
Tsinstikeptum I.R. 9	1,544.59 ac
Tsinstikeptum I.R. 10	768.34 ac

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2,317.93 ac

The reserves allocated to the new Westbank Band comprised a logical geographical grouping. Reserves 9 and 10 are situated on the west side of Okanagan Lake between Kelowna and Westbank. Mission Creek Reserve 8 is a small uninhabited reserve on the east side of the lake adjacent to Kelowna. Historically, Tsinstikeptum Reserves 9 and 10 were the home of the Indians now known as the Westbank Band. The reserves were established in 1888 by Peter O'Reilly, an appointed Indian Reserve Commissioner for British Columbia. Originally these lands were part of ten reserves established for the Okanagan Band. The main reserve, Okanagan 1, is located at the head of Okanagan Lake.

Reserve 9 originally had been surveyed to include approximately 2400 acres. Mission Creek Reserve (8) was originally 55 acres. In 1913, a Royal Commission on Indian Affairs for the Province of British Columbia held hearings concerning reserves in the Okanagan area. The Commission had been appointed pursuant to a federal-provincial agreement signed in 1912, known as the "McKenna-McBride Agreement". The Commissioners were empowered to make recommendations on reserve size and location in order finally to resolve all outstanding issues in that regard between the Province of British Columbia and the Government of Canada. The Commissioners recommended that Reserves 8 and 9 be reduced. Following this recommendation, approximately 820 acres were "cut-off" from Reserve 9 and 50 acres were "cut-off" from Reserve 8. The cut-off lands later became the subject of litigation between the Westbank Indian Band and the federal and provincial governments. A settlement was achieved in 1983, resulting in certain lands and funds passing to the Band.

There were a number of reasons for separation of the Westbank group from the Okanagan Band. When the Department of Indian Affairs grouped the Indians living at Westbank together with those living at the head of the lake, it did so perhaps more because of administrative convenience than because of historical links. Although the two groups shared a common language and heritage, the distance between them was a natural division in earlier times. Historically, Indians residing near Westbank had had their own Chief or sub-Chief. Clearly, geographical isolation from the main population would be a major factor in the impetus to separate the Westbank Band from the larger group.

In 1957, residents on Reserves 9 and 10 petitioned the Indian Agent at Vernon for separate status. They noted that since they were approximately 50 miles from Reserve 1, where the Band Council convened, they had difficulty in having due regard paid to local concerns by Council. The councillors, who were all residents of the Reserve at the head of the lake, were said to be not sufficiently interested in the affairs of the people residing at Westbank. The Indian Agent, Mr. David Hett, forwarded the request together with his recommendation in favour of separation to the Indian Commissioner for

British Columbia. Mr. Hett confirmed that the Indians at Westbank were not adequately represented on the Okanagan Band Council (there were then no councillors from Reserves 9 or 10). He felt that the group at Westbank was capable of governing their own affairs and that the grant of separate status would enhance the welfare of the residents of Reserves 9 and 10. The Department did not take any concluded action on the request at that time. The status quo remained until 1962-63, at which time separate status was conferred on the Westbank group.

In addition to problems caused by geography, there were apparent philosophical differences between the Okanagan Band Council and the band members at Westbank. Some members residing on Reserves 9 and 10 were anxious to take greater economic advantage of their proximity to Kelowna. They wanted to lease their lands for commercial purposes. The Okanagan Council was generally opposed to the long-term leasing of their reserve lands. The residents of Reserve 1 were generally engaged in farming and their lands were well-suited for that purpose. Although not all the members resident on the Westbank reserves wanted commercial development, there was virtual unanimity on the issue of separation. The Westbank people generally felt that their concerns were given a low priority by the Okanagan Band Council. There was a feeling that they were not receiving their fair share of funds provided by the Department of Indian Affairs. That feeling is not unknown beyond the boundaries of Westbank. It has sometimes been noted by premiers of this province that they feel the central government is not sufficiently attentive to local issues.

In 1963, the issue of separation had come to the forefront. A special committee was organized from among the members resident on the Westbank reserves, in order to further promote the request for separation. Band members active on the committee included Ted and Margaret Derrickson, J. Norman Lindley, Alex and Mary Eli, Henry and Millie Jack, and Francis Swite. Another petition was sent to the Department of Indian Affairs asking for the division of the Okanagan Band by the creation of a new Westbank Band.

The sentiment of people at Westbank in favour of separation remained. Lack of adequate representation on the Okanagan Band Council, coupled with the difficulty of attending Council meetings due to the distance between the two communities, persisted as major grievances of the Westbank group.

In addition to continuing concerns over lack of adequate representation, an economic issue arose that sharply divided the Okanagan Band. A new floating bridge had recently been constructed, providing a direct link between Reserve 10 and Kelowna. The City of Kelowna expressed an interest in expanding the municipal boundaries to include Reserve 10. There was also a proposal to lease a substantial amount of land on that reserve for a college site. Many residents at Westbank wanted to

take advantage of the commercial development potential of their reserve lands. The Chief and Council of the Okanagan Band continued to be hesitant to commit themselves to long-term leasing. They were unenthusiastic about the proposed college site lease. The District and Regional Offices of the Department of Indian Affairs were mindful of the sentiments of the Westbank group. Meetings were organized in order to persuade the Okanagan Band Council to move on the development proposals. The Westbank group also sought more representation on Council. It was suggested that one or two councillors be elected from Westbank. The Okanagan Band Council declined to accommodate these Westbank requests for representation. They continued to oppose the possible college development lease.

A vote was conducted on the question of the Westbank group separating from the Okanagans. Voters at the head of Okanagan Lake outnumbered those at Westbank by approximately four to one. The results of the vote were close — 49 percent in favour to 51 percent opposed. Ninety percent of the eligible voters at Westbank had cast ballots, virtually all in favour of separation. Only about one-third of the eligible voters on the other Okanagan reserves had cast ballots. There were just enough opposed to defeat the proposition. The federal government eventually exercised a discretion in favour of a division, probably because of the very strong sentiment at Westbank. Additionally, Westbank was becoming very much an economic area of its own.

Details of the division of land and money assets were largely completed by 1964. That year, the first Westbank Band Council was elected. It was composed of J. Norman Lindley as Chief and Harry Derrickson and Margaret Derrickson as councillors. Mr. Lindley served as Chief until 1968, when Noll C. Derricksan was elected to that office. The new Band office building on Reserve 10 is named in honour of former Chief Lindley. Noll Derricksan served as Chief from 1968 until 1974, when Mr. Lindley again took over. He was succeeded in 1976 by Ronald M. Derrickson. Although they spell their names differently, it should be noted that Noll C. Derricksan is the elder brother of Ronald M. Derrickson. Their parents are Ted and Margaret Derrickson.

The first ten years after separation were very much growing and learning years. Band members Mrs. Mary Eli and Mrs. Millie Jack gave evidence before the Commission, both having served on Council during the years following division. Mrs. Jack noted that much time was devoted to establishing an administration that could manage programs such as social assistance, education, and housing. These programs were even then beginning to be transferred from the exclusive jurisdiction of the Department to local Band administration. The pace of development on the Reserves had not been as great as may have been anticipated at the time of separation. But the Band was now a separate entity and had achieved a greater measure of control over its future course. It was located in a favourable position compared to many bands in that its

lands were more likely to attract the attention of developers because of proximity to Kelowna.

### **The Importance of Land**

The importance of land to the Native Indian people cannot be overstated. Besides its spiritual or emotional significance to them, it is truly the very cornerstone of their economic well-being. Section 2(1) of the Indian Act defines “reserve” as follows:

... a tract of land, the legal title to which is vested in Her Majesty, that has been set apart by Her Majesty for the use and benefit of a band;

The concept, broadly speaking, is of a parcel of territory set aside for the communal benefit of a group of people comprising an Indian band. The concept of reserve land is that it be essentially inalienable, and that it be kept in perpetuity for the benefit of that band which has the use of the reserve. Although the concept of an absolute or fee simple interest in land is not spelled out in the Indian Act, there is provision in it for an individual band member to obtain what is called a Certificate of Possession. Section 20(2) of the Act reads as follows:

The Minister may issue to an Indian who is lawfully in possession of land in a reserve a certificate, to be called a Certificate of Possession, as evidence of his right to possession of the land described therein.

While that interest is not, as noted, a fee simple interest, it has in practical terms much similarity to such an interest in land. A person holding a Certificate of Possession is usually referred to as a “locatee”. Section 58(3) of the Indian Act reads as follows:

The Minister may lease for the benefit of any Indian upon his application for that purpose, the land of which he is lawfully in possession without the land being surrendered.

The process of surrender, of which more later, is a method whereby an Indian band may authorize officials of the Department of Indian Affairs and Northern Development (hereinafter often referred to as “the Department”) to lease Indian lands in a reserve upon such terms and conditions as may be approved by the band. It should be noted that where a proposal is made to lease band land, the consent of the electors of the band is required to the necessary surrender. That is not the case, of course, where what is being considered is a lease of a locatee’s land.

There was a time when absolute surrenders were made. Those days are long past and, as a matter of practice, conditional surrenders are now normally used to effect leases of some definite duration.

Where a member of an Indian band is lawfully in possession of a tract of land located on a reserve, he or she is entitled to request the Minister to grant a lease of that land to a third party under the provisions of Section 58(3) of the Act. Again, as a matter of practice, the Department is currently reluctant to consent to leases in excess of 21 years under the provisions of this section. That policy is criticized by some Indian people.

As noted above, Indian land generally cannot be sold to outsiders, but it may be leased for a stipulated term to a third party who is not a band member. It is thus not possible for an outside party to buy a piece of land on an Indian reserve and put a development on it. Land can only be leased. The freedom to deal with a lease can in practice be much less extensive than is the case with owned land. In a certain sense, a developer can feel pressured because of this form of tenure. If the lease is lost, the improvements may pass from his possession to that of the locatee. It would be idle to pretend that these tenure issues did not contribute to some of the tensions that arose at Westbank. While development on leased land has attractive features to some developers, it also has hazards. Those hazards are not always apparent at the outset of a project.

A form of development that has become quite popular on Indian lands in areas adjacent to urban settlements in British Columbia is that of mobile home parks. This type of development on Indian land has certain advantages from the developer's point of view. The developer is not obliged to purchase a parcel of land. Instead, a developer is able to lease, for a fixed term, Indian lands located on a reserve. On those lands a development can be constructed, at less initial capital cost than would have been the case had he or she been obliged to purchase a freehold interest in land for such a facility. This is so because hitherto it usually has been cheaper to lease Indian land than to purchase (or lease) non-Indian lands. That state of affairs may by now be a thing of the past. To the extent that this means Indian people are getting a fairer return on their land, this is a good thing.

Leasing Indian land has other implications. Indian land is subject to some disadvantages from a developer's point of view. Thus, it may not be the case that absolute parity of rentals compared to non-Indian lands is justified. Appraisal of the value of Indian lands appears to me to be a more difficult task than the appraisal of non-Indian land. Non-alienability and absence of taxation are but two features that cause there to be some significant differences between the two types of real estate. I will comment later on certain issues relating to development, taxation, and related matters concerning Indian lands.

From the point of view of an Indian person in possession of a tract of land on a reserve under a certificate of possession, the desirability of entering into a lease with a developer is that a cash return is therefore

generated from that tract of land. Additionally, long-term improvements may be made. The surrounding area may be enhanced by proper development. However, according to Section 28(1) of the Indian Act, an individual Indian band member may not directly lease his or her land to a third party non-Indian. Section 28(1) reads:

Subject to sub-section (2), a deed, lease, contract instrument document or agreement of any kind whether written or oral, by which a band or a member of a band purports to permit a person other than a member of that band to occupy or use a reserve or to reside or otherwise exercise any rights on a reserve is void.

Undoubtedly a significant policy concern underlying the Indian Act and its predecessors was that Indian persons were not to be imposed upon or cheated by non-Indians. Given that general concern, it was made mandatory for any transactions relating to the disposition of Indian lands to require the involvement of the agency responsible at the material time for the administration of Indian affairs. That legal requirement is still in effect. However, in practice, there has been considerable alteration in the sense that Indian persons and bands now have a much more active role to play in the governance and disposition of their lands. The Act provides that leases of Indian land should be executed by an official acting on behalf of Her Majesty the Queen in right of Canada. In practice, that official is a member of the Department of Indian Affairs. Where bands have been granted more ample authority over land matters pursuant to Sections 53 or 60 of the Indian Act or by special statute, the practice may be somewhat altered.

Nevertheless, the basic concept is that the federal government holds Indian land in a fiduciary capacity for individuals or a band and is, in law, the party lessor. But whatever the legalities are, the commercial world follows its own course and, in fact, leases of Indian lands are similar to leases of non-Indian lands. A developer will approach a band or a band member to ascertain if a contractual arrangement can be entered into for leasing a parcel of land. If an agreement can be reached, documentation is prepared and a lease is duly entered into. But the lease, as executed, is not between AB, an Indian band member, and XY, a non-Indian, but rather between Her Majesty the Queen as lessor and XY as lessee.

Although, in fact, AB has leased the land to XY, in point of law, the direct legal relationship is between the federal government and the lessee. In such a situation, there is obviously some divergence between the situation in fact and the position reflected in the legal documentation.

There is thus a certain artificiality to the transaction in the sense that the basic business arrangement is between AB, the Indian entitled to possession of the tract of land, and XY the lessee, but this is not



reflected in the documentation where Her Majesty and not AB is the lessor. It is, of course, not unknown in the non-Indian world for agents or nominees to be involved in commercial leases. Such a situation would arise where, for instance, the trustee of a minor beneficiary entered into such an arrangement with a lessee. In the latter case, however, there would often be no direct dealing between the beneficiary and the lessee, whereas in a situation involving a member of an Indian band, the reality is usually otherwise. There, the band or band member has many of the attributes of ownership but is not generally able to directly lease Indian reserve land.

The interposition of the Department of Indian Affairs and Northern Development between the band member and the third party lessee has considerable historic underpinning and justification, but I think that it does from time to time cause certain tensions and difficulties. There has always existed a very real possibility of confusion as to just who has particular responsibility or authority relative to the various issues that may arise under a lease of Indian land. There was a time when Indian people had very little control over such matters in practice. But over the past twenty years that situation has changed quite dramatically in British Columbia.

It would be to ignore reality to fail to note that practices regarding leases of Indian lands in the 1950's and 1960's differed from those in the 1970's and 1980's. This was particularly true of desirable lands near urban centres, such as the reserves of the Westbank Indian Band. There was certainly a suggestion in the evidence I heard from a number of sources that the posture of the Department as landlord in earlier times was less vigilant than in the recent past. The Department, as a landlord, was undoubtedly viewed as a much more "easy" landlord than would be the case in more recent years. Yet, to be fair to all parties, these were early days in the economic development of reserves in British Columbia and the perception of matters economic in Indian affairs then was dramatically different in a great many ways from what it is today.

As noted, Indian lands have certain desirable features from a developer's point of view. The capital cost requirements can be lighter. There may be less regulation, and that also appeals to developers. Land values on the Westbank Reserves 9 and 10 were considerably lower in the 1950's and 1960's than was the case in the late 1970's and into the 1980's. There was no particular planning regime in the 1960's. By-laws were unthought of. It was an uncomplicated era in some senses, but later, out of events that originated in that uncomplicated era, rather serious complications were to arise.

### **Early Development on the Westbank Reserves**

Prior to 1970, there was relatively little development on either Westbank Reserve 9 or 10. The earliest registered leases, from the

1930's through to the 1950's, were virtually all short-term agricultural leases. Many Band members gained their livelihood working in the fruit and vegetable industry. Certain Band members engaged in small farming operations during this time. Indeed, agriculture still contributes to the economy of the Westbank Band. For example, Mr. Ted Derrickson on Reserve 9 and the Swite family on Reserve 10 are actively involved in farming. However, by the 1960's some members of the Westbank Band were beginning to seek out commercial and residential development as a more substantial source of income.

The new floating bridge that spanned Lake Okanagan linking Reserve 10 directly to Kelowna greatly increased the development potential of both Reserves. The City of Kelowna was viewing Reserve 10 as a possible suburb within its expanding municipal boundaries. These events and concepts were evolving about the time that the Westbank group separated from the Okanagan Band. Certain of these factors may have acted as a catalyst in the decision to form a separate Westbank Indian Band.

On February 17, 1965, about one year after separation from the Okanagan Band, Westbank Band members voted to surrender Reserve 10 for leasing purposes. This was done to accommodate a plan referred to as the "Grosvenor Laing Development", an ambitious proposal for developing the entire Reserve. However, as the details of the development were more closely scrutinized by Department officials, it was decided that the return to the Band members would be insufficient. Mr. Fred J. Walchli testified that his first assignment (as a Land Use Officer with the Department) was to review the Grosvenor Laing proposal. He recommended against the plan because he felt there was too much uncertainty as to whether the Band would get a fair return on their land. An overview of the proposal was that development costs would be the first charge against any return, thereafter management fees were to be paid to Grosvenor Laing, and any resulting profit would be split 50/50 between the developer and the Band.

After the concept of the Grosvenor Laing development had been abandoned, another group of developers came forward with a similar proposal. According to Mr. Walchli, this new proposal on behalf of Catamount Developments suffered from many of the same defects as the Grosvenor Laing plan. Although it was an improvement over its predecessor in that it allowed for Indian involvement on the board of directors and more attractive revenue-sharing, it was still viewed as creating too great a risk to the Band's valuable land holdings. Consequently, it was not allowed to proceed.

Only minor development occurred on Reserve 10 during the surrender period. A portion of waterfront had been leased for a marina development, and another small parcel adjacent to the bridge had been leased

for a retail enterprise. Okanagan Regional College Council had leased a substantial lot for a college site in 1965, but relinquished it in 1973.

Reserve 9 had been surrendered for leasing in 1967 under similar conditions to those governing Reserve 10. There was not a great deal of leasing activity on Reserve 9 during the surrender period. A portion of Reserve 9 which fronts on Okanagan Lake had been the subject of some tent and trailer park development. Mr. Leonard Crosby had commenced constructing a development. Mr. Noll Derriksan attempted to develop certain of his locatee lands through a corporate vehicle, West-Kel Holdings Ltd. West-Kel held the head lease on lands which were later sub-leased to the developers of a proposed mobile home park often described as Westview Village or Park Mobile Homes. This was adjacent to the area of Mr. Derriksan's own Mt. Boucherie Mobile Home Park. In addition to such commercial leasing, there were some shorter-term agricultural leases, and there was consideration given to developing a speedway racetrack on Reserve 9.

Virtually none of the lands which had been leased during the surrender period on Reserves 9 or 10 were Band lands. Consequently, virtually no funds accrued to Band revenue as a result of the surrender exercise. The surrender could be viewed as a tentative step in the direction of Reserve development. Ultimately, it was fortunate that the proposed development on Reserve 10 did not proceed, as I believe the Band members are better off today with the great increase in land values that has occurred over the past 15 years. In December 1972, both Reserves 9 and 10 were returned to reserve status.

Under the terms of surrender of both reserves, revenues generated from leased parcels were to accrue to the locatees who had held the lands prior to the surrender, or to the Band as a whole in the cases where unallotted lands were leased. Although a surrender of reserve lands normally has the effect of removing all individual locatee interests, under the terms of the Westbank surrenders, former locatees retained a beneficial interest in their lands. Individuals continued to buy and sell these interests during the surrender period. However, no new allotments were possible. At the time the lands were returned to reserve status in 1972, the Band Council reallocated lands to individuals based on the historic beneficial interests. Lands that had been leased during the surrender maintained the status of surrendered lands until those leases expired or were cancelled. This later had some significance relative to the possible application of Band by-laws to such land — questions arose as to whether surrendered land was in the category of reserve land under the Indian Act.

Although the strategy of surrendering the entire Reserves for development was abandoned, the push for development was very much alive in the early 1970's. The federal government had undertaken programs in the late 1960's to improve the social and economic status of

Native persons. An Economic Development Program was launched at that time, the object being to encourage Indian entrepreneurship and the efficient development of reserve lands. The Westbank Band was still of a mind to see Reserve 10 developed in a comprehensive way under a community plan. A study, known as the "Interform Plan", was undertaken in 1973 to determine the optimum future development for both Reserves. The plan recommended that Reserve 10 be fully developed as a planned community, and that Reserve 9 should be used for Band housing as well as for agricultural, recreational, and commercial purposes.

The Community Plan for Reserve 10 was in structure and concept similar to the earlier plans noted above. However, it was now to be undertaken in stages by a development company to be formed by the Band. It envisaged primarily residential uses of varying densities together with a supporting town centre, a golf course, and associated recreational facilities. Some commercial uses, including an existing marina and store, were to be permitted under certain controls. It was recommended that locatees on Reserve 10 sell their lands to the development company and receive in return shares in the development. Both Band and locatee lands were to be included in the project. The concept of the plan apparently had a reasonable measure of support from the locatees of Reserve 10, although a number of locatees had substantial concerns about specific aspects of the plan. The land pooling concept was never achieved, but the Band did begin to formulate future development on both Reserves that was generally in accord with the Interform concept.

By 1973, the Westbank Indian Band Development Company had been formed to begin developing the land resources of the Band. Noll Derriksan, Chief of the Band in this period, began planning for the first residential subdivision on Reserve 10, the Sookinchute, or Lakeridge Park, development. To that end, a large block of Band lands above Lake Okanagan was surrendered. A long-term head lease was entered into with the Westbank Indian Band Development Company. This company undertook to develop the subdivision and to make lease payments to the Band. It would obtain its revenue from long-term sub-leases of individual lots. The Company's Board of Directors was comprised of appointed Band members. The project was to be financed by way of conventional financing, including long-term residential mortgages. It was conceived as a high quality residential development, a concept that has been fulfilled.

The subdivision ran into difficulties at the outset such as cost overruns and financing uncertainties. There also appeared to be a general resistance in the housing market to long-term leaseholds on Band land. By the time Ronald M. Derrickson became Chief in October 1976, the project was in some disarray. By virtue of financial assistance

from the Department, coupled with an aggressive marketing strategy (and perhaps assisted by a general upswing in the local economy), the company began to overcome these early problems. Although it is difficult to be precise as to how much money this project generated as ultimate profit to the Band, it has been generally viewed as an economic development success story by both the Band and the Department of Indian Affairs and Northern Development.

While the Band, through its company, was thus developing Reserve 10, development of mobile home parks became more active in the Okanagan Valley generally and in the Kelowna area in particular. This activity was occurring particularly on Reserve 9. The parks that had been established in the late 1960's and early 1970's were expanding and others were being started. As early as 1974, Noll Derriksan, through his company Toussowasket Enterprises Ltd., had, with the assistance of the Department, undertaken plans for development on his locatee land of a mobile home park that he intended to operate. This park, later known as Mount Boucherie Mobile Home Park, was to be a high quality park. Actual construction of the park began in 1976. The project was subject to financial problems from an early date, details of which are provided in Chapter 2 of this Report.

At the time that Ronald M. Derrickson was first elected as Chief in 1976, the Westbank Indian Band and certain of its members had begun projects to develop reserve lands. However, two of the major Indian-owned initiatives, Lakeridge Park and Toussowasket Enterprises, were in rather dreary economic condition at this time. Mr. Derrickson said about Lakeridge in his evidence: "we came to the . . . conclusion that the company was bankrupt and it was unsalvageable". He was persuaded by Mr. Walchli to try to salvage it and in fact it was salvaged and became a good development. The development of this residential subdivision continues at present.

### **Significant Persons**

In the period 1975-86, three people stand out as major figures in the history of events at Westbank. Those people are Mr. Leonard R. Crosby, a lessee of lands on Reserve 9, Mr. Ronald M. Derrickson, Chief of the Westbank Indian Band from 1976 through 1986, and Mr. Fred J. Walchli, Regional Director General in B.C. of the Department of Indian Affairs for the period 1976 through 1983. Various storms (or perhaps at times just thunderclouds) rumbled about Westbank. The three above-noted men were centrally involved in the various controversies that emanated from Westbank.

Mr. Crosby had become interested in developing a retirement complex on lands held by Mr. Derrickson. This was in about 1969 when he was still a member of the R.C.M.P. Later, the project changed to a

mobile home park. Mr. Crosby appears to be a competent operator. Although he and Mr. Derrickson have, to put it mildly, had their differences, the latter acknowledged that Mr. Crosby's operation has been well-run and a credit to the Reserve. He was somewhat less commendatory of some other operations.

Mr. Derrickson grew up on Reserve 9. His parents, people of some stature in the community, farmed and still farm on the Reserve. Mr. Derrickson has lived through an era of dramatic change in Indian affairs. It would be fair to say that he is not wholly typical of Indian society. He has been actively involved in economic and political activities. He became interested in acquiring land on Reserves 9 and 10. He sought political office. In 1976 he was elected Chief. He possesses drive. He is not long on humility. His style can be highly confrontational. He has not had an easy life because he straddles two worlds. He gets things done but diplomacy is not his forte.

Mr. Walchli was born in Prince George and took his schooling there and at UBC. He has training in land economics and management. He worked in industry and for municipal authorities prior to joining the Department of Indian Affairs and Northern Development in 1966. Immediately prior to joining the Department, he worked for two years as a land inspector in Prince George with the provincial Department of Lands and Forests. His initial job with the Department of Indian Affairs and Northern Development was as a land use officer. When he took over as Regional Director in B.C. in 1976, there was considerable upheaval in Indian affairs in B.C. These were not easy times in which to preside. Mr. Walchli is currently a senior federal negotiator for land claims.

It is desirable to let these three parties speak for themselves to some extent. I set out hereafter excerpts of their evidence. Because these people are central to any meaningful narrative of events at Westbank, it is necessary to understand who they are and what they perceived themselves to be doing. By allowing them to use their own phraseology, one can get a sense of the individuals and their backgrounds.

How Mr. Crosby came to be a lessee on lands at Westbank Reserve 9 is set out in the following excerpt of his evidence:

- Q Mr. Crosby, I'd like a little biographical detail about you at first. You were formerly a sergeant in the Royal Canadian Mounted Police, were you not?
- A Yes.
- Q And you were stationed in Kelowna in about the years 1967 and '68?
- A Yes, I was.
- Q And about that time you became interested in acquiring some land on the Indian Reserve No. 9?

- A Yes.
- Q And you made application for some land?
- A Yes, I did.
- Q Can you tell us about the land you applied for at that time, where it was situated and what it was?
- A It's on the southeast corner of No. 9 Reserve. It borders on to Boucherie Road, and that is on the north side of Boucherie Road, and it consisted of approximately three and a half acres.
- Q And that's at the west end of the Indian Reserve No. 9, is it not?
- A Yes.
- Q And in relation to the lake, the lake is, in fact, south of your property?
- A Yes.
- Q You made application then in or about the year 1968 for three and a half acres of land?
- A Yes, that's right.
- Q And who were you dealing with at that time, to acquire that land?
- A I had been talking to Ron Derrickson.
- Q And was he, to your knowledge, the locatee of the three and a half acres at that time?
- A I believe so.
- Q And you made application then by this letter, No. 1 in this group of documents, and a lease was executed and delivered to you in the year 1969?
- A That's right.
- Q And I refer you now to document No. 2 in the group of documents.
- A Yes, document No. 2 is a copy of a telex that I received from the administrator of land in Ottawa, and it bears the date 11th of December 1969.
- Q And in that document, or No. 2, you were advised that a lease had been executed and would be forwarded to you through the Kootenay Okanagan Indian Agency.
- A Yes. . . .
- Q What were the significant terms of the lease that you entered into in 1969?
- A It was a fifty-year lease. The rent for the first five-year period was \$800 a year, I believe.
- Q And when it came to revisions of the rental what did the lease provide for?
- A It provided for arbitration.
- Q All right. And I refer you now to document No. 3(a) and No. 3 in the volume of documents. No. 3(a) appears to be a document dated the 25th of August 1969. Included in it and on the signature page, it would be about the sixth page, it appears to have been executed by yourself, by Ronald Derrickson, by Herbert Taylor Vergette on behalf of the Department, or the Minister, or the Crown. It appears to be signed by the Chief and Councillors of that time. Do you have that before you?
- A Yes, I do.
- Q Is that the lease that you executed for your original three and a half acres?
- A Yes.

- Q All right, just going through the significant terms: There's \$800 as a rental. There is a sketch showing a 3.75 acre parcel. Do you have that?
- A Yes.
- Q And Boucherie Road is to the south of your parcel, I take it?
- A That's correct.
- Q And at the top of the page, that's the western boundary of the parcel?
- A Yes it is.
- Q Now, who drew this lease or do you know?
- A I don't know for sure.
- Q All right. It was not drawn by your lawyer?
- A No.
- Q I refer you to page 2. There is, in the first full paragraph, after the word "provided" there are mechanics that are incorporated into the lease for rent revision. Do you see that?
- A Yes.
- Q All right. Would you explain to the Commission what your understanding of that clause was and what your input was into the drawing of that clause? . . .
- A The main part of that matter was that in any future — or the determination of rent for any future five-year period, that is after the first five-year period, the annual payment is reflecting the increase, if any, in the market value of the unimproved land to be paid by the lessee to the lessor. Such amounts shall be agreed upon by the locatee and the lessee and in the event no agreement should be reached by arbitration with the locatee and the lessee, each selecting one arbitrator, and the two arbitrators so selected choosing a third and the decision of the majority of the three arbitrators shall be final.
- Q Now that provision was agreed upon by you, by the locatee and by the Crown or the Department of Indian Affairs, is that correct?
- A Yes.
- Q And the idea behind that clause was the concept that you would not pay any increased rental based on any improvements that you placed upon the land?
- A That's my understanding, yes.

(Transcripts: Volume I, pp. 5-10)

Thus it was that Mr. Ronald M. Derrickson and Mr. Leonard R. Crosby became known to each other and entered into legal relations, one with the other. Or perhaps more accurately, one might say that they were prevented from entering into direct legal relationship, one with the other, by the provisions of the Indian Act, and that that may in turn have led to many of the problems that later surfaced between them. Interposed between the two was the Department of Indian Affairs and Northern Development. Later on, following his retirement from the police force in 1971, Mr. Crosby arranged to lease additional land from the father of Ronald Derrickson, Ted Derrickson. Mr. Crosby told me of the improvements he began on the land.



- Q What type of financing did you arrange for the development of this property?
- A I used my own funds initially, but all of those weren't immediately available when I first commenced and I had some financing from the Kelowna and District Credit Union.
- Q Did you grant a mortgage over the property at that time?
- A No, I think my first financing was by way of personal guarantee. There wasn't a mortgage registered against it.
- Q What buildings did you put on the property?
- A The first building we constructed was a duplex building, approximately 1600 square feet, one bedroom on each side, with a carport and a small sundeck.
- Q Did you do any levelling of this land?
- A Yes, we did some, before building the duplex, but not the whole acreage initially.
- Q When was the duplex completed?
- A To my recollection my brother was the first occupant of one half of it and I think that was approximately Christmas, 1971.
- Q What else did you do to develop that property?
- A Well, we had to get power onto the property and put in water lines. We roughed in a gravel road initially.
- Q And the source of your water was not the lake, but the well you had dug?
- A Yes. . . .
- Q Now, you continued to develop that property of three and a half acres. You put in a duplex. Did you put in other buildings?
- A Not in '71, but I recall we did put in the basement for the second duplex, that is all the cement work. I think that was in 1972.
- Q Was there any further development done in that period of time?
- A No. We were working at it all the time, mostly my father-in-law and I. There was a — we also built my brother's house or started to build it. I think that was in the period of '72 to '73.
- Q And in the first five-year period of that lease, how much building did you do on the property?
- A That's between '69 and —
- Q Say '74.
- A — '74. I believe we largely completed my brother's house, and the first duplex would be finished and the second duplex commenced. And we've done a lot more site work. There was an awful lot of earth to move to fill the ravines.

(Transcripts: Volume I, pp. 12-14)

By the mid-1970's the direction of the enterprise had shifted. Mr. Crosby now wished to develop a mobile home park. He said some problems arose relative to the lease and that he was not well treated by the Department of Indian Affairs over an arbitration clause:

- Q All right. Now, did you have many discussions, and I'm now talking about the years 1974 and '75, with the locatee of the land, Ron Derrickson?
- A On one or two occasions, but not protracted discussions.

Q All right. Now, I'd like to ask you about something else in this letter. Do you recall there was an arbitration clause in the lease that you signed?

A Yes.

Q Now in the first paragraph of this letter it refers to an inability to arbitrate and also the Department's acceptance of a contractual arrangement that cannot be honoured. Do you see that?

A Yes.

Q I direct your attention also on the second page of the letter to the clause that says:

"Arbitration as outlined in the lease is inoperative."

A That's right.

Q All right. Would you tell us about what discussions you had with respect to the arbitration of the revised rent or a new rent?

A Well, it's just as the letter states, the Department representative adopted the view that the arbitration — the reference to arbitration in the lease was inoperative. They couldn't or wouldn't use it.

(Transcripts: Volume I, pp. 20-21)

Mr. Crosby came to believe the Department was not living up to the terms of the lease. He felt the Department should go to arbitration on the rent, but the Department thought otherwise. The arbitration clause was poorly drawn and there was some basis for the Department saying that it was "inoperative" — perhaps "inadequate" would have been a better term. It was clearly difficult to implement.

Q And it appears that the Department fixed a rent at \$2100 per year in the letter, and then it's stroked out, and \$2675 is written in in September 6, 1974.

A That's correct. And in their letter on the 9th, that's 10E, dated the 9th of September 1974, there's a P.S. at the bottom,

"In our letter to you dated September 6, 1974 in connection with lease 69-2249 the new rental is shown as \$2100. This should read \$2675."

Q Can you elaborate on that for us, please, or can you tell us anything more about it?

A I took it that he was drawing to my attention that there'd been a typographical error.

Q In any event, that lease — those letters were not acted on, were they? A new arrangement or a new deal was made.

A Yes.

Q Would you tell us about that, please?

A Well, I think we'll come to those letters in a moment, but we didn't seem to be getting — be able to resolve the difference of opinion as to what the rent should be, so I needed an arbitrator and I wanted the Department to see that the rest of the lease was lived up to.

Q Did the Department name an arbitrator?

A No.

Q And there was no arbitration?

A No, there was not.

Q However, you later, in that year or the year following, entered into further negotiations for a lease, did you not?

A Yes, at that time, since we couldn't seem to agree or get the arbitration matter in progress, I offered to sell them my leasehold interest and leave the property, but this never came about nor did I receive an offer of any sort in reference to his offer to sell to them. . . .

Q In any event, up until the period of 1975 or 1976 you had not started to develop any form of mobile home park?

A No.

Q I refer you to letter No. 13, a letter to Ronald Derrickson, the 5th of July 1975, which reads as follows:

"After our last conversation I contacted Mr. Hulley at the Vernon office and he offered to see you within a few days and was to contact me. However, I believe he no longer acts in his former capacity.

I believe we are close to being able to settle our mutual differences, however, we appear to have a communications problem and to assist in that regard may I suggest that you ask your brother Noel or your father if he would mind contacting me for a short meeting in order that I can convey my current thoughts on the matter of rent to you through a third party who I believe has the confidence and esteem of both of us."

Now, what was happening at or about that time?

A We still hadn't resolved the rent issue and we had been discussing the enlargement of the area I leased from about three and half to approximately seven and a half acres.

We were close to an agreement on what rent would be suitable to him for the seven and a half acres, but it's my recollection that Ron was not the locatee of that land at that time. I believe that the land belonged to his father or was under the locatee or certificate of possession of his father.

Q You were thinking at that time of leasing an additional parcel of three and half or four acres?

A That's right.

Q You were thinking at that time, then of creating a mobile home park?

A Yes.

Q And to your knowledge or belief at that time Ron Derrickson was not the locatee of the property adjacent to you, but his father, Ted Derrickson, was the locatee, do I have that right?

A That was my understanding, yes. I eventually did lease this additional four-acre piece of land. When the locatee status changed I don't know.

(Transcripts: Volume I, pp. 21-26)

Around 1975 momentous changes were occurring in Indian affairs in B.C. There was a considerable degree of unrest, and relations between the Department and bands were becoming more tenuous — some district offices were closing. Mr. Crosby testified about this as follows:

Q Now, the next letter in this bundle of correspondence is from the Department. It's number 14. It's dated July 16, 1975 and it directs

you to make payments under your lease not to the Kootenay Okanagan District Office but to a Vancouver office of the Department of Indian Affairs.

A That's correct.

Q Can you tell us what has happening at or about that time?

A The district office, as this letter says, is closed. That is, the office in Vernon closed at that time.

Q Okay, and that office closed at that time and has never reopened?

A No.

(Transcripts: Volume I, p. 27)

Ultimately, Mr. Crosby, through his company Golden Acres Ltd., acquired a lease of about 7.5 acres in 1976. He testified about the terms of the lease:

Q Now, let's just deal with the significant parts of this lease, No. 23. It was a lease for forty-five years?

A Forty-five years, seven months. Yes.

Q And there's payment of rent of \$1400, and then the rent for the first five-year term, I take it looking at page three, was an annual rent of \$3500?

A That's correct.

Q And then you had in there on page three a formula for establishing renewal rents for revised rents for the future.

A Yes.

Q All right. Did you have any input into the drawing of that formula?

A Yes. When we had agreed as to the new area and the new rent, then I was in Vancouver and I don't know for certain who it was that I was speaking to, but it was in relation to the preparation of the lease and I was insisting that the lease contain words which would acknowledge the development, or the authorization of the development had already been done; also that it was to be a land-only lease.

Any future renewal of rent in any future five-year period would be in respect to land only and they were to ignore any improvements that I'd made on the property. Also there was a discussion and I was saying in effect that I wanted some assurance that any future land rent would not be so excessive that it would be impossible for me to carry on with the lease.

Those generally were the things that I was asking or insisting that should be included in the new lease.

(Transcripts: Volume I, pp. 37-38)

During 1974-76, there were discussions back and forth between Mr. Crosby, Mr. Derrickson, and officials of the Department as to whether Mr. Crosby would go forward with his development plans or whether Mr. Derrickson would buy Mr. Crosby's completed developments. Ultimately Mr. Crosby entered into a new lease in 1976. The lease was different from leases current today. It provided for setting lease rates based on applying bank prime rates to appraised land value. It also provided that "the level of income being generated by the tenant from

its use of the land will be taken into account". As well, the lessee consented to observe by-laws, regulations, etc. of "every federal authority or agency applicable to the land and improvements".

These clauses loomed large in later controversies between Mr. Crosby and Mr. Derrickson. The concept of a percentage rent surfaced in a letter from Mr. Crosby to Mr. Kerr of the Department dated April 19, 1975. A dispute over this later led to a rupture of relations between Mr. Crosby and Mr. Derrickson — this breakdown had the unfortunate result that dialogue ceased and acrimony increased. However, strains in the relations between the two men could be perceived as early as July 1975 when Mr. Crosby wrote to Mr. Derrickson seeking to involve a third party and suggesting "your brother Noel [Noll] or your father" as a mediator of sorts. This is a theme we shall see again in the form of Mr. Crosby seeking to deal not with Mr. Derrickson but with officials of the Department.

During a period of dramatic and intense change, 1974 through 1976, came the advent of Mr. Ronald Derrickson as Chief of the Westbank Indian Band. He gave evidence before the Commission commencing on June 5, 1987. He described his early life, how he became interested in Band affairs, and what he aspired to do for his Band and Native people in general:

Q Mr. Derrickson, what is your present age?

A I am 45.

Q And what is your present occupation?

A I am a businessman.

Q Where were you born and raised?

A I was born in the Kelowna General Hospital, and I was raised on the Westbank Indian Reserve.

Q Mr. Derrickson, could you tell us where your parents were raised?

A My father was born in Winfield and was raised in Westbank, as far as I know. My mother, I think, was born in Ashcroft and was raised at St. Mary's Mission in Omak, Washington, and I guess, her remainder of life, she looked after me.

Q Mr. Derrickson, what are your earliest recollections of life on the Reserve in Westbank?

A Well, I guess my earliest recollections are somewhere in the late 1940's, and I think life on our Reserve then would be consistent with a non-serviced, rural — very rural area — Indian Reserve. It was generally, the most of homes, I guess at that time, none of the homes had running water, none of the homes had bathrooms, some of them never had homes.

You know, our people were nomadic, they followed work. I myself, we worked for the Chinamen in the vegetable gardens. We worked thinning and worked in apple orchards, anywhere we could make a buck to eat.

Q Could you tell us a little bit about what your recollections are in reference to employment on the Reserve in those early days?

A Well, there is basically two to three types of employment offer to a Native Indian in those days; that was working in the vegetable and

fruit industry in this valley with large canning facilities. We never got the privilege of working in the canning facilities, we worked out on the farms in the sun. They worked, like I say, the vegetable gardens, the orchards; some of the Indians went to work in a logging camp. That wasn't very much in the early days.

We were generally nomadic in nature. We had to move around the area where the jobs were and small farmers.

Q Mr. Derrickson, what is your earliest recollection of where you lived, or the house that you lived in upon the Reserve?

A Well, the first one I remember was a one-room shack, somewhere just off of Boucherie, I would say, north of Boucherie Road, where the Boucherie Pub is right now, and my dad's vineyard is — the one-room shack that had no running water and no bathrooms in it.

Q Did you live in that particular area for most of your younger life?

A I lived down in that area all my life.

Q Mr. Derrickson, do you have any recollection in the early days on the Reserve, as to what the policing was like on the Reserve?

A Well, the original police used to be the Provincial Police. As far as Indian is concerned, I guess it's like most government bodies, they are the enemy, because, you know, the Indian, in my mind, and as I grew up, seems to always get the short end of the stick when they were involved. I'll give you an example.

When the police used to come for sport on Saturday nights and they used to come to the Reserve and kick in a few doors on the Reserve to find out if there was any Indians drinking, because in them days, the Indians weren't allowed to have liquor.

Q What is your early recollection in reference to your schooling?

A My brother, Noll and I, were one of the first Indians ever allowed to go to a public school in Westbank, and it was tough.

Q How long did you go to that particular school, Mr. Derrickson?

A We went there the first grade one of our schooling, and then it was so rough on us that our folks pulled us out and sent us to St. Mary's Mission in Omak.

Q Now, your brother Noll, is older than you are?

A Yes.

Q But you both started school at the same time?

A That's right.

Q And you both started school in Westbank?

A Yes.

Q Tell us about the type of difficulties that you had in that first year of schooling.

A Well, all Indians were made to sit at the back of the class. You know, for example, when the teacher would ask the question of the student, and if an Indian put his hand up you know, he'd just look like a dope sitting there with his hand up, because nobody would ask him a question. It got better as years went by, but not much better during my time I was in school.

Q Now, a decision was made by your parents to remove from that school after the first year?

A That's right.

Q And where did you go then?

A St. Mary's Mission.

Q Where's that?

A Omak, Washington. It was, I guess, I don't know what the term for that school would be, an Indian residential Catholic school, with all the Catholic dogma and trimmings, I suppose.

Q And how long did you remain at that school?

A A year.

Q And then what happened?

A Well, it was worse than the public school, so we came back to the public school.

Q How long did you remain in the public school?

A I left public school in the middle of grade nine.

Q What gave rise to you leaving school at that time?

A I was entered in the University — in those days they had a University program — I don't know if it's the same, it's been so many years since. I've seen the inside of a school. The principal removed me from the University program, so I thought there wasn't much point; I wasn't getting along very well with him anyways, so I just left.

Q Was there a particular incident that gave rise to you leaving in reference to that particular program that you were involved in?

A Yes. There was a violent incident that made me suddenly decided I had better make an exit.

Q Did you ever return to school after that?

A No. Yeah, I went during the early '50's, or the mid-'50's, there was a national report, and I can't remember who it was done by, but basically the report said that the education and the housing situation with Indian people was deplorable, and there was a great surge of conscience and the non-Indian sympathy for the Indian people had grown at such a rate, they decided to give a bunch of Indian kids a chance to learn something.

So, I was chosen as one of the children — or young teenagers — to go to the University of British Columbia, to attend a six-month extension course in agriculture, so they figured they'd get us back into the fields somehow.

Q And did you attend that course?

A I did.

Q Is there anything that particularly sticks in your memory that happened during the course of that time at UBC, that you can recollect today?

A Well, that was the first time I ever met Senator Len Marchand. He heard I was in the school; he heard there was an Okanagan Indian down there, and he came to see if I had, you know, enough pairs of socks and two pairs of pants for a change. He was going through the University on an Agriculture course then.

Q And that was the first time you were involved with Senator Marchand, is it?

A That's the first time in my recollection that I remember Senator Marchand. Of course, he wasn't a Senator then.

Q Mr. Derrickson, when did you first start working?

A As soon as I could, I guess, get my butt between two rows of onions, you know.

Q How old would you have been then?

A Five or six.

Q After you finished school, what did you do?

- A I went to work in logging camps and orchards, whatever, ranches, you name it, wherever there was a job and where they would hire me, I would work.
- Q How long were you involved in the logging business?
- A Off and on, four or five years.
- Q What did you do next as far as employment was concerned?
- A It's so long ago, it's hard to remember, but I started welding in Vancouver for Wagstaff Hoists, and then I got into a Union by getting into the shop. Then as a union member, I travelled all over Canada, and the northern west half of the United States, doing service work for Wagstaff Hoists.
- Q Did you take an apprentice program in welding?
- A That's right.
- Q And you completed that course?
- A Yes.
- Q And that was your employment for a number of years, was it?
- A That was — well, that's the only profession I ever gained.
- Q What type of days and hours did you work in reference to that particular business?
- A Well, you know, in the boom days of '60's, when they were building oil pipelines and pulp mills all over the country, I worked eight hours on and eight hours off, almost seven days a week for six months. I worked when they build the Northwood Pulp Mill in Prince George, I worked from the time it opened until the time that W.A.C. Bennett cut off the overtime, then there was no use working there, you know, it was a hard place to — Prince George wasn't my favourite place for a Native son to be.
- Q Mr. Derrickson, was it during that period of time that you started to garner somewhat of a capital base?
- A I saved as much money as I could get my hands on. What I saved, I bought land with.
- Q Did you have a plan at that time, in reference to what you were going to use that capital for?
- A Well, I don't know at that age, if I was bright enough to have a plan, but, you know, I intended to — I was experiencing — trying to experience business, so I was looking at anything that I could make a fast buck at. The only thing that had been drummed into my head from the time I was born was my dad said that the land doesn't go away. If you buy it, it will be there tomorrow. So, you know, that was, basically, the first thing that I started to look at.
- Q At that period of time when you were away working, was your father involved in the management of looking after a series of land parcels on the Westbank Indian Band Reserve?
- A Yes. My father was always very ambitious in regard to having a large land base, and he has a large land base together. In fact, I can remember the Indians used to call him the "Commissioner" and the "Baron", you know, jokingly, because he had all this useless land. Like, some of it is still useless today. But, I can tell you, none of us are going to give up any.
- Q Did you start acquiring or buying land during this period of time?
- A Yes.
- Q And you bought land at that time, mainly on the Westbank Indian Band Reserve, is that correct?



- A Mainly, except for one other parcel I got involved in with a group of Kelowna businessmen, and they gave me my first lesson in knowing what the hell you're doing before you get in it, because they skinned me for everything I had.
- Q Mr. Derrickson, during the 1950's, could you tell me what your recollection is of how the administrative part of the Westbank — what is now the Westbank Indian Band operated? I realize it was the Okanagan Band at that time, but could you tell me how the administration of the Band operated?
- A Well, I wasn't very much interested in them days. I was more interested in getting enough money for lunch, but, you know, my recollection that my parents were very involved, and that they had tried, unsuccessfully, for some years with the Okanagan Indian Band to get some kind of representation — even a Councillor — elected to represent the interests of the Westbank Indian Reserve.
- It was a joke. They laughed. I mean, there was no way we were going to get representation for anything, period, up there. So, as I remember, the initial committee was Francis White and my dad, and Mary Eli and Millie Jack, and Bert Wilson, who started lobbying. I think in them days, and I can't remember offhand, the big guy in Indian Affairs was called the "Commissioner", and I think, eventually after a lot of lobbying and votes of both Bands, it was agreed that we could leave the Okanagan Reserve, and we formed our own Reserve.
- Q Did you have any experience in dealing with the Indian agency in Vernon, during the period of time it existed?
- A No. I was like any other Indian. I pretty well went along with what they told us to do, and pretty well respected what they told us to do in those days.
- Q Mr. Derrickson, was there much in the way of communication between the Natives that were in the Westbank Indian Band area and the Okanagan Band, or the agency office in Vernon, during that period of time?
- A Well, I don't know. If you had an agriculture lease or something, you went up there and, other than that, I don't really know. I know that you couldn't do much; you couldn't fence; you couldn't put up wire. I know that a truck would come along every couple of years with the deck of the truck full of paint, and it was all the odd colours that no other — I guess all the paint companies wanted to get rid of and give the Indians the orange and purple, and green, bright green paints.
- So, I guess that's become part of our heritage, having bright houses. . . .
- Q Mr. Derrickson, what are your first recollections of your dealing with the Department of Indian Affairs, and who were you dealing with?
- A Well, in respect to, I guess the very first dealings with the Okanagan Indian agency and the first guy, I remember, was Dave Hett. I can remember trying to get some barb wire from him for my dad's house, and he wouldn't give me any and it made me so upset he wouldn't give me any barbed wire, but the guy had just taken 40 rolls out of there before me and I only wanted 6 rolls. I

think that was the first interaction I ever had with the Department of Indian Affairs and I lost, so I never did get my wire.

Q Were you dealing, at that stage, with an Indian Agent in Vernon in the early years?

A Yes.

Q How would you characterize the attitude and the response of the Indian Agent, in reference to Native people, at that point in time?

A Well, some of them were very good. Dave Hett, you know, he was from the old school. I think he might have had a bit of a military background because it was traditional that those people in the military would, when they retired from the military, they would come and they would work for Indian Affairs, and you could see that. You know, they were very disciplined in their manner and their ways, and very short, you know. We were expected to, you know, really were expected — the same thing is expected today, only they do it a little more eloquently.

Q They set rules and you followed them?

A Pretty well, pretty well. The Indians are — they are an enterprising race. They learned how to sneak around them and do things without them. I learned just as well as the rest of them, you know. In the old days, you couldn't even sell any of your produce or your cattle without their permission. But hell, we didn't pay no attention to them, we'd sneak off and do it without them. And we still don't pay much attention to them.

Q Except for when you go on fishing trips down to the Regional office?

A Well, I mean, you have a responsibility if you are a Chief or a Councillor of a Band, to try and better your people and to look after your various programs. Any time, in the early years, there was really not much going on around here, I mean, you could all meet at the local restaurant or something and talk about what could happen, but eventually we got to a point where we went down to see what could happen, you know. And we'd go down on our little fishing trips to Indian Affairs in Vancouver, this was after the District office was closed, just to see what was available. I mean, it was a learning experience. We'd try to get on a first-name basis with everybody.

Generally, most of the technical bureaucrats were very helpful to the Indian people and would really try. I would say, probably, nine out of ten officials in the Indian Affairs were very good and very helpful, but it was very frustrating to deal with them and they were generally frustrated, because of the policies and the rules and the laws, and it's always been my complaint that the Indians are guided by 5 percent law and 95 percent policy. . . .

Q Mr. Derrickson, what is your recollection as to when the Band split, with the Okanagan Band, as to what transpired then, as far as the Westbank Indian Band was concerned?

A Well, even though there was divisions in our Reserves back then, our people knew well and good that in order to get away from, I mean, I guess to make a long story short — we hated each other less than we hated them up there. So, we had to kind of come together to get away from them up there, and we did — or they did, you know, I was just a kid.

Once we got divided from them, we elected the new Chief and Council. I think our first Chief and Council was elected by acclamation, but I can't remember.

Q Now, once that Band was separated and formed here, did you, when you were in Westbank, or at home, or at your property, did you take part in Band meetings and Band activities?

A Yes. I very, very ever seldom ever missed a meeting, the Band meetings of this Band, since I can remember. Not especially because I wanted, because our parents made us go, you know, we didn't have much choice in the matter. It was like going to church when we were younger. . . .

Q . . . Your first venture into Band government was in 1976, is that correct?

A That's right.

Q You ran against Norman Lindley?

A That's right.

Q And you were elected Chief?

A That's right.

Q Now, I would like you to tell us as to what your involvement was or what your focus of interest was in the first few months after you became Chief.

A Well, basically to find out where the Band was, to review the records and with particular emphasis on the Band's development company, the Westbank Indian Band Development Company.

(Transcripts: Volume LXV, pp. 9625-9695)

As noted above, the 1970's were times of very significant changes for Indian people both in British Columbia and in Canada generally. Mr. Fred J. Walchli gave evidence before the Commission in March 1987. He said he joined the Department of Indian Affairs and Northern Development in 1966 as a land use officer. He said that, prior to 1966, he had worked as a land inspector for the Department of Lands and Forests in Prince George. He was approached by Arthur Laing, a federal Cabinet minister responsible for Indian Affairs. Mr. Laing had expressed concerns about the way Indian lands were being managed and encouraged Mr. Walchli to join the Department of Indian Affairs and Northern Development. He described the situation when he arrived as follows:

Q Would you describe briefly the state of the Department at that time?

A My role at that time was primarily in dealing with land problems, and I suppose the first thing that struck me when I joined the Department was the general attitude toward the management of Indian lands. The feeling seemed to be that Indian lands had very little value, that if they did have any value, then we should take whatever proposal came along and try and lease it out.

There was no thought given to standards of development, arriving at proper rent rates, and no such thing as rental reviews, except on reviews that were no longer acceptable, like ten- and twenty-year periods. In any event, the approach seemed to be to accommodate the lessee, not the Indian.

The Indian people were starting to object to this in a big way. They were starting to enter into their own agreements which were what we called buckshee leases. The Okanagan was particularly bad for that, but all throughout British Columbia and indeed Canada there were a number of bands who had virtually taken over leasing out their own lands. They entered their own agreements, collected their own rentals.

They had no written agreements; certainly they weren't registered by the Department, and part of my role was to try and regularize a lot of those agreements.

Q That is what you called "buckshee agreements"?

A That's correct.

(Transcripts: Volume XXXI, pp. 4233–4234)

In 1969, Mr. Walchli was appointed the Regional Superintendent of Economic Development. He said about the land holdings situation generally in the Okanagan:

Q Could you give a brief overview of your work involving the Okanagan District, in particular with regard to land use during the period from '66 to '69?

A Well, this was one of the areas that we had most trouble with in British Columbia. The amount of land held by Indians is around 830,000 acres, of which 200,000 is in the Okanagan/Kootenay area, and another 200,000 in the Kamloops area. So half the land is in the southern part there, and in the Okanagan we had very bad situations.

On the Okanagan Reserve out of Vernon the whole lakeshore had been leased out in terms of buckshee leases, and of course the health authorities were pressuring us to develop some standards and get control of the situation. In Westbank we had one or two of the lessees, particularly on the Tomat properties, and Leo Matte, there was Shady Camp was the other one, I think — we were trying to undo deals that the Indians had already entered into, because we couldn't accept them because the standards weren't right, the lease fees weren't right, and Arthur Laing at the time was signing every lease, and he just wouldn't accept them until he was sure there was a proper development plan that went with it.

Then in terms of going through to Penticton we had a case where the airport had been taken during the war, had never been compensated — the Indians had never been compensated. We had a lot of problems trying to regularize that situation.

There were a number of leases on Skaha Lake which were regarded as unacceptable. We had a problem with the railroad through Penticton. Then, of course, we had Osoyoos. The bands there were trying to go ahead with a similar development to Grosvenor-Laing. They had another group of people in there, and we ended up rejecting that proposal because it didn't meet the type of standards we insisted upon.

There were highway right-of-way problems where the province had taken land without ever compensating the Indians, no agreements in place. It was a bad scene. I spent the first three

years most of the time going through the Okanagan trying to correct a lot of these problems.

(Transcripts: Volume XXXI, pp. 4239-4240)

Mr. Walchli left British Columbia and was in Alberta from 1974 to 1976. He returned to British Columbia in mid-1976. This was after the closure of the Vernon office. He outlined the situation when he arrived.

Q So, Mr. Walchli, you took up your position as Regional Director General July 2, 1976. How many reserves, and what was the structure of the government of the Indian peoples at that time?

A Well, there were 1621 reserves. If you refer to the map here, and it's not very good —

Q You have a map above you, yes?

A All these little dots represent reserves. There's 194 bands in British Columbia. There were 192 at the time, but later on two of them subdivided. I know one of them subdivided, and two more.

Anyway, we ended up with 194 bands. Now, when I took over in British Columbia I took over after the long hot summer of '75.

Q We'll go into that later.

A But what I found in British Columbia was a situation where the relationship of the Indians was extremely bad. The Department, because of what happened in 1975, had in fact become almost non-functional to the extent where the contact between the Indians and the Department was on an occasional basis.

Our staff would go out to the reserves if they were requested to, but otherwise they preferred not to. Indian people generally had given up on the Department at that point. In fact, they wanted the Department completely removed from their life.

(Transcripts: Volume XXXI, pp. 4247-4248)

Mr. Walchli went on to note that this was a time of considerable change in the dynamics of the Indian bands and the Department. He said that Indian people were seeking to take on more administration of programs.

A As we introduced programs, the bands began to take advantage of them. Throughout the British Columbia region we started introducing welfare programs and housing and so on, and they became very interested in development, all facets of development, social and economic.

But as they became more schooled in understanding the dynamics of development, they began to want to take over from us. Now, the band councils at that time had very little authority. The Department of Indian Affairs virtually did all the programming, or developed all the programs on the Reserves.

We administered the welfare; we administered the education; we provided the bus services; we built the houses and so on. The Indian band council was nothing more than a group of people who would advise the Department on where development was to go, and approve certain Band Council Resolutions relating mostly to land and the trust functions, but also approving certain programs.

(Transcripts: Volume XXXI, pp. 4251-4252)

He described what led to what he described as the “uprising in ’75”. As noted earlier, the period 1974–75 was one of stormy relations between Indian people and the Department in B.C.

- A So you had a situation by 1974 which basically had seen Indian Affairs move forward with the transfer of programs — or not transfer of programs — rather the implementation of programs virtually under Indian Affairs’ control.

We had band councils who began to realize that development was the way to go, but they wanted to control the development. They wanted to manage it. We had a provincial organization, an Indian organization, which had become divorced from their members and were pursuing initiatives which the membership did not support.

But because the money was going to the provincial organization and because the bands didn’t have any control over it, they began to have quite a problem of — a problem arose between the two which actually became quite acrimonious. In fact, it led to the uprising in ’75.

THE COMMISSIONER: Who were the combatants in that particular contest?

THE WITNESS: In ’74?

THE COMMISSIONER: Yes. You said there was some sort of controversy or dispute. Who were at each other’s —

THE WITNESS: Well, you had two sets of things happening. The bands were down on the Department because we would not turn control over to them fast enough, and you had the bands starting to turn on the Union of Indian Chiefs because they were not able to control that organization, and they felt that organization was not providing the kind of services that they were designed to do, and they objected very strongly to the idea that the federal government would provide up to \$2 million a year to a provincial organization in which the membership had no control of.

(Transcripts: Volume XXXI, pp. 4256–4258)

Mr. Walchli said that when he arrived back in British Columbia as Regional Director General there was considerable disaffection and confusion in the Indian community. Many people in that community were advocating complete divorce from the Department.

- A . . . The result of all this was a total collapse in British Columbia of the Indian organizations; the Union of B.C. Indian Chiefs collapsed. The district councils were removed. What was left were the Indian bands with virtually no control over the Department of Indian Affairs at that point, and almost seemingly taking the point of view that from here on in, if they could not get it legally, they were simply going to assume control of their lives.

Now, they were going to make the point with the Department and with their own membership that they were no longer going to rely on the Department of Indian Affairs, and as part of the national period of discontent, as the caravan was marching on

Ottawa, each region was confronted by Indians who occupied offices or led confrontations of one kind or another.

In British Columbia, the summer of '75, seven of our district offices were occupied. The regional office was occupied, three of the district offices were closed for good, and the Indians rejected government funding.

So from the summer of '75 until the summer of '76 when I arrived here the Department and the Indian people had all but broken off relationships, and there was very little development going on on reserves. As well, the Indians had decided to demonstrate to the Department they could go it alone without government funding.

That was the situation I found in 1976 when I got here.

(Transcripts: Volume XXXI, pp. 4263-4264)

Mr. Walchli noted that a significant shift in policy was undertaken by the Cabinet and the Department of Indian Affairs and Northern Development in 1976. By 1976, cooler heads were prevailing and it was evident that the Department and Indian people could not carry on satisfactorily under the old regime but neither were Native people in a position to entirely dispense with Departmental assistance. Mr. Walchli spoke of the changes around that time.

A . . . Perhaps the most significant event that took place that year was when the Cabinet approved the Indian Government Relationships Paper. . .

Q That, in your view, was a significant watershed in the relationships?

A Very much so, because it did a number of things. First of all, the 1969 White Paper had proposed a new direction which had virtually seen the federal government removed from having any trust responsibility, and had turned over the responsibilities either to the province or to the Indian people themselves.

The Indian people had accused the government of following integrationist and assimilation policies, which they found not acceptable. This paper then was designed to answer a lot of concerns that the Indian people had, as well as to set a new direction and a different way of dealing with the Indian people.

You'll note the first — or one of the major statements in the policy talks about the new concept being "one of Indian identity within Canadian society rather than a separation from Canada society or assimilation into it."

This was the government response to the White Paper. They now formally recognized that the Indians had a place in the sun, and that the intent was to develop a new relationship based on transferring to Indian people the control of programs and the management of programs.

Now, the document did a number of things. First of all, I want to point out this was approved by the Cabinet, not just by the Department, and it was issued under the instructions of Judd Buchanan; and all regions were commanded to take into account the new directions in the way they organized and delivered programs.

It was to be sort of the underlying philosophy for the development of policies, as well as to the delivery of programs. Now, there's a few important things in it. Basically from here on in there was to be mechanisms set up across the country at the band, provincial and national levels where Indian people would be consulted and have an involvement in the policy-making and in the program development, and also have a lot of say in how programs were delivered to the reserves.

The paper is broken into two areas which really deals with the policy, and then the question of program development and delivery.

(Transcripts: Volume XXXI, pp. 4265-4267)

Mr. Walchli said that the thrust of the policy of the Department at the time was to transfer programs as quickly as possible.

What was happening in British Columbia, as described by Mr. Walchli (and it was not confined to British Columbia alone, of course) was a very profound change in the relationship between the federal government and Indian people. That profound change spilled over into relationships between third parties such as lessees of reserve lands and Indian people. If it had been true that the Department was a somewhat somnolent landlord, that assumption could no longer be made. The old verities, good or bad (and the goodness or badness probably depended on the perspective from which one viewed these matters) were being swept away, and a new era was being born.

The years 1975-86 were years of progress but they were also years of increasing acrimony. The winds of change were sweeping through Westbank — not surprisingly there was conflict and controversy. Rapid change often causes discomfort. Additionally, periods of rapid change put stresses on people and systems that may cause both to malfunction at times.

Many of the problems arose from personal conflicts of individuals on and about the Reserves. Mr. Ronald Derrickson was often at the centre of controversy. He wore many hats — Chief, locatee, negotiator, land manager, etc. He was a man for all seasons but, like many men of action, he caused in some others quite strong reactions. Relations between him and certain mobile home park lessees became increasingly acrimonious — Mr. Crosby complained to Departmental officials and politicians about what he perceived as problems relative to lessees and Band and Departmental administration. Mr. Walchli was the Chief Executive Officer in B.C. for the Department during a period of change and controversy.

The 1980's were turbulent times at Westbank. In 1984, Mr. Derrickson became a director of the ill-fated Northland Bank. A number of mobile home park lessees were embroiled in controversies over leases. Highway 97 was being widened and considerable sums of



compensation accrued to Band members for lands taken. A significant settlement regarding cut-off land was achieved and a large block of land at Gallagher's Canyon was purchased by the Band. Reserve water supplies (and proper fire protection) were becoming of increasing concern. A spacious new office building, partly for Band offices and partly for business rentals, was erected on Reserve 10.

During the years 1975-86, much correspondence was directed to various Ministers of the day. Press reports were made of controversies involving the Reserves. Statements were made in Parliament. Certain members of the Band formed an "Action Committee" to have the Chief removed. A violent physical attack was made on Chief Derrickson in the spring of 1982 and widely publicized court proceedings followed.

Certain problems at Westbank may be common to all bands undergoing rapid change — to that extent, the events there can hold valuable lessons for other bands and the Department. However, a great many of the matters I looked at at Westbank seemed to arise out of the local situation.

## Chapter 2

# Toussowasket (Mt. Boucherie Park) and Related Matters

Toussowasket Enterprises Ltd., sometimes also known as Mt. Boucherie Mobile Home Park or McDougall Creek Estates, has generated considerable controversy over the years at Westbank. Between 1975 and 1982, a substantial mobile home park was built on lands held by Mr. Noll C. Derriksan, a former Chief of the Westbank Indian Band and the brother of Mr. Ronald M. Derrickson (who was Chief from 1976 to 1986). During those years a considerable amount of federal money was allotted to this project, and it was suggested in some quarters that Noll Derriksan had received unjustifiably favoured treatment from the Department of Indian Affairs, thereby greatly enhancing his capital and income position.

Toussowasket Enterprises Ltd. (hereinafter called "Toussowasket") had been incorporated in 1971 by Noll Derriksan. He and his mother, Margaret Derrickson, were shareholders. For my purposes, the narrative commences in 1974. Noll Derriksan was the locatee of real property on Reserve 9, where he proposed to develop a mobile home park. Heritage Realty Projects Ltd. of Vernon was engaged to be the general adviser and overseer of the project. Toussowasket obtained a lease from Her Majesty the Queen of a portion of the lands held by Mr. Derriksan as locatee. These lands are located at the edge of Reserve 9 near Mt. Boucherie, within easy reach of Kelowna. The lands are adjacent to Highway 97 and are immediately next to Westview Village Mobile Home Park, an operation owned and operated for several years by members of the York family. Relations between Mr. Derriksan (also locatee of the Westview lands) and the Yorks were strained at times.

The term of the Toussowasket lease was for thirty years from November 1, 1974. Heritage Realty Projects Ltd., project overseer (hereinafter called "Heritage"), proposed that financing be provided by means of an Indian Economic Development Fund (IEDF) loan as well as a loan from the Federal Business Development Bank (FBDB). Heritage was under the direction of a Mr. Weir, formerly of the Department. He had been the Land Use Officer at the Vernon District Office who dealt, inter alia, with the initial Crosby lease.

It was felt, in 1974 and 1975, that the area of Kelowna was not sufficiently serviced by mobile home parks and that the venture proposed by Mr. Derriksan could be a profitable one. Loan financing was in fact obtained through the Indian Economic Development Fund

and the Federal Business Development Bank. FBDB was in the first security position and IEDF was the second-place secured lender. Correspondence indicates that, when construction was occurring in 1976, the projected construction costs proved to be too optimistic — the costs of the project began to spiral. By late summer 1976, the first phase of the mobile home park had been completed, albeit with cost overruns, and the park began operations.

By that time, there seemed to be a decline in the demand for mobile home park accommodation in the Okanagan, which meant it was very difficult to operate the park with any degree of profitability. The debt obligations of Toussowasket at that time were substantial. There was approximately \$195,000 owed to the IEDF and approximately \$170,000 owed to the FBDB. Mr. Derriksan had guaranteed payment of all of the former and a part of the latter. As well, the park had to pay an annual rental to the locatee and there were outstanding sums still owed to parties who had helped build the project. These included Donaldson Engineering Limited (“Donaldson” — head contractor) and Underwood & McLellan (engineers). It appeared that the amount of more than \$50,000 owing to Donaldson was for extra costs not originally provided for in the contract.

The amount of money contributed to this project by way of equity injection was said to have been \$40,000 from Noll Derriksan (letter of Weir to McGillivray). Some of this was apparently bank borrowings. Mr. Derriksan also provided the land for the project. That is a notional contribution in the sense that he did not then put out cash for the purchase of the land but furnished land to the project on a rental basis. This land had been purchased for a few thousand dollars in about 1969. From any point of view, the project was thinly financed and top-heavy with debt. This debt load caused continuing difficulty after 1976.

The original concept had been that Toussowasket would operate the Mt. Boucherie Mobile Home Park and in turn would pay an annual rental to the federal Crown which would pay the rental money to the Indian locatee, Noll Derriksan. Whether or not any funds would flow to Mr. Derriksan by way of rent would, of course, be directly dependent upon the success or lack of success of the mobile home park. In May 1976, Noll Derriksan had agreed with the Department that he would not take any rent until Toussowasket was in a position to pay it without impairing the viability of the project. In December 1976, Messrs. Peter Clark and Fred Walchli (of the Department) determined that they could not recommend an additional loan of \$50,000 for the project as had been requested by Mr. Derriksan. A memorandum covering the subject said:

After an extensive study of the project, it was determined that the average cost per pad is excessively high; that the total of the present financing exceeds the projected ability of the project to pay both principal and interest; and the additional loan requested would not be

sufficient to cover outstanding invoices due and loan interest due. The request is therefore declined. (My underlining)

(Exhibit 114, Document 64)

Mr. Leonard Crosby, President of the Mobile Home Park Owners Association, suggested that one reason the Mt. Boucherie Mobile Home Park got into trouble was because the park was built to a higher standard than was economical when it was built. In other words, it may have been a park that was designed to be too high-priced for the market it was to service. It was a difficult position for the locatee and the Department. The project needed more money, but unfortunately the existing debt load was so high that it was already impossible to service the debt. More debt would simply have driven the project deeper into financial woe. To put it colloquially, "a fine mess".

This situation, of course, raises the problem of developments on Indian reserve land and assistance by governmental agencies to such developments. On the one hand, it is highly desirable that Indian entrepreneurship be encouraged and assisted; on the other hand, it should be done so that market economies are observed to a reasonable extent. Also, it can be fundamentally unfair if one enterprise is given a large amount of government funding and another nearby private enterprise is forced to exist entirely on private sector financing. This sort of problem is, I am sure, not confined to Westbank. The problems that occurred in connection with this venture provide material for useful study in this whole area of what government can or should do in this sector of Indian enterprise. Toussowasket was a fledgeling chick of economic enterprise on the Westbank Reserve — some might have been inclined at times after 1976 to call it an albatross around the neck of the Department.

It must always be remembered, however, that banks have not been historically favourable to lending on Indian projects and therefore a certain amount of government backing is often needed to generate economic activity on reserves. To the extent possible, it is probably desirable for government to be more often a guarantor than a direct lender — that helps to ensure some realistic analysis of the economics of the venture in the early stages.

There were serious and continuing problems with regard to the economic viability of the project from the very beginning of operations. Mr. Ronald M. Derrickson, in his evidence, was inclined to be critical of Heritage, the managers of the project. Management of the park seemed to be a continuing problem — Mr. Walchli said in his evidence, "For whatever reason, the management of the court was not up to what was required from '76 on 'til about '81". The facts would seem to support his comment.

Mr. Noll Derriksan did not testify and give us the benefit of what was in his mind for the project, but undoubtedly the project offered substantial benefits to him with no great outlay of capital and with substantial assistance from government financing. In addition to the stated contribution of \$40,000 in cash to the project, I have noted that he had provided a contribution by way of land valued at \$95,000. This was land whereon he was the locatee. The debt to equity ratio was always high and it was to become higher.

To add to the miseries of the project, a corporation that had entered into an agreement relative to leasing mobile home pads from Tous-sowasket, Homco Industries Ltd., ran into economic difficulties and was not able to carry on as initially envisaged. A report on the park project, done apparently in the first half of 1977 by Stewart C. Wong for the Department, indicates continuing problems with the park and little likelihood of economic viability in the foreseeable future.

#### 6. EXPECTATIONS FOR 1977

Unless the owners are able to find private capital to pay outstanding construction invoices or make alternative arrangements with their debtors; and unless the remaining lots are rented early in 1977, the owners will become substantially in default of their loan repayments.

Thirty lots have been leased to Homco which company has been having financial difficulties. However, they were recently granted an extension by their creditors for a five year period.

In considering requirements for 1977 the company obviously requires additional assistance to the extent of \$75,000, but the affairs of the company are such that it cannot carry any more debt.

As a result, no additional financing can be considered, so far as the company is concerned. (My underlining)

(Exhibit 116, Document 78)

The underlined comment above succinctly states the essential dilemma of the enterprise. The outstanding invoices relative to the building of the park were not satisfied and in early 1978, Donaldson Engineering Limited commenced suit against Toussowasket. Donaldson eventually recovered judgement in April 1979 for approximately \$55,000 for services rendered as main contractor on the project. The judgement was ultimately obtained by default and although there were faint suggestions in the evidence that Donaldson had not done a good job, I was satisfied that it had performed its tasks in a competent manner.

From the point of view of all concerned, including the locatee and majority shareholder of Toussowasket, Noll Derriksan, the golden dreams of Toussowasket had very much turned to dross. Neither the IEDF nor the FBDB had any likely prospect of being repaid the monies

that they had advanced, the land was not producing any rental return to the locatee, and the locatee remained liable on his personal guarantee, although the collectability of that guarantee was very much in doubt. On June 8, 1978, then Chief Ronald M. Derrickson (brother of Noll Derriksan), sent the following telegram to Fred Walchli:

This is to advise you that we have met this day with the solicitor for Noll C. Derriksan and the solicitor for the Westbank Indian Band. In his general opinion, the company Toussowasket Enterprises Ltd. is insolvent and does not have the ability to make any payments at all. Tax Department is taking action to recover four years taxes never paid. In order to protect the personal financial position of the locatee we request that you telex our office back this day with immediate cancellation of the lease.

On June 16, 1978, Noll Derriksan, on behalf of Toussowasket, requested the Department to forgive the IEDF loan "in an attempt to keep the company operating and to meet all accounts as they come due". The Department was not prepared to agree to this course of action.

On June 20, 1978, the sum of \$17,000 was advanced by way of a grant from the Department to defray legal costs and engineering analysis costs connected with the defence of the outstanding claims of Underwood & McLellan, the project engineers, and Donaldson Engineering. Concurrently with these developments, a proposal was being considered to extend the term of the original lease from 30 years to 65 years in order to enhance the use of the land for purposes other than mobile homes and to enable better financing to be obtained by conventional means. Everyone was casting about for some solution to this continuing problem.

A perceived difficulty in changing the use of these approximately 27 acres of which Mr. Derriksan was the locatee is indicated in a letter from Mr. Poupore, Director of the Lands Branch in Ottawa, to Mr. Peter Clark, of the B.C. Region, on November 30, 1978. Mr. Poupore says:

We have doubts about the proposed change of the use clause in this lease. Non-Indians living in a mobile home park should have very little long range or permanent impact on the lifestyle of the Indian community. However, if this use is expanded to include permanent residences, an influx of non-Indians occupying such permanent residences will undoubtedly affect the reserve as a whole. Any development plans which will affect the lifestyle of the Indians, for whom the reserve was set apart, must be presented to all members of the Band so that they may decide whether they wish their reserve to be used for such a purpose. As you know, we have received advice from our legal advisers in the past in which they have pointed out the pitfalls of long term major developments on locatee land, without the approval of all the members of the Band.

While we are sympathetic with the Regional Office's desire to safeguard the monies loaned by the Federal Government on this project, we wonder whether this is sufficient reason to even consider this new scheme. It is our view that we have a responsibility to the Indian people as a whole and that this obligation must be given precedence over our efforts on behalf of individual band members. At the same time we must ensure that protection of the Indian band's interest in its lands is seen as paramount to the recovery or protection of loan funds.

(Exhibit 116, Document 113)

Mr. Poupore's letter does highlight one problem that development raises for reserves. If the greater part of the reserve is developed, then its essential character may change. This is no different from changes facing any community but it does illustrate that the length of leases is a very relevant concern for all members of an Indian band in that the duration and conditions of leases can very much alter the local environment. Mr. Poupore also notes in his letter the dilemma facing the Department's regional office in choosing whether to go deeper into the project or to abandon it.

By February 1979, the FBDB was calling Noll Derriksan on his guarantee and was also demanding payment from Toussowasket of the \$190,000 then outstanding on their loan. Prospects for reduction of the liabilities were dim. What had started out as an attempt to launch a viable business was proving to be a financial headache for all concerned.

The increasingly unhappy situation is outlined in a letter of February 23, 1979 from Mr. Armitage of the Department of Indian Affairs to the Department of Justice.

Potential loss and the reputed poor attitude of Mr. N. Derriksan have caused some harm to the Indian cause so far as the Federal Business Bank in Kelowna is concerned and possibly the regional office in Vancouver. In an attempt to retain some good will, we may be willing to split the net rental between the bank and ourselves.

The mobile home park has a considerable number of vacancies at present; 26 rented, 33 vacant. The park, if it could be sold, would be at a distressed price, probably not even sufficient to pay the FBDB loan. Present indications are that the demand for spaces will improve after another two/three years time. Then the receiver/manager may well sell the park with a very low vacancy rate maximizing the price to be obtained. Even so, it is questionable whether the proceeds would repay both loans totalling approximately \$400,000.

(Exhibit 116, Document 116)

In March 1979, the FBDB appointed as receiver Mr. A.D. Stewart, C.A., of Kelowna. As reflected in an interim accounting by Mr. Stewart for the period from March to August 1979, the enterprise continued to be of marginal economic viability and was certainly not generating enough revenue to properly service the debts or to return any funds to the locatee by way of rent.

An unaudited schedule of development costs dated April 30, 1980, which was done by Lett, Trickey and Co., Chartered Accountants, indicated that the development costs of the project then aggregated over \$500,000. However, in November 1979, Mr. Marsh, of the Department of Justice, had advised Mr. Van Iterson of the B.C. Region of the Department of Indian Affairs in Vancouver that "while the matter is complicated, we have come to the conclusion that much of the Crown's security and that of FBDB is, from a practical point of view, worthless." This was, of course, very gloomy news to the secured lenders.

By March 1980, the relationship between FBDB and the Department of Indian Affairs was being strained by the insistence by the Bank that the Department take action to ensure that the bank debt was repaid. The Bank let it be known to the Department that if the situation was not resolved, they would look very unfavourably in the future on loans to Indian bands or to Indian individuals in British Columbia.

Ronald M. Derrickson testified that he was very unhappy with the way in which the receiver appointed by FBDB had been conducting the business of Mt. Boucherie Park. By Band Council Resolution dated July 14, 1980, the Band Council requested that the lease dated November 1, 1974 in the name of Toussowasket Enterprises Ltd. be cancelled. For obvious reasons, the Department of Indian Affairs was most unwilling to effect cancellation of the lease. Cancellation would mean destruction of the underlying security for the IEDF and the FBDB loans.

The situation at that time reflects the sort of conflict of interest position in which the Department can find itself. On the one hand, by reason of its perceived obligations to the Band member, Noll Derriksan, and in its capacity as landlord under the lease, its position would tend to favour termination of the lease. But if it took this course of action, the outstanding secured loans (over \$200,000 directly owed to the Crown under the IEDF loan and \$225,000 indirectly owed to the Crown through FBDB) could be rendered uncollectable. Additionally, of course, the fact of the lease being cancelled and the likely destruction of any security for the FBDB loan would undoubtedly have a negative impact on the possibility of future financing by FBDB for Indian enterprises.

Although Noll Derriksan does not appear to have taken any major public role in events, his brother, the then Chief, Ronald Derrickson, was actively involved in the matter and was obviously at odds with the receiver/manager, Mr. Stewart. On October 6, 1980, then Chief Derrickson notified the receiver that the rent due the locatee was being increased retroactive to November 1, 1979 and was being set at \$44,500 per annum. He also reminded the receiver that rental payments had not been received for the years 1977 and 1978 and demanded prompt payment with interest. On October 14, 1980, the receiver/manager, Mr.



Stewart, responded to the Chief advising him that Toussowasket had an assignment of rentals from Mr. Derriksan and that sums owing on account of rent were to be satisfied by crediting the appropriate amounts to a shareholder's loan of Mr. Derriksan. The receiver took the position that all rents were therefore current. The original rental assignment apparently had been made to assist in obtaining funding from IEDF.

By the fall of 1980, the situation was showing some improvement. The park was generating enough revenue to repay part of the principal on the FBDB loan but not enough to properly service and retire all outstanding debts and to return the required sum due as rental to the locatee, Noll Derriksan.

Former Chief Derrickson testified concerning this matter before the Commission as follows:

A . . . Homco's other companies in Ontario and Saskatchewan got into financial difficulty, even though this plant here was doing well financially. Homco went into bankruptcy and he had an agreement that they would pay him \$1,500 for every lot he produced.

Well, number one, he got the bottom of the spiral. He had to build it to standards higher than anyone else on the reserve, and the fact that he had consultants who left a lot to be desired, and some of the construction and engineering work left a lot to be desired.

I mean, it was a hopeless situation from the start. My first impression of that park was it should go into bankruptcy, even more so than Lakeridge Park. I always maintained that belief it should be let go into bankruptcy.

Q Now, what steps did you take to try and resolve that particular problem as far as Toussowasket was concerned?

A Well, I tried to force it into bankruptcy, but I wasn't getting much cooperation, simply because the Department didn't want to see bankruptcy occur on something that they felt could be viable.

Some of the technicians at Indian Affairs put together a package where Noll would, based on the figures from the receiver — and I'd looked at the figures the receiver had produced and it showed that the park was getting deeper into debt every year. They tried to convince me that maybe over 13 years Noll, if he gave up the the park completely, if they kept it in receivership for 13 years that it would eventually come to a place where it would start paying off.

I said that was a ridiculous situation.

Q Now, did you ask the Department to do a detailed review of that particular project?

A I think I asked the Department to do a — at our initial meeting with Fred Walchli I think we asked them to do a detailed review on Lakeridge Park, which was called the Sookinchute Development.

That he agreed, and he agreed to support us. He agreed to support us financially so that we could get the — I think there was current outstanding bills at that time, over and above the loans, but there was bills that were 90 days in arrears or longer of \$185,000, and I'm just saying this from memory.

Q Did Noll Derriksan, prior to you becoming involved in this particular problem, did Noll make a number of proposals to your knowledge to the Department to try and resolve this particular financial problem?

A Yes.

Q Now, eventually a proposal came forward after a number of discussions back and forth between Noll and the Department; eventually a proposal arose that the Band became involved in.

A Now, we're talking about the trailer park or Lakeridge Park?

Q No, the trailer park, Toussowasket.

A Okay.

Q Now, first of all, can you tell us how that particular proposal arose, how it came about?

A Well, again, I don't have the use of the files, so I have to go from memory. I hope you appreciate that. I don't have the benefit of files.

It's my understanding, from my memory, we got to a point where we were going to take a very, very strong position in regard to that park. It was not going to be in receivership for 13 years. The Locatee was receiving no rent, had never received any rent to my knowledge, and every proposal he put forth had been denied.

I don't know the reasons. I guess there was some politics on it. I think one of the facts was that Noll had had a write-up in some magazine that professed him to be a millionaire, when indeed he had no cash.

So, we wanted to put it into bankruptcy and we were making waves with the Department. We told them that we were going to make application to the courts and force it into bankruptcy regardless of what they thought or said.

Q Now, had you followed that route, Mr. Derrickson, based on your understanding of the way that might have worked, what would have been the end result had you been successful in putting it into bankruptcy?

A The end result would have been that, number one, Noll would have got his park free and clear of all debt. I don't think politically, it's never happened before, the Department could have stood the criticism of a trailer park like that going bankrupt and then giving it to somebody else.

Even if they did, if they took the most drastic action, at least he would have been entitled to his rent, which was better than what he was getting. I always figure if you see a situation in business and if you see you can get the advantage, and you see more eggs in your basket in a negotiation you take full advantage.

I felt that the bankruptcy was the best route to go; that there was more benefits for the locatee through bankruptcy than a reorganization.

(Transcripts: Volume LXV, pp. 9709-9712)

Such a course of action (bankruptcy) would have had certain obvious benefits for the locatee, but from the point of view of the Department and the FBDB, the results would have been very unfavourable. The FBDB had suggested that the Department sort out the loan problem or face very substantial restriction of FBDB lending to Indian persons in B.C. While Mr. Walchli was quick to point out to FBDB that such a policy might be hard for a body such as FBDB to adhere to, he was nonetheless keenly aware that the bankruptcy of Toussowasket could have a very chilling effect on bank lending practices to Indian individuals and bands in British Columbia (and doubtless elsewhere in Canada).

While it might be said that the Chief and Council at Westbank were holding a gun to the head of the Department, it could also be said that the gun was partly primed and loaded by the Department itself when it entered into the venture in the mid-1970s. One should not, however, be overly critical of the Department, for one of its mandates is to encourage more economic enterprise on behalf of Indian people. It apparently was the case that the advisers to the locatee believed that this would be a viable project. Looked at in retrospect, the project may well not have been subjected to a sufficiently rigorous economic analysis at the outset and, as we have seen, the project continued to suffer from management and financial deficiencies until 1980.

In the summer of 1980, the Toussowasket situation was in a most unsatisfactory state. The Department was casting about for some method to resolve a matter which had generated a great deal of ill will on all sides. Regardless of the errors of the past, the then existing situation required that some solution be imposed to avoid further deterioration.

Mr. Walchli testified that he felt that it would be a good thing to have the Band take over the operation of the park. He attempted to persuade then Chief Derrickson to interest the Development Company in taking on the project.

Q Now, those matters about which you just gave evidence on the questioning of the Commissioner, Mr. Walchli? Just to continue from what you said, they arose out of the beginning note, the telex of June 8, 1978, document 100, and then you also spoke of document 131, the April 18, 1980 letter of yourself, and followed, I think, by personal discussions that you had with Mr. Derrickson, Chief Derrickson, late '80 and January '81?

A That's correct, yes.

Q Is there anything to elaborate on that, what the nature of those discussions were, or were they just as you described them to the Commissioner a moment ago?

A Well, the discussions between myself and the Chief began to take on a serious approach to this in 1980, in the latter part of 1980.

He really was pushing the idea that we should simply let the thing go into bankruptcy and that once the bankruptcy was cleared away, then Noll Derriksan would in fact be able to take back the court and set up under a different arrangement, a different company and a different lease and continue to operate it.

I rejected that. I told him that that would be a last resort; we should first try and explore the idea of the Band acquiring an interest, and he was agreeable to that.

Q Okay. Carrying on then with document 145. That is a memo of March 11, 1981. I understand that to be a summary of a proposal?

A That's correct. Jack Rennie had been assigned at this point to start working with the Band, and this was the type of proposal that he'd worked up.

Q There is some figuring on the bottom in hand. Do you see that, Mr. Walchli?

A Yes, that's correct. That's really the amount of money that is owing on Toussowasket at that point in time. You'll note that there's a principal of \$197,350.00, and interest which was accrued to March 31st, '81 as being \$100,543.07, for a total of \$297,893.00

There's a further figure which says how much interest it's costing per day. It's \$56.77. . . .

Q There's another document following that which appears to be part of that. It's a contribution arrangement.

A Yes, that's correct.

Q That is something that is prepared preliminary to the contribution agreement going into force, in effect, I take it, is it?

A Yeah, we always do what we call an analysis of the proposal, in the jargon of the Department a "work-up sheet", and this really was designed to do that, to lay out the proposal and to indicate the conditions which would apply for the contribution agreement, and also to stipulate or state the reasons for the transaction, which is on the following page.

Q Okay. Then we have at 146 an interim accounting from the receiver for period March 20, 1979 to March 31, 1981. I note the Federal Business Development Bank were paid \$50,000. IEDF doesn't appear on that.

A That's correct. What they were doing at that point in time was merely operating the park, and any of the proceeds or the profits were going to paying off their loan. IEDF did not receive any consideration from Mr. Stewart.

The other thing I think is important is it shows that even during that period of time, which was two years, from March 20, 1979 to March 31, 1981, the park really was not — or was just barely generating enough revenue to cover the Federal Development Business loan, and there were no funds left over to retire any portion of the IEDF loan. . . .

Q And then 147, a letter to Chief Derrickson from the FBDB just indicating, I guess, the amount outstanding and the amount in arrears at that time?

A That's correct.

Q And they need a certain amount, \$49,226.90 to bring this account to a current position. Was that done?

A Not at that point, no. Oh, sorry, just shortly after it was. This was the letter that the bank sent to the Band, and I think four or five days later the Band actually brought the account into good standing. . . .

Q Then we've set out the final account of the receiver, document 149.

A Right.

Q Now, why is he doing that at that time?

A Well, the agreement that the Band had struck with FBDB was that once the Federal Development Bank loan was brought into good standing, then the receiver's term of duty was completed. He's simply advising us that his duties are over as of May 19th, 1981.

Q Okay. Then document 150 is an agreement between Toussowasket, WIBDC, Noll Derriksan and the Band?

A That's correct.

Q Can you summarize that for the Commission?

A Well, this agreement really was designed to enable the Band to acquire the 50 per cent interest in Toussowasket. Now, this included not only the parcel of land which the trailer park was on, which was Lot 32-2, but it also included the part that was not developed, 32-2-1, and an option to acquire Lot 33-1.

Now, what this does is simply — it's an agreement in which the vendor, Toussowasket, agrees to sell a 50 per cent interest in and to the lease, and the purchaser wished to purchase this interest.

So the approach that the Band were following was that they were going to acquire their interest by obtaining a 50 per cent interest in the leasehold of Toussowasket.

Q They were not going to acquire any interest in the company?

A No, not as such.

Q All right, okay. And the consideration: "The Band agreed to assume responsibility. . ." — under "C" there — ". . . on behalf of the vendor for the payment of all monies due and owing under the second mortgage". That's the IEDF loan?

A Right, and they also agreed to bring the Federal Business Development loan into good standing, and they took over 50 per cent of Noll's personal guarantee.

THE COMMISSIONER: The guarantee with regard to the FBDB?

THE WITNESS: That's correct, yes. At that point it was a \$50,000 guarantee. They took over repayment of FBDB's loan, 50 per cent of that. They took over 50 per cent of the personal guarantee, and they agreed to pay off the total IEDF loan. Then, of course, it sets out the responsibility for completing the court and managing it.

THE COMMISSIONER: What was the state of the park at that time, Mr. Walchli? Obviously they'd had financial difficulty in the sense it wasn't generating really enough cash flow to even service its debts. The receiver, Stewart, was managing it. Was there a — I don't suppose they were building anything at that stage, were they?

THE WITNESS: No, there was no construction taking place. There was just a certain amount of maintenance being done, and that's all. The court itself at that point in time owed IEDF around \$300,000. It owed FBDB \$216,000; over \$500,000 worth of debt.

THE COMMISSIONER: It just hadn't panned out as originally envisaged by the first plans that had been put forward, because as I understood it, from what Mr. Branson led by way of evidence I think two weeks ago, when it was envisaged it was going to be a self-supporting operation, it would pay its debts, and it would reach a certain size. Obviously it hadn't come anywhere near that by '81, had it?

THE WITNESS: No. What had happened is that there were a number of problems right from the outset with the court. The initial feasibility study done by Heritage Realty had underestimated the cost of development. . . . (My underlining)

(Transcripts: Volume XXXV, pp. 4726-4732)

In a memorandum on the subject of Toussowasket, in early 1981, to Mr. J. W. Evans, Director of Economic Development, Mr. Walchli gave instructions as follows:

The Westbank Band Council have decided to take over the Toussowasket Park. They're requesting that assistance be given from the Department in putting forward such a proposal. They have specifically asked for Jack Rennie to help them. Would you please assign Mr. Rennie to this project.

In the spring of 1981, a contribution agreement was entered into between the Department and the Westbank Indian Band whereby the Department agreed to contribute to the Band up to \$300,000 over a period of years. The Band agreed to undertake liability for 100% of the IEDF loan and to undertake liability for 50% of the FBDB loan and 50% of the guarantee of Noll Derriksan. The Band or Band Company was to obtain a 50% interest in the venture, and also undertook to construct an additional phase or phases of the park to bring it to "completion". An agreement was entered into at about the same time between Toussowasket, Westbank Indian Band Development Co. Ltd., Noll Derriksan and Westbank Indian Band whereby the Development Company would be the actual purchaser of the half interest in the lease.

The entry of the Band and its development company into the picture heralded better days for Toussowasket. It emerged from a slough of financial despond to become a more successful operation. The park was expanded. But Band involvement had required the promise of additional federal funds of \$300,000 — by now the amount of federal funds committed and to be committed was in the range of \$750,000. Mr. Walchli, then Regional Director General in B.C., felt that on balance, no other course of action was preferable.

The matter of Toussowasket appears to have been a subject of considerable discussion before the Standing Committee on Indian

Affairs and Northern Development in 1982. The following exchange occurred between members of the Committee and Mr. Walchli at a meeting of May 26, 1982. Mr. Walchli had been called back from holiday to meet with the Committee and was probably not fully prepared to deal with the matter. For instance, he told the Committee that the \$300,000 of the contribution agreement was used to satisfy all creditors, but in fact the unsecured creditors were not paid. The tone of the meeting was at times quite critical of Mr. Walchli and his relationship to Chief Ronald Derrickson and Noll Derriksan.

**Mr. Oberle:** Thank you. Mr. Chairman. Let me first express our appreciation for Mr. Walchli's efforts in coming here. I know that you have probably interrupted a personal holiday, and we certainly appreciate your co-operation. I would like to begin by asking Mr. Walchli some questions and perhaps make a little bit of an opening statement. Mr. Walchli, when we were meeting in Vancouver, and prior to that, in meetings here which led to the decision of the committee to travel to Vancouver to examine the situation that many of us felt was peculiar to that part of the world, myself and my colleagues began to harbour the impression that there was something wrong with the administration of the department's affairs in British Columbia. It is not that everything is rosy in the rest of the country, but there were some very peculiar problems in British Columbia. Unfortunately, the testimony we received in Vancouver did not allay, at least in my mind, my conviction that there are some peculiar problems, or some problems that are peculiar to British Columbia.

Generally, I have the impression that you have sort of your own system; it is a paternalistic system, but that is the nature of the act under which you operate. But when I looked at the objectives that are stated in the department's estimates, you are achieving some of these objectives but you are achieving them for a select few Indian people. There is a disproportionate number of Indian people and tribal councils and band councils in British Columbia that have achieved quite a degree of self-sufficiency and self-administration, but there are others as well who need a lot of help. I get the impression, from testimony we have received and documents we get from time to time from a variety of sources, that you are all too ready to help those who do not need your help any longer. They told us: Look, we already have engineers, and this and that, working for us in the district councils and we do not see any evidence that the bureaucracy in Vancouver are getting rid of their responsibility or reducing their staff that we have hired ourselves. So the people who get all the help from you do not need it any more. They are telling us, get Walchli off our back, and the people who need your help are not getting it.

Rather than going through a tedious process to show you, in the testimony, how we arrived, or how I arrived, at this assessment of your role in Vancouver, I would like to show you an example and maybe we could ask you to explain to us a particular case. In doing that, I would like you to cast your mind to the so-called, as we call it, "Westbank Caper". Westbank is a reserve near Kelowna where a brother of a chief by the name of Derriksan received some economic help from your department back in 1976. You became involved

shortly after you arrived on the scene in Vancouver. I think close to \$300,000 was involved. The idea was to lease a parcel of land from the reserve and convert it to a trailer court. A fellow by the name of Noll Derriksan became the president of the operation. His mother, Margaret Derriksan, held one share and was the secretary of the company.

Things did not go very well right from the beginning, but to make a long story short, because I would like you to elaborate and fill in the gaps, the department was not very successful in getting any repayment of this.

Before I go further, I should tell you that I compare this particular situation with a situation in Fort Ware, for instance, where I travel and I see old people freezing to death or cold because they do not have any firewood or the generator has broken down and there is no electricity. Another old family is sitting on the floor of a shack, 40 below outside, eating porcupine legs, because they no longer have any food left. That is what I am comparing the situation with.

So here is an old Derriksan, obviously one of the favourite sons of paternalists in Vancouver. He is having a lot of trouble repaying his loan. In fact, he has not made a payment on it, either in principal or in interest. So the situation gets rather difficult and dicey. Then you get a lawyer who suggests — as Derriksan is not only unable to repay your loan, but is also having trouble satisfying his other creditors — that you make another loan, this time to the Indian Band. Incidentally, the chief of the band at that point is the brother to Noll, Ron Derrickson, whom I see has received money from time to time — at least in one instance — to travel with you to Ottawa. I see an expenditure of \$4,000 travel expenses to that particular person. I would like to see the chief in Fort Ware travel someplace and tell his story. It would shock a lot of people.

The notion was kicked around, that the department should make another loan, this time to Ron Derrickson, on behalf of the band. This is the story I got, so you might be able to fill me in. The idea was to buy 50 per cent of the shares of the brother's company. The brother's company would become a shell, and it would hold all the liabilities, but the assets would be transferred to a new company. Indeed, I see in a document here, in a print-out, that \$100,000 has been allocated to that particular band. As I understood it, the payment was to be made over three years at \$100,000 a year. The band would now be a 50 per cent shareholder in the scheme, and the money that is being paid to allow the band to buy in to this incredibly lucrative enterprise would, of course, be used to retire the department's obligation in the first place.

If that is true and that coincides with facts — or if it is even close — you know, of course, that this is highly irregular — if not illegal in terms of the constraints of the Financial Administration Act. You can see, with that background, why we are increasingly nervous sitting here putting our stamp of approval on the departmental estimates on Monday, when these kinds of things are going on.

You have, no doubt, a bunch of favoured sons out there, who have helped you out of all kinds of political problems by collaborating with you in starting this regional forum, by going into a deal which would



be known as an Indian Economic Development thing which as far-reaching Utopian consequences including that of self-government. All of this, if nothing else, is terribly premature, because according to my information, it is not until later on this year that the government intends to table some guidelines with respect to the development of an Indian government.

I am glad that Mr. Savill is here, because he understands and knows the problems which I see daily, or everytime I go home. He knows the situation at Lower Post, Ingenika, Fort Ware, Blueberry, and at Doig River. Here I am begging on my knees to find \$250,000 to assist in the rural electrification program that would bring electricity — one of the most basic elements — into the Doig River Reserve. When I see this kind of squandering of public money, sir, I am less than amused. I would like you to make some comments. If my information is wrong, I will just be too pleased and excited to be corrected.

**Mr. Walchli:** First of all, Mr. Oberle, I would like to respond to the allegation that we are discriminating against certain bands and favouring others. That is just not the case.

If you take a look at the per capita breakdown of all the departmental funds going into B.C., you will note that most of the bands are getting their fair share of those dollars.

Now, we did a breakout here a year ago which looked at the equalization of those payments and, to quote there on what you are talking about, the central area has 15 per cent of the population and are getting 15.1 per cent of the funds. You will find that every district is fairly close to a fair share in their funds. The one exception is the coastal district in Prince Rupert. It is not getting its fair share of the funds at this point, and there are good explanations for it. But the point I make is that we have attempted, and have done so over the last five years, to distribute those funds equally across the region. I have figures to support that.

Second, in terms of actual help from the department, we have transferred to tribal councils a lot of the responsibility for providing their own advisory services. Along with that has gone \$6 million. So I think it is not fair to suggest that we have given certain tribal councils money and others we have not. Each tribal council has had a fair share of that budget.

In terms of our own support services, they are available to bands upon request. Some bands are very good at coming to us and asking for help. Others are not. We do not foist ourselves upon any band, if they do not want us. So I think it is a totally unfair allegation that, in some way, we have favorite sons to whom we attempt to provide more funds than to others.

Let us go to Westbank, because that seems to be an issue here. Let us talk about it. I am going to put the whole story on the table. First of all, on the development proposal. This trailer court we refer to was developed and funded at a time when I was not in the British Columbia region. It was a new venture by an Indian band at that time, particularly Noll Derriksan, to go into the trailer court business. There were some costly mistakes made in terms of the cost of engineering. Also, it came on stream at a time when the economic

development situation was such that they could not market those trailer lots. The result was that the company ended up in a deficit position at the very outset. It should have been the subject of a stabilization grant in the way other bands were stabilized in British Columbia. It was not.

**Mr. Oberle:** Excuse me. Are you telling me now the loan was made to the band or to the individual?

**Mr. Walchli:** To the individual.

**Mr. Oberle:** You said the word "band".

**Mr. Walchli:** I am sorry. I meant to say the individual. At that time, there were a lot of economic development projects in trouble across Canada. The department introduced a stabilization program to stabilize those projects worth saving. We did not do that for this particular project. The assessment at the time was that it could stand on its own feet. That proved not to be the case. It went into receivership by FDB and, for two years or a little longer, they administered that trailer court. The one thing they did not do in those two years was to raise the rents the way other rents were going up around the country. So the result was that, even if the company could have made money, it was not allowed to do so. It continued to lose money.

There were a number of other problems with it. First of all, it was a lease issued over a locatee land — land which should have been surrendered and was not for reasons I do not understand. The problem then was that in order to foreclose on that development, we would have been into quite a legal problem. So that was one reason we had to look at how to solve it without going through the courts.

**Mr. Oberle:** But you said it had already been foreclosed by the bank.

**Mr. Walchli:** No. It had gone into receivership. It had not been liquidated. So that was one problem. The other one was the FDB had not raised the rents; therefore, it could not sustain the debt load it was carrying.

The third problem was that the band itself was proposing new sets of guidelines in terms of quality of development, and were insisting that the rents on that whole reserve be brought up to a market rent. But this was not possible under the arrangement.

We did an assessment of that project and came to the conclusion that the project was a good one.

It was a well-constructed trailer court and it had the potential to provide revenue to the owners. But we could not find it in our guidelines or within our policy to contribute a further \$300,000 to Noll Derriksan per se. What we decided to do then was to tell Derriksan that he would have to be prepared to give up half interest in that trailer court and that the band would in turn acquire 50 per cent ownership. As a result, the money, 50 per cent of the revenue, would go into the band coffers for use by band members to pay for their own services.

We agreed to provide \$300,000. The Band Development Company put up another \$450,000, which was their own money, and between the two we were able to liquidate all the debts on that trailer court operation and put it into a viable position. Derriksan himself has lost

50 per cent ownership in that company and 50 per cent of his land holdings on which the trailer court is set. So he did not get a single nickel from us. Ron Derrickson did not get a single nickel from us, the Westbank Band did.

**Mr. Oberle:** What you are just telling me is precisely what I told you happened, except that you are making the story worse. You are now saying that you gave the band another \$300,000 —

**Mr. Walchli:** That is right.

**Mr. Oberle:** — with which they acquired 50 per cent of the trailer court. Did any of the \$300,000 get back to you in terms of interest and principal on the first loan?

**Mr. Walchli:** There is a debt load on that and I do not have the exact figures. But there was a debt load to the FDB. There was a debt load to private creditors and there was a debt load to Indian Affairs. We agreed to put up \$300,000, the band agreed to put up \$450,000, or thereabouts, and out of that they retired the total debt. Our money was used to pay the FDB and the private creditors.

**Mr. Oberle:** So you have not got any of your initial money back.

**Mr. Walchli:** It was one pot of money, Mr. Oberle. It was to retire the total debt of that trailer court.

**Mr. Oberle:** So you now have \$600,000 in that venture and poor Noll Derriksan, even though he lost 50 per cent of it, no longer has any debts. You paid them off for him.

**Mr. Walchli:** No, the point I am making is that it was the band company. Not the Westbank Band Council but the band company that bought a 50 per cent interest in that trailer court. Now the revenue from that, instead of going to Noll Derriksan, goes into the band.

**Mr. Oberle:** Who is the president of the Band company?

**Mr. Walchli:** At the moment they have a board of directors, Noll Derriksan and the other band councillors on that band council, but —

**Mr. Oberle:** I see. So he is sure he is his own director.

**Mr. Walchli:** — the shares are held by the Westbank Band.

**Mr. Oberle:** Well, that just simply makes the problem that much worse.

Could I ask you to comment on a letter — I am sure you have a copy of it — which was written by . . . ?

**Mr. Walchli:** Mr. Oberle, if I may point out, if that had gone into bankruptcy, then the money owing the department, the department would have had to pay it anyway.

**Mr. Oberle:** That does not provide me with any source of comfort. Nor does the fact that a lot of other projects were in trouble throughout the country. That is no excuse.

**Mr. Walchli:** It may not be an excuse but it is a fact of life.

**Mr. Oberle:** Well it certainly is not.

I have a letter here which was written by a consultant, I think it is a departmental consultant. I will just read one paragraph of it to you. I know you are not a stranger to it:

This project was developed primarily as a retirement fund for the locatee Noll D. Derriksan. The proposal was to create a development consistent with the master plan of the reserve which after payment of loans would create a good source of annual income as a form of a retirement plan.

I have financial statements of this Noll Derriksan here. He is shown to have an income of \$44,890 from land holdings, and from the sale of paintings. Although I am told he is not really an artist, he is a manager of a section, of the B.C. Arts and Crafts Centre.

So he has an income from there. He is obviously one of those people who would fit into that category of the favourite son, of which I spoke earlier. The accountant says that if Derriksan were to have to pay income tax like any other person in Canada does who is not an Indian earning his money on reserve, his annual income would be in the neighbourhood of about \$150,000. In fact, his life-style would bear that out.

(Minutes of the Standing Committee on Indian Affairs and Northern Development, May 26, 1982, pp. 55:5 to 55:10)

Mr. Walchli said he "was going to put the whole story on the table". He did not. By the time he spoke to the Committee in late May 1982, a proposal had been made and accepted to have the Band Company trade the half interest in the mobile home park for land of Noll Derriksan located on Reserve 10.

It appears from the dialogue between members of the Committee and Mr. Walchli that there was some misapprehension on the part of some members as to the magnitude of the problems confronting Mr. Walchli in 1979-80 on this project. Significant government funds had been allocated to the project and the partly completed project was in receivership and was generating barely enough revenue to pay operating expenses. Chief Derrickson, to assist his brother, Noll Derriksan, the locatee, was proposing to put the enterprise into bankruptcy and was urging that the Department cancel the lease. Mr. Walchli, with considerable justification, viewed these eventualities as little short of disastrous. He said in his evidence before the Commission that if the park were put into bankruptcy "it was very doubtful, in fact, whether there'd be any assets that were available to us after a bankruptcy".

As I noted earlier, the Department was in a most unhappy position. If they allowed the operation to go under or if they terminated the lease, at least three undesirable events would ensue. The IEDF loan likely would be lost. The FBDB loan would almost certainly not be repaid and this could have negative repercussions for other Indian projects. A locatee would inherit the improvements and be put in a position to thumb his nose at creditors. As a result, the Department could well face criticism for showing gross favouritism to one band member of one Indian band to the prejudice of other bands and members. Indeed, that is precisely what was put by Mr. Oberle to Mr. Walchli at one point during the Committee meeting of May 26, 1982:

So here is an old Derriksan, obviously one of the favourite sons of paternalists in Vancouver. He is having a lot of trouble repaying his loan. In fact, he has not made a payment on it, either in principal or

in interest. So the situation gets rather difficult and dicey. Then you get a lawyer who suggests — as Derricksan is not only unable to repay your loan, but is also having trouble satisfying his other creditors — that you make another loan, this time to the Indian Band. Incidentally, the chief of the band at that point is the brother to Noll, Ron Derrickson, whom I see has received money from time to time — at least in one instance — to travel with you to Ottawa. I see an expenditure of \$4,000 travel expenses to that particular person. I would like to see the chief in Fort Ware travel someplace and tell his story. It would shock a lot of people.

(Minutes of the Standing Committee on Indian Affairs and Northern Development, May 26, 1982, pp. 55:6)

Obviously members of the Standing Committee were concerned, and rightly so, with the spectacle of one member of one band apparently getting so much when so many individuals and bands in Canada were in very poor shape economically. It appears that some members of the Committee felt a degree of outrage at the situation at Mt. Boucherie Mobile Home Park. But as I have said, Mr. Walchli was facing a troublesome problem at Westbank — he was in a difficult position in 1980 and 1981 with regard to this failing mobile home park and it is difficult to see what more satisfactory solution he could have devised than to get the Band or its company to take over the park in an effort to complete it and resurrect its fortunes. If the Band could be induced to take over the project, improve it, and ultimately salvage it, then a host of unpleasant events could be avoided. Mr. Walchli had been engaged in 1980–81 in efforts to induce the Band to undertake responsibility for the project. He felt the Band had demonstrated capability because of the turnaround it had achieved on the Lakeridge Subdivision between 1978 and 1980. This was the high-quality subdivision located on Reserve 10 above Okanagan Lake.

The Band was not willing to take over the project unless a substantial financial contribution was provided by the Department. Mr. Walchli signed a Contribution Agreement wherein the Department agreed to provide such assistance up to a maximum amount of \$300,000. Although it was submitted by counsel for the Department that there was a requirement in that Agreement to complete development at the mobile home park within 18 months, I was not able to find any clear provision in either the Contribution Agreement (May 5, 1981) or the four-party Agreement (May 20, 1981) where this requirement was spelled out. There seems to have been a general understanding that the Band company would further develop the park but the obligation to do so seems only to be spelled out in a later agreement of April 23, 1982. For ease of reference, I set out hereafter a copy of the May 5, 1981 Contribution Agreement. It was later amended.

## CONTRIBUTION AGREEMENT

## BETWEEN:

HER MAJESTY THE QUEEN IN RIGHT OF  
CANADA AS REPRESENTED BY THE MIN-  
ISTER OF INDIAN AFFAIRS AND NORTH-  
ERN DEVELOPMENT

(Hereinafter referred to as the "Minister")

## AND:

THE WESTBANK INDIAN BAND,

(Hereinafter referred to as the "Recipient")

## MAILING

ADDRESS: P.O. Box 850, Westbank, B.C. V0H 2A0

## CONTRIBUTION

AMOUNT: \$ 300,000.00

## PURPOSE:

To purchase a 50% interest in the leasehold interest held by Toussowasket Enterprises Ltd. and a first refusal to a leasehold interest in an additional 15 acres adjoining the property.

## FINANCING:

"Application of Funds"	"Source of Funds"
Purchase of leasehold interest <u>\$300,000</u>	Department of Indian Affairs <u>\$300,000</u>

TERMINATION: This Arrangement shall terminate on the 30th day of June, 1984, subject to any other provisions of this Arrangement.

## DISBURSEMENT:

1. On the Recipient's acceptance of this Arrangement and the completion of all legal documentation, a disbursement of \$100,000 will be made.
2. The Recipient shall provide a statement of expenditures with full disclosure of all disbursements during the period, plus a revised expenditure plan before any subsequent payments can be released.

3. The Recipient agrees to refund to the Department all funds not expended or committed for the purpose by cheque payable to the Receiver General for Canada.

**EXPENDITURE  
PLAN:**

Prior to March 31, 1982 \$ 100,000	April 1, 1982 to March 31, 1983 \$ 100,000	April 1, 1983 to March 31, 1984 \$ 100,000
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Funds will not be disbursed in any fiscal year until the Band's Financial Audit has been received and approved by the Department.

**OTHER:**

1. The Recipients shall provide accrued interests towards financing the Purpose, as follows:  
  
Accrued Interest on the outstanding balance of the debt owed by Toussowasket Enterprises Ltd. to the Indian Business Loan Fund on an annual basis commencing March 31, 1982.
2. The Recipient shall observe the following additional conditions under which the Contribution is made:  
  
The Westbank Indian Band shall enter into an agreement with Toussowasket Enterprises Ltd. that all payments made to Toussowasket Enterprises Ltd. from funds paid under this Arrangement shall be used to reduce the debt owed by Toussowasket Enterprises Ltd. to the Indian Business Loan Fund including principal and accrued interest.

**GENERAL  
CONDITIONS:**

1. All funds contributed in this Arrangement will be subject to an annual financial audit to the Minister's satisfaction to be provided by June 30th for each year ended March 31st.
2. The Minister reserves the right to cancel or suspend any disbursement relative to this Contribution at any time should circumstances warrant such action.
3. All schedules required pursuant to this Arrangement, and attached hereto, form an integral part of the Arrangement.
4. The approval of the funds, which are the object of this Arrangement, are subject to appropriations being approved by Parliament during each fiscal year of the Arrangement.
5. Any funds not disbursed by March 31st of each fiscal year must be returned to the Receiver General for Canada.

6. This offer is open for the acceptance of the Recipient until June 30, 1981, after which it shall become null and void.
7. The Recipient shall keep and maintain accounting records during the life of this Arrangement in a form satisfactory to the Director General and permit or arrange for the Director General, or any person authorized by him, to examine those books and records at any time.
8. This Arrangement shall not be assigned.
9. Disbursements made by the Recipient, pursuant to the Arrangement for honoraria, professional and administrative services and all other expenses, must be supported by invoices itemizing time and charges.
10. The Recipient agrees to provide a summary report of activities undertaken during each quarter of the period covered by this Arrangement. The report should address the degree of attainment of the objectives of the program.
11. No member of the House of Commons may be admitted to any share of this Contribution or to any benefit to arise therefrom.

There was later to be considerable debate over the question of whether this contribution agreement was for the purpose of the Band buying an interest in the mobile home park enterprise or for the purpose of paying down the debt owing, inter alia, to IEDF. It could be plausibly argued that it was a bit of both. The debate or argument that waxed over this issue is reminiscent of the vexed questions of causality in the law of torts wherein learned lawyers debate the niceties of ultimate and proximate causes.

Plainly, a major object of the contribution agreement was to ensure repayment of the IEDF loan. But it was also a practical way of getting the Band to take on the project and, hopefully, to make it work. Mr. Ernest E. Hobbs, former Director of Economic Development in Ottawa for the Department, was eminently correct in his assessment that the contribution agreement was being inappropriately used to pay back the IEDF loan, but he of course was looking at the matter only through the lens of economic development policy. Mr. Walchli was faced with a multifaceted problem. He felt able to fit the contribution agreement into a permissible category of aid to the Band to acquire a 50% interest in the economic enterprise of the mobile home park. Or perhaps I should say, the highly uneconomic enterprise prior to 1981!

Although the disagreement between Messrs. Hobbs and Walchli generated a fair amount of sound (and perhaps fury), the course pursued by Mr. Walchli offered a way out of the morass the Department found itself in. He may have worked around the rules somewhat but he was faced with a most unhappy situation and acted in an endeavour to solve the troublesome Toussowasket problem.



After the advent of Band Company direction of the enterprise, matters progressed far better at the mobile home park. In part, this was fortuitous. The years 1980–82 were a time of rapid increase in land values and an acceleration of economic activity generally in B.C. In retrospect, the period had certain aspects of economic mania, the fallout from which is often economic hangover (B.C. has not proved an exception to the usual pattern). All concerned with Toussowasket were fortunate that the demand for accommodation increased just as the new park expansion got under way. Perhaps the more dynamic direction of then Chief Derrickson also played a role in the reversal of fortunes. From being in a very bad state financially, it could be said that by 1982–83 Toussowasket was becoming a healthy enterprise. The course taken by Mr. Walchli resulted in the economic resuscitation of the floundering enterprise and satisfaction of the debts owed to secured creditors. Unsecured creditors were not so fortunate, but it seems most unlikely, as submitted by counsel for the former Band executive, that they would have been paid if bankruptcy had ensued. Of course, the surrender of the lease in April 1982 made the case of the unsecured creditors utterly hopeless.

The Toussowasket matter in its many facets and long duration had an influence, not always for the good, on what happened at Westbank in the late 1970's and early 1980's. It will be remembered that the origin of the Mt. Boucherie Park was a joint initiative of the former Departmental official, Mr. Weir, and the former Chief of the Westbank Indian Band, Noll Derriksan. By 1980, the federal government or its agencies had outstanding debt on the project of something in the order of \$500,000. There were unpaid development bills outstanding on the park, which was only partly completed. Rancorous relations existed between the FBDB and the Department because of the sad experience relative to this park. That ill feeling threatened to spill over to the economic disadvantage of bands throughout the province and indeed even throughout Canada. What was to be done? In effect, the Department was trapped in a situation where it desperately needed a path out of the morass of debt and discord that surrounded Toussowasket.

As I noted earlier, Mr. Walchli had discussions in late 1980 wherein he urged then Chief Derrickson to become involved with the Park. The Chief demanded a substantial financial contribution if the Band or the Band company were to become involved. A contribution agreement (set out above) was eventually signed in May 1981. Undoubtedly, participation by the Band in the enterprise and the subsequent escalation in the fortunes of the project — the Band and Band company took the matter through to substantial completion — relieved Mr. Walchli of a host of difficult problems surrounding this matter. The success of the project no doubt also enhanced Chief Derrickson's own view of his business abilities — he told me that he had been able to work out a very favourable arrangement with a Kelowna mobile home vendor to pay a

considerable sum of money as reservation fees for mobile home pads on the newly developed area at Mount Boucherie Park. These fees are sometimes colloquially called "patch fees". They were apparently a considerable source of income to park owners in the buoyant times of 1980-81. With the injection of these sums and the additional \$100,000 immediately contributed by the Department under the contribution agreement of May 1981, the fortunes of Mt. Boucherie Mobile Home Park improved dramatically. The longer-term picture improved too because of an upsurge in demand for mobile home park accommodation in the Kelowna area. Mr. Walchli was undoubtedly pleased that Band involvement in both the Lakeridge subdivision and the Toussowasket park had been fruitful. The latter especially had been a source of concern to the Department for several years. But as the evidence developed, it appeared to me that matters surrounding Toussowasket had a fallout effect that influenced other events which in turn caused further controversy at Westbank.

The Toussowasket matter had, in my view, a relationship to what I shall call the York-Derrickson controversy. It should be noted that Mt. Boucherie Mobile Home Park is directly adjacent to and contiguous with the Westview Village Mobile Home Park, sometimes also known as Park Mobile Homes Ltd., an enterprise run, as previously mentioned, by members of the York family. The individuals managing the park from 1978 to 1982 were Mr. Bruce York and his wife, Henriette York. Henriette York gave evidence before the Commission but Mr. York was not available due to illness. Mrs. York was an articulate witness and was able, with the aid of numerous documents, to outline a general history of the mobile home park from its inception in the early 1970's.

One Larry York had been involved in the area from the early 1970's. He had been developing a mobile home park and had been engaged in the sale of mobile homes at the location leased from West-Kel Holdings on Westbank Reserve 9. There also was a sales outlet in or near Kelowna for a period of time. The mobile home park and sales office were located adjacent to Highway 97 on land held by Noll Derriksan as locatee. It was my impression that Mr. Derriksan was one of the most active members of the Westbank Band in seeking leasing and business opportunities in the early 1970's. The park was generally referred to by witnesses as either Park Mobile Homes or Westview Village. Mr. Derriksan was, of course, also the locatee at Mt. Boucherie Park, the history of which is set forth above.

Those individuals actually running the park prior to 1977 had not been particularly desirable operators, according to Mr. Ronald Derrickson. He said that the park had not been built to a high standard and was not well maintained. Additionally, the existing sub-lease between the York company (Park Mobile) and Mr. Noll Derriksan's company (West-Kel) was not a particularly favourable one and became less favourable as time passed. The Westview Village (York) Park was a

direct competitor of the (Derrickson) Mt. Boucherie Park, and, it appeared, a rather low-cost competitor. It will be remembered that the Mt. Boucherie Park was said to have been built to a quite high standard at considerable cost. Mr. Walchli had noted to the Standing Committee that, in his view, the Mt. Boucherie Park was a well-built court. One had here the inherent tensions of a relatively low-cost operator next to a relatively high-cost operator. The Park Mobile enterprise appeared more successful than the Mt. Boucherie enterprise. It must have been somewhat galling to both Noll Derrickson and then Chief Ronald Derrickson to see the York operation proceeding in reasonably good economic fashion while Mt. Boucherie (Toussowasket) languished in economic distress. To put it in colloquial terms, there was no love lost between the Yorks and Chief Derrickson or his brother, Noll Derrickson.

As outlined in the evidence of a sometime co-venturer of the Yorks, Mr. Nick Dachyshyn, the Yorks were obligated to have the mobile home park completed to a certain degree by a specified date in 1981 or face possible forfeiture of the sub-lease. Mr. Dachyshyn, however, grew so frustrated with the endless delays and impediments he encountered in 1980-81 that he eventually gave up and left the Kelowna area. A picture emerges of certain of the Yorks being less than ideal lessees, but a picture also emerges of the then Chief and Council behaving towards their proposed development plans in a fashion that was frustrating to the developer. In some ways, the problems and controversy flowing from the Park Mobile development are illustrative of how problems can arise on leased Indian reserve land. It is a case that can usefully be studied by Departmental officials and bands to avoid future troubles on developing reserves.

I heard about the rather curious incident of the allotment of an old unused Band roadway to Messrs. Noll Derrickson and Harold Derrickson. Mr. Ronald Derrickson, Chief at that time, professed that he was concerned about maintenance of and snow clearing from the road and that because of this continuing burden on the Band, the road was allotted to the two adjoining locatees. He noted that there was a payment made to the Band of \$1,400 arising from the road allotment. The road issue was made more contentious by a perhaps less than perfect provision in the original lease to preserve access to all parts of the Westview property through and over this roadway bisecting the property. The Band allotted part of the road to Noll Derrickson, one effect of which was to give Noll Derrickson a legal position that could enhance his bargaining position vis-à-vis the Yorks. It was my view that he would be glad to improve his position because of the fact that the sub-lease was becoming less desirable as time passed after 1976 through to 1982.

It was not long after the time of this allotment that relations between the Yorks and Ronald Derrickson and Noll Derrickson appear to have become more strained. There were plausible reasons for the allotments

of the roadway to the adjoining locatees, but I saw no compelling reasons. I think the allotment did more harm than good because it could be construed by the lessee as a lack of evenhanded action by Council — why, for instance, as a sensible precaution, was not the lessee asked if it had any comments on the matter prior to this allotment?

As I noted earlier, the Park Mobile operation was located on Reserve 9 adjoining Highway 97 and contiguous to Mt. Boucherie Park. At the time of the original leasing of the land in 1971, the leased area had been “surrendered” land. The surrender question was later to have repercussions on the question of the applicability of Westbank Band by-laws to the Park Mobile operation. There has long existed doubt about the application of by-laws to surrendered land, according to Mr. David Sparks, a Departmental official with expertise in this area. As noted in the Introduction, there was a period in the late 1960’s and early 1970’s when Reserves 9 and 10 had been surrendered in the hope that major leasing arrangements could be concluded. These hopes were not realized. However, any leases entered into in that period were arguably different from normal locatee leases of reserve land because the terms of the Indian Act leave room for doubt as to whether “surrendered” land is “reserve” land within the meaning of the Act. Hopefully, this uncertainty will be resolved by certain proposed amendments to the Act that are currently in the parliamentary process.

The 1971 lease had some rather special rental provisions in that up to 1976, the rent was to be higher than after 1976. The rent was fixed in the lease for the first ten years from 1971 to 1981. The rental in the first three years was to be \$15,000 a year. Rent for the next year was to be \$19,000 a year and in 1975–76 was to be \$23,000. Then for five years from July 1976 until June 1981, it was to be \$12,000 a year. The lease provided that the rent for the eight succeeding five-year periods after 1981 would be set at a fair market rent to be negotiated immediately before the commencement of each five-year period. In the event that an agreement could not be reached, the matter would be referred to the Federal Court. In 1977, just when Noll Derriksan’s woes at Mr. Boucherie were commencing, his lease income from Park Mobile was about to take a substantial dive downward.

The lease also contained the following term, which became of considerable significance later on:

the lessee agrees that it will have, by the end of the tenth year of the term hereof, completed a minimum of 260 mobile home pads or sites and have expended a total of not less than \$450,000 on its development on the said premises failing which the lessor shall have the right to cancel the present lease on thirty days notice without further recourse by the lessee.

It was also contemplated in the lease that a concurrent sub-lease would be granted to Trojan Developments Ltd. In 1971–72, Trojan Develop-

ment ran into financial problems and had to abandon the sub-lease. This operation had been under the direction of a Mr. Young. Henriette York said only a few mobile home pads had been completed in that early period.

Mr. Larry York of Park Mobile Home Sales Ltd. (hereinafter sometimes called "Park Mobile") had apparently some existing financial relationship to Trojan Developments and in October 1972, another sub-lease was entered into between West-Kel (Derricksan) and Park Mobile (York). This sub-lease was for a period of forty-eight years and eight months. The payment terms paralleled those in the head lease, which had a fifty-year term. There was a difference in duration in that the first rental period (fixed) of the sub-lease extended until October 1982, since the first year of the ten-year term under the York sub-lease had commenced in October 1972. This sixteen-month difference in duration between head lease and sub-lease later caused much controversy when there arose a debate over just when a new rent was to be fixed for the succeeding five-year period. This controversy generated quite a blizzard of correspondence between the solicitors involved for the respective parties.

The new sub-lease also contained this clause:

Notwithstanding anything herein contained, except for the approvals required in paragraph 8 herein, it is agreed that the grantee shall have the sole and exclusive power and authority on behalf of the grantor to deal directly with the lessor under the lease relative to any matter arising under the lease or with respect to development on the land and the grantor shall not undertake any negotiations or communications with the lessor unless specifically requested to do so by the grantee.

It appears that this provision contemplated that Park Mobile would be dealing directly with the Department of Indian Affairs relative to certain matters arising under the lease. Mr. Larry York signed the lease on behalf of Park Mobile. From 1973 through 1976, Park Mobile went on with development on the land leased from West-Kel and also carried on a mobile home sales operation at Kelowna. For a time, a Mr. Charles Satiacum was involved with the operation. Henriette York said that Mr. Larry York and Mr. Charles Satiacum did extensive development to the park in the mid-1970's. Bruce and Henriette York came on the scene as park operators in 1977; almost from the outset, there were difficulties.

In April 1977, Mr. Satiacum ceased to be involved in the Park Mobile business and the shareholders of the enterprise then became Messrs. Bruce York, Glen York, and Stanley Lawrence York. From financial statements of Park Mobile at that date, it appears that the amount of money required to be spent under the head lease in development of the park had been expended, but the requisite number of

pads had not yet been installed. The stipulated number had to be in place by the summer of 1981 in order to preserve the lease (and sub-lease) in good standing. The sub-lessee, Park Mobile, had undertaken in its sub-lease to complete the necessary construction and to expend the necessary monies stipulated in the head lease. This requirement lay at the heart of later problems. The urgent need of Park Mobile to complete the development and the apparent reluctance of the Band executive (particularly on the part of the Chief) to expedite matters relative thereto contributed to continuing ill feeling on the part of the shareholders of the lessee company.

Around the time of Mr. Satiacum's retirement and the takeover of the park by the Yorks in 1977, relations between the parties seemed to become increasingly acrimonious. In April 1977, correspondence was exchanged between the solicitors, Larson and Co., on behalf of the Yorks and Mr. Warren, solicitor to West-Kel, relative to alleged breaches of the lease. In May 1977, Noll Derriksan, president of West-Kel Holdings Ltd., wrote directly to Mr. Fred Walchli, the Regional Director General, concerning this lease. It seemed to me somewhat unusual that a locatee would think it appropriate to write directly to the head of the B.C. Region in connection with his problems over a lease. Generally speaking, I doubt that such would occur. I realize that it is desirable that chief executives not be isolated from the activities of their department, but orderly business would be impeded if this practice became the order of the day. But it must be remembered that Tous-sowasket (and to some extent Lakeridge) had involved Mr. Walchli in getting to know Noll Derriksan and Ronald Derrickson. He came to know them and he was favourably impressed certainly by Ronald Derrickson. It may have been perceived that he was treating them as court favourites. There was, to put it in mild terms, considerable intensity in Indian politics in B.C. in the 1970's. Perhaps unconsciously, Mr. Walchli allowed himself to become identified as a Departmental official who was quite close to Ronald Derrickson and his brother. It is always a difficult and delicate task for a chief executive who must to some degree be accessible to all, and yet not perceived as too accessible to some. I think this was a particularly difficult task in B.C. in the late 1970's, when there was a very fluid situation in Indian politics in B.C. Some of the perceptions of wrongdoing that emerged from the Toussowasket affair could be said to be flawed, but there was some foundation for suspicion in the sense that Mr. Walchli did have a considerable measure of contact with Ronald Derrickson and Noll Derriksan. Some felt he was too solicitous of their welfare.

In June 1977, Mr. Warren sent to Park Mobile through their solicitors a notice to quit and a demand for possession. This was but an early salvo, albeit a fairly heavy one, in what would continue as a state of more or less constant confrontation for several years. Around this time, a Department study was commissioned on behalf of Noll

Derriksan — the engineers were instructed not to communicate with the Yorks. There seemed to be growing mutual mistrust. The Department was becoming more involved in the vortex of ill feelings that was growing out of the Park Mobile situation.

In May 1977, Mr. Warren sent to Mr. Larson a letter pointing out that a former Band roadway through the park was now owned by the locatee of the leased land, Noll Derriksan. This road had on it, according to the evidence, encroachments which had been constructed by Park Mobile or by their tenants or predecessor in title, Trojan. As noted above, it was said that there had been problems with maintenance of the road as well as complaints from Band members about motorcycles and skidoos on the road. Ronald Derrickson said in his evidence that allotment of the road had realized \$1,400 for Band coffers. The allotment was completed in May 1977, just prior to the arrival in the Department of Mr. Peter Clark. The allottees were the adjoining locatees, Harold Derickson and Noll Derriksan. The timing of the allotment was unfortunate in that it coincided with a hardening of relations between Noll Derriksan and the Yorks.

Mr. Clark said in his evidence that this road was no longer needed for access and was therefore allotted to the adjacent landowners, Noll Derriksan and Harold Derickson. However, Mr. Walchli, in his evidence before the Commission, said that this later became one of the considerations in the mind of the Department regarding problems with the FBDB security on Mt. Boucherie. He said:

You will recall when we looked at the plans that Sandy McDougall put on the board the road access was actually transferred to Noll Derriksan some time earlier, but it was not part of the lease agreement. So without that access the trailer park was land locked. (The reference is to Mt. Boucherie.) (My underlining)

(Transcripts: Volume XXXV, p. 4828)

It appears from a letter of January 27, 1977 from Chief Derrickson, that access to Highway 97 from that road had been cancelled by the Department of Highways, but at least in the mind of Mr. Walchli, Noll Derriksan's ownership of the roadway created some question as to the viability of the Mt. Boucherie lease and hence proper enforcement of FBDB security. This matter, of course, came to a head later when debate arose between the Department of Indian Affairs and FBDB as to what was going to be done with regard to the defaulted loan on Mt. Boucherie Park. The fear of the Department was that the locatee and the Band could frustrate any effective dealing with the lease which was the basic security for the loans against the Park. The roadway was one factor. Another was the problem of getting Band consent to assignment of the lease.

The Department had been required to give its consent to the allotment of this roadway to the adjoining landowners to make an

allotment effective. Given the later acrimony between the locatee, Noll Derriksan, his brother, then Chief Ronald Derrickson, and the Yorks, the timing of this transfer of the roadway was a matter that Commission Counsel submitted should be looked at very critically. Should the Department have given its consent to this allotment? Counsel submitted that it was unwise of the Department to give its consent.

Mr. Clark said it was a routine request. He saw nothing out of the ordinary in it. As the matter was presented to the Department, there appeared to be valid reasons for a transfer of the roadway to the adjoining locatees. Ronald Derrickson said that it would relieve the Band of its maintenance or snow removal obligations, although one wonders just what degree of responsibility would be placed on the Band by keeping this as a roadway. It did not appear that it was being maintained by the Band as a road in any event. From the state of encroachments on the roadway, it appeared not to be able to be utilized as a road. The Okanagan is not noted as a severe snowbelt, so snow clearing responsibilities could not be viewed as a matter of substance.

The objection to allotting this roadway was that it changed the character of the particular land from road designation to a state of ownership by the respective locatees. Since the road bisected a portion of Park Mobile Home's leased land, it gave to the locatee, if so inclined, a more absolute form of dominion over the land. For instance, the locatee could erect a fence, plant crops, put up a row of trees, and the like. It could result in an enhancement of the legal ability of the locatee to make life difficult for the surrounding lease holder. For instance, in a letter that Mr. Clark wrote to Mr. Noll Derriksan in November 1978 he said:

I'm advised that in the absence of a mutual agreement that steps to prevent Park Mobile Home Sales Ltd. from using land in which they have no interest, such as a fence, should be taken. (My underlining)

Mr. Clark said, when asked about that letter,

...It was one of the ways, I think, in the negotiation that there were areas there which I think were causing some concerns which could have been fenced off without causing any major problems. I understood that was feasible to do although apparently it wasn't economic.

Q And of course the erection of a full fence would have prevented the people that were landlocked from getting anywhere.

A Right.

Q Were you prepared to go that far yourself, or was that just a negotiating tool?

A No. I think there were one or two roads across that piece of property that — it wasn't as if the road was being used in a lineal part at all, but there were one or two accesses that were across the road, which as I understood, was still being used and there was no



great problems with, on the north/south I imagine, rather than the east/west.

Q Were you proposing here that — were you considering at that time that those accesses be fenced?

A No.

(Transcripts: Volume L, pp. 7172–7173)

This evidence of Mr. Clark I find difficult to comprehend — I believe Mr. Clark was here suggesting that a fence be put up to put pressure on the park operator — Mr. Derrriksan had been complaining to Mr. Walchli about this problem and Mr. Clark, his subordinate, was casting about for ways to solve the simmering controversy. The Department also bore some responsibility for the problem since it had unwisely consented to this allotment in 1977.

Unfortunately, we were not able to hear from Mr. Sheldon McCullough, the official of the Department who approved of the allotment, because of his health problems. It appears that he was oblivious to the potential problem when he recommended Departmental consent to the allotment. Mr. Clark could not give details of the Department's thinking since he did not arrive until shortly after allotment of the roadway. Mrs. York said, when asked about the roadway:

Q When did you find out and when did you first obtain the knowledge that Noll Derrriksan asserted title to this roadway? Was it only after you became a shareholder in the —

A Oh yes, it was in that one letter, but even at that point I myself didn't think that a band member became owner of a road, the Band road. I just — that was my own way of thinking. I didn't think that band roads became private property of band members. Obviously I was wrong.

(Transcripts: Volume XIV, pp. 1970)

There is nothing to criticize in a band allotting band roads to whomever it chooses, but it should be done in such a way that the status quo ante is not altered. That principle was wholly ignored in this case by both the Band Council and the Department. Mrs. York was unpleasantly surprised to find that the ownership of the roadway was now in Noll Derrriksan, the locatee. Nevertheless, it was quite improper for Park Mobile or park tenants to be placing encroachments on a roadway which was not part of the leased land. The Band was the authority originally in control of the road and as a matter of law, they or the Department would have had the right at any time to demand that these encroachments be removed. By May 1977, it was in the control of Noll Derrriksan as locatee. By this time he was interested in seeing if his lease position could be improved. The Yorks would not be enthusiastic about making any alteration to the lease arrangements that would be less favourable to themselves.

Clearly, the transfer of the Band road to Noll Derrriksan would be a circumstance that could lead the Park Mobile proprietors to believe that

they were not playing “on a level field”. Therefore it was unfortunate that the Department consented to this allotment. Mr. McCullough may not have been as fully informed as he ought to have been by the Band as to who had lease holdings in the area, but I think where roadways are concerned, that there are usually potential issues of access, and prudent practice would be to ascertain there are no interests overlooked. As noted, the Band always would have had the right to deal with any encroachments on the road. This allotment to Mr. Noll Derriksan could be interpreted by the lessees as providing an unfair advantage to the locatee. Where an existing lease is in place, the Department must be scrupulously careful not to disturb the balance of the status quo between the lessor and the lessee. Here that status was disturbed and became another issue of contention between people who already had many issues arising between them. Its natural tendency was to cause the Park Mobile owners to question the bona fides of the Band executive and the Department. That is the one thing that governments cannot afford — those subject to governmental action may disagree with a particular governmental action but it is a problem of an entirely different order when parties question the integrity or motives of government. This roadway issue had the tendency to cause the Yorks to harbour suspicions that they were subject to capricious action by the Band.

As I noted above, there was an interplay between Toussowasket and the Park Mobile situation, which situation later became full of acrimony. It will be recalled that by 1977 the fortunes of Noll Derriksan’s park, Mt. Boucherie, were in a state of serious disarray. Directly beside this park was the Park Mobile operation. It was just at that time that the rent on Westview Park (Park Mobile) was reduced for the next five years. The rental scheme for the first ten years, (1971–81), appears to have been designed to encourage full development of the site. By 1977, the rental arrangement was becoming less favourable to the locatee in the sense that his cash return was being diminished and would be diminished for several years.

Noll Derriksan was in possession of a failing park (Mt. Boucherie), while the Yorks were running a park that was generating a reasonable income from mobile home sales as well as from pad rentals. But the York operation was, as of 1977, returning to Noll Derriksan a decreased rental and was going to do so for the next several years. It is clear to me that, commencing in or about 1977, Noll Derriksan, abetted by his brother, Ronald Derrickson, was intent on getting a new and better lease arrangement in regard to the Park Mobile leased land. Two letters that I set out hereafter as an addendum to this chapter give the flavour of the controversy that was going on in the spring of 1977. (Documents 27 and 30 from Exhibit 51)

Significantly, on May 2, 1977, a letter was sent from Warren and Company on behalf of West-Kel (Derricksan) to the solicitors for Park Mobile (York) containing the following proposal:

In an effort not to jeopardize your client's investment, West-Kel Holdings Ltd. is prepared to implement the following: 1) the property shall be appraised by two appraisers, one selected by your client and one selected by our client; 2) the average of the appraisals shall be taken and against such average there shall be applied an annual rental of 9.5%. The new lease agreement shall be entered into for the benefit of your client and our client, the details of which shall be subject to the aforementioned meeting. (My underlining)

On May 11, 1977, Mr. Warren again wrote to Mr. Larson making a proposal that Lot 31, adjoining Mt. Boucherie Mobile Home Park, be deleted from the existing sub-lease and that a new appraisal be done and a new rent fixed for Lot 32. In October 1977, Mr. Derricksan wrote to Mr. Walchli demanding that the Department have encroachments on the aforementioned roadway removed. On November 8, 1977, Mr. Clark wrote to Park Mobile in care of their solicitors, requesting immediate action to remove encroachments from the land comprising the old roadway. He said in his letter, inter alia,

alternatively, you may arrange to meet with the locatee landowner, Mr. N. Derricksan and Band Council to retain use of these lands on terms and conditions to be established in conjunction with this Department. (My underlining)

I would infer, as did counsel to the Department, that the underlined portion is a reference to the Minister's ultimate jurisdiction over lease arrangements.

As early as November 1977, action was being taken by West-Kel in the courts to attempt to cancel the sub-lease. These efforts were unsuccessful. A court doubtless would be reluctant to order forfeiture of the sub-lease of such a substantial operation as Westview Village Mobile Home Park for the sole reason of some encroachments on the former Band roadway. Bruce and Henriette York must have been greatly concerned to find themselves facing cancellation of the sub-lease almost immediately after their arrival at Westbank. Noll Derricksan was apparently becoming frustrated by the unsatisfactory state of matters at Mt. Boucherie. Both parties got off on the wrong foot and never did seem to be able to establish good relations thereafter.

The parties were apparently close to settling their dispute in the summer of 1978 when agreement was reached for an increase in rent from \$1,000 a month to \$1,500 a month. But the settlement negotiations appeared to founder over the issue of whether or not the roadway was to be included in the proposed settlement. Mr. Warren said in a letter of July 31, 1978 he sent to the solicitor for Park Mobile,

We reject your suggestion that there was ever any intention of including within the terms of the settlement agreement, a settlement of the trespass and encroachment on Tsinstikeptum Reserve #9 by Park Mobile Homes Sales Ltd. Indeed, I remind you that the author specifically informed you during our settlement negotiations that the firm of Warren, Ladner was not authorized or instructed to deal in any way with the problems related to the 66-foot roadway. The undersigned made specific reference to this matter in order that your office and your client could determine whether it desired to negotiate separately on the two disputes.

Mr. Clark of the Department had given his approval to a form of settlement and apparently was of the view that all matters between the parties were settled. In the event, no settlement was concluded and the dispute continued. There were quite a number of solicitors successively involved for both parties and matters were not ultimately resolved until 1984. The resolution, in effect, was a divorce — the Yorks sold the park to a new owner, Mr. John Ross. My impression from considering all of the correspondence, court proceedings, and testimony concerning this long-running matter was that there was a considerable reservoir of ill feeling on both sides. Such things, I suppose, are inevitable in human affairs, but it is still disappointing to see so much unedifying acrimony.

In the summer of 1982 occurred a truly shocking incident. Ronald M. Derrickson was set upon in his home at Westbank by an assailant and was severely injured. This matter and its resultant charges has already been dealt with by the Criminal Courts and I do not wish to trench on conclusions reached in earlier proceedings where evidence was led and conclusions were arrived at based on evidence heard by other tribunals. However, it is abundantly clear that the assailant of Chief Derrickson did not drop from the sky by chance. The individual who was found to have actually committed this brutal assault was a person known to relatives or associates of relatives of Mr. Bruce York. The assailant came from Edmonton and relatives of Bruce York were located in that city. A Mr. Tsu of Kelowna pleaded guilty to a charge in connection with the attack, but Bruce York and his relatives were acquitted of conspiracy charges laid arising out of the assault. I heard evidence from a Ms. W. that after the assault (and after conspiracy charges had been laid) Bruce York was heard to offer compensation to someone if they would agree to plead guilty to the crime. This conversation occurred in Edmonton, she said, at the residence of relatives of Bruce York. That, in and of itself, obviously proves nothing against Bruce York. Such evidence could be admissible at law to support an inference that a person possessed a guilty mind concerning the crime, but it could be equally consistent with a legitimate wish to avoid any entanglement in criminal charges. Ms. W. said in her evidence before the Commission in answer to questions from counsel for the former Band executive:

Q What did they indicate had gone wrong in reference to this hit?

A Well, at first they didn't know, they just announced that something had gone wrong and somebody had gotten shot.

Q Were there any discussions at that initial meeting, if I could just take you back for a moment, in reference to the nature of the business transaction, or what type of relationship they were involved in with Mr. Derrickson?

A Yes. There was some reference made to a lease on a trailer home, and that Ron had reneged on the lease and that they were out to get him, or something along those lines. It's been a long time ago.

Q What do you recall the next incident involving this matter as being, after that?

A When the charges were laid.

Q All right. Can you tell me what happened then?

A Yes. They were sitting in the basement, discussing that —

Q Now, if I could just stop you there, when you say "sitting in the basement", was this, again, at Larry York Senior's residence?

A Yes.

Q In the City of Edmonton?

A Yes.

Q All right.

A St. Albert, actually.

Q St. Albert?

A Mm-hmm.

Q And you were present?

A Yes, I was.

Q And who else was present at that particular discussion?

A Bruce York, he came in from Kelowna; flew in from Kelowna. There was also Larry York Junior; Larry York Senior; Murray; myself, and Olga Petrov, which is Larry York Junior's girlfriend at that time, it's now his wife.

Q And all these people were present at this conversation that took place?

A Yes.

Q All right. Would you tell me what was discussed then?

A What was discussed was that Larry York Junior should take the —

THE COMMISSIONER: When you speak of charges, Miss W., as I understand matters, there was a chap called Cooper, who had been arrested shortly after this incident in Kelowna. I think he was charged with attempted homicide; is that the charges you are talking about, or are you talking about charges that were laid against Mr. Bruce York, and I think maybe Larry York, and others?

THE WITNESS: No. There was charges apparently laid against Cooper, fairly subsequent, like, almost right away after the incident happened. But, it was some time before, if I remember correctly, it was sometime before charges were laid against Larry York Junior, Larry York Senior, and Bruce York.

THE COMMISSIONER: Fine. Now, when you speak of "charges" that you were present at a conversation, is that the second series of charges you are talking about?

THE WITNESS: That's the ones against the York family, yes.

THE COMMISSIONER: Okay. Yes, all right. All right, now I understand. Yes, carry on.

Q And there were discussions about those particular charges?

A Yes, there were.

Q And you were present?

A Yes, I was.

Q Could you tell me what was discussed?

A What was discussed was Bruce York offered Larry York Junior an amount of money, I can't quite remember whether it was \$30,000 or \$50,000, but it was a large sum of money for him pleading guilty to the charge, and letting the other two go.

Q Was Larry York Junior prepared to accept this money and plead guilty?

A No, he wasn't. He said that he would do that if there was a larger amount of money. I remember distinctly that he said that he was looking at perhaps three to five years, and for him to take a charge like that, he'd have to get paid more than that.

Q And was that the first time that you had met Bruce York?

A Yes.

(Transcripts: Volume LXIX, pp. 10331-10335)

This assault incident and subsequent court proceedings related to it cast a somewhat lurid glow over events at Westbank. It must always be an object of regret when parties seek to take the law into their own hands. That incident was obviously evidence of aberrant thinking. But because of the tremendous publicity such a matter inevitably attracts, this appears to me to have been a large factor in giving undue prominence to various disputes and controversies at Westbank. It raised to a remarkable degree the profile of Ronald Derrickson and the Westbank Indian Band. From that day forward, the Chief and Band had great "news value". This is not always a desirable state of affairs. Sensational publicity can have quite unforeseen consequences.

This whole incident and its fallout would obviously have been a further factor to exacerbate the already difficult relations existing between the Band executive and the operators of Park Mobile. There was no suggestion that Henriette York had anything to do with this whole disgraceful incident — indeed, I had the impression from her evidence that she could never understand just what led the various parties to manifest such animosity to each other. She appeared to be a woman of good sense and good will.

On another front, in September 1978, the Westbank Indian Band had sought approval under Section 53 and Section 60 of the Indian Act to manage their surrendered and reserve lands respectively. Mr. Clark wrote on this subject to Mr. Joe Leask, another member of the Department, on November 6, 1979. He said, *inter alia*:

since the issuance and approval of this Band Council Resolution by the Westbank Band Council we have continued discussions related to the advisability and necessary procedures to affect such control and

management as the record shows there's been a history of difficulties related to the disposition and development of lands held by members of the Westbank Band.

The experience gained by the Band through their Band Development Company and the Lakeridge Park subdivision which is on surrendered land, is evidence that there is a competence to effectively manage these lands. I therefore recommend that the request to the Westbank Band Council for the Minister to appoint the Band Council to manage, sell, lease or otherwise dispose of surrendered lands under Section 53(1) of the Indian Act be approved. — Such authority should be limited to the surrendered lands on Tsinstikeptum Reserve #10. (My underlining)

The surrendered lands on Reserve 10 chiefly comprised the Lakeridge Park subdivision located above Okanagan Lake. This is a housing, as opposed to a mobile home park, development. It is a high-class residential subdivision that is a credit to the Band.

The Department, ignoring Mr. Clark's above advice, on October 6, 1980 appointed the Westbank Indian Band to exercise Section 53 authority over all surrendered lands on its reserves at Westbank. The effect was to give to the Westbank Indian Band authority over the management and administration of the leased land whereon Park Mobile was situate. On October 15, 1980, Mr. Walchli wrote to Park Mobile advising them that he had been informed that they were commencing development improvements in breach of Westbank Indian By-law 1979-15, relating to development, and that since no proper plan was approved they were to cease and desist from construction. Since the Band had been given authority over surrendered lands, there seems no apparent reason for Mr. Walchli to write on the subject — it may be, however, that it was simply a case of overlap. I again found it somewhat surprising that Mr. Walchli would involve himself in this matter even if the Department had responsibility for dealing with the land — I would have expected it to fall more suitably within the purview of a less senior member of the Department. Having someone in the position of Mr. Walchli dealing with this relatively minor issue could lead the lessees to suspect the worst.

For the Department to grant authority over all surrendered lands, including as it did the Park Mobile lands, in the circumstances existing in 1980, was probably not the prudent course to adopt. There was, as noted by Mr. Clark, some history of prior trouble, and given the controversy existing between the Yorks, the locatee Noll Derriksan, and his brother, the then Chief, this was once again a situation where the status quo was being changed in a way that could give lessees an impression of a failure by the Department to have due regard to existing lease arrangements. The blanket grant of authority was indeed not considered desirable by the regional official, Mr. Clark. Perhaps the proverbial distance between Ottawa and B.C. contributed to this lapse.

I have earlier noted the evidence of Mr. Dachyshyn about the problems he encountered in 1980 and 1981 with regard to obtaining approvals for expansion of the Westview Village Mobile Home Park. This expansion was, as we have seen, necessary in order that the lessee meet certain construction requirements imposed under the head lease of 1971. Failure to complete by the deadline could imperil the continuance of the sub-lease covering the park.

In September 1980, apparently in a state of near desperation about the lack of progress on the park expansion, Mr. Dachyshyn and Mr. Bruce York sought to enlist the aid of a Mr. John Steward. Apparently Mr. Steward had promised to engage a law firm to sort out the development and by-law problems that the Park Mobile people were encountering with the Westbank Indian Band Council. On October 9, 1980, Chief Derrickson wrote to Park Mobile saying:

We have on file a letter signed by yourself and Nick Dachyshyn appointing Mr. Grant Maddock of Okanagan Planning and Engineering Ltd. to be your sole agent to finalize all approvals in regard to your extension. Mr. Maddock set up a special meeting with the Westbank Indian Band Council where all plans would be reviewed. There were several preliminary meetings with the Westbank Indian Council and Mr. Maddock, the final meeting was with the intention of trying to finalize or clearly define those areas needing to be fulfilled for final approval. Before this meeting took place we were informed by Mr. Walchli that a Mr. J. Steward had been appointed as your sole agent to deal directly with the Department in regard to obtaining these approvals.

We have therefore had several meetings and telephone conversations with the Department of Indian Affairs, and we have established that the complete files on Park Mobile Home Sales including all problems will be subject to complete review in regard to the present facility and approvals, any encroachments or complaints by West-Kel and/or the locatee as well as several complaints made to this office by residents of your park. (My underlining)

On September 26, 1980, Chief Derrickson sent to Park Mobile a letter in the following terms:

Enclosed please find copy of a news clipping which will be of interest to you. We also advise that all lands on Indian Reserve #9 are surrendered.

Attached to the letter was a newspaper article with the heading "B.C. Rentalsman Scalped by Indian Act". The article dealt with the proposition that the Provincial Rentalsman had no jurisdiction over Indian lands. The sending of the letter could be construed as a not very subtle statement by Mr. Derrickson that he intended to take a more aggressive stance with lessees and tenants of mobile home parks.



One can see from these letters the possibility of further suspicion. The Park Mobile operators could get the impression that the head of the Department in B.C., Mr. Walchli, was passing on everything to the Chief. This is an example of the undesirability of the Department head involving himself in matters at this level. A suspicious person might well say — “what on earth is the head of the entire B.C. Region doing involving himself in this lease problem — the Chief or his brother must have a tremendous amount of influence with him”. Additionally, the letter enclosing the clipping seemed to indicate that the Chief meant to be more, not less, assertive. If the lessees came to feel that Mr. Walchli was too compliant where the Chief was concerned, their apprehensions would have been much increased.

On October 27, 1980, Mr. Walchli again wrote to Park Mobile in strong terms telling them to remove their encroachments on the former roadway. This, of course, was when Mr. Walchli was urging the Chief and Council to step in and assist with the Mt. Boucherie Park problem which was worrisome to the Department and which threatened to permanently impair relations between FBDB and the Department (and Indian entrepreneurs). I can appreciate that Mr. Walchli would want to maintain good relations with Ronald Derrickson, but for him to involve himself personally in this lease dispute was to court the possibility of giving a very unfortunate impression that he was allowing himself to become unduly partial.

There was a meeting held in early November 1980 at the Westbank Band office. According to Mr. Dachyshyn, there was a bit of a scene between the Chief and a fire marshal. The Chief demanded that the person in question leave the meeting. Apparently one of the issues to be discussed at the meeting was the vexed question of fire protection — this was a legitimate concern of the Chief, but the matter would hardly be advanced by diatribe as opposed to rational discussion.

Q What happened at that meeting?

A Well, we started to discuss the plan, and tried to get to the problem of why he rejected the water system, and he stated his case, and then the Assistant Dominion Fire Marshall, he didn't get up, but he got into a discussion where, according to all codes, requirements, water reserve, the gallons-per-minute that the pump pumped, and that the system as far as his regulations were, was sufficient.

Q What was the response of any of the parties there to that statement?

A Well, it took about two or three — maybe five or ten seconds — Chief Ron asked him who he was, what he was doing there, and he could just pick up his bag and he gave him two minutes to get out of there, or he would call somebody and have him removed.

Q What happened then?

A The gentleman left.

Q Did the meeting continue?

A Yes.

(Transcripts: Volume LXVIII, p. 10202)

This sort of behaviour by the chief executive officer of the Band, aside from being petulant, was scarcely of the sort to dispel the already deep suspicions that the Park Mobile people harboured about the Band administration. It also highlights just how undesirable it was for the Chief to involve himself so directly in a matter where his brother was the next-door competitor of (and actively engaged in litigation with) Park Mobile. Here was a clear example of a conflict of interest but everyone, including Departmental people, seems to have been oblivious to it. Mr. Grant Maddock of OPEC Engineering, in answer to questions from counsel for the former Band executive, said this about relations between the parties as he, an outsider, saw them around this time:

A Well, there was a couple of things that were causing difficulties. One was the right-of-way, and I know that was a sore point. It looked like it was going to go to court over it, and also the new standards.

I know that Larry York was very discontent with the Band and Council at that time because of the new by-laws that were being brought in.

Q Mr. Maddock, were you involved in those actual discussions and negotiations that were ongoing at that time?

A No, I was only a third party to what was being said and the discontent that was going on.

Q Did you have an discussions with Mr. Larry York in reference to his reaction to the Band over these by-laws?

A Yes, I did.

Q How would you assess that particular reaction?

A He was very upset. There were many words that were said that were I would say derogatory about the Chief, specifically about the Chief at that time.

Q And that was Ron Derrickson?

A Yes.

Q Did it become an extremely difficult and tense situation as a result of that to deal with this problem?

A I would say it was getting to be that way, yes. It was to the point that there were court actions being contemplated from both sides.

(Transcripts: Volume LXI, pp. 8805-8806)

Eventually Mr. Maddock grew tired of the wrangling and refused to carry on. I can appreciate his sense of frustration with all parties who seemed more intent on scoring points than solving the outstanding issues.

In December 1980, the Park Mobile owners engaged a Mr. Falkenberg to be their consultant to attempt to get the planning completed so that they could adhere to the terms of the original lease, which terms required them to have a specified number of pads in place by the

summer of 1981. It appears that his efforts were successful for the requisite number of pads seem to have been completed at Westview sometime in the summer of 1981.

Throughout that year the various lawsuits were continuing. On July 3, 1981 Mr. Warren wrote to Park Mobile advising that they were in default under their lease because they had not constructed the minimum of 260 mobile home pads on the demised premises by June 30, 1981. He said:

You should be aware that the failure to construct the minimum number of pads by the aforementioned date will be reflected in the rent renewal in the event you are still the tenant on the property.

The fear of the Park Mobile operators that they would be held strictly to the terms of the lease appeared to be materializing. Although it appeared that the Yorks had succeeded in getting the required pads completed (more or less on time) to avoid lease forfeiture, they could not be sure that this was the case if Mr. Warren should receive instructions to litigate this issue. This was just one more element of uncertainty they faced.

In the fall of 1981, there was a general meeting held by the Band executive with mobile home park lessees relating to the question of by-laws. The lessees were informed of a new by-law regime that was to be put in place. It was quite a comprehensive plan. Mr. David Sparks of the Department had assisted the Band in drafting appropriate by-laws to address what was perceived as a regulatory vacuum on the Reserves. I deal with some questions relating to by-laws elsewhere in this Report. This meeting had good and bad elements. It was proper for the Chief to notify lessees of the new regime, but it might have been better to have greater and earlier consultation with those affected so that people felt they were part of the process. To the greatest extent possible, it would be desirable if bands could be sensitive to the concerns of lessees on reserves. If a new by-law regime is to be brought in, it seems to me that it would be desirable to have discussions with lessees about the parameters of regulation. Lessees may not always be happy with by-laws (in fact they often will be unhappy) but if they are consulted, I think that friction can be lessened. I have observed elsewhere that Mr. Derrickson was a man of action. This is a desirable quality in a leader in that it ensures that things get done, but in this instance, Mr. Derrickson might have been wiser to do some preparatory consultation before presenting the lessees with a fait accompli. I must observe, however, that the mobile home park association at Westbank seemed at times to seek to undermine the Chief by complaining to third parties. Local disagreements should generally be settled at the local level and it was unfortunate that a litany of complaints to third parties occurred as opposed to direct dialogue between Band executive and lessees.

In September 1981, the Westbank Indian Band sent a bill to Park Mobile for \$14,500 for development fees charged pursuant to the new Band development by-law. Park Mobile refused to pay these fees and has continued to refuse to pay them to the present day. One of the live issues between the parties was the question of whether by-laws could apply to "surrendered" land. There also appeared to be some question as to the applicability of this by-law to the works in question. I hope recommendations made in Section II of my Report can quiet that sort of issue relative to surrendered lands in future.

In the early part of 1982, there was correspondence between solicitors for the Band and solicitors for Park Mobile concerning the payment or non-payment of various fees. In March 1982, Mr. Flanagan of the Warren, Ladner firm wrote to Mr. MacDonald, the then solicitor for Park Mobile, indicating that, because of various alleged breaches by Park Mobile, there would be no business licence issued to them, and accordingly they could be subjected to penalties. Throughout that spring and summer, there was an ongoing controversy between the Band, B.C. Telephone, B.C. Hydro, and Park Mobile over whether or not services could or should be installed at any park extensions. Chief Derrickson purported to forbid access to Reserve 9 for installation of services at the new Park Mobile development. He said that he did this to have the Yorks comply with Band by-laws and press them to pay development and other fees. The Yorks objected to the imposts. One unfortunate by-product of this contest was inconvenience and worry occasioned to tenants of the mobile home park. There seemed to be some confusion over the status of the land on Reserve 9 because on May 19, 1982, Chief Derrickson wrote to B.C. Hydro advising:

This is to advise that the property concerned is presently leased to West-Kel Holdings Ltd. and sub-leased to Park Mobile Home Sales Ltd. and is not surrendered. (My underlining)

On June 3, 1982, Mr. Munro, then Minister of the Department, wrote to Mr. Fred King, M.P.:

A couple of the mobile home parks on the reserve are lands surrendered for lease. The portions not under this provision are returned to reserve status leaving leased areas surrendered lands. In October, 1980, under Section 53 of the Indian Act I appointed the Westbank Band Council to manage the surrendered lease lands as my agent. I understand that the Westview Village Mobile Home Park is surrendered lease land and I assume that the Band Council is exercising its authority to manage this leasehold under the 1980 delegation of authority. The Westview Village Mobile Home Park is operated by Park Mobile Home Sales Ltd. under lease from West-Kel Holdings Ltd. which in turn leases the lands from the Crown. (My underlining)

It does not appear that the assertions in the two letters about the status of the lands can be reconciled to stand together. Once again, such patent inconsistency could excite suspicions.

On June 5, 1982, Henriette York wrote to the Minister, the Honourable John Munro, apparently as a result of a letter earlier sent from the Minister's office to a tenant of Westview Park who had written to the Minister complaining about his inability to get telephone service. Mrs. York said in her letter:

The band has used every conceivable means in attempting to cause us to be in violation of our lease, and to prevent us from conducting our normal business. One of the means used is to allege that we have not paid the fees necessary under their By-law #1979-15. This allegation did not arise until October 1981, some months after the original permits were obtained. In October 1981 we received a letter from the Band demanding \$14,500 in additional permit fees. The Band also caused a copy of a Band Resolution to be sent to B.C. Hydro and B.C. Telephone forbidding them from entering Band Reserve land leased to Park Mobile Homes to install any Hydro meters or telephone service.

We called the Westbank Indian Band Council to set up a meeting with Chief Ronald M. Derrickson, and had the meeting set for 1:00 p.m. on April 3, 1981. Upon arriving we were told the Chief could not meet with us, but Brian Eli, a council member, and Harold Derickson, license inspector, would meet with us. They offered to reduce their fees to \$50 for each lot, as a processing fee. There were 88 lots, so that is \$4,400, and they would forgo the additional \$10,000 "Inspection Fees". We asked that if we accepted that offer would this be all that was demanded, and would it result in Hydro service. We were assured that it would. Mr. Minister, there is no mistake in relating this conversation as we have a verbatim transcript of it. Within an hour after returning to our office, Harold Derickson phoned me to state that the Chief had over-ruled, and the full amount had to be paid. In October, after the Band Council Resolution was sent to Hydro and B.C. Telephones, the Band requested information on the cost of the expanded park. This was supplied. Thereafter, they raised the amount required to \$23,432.51.

We feel there is no legal basis for such demands, and we are prepared to contest the matter. By-law #1979-15 has according to the information from your department, never been approved by yourself. They choose rather to try and force payment by preventing public utilities from servicing us. To date, Mr. Minister, you have, possibly without realizing it, assisted the Band in doing that.

Mr. Minister, other Mobile Parks were expanded immediately prior to our expansion and also immediately afterwards, and no such exorbitant fees have been asked of them. There were no changes in the By-laws during that period. All we are seeking is equal treatment. Mr. Minister, are you seriously suggesting that we are at fault, as indicated in your Bianchini letter, for not yielding to what in my opinion is attempted extortion.

What we did do in an attempt to reduce or eliminate the civil damages being done is to offer to put the disputed fees in trust awaiting a ruling on the matter. Please note a copy of our solicitor's letter to the Band's solicitor, dated Feb. 12, 1982, which is attached. Also attached is a copy of a Band letter dated May 7, 1982, containing their latest demand for full fees of \$31,494.09.

The tone of the letter discloses that the people actually running the park, Bruce and Henriette York, felt that they were getting unfair treatment from Band officials. The controversy involving Park Mobile was a continuing and bitter one. It had spread to involve the Minister in Ottawa and public utilities in British Columbia.

The spring of 1982 was also the time when there arose a serious question of finance concerning Mt. Boucherie Park. In May 1981, an agreement had been signed by the Department for contribution to a maximum amount of \$300,000 to be payable over three years. That was part of the arrangement arising from discussions held between Mr. Walchli and Chief Derrickson in 1980 and 1981, as a result of which the Band development company took an interest in the Mt. Boucherie Park with a view to further developing the park.

This contribution agreement had been brought to the attention of Mr. Ernest Hobbs, Director of Economic Development for the Department, in the fall of 1981. This matter, like several I encountered at Westbank, seemed to have a political component in that the source of the complaint to Mr. Hobbs was apparently an Indian leader who was not then sympathetic to either Chief Derrickson or the B.C. Region of the Department. Mr. Hobbs began inquiries as to the legality and propriety of this contribution agreement in view of the fact that it could be an infringement of the policy of not permitting Indian Economic Development Fund loans to be repaid from other Economic Development Funds. I gathered this was a policy founded on comments of the Auditor General of Canada. Mr. Hobbs outlined his position questioning the propriety of the contribution agreement under cross-examination by counsel for the Department. His evidence is as follows:

- Q All right. Well, isn't it necessary, Mr. Hobbs, to look beyond the dry words of the purpose, to purchase a 50 per cent interest, to find out the reason for that purpose in order to understand what's going on?
- A Well, I believe it is. I believe one needs to look at the entire contribution arrangement to understand what's going on.
- Q And isn't it necessary to find out whether there is indeed an economic enterprise on the Reserve lands, to find out whether the reason for the purchase is to save that economic enterprise?
- A Well, that's certainly one of the considerations, yes.
- Q And do you still take the position, that if that's the dominant underlying reason for the purchase which is spelled out in this contribution agreement, do you still take the position that if one of

the effects of that is to pay off the IEDF loan that there isn't authority to enter into that?

A I take the position that it is impermissible to have a contribution agreement, using government monies, a condition of which is to ensure that an IEDF loan is repaid, because there is no authority to use Economic Development contribution monies, or in fact any other contribution monies of the Department in order to meet that condition.

Q But there is authority to use contribution monies to save an economic enterprise on Reserve lands?

A There certainly is that.

Q All right. If one of the things that needs to be done in an orderly business sense, and that is to take care of the secured debt, do you take the position that, because one of those secured debts is an IEDF loan, that the contribution arrangement must be halted, cannot go ahead? Do you go that far?

A Well, I think in fact if you look at my memorandum of March the 30th, 1981, you will see — or 1982, I suppose it is — you will see that I didn't in fact take that position. What I took was a position that I required all of the documentation in order to be able to understand the full nature and purpose of this arrangement.

As far as the other aspect of do I take the position that it is not possible to use the contribution funds for the purpose of repaying an IEDF loan, yes, I take that position. As I said earlier, it is not myself that wrote these regulations. It's regulations of the Government of Canada, to the extent that those regulations are written in such a way as to preclude something happening, notwithstanding its apparent desirability.

My understanding is that the only way that one is in a position to do this is to use the authorities which have been put in place, presumably with due consideration by people who had the authority to put them into place, to accomplish the desirable ends.

There is a way in which that can be done in terms of forgiving or deleting or reducing loans which are due to the Crown. That was a way which was available to be accomplished here.

In fact, in this particular case it had been considered earlier, prior to my arrival in the Department, and had been turned down as going through that process, as the result of the fact that it was not considered to be a loan which should be forgiven or reduced by the Crown as a result of the type of security which the Crown held on it.

(Transcripts: Volume LXIV, pp. 9457-9459)

On March 30, 1982, Mr. Hobbs sent a telex to Mr. Walchli in Vancouver advising him not to disburse the remaining funds under that agreement until the matter had been fully reviewed. Mr. Hobbs was not the direct superior of Mr. Walchli in a line sense, but he was a senior official with authority in the Economic Development area. Persons who could give a direct order to Mr. Walchli forbidding him to expend those funds included Mr. Donald Goodwin, Assistant Deputy Minister of the Department. This directive of Mr. Hobbs caused a considerable flurry of excitement. Ronald Derrickson sought immediate support from other

Indian leaders, including Senator Marchand and Messrs. Antoine and Moses. He and the others attended at Mr. Walchli's Vancouver office where there was a conversation by speaker phone with Mr. Hobbs. The result of this conversation was that it was agreed that Mr. Walchli could proceed if he could obtain Mr. Goodwin's approval. Mr. Walchli said that he in fact did receive such authorization and accordingly he proceeded to accelerate disbursement of the remaining \$200,000. He viewed this as a matter of some urgency at the time because the monies had to be taken from Department funds that were on hand at the end of March 1982. The government fiscal year ends on March 31. There was no assurance that these funds would be available in the following fiscal year.

April 1982 was a period of considerable activity on many fronts in regard to matters involving Toussowasket (Mt. Boucherie Mobile Home Park). Ultimately, some of the haste generated confusion and suspicions. Mr. Walchli was under considerable pressure from Chief Derrickson to pay over the \$200,000, but questions were being raised by Mr. Hobbs. At the end of April 1982, the Toussowasket lease was cancelled. This cancellation was registered May 3, 1982. In March 1982, Mr. Justice Locke (then of the B.C. Supreme Court) had delivered Reasons for Judgement in the case of Toussowasket Enterprises Ltd. v. Effie Mathews et al. This action had been taken by a tenant at Mt. Boucherie Park who was opposed to a rent increase and the B.C. Rentalsman was also involved as a party intervening in the case. The park proprietors sought to increase rents to make the park more economic. Although the judgement deals with a number of issues, one aspect of it sustained the jurisdiction of the Provincial Rentalsman over the tenancies at Mt. Boucherie Park, among other grounds, on the basis that the corporation, Toussowasket, had a separate legal existence and was not to be treated as identical to an Indian person. The learned Justice quoted from an Alberta case which contained the following passage:

The status of a corporation as a legal entity which exists independently of the character or status of its shareholders is recognized in law.

As a result of this judgement, it was felt that one way to perhaps abate the jurisdiction of the Rentalsman would be to have the corporation cease to be the leaseholder, and to have a direct lease from the Crown for the benefit of the locatee — this, it was believed, would oust the jurisdiction of the B.C. Rentalsman. As I understand it, the Rentalsman later held that this alteration did not deprive him of his jurisdiction but at the time the park proprietors and the Department desired not to be subject to his office in order that more economic rents could be put into effect at Mt. Boucherie. Mr. Walchli spoke of this before the Standing Committee and Ronald Derrickson also noted this problem in his evidence before the Commission. He said that the



Receiver had failed to raise rents during his tenure and that, as a result, the existing rental rates were out of step with comparable parks in the Westbank area.

In the spring of 1982, Mr. Ted Ross of Donaldson Engineering had been endeavouring to have his long-standing judgement against Toussowasket registered in the Indian Land Registry in Ottawa. He had no success. He had, as he said in his evidence, by that time elected to "go the political route", and was in contact with his M.P., Mr. Ron Huntington. Mr. Huntington was a Conservative and the government of the day was Liberal.

Mr. Huntington was apparently questioning Mr. Munro on what was happening with regard to the \$300,000 contribution agreement. A letter went from Mr. Leask from the Department in Ottawa to Mr. Clark in Vancouver. It contained the following:

The question raised by Mr. Huntington on March 24, (1982) concerning the \$300,000 contribution agreement to the Band with respect to Toussowasket Enterprises, Mt. Boucherie Mobile Home Estates, is under review. We have asked for background information from our Economic Development Branch in our Regional Office. We expect to have this information within the next few days.

Mr. Hobbs had told Mr. Walchli to hold back payment at the end of March 1982. On April 1, 1982, Chief Derrickson wrote to the Department protesting against any cutback in this funding. In the original contribution agreement, a stated purpose of the contribution agreement was the "purchase of 50% interest in the leasehold interest held by Toussowasket Enterprises Ltd". This was, of course, the lease on the mobile home park.

There was apparently some sentiment within the Band Council at this stage (March and April 1982) to have the Band get out of the mobile home park business entirely. It was felt that it might be wiser to concentrate instead on the development of real estate in the Lakeridge Park area. Ronald Derrickson dealt with this in his evidence:

A ...In around that time the trailer park owners and some of the trailer park residents were becoming very restless and becoming very active and very vocal. We were starting to get somewhat gunshy about — I think the question was asked by Brian or Harold or whoever it was there at one of the Council's meetings that what the hell are we doing in the trailer park business; we're supposed to be operating the administration of the Band and we should get the hell out of it.

So there wasn't much stomach at that time, the fight with the Rentalsman and so forth and all the negative press we had been getting. There wasn't much stomach by the Council and from me for that matter, either, in regard to proceeding with trying to acquire all the trailer parks.

And the other thing; that finances — you know, it was going to stretch the Band to go in and rebuild this Paradise Trailer Park.

So, we had an offer with subjects on it and we let the offer collapse, and then decided that we've had the most success and we can see the better future in Lakeridge Park, that area on number 10. It was decided by the Council what we wanted to do — what we wanted to do, what we'd like to see done was to acquire as much of that area, in fact all of that area surrounding Lakeridge Park on the other side of the highway.

Q I.R. 10?

A This was the area. This was the entire area that we felt we wanted to get in under our control. That's Campbell Road — and all of this, and we acquired basically all of it, eventually.

Q Now, these discussions at the Band Council level arose after you'd made the initial agreement to get involved in the Toussowasket Park, and after you'd made the initial agreement with Noll Derriksan?

A Yes.

Q Now, how did these discussions, first of all, arise with Noll Derriksan in reference to this land swap?

A Well, when the first brilliant idea was thought up, Harold and I went over to Noll's house, and needless to say he threw us out. We had one hell of a big argument and he threw us out.

So, we came back and thought well that one's dead. So, Noll is a different sort in that he'll get mad and be negative at first and then after you give him a while to think about it he will contact you.

So, he contacted Brian and told Brian he wanted to see him and discuss it. Brian came to me and I said well by all means, I'm not going back over there.

So, the deal started there, and Brian would go and negotiate with him and come back to me. The first agreement that Brian negotiated I wouldn't agree to. He kept running back and forth until we had something hammered out.

Q During the period of time that the Band was involved in the operation of this particular park, who managed the funds?

A We at all times managed all the funds 100 per cent. At no time did Noll have anything to do with it, and that was stipulated by me. We had Band monies involved in that park and we couldn't take a chance that anybody else could jeopardize our position by handling those monies.

Q Now, there was a problem that arose over this land swap, and we referred to a number of letters or correspondence previously in this Inquiry in reference to an appraisal that was completed on the property that's known as Lot T, that was Noll's prior to the exchange.

There was a problem that arose from this particular appraisal. Could you tell us what your memory is of that particular concern?

A Well, it was Fred Walchli was the problem, you know. He wouldn't let us make the trade. In fact he went and put caveats on the title. I was furious about it. In fact, I threatened to bring the whole goddamn thing down on his head — excuse my language,

the whole thing down on his head when I found those caveats were placed on the title.

But he said it goes both ways. If it's not valuable enough you're not going to trade, and if it's too valuable I've got to let him know. I said if I tell him what it's worth he won't trade. So, you know, I was caught in my mind between the Indian Affairs system.

Anyway, before I would actually agree or before I actually went and told Noll what the value was, I went over and asked him if he would sign a letter, and that letter is somewhere in the files, that he understands that the lot — Parcel T — I don't know what they call it now.

Q Parcel T.

A Yes, this Parcel T was more valuable in the trade. He signed the letter, so then I had no problem with Fred showing him the appraisal after that, because I thought I'd jump one step ahead of him.

Q Did that cause a few problems as far as Noll was concerned?

A No, because he'd signed the letter. He's a big boy. I told him what the value was. I said look the value is higher than what the trade is. He knew enough. He wasn't stupid. He knew that the Band had very little money in this project and that we were getting a bonanza. Why would we do the deal otherwise? I mean, it was a lot of heartache, this whole trailer park situation. . . .

Q Now, this particular trade — I'm not sure whether you were present or not when Councillor Eli gave evidence, but were you involved in the details in reference to the exchange of properties in reference to this trade for the 50 per cent interest in Toussowas-  
ket?

A Yes, I was involved. Brian reported to me what they were discussing.

Q Were you aware of the fact that during this negotiation that Noll had an interest in two acres or approximately two acres in Parcel T and wanted to keep part of that parcel?

A Had an interest in it?

Q He wanted to keep an interest in part of Parcel T?

A Oh, sure. Yes.

Q Were you aware of why he wanted to do that?

A He wanted to build an art gallery and some sort of small commercial building to house all his various little businesses that he was doing or contemplating.

I have to be honest, I didn't want him there. I didn't want to be involved with him in that business, simply because it was a cause of blisters that occur between us from time to time, and I wanted it a little more clean and neat.

Q Now, were you also involved at that point in time in reference to discussions with Lucy Swite in reference to the exchange of certain properties with her?

A Mostly — not with Lucy so much. I think I talked to her a few times, but basically with Bob Young, who was her lawyer, and I think on occasion her sister and her brother.

Q Now, without referring to the actual documents in exhibit, but they are, as you know, in as an exhibit in this particular Inquiry —

A Yes.

Q — eventually a deal was made between Noll and the Band in reference to an exchange of parcel T for the 50 per cent interest in the Toussowasket Trailer Park. Is that correct?

A That's correct.

Q It involved a series of exchange of properties whereby Noll ended up with a parcel down on the land and Lucy Swite ended up with a parcel on the lake, and the Band ended up with Parcel T, which is the Band office site?

A Yes.

Q There were certain exchanges of monies and lots involved in that particular transaction as well?

A That's right.

Q It took a period of time before that transaction was eventually concluded after it was initially discussed?

A Well, as usual, with anything we do something seems to happen to always complicate it and make it, I don't know, difficult to understand.

Lucy had bought this trailer already and I got a phone call from the mobile home lot that she wanted to move it. We hadn't come to an agreement. In fact, at that point in time, I thought there was no deal with Lucy.

Then her lawyer and her brother phoned me and Brian came in hollering at me about, you know, we've got to do something; they want the trailer out of the lot. So, we were looking for a site for her and she wanted more in exchange of the lot from the Band than we were willing to give.

I think it was finally resolved between her lawyer and I and then she moved in and took kind of the pressure off there, and that's where it ended up.

(Transcripts: Volume LXV, pp. 9718–9726)

It is not easy to reconcile the documentary evidence concerning certain of these matters with the testimony given. Mr. Walchli said, when questioned by his counsel, "Well at that time we had — towards the third week in April, particularly after we'd received the decision that there would be no financial support from. . . [the Department to appeal]. . . the Locke decision, the Band at that point, began to explore with Noll Derriksan the idea of exchanging property".

On April 23, 1982, the Band and Noll Derriksan signed an agreement. This agreement provided that, when full development had taken place at Mt. Boucherie, the Band would trade its interest in the mobile home park for Lot 180 on Reserve 10. This lot was then held by Noll Derriksan as locatee. It was generally adjacent to Lakeridge Park subdivision and was thought to be a likely site for future long-term lease development.

As noted above, the original agreement had been that the Band or its company would purchase a half interest in the lease at Mt. Boucherie Park. Mr. Walchli said that the development of the mobile home park

ultimately went faster than was contemplated. He said: "originally we had planned it to take over three years to complete, but the Band through Chief Derrickson actually accelerated the process and it moved much faster than we'd originally thought would be the case". It was proposed, in April 1982, that the lease be cancelled and that the payment be accelerated, and this was in fact done. However, it was done so quickly that the Department itself could not keep abreast of the actual events at Westbank.

On April 29, 1982, Mr. Munro, the Minister, wrote to Mr. Huntington, M.P. Mr. Munro's letter contained the following paragraph concerning the Donaldson judgement and Toussowasket Enterprises:

You may wish to inform Mr. Ted Ross, the President of Donaldson Engineering and Construction Ltd., that Toussowasket Enterprises Ltd. has been taken out of receivership. The loan with the Federal Business Development Bank has been renegotiated and the one from the Indian Business Loan Fund has been partially paid. Toussowasket Enterprises Ltd. is again an operating company and Mr. Ross is free to pursue his claim against it through the normal legal channels. I trust you will find this useful.

When one compares that to the narrative of events given by Mr. Walchli, it is clear that Mr. Munro was not up-to-date on actual events at Westbank. Obviously, his own staff had not been able to keep him abreast of the rapid developments in the Toussowasket situation. In fact, the Toussowasket lease was terminated by the date of the Munro letter — thus there was nothing for any creditor to seek to realize upon. Because of the dismal financial condition of Toussowasket, it appeared to me doubtful in the extreme that Donaldson would have in any event realized any funds under its judgement. However, by the end of April, not only had the somewhat moribund horse bolted from the stable — the stable itself had collapsed by virtue of the lease cancellation. Mr. Munro was giving an answer to Mr. Huntington based on a state of affairs that had ceased to exist. It was a case of the right hand not knowing what the left was doing. This is, of course, not unknown in government or private enterprise, but such patently incorrect information being furnished to Mr. Huntington could lead people to believe they were not getting the real story.

Mr. Walchli told the Commission that he had not been particularly expansive in dealing with the Parliamentary Committee because he was not certain that the arrangement for the trade of the interest in the park for land between the Band and Mr. Noll Derriksan would go forward. But if that were so, why then would the Department agree to cancel the lease at that date? If in fact the deal did not go forward and the status quo had to be restored, there would have been no existing lease in place to protect the funds that the Band or its company had already expended. Mr. Walchli may have recognized this himself when he had a caveat

placed on the lot in question. There was ultimately a period of several months before the exchange was completed and in the interim matters stood in a somewhat uncertain state.

The evidence of Brian Eli, a councillor of the Westbank Indian Band, in this matter is instructive. He said in answer to questions from counsel for the former Band executive:

Q Now, I'd like you to tell us about that particular transaction; in other words, the negotiation that gave rise to the Band acquiring the site which is referred to as the Band office site, and giving up its 50 per cent interest in the trailer park to Noll.

A Well, initially that we became 50 per cent ownership to that lease we got on the trailer park, during that time there was some controversy about the Band's involvement and a lot of bad publicity was out there into the general public.

It was decided that we should try to get out of this business because of all the things that were happening. The Chief and Council were getting blamed for starting all this, instigating this stuff.

Then, at that time, I think we were looking for — we were involved in buying additional land for the Band, and I'd done some research and found out Noll would possibly be interested in trading some land to remove us out of there. Between himself and me we went down and looked at parcel T and —

Q If I could just stop you there. Parcel T is the parcel that the Band office is now located on?

A Yes.

Q How large is that parcel approximately?

A I believe it's around 40 acres. I might be wrong.

Q Carry on.

A Once we viewed that parcel the discussion between me and him was that he'd be willing to trade our share in exchange for the land down there. One of the conditions was that he wanted a two-acre site there for his own business.

He had businesses in Kelowna at the time and he was trying to move them — trying to establish them on reserve where he could be exempted as a Band member having business on reserve, some of the income tax benefits.

From there I went back to the Chief and Council and talked to them and identified the type of discussions I had with Noll. Harold and Ron were there. It was pointed out to me by the Chief and Council, Harold and Ron, that I had to go back and try to get Noll to disagree with the two acres.

Q If you could stop there for a moment. To disagree with the two acres; to withdraw his position in reference to the two acres or to give up the two acres?

A To give up the two acres totally, and if he wanted to start up any businesses that since we were anticipating building this would be an ideal site for it, on number 10, that he could come in with us and we'd rent — we'd put up the building and he could start his own business within our building, such as an art gallery and whatever else he had going.

And he wanted his own personal office there.

Q Now, was that acceptable to Noll?

A Yes.

Q Now, did he want any other consideration in reference to this particular transaction?

A Well, there was — initially it was agreed upon us, between me and him, that our 50 per cent would be given up for Lot T excluding two acres.

I took that back to the Council and said well I've made a deal with him and now what and they instructed me that I'd have to look for — try to go back to him and renegotiate with him to try to find an alternative route to remove those two acres from him.

I then was talking to — I went back and talked to Noll and said that we had a piece of property on number 10 that is — I forget what the exact acreage is, but I think it's about two acres or so — maybe less than two acres.

It's adjacent to the lake. It's parcel FF, 2-B or something like that or 1-B.

Q Could you point out that particular parcel on the map behind you please? That's in the far corner of I.R. 10 next to the lake?

A Yes.

Q All right. Carry on then.

A I took that proposal back to him and he agreed to that, to exclude himself from the two acres from parcel T and accept this property in exchange for the two acres.

I then went back to the Council and they agreed to it and I was finalizing that deal. Other things were happening, too, that happened later. I don't know if you want to get into it.

Q Yes, carry on. What happened then? Did you ever finalize that deal with Noll?

A Yes, it was finalized there.

Q But, did you finalize the deal in reference to the parcel on the lake with Noll?

A Parcel F was actually transferred to him, and during that there was other things happening at the time. An estate on number 10 was being settled at that time and one of the Band members, a lady elder of Number 10 residence, was on an estate which her husband felt he had a right to or he was hoping to receive some land back, because he was the last surviving brother of the individual.

The Department of Indian Affairs settled in the estate on that and it was proved that other Band members had rights to that property and that she no longer had the right to reside there.

Q Mr. Eli, if I could just stop you there for a moment. I hesitate to get into names, but as you're aware this individual has given evidence previously. That was the property that Lucy Swite was seeking an entitlement to. Is that correct?

A Yes. I didn't know if I should say.

Q All right. She has given evidence previously in reference to that matter. Just carry on from there then, please.

Q Okay. I then talked to Lucy. I went down there and had a number of discussions with her, because she was becoming very concerned.

Another Band member was talking to her about the possibility of the new people that were going to receive land, that they were going to chase her off immediately.

I went down to her and assured her that we'd assist her in trying to relocate. I initially offered her a lot in number 9 reserve. I brought her up and showed her one house and she said it was too far and she liked the lake and it wasn't her type of unit she wanted.

So, again I went back and showed her some other land that the Band had bought for a Band subdivision on I.R. 10. Again she said she didn't like that property. It was too far from the lake and that there was nobody around, it's too isolated.

Our final discussion was that she didn't want to build on her own property because of water, sewage and trespassers by the general public.

Q If I could just stop you there for a moment. That parcel of property was the property that was down immediately adjoining the bridge — is that correct — on I.R. #10?

A Yes, parcel Q I think it is.

Q Could you just point that out, please?

A Parcel O.

Q That was the parcel that is immediately adjoining 97 and the bridge?

A Yes.

Q Now, all right. Carry on from there.

A After we talked about the servicing the roads and the housing and the problem of trespassing she didn't want to live down there. After more discussion I pointed out what about parcel FF-1, I believe it was, the parcel that I negotiated with Noll Derricksan — negotiated with him on the other deal — that possibly the Band could give that property and allow her to build on that, make her a deal on that one.

There was discussion about possibly changing titles from one property to another. At that time we indicated that parcel O would be an ideal for — you know, if she wanted to transfer that to the Band we in turn would transfer this one over.

There was other conditions on there. I believe there was setting up the trailer, doing the yard work and doing the moving for her, and a porch and other considerations that we had to give her.

Q Did you eventually arrange that particular trade on that parcel?

A Yes. Eventually it turned out that Lucy Swite, through Ron Derrickson and Lucy Swite's lawyer in Calgary, that they did strike a deal on the transfer of one property to another with considerations for helping set up the trailer, doing the yard, clearing the property and a porch and a few other things that we did for her during the transition period.

We ended up with parcel O. After we did agree to that I went back immediately to Noll and said that I have another deal which I had to work on rush on, and explained it to him, and that this parcel O was what I wanted him to trade us back, give back to the Band, as we will get the title for parcel O for him.

In the meantime Lucy Swite would get parcel FF, and he agreed to that.



- Q That was how Noll Derriksan ended up with the parcel of property down next to the bridge, which was unserviced?
- A Yes.
- Q And is unserviced to this date?
- A Yes.
- Q Now, did you consider that particular transaction to be part and parcel of the agreement in reference to the exchange of Lot T and 50 per cent interest in the trailer park?
- A Yes, because they were happening fairly close to the same time and I was discussing one or another. There was a number of things that were happening at the same time.
- Q Was that particular agreement that you negotiated with Noll Derriksan as to the two acre part of Lot T, was that part of the agreement ever documented?
- A The two acres that he wanted excluded?
- Q Yes.
- A No, because I was discussing with him — we had agreed before the documentation was completed that, I believe, that he would not take property within T.
- Q Now, all these negotiations throughout you were primarily involved with?
- A Yes.
- Q Was Ron Derrickson ever involved directly in the negotiations with Noll Derriksan?
- A No.

(Transcripts: Volume LVII, pp. 9078–9086)

Mr. Eli, in his evidence, refers to a question concerning a two-acre parcel to be reserved from the large lot held by Noll Derriksan on Reserve 10. There is, however, curiously no reference to this in the agreement of April 23, 1982. Despite Mr. Eli's evidence that agreement with regard to the two acres was reached "before the documentation was completed", I got the impression that it was sometime after April 23, 1982 that an agreement was made whereby Noll Derriksan was given other land instead of the two acres. This exchange transaction had elements of confusion, but on any view of matters, it appears that Noll Derriksan realized significant additional consideration in the ultimate agreement.

It was not until quite late in the evidence before the Inquiry that a later written agreement surfaced, namely an agreement dated October 13, 1982 between the Westbank Indian Band and Noll Derriksan. This agreement provided additional consideration to Noll Derriksan, including a parcel of waterfront land located near the Okanagan Lake bridge at Highway 97, a lot in the Lakeridge Park subdivision, and a cash payment of \$15,000. Mr. Eli in his evidence describes the process of moving from the April agreement to the October agreement as one that apparently took much time and negotiation. It remains puzzling to me that there is no reference to any reservation of a two-acre parcel in the original April 23 agreement. Puzzling too is the fact that in a letter of November 18, 1982 from Mr. Walchli to Ronald Derrickson

amending the contribution agreement, there is no mention of the October 13, 1982 agreement. This appears to be a deliberate cover-up by the Department of the full extent of the consideration Noll Derriksan received in the exchange transaction. Counsel for the Department described this as an "anomaly". The November 18 letter, coupled with Mr. Walchli's failure to give a full explanation to the Standing Committee in May 1982, could give the unfortunate impression that something wrongful was occurring. It would appear the Department had knowledge of certain of the extra considerations, namely the allotment of Lot F-1 on Reserve 10 because, as disclosed in Exhibit 150, an application to register that allotment went to the Regional Office on November 2, 1982. The absence of Mr. McCullough makes it difficult to assess the precise state of knowledge of the Department at the relevant time. Was the Band Council being less than frank with the Department? Chief Ron Derrickson earlier had neglected to tell the Department about the receipt of patch fees at Mt. Boucherie. I am of the view that the Band Government was not keeping the Department fully advised of the details of the exchange transaction; such failures to keep the Department in the picture had the capacity to embarrass Mr. Walchli and the Department. It was but another example of the problems that seemed fated to occur in the Toussowasket enterprise.

It appeared to me that things moved too rapidly for people to keep abreast of events in the month of April 1982. Aside from the propriety of disbursing the \$200,000 when the matter was not fully resolved, it seems to me that it was of doubtful wisdom to agree to cancel the lease so precipitously. For instance, if the arrangement of April 23, 1982 had to be annulled (Mr. Walchli said that he was not sure that he would permit it to go forward), it seems to me that it would not have been possible to return the parties to their original status because the lease had been terminated. As well, the Minister was obviously not being kept informed, and it is unfortunate that his letter to Mr. Huntington contained erroneous information. It was another element that could lead people such as Mr. Ross of Donaldson Engineering to think that there was something improper occurring at Westbank.

It was also undesirable, from the point of view of the Band, to have the lease cancelled, and thus have no security for the funds that they had already advanced in connection with the mobile home park. It was clearly a benefit, of course, to Noll Derrickson to have the lease cancelled and to have the rentals increased on that park. There was here an element of conflict of interest in having Chief Derrickson of the Band dealing with this matter, which so intimately involved his brother Noll Derriksan. Although Mr. Eli seems to have been the main negotiator, Chief Derrickson was clearly involved in the decision-making process relating to the exchange transaction.

It is not wholly clear to me why further consideration was provided to Noll Derriksan by the agreement of October 13, 1982. It is difficult, as

I said, to synchronize the testimony of Mr. Eli and Mr. Derrickson with the written documents of April 23, 1982 and October 13, 1982. I reflected on whether or not Noll Derriksan was giving some consideration to the Band by releasing them from certain obligations to complete works at the park, but I gathered from Mr. Walchli that the new park works were largely completed by the fall of 1982 because the project had moved quite swiftly. The fact was that the Band found itself in the summer and fall of 1982 in the position of not having the security of a lease and if Noll Derriksan was inclined to seek some further consideration, he would have therefore had an enhanced bargaining position. He did ultimately, as noted above, receive significantly more consideration than a single conveyance of one half of the mobile home park. In general terms, Noll Derriksan was receiving immediate benefits in that he was getting cash, highway monies arising from the large parcel at Reserve 10, and the mobile home park and the income from the park. Additionally, Mr. Derriksan was to receive either Parcel "F" or Parcel "O" on Reserve 10. In fact he received the latter, which was on the waterfront adjacent to Highway 97. The Band was getting a large parcel of land suitable for future development. The Band acquisition in this exchange may have been more suitable for development by an entity as opposed to an individual. The Band had a successful track record on Lakeridge and the future development on the new property seems likely to be quite a major undertaking.

I am of the view that if Mr. Walchli was in doubt as to whether or not the exchange transaction reflected in the agreement of April 23, 1982 was going to be allowed to proceed, then he ought to have insisted that the Toussowasket lease not be cancelled. On the other hand, if he was quite certain that the deal was going to go forward, he should have given a more complete and up-to-date description of the current state of affairs to the Standing Committee when he met with them on May 26. The Committee was left with the impression that the Band or Band company still had an interest in the park when the fact was that they had agreed to the exchange of their interest for land held by Noll Derriksan.

It appeared to me that the haste with which matters moved in April was one of the problems here. It does not seem to me that Mr. Walchli and his officials conducted a careful enough analysis of this matter to avoid later potential problems. I can understand everyone's desire to get out from under the problem of the Rentalsman, but was it wise to cancel that lease so quickly? By so doing, Mr. Walchli was certainly placing the Band and the Department in a position where Noll Derriksan could have a distinct bargaining advantage. There was also a problem in that the rapidity with which matters moved could lend an aura of covert action to the entire transaction. Was Mr. Walchli less forthcoming than he might have been with the Standing Committee because he felt that the Department had allowed itself to be persuaded to move before it was

ready in April 1982? In retrospect, it may be that Mr. Walchli realized in May that he had moved with undue haste, and that he was therefore somewhat hesitant to deal with the matter in full detail before the Standing Committee. I think that his failure to do so was unfortunate in that it left the record incomplete and could lead to the impression that there was an effort being made to suppress the true facts.

Certainly it is most undesirable to have the Minister of the Department writing to a colleague setting forth facts that are no longer facts. I do not think that Mr. Munro can be faulted for this, but clearly his Department was not keeping him up-to-date on the matter. I rather think that in this instance, for whatever reason, Mr. Walchli allowed the Department to proceed too quickly and that all the details of the arrangement were not sufficiently settled before the Toussowasket lease was cancelled.

Criticism has been directed at Mr. Walchli for his role in affairs at Westbank. In effect, the criticism was that he was being overly favourable to individuals of the well-off Westbank Band to the detriment of other bands in British Columbia that were in desperate economic straits. Mr. Walchli vigorously denied this before the Standing Committee and said he tried to treat all bands and individuals in a consistent fashion.

On one view of matters, Noll Derriksan has received substantial benefit from the Toussowasket venture, but the train of events that resulted in the benefits was set in motion before Mr. Walchli took over in B.C. In 1981, when the Toussowasket problems were longstanding and serious, Mr. Walchli persuaded the Westbank Indian Band to acquire an interest in the mobile home park. There were considerations in the spring of 1982 that made it desirable for the lease to be cancelled. There were also certain reasons why it made sense for a trade of land to be considered in exchange for the interest in the park. Yet, as I noted, it could appear that Noll Derriksan was receiving far too many benefits in this transaction of Toussowasket.

I think that in the spring of 1982, Mr. Walchli allowed himself to be moved too quickly along the path desired by Ronald Derrickson and Noll Derriksan. This gave the unfortunate impression to outsiders, including Mr. Ross of Donaldson Engineering, that there was something improper being done. I have said that it was unlikely that Donaldson could have realized any funds from Toussowasket because it was an unsecured creditor. However, it clearly would have been better if the lease had remained in place until the company had at least had a chance to pursue the suggestion in Mr. Munro's letter. I am not certain that any effort would have succeeded in view of the professed attitude of the Registry officials that they did not feel that the company could obtain registration of the judgement. That aspect of matters (execution by

creditors), dealt with in Section II of this Report, is one of the most perplexing problems of developments on Indian lands.

In retrospect, it is unfortunate that Mr. Walchli was perhaps not more definite in his approach to this matter when he was before members of the Standing Committee on Indian Affairs. By that time he was aware that there was a plan for a land exchange. This represented a benefit to Noll Derriksan, but it also could represent a benefit to the Band because they were getting land that had good potential. I am not prepared to characterize this transaction as being one that was necessarily hurtful to the Band. Mr. Walchli said in his evidence that he was not sure he would approve this deal in any event, hence he did not mention it to the members of the Committee. As well, I must say that some members of the Committee were not particularly restrained at times, either then or on earlier occasions, relative to their characterization of the behaviour of Mr. Walchli. Their desire for evenhanded treatment of all bands is an appropriate one, but the Committee does not appear to have had any real understanding of the very difficult situation that Mr. Walchli had faced relative to Mt. Boucherie Mobile Home Park. Mr. Walchli appeared to be reluctant to give an absolutely full explanation of the whole situation, which reluctance was probably the wrong posture to adopt. If the impression is given that something less than the full facts are being provided, suggestions can be made that there is something to hide.

Perhaps an explanation for his reluctance may lie along these lines. Mr. Walchli knew it could be said that, on the surface view of matters, he had shown a degree of favouritism to Noll Derriksan and then Chief Ronald Derrickson. He had been receptive to assisting Ronald Derrickson to advance the Band. This was not an unnatural reaction because Chief Derrickson had been a forward-looking administrator. He had rendered great assistance to Mr. Walchli in bailing the Department out of the Tousowasket mess and had done a good job at Lakeridge. Mr. Walchli was also aware of the rumbling discontent growing between himself and Mr. Hobbs, and may have felt a bit reluctant to dig too deeply into the whole contribution agreement issue, which had recently been the subject of much debate and discussion within the Department and with Chief Derrickson. Later on, when it was discovered that, in fact, Noll Derriksan had received a transfer of the ownership of the entire park, there might well be further questions raised as to the propriety of the transaction. I think Mr. Walchli did himself a disservice by failing to make clear to the Committee in greater detail the past and existing situation at this troubled mobile home park. I think it would have been preferable to have the full history of the transactions narrated in the spring of 1982 so that no one was in any doubt as to what was going on. Once again, fact would have proved a useful antidote to rumour.

Ultimately, as we have seen, Noll Derriksan received considerable benefit. He obtained some cash and became the sole owner of a valuable mobile home park which gave him an income. The park had received a large contribution of government funding. However, the Westbank Indian Band had also received a benefit by obtaining a block of land on Reserve 10 with development potential. Noll Derriksan got immediate benefits. Only time will tell how good an investment the land on Reserve 10 will prove. I hope it turns out to be a favourable one. Given its proximity to Kelowna, I think it is likely that this will be of benefit to the Band in the long-term.

If there are uncertainties as to the dimensions or nature of a transaction, people can misunderstand and rumour and innuendo can result. It may be that some will be critical concerning the amount of money that has accrued to Noll Derriksan from government coffers. But that result was probably foreordained from the day that Heritage Realty and Mr. Derriksan embarked upon the project in the mid-1970's. Mr. Walchli was faced with a *fait accompli* when he arrived in 1976 and it fell to him to wrestle with the Toussowasket problems over the succeeding years. The course he adopted was one that he need not to be ashamed of, but if he had been less reticent with the members of the Committee, I think that he would have been following a wiser course.

The Toussowasket situation and related issues, such as Park Mobile, appeared to me to be a major focus of much of the controversy that occurred on the Westbank Indian Reserves. The Council, in particular the Chief, saved the Department from an embarrassing situation by taking over the operation of Mt. Boucherie. At the same time, the Department entered into an agreement with the Band to contribute money to help solve the problems. I think the dealings between Mr. Walchli and Chief Derrickson were to have unfortunate consequences in that Mr. Walchli tended to be too uncritical of the wishes of the Chief and it may have affected, perhaps unconsciously, the ability of Mr. Walchli to look at matters in a sufficiently objective fashion. For instance, the whole of the acrimonious controversy with the Yorks went on with a seeming lack of intervention by the Department in a situation that called for an active role at the executive level of the Department. The Department should not interfere with legitimate band government but when matters reach the state they did at Westview Village, to do nothing is to invite trouble, which trouble in fact arose, albeit in a wholly unexpected and shocking fashion. I have earlier noted the lapse of Departmental management in failing to heed Mr. Clark's advice on limiting the extent of surrendered land over which authority was transferred to the Band government.

The matter of Donaldson Engineering should be considered in this context. Mr. Ross from Donaldson Engineering said that because of his inability to get satisfaction through legal means he "went the political

route". I think he was also influenced by the possibility that this route might be cheaper, as suggested by counsel for Mr. Walchli. While I can appreciate the frustration Mr. Ross felt, I believe that it is better to keep such matters out of the political arena because it transforms what should be commercial disputes into political disputes, and that is not an orderly way to resolve them. However, there obviously was something seriously amiss in April 1982, for at the very moment that Mr. Munro, the Minister, was writing to Mr. Huntington saying that Mr. Ross would have to pursue his remedies through the courts, the main lease was being surrendered, which action, of course, rendered the proposed legal proceeding completely nugatory. The stated motive was to solve the Rentalsman problem, but one who did not appreciate why this was being done could consider such action to be evidence of gross collusion between the Department and the Band to prevent any hope of realization by creditors.

It seems clear to me that if the enterprise had been allowed to go into bankruptcy (as had been urged by Ronald Derrickson), Mr. Ross's company would not have recovered any funds because of the very poor financial status of the park and the prior rights of secured creditors. However, the destruction of the underlying head lease had the appearance, on the face of it, of pulling the rug out from under the feet of all creditors, including Donaldson Engineering. It again was something that could be (and was) misconstrued and fastened onto as evidence of sinister activity at Westbank. Had matters proceeded in a less hasty fashion, it would have been clear that there were legitimate reasons for the actions taken and that Mr. Walchli was not acting in a corrupt fashion, but was in fact trying to solve some of the continuing series of problems that centred around the Toussowasket project.

Concerning the performance of Donaldson Engineering, it appears to me that the company did a reasonably competent job of the tasks that it had undertaken at Mt. Boucherie Park. There were cost overruns, but I could not conclude on the evidence before the Inquiry that the company was a poor operator. In the end it was not fully paid. That, of course, happens all too often on construction projects. Difficulties of realizing on debts are often greater on Indian lands because of restrictions on alienation of the lands.

This fact raises another issue that surfaced during this Inquiry. There seemed to be a belief or impression that somehow the Department was going to be a financial guarantor of the Toussowasket enterprise. Contractors may face very real problems when they are working on Indian land because there are limited rights of execution against Indian land. Contractors cannot assume that merely because the Department is advising on a project that it will necessarily guarantee payment. If a contractor wishes to assure itself of payment, then it must enter into the proper guarantee arrangements before projects are undertaken. Hopefully, proper legal advice will alert contractors to difficulties that may be encountered because of the special legal status of Indian land.

A potential source of problems is that because the Department is an arm of the federal government, it will be held to a somewhat higher standard than would be the case in ordinary business. There seemed to be some notion abroad that because an agency of the government was involved, it would see to it that the contractor was paid. That is not the law nor is it likely to be the law, but it did appear that there was the impression that somehow this situation was different. This seems a burden that often hangs round the neck of the Department of Indian Affairs and Northern Development. Similar thinking underlies the complaints of some lessees, who also seemed at times to have the misapprehension that somehow the government was going to look after their lease for them. As counsel for the Department pointed out, this would place the Department in a false position — its concern must be for the Band or locatee. However, it is clear that the Department has to adhere to a standard of conduct that is above reproach and it cannot be seen to be engaged in or abetting any sharp practice. Unfortunately, when a department of government is engaged in a business enterprise, it is sometimes seen as being a guarantor of perfection and, furthermore, it is too often assumed that there is no limit to what it can pay.

This matter illustrates again some of the difficulties of having government operate outside of the purely public sector. In the case of Indian Affairs, it is often very necessary for government to be involved, either as a guarantor or as an initial source of funding and so it becomes involved in the commercial process. This may lead to misunderstandings or dashed hopes and the disappointed parties may seek to find fault residing somewhere else than at their own doorstep.

The problems, for instance, that Donaldson Engineering faced bring into focus some of the difficulties with the registry system in effect on Indian lands, which difficulties I comment on in Section II. To the extent that contractors or third party businessmen find that they cannot deal reliably on Indian lands, the cause of Indian people and bands throughout Canada will be injured. The recommendations that I make elsewhere on the registry system are intended to ameliorate problems seen to exist in this area. It does not seem to me that it lies within the purview of this Commission to order a radical restructuring of Indian landholding, but obviously it is desirable that there be full opportunity for orderly and businesslike dealing between third parties and Indian bands and Indian entrepreneurs to foster the better development of Indian reserves and Indian business ventures. Arbitrary or capricious actions must be avoided, as must all appearance of arbitrariness or capriciousness if Indian business and enterprises are to have the best opportunities for success.

It would have been desirable for Mr. Ross of Donaldson Engineering to have been told earlier the full story of what went on in connection with the Toussowasket matter. I doubt if he ever had a true picture of what happened prior to this Inquiry. When the matter is examined in



detail, it should be plain to Mr. Ross that no one in the Department was trying to do him harm. But unless he had the whole picture, there was obviously room for him to believe that there was collusion between the Department and Band Council or Mr. Derriksan to avoid payment of a lawful debt. Unfortunately, the members of the Standing Committee were also not given a full and complete picture and they were left in a state where they could think that there was indeed something rotten at Westbank.

Ultimately, the complete facts did not emerge until this Inquiry was held. Before this Inquiry, there did not exist the necessary machinery to examine the Toussowasket matter in adequate detail. Indeed, it was not until late in the hearings that counsel were able to finally determine just what was the total consideration that passed from the Band to Noll Derriksan for the large parcel of land the Band acquired on Reserve 10. The agreement of October 13, 1982 was news to a lot of people. Because the full story of Toussowasket remained obscure until the present time, confusion and controversy continued.

The Toussowasket venture was in many ways a disaster for the Department. It was an early project and like all learning experiences, it generated pain. In the end, it has proved to be a viable project, but at considerable cost in money, heartache, and bad press. There might have been a great deal less controversy at Westbank without the project and all its ramifications, but once started, it proceeded inexorably on its way and became the focus of a series of controversies and confrontations that had wide repercussions. It was a central event in the Westbank story. I believe that this Commission has unearthed the full facts and concerned parties can at last know just what occurred. And now they know that they know, which is perhaps most important of all!

It is a tale replete with missteps and misunderstandings, but it also demonstrates that intractable problems may require unconventional solutions. Mr. Walchli took something of a risk in trying to salvage the project. The project was improved and the secured lenders paid. However, one result was that Mr. Walchli came to be perceived in some quarters as unduly partial to Ronald Derrickson and Noll Derriksan. This is a continuing problem in Indian Affairs and I am sure Mr. Walchli has much company in this difficulty. I saw no misconduct, but I did feel that Mr. Walchli did not always exercise effective management in his dealings at Westbank. I trust that he has learned that one must take exceptional care to avoid charges of partisanship in this highly charged political scene. In a tense atmosphere, such as the one in which Indian Affairs has operated over the past decade, a high measure of statesmanship is required on the part of Departmental people. I hope that this Inquiry will be of some assistance in pointing out to parliamentarians that the Department is operating in a difficult era. I would hope that it can be made clear to all concerned that partisan politics are to be avoided if the Department is to function in optimum fashion.

# LARSON, SMITH & HENDERSON

*Barristers and Solicitors*

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CANADA

C.H. LARSON LL.B.  
LON L. SMITH B.A., LL.B.  
B.R. HENDERSON B.A., LL.B.

OUR FILE L1034

May 12, 1977

Warren, Ladner,  
Barristers and Solicitors,  
256 Lawrence Avenue,  
Kelowna, B.C.

ATTENTION: Darrel Warren, Esq.

Dear Sirs:

Re: West-Kel Holdings Ltd. and Park Mobile Home Sales Ltd.

We acknowledge receipt of two letters from you dated May 11, 1977. As I previously advised you verbally, the new owners of the shares of Park Mobile Home Sales Ltd. have injected substantial amounts of money into that Company to ensure that it can meet its debts as they fall due. There are a number of matters in dispute between the Company and some of its creditors. However, we expect those matters to be resolved in a very short time. According to our information the Company is not insolvent.

The present owners would like very much to reorganize the complete financial structure of the Company to ensure its profitability in the future but of course are reluctant to do so in view of the present circumstances with respect to the lease. It would appear from your letter that your client wishes to delay that reorganization further even though part of the reorganization which we have proposed would not include any increase in the indebtedness of the Company or encumbrance on the present lease. We fail to see how the assignment of the mortgage from the Royal Bank of Canada to the Bank of Nova Scotia can effect your client's position and are at a loss to understand why he has refused his consent.

However, it is our understanding of paragraph 9 of the sub-lease that our client does not require the consent of West-Kel Holdings Ltd. to that assignment. As we read it paragraph 9 only requires Park to obtain the consent of Her Majesty. Under the circumstances, we have requested the consent of Her Majesty Queen Elizabeth II as required by clause 9 and intend to proceed with the assignment if consent is granted.

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With respect to the matter of a survey we apologize for the misunderstanding that it was Noll Derrickson who ordered the surveyors off the property. In fact it was apparently his brother Ron Derrickson. We don't understand what right he has to order people off property that is leased to another individual such as our client, particularly when the specific lease in question requires the survey to be done. We have also contacted the Department of Indian Affairs in Vancouver and they have advised that they fail to see what right he has to deny Park quiet possession of this property. Because Ron is Noll Derrickson's brother, his actions are very suspicious.

If your client's real interest in sending the notice of deficiencies is to have the deficiencies corrected under the lease as soon as possible, we would request that you have him do everything in his power to ensure that the Indian Band does not put road blocks in our way because, as you can well appreciate, his actions have already delayed the matter by a considerable period of time.

It has come to our attention that there is growing concern amongst members of the public and the business community that leases of Indian lands lack security. In fact it is our understanding that there was a sign along Highway 97 South warning members of the public not to deal with the Indians within the last several days. No doubt your client will appreciate that if the concern becomes widespread it will be very difficult to find people prepared to lease Indian lands.

In this particular case the land was leased to our client a number of years ago when its value was substantially less than it is now. It was leased on the basis that our client, the Lessee, would, over a period of ten years, enjoy a moderate rent in return for which it would spend substantial sums of money on development of the lands as a mobile home park. It now appears that your client is attempting to recover the land itself, or a substantially higher rental from it, without considering the enhancement of its earning potential by virtue of the money which has been spent on developing it by our client. Quite frankly we view this as short sightedness on his part as we have previously indicated. As you are well aware, we are attempting, with all diligence, to cure any deficiencies which exist under the lease. At the moment we do not believe there are any deficiencies of sufficient seriousness to justify our client making an application for re-entry.

In reviewing your letters and the Notice of April 14, 1977, we note that a number of the allegations of breaches of the Head Lease and the sub-lease are vaguely

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described. There seems to be a distinct lack of specificity to the particulars of the deficiencies alleged. In your letter of May 3rd, you have conceded that Park Mobile Home Sales Ltd. has corrected only one item in the list of deficiencies. Unfortunately both the Notice and your letters have failed to spell out specifically what deficiencies you allege are still outstanding under items 2, 3 and 9 listed as breaches of terms under sub-lease number 29252. You have also failed to spell out particulars of the breaches which you allege under items 1, 2, 3 and 4 of the head lease.

For example, you have alleged that the trees have been removed without permission for purposes other than that permitted by the lease document. We have in our correspondence indicated that according to the Engineers who have done the work, no trees have been removed except as necessary for purposes of construction of the mobile home park. If your client has a specific allegation of removal of trees without permission which was done for some purpose other than the construction of the park, we would appreciate being advised of it. However, our client as you can well understand cannot correct a problem which is not particularized to the point that he can identify it.

Furthermore our client requires specific notice of other breaches which you allege are still outstanding such as what rubbish or other matter of offensive nature are deposited on Lot 32; what fences which were on the demised premises have not been looked after and why he alleges that development was not first undertaken on those portions of Lots 31 and 32 outlined in blue on Schedule "B". We further require specifics of what you allege are the deficiencies under paragraphs 2 and 3 under the sub-lease so that we can identify the problems which you wish corrected. We have explained that we are of the opinion that these matters are not deficient. If you disagree, we must have a specific explanation so that we can identify the problems.

With respect to the surveyor, you are well aware that we are attempting to have that done as expeditiously as possible. We should point out however, that in years past Mr. York has approached the Westbank Indian Bank Council and requested instructions to do the survey and was told not to bother because of a previous survey which had been done. Again we would point out that as this specific deficiency, if there is one, has continued since 1972 without your client having brought it to our client's attention, we take the position that your client has waived any breach of that term of the lease.

With respect of paragraph 8(A) of the sub-lease, we take the position that that clause has been waived by your client by acquiescence since the inception of the

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sub-lease in 1971. Since that time Mr. Derrickson has been in and out of the park and past the park on many many occasions, has seen the construction and has been aware of the continuing installation of mobile homes in the park. At one point during a strike of electricians, construction on the park was at a standstill. Noll Derrickson and Larry York had a conversation at which time Mr. Derrickson asked Mr. York when Park Mobile Home Sales Ltd. would be getting more trailers set up in the park. Mr. York apparently said something about requiring Mr. Derrickson's permission and Mr. Derrickson indicated that he did not need his permission. . . "just go ahead and fill it up as you have to pay the rent somehow." Under the circumstances we take the view that the deficiency has been waived by your client both verbally and by his acquiescence. Insofar as the future is concerned we are prepared to work out with you an agreement which we would have all future tenants sign before they take space in the park. We would also be prepared to work out some sort of procedure which would permit us to obtain approvals by West-Kel and the Department of Indian Affairs. However it has been our client's experience that when he has required the consent of Mr. Derrickson, it has sometimes been very difficult to obtain it. It seems to us that West-Kel's greatest concern should be that the lease price which is agreed upon is sufficient for the amount of space that is being leased. If that is the case we should be able to work out some kind of agreement which would permit approvals to be granted quickly provided that the lease price agreed upon covered a portion of the property of a specified size. We would welcome your comments with respect to that. In the meantime we are enclosing a form of agreement which we have prepared and which we are presently using in another mobile home park for your perusal. We have supplied a copy to our clients, Park Mobile Home Sales Ltd. and requested their comments. We are also forwarding a copy to the Department of Indian Affairs for their comments. We must naturally ensure that the agreement is acceptable to those people who will be prospective tenants of the park. We also understand that the Provincial Government is threatening to enact new regulations to cover mobile home park tenancies which of course will have to be taken into account in due course.

In one of your letters, you have indicated that Park Mobile Home Sales Ltd. is not to establish a mobile home sales office on the park premises. In our view this is a necessary, related, or ancillary service or facility and therefore comes with the provisions of Clause 5(C). As evidence that this is in fact the case, we would point

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to Mr. Noll Derrickson's own property, which we understand is on Lot 33 where he has developed a mobile home park. It is our understanding that in conjunction with that, he has leased a mobile homes sales office to a mobile home sales company as a necessary ancillary service or facility to the park. The two seem to us to go together like hand in glove. In any event there is no mobile home sales facility there at the moment and our client has indicated that they will not set one up until that particular matter has been resolved between us.

With respect to the deficiency numbered 11 under the sub-lease, we have provided you with evidence indicating that inspections have been done by the Health Department. We take the view that the clause is uncertain to the point where it would be almost impossible for any Court to say that there has been a violation of it; however we have requested the Technical Services Branch of the Department of Indian Affairs to inspect the installations as soon as possible in order to attempt to satisfy your client.

Also, once the survey has been completed to the satisfaction of everyone, if there are encroachments on any other properties, those will be corrected forthwith. We are advised by Mr. York that some of the problems were created by a previous lessee by the name of Trojan Developments, prior to the lease between Her Majesty and West-Kel. Those problems with respect to Lot 35 were corrected by Park Mobile Home Sales Ltd. to avoid problems with Mr. Harold Derrickson.

With respect to the letter proposing a compromise by way of a new lease which would delete Lot 31 and increase the rent on Lot 32, our answer must necessarily be no. Approximately \$170,000.00 has been spent on the development of Lot 31 and our clients are not prepared to donate that to your client along with an increase of rent to be paid on Lot 32. Also the water system for the entire park is located on Lot 31 as is access and our clients feel very strongly the need to control the access and the water supply. Also our clients do not feel that they should agree to pay any substantial increase in rent over the next four years of the lease as they still have the responsibility to complete the development of a large number of mobile home pads in the park which will require the expenditure of a substantial amount of money. We would again suggest that your client should be patient as he will no doubt receive a substantial increase in rental payments when the rent is renegotiated in four years time.

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In closing, we wish to reiterate that since your client has acquiesced in whatever deficiencies there may be for a considerable period of time we are of the view that a Court would be reluctant to grant him re-entry. He has apparently stood idly by for a number of years while substantial amounts of money have been spent on development of the park. We doubt that a Court would allow him to prejudice our client's position to that extent by his acquiescence and then allow him to take advantage of it after such delays. We will therefore strenuously resist any attempt to obtain re-entry. We would however like to have matters cleared up as soon as possible so that the future relationship between the parties can be reasonably amicable.

Yours very truly,

LARSON, SMITH &amp; HENDERSON

per:

C.H. Larson

CHL/ss

Encl.

**WARREN, LADNER**

TELEPHONE (604) 763-5643

BARRISTERS AND SOLICITORS

256 LAWRENCE AVENUE  
KELOWNA, B.C. V1Y 6L3

DERRIL T. WARREN

HUGH G. LADNER

May 17, 1977

WITHOUT  
PREJUDICEMessrs. Larson, Smith & Henderson  
Barristers and Solicitors  
# 3 — 246 Lawrence Avenue  
KELOWNA, B.C., V1Y 6L3

Your File # L1034

By Hand Delivery

Attention: Mr. C. H. Larson

Dear Sirs:

Re: West-kel Holdings Ltd. and Park Mobile Home Sales Ltd.

We acknowledge receipt of your letter of May 12th 1977.

You have raised a number of points in your letter and we shall endeavour to answer them in the same order as that in which they appear in your letter.

1. You have stated that you fail to see how the assignment of the mortgage from The Royal Bank to the Bank of Nova Scotia can affect our Client's position and you are at a loss to understand why he has refused his consent; the consent form required by the Director of Indian - Eskimo Economic Branch of the Department of Indian Affairs and Northern Development requires a statement that the lease in question is in good standing. To execute a consent form for the Bank of Nova Scotia would not only be misleading but dishonest.
2. We have had an opportunity to talk to Chief Ron Derrickson concerning the allegations contained in your letter and Chief Derrickson is forwarding a letter to us indicating the reasons why it is necessary for the surveyors to obtain the consent of the Indian Band prior to the survey being performed. Briefly, the surveyors will have to trespass on land owned by other Indians or by the Band and as a result of problems in the past it is in the Band's Resolution that they would advise each land owner of the possible trespass. This step would have the effect of preventing any misunderstandings.
3. You have made a number of general allegations which strike personally at Mr. Noll Derriksan and his brother Ron; by innuendo and direct

. . . . comment you have . . .



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Mr. C. H. Larson

Re: West-kel &amp; Park Mobile

Without Prejudice

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comment you have indicated that their conduct is less than meritorious; for these reasons our instructions are to proceed with a Notice to Quit in the event the lease deficiencies are not corrected within the time allowed. We have specifically refrained from making comment on your Client and some of the statements which your Client has rendered but we think that if there is to be fault allocated your Client will carry the heavier burden.

4. Your Client is well aware of the breaches of the lease and the deficiencies are sufficiently specific to allow corrections thereof; for example, your Client removed all of the trees along the buffer zone located adjacent to Highway 97. Your Client then filled in this area with excess fill and now proposes to remove it. Surely you are not suggesting your Client does not know that it has done this. Concerning your other requests on page 3 we do recommend that you visit the mobile home park and it will become obvious to you, as it is to your Client, which deficiencies still exist.
5. We have attempted to determine who from the Westbank Indian Band Council gave instructions to Mr. York not to prepare the survey and there is no evidence whatsoever that any such instruction was given to Mr. York.
6. In passing, our Client has continually requested your Client to meet its obligations under the lease; we have secured some correspondence in the Office of another lawyer and the record is clear that every request advanced by our Client to your Client was simply ignored by your Client.
7. Contrary to your Client's undertaking we noted yesterday that a mobile home sales office is now established on the property, apparently set up over the weekend. This is not untypical of the actions of your Client and we would point out to you that the wording under Mr. Noll Derriksan's lease is significantly different from that under the lease held by your Client.
8. You have indicated that Park Mobile Home Sales Ltd. has settled its problems with Mr. Harold Derickson; enclosed herein you will find a letter from Mr. Derickson commenting on the settlement.
9. Having visited the property we are confident that your Client has not spent anything like \$170,000.00 on the development of Lot 31. In addition, our Client would certainly provide the necessary assurances that water and access would remain under your Client's control.

WARREN, LADNER

-:3:-

May 17, 1977

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Mr. C. H. Larson

Re: West-kel & Park Mobile

Without Prejudice

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Yours very truly  
WARREN, LADNER

“Derril T. Warren”

DERRIL T. WARREN

Enclosure

DTW: jp

## Chapter 3

# Land Allotments

The Indian Act defines "Reserve" as:

... a tract of land, the legal title to which is vested in Her Majesty, that has been set apart by Her Majesty for the use and benefit of a band;

The definition of "Band" includes the following:

... a body of Indians... for whose use and benefit in common, lands... have been set apart... (My underlining)

From these definitions it is apparent that reserve lands were originally set apart for the use and benefit of all band members in common. The Act also contains a general prohibition against the sale, lease, or other disposition of reserve lands until those lands have been surrendered to Her Majesty by the band for whose use and benefit the reserve was set apart. The surrender procedures are detailed in the Act and require a band vote to be taken on the issue of surrender. Within the framework of this communal interest in reserve lands, the Act also provides for certain individual interests to be created. Section 20 of the Act sets out how an individual band member may acquire lawful possession of reserve lands:

20.(1) No Indian is lawfully in possession of land in a reserve unless, with the approval of the Minister, possession of the land has been allotted to him by the council of the band.

(2) The Minister may issue to an Indian who is lawfully in possession of land in a reserve a certificate, to be called a Certificate of Possession, as evidence of his right to possession of the land described therein.

Section 24 provides that band members may transfer their possessory rights either to the band or to another band member. Whenever the band council conveys band lands to an individual member, regardless of whether or not any consideration passes, that transaction is termed an "allotment". Allotments may be made in exchange for cash consideration or in exchange for other land. An allotment may be made subject to the performance of certain conditions — for instance, requiring improvements to be made within a specified period.

The Minister (in effect, his delegate in the Department of Indian Affairs) must approve any allotment. Only then is an individual band member recognized as being in "lawful possession" of reserve land. A

“Certificate of Possession” is issued as evidence of the individual’s lawful possession. A band member in lawful possession of reserve land is referred to as the “locatee” of that land. The locatee obtains an interest in land that may be transferred by sale, or by will. However, the interest can only be transferred to the band or to another band member. The locatee may use his land as he sees fit, subject to the restrictions contained in the Indian Act, regulations made under the Act, or band by-laws. An Indian who has acquired “lawful possession” pursuant to Section 20 of the Act may request the Minister to lease his lands for his benefit, pursuant to Section 58(3) of the Act (the “locatee lease”). If the land is situated so as to be attractive for commercial or residential purposes, a locatee can gain a substantial income from his land under such a locatee lease. Because of the favourable location of the Westbank Reserves, individual rights of lawful possession are very valuable.

Not all bands in Canada use the allotment provisions of the Indian Act in order to give rights of use and occupation to their members. Many bands rely on more traditional communal systems of land holding. However, the only possession by an individual band member that is recognized as “lawful” under the Act is that conferred by allotment made pursuant to Section 20. If an individual is not in “lawful possession”, then he cannot request a lease of his lands pursuant to Section 58(3) of the Act.

The Department of Indian Affairs has recognized that a conflict of interest may well arise in instances where a band council was allotting land to a chief or to a member of band council. Since 1975, the Department has had published guidelines to avoid conflict of interest in these situations. The current policy, in effect since 1979, is set out in Program Circular H-3. It reads as follows:

Where an allocation is proposed for a sitting member of the Council and/or the Chief, where there may appear to be a conflict of interest, the member to whom the lands are allotted should not be a voting member of the quorum. Normally, an allotment to the Chief or a Council member should be ratified by a majority of the electors of the Band at a Band meeting. A subsequent resolution of allotment provided to conform with the specific provisions of this subsection, i.e., “allotted to him by the council of the Band” would not, if signed by the individual as a quorum member, be a conflict of interest. (My underlining)

During the years that Ron Derrickson was Chief of the Westbank Indian Band, he was allotted parcels of land situate on both Reserves 9 and 10. Some of those lands are quite valuable and it appears that the consideration received by the Band was quite modest. It did not appear that the Band adopted the practice of putting the question of these allotments before a Band meeting. The following are instances where allotments were made to Mr. Derrickson.

### **Lots AA and BB — Reserve 10**

Lots AA and BB, located on Reserve 10, were allotted to Ron Derrickson by Band Council Resolution dated October 22, 1976, some two weeks after he was first elected Chief. The lots are located on Okanagan Lake opposite Kelowna. Each lot is approximately four hundred feet long and one hundred feet deep. Mr. Derrickson had earlier acquired the adjacent upland (Lot 111) in 1969. All three parcels are currently under lease to Gabriel Estates Ltd. That company is said to have plans to construct and operate a resort hotel on the property.

In his evidence before the Commission, Mr. Derrickson explained that the allotment in 1976 only confirmed his pre-existing interest in Lots AA and BB. He said that he had previously purchased one of the lots from his brother Noll Derricksan and the other from Norman Lindley. Normally, when one band member purchases land from another band member, the transaction can be effected by a transfer pursuant to Section 24 of the Indian Act. However, before an individual band member can effect a transfer of his lands, he must first have acquired "lawful possession" of these lands. Indian Land Registry records do not indicate any lawful individual interest in Lots AA and BB prior to the 1976 allotment to Ron Derrickson. When Mr. Derrickson was questioned as to how the vendors had acquired legal interest in the lots, he said that they had historical claims recognized by the Band. Mr. Derrickson said that Norman Lindley had occupied one of the lots. The other lot had been occupied by Ron Derrickson's uncle, David Derrickson Senior. Ron Derrickson testified that his uncle's claim had been purchased by Noll Derricksan and that he had later purchased his brother's interest.

None of these previous claims or purchases are recorded in the Indian Land Registry. Mr. Derrickson suggested in his evidence that records of the previous claimants to the lots had been lost following the closure of the Vernon office of the Department of Indian Affairs in 1975. He said that documents concerning the Westbank Band that had been stored at the Vernon office had been destroyed after the office was closed. "Piles and piles of maps were destroyed at the Vernon garbage dump when that office was closed down". However, the Land Registry is located in Ottawa. Any documents which evidenced interest in land should have been recorded in Ottawa following their processing at the Vernon office. The destruction of documents from the Vernon office should not have affected the Land Registry records in Ottawa.

When Council allotted Lots AA and BB to Chief Ron Derrickson in 1976, he was in a position of conflict of interest. Ron Derrickson claimed to have purchased those lands previous to this allotment from individual Band members even though there are no recorded allotments of the lands prior to 1976. The lands in question are valuable beach lots.

They are rendered even more valuable when joined with the contiguous upland lot which had previously been acquired by Ron Derrickson. It is of interest to note that the acquisition of the upland lot (Lot 111) in 1969 was duly documented and recorded in the Reserve Lands Registry. There is no corresponding record of Ron Derrickson's purchase of Lots AA and BB. He did not say how much money he paid for Lots AA and BB, but it is clear that he paid no compensation to the Band for the allotment. Any compensation was paid to individual Band members who had no recorded interest in the lands.

Lots AA and BB form an integral part of the lands now under lease to Gabriel Estates Ltd. The term of that lease is 98 years commencing February 1, 1985, for a total rent of \$2,700,000. Rent is to be paid to the locatee in various instalments with the final instalment due in 1994. The lessee additionally paid a premium of \$300,000 to the locatee as an inducement for the locatee to consent to the lease. The sums paid and payable under this lease demonstrate that Lots AA and BB are valuable assets. While the lots may have been of considerably less value in 1976, they were waterfront situate near Kelowna and thus quite desirable.

It is difficult to understand why the Department approved this allotment in the absence of a Band vote. Counsel for the former Band executive argued that this was not a "pure allotment" but was rather a "transfer". Given the nature of the Registry records, it appears to the outside observer that it would fall within the guidelines requiring a Band vote. This is a good example of a situation where timely disclosure of this transaction to other Band members would have been highly desirable. I make some suggestions for improvements in this area of disclosure in Section II of this Report.

### **Lot 13-6 — Reserve 9**

On March 5, 1980, Ron Derrickson was allotted Lot 13-6 on Reserve 9 by Band Council Resolution. Lot 13-6 is a small lot of approximately two acres. This lot has approximately 150 feet fronting on 1st Avenue North, the public road which separates Reserve 9 from the village of Westbank. At the time of this allotment Ron Derrickson was the locatee of lands located on either side of Lot 13-6.

The history of this allotment has been documented to some extent in Band Council minutes as well as in correspondence between the Department and the Westbank Band Council. At a meeting of Council held on December 10, 1979, Ron Derrickson agreed to transfer his interest in a permit for the use of certain waterfront lands on Reserve 10 to the Band in exchange for an allotment to him of Lot 13-6. The transaction is recorded as follows:

Concerning BCR 1979-86, the cancelled agreement on Parcel L, I.R. #10, Ronald Derrickson has agreed to cancel this agreement and allow the Band to take over and receive revenue from same in exchange for title to Lot 13-6. Therefore, it was Moved by Councillor Brian Eli, Seconded by Chief Ronald M. Derrickson and carried unanimously that Lot 13-6 be transferred to Ronald Derrickson in exchange for the cancellation of the agreement on Parcel L, I.R. 10.

Ron Derrickson testified that he had held a five-year permit to certain lands described as Parcel L on Reserve 10. Pursuant to this permit, Mr. Derrickson sublet numerous beach lots for summer camping purposes. He said that the business generated between fifteen and twenty thousand dollars per year. At the time that the exchange was made, there were two camping seasons remaining on a five-year permit. Mr. Derrickson explained that the Band wanted to obtain a source of revenue and consequently this deal was struck to exchange unoccupied land for the waterfront property, which generated revenue.

At the time that the transaction occurred there was a seat vacant on the Westbank Band Council. As a result, the Band Council consisted only of Chief Ronald Derrickson and Councillor Brian Eli. Some months later when the allotment was perfected, a second councillor had been elected. He concurred in the Band Council Resolution. There is no record of any further discussion of the matter beyond that found in the December 1979 Band Council minutes.

At one point in the processing of the allotment, the issue of a possible conflict of interest was brought to the attention of the Band Council. In a letter dated February 8, 1980, an employee of the Department of Indian Affairs' Regional Office advised:

Please note that when an allocation is proposed to a member of the Council, the member to whom the lands are allotted should not be a voting member of the quorum, in order to avoid the possibility of a conflict of interest.

A copy of the conflict of interest guidelines contained in Program Circular H-3 was attached to the letter. That policy provided that a band vote should be conducted when an allotment of this sort occurred. There was a Band meeting held on February 21, 1980, but it does not appear that the allocation of Lot 13-6 was brought before the meeting. The allotment was approved by the Department in March 1980.

According to Mr. Derrickson's evidence, the consideration for Lot 13-6 was his relinquishment of the final two years of his permit over Parcel L. He said that surrendering the permit amounted to a significant detriment to himself in the years remaining on it. The Band traded the land located on Reserve 9 to him in perpetuity. Ron Derrickson was thus involved on both sides of this transaction. As Chief of the Band he took part in the decision that the Band required the

revenue from the beach lot permit. Any revenue would not be generated immediately as this transaction was entered into in December. It was a decision of Council (of which he was a sitting member) that the transaction was in the interest of the Band. This situation was very like that of a mayor being involved in a land exchange with his municipal government.

There could be questions raised concerning the benefit to the Band of this transaction. The Band was alienating land in perpetuity and receiving in return benefits under a permit with two years to run. The Band could, for instance, have simply waited for the permit to expire and then taken over operation of the business. From the Band's point of view, one advantage of the use of a permit was that it allowed the Band to collect some revenue (rent paid by the permit holder) from its lands without tying them up for a long period of time. Mr. Derrickson said his mother had operated a similar enterprise under permit for some years before he took it over. It may well be that the Derrickson family was involved in this business enterprise for many years, but that does not convert a five-year permit into a perpetual right or interest in the land. Under the terms of the permit he was to pay an annual rent to the Band of \$600. The beach lot rentals were said by Mr. Derrickson to be bringing in \$15,000 to \$20,000 per season. It would appear that this permit would have accrued to him during his tenure as Chief. There was no evidence of Band approval of this transaction.

Mr. Derrickson said that Lot 13-6 was not particularly valuable land. However, that parcel had special value to him as it was located between two other parcels of land that he already owned. By acquiring Lot 13-6, Mr. Derrickson was able to consolidate this land into one block. Some indication of the land's value may be obtained from the amount of compensation paid for the highway taking. Mr. Derrickson received \$27,500 for 0.57 acres taken for highway purposes. This lot is near the village of Westbank and near the main highway. It is clearly less valuable than waterfront. I am not disposed to say that the value of exchange was disproportionate or that Mr. Derrickson was trying to steal a march on anyone, but I believe that Band members should have had a chance to comment on the exchange of the permit rights for the land granted on Reserve 9. Mr. Derrickson should have been especially careful to get Band approval since it was he, the Chief, who was getting the land. Once again, he appears to have been blind to an obvious conflict of interest and failed to take steps to ensure that the matter was handled carefully. Here again, the Department appears not to have ensured that there was proper approval by the Band membership.

### **Lot Q Remainder — Reserve 10**

On August 30, 1985, Ron Derrickson was allotted Lots 188 and 190 on Reserve 10, both of which were formerly known as the Remainder of



Lot Q. The allotment was made by resolution of the Band Council. Chief Derrickson did not sign the allotment instrument. At this time, the Band had been granted authority to control and manage its Reserve lands pursuant to Section 60 of the Indian Act. As a result, the Band Council was responsible for allotting Reserve lands and was also the approving authority acting in place of the Minister. The allotment was signed by Councillors Brian Eli and Harold Derrickson, and was subsequently approved by those two Councillors on October 4, 1985.

Prior to the 1985 allotment, the Remainder of Lot Q had been registered in the Indian Land Registry as Band land. During the Inquiry, Mr. Derrickson said that the official records concerning this lot were in error. He said that he had an historical claim to the area and that this was perfected by the allotment.

The history of Lot Q must be considered. In 1964, Ron Derrickson had been granted a conditional allotment of a 12-acre parcel of land in this area. It does not appear there was a legal survey of the land. The resolution simply described the parcel as a 12-acre portion of the Reserve shown in an attached sketch. The sketch differed from the dimensions of the lot eventually surveyed as Lot Q. The parcel defined as Lot Q in the first official survey of Reserve 10 was a 12-acre parcel located on Okanagan Lake at the southern end of the Reserve. It was roughly triangular in shape, with approximately 1000 feet of waterfront. The original sketch showed a more elongated parcel of land stretching further along the waterfront. The first official survey of this Reserve was published around 1970. Following this publication, a further Band Council Resolution was passed requesting that the boundaries of Lot Q be redrawn in accordance with the sketch that had accompanied the 1964 allotment to Ron Derrickson. In 1971, a resurvey of the area was done. A new lot, described as Lot FF, was created. It more closely resembled the original sketch, which reflected the intended allotment to Ron Derrickson. Lot FF was formed out of a portion of Lot Q and other lots which were registered as Band lands. The boundary of the newly created Lot FF cut Lot Q approximately in half, leaving the waterfront portion included in the new lot FF. The back portion of Lot Q became known as Lot Q Remainder. The new Lot FF comprised approximately 20 acres.

Following the de-surrender of Reserve 10 in December 1972, the Band Council reallocated any lands which had formerly been in individual possession. Band members who had retained rights in any Reserve lands during the surrender period were reallocated those lands upon de-surrender. Based on his equitable interest, Ron Derrickson was allotted the new Lot FF and recorded as the locatee of Lot FF. The Band was recorded as the owner of the remainder of Lot Q.

At the Inquiry, Ron Derrickson claimed that he should have been allotted both Lot FF and the remainder of Lot Q. He said that the lot

known as FF did not accurately show all of his property. He maintained that his property included not only the new Lot FF, but also the portion known as Lot Q Remainder. He explained that he had traditionally claimed the property located in the area extending from the waterfront back to the point where the land starts to rise sharply into a cliff. That physical description would include both Lots FF and Lot Q Remainder. Mr. Derrickson further testified that, following the de-surrender of the Reserve in 1972, a committee of Band members was appointed to settle disputed boundary lines. He said this committee had viewed his property and agreed that he was entitled to the lands from the waterfront to the base of the hill. He was not aware of any written document that reflected this decision.

Indian Land Registry records do not support Mr. Derrickson's historical interest in the remainder of Lot Q. Following the 1972 de-surrender of Reserve 10, there was no further resurvey of this property. When the Council reallocated lands according to equitable entitlement, Ron Derrickson was allotted Lot FF. The remainder of Lot Q was not allotted, but it was recorded officially as Band land. Mr. Derrickson explained that he was not allotted Lot Q Remainder immediately following the de-surrender of most of the Reserve because it had been mistakenly included with lands still surrendered for the development purposes of the Westbank Indian Band Development Company (the Lakeridge Park development). Mr. Derrickson stated that, before he could be allotted that land, there had to be a further de-surrender of Lot Q Remainder. He thought that this may have occurred in 1985. Considering the Land Registry records, Mr. Derrickson's claim is hard to follow.

The question of Mr. Derrickson's entitlement to Lot Q arose as a result of highway construction in the area. In 1982, the Provincial Ministry of Highways negotiated for the purchase of certain rights of way on Reserve 10. Compensation was to be paid to either the locatee in possession of lands affected by the highway, or to the Band when the highway crossed Band lands. Ron Derrickson claimed and was paid compensation for lands taken from the Lot Q Remainder. When officials from the Department of Indian Affairs were reviewing the acreages taken and the compensation paid, there was a question raised respecting Ron Derrickson's entitlement to such compensation. At that time, the Registry records in Ottawa showed Lot Q as unallotted Band land.

This discrepancy was one of several land status issues then delaying the transfer of the highway lands to the Province. This issue was apparently resolved as a result of a meeting held in June 1984, minutes of which were entered as an exhibit in these proceedings. They indicate that the purpose of the meeting was to resolve any land entitlement or status issues that were delaying the issuance of the federal Order-in-Council required to transfer the lands taken for highway purposes to the

Province of British Columbia. The meeting was attended by officials from the Department of Indian Affairs and the Ministry of Highways. The Band was represented by Chief Ron Derrickson. According to the minutes, the status of Lot Q Remainder would be resolved by “the Band” agreeing to “confirm the allotment of the whole area to Ron Derrickson by Band Council Resolution”. This was eventually done the following summer with the allotment of Lots 188 and 190.

The minutes of the 1984 meeting reveal a conflict of interest in that Ron Derrickson represented the Band at that meeting and apparently agreed on behalf of the Band to resolve the issue of his entitlement to the remainder of Lot Q by having the Band Council allot that property to him. It is not known why the representatives of the Department of Indian Affairs agreed to that resolution of the issue. There was no ratification of this allotment by Band vote. The resolution was not in keeping with Department policy concerning allotments of land to Council members. It can scarcely have escaped the attention of the Department that this was a clear conflict of interest situation — here the Department showed an alarming lack of vigilance. While the Department perhaps could claim not to have been fully aware of certain other instances noted above, it had a representative present at the meeting where this transaction was approved. Its failure to ensure observation of its own published guidelines is surprising, to say the least!

### **Departmental Policy Regarding Conflict of Interest**

The Department of Indian Affairs had policies in place regarding allotments of land, including a specific directive regarding allotments to sitting council members. That policy, as noted above, called for a band vote or ratification of any allotment to a sitting council member. Mr. Peter Clark, former Director of Lands, Revenues and Trusts for the B.C. Region, said in his evidence before the Inquiry that his land officers adhered to the policy described in the program circulars. Policy can be a malleable thing depending on how it is interpreted and applied. Mr. Clark's evidence regarding the implementation of the conflict of interest guideline set out in Program Circular H-3 is indicative of how policy can be misconstrued. It stated that “normally, an allotment to the Chief or Council member should be ratified by a majority of the electors of the Band at a Band meeting”.

Mr. Clark expressed his view that because all Band Council meetings at Westbank were open for interested parties to attend, it was sufficient to deal with the issue at a Band Council meeting rather than at a Band meeting. He said that because the Council meetings at Westbank were open and an agenda posted at the Band Council office well in advance of the weekly meetings, this sufficed. Department policy seems to call clearly for a Band meeting as opposed to a Band Council meeting. I got the impression from Mr. Clark's evidence that he perceived no

distinction between the two kinds of meetings for purposes of complying with the conflict of interest policy. But there are obvious and important differences. Band meetings are usually called by way of special notice and are convened at a time that is convenient for the majority of Band members to attend. The Westbank Band Council meetings, on the other hand, were generally convened on weekday mornings. While Band Council meetings may be open for all interested Band members to attend, Band members do not have a vote at Band Council meetings. The stated policy seemed to be that a special Band meeting would be held where as many electors of the Band as attended could express their views and vote on the issue. If the majority of the electors of the Band present at a Band meeting ratify the allotment, then any potential conflict problem seems to me to be solved. If ratification is not forthcoming, then presumably the membership is not prepared to endorse the transaction. But the membership is clearly entitled to know what is happening so that they can vote “aye” or “nay”.

Due to the commercial value of lands on the Westbank Reserves, it was, and is, important that allotments to Council members be carefully considered. The Department of Indian Affairs recognized that such allotments involve a potential conflict of interest. Accordingly, they prescribed that those allotments should be subject to the scrutiny of band members and requested a band vote to ratify transactions. This policy appears to have been honoured more in the breach than in the observance at Westbank.

I trust that the Westbank experience will serve as a caution to bands and the Department that scrupulous care should be taken to obviate conflict of interest problems. This is one of the more common problems that can occur in bands because of their size and family structures. It is essential for the political health of the band to avoid controversy and rancour arising from perceived favouritism. The Department guidelines are helpful — I believe that they should be universally observed in order to ensure that conflicts of interest do not occur and are not perceived to occur. This area was one where I found that the Department did not conduct itself with distinction. I am not certain why the failures occurred, and I am not able to say in detail how this area can be better dealt with in future. The issue is clearly important and I commend it for immediate study to the Lands, Revenues and Trusts Directorate. It is of practical economic concern and is the sort of matter that should be carefully overseen to ensure that abuses of office do not occur.

## Chapter 4

# Northland Bank

One issue that generated considerable controversy and caused much uncertainty in the Westbank Indian Band was the matter of the Northland Bank (hereinafter sometimes called “the Bank”). A detailed description of the circumstances that led to the failure of Northland Bank is contained in the *Report of the Inquiry into the Collapse of the CCB (Canadian Commercial Bank) and Northland Bank*, published in the fall of 1986. Northland Bank had become overextended and was placed under curatorship in September 1985. The federal inquiry into its demise and that of the CCB was conducted by Mr. Justice Willard Z. Estey, a judge of the Supreme Court of Canada.

This bank failure caused grave concern among members of the Westbank Indian Band who were aware that then Chief Ronald M. Derrickson had been a Director of the Bank and who were also aware that the Band had an investment in and other financial dealings with it. Indeed, it appeared that the term “misappropriation” found in one or more of the petitions of the Action Committee was a reference to the investment or deposit of monies into the Northland Bank. Given the amount of money that was either invested in Northland Bank shares or deposited in it, it is not difficult to appreciate why Band members would be concerned about the state of affairs that existed in the fall of 1985 and continued through 1986 into 1987.

Substantial progress has been made to effect some resolution of the various cross-claims between the Northland Bank, the Westbank Indian Band, and the Westbank Indian Band Development Company. However, even when submissions were being made to the Inquiry in August and September 1987, it was apparent that total resolution of those issues had not occurred.

Concerned Band members had visions of their patrimony vanishing in the wreckage of the Northland Bank. It appears that the problems anticipated may not be as serious as once thought and it now seems that resolution is possible. But it was and remains a worrisome situation for the Band.

One task that this Commission addressed was to attempt to unravel the story of the dealings between the Northland Bank, on the one hand and, on the other hand, the Westbank Indian Band, the Westbank Indian Band Development Company, and Ronald M. Derrickson. In 1984 and 1985 Mr. Derrickson was a director of the Bank. It proved a bit of a tangled web, and on the face of it certain matters could excite

suspicion. These required proper investigation to determine whether or not any wrongful conduct had occurred, and specifically whether there had been abuse of office or conflict of interest on the part of any of the then Band executive members.

In order to appreciate what went on vis-à-vis the Band, its Company, and individuals and the Northland Bank, it was necessary to examine events commencing in 1980–81. A group of investors had conceived the idea of constructing and operating a large amusement park near Calgary called Calaway Park. At the time the project was conceived, it was thought that it could be put into operation for an investment of around \$12 million. Chief Ronald M. Derrickson became interested in the project and ultimately was a shareholder in it. Northland Bank was to be the main financing bank for the project, although it proceeded to syndicate part of the loan out to partner banks. This project was a large-scale one involving substantial sums of money.

It did not progress well, perhaps most significantly because of a general, catastrophic downturn in the western economy in general and the Alberta economy in particular in late 1981 and through 1982 and 1983. Indeed, even today, the western economy is not nearly as robust as it was in the late 1970's and 1980. Precipitous declines in the price of oil and real estate have caused severe economic distress in western Canada. Commissioner Estey in his Report has discussed the difficulties occasioned to Northland Bank by these declines.

In addition to these external events, it proved not to be possible to build the park for the amount originally estimated and there were quite substantial cost overruns. Ultimately, the cost of the park worked out to be in excess of \$20 million. The problems associated with cost overruns on any project were, of course, magnified by the poorer revenue prospects because of the economic recession.

As a condition of obtaining financing for construction of the park, the various shareholders were required to sign personal guarantees for the bank indebtedness. The signatories included Mr. Ronald M. Derrickson. Bank borrowings initially estimated to be in the \$6–9 million range had dramatically escalated by the summer of 1982 when the park was about to open.

Calaway Park had the misfortune of opening just when there was this unexpected downturn in economic activity in Alberta. Attendance figures were nowhere near those projected, and of course, given the greatly increased level of debt, it proved increasingly difficult to successfully service the debt and to pay ongoing expenses. By the fall of 1982, the newly opened project was in serious financial trouble and so was placed into a form of "soft receivership". Northland Bank and syndicate banks hoped that they might be able to work out a solution, but it was apparent by the end of January 1983 that matters were going

from bad to worse. Accordingly, in early February 1983, Touche Ross came on the scene as a court-appointed receiver.

As detailed at some length in the Estey Report, Northland Bank was faced with a difficult situation. Here was a large loan that had turned non-performing. That circumstance would adversely affect the perceived financial condition of the Bank. It was therefore desirable that the Bank be enabled to restore the loan to performing status. To this end, it entered into negotiations with the original shareholders of the Calaway Park operation, that is, Mr. Derrickson and his co-venturers. These individuals were also placed into a difficult situation because the Bank had called the loan and had demanded payment pursuant to their guarantees. At that stage those guarantees had a potential liability of over \$12 million. Several of the guarantors were in no financial position to pay substantial sums, though certain investors, including Mr. Derrickson, did have quite substantial assets. Mr. Derrickson was therefore obviously one of the persons who would have been a financial target to pursue if Northland Bank had intended to seek recovery under the guarantees.

Obviously, Northland Bank, its loan syndicate partners, and the several investors in the Calaway Park operation had a variety of problems to solve. Ultimately, Northland Bank bought out the other syndicate members at a discount. If it could then work out some solution whereby the original investors would continue to support the park and inject more capital, its financial status would be considerably improved. At the same time, if the investors could receive some relief from the immense guarantees overhanging them, they would obviously benefit financially. And, of course, if the park could be made viable, all would benefit from its success.

To some extent, there was a time limit on negotiations because Northland Bank was anxious to have matters in order for its financial year-end on October 31, 1983. Ultimately an agreement was reached. In general terms it involved writing down the park debt to a more manageable level. The old shareholders from Calaway, through a new company called Calalta Amusements, would continue to carry on the operation of the amusement park. Outstanding guarantees were to be written down from as much as \$12 million in potential liability to a maximum of \$250,000 per individual or individual company.

Northland Bank also undertook to fund certain investors by loans when they were unable to raise equity funds for the project from their own resources. It was anticipated that, by thus setting the debt load lower, the project could be made viable as an ongoing business. The debt could then be retired in an orderly fashion from operating revenues. It appeared that a forced sale of the park would have resulted in a very large shortfall and a concomitant financial loss to be borne by Northland Bank and the guarantors.

While it could be said that individual investors were receiving enormous benefit from having their guarantee liabilities written down so much, it could also be said that the Bank was benefitting in that the investors were going to put in more funds (though much of the new equity would be furnished to the investors through loans from Northland) and were going to endeavour to keep the park going. It was certainly a permissible inference that Mr. Derrickson and his fellow investors were getting large financial benefits in the sense that an onerous liability was being reduced to very moderate proportions. As noted above, it appeared from the information laid before the Inquiry that Mr. Derrickson was one investor who might well have been a major target of the Bank if it sought recovery under the guarantees.

I will now examine events that occurred at Westbank in order to provide an understanding of that aspect of the problem. In the early 1980's, there were negotiations occurring between the Westbank Indian Band and the federal and provincial levels of government over compensation for what is termed a "cut-off" claim. Briefly described, in the early years of this century, certain governmental actions were taken to "cut-off" lands from existing Indian reserves in British Columbia. In the past several years there have been negotiations between some of the bands affected and the two levels of government to arrive at compensation for these cut-off lands. In the case of Westbank, part of the ultimate settlement was in the form of land transferred back to Band control. In addition, a sum of money was provided as compensation. These monies came from the two levels of government.

Between 1982 and 1984, the Westbank Indian Band received cut-off funds totalling about \$4.5 million. In addition, there were highway compensation funds of approximately \$3 million received by locatees of Reserve 9.

The mechanism for funding these latter payments was as follows. The cut-off funds were utilized to pay out individual locatees. The Band then became the owner of the lands (see Band Meeting minutes, December 1983). In effect, the Band undertook to clear title and convey the land taken from the Crown Federal to the Crown Provincial for highway use. It was, as Mr. Derrickson and Mr. MacSween (of the Provincial Department of Highways) testified, the Band's responsibility to see that the land was conveyed clear of any claims. I deal with this matter of highway land takings in greater detail in Chapter 9 of this Report. It suffices here merely to outline the general course adopted by the Band and its executive.

As noted above, 1982 and 1983 were increasingly difficult years in western Canada. The economic downturn severely affected the Northland Bank. The Bank had many other loans besides Calaway Park which were not in good standing. By the fall of 1983, the Bank was



seeking to enhance its capital base by issuing shares. It was anxious to induce new shareholders to put up capital in order to strengthen its equity position. Bank management deemed this move essential if the Bank was to continue as a viable institution.

Mr. H.G. (Byd) McBain, a former vice-president of the Bank, said when shares were being offered, employees were under some pressure to support them. He said: "We were told that there was an offer. I guess — certainly in my case and I know in many other cases, like you really didn't have a lot of choice as to whether you exercised your employee's rights or not". The Bank sent two of its executives, Mr. Martin Fortier and Mr. McBain, to Westbank. When questioned by Commission Counsel, Mr. McBain made the following comments about the transaction in which the sale of shares to the Westbank Indian Band was concluded:

A Ron Derrickson was one of the individuals that was contacted and asked if he wanted to subscribe.

Q Why was he prevailed upon to subscribe to these shares? What was the thinking as far as the bank was concerned?

A Well, we'd seen his balance sheets, of course, and felt that he could afford it. You know, he had indicated some interest in the bank, getting into native banking.

Q Yes?

A Whilst nothing had been done at that time, you know, there had been some discussions.

Q Now, you were dealing with him on a day to day basis, I presume, in the restructuring of the Calaway Park thing about that time?

A Yes. Well, not necessarily with Ron on the Calaway. I was dealing with him on his own involvement in it. Generally speaking, he wasn't that involved in the restructuring, although he was in the background, of course.

Q He was interested?

A Oh, as one of the shareholders, yes.

Q Yes. What else was happening with Ron Derrickson then? We're dealing about October/November.

A Yes. That's about the extent of it; that and the purchase of shares. Now, I don't recall the exact date that we did make a sale of shares to him, but I believe it was around this time.

Q Who made the approach, do you know?

A Marty Fortier.

Q You would have been in communication with Mr. Fortier because of your ongoing relationship with Mr. Derrickson, I presume?

A That's correct.

Q Were you present at any meeting with Ronald Derrickson in which the purchase of shares in the bank was discussed?

A Yes, I was.

Q When and where did those discussions take place?

A I believe it was about this time, and they took place at the Chief's office on the Reserve.

Q In Kelowna or in Westbank?

A Yes.

Q You were present?

A I was present.

Q Was Marty Fortier present?

A Yes.

Q Would you tell us what you recall was said?

A Well, Marty and Ron, as I recall it, had some discussions and Marty and I flew out together to meet with Ron and the two Councillors. Marty had some figures and a bit of a pro forma, I guess, on what they thought that the bank could do and he went through that with the Chief. It was agreed that some shares would be purchased.

Q What was the nature of the figures in the pro forma?

A It showed a pretty good turnaround in the bank, but I just can't recall. I didn't have one of those packages, and I hadn't been involved in the actual sales of the shares at that point. So I'd be just wild-guessing.

THE COMMISSIONER: You said they were meeting with Chief Derrickson and the Councillors. Do you mean the Councillors of the Westbank Indian Band?

THE WITNESS: Yes, Brian Eli and Harold Derickson.

THE COMMISSIONER: Were you ever introduced to those people?

THE WITNESS: Yes, I know them.

BY MR. ROWAN:

Q And you had known them before this meeting?

A Yes, I believe so.

Q What business relationships or dealings had you had with the Council prior to this meeting at which the shares were discussed?

A I don't know if we'd had any at this point. I don't recall the dates when we were doing business with them on a business basis, but I had been out to see Ron. When we were trying to do the restructuring we came out and looked at some of his assets, and I believe I met one or both of the Councillors at that time.

I made so many trips here during my time with Northland that I forget which —

Q Pardon me?

A I made a number of trips during my time with the Northland to Kelowna to visit with Ron and his Councilmen. I can't recall the first time I met them.

Q Now, was the sale of shares to the Band and to Ron Derrickson discussed at the same meeting?

A I believe it was.

Q And what was the outcome of those meetings? There were a number of shares purchased by the Band and there were a number of shares purchased by Ron Derrickson himself, as I understand it.

A That's correct. The discussions with Ron, of course, were simply with Ron Derrickson. The discussions with the Band included the Councillors. I believe they were both present.

(Transcripts: Volume XXXIX, pp. 5402-5405)

The Band then had an investment in a term deposit of approximately \$1 million. This represented funds received from the Province as part of the cut-off settlement. It appears from the evidence that this had the

character of what is called "Capital money" in the parlance of the Indian Act. Such funds are subject to certain restrictions; generally, they are to be used to purchase or construct capital assets for the benefit of the Band.

On November 23, 1983, Northland Bank authorized a \$1 million loan as bridge financing to enable the Band to buy 240,000 shares of Northland Bank stock. As security, the Bank took back an hypothecation of the \$1 million term deposit owned by the Westbank Indian Band. The commitment letter was signed on behalf of the Bank by Mr. McBain; Mr. Ronald M. Derrickson, Mr. Brian Eli, and Mr. Harold J. Derickson signed on behalf of the Westbank Indian Band. It appears that the term deposit at that point was located at the Continental Bank, but that was subsequently moved to the Northland Bank.

A document found in Exhibit 81 sets out the Bank's analysis of what the transaction was and who it was with. These comments are contained in the Bank memo:

The Westbank Indian Band is a wealthy band of Okanagan Indians residing on a Reserve at Westbank, B.C. Under the capable direction of Chief Ron Derrickson the Band is virtually debt free and has accumulated considerable wealth through real estate development on leased land and sale of properties to federal and provincial governments. A recent cut-off settlement negotiated with the two governments will net the Band in excess of \$10 million.

The Band is constantly undertaking projects for the betterment of its members, as evidenced by the recent completion of an ultra modern extended care facility. A good portion of the funds outlined above go to the individual Band members (or in trust until age 19) and to facilities such as a proposed new hockey rink and the extended care facility.

A portion of the funds, which are still held on a trust basis for the Band, have been pledged as security for this investment facility to enable the Band to participate in the recent bank stock issue.

Interest will be at prime until December 2, 1983 at which time the deposit will be moved from the Continental Bank in Kelowna to our Vancouver office. At that time the interest will revert to 10% fixed, for a one year period (to match the rate being paid on the deposit). Interest will accumulate for the one year but will not compound.

It is important to note that all negotiations in the closing of this transaction took place on the Reserve at Westbank.

At the time that this investment decision was made, the Chief of the Band was Mr. Ronald M. Derrickson. The Band councillors were Mr. Brian Eli and Mr. Harold J. Derickson. As described above, around the time of the investment by the Band in Bank shares, Mr. Ronald M. Derrickson was able to arrive at an agreement with Northland Bank whereby his guarantee was reduced from a potential liability of several millions to \$250,000.

The Band undertook to purchase Bank stock valued at about \$1 million. This was a quite substantial investment. Obviously this situation called for close scrutiny because of the substantial financial benefit that had accrued to Mr. Derrickson by reason of the guarantee reduction.

Ronald M. Derrickson indicated in his evidence before the Commission that he did not wish to unduly influence the other councillors concerning buying stock in the Bank. He arranged for them to meet alone with the representatives of the Bank, Messrs. McBain and Fortier. This was confirmed by the former Bank officers, who gave evidence before the Inquiry. In questioning by counsel for the former Band executive, Mr. Brian Eli and Mr. Harold Derickson gave evidence concerning their participation in the decision as follows:

Q Now, Mr. Eli, you've been present in the course of this Inquiry and you've heard evidence in reference to the purchase of shares of the Northland Bank?

A Yes.

Q Would you please tell us as to what your recollection is as to when the discussions first arose in reference to the purchase of those shares based on my understanding that they were purchased in late November or December of 1983?

A Ron had indicated to us that he had Byd McBain and Mr. Fortier were in the office to discuss the possibility of buying shares, and that he would like myself, Harold to meet them privately and then meet also, myself and Harold, together with them to discuss the possibility of buying the shares.

I first met with them privately, discussed the possibility of buying shares, the dollar figure that we were buying them at and some of the questions that I asked him — our concern at that time was that Northland Bank was indicating to us in a very strong manner and cooperative manner that they were anticipating to put in an outlet for the Band members and the Band itself for deposits where we would be exempt from taxation on our dollars.

This was very attractive to us at that time. In that light I was looking at the possible buying of shares as a very good investment.

Q Mr. Eli, were there discussions at those meetings or prior to those meeting in reference to the potential or the possibility of enticing a bank — maybe not the Northland Bank, but enticing a bank to locate in the Band office building?

A Yes, a number of years the majority of our Band banking was done with the Royal Bank. We were also approaching them. We felt that we had a good promise or acknowledgement that they were, at that time, in the '78/'79 period, or even before that, that they were willing to come and put up a deposit centre at the Band office or at one of our locations that we were trying to get them at.

We already were anticipating the settlement of the cut-off lands and also possibly the settlement of the highways on 9 and 10, so there would be a fair amount of cash coming to the Band itself and individuals.

Also after that, after the problem with the Royal Bank, that they weren't that interested or not going to follow through with their promise of putting an outlet we then approached Continental Bank, which again, they in turn said that they were willing and seriously looking at putting in an outlet again, within the Westbank Indian Band office, which was on Shannon Lake Road, which never came about.

After that discussion Northland Bank was approached — or Northland Bank approached us and we jumped into Northland Bank because they sounded more sincere than the other banks.

Q Were there discussions with the representative from the Northland Bank in reference to a Native banking program?

A Yes. During the time there was a lot of considerable problems with loans to individuals or bands itself, and Band businesses or Band companies or locatees or Band members.

The Federal Business Development Bank around that time had given a statement that they will no longer finance any type of development on reserve property, whether it was regarding an outside developer or a Band business or individuals.

So, the only resource of loans that we had available were the Department of Indian Affairs loans. With Department loans funds it was the taxed amount of dollars that they had available to us, and to get that it was a long process.

You're looking up to maybe six months to eight months to get that loan approved, and then, you know, it's very cumbersome and at that time things were going too slow for us. We were looking for alternate financing from outside sources, so we were looking at trust companies, anything that we could get into.

Q Now, when these discussions took place, and prior to the shares being purchased, were there discussions with the Northland Band representative in reference to Native banking between yourself and them?

A Yes. They wanted at that time to discuss about setting up a Native loans policy, setting up a whole separate program where it would identify and deal with specifically only loans to Bands or Band members on reserve.

Q Mr. Eli, you have reviewed the minutes of the various Band meetings that have been held prior to November/December of 1983. Is that correct?

A Yes, some of them.

Q Now, in your review of the minutes have you been able to determine whether or not there's any documentation referring to discussions prior to November/December of 1983 in reference to purchase of shares in the Northland Bank?

THE COMMISSIONER: Are you speaking here of Band meetings, Mr. McAfee?

MR. McAFEE: Yes. Band meetings, not Band Council meetings.

A The minutes that I've got, I've obtained those through different sources within our own group and I have yet to see the Band minutes that are held at the Band office, and I haven't — the ones I've got aren't, in my mind, completed. I feel that there's some minutes missing.

The minutes — it does not reflect that there was discussions on the shares purchase, but there is discussions regarding purchase of shares but it doesn't identify the Northland Bank.

- Q Now, do you recall from your memory, without being able to refresh it from the minutes, do you recall any discussions prior to late November or December at a Band meeting in reference to the purchase of shares in a bank?
- A Yes. During several meetings I remember we were talking about the problem of loans within the Band itself and its businesses and with individuals obtaining loans for development on reserve, and that we felt we should be buying into something to get an Indian Native policy for loans on reserve.
- We did discuss us possibly buying shares into a trust company or into a bank, whatever was available to us.
- Q I would like to now go to Mr. Derickson, if I might. . .
- . . . Now, Mr. Derickson, were you present when the discussions took place in reference to the purchase of the Northland Bank shares?
- A Yes, I was.
- Q Could you tell me what you recollect in reference to the discussions on the purchase of those shares? First of all, do you have any recollection of any discussions taking place at the Band level prior to the decision being made to purchase the shares?
- A Yes, it was discussed in general terms in relation to a general Band meeting in relation to that Council was wanting to invest in shares and looking at shares or some type of financial institution that would address some of our immediate concerns, alleviate some of our difficulties in raising capital monies for investments or developments and that type of thing.
- Q Now, did you have discussions with representatives to the Northland Bank in reference to, number one, the potential of locating a bank branch in the Band office building?
- A Yes.
- Q Did you have discussions with officers of the Northland Bank in reference to a training program for Band members in the banking program?
- A Yes.
- Q Did you have discussions with representatives from the Northland Bank in reference to what they could offer by way of a Native banking program prior to you making the decision as to the acquisition of shares?
- A Yes.
- Q Now, were these some of the factors that you considered when you made the decision to purchase shares in the Northland Bank?
- A That's right. That was some of the major things that I was concerned with; the idea of a financial institution on reserve, the Band having some type of investment in there through a share purchase would give us a foot in the door into a financial institution — the idea of a financial institution on reserve where some of our Band members that had monies they could deposit that would be interest free in relation to their — or I guess it would be income tax free in relation to their deposits on their income. This type of thing really appealed to me, because I was

working and always have worked and still am in a lot of the job creation programs for the Band. That's one of my main portfolios.

I questioned them and quizzed them in relation to well what benefit is the Westbank Indian Band going to get out of this financial institution if it does take place that we invest, and so we went through the whole gamut in relation that we could end up with members involved in the financial institution in various capacities.

The direct benefit would be to the Band and the Band members, and that was all part and parcel of the decision to arrive at — to say, yes, we should purchase the shares. It sounded like a good, viable operation.

Q Mr. Derickson, during these discussions that you had with representative of the Northland Bank, did then Chief Ron Derrickson insist that you meet with these individuals and discuss this particular transaction with them privately without anyone else present?

A Yes. I mean they both, Mr. McBain and Mr. Fortier were in my office. We probably spent about two or three hours going over the various ramifications and benefits that could be available to the Band in the event we decided to invest and we had a good, long discussion on it.

Q Mr. Eli, did you meet with the representative from the Northland Bank separate and apart from Harold Derickson and from Ron Derrickson?

MR. ELI:

A Yes, I did.

Q And at the conclusion of these various meetings a decision was made by Council which, I assume, was to invest in the Northland Bank?

A Yes. Prior to making that decision the three of us, I and Harold, met with them again together without Ron Derrickson. After the discussion me and Harold had talked about it. Then we went to the Council meeting.

(Transcripts: Volume LXII, pp. 9035-9048)

Mr. Eli further testified in cross-examination by counsel for the liquidator of the Northland Bank as follows:

Q Mr. Eli, first of all, did you, in your position as a Band Councillor, after discussions with McBain and Fortier, believe that, apart from the benefits the Band might receive in the sense of good bank relationships — and then you get in the bank as a tenant and the other matters you discussed — did you also believe that it was good value to buy these shares in the Northland Bank at the price they were being offered at?

A Yes.

Q All right. Was there discussion about that later with the Band Council, in the Band Council?

A Yes. As I stated earlier, I met them privately myself and I joined Harold Derickson in a discussion with him also. Then we went into a Council meeting and agreed to the purchase.

Q Was it the consensus in the Band Council itself that the shares were good value for the price that was being asked for them per share?

A Yes. Without looking or having the Band Council minutes available to me, I believe there was actually a motion passed. I'm not too sure. If I had those minutes I could show it to you.

Q You have them available, but not here at the present time?

A No, I don't have them. They're presently at the Band office, and I think that they are — at different times in the Inquiry McAfee has asked for them.

Q All right. Now, in your evidence — and I mean — if I didn't hear you correctly I'm sure you'll tell me.

You said that you recalled discussions in the Band Council about buying shares in trust companies or banks. You described various discussions. Was there specific discussions at the Band Council about buying shares in Northland Bank as opposed to any other bank?

A You're talking about the Band Council or general Band meetings?

Q Yes, I'm talking — I'm talking about Band meetings. I'm sorry, I confused you.

A Not specifically, no.

Q Oh, but there was at the Band Council meetings?

A Yes, at the time of the purchase, I think. We, at that time — after we met with them we held a Council meeting shortly right after the discussions.

Q All right. And you recall whether at a Band Council meeting there was actually a motion made which was passed authorizing the purchase of the million dollars worth of Northland Bank shares?

A I believe so. As I indicated earlier, I don't have those documents in front of me, but if I had them I could possibly go through them and see if there is such a document there. I believe there was.

Q You have those documents available to you?

A I said if I had those documents available to me I could look at them and —

Q I'm sorry, I'm confused. Where are they now?

A I indicated just a couple of minutes ago that they're at the Band office and we haven't been able to obtain them. . . .

Q . . . Mr. Eli, you're aware, I presume that the Band paid for the shares by way of obtaining a loan from the Northland Bank. Did you participate in negotiations for that loan?

A The loan with the Northland Bank?

Q Yes.

A I was informed through Ron Derrickson, I believe it is.

Q I see. Were you aware that as security for the loan to buy the shares in the Northland Bank, the Band pledged monies in a term deposit at the Continental Bank, where were Indian monies received from an expropriation. You were aware of that were you?

A Yes.

Q Was it ever discussed at a Band Council meeting that the Band was going to pledge that term deposit as security for the loan?

A At a Council meeting?

Q Yes.

A I'd have to look at the files I guess, the Council Minutes.



Q All right. I'd appreciate it if you'd do that.

A Okay.

Q Was it discussed at the Band Council meeting that the Band would have to put up security of some sort for the loan?

A It was probably covered in the Council minutes if there was.

Q You believe that would be in the minutes?

A Yes, I believe so.

Q All right. You'll examine them with Mr. McAfee, will you?

A Yes.

Q All right. Did you have any involvement in the repayment of the loan for \$1 million by the Band to the Northland Bank? Are you aware of the circumstances under which it was repaid?

A To the point where — I believe where Ron Derrickson was dealing with the Northland Bank and dealing on our behalf, he would inform us of a decision, whatever happened with the Northland Bank, and it would be discussed in the Council minutes.

(Transcripts: Volume LXII, pp. 9125-9131)

There are certain curious features to the transaction whereby the large block of shares in the Northland Bank was purchased in the fall of 1983. Counsel were not able to find a Band Council Resolution referring to the matter. Mr. Norman Schwartz, the Band Administrator and chief financial officer, did not seem to be very familiar with the details of the transaction. Given the magnitude of it, this unfamiliarity could lend force to the suggestion that there was a sinister quality to the transaction.

After considering all of the evidence, oral and written, I concluded that neither Chief Ronald M. Derrickson nor Councillors Brian Eli and Harold J. Derickson were guilty of an abuse of office in effecting this particular investment.

The situation vis-à-vis Ronald M. Derrickson and the investment in Northland Bank shares was replete with the potential for allegations of conflict of interest. Was it an example of abuse of office on the part of Ronald M. Derrickson or the councillors? I am more inclined to characterize the hasty and undisclosed proceedings surrounding the investment as a lapse in careful procedure rather than as a true "abuse of office". I believe abuse of office connotes matters such as corrupt practice or breach of trust in the context of an investment decision of this sort. I did not perceive that sort of conduct here.

As to conflict of interest, it probably would have been desirable for Mr. Ronald M. Derrickson to have abstained from voting for or against this investment because of his personal Bank dealings. It therefore could be said that he acted in a situation of conflict of interest. But I did not conclude that he had acted from any wrongful or corrupt motive. I think that his participation, while perhaps unwise and unfortunate, does not deserve censure as a breach of trust of his office. I cannot help observing that much difficulty could easily have been obviated had a more orderly and businesslike course been adopted from the outset.

It appears to me that the situation was poorly handled from the point of view of having Band membership informed as to what was transpiring. Likewise, there was no process undertaken to get informed approval from Band members for this very substantial investment. I remain puzzled by the failure of Chief and Council to properly consult with the membership on this issue. Such failure contributed in large measure to the controversy that erupted after the failure of Northland Bank. It is a classic example of the mischief that can accrue from lack of full disclosure.

A subject that arose from time to time during the course of the Inquiry was the extent to which the Band should be consulted on decisions made or to be made by the executive of the Band. Indeed, it appeared to me that even to the present day, disparate groups in the Band are far from unanimity on the degree of disclosure that ought to occur. As a general proposition, it seemed to me that the "outs" wanted everything to be approved by the Band membership, while the "ins" manifested much less enthusiasm for calling general Band meetings to discuss what course of action should be taken or had been taken. That is a pattern found in political organizations throughout the world, and obviously there must be some accommodation made between efficient and effective Band government and the democratic participatory process. In the natural order of things, the executive of a band, or of any government, is expected to perform governing functions — that is why they were elected in the first place. There is always a tension in any democratic organization to steer some sort of a middle course between a rudderless government by referendum and the declaration such as that of the English statesman, Edmund Burke, to his constituents that he would proceed as he thought fit rather than how they might think fit.

Many governmental decisions have to be dealt with confidentially in order to protect the public interest. Likewise, a band government or any other government has to make decisions about general administration that must and should be made by it and not referred for decision to the general membership. To operate otherwise would mean that the band executive would have no real function and effective governmental action would be at an end. It is also necessary, of course, that some decisions be taken quickly in order to achieve the best results.

One example of a case where confidentiality was important was disclosed during the Inquiry. It seemed to me to be an appropriate exercise of executive decisionmaking by the Chief and Council (without Band participation concerning specific details) to work out the details of the purchase of the property known as "Gallagher's Canyon". The Band had earlier, in a general way, endorsed the concept of purchasing additional land with funds received pursuant to the cut-off negotiations. If a vendor of land became aware of the fact that a band government had passed a resolution approving of or requiring the purchase of his

piece of property, this obviously could have a severe impact on the price the vendor was asking. And the impact would not be downward! In order to preserve a proper bargaining position, it seems to me necessary that the executive have a relatively free hand in negotiating a land purchase or sale. It would be harmful to the interests of the Band, from a financial point of view, to have it known to a vendor that the Band was fully committed to purchasing a particular parcel of land. Gallagher's Canyon was a good example of a situation where full prior disclosure of a proposed transaction could have harmed the financial interests of the Band. Its general good dictated that the matter be conducted with a certain degree of reticence. I saw virtually no comparison between that situation and the Northland Bank share purchase arrangement.

This latter transaction was a sale of shares. Obviously the Bank was quite keen to sell shares to prospective purchasers. I certainly did not get the impression from the evidence that the shares were in such short supply that there was urgency for an instant decision. The gist of the testimony of the Bank officers and their actions tended to suggest that they, not the Band, were the supplicants.

I remain mystified as to why there was this curious failure to solicit Band views on the purchase. That failure was compounded by failure to inform the Band membership about what had been undertaken in this regard. Had a more open, consultative process been followed in the case of the purchase of Northland Bank shares, a great deal of controversy and rumour could have been stopped at the outset. Full disclosure was obviously required because of the very substantial dealings ongoing between Mr. Ronald M. Derrickson and the Northland Bank.

If the other members of the executive, Mr. Brian Eli and Mr. Harold J. Derickson, were aware of the full extent of Mr. Derrickson's dealings with the Northland Bank, they should have insisted on a far more rigorous course of disclosure and participation by the Band in this matter. Their knowledge would necessarily, of course, be much less complete than the knowledge of Mr. Derrickson, who would be fully aware of his own dealings.

This was clearly a potential conflict of interest situation and had to be dealt with in a scrupulously correct manner to allay any suggestion of misfeasance. Because the sums of money involved (in both instances) were substantial, the matter had to be handled so that no one could suggest wrongful actions or bad motives. In fact, the way in which it was done was virtually an invitation to misconstruction.

Mr. Ronald M. Derrickson was quite vague when he was asked what discussion was had with the Band concerning purchase of the shares. He was questioned on the matter by counsel for the former Chief and executive:

- A I might have mentioned it once or twice, the fact that we could make a quick profit. I don't remember offhand, but I'm sure if they were up at that time it would have been on my mind.
- Q Mr. Derrickson, prior to the decision being made to purchase the shares, which I understand was late November or December 1983, do you have any recollection of the subject matter of a share purchase being discussed at a Band meeting?
- A I can't point to any recollection. There's days I'm sure that it was discussed and there's days I can't remember. So, I really can't point to — you know, I've talked to some of the Band members and they've told me that they were sure it was discussed there and so forth.

But I can't specifically say on so and so a date these were the words that were said. I talked with several of the Band members, including quite a few of them that are here, that said that we discussed the share purchase with them.

(Transcripts: Volume LXVII, p. 9947)

One is left wondering why there was such reticence to bring this matter before the Band to have the investment ratified. Clearly there were many legitimate reasons why a band might invest money in the Northland Bank. Mr. Eli and Mr. Harold J. Derickson have noted above the reasons that impelled them to favour the investment. Those reasons are sensible and supportable. That being so, I find the failure to have proper consultation or at least post-event disclosure wholly inexplicable.

Mr. Ronald M. Derrickson said this when he was asked about the matter by counsel for the former Chief and executive:

- Q Now, Mr. Derrickson, that was one of the considerations you had when you negotiated for the purchase of shares in Northland Bank. Are there others that come back to your memory today in reference to why you had a particular interest in purchasing shares of the Northland Bank?
- A Well, at the time, unwisely or not, I figured that we would make — that the shares were down, the market was somewhat in a — you know, that the economy at that time was difficult and the shares were down in price.

I thought that the potential of where they had been before, there was potential for us to double our money at least on the shares. They were paying dividends and we received dividends right up until the curatorship was announced.

But the main consideration of buying the shares was, you know, we certainly didn't buy the shares thinking that we would lose the money. We bought the shares thinking that we would make a profit on them, that they would be a good long term investment, but they would also become security.

Although the Bank Act prevented us from using them as security to Northland Bank, we could certainly use them as security at other banks.

One of the things that Indian Bands generally lack is any form of security.

Q Mr. Derrickson, were there discussions with the Northland Bank people in reference to setting up a branch or setting up a deposit service to make it available to the Westbank Indian Band members?

A Yes, but they took the long route around. They were dubious — a little bit redneck maybe in some of their knowledge of Indian business, and keep in mind at that time that we bought the shares they had a major Indian band as an investor.

I think at that time they owned seven or eight per cent. That was the Erminskin Indian Band. They had an appointment and a director. They appointed, I think, their business managers or their lawyers or their director. He represented their interests there.

So it wasn't all completely new and foreign to us, but I think the major consideration was the fact that we would have access and it would open the doors and we would have an ongoing ability to access funds, especially if they located a bank branch on the reserve.

I think, as one of the other Councillors said — I can't remember who — we had entertained and negotiated with — I think they said two banks, but we negotiated with the Royal Bank to open a deposit centre on the reserve.

We negotiated with the Continental Bank, and I've forgotten the other one.

Q Would it be Royal Trust?

A Possibly, I can't remember.

Q Mr. Derrickson, was there consideration in reference to tax benefits as far as Band members were concerned, if you could locate a bank within your new building?

A Well, the consideration was there. That is not a consideration any more, because money earned on reserve, even if you deposit it in a bank, is not taxable any more. There's some court cases that support that.

But, at that time, interest on deposits was a very key thing in our mind. A lot of our members if they have large term deposits — and I can remember one specifically, I won't use their name, had about \$500,000 in a term deposit and was receiving about 4.5 per cent return on it.

What we wanted to do was get our Indians in a situation where they could become well aware of the differences in interest rates and to get them the maximum benefit they could from these rates.

Q Mr. Derrickson, at the times that the shares were purchased by the Westbank Indian Band did you have strong personal feelings in reference to the purchase of those particular shares, and in fact, did you purchase shares yourself?

A Well, I had strong personal feelings to a little over a million dollars of my own money went into the purchase of shares in the bank. (My underlining)

(Transcripts: Volume LXVII, pp. 9943-9946)

In fact, the Band purchased another quarter million dollars worth of shares in the spring of 1984. Funds were borrowed from Northland

Bank to do so. In financial matters, as in other matters, all things are relative, but from any point of view this was a significant investment for the Westbank Indian Band. I think it fell very clearly within that class of matters calling for consideration by the Band as a whole. Furthermore, it was of the utmost importance (because of the Chief's peculiar position in that he had extensive dealings with the Bank and was receiving from one point of view substantial benefit from the Bank at about the same time) that there be true, full, and plain disclosure of the whole transaction in a timely fashion. It did not appear to me that the full story of this transaction was revealed until evidence was developed during the Inquiry. This was rather late for Band members to be finding out the whole story of their investment in Northland Bank.

When the Bank failed in September 1985, there was alarm approaching panic among certain members of the Westbank Indian Band. Mr. Ronald M. Derrickson was critical (and there were grounds for his criticism) of the inflammatory language used by the Action Committee and its agent, Mr. Kayban. However, he to some extent was the author of his own misfortune, in that the inexplicable failure of him and his council to frankly and fully inform the Band in a timely fashion about matters concerning investment in Northland Bank was a large contributing factor to much of the concern and misinformation that appeared to swirl about the reserve. If a matter is left obscure, as this was, wrong inferences can and usually will be drawn. The lack of information on this subject would lead people who were concerned to suspect the worst, and they did. This, I believe, played a large role in creating the hysterical tone of the allegations given currency through Mr. Kayban. The best cure for rumour is usually fact. If Band members had had a true appreciation of the facts in 1985 and 1986, I think a great deal of hyperbole would have been avoided.

Based on my analysis of the evidence and submissions related to the investment in the shares of Northland Bank, I think there were many legitimate reasons why the investment in shares in the Bank could have been advantageous to the Westbank Indian Band.

It is too often true that banks are reluctant to lend funds to Indian people or Indian enterprises. Banks are not necessarily to be criticized for this reluctance because they have had some bad experiences. Banks are not in their conception or in their operation usually viewed by themselves or others as charitable institutions. They exist to provide a profit to their shareholders. There are, as we know, problems with the taking of security on Indian land or on chattels located on Indian land. All these matters affect the issue of whether or not an Indian person or band will have easy access to lending and capital markets, in particular to banking connections. The desire of the Westbank Chief and Council to enhance their relationship with a chartered bank in order to help them fund persons and enterprises was laudable and worthy. Likewise, it was laudable that Chief Derrickson later undertook to be a director of

the Bank. We need more Indian leaders, not fewer, doing this sort of thing.

I therefore find it puzzling that he was reluctant to involve the Band in this decision, or to be frank with them as to particulars of the investment. Given that he had extensive dealings with the Bank, if matters were left unexplained or uncertain, many unfavourable inferences could and would be drawn against him by others in the Band who were not in possession of the facts. It is, to put it mildly, unfortunate that the whole story did not come out prior to the Inquiry.

One other matter that calls for comment in connection with the purchase of shares in the Northland Bank is that there appears to have been no financial analysis done on this investment. In the Band by-law establishing the position of Band Administrator, one task given is to act jointly with the Band Treasurer for the purchase and sale of securities by Council, and generally to have control and supervision of all matters respecting Band finances. It was clear from the evidence that Mr. Norman Schwartz, Band Administrator, was not involved in evaluating the investment in the shares.

Mr. Schwartz said when asked by Commission Counsel about the Northland Bank investment:

Q Now, in or about that time, and I'm talking about the end of 1983, the Band invested a substantial amount of money in the Northland Bank. There was about a million dollars borrowed and used for the purchase of shares in the Northland Bank. Do you remember that?

A I remember we have shares in the Northland Bank, yes.

Q Can you tell me how the decision was arrived at to invest the money in the Northland Bank?

A Well, to be honest with you, I was not involved in the decision. The Chief and Councillors made that decision themselves, and I think they were together with a lawyer at the time, and I was not present.

Q Was there any legal advice taken that you know of? Do you know the lawyer that was involved at all?

A Graham Allen, I believe, was the legal adviser at that time.

Q Did you ever meet a Mr. Byd McBain?

A I have met Byd McBain once, but I don't know him on a personal basis.

Q Did you meet him about the time that the shares were bought in the Northland Bank?

A I couldn't say that for sure.

Q Did you discuss the purchase of shares in the Northland Bank with Chief Derrickson?

A I think that it was reported to me, yes, that we had shares in the bank.

Q A million dollars worth?

A I think it was a fraction over a million, or in that area. That was the value. I don't think they paid that much for the shares.

- Q Did you discuss with the Chief or any of the members of the Council about any advantages or disadvantages of buying shares in the Northland Bank?
- A No, I did not because, you know, when you get into the politics of the Band you're — I'm not involved. I think that that was a political sense.
- Q Do you consider that was a political decision or just a plain investment decision?
- A Well, it was an investment, and it was the Band's money. I don't think that the administrator should be involved in that particular area.
- Q Well, other than I see you're charged with some duty with regard to the purchase of securities.
- A Oh, yes. Well, I am, sure. I have many charges with the — right today, if the Westbank Indian Band wanted to go and get some money, who would they go to? They wouldn't get it on the signing of a Chief or a Councillor. It would have to be my signature if they wanted to get a line of credit. So, you know that's — but it's not necessary that I was involved in the designation of those shares.
- Q Okay. So when the shares were bought by the Band, and I'm not talking about the period of about November/December, 1983, did you know about the purchase of the shares before they were bought?
- A No, I did not.
- Q So you weren't privy to that decision at all?
- A No, sir. . . .
- Q . . . Did you have any discussions with Ron Derrickson about the purchase of those shares?
- A No, I wouldn't say that I had any discussion. He just told me that they had purchased these shares, and that's all I can recall.
- Q And there was a bank loan taken out to finance the purchase of those shares, was there not?
- A Probably there was.

(Transcripts: Volume XLVII, pp. 6816–6819)

It is obvious to me that one of the things that a modern, urban band needs is competent and informed financial advice. It did not appear from the record of evidence that there was any attempt made by the Chief or councillors to obtain any financial analysis of this proposed investment. According to Mr. Schwartz, he had no role to play in the matter. Perhaps it was felt by Chief and Council that he had no role to play. But it would seem to me highly desirable that the executive seek out some advice from a professional in the financial area to help them evaluate the investment. I am sure that Mr. Brian Eli and Mr. Harold Derickson would have been reassured by advice from a person accustomed to dealing with investment. Chief Ronald M. Derrickson had a reasonable degree of experience with investment, but because of his own substantial dealings with the Bank, it would have been preferable for him to have had outside advice on the matter.



Modern Indian bands with significant funds to deal with need access to good financial advice. Given the dimensions of the Northland Bank investment transactions, I found the lack of professional financial analysis disquieting.

Although Mr. Schwartz seemed to be described at times as the Band Administrator, it seemed that in his own view of his responsibilities he was more of an office manager. It seems doubtful if there was anybody occupying the sort of position envisaged by Mr. David Sparks of the Department when he set forth in a by-law the job description of a band administrator. That being so, a prudent course for the Band executive to follow would have been to take proper advice from a qualified third party. I am far from certain that any different or better result would necessarily have been reached, but in matters of this sort, not only must those responsible for decisions act with proper motives, but they must also act in such fashion that impropriety cannot be suggested.

That may have been indeed one of the problems with the Northland Bank investment. If there had been some proper analysis of the whole situation, including questions directed to Chief Derrickson about his relationship to the Bank and the like, I am certain that the matter would not have been handled as it was. Any competent financial adviser would have spotted at once the enormous potential for trouble that existed if the matter was not handled with the greatest care and fullest disclosure. Thus, the Chief and councillors would have avoided blundering into a huge public relations nightmare.

I think the motives that induced the Chief and Council to make the Northland investment were understandable and appropriate. Lack of independent analysis of the transaction coupled with failure to disclose the matter properly is anything but praiseworthy — it was a severe lapse of good management and good judgement. Herein, Mr. Ronald M. Derrickson must bear the major burden of blame, for neither of his councillors could have the detailed knowledge that Mr. Derrickson had of his own business affairs. In addition, neither had any substantial background in business, unlike Chief Derrickson who had a reasonable degree of experience in major ventures.

Ultimately, the investment proved to be wholly disastrous in that the shares are worthless. They represent a loss to the Band of something in the order of \$1.25 million. However, that is all hindsight, and as we well know, a great many people and corporations lost considerable sums in the collapse of Northland Bank and Canadian Commercial Bank. Many of those people were quite experienced in capital markets. The investment had risks, as do most investments, but there were also significant benefits that the Chief and councillors saw could accrue to the Band as a result of a good banking connection. Those were legitimate considerations for the Band executive. It would be quite wrong to censure their decision on the basis of hindsight.

In fact, significant loans were obtained from the Northland Bank for purchase of the land at Gallagher's Canyon. As well, loan-financing for erection of the Band building and the acquisition of the water slide known as Wild'N'Wet came via Northland Bank. I deal elsewhere in greater detail with Wild'N'Wet in the chapter entitled "Band Investments" (Chapter 5).

At the time of the Northland Bank collapse, the Band, through its solicitor, had deposits in it over and above its share investment of about \$3 million. The Band then also had outstanding about \$3 million in loans to it or its development company.

Was it prudent for the Band to have placed virtually all its money in the Northland Bank? That, I suppose, is a question that could elicit different answers from different people, depending on their perspective. I am not prepared to say that it was a wrong decision. Mr. Ronald M. Derrickson was a director of the Bank until August 1985. He and his fellow councillors had decided to support the Bank by way of investments and deposits, and to be consistent with that position they elected to support it by being large depositors. Northland Bank did advance significant loan funds to the Band, so to that extent, the strategy that impelled the Chief and councillors on their original course was being realized.

The Band undoubtedly had heavy exposure at this Bank, in the order of something near \$4-\$4.5 million (including the share investment), but they also had obtained some substantial loans. As I noted above, it appeared to me that in 1987 serious efforts were being made for the parties to settle the debits and credits that existed relative to the deposits versus the loans. It appears that some resolution of that matter may be achievable and I must leave it to the best judgement of those concerned with the Band government to decide what can be achieved in this area. Doubtless no perfect solution can be found, but one can hope that financial harm occasioned to the Band by the Bank failure can be kept within tolerable limits.

The Northland Bank situation disclosed a lamentable failure by the then Chief and councillors to: (1) involve the Band in the decision to invest; and (2) inform the Band in a timely fashion of details relative to the investment.

Did Mr. Ronald M. Derrickson feel unconsciously that because of his extensive personal dealings with Northland Bank there might be criticism of him for investing substantial Band funds in the Bank? I do not think that when the whole picture emerges such criticism would be thought justifiable. But by acting as he did, or to put it more accurately, by failing to act in a certain way, he did a great disservice to himself

and his councillors and caused much needless worry to Band members. Great controversy was fuelled by the investment. Had there been a more orderly and open process followed in connection with it, I am confident that much controversy could have been avoided. I hope a lesson can be learned from this course of events so as to avoid similar pitfalls in future.

## Chapter 5

### Band Investments

The Commission examined certain Band investments from the point of view of possible conflict of interest. The Westbank Band has been actively engaged in a number of businesses and investments over the past fifteen years. In 1974, the Westbank Indian Band Development Company was incorporated in order to develop what is now called the Lakeridge Park residential subdivision on Reserve 10. That company was the first of a number of subsidiary enterprises that the Band created or acquired. Over the years, the Band, through its development and construction companies, has operated in the real estate, insurance, travel, construction, picture framing, personal care, and recreation fields. These business ventures have met with varying degrees of success. Recently, the Band has had to cut back on its investments, as some were just not successful. Others were successful and remain viable.

Indian band investment is an area where one must be cautious. It differs from non-Indian private investment in that there are instances where an investment may not appear to be successful based on a purely economic analysis, but it may have significant side or spin-off benefits. Ronald Derrickson gave some illuminating testimony about the special considerations that affect this area of Indian life:

Q Mr. Derrickson, what was the state of affairs as far as the welfare system in 1976/77 within the reserve?

A Well, I don't know really. I never liked welfare. I never liked that word and I never liked what it did to our people.

But you know, we've always had that. That's always been a major part of our funding and a major part of our problem. I can remember one occasion, Bill Derrickson was Councillor. He was handling the welfare system and people who make applications.

He went away for two weeks, and during that two weeks anybody that came in and gave me a hard story I wrote them a cheque. When he got back I was in trouble right up to here. From that point on they kept me away from them, because I believed everything, you know? It just seemed reasonable to me.

I've hated that system, but it's always been a part of our reserve system. I think it always will be as long as there's an Indian Act, because welfare has to do with lack of discipline, you know, or lack of ability or lack of opportunity, lack of confidence or apathy or all together. It's something I wish there was a cure for, but, you know, I think the cure for most of that problem is getting rid of the Indian Act.

I agreed with Harold Derrickson, maybe not the exact way he would lay it out, but there'll always be welfare and it will always

go as long as we have the present Indian Act and people like, like I say, Mr. Hobbs running our affairs.

Q Mr. Derrickson, you had a belief, or the Council had a belief, that people that were on welfare should endeavour to the best of their ability to contribute to the Band affairs. Is that correct?

A Well, that's right. It's reasonable, if you have somebody who is on welfare, and if he's working for that welfare, for the benefit of the Band, he's a Band member. He'll benefit eventually. Eventually the Band will get into a position where it doesn't need that sort of thing, where the disciplines are created and put into place so people have more pride in themselves and more opportunity.

It's a question of building opportunity. I know the criticisms. It's all right for you to talk. You, you're well off. You're not on welfare. What about us?

But, I mean, it all has to start somewhere. It won't start where we're fighting with each other all the time and where we're not developing opportunities so we can take advantage.

(Transcripts: Volume LXV, pp. 9738-9740)

There is a moral in what Mr. Derrickson says. In effect, in times past (and present), many Indian people have been out of the economic mainstream. To the extent that they can be more successful in the economic sphere, I believe their lives and the lives of their descendants will be enhanced. Alleged failures in this area are not necessarily useless. Those in charge of economic development in Indian bands often have a difficult environment to work in and progress may be somewhat sporadic. There will be higher rates of apparent failure than would make an eagle-eyed accountant happy, but it will have to be recognized that from some failures will come, eventually, new attitudes and a sense of discipline that is a prerequisite for success in any field.

Westbank Indian Band investments grew significantly following settlement of a cut-off lands claim and the resulting influx of capital. The Westbank Reserves were well situated to take advantage of economic growth in the Kelowna area. The local economy grew in the 1970's but maybe not as quickly as some people had anticipated. Some Band members have criticized the former executive for some of its investment decisions and its business management. In particular, the former council's acquisition and management of the Wild'N'Wet Waterslide, Chancery Hair Design Ltd., and Toussowasket Custom Framers Ltd. were called into question during this Inquiry.

It should be noted that there was also an investment made in an interior design business. The executive elected in 1986 decided to close the operation, an action with which the former executive did not agree. I am not disposed to go into this matter in detail, as I think it a matter where reasonable people may differ in assessing the enterprise. I saw no conflict of interest issue; this case simply illustrates the vicissitudes of economic life. One could criticize the former executive for being unduly expansionary, but it could also be argued that the present executive

acted too precipitously in closing the design business. In a rising market it pays to be expansionary and in a falling market the conservative investor will do better. In matters economic, timing is everything and time alone can tell whether an individual has talent or simply was lucky in a choice of investments. The design business failed but it may have had legitimate chance of success, offering apparent employment opportunities for Band members, at its inception. I am not inclined to be critical of this particular venture despite its unhappy demise — it was an effort that failed but that, of course, happens to any number of business ventures.

In December 1984, the Westbank Band purchased a 50 per cent interest in a tourist facility known as Wild'N'Wet Waterslide. The Band had entered into an arrangement with the Fort Nelson Band whereby each band would acquire a 50 per cent interest in the enterprise from the previous (non-Indian) owners. Wild'N'Wet was a limited company located on Reserve 9 where it operated under a locatee lease. It had been in operation since approximately 1980 and appeared to have been a viable enterprise. Both bands contributed equally in making a substantial initial payment. The Fort Nelson Band provided approximately \$385,000 in cash, while the Westbank Band provided an equivalent value in land. The balance (approximately \$900,000) was to be financed by each band obtaining a loan for their respective half interests. Ultimately the Fort Nelson Band did not take down its share of the financing, forcing the Westbank Band to borrow the full amount from the Northland Bank in order to close the transaction with the previous owners.

Some of the property that the Westbank Band traded to the former proprietors as their portion of the down payment was land originally held by former Chief Ron Derrickson. The Band paid Mr. Derrickson \$124,000 for two parcels of land located on Reserve 10. It does not appear that the Band purchase of these properties from the Chief was disclosed to the general Band membership. In fact, when the purchase of Wild'N'Wet was discussed at a Band meeting, the impression conveyed was that the Band had only put up land and no cash in the deal. The money paid to Mr. Derrickson by the Band may well have represented fair market value; the vendors of Wild'N'Wet accepted that value. However, the transaction raises questions concerning a conflict of interest situation. Why was land owned by the Chief included in the deal? Could the Band have used other lands and thereby avoided any cash outlay? These are questions that some Band members might well have asked, if given the opportunity. The significant feature was that because the Band was dealing with the Chief, there should have been full disclosure of the structure of the arrangement to the Band membership. Clearly, there was the potential for a conflict of interest, if not an actual conflict, and to avoid any appearance of a lack of propriety, full disclosure was necessary. The Chief, Council, and Band Administrator were amazingly oblivious to the problem and failed to take steps to ensure that the transaction was properly handled.

As previously noted, Wild'N'Wet has a leasehold interest in lands on Reserve 9. Actually, there are two leases involved because the enterprise occupies the properties of two different locatees. The locatees are receiving rental payments. The fact that this Band business is operating under a locatee lease has resulted in a difficult conflict of interest situation. The Band Council, who in effect control the company, had to negotiate on behalf of the company with the two locatees regarding a fair rent. Purportedly acting pursuant to powers granted under Section 60 of the Indian Act, the then Band Council had assumed responsibility for determining rentals on leased land on behalf of the Minister. Thus the Band Council had to consider, on the one hand, the business interests of Wild'N'Wet and its shareholders (ultimately all Band members) and, on the other hand, they had to consider their obligations to the locatees when they determined the rent. In addition to these disparate interests, then Chief Ronald Derrickson undertook the responsibility for negotiating on behalf of the locatee interests. Mr. Derrickson was clearly wearing too many hats. In his evidence he described the difficulty of his position:

A . . . I could have went two ways. I could have hammered the Lessee — or the landowners, the Locatee. I could have hammered them on the rent and run them through the wringer. But what is my obligation as Chief? My obligation as Chief is to — if the owner of Wild'N'Wet had been Len Crosby, you know, I would have been getting —

I mean, I'm getting criticized for doing what I thought was the only thing I could do; find a middle ground that I thought both would buy, that we could handle both ways. I found that middle ground.

If I had not given Mary Eli and Dave Derrickson fair rent, that I considered fair at that time, I would be here — they would have been asking me — I mean, they were your own Band members Ron Derrickson; why wouldn't you treat them fairly? I couldn't win in that situation.

(Transcripts: Volume LXVII, p. 9967)

I agree that he could not win — neither was the Band likely to. This was a case where Mr. Derrickson would have been more prudent to depute a member of the Council to deal with this matter on behalf of the Band if he undertook to act for any of the locatees. Although I recognize that a band has communal and familial features, where significant transactions are being conducted, businesslike procedures must be followed or controversy will occur later. Chief Derrickson was falling into the very trap I have heard the Department criticized for — paternalism. He believed that he and he alone could deal with the issue and keep everyone happy — a sort of “father knows best” attitude. It is an easy trap to fall into and all Indian band executives should be particularly conscious of this lurking danger, given the close-knit nature of a band.

The new rental agreement called for an increase in the annual rent payable to each locatee from \$25,000 to \$30,000. In addition, each locatee was to receive 5 per cent of the gross receipts of the company. Mr. William Kinsey, C.A., gave evidence regarding the ability of the business to carry the rental increase. He indicated that based on its previous income, the company would have lost money in all but the best years had it then been operating pursuant to the new rental agreement. In Mr. Kinsey's opinion, the requirement to pay 10 per cent of gross receipts in addition to a base rent would seriously impair the company's ability to break even, let alone show a profit. The present Chief, Mr. Robert Louie, expressed concern that the new rental agreement was not negotiated with the best interests of the company (and the Band) in mind. He stated that the company's profits had been steadily declining virtually since its inception. He attributed this to a variety of factors, including growing competition in the area. He said that under the new lease agreement the company had lost money in 1986 and appeared to be heading for a loss situation in the current season as well. Of course, if a business continually loses money it will go bankrupt. If that happens in this case, Mr. Derrickson will be subject to criticism, but it is criticism he will have brought on himself.

In May 1985, the Band purchased, through its development company, Chancery Hair Design Ltd. and Toussowasket Custom Framers Ltd. These two businesses were previously owned by Noll Derriksan, brother of Ronald Derrickson. The transaction was structured as a purchase of all the shares in the two companies. The purchase price for both businesses was \$60,000, which was to be paid in three equal instalments. It appears from the somewhat sparse Band records that the purchase price was to be paid partly in cash and partly by an exchange of properties. Both businesses operated from rented premises in the City of Kelowna. Chief Robert Louie gave evidence concerning the poor financial state in which he found the companies upon his election in August 1986. The hairdressing company was apparently averaging losses of approximately \$4,000 per month. Eventually, the new administration decided to discontinue the operation; it is difficult to see what else they could have done, given the continuing losses. Toussowasket Custom Framers is still operating, but in a loss situation. Fortunately, it is not a large cash drain.

Subsequent to the purchase of Chancery Hair Design Ltd., the Band changed the name of the company to Hyde Park Image Creators Ltd. The Band also purchased a building in downtown Kelowna as a site from which to operate the new business. Substantial improvements were made to the building, with the total investment in the land, building, and the company approaching \$225,000. Although the Band is no longer operating the hairdressing business, it is being carried on by another party in the same building. The Band still owns the land and building and is in a landlord relationship with the new tenant.



It is unclear how the purchase price was arrived at for the two companies. In their evidence, the current Band auditors said that they had difficulty obtaining financial information related to the two businesses. The Band Administrator, Mr. Schwartz, appeared not to be fully informed about their finances. The most recent financial statements available were dated January 31, 1984. As the Band did not purchase the companies until May 1985, that left a gap in the financial information. According to the January 1984 financial statements, both companies were operating at a loss. There was nothing to indicate that the situation had improved by the time of the Band's purchase. Ronald Derrickson stated in his evidence that the businesses were purchased in order to create employment for Band members and that at least one Band member had been employed in each business from time to time. He also said that he had seen financial records from the companies which had been kept by his brother, Noll Derriksan, subsequent to the 1984 statements. According to the evidence of the auditors, however, there was no financial information available to them in the spring of 1986 when they made their inquiries of the Band administration.

Viewed from one perspective, the purchase of these businesses from Noll Derriksan was an attempt to expand the business activity of the Band and to create employment for Band members. The Band was in a relatively flush financial position at the time of the purchase. From another perspective, it could be viewed as unduly favourable treatment of Noll Derriksan at the expense of the Band. It is understandable how some Band members could hold the latter view. The businesses were not in good financial condition nor had they any great prospects when they were purchased. According to Chief Louie's evidence, they continued to be a financial drain during his administration. There did not appear to be any recent audited financial statements available to the Band Council prior to the purchase of the businesses in May 1985. The companies were purchased from the former Chief's brother and the general Band membership was not informed of the purchase until after the fact.

It is difficult to judge at this point whether these were appropriate purchases. The purchase of the building for Chancery Hair Design Ltd. may work out, but this venture into the personal care business was subject to so little analysis that I think it fair to say it was not a model of how to proceed. Business ventures, of course, do not always turn out as well as planned. In this case, it is not clear what information the purchaser acted on in deciding to acquire these businesses. But the main problem with the transaction was that there was an apparent conflict of interest because the Chief and Council were dealing with the Chief's brother. The appearance of conflict was exacerbated by the lack of current financial information on the companies and their past record of poor performance. Given the nature of the transaction and the clear potential for conflict of interest, it was a lapse in good judgement and

good management to make the acquisition in such a casual fashion without any noticeable analysis or apparent business plan.

The big pitfall to watch for in band investment policy is conflict of interest. Opportunity for success must be spread evenly throughout a band. Because of the family nature of many, particularly smaller, bands, care must be taken to avoid the appearance of a favoured few (perhaps close relatives of the elected council) having a virtual monopoly on funding for new business or existing enterprises. Likewise, where a band is considering investment in a project, the members of the band executive must be scrupulously careful in their dealings with band or Department funds. These cautions were not always observed at Westbank and the result was controversy and complaint. This was another instance where proper disclosure and an opportunity for the Band membership to debate the proposed course of action would have minimized the likelihood of later objections.

I have commented elsewhere on certain major investments of the Westbank Indian Band, such as the Northland Bank share purchase and the acquisition of the Gallagher's Canyon land. In addition, the Band had a pot pourri of other investments including travel and insurance businesses. Some of them I thought were undertaken more to fill the new Band building than for any logical economic or Band employment reason. There appeared to be lacking any comprehensive economic plan or vision for the Band. Developing bands must pay particular attention to the planning area or their economic progress will suffer. The lack of overall economic planning at Westbank illustrates a frequent weakness of new and developing organizations. Hopefully, the current and future administrations can take heed from the deficiencies of the past to pursue a more orderly course in the future. Band Council, the Administrator and outside professional advisers must together formulate a reasoned course of investment action. Such a course, accompanied by proper disclosure and sensitivity to conflict situations, should ensure that band investment policy is conducted in an orderly fashion and in a fashion that minimizes the likelihood of controversy.