



Indian and Northern
Affairs Canada

Affaires indiennes
et du Nord Canada

Self-Government

Autonomie gouvernementale

**WESTBANK INDIAN COUNCIL
LOCAL GOVERNMENT PROJECT**

**FRAMEWORK
AGREEMENT PACKAGE**

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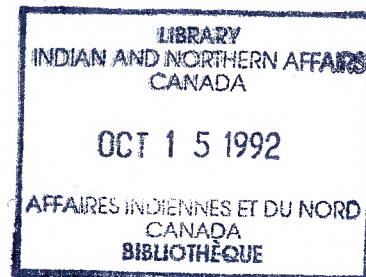
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**WESTBANK INDIAN COUNCIL
LOCAL GOVERNMENT PROJECT**

**FRAMEWORK
AGREEMENT PACKAGE**



**DEPARTMENT OF INDIAN AFFAIRS
AND NORTHERN DEVELOPMENT
MAY 1990**



Indian and Northern
Affairs Canada

Affaires indiennes
et du Nord Canada

Canada

**AGREEMENT ON AN AGENDA AND PROCESS
FOR THE NEGOTIATION OF
AN AGREEMENT-IN-PRINCIPLE
ON INDIAN GOVERNMENT ARRANGEMENTS**

BETWEEN

**HER MAJESTY THE QUEEN IN RIGHT OF CANADA
AS REPRESENTED BY THE MINISTER OF INDIAN AFFAIRS AND
NORTHERN DEVELOPMENT, HEREINAFTER REFERRED TO AS
"THE MINISTER"**

OF THE FIRST PART

AND

**THE WESTBANK INDIAN BAND,
REFERRED TO AS "THE BAND"**

OF THE SECOND PART

WHEREAS

The negotiation of Indian government arrangements for Indian communities without prejudice to existing aboriginal and treaty rights is consistent with the policy of the federal government and the mandate of the Minister;

AND WHEREAS

The Westbank Indian Band provided to the Minister a proposal for the further development and negotiation of Indian government arrangements;

AND WHEREAS

the Westbank Indian Band have provided the Minister with evidence of support for the proposal and this Agreement, as set out in the attached document (Appendix A);

AND WHEREAS

The Minister has obtained the consent of Cabinet to enter into the further development and negotiation of Indian government arrangements based on the Westbank Indian Band proposal, as summarized in the Discussion Paper (Appendix B);

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ON WESTBANK LOCAL GOVERNMENT**

AND WHEREAS

The General Parameters for Self-Government Negotiations as set out by the federal government (Appendix C), will govern the further development and negotiation of Indian government arrangements under this agreement;

AND WHEREAS

The Westbank Indian Band and/or the federal government may, in accordance with the provisions of this Agreement, further develop or change the proposals and/or responses summarized in the Discussion Paper (Appendix B).

NOW THEREFORE the parties agree as follows:

.1. PURPOSE AND OBJECTIVES

- 1.1. The parties agree to pursue the further development and negotiation of Indian government arrangements based upon the subject matter of the Discussion Paper and within the General Parameters in the manner herein provided with the object of arriving at an agreement-in-principle for Indian government. For greater clarification, the subject matters set out in Appendix B are not exclusive but are in fact the areas for discussion presently identified by the Westbank Indian Band and the Minister;
- 1.2. The agreement-in-principle reached pursuant hereto shall have no force or effect until it has been ratified in accordance with section 7.

.2. CLASSES OF MATTERS TO BE NEGOTIATED

- 2.1. The parties agree to the further development and negotiation of Indian government arrangements under the following classes of matters as set out in the Discussion Paper and within the General Parameters:
 - a) Legal Status and Capacity
 - b) Local Powers and Capacity
 - c) Structures and Procedures of Government
 - d) Financial Arrangements
 - e) Membership
 - f) Lands and Land Management

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- g) Resource Management
- h) Implementation

The application of federal and provincial laws (including the Indian Act) will be discussed throughout substantive negotiations under the headings listed above.

- 2.2. Other matters, as set out in the Discussion Paper (Appendix B), may be included as might be determined to be necessary through the course of negotiations.

.3. AGENDA AND TIMEFRAMES

- 3.1. The further development and negotiation of the classes of matters set out in section 2 shall be in accordance with the agenda and timeframes set out in Appendix D.

.4. ESSENTIAL ELEMENTS

- 4.1. An agreement-in-principle for Indian government will not be recommended by the Minister to the Cabinet unless it includes arrangements under classes of matters (a) - (g) as referred to in paragraph 2. While arrangements on the above-noted classes of matters are essential, the specifics thereunder, as summarized in the Discussion Paper, may be altered in accordance with paragraph 6.4.

.5. PARTIES

- 5.1. Each party shall appoint a negotiator to conduct negotiations.
- 5.2. The Westbank Indian Band shall provide to the Minister written notice of the appointment of their Negotiator.
- 5.3. The Minister shall provide to the Westbank Indian Band written notice of the appointment of a Federal Negotiator.
- 5.4. Where the negotiation of a matter may require the cooperation of the Province or any other party, the Province or such other party shall, with the mutual consent of the parties, be invited to attend the negotiating sessions.
- 5.5. With the agreement of the Negotiator for the Westbank Indian Band and the Federal Negotiator, parties identified in the Discussion Paper, or any other party, may be invited to attend the negotiating session.

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.6. PROCESS

- 6.1. The parties hereto agree to work cooperatively toward the development of agreed positions regarding Indian government arrangements.
- 6.2. The parties agree to exchange proposed positions in writing, and when requested, to respond in writing to proposed positions submitted by the other party.
- 6.3. The Negotiator for the Westbank Indian Band and the Federal Negotiator shall be responsible for the arrangement and conduct of all negotiating sessions.
- 6.4. The parties may, by agreement in writing, extend, modify or delete any of the classes of matters to be negotiated other than those referred to in paragraph 4 of this Agreement; alter the order in which the negotiations shall be conducted, extend the timeframe referred to in Appendix D and/or amend the funding support referred to in Appendix E for the negotiations of any class of matters; except no such extension, modification, deletion or alteration shall contravene the limitations set out in the General Parameters for Self-Government Negotiations as set out in Appendix C.

.7. RATIFICATION OF THE AGREEMENT-PRINCIPLE

- 7.1. Any agreement-in-principle reached between the negotiators shall be of no force and effect unless and until the same has been ratified:
 - 7.1.1. by the Westbank Indian Band through the process as described in Appendix F.
 - 7.1.2. upon fulfilment of paragraph 7.1.1, by the Minister seeking the concurrence of Cabinet for the agreement-in-principle and the authority to carry out such further steps as may be required to accommodate the agreement-in-principle.
 - 7.1.3. Notwithstanding paragraph 7.1.1, in the event that the Westbank Indian Band agree to an alternate manner of ratification for the agreement-in-principle, such manner of ratification shall supersede paragraph 7.1.1.

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.8. FUNDING

- 8.1.** The Minister shall provide funding to the Westbank Indian Band in accordance with Appendix E to support the negotiation process pursuant to this Agreement.

.9. TERMINATION

- 9.1.** Either party may terminate or suspend this Agreement without cause by providing to the other party written notice of intention to terminate or suspend at least sixty (60) days prior to the intended date of termination.

**SIGNED IN DUPLICATE FOR
AND ON BEHALF OF HER
MAJESTY THE QUEEN IN
RIGHT OF CANADA**

**AS REPRESENTED BY THE
MINISTER OF INDIAN AFFAIRS AND
NORTHERN DEVELOPMENT**

**SIGNED IN DUPLICATE AND
ON BEHALF OF THE
WESTBANK INDIAN BAND**

THE MINISTER

ROBERT LOUIE, CHIEF

DATE

DATE

**AGREEMENT ON AN AGENDA AND PROCESS
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APPENDICES

APPENDIX

Evidence of Community Support	A
Westbank Indian Council Framework Discussion Paper	B
Parameters for Self-Government Negotiations	C
Agenda and Timeframes for Negotiation	D
Budget for Negotiations	E
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APPENDIX A

EVIDENCE OF COMMUNITY SUPPORT

***AGREEMENT ON AN AGENDA AND PROCESS
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**BAND COUNCIL RESOLUTION
RÉSOLUTION DE CONSEIL DE BANDE**

NOTE: The words "From our Band Funds" "Capital" or "Revenue", whichever is the case, must appear in all resolutions requesting expenditures from Band Funds.
NOTA: Les Mots "des fonds de notre bande" "capital" ou "Revenu" selon le cas doivent paraître dans toutes les résolutions portant sur des dépenses à même les fonds des bandes

The council of the Le conseil de la bande indienne	WESTBANK INDIAN BAND	Current Capital Balance Solde de capital	\$ _____
Agency District	CENTRAL DISTRICT	Committed Engagé	\$ _____
Province	BRITISH COLUMBIA	Current Revenue Balance Solde de revenue	\$ _____
Place Nom de l'endroit	WESTBANK	Committed Engagé	\$ _____
Date	23 April AD 19 90 Day - Jour Month - Mois Year - Année		

DO HEREBY RESOLVE:
DÉCIDE, PAR LES PRÉSENTES:

WHEREAS eighty-seven (87) of the registered resident members of the Westbank Indian Band (which consists of greater than 50% plus one of the eligible voters), of the Westbank Indian Band, declared in writing that they did review the Westbank's Community Government discussion paper;

AND WHEREAS the same number of registered resident members of the Westbank Indian Band agreed to mandate the Westbank Indian Band Council to negotiate a Westbank Community Government Arrangement;

AND WHEREAS other registered resident members are still signing the said declaration and that these declarations are still being received at the Westbank Band Offices;

THEREFORE BE IT HEREBY BE RESOLVED that the Westbank Indian Band Council declares that the draft framework agreement on Westbank's Community Government Arrangement is hereby ratified. Evidence of ratification can be reviewed at the Band Office.

A quorum for this Band
Pour cette bande le quorum est

consists of 3
fixé à _____

Council Members.
Membres du Conseil.

(Councillor - Conseiller)

(Chief - Chef)
(Councillor - Conseiller)

(Councillor - Conseiller)

(Councillor - Conseiller)

(Councillor - Conseiller)

(Councillor - Conseiller)

APPENDIX B

***WESTBANK INDIAN COUNCIL
FRAMEWORK DISCUSSION PAPER***

***AGREEMENT ON AN AGENDA AND PROCESS
FOR THE NEGOTIATION OF AN AGREEMENT-IN-PRINCIPLE
ON WESTBANK LOCAL GOVERNMENT***



WESTBANK INDIAN COUNCIL
FRAMEWORK DISCUSSION PAPER

INTRODUCTION

This discussion paper was prepared jointly by the Westbank Indian Band and the Department of Indian and Northern Affairs, based on the Westbank Band's community local government framework proposal, and preliminary discussions held between the band and the federal government.

This paper outlines the local government intentions of the Westbank Band, the federal response to those plans, and a description of the existing legal and jurisdictional situation which applies to Westbank.

As part of the Framework Agreement documentation, the discussion paper provides a common starting point for substantive negotiations.

BACKGROUND TO THE PROPOSAL

Westbank was one of the key participants in the "Tripartite Local Government Committee" from 1976 to 1981, and was a major participant in the federal attempt to develop Indian local government legislation in 1978-1982.

Westbank was a strong supporter of both the Sechelt self-government and the Kamloops taxation initiatives and even went so far as to develop a band constitution in 1985-1986. Westbank entered into its first one-year Alternative Funding Arrangements (AFA) on December 18, 1987, which was retroactive to April 1, 1987. The band now has a five-year AFA in place. The band approached B.C. Regional Office in March 1989 to talk about self-government.

GENERAL DESCRIPTION OF THE PROPOSAL

The Westbank Framework Proposal for Self-Government was received by the B.C. Regional Office on April 12, 1989. The proposal outlined a structure for the planning of local government which involved the establishment of committees. The senior committee, to which other committees report, is the Planning Committee, which is composed of band council and community members. This Planning Committee was divided into four sub-committees:

- (1) Lands
- (2) Membership
- (3) Local Government and Taxation
- (4) Human Services

Each of these four sub-committees are chaired by the chief or a councillor and are open to all members. Community meetings commenced in 1989, and are expected to be on-going until the development of legislation. Many band members participate in committee work and in meetings.

The band's proposal outlines the band's intentions in the subject matters of legal status and capacity; structures and procedures of government; financial arrangements; membership;

powers of local government; education, social services, child welfare, and health; administration of justice; lands and land management; and resource management. Additionally, there are a number of subject matters which have been added through discussion, such as public order and safety; community infrastructure and public works; licensing and regulation of businesses; wildlife management; and agriculture.

Central to the proposal is the band's desire for the capacity to manage, develop, and raise revenue from their lands as they see fit, without the limitations of the Indian Act. The band also seeks financial arrangements which will allow a standard of service to their members. Westbank intends the band government to have the capacity of a natural person, and intends that the government will be financially and politically accountable primarily to its members.

The band's intent is that there will be a Westbank Constitution which will be amendable by the band, and a Westbank Community Local Government Act (of the federal Parliament).

SUBJECT MATTERS FOR NEGOTIATIONS

1. LEGAL STATUS AND CAPACITY

PROPOSAL

- 1.1 The Westbank Band intends to secure in law the capacity of a natural person so that it can:
 - Carry out business and financial transactions
 - Sue and be sued
 - Carry out all the functions of government in relation to lands.
- 1.2 Westbank Band proposes to be the entity which has both the legal jurisdiction and capacity to perform all the functions of government.

FEDERAL RESPONSE

Legal status and capacity is considered to be an essential element of community government and will be included as a topic for negotiation. The balance between band authority and executive authority will have to be defined.

2.0 LOCAL POWERS AND CAPACITY

PROPOSAL

- 2.1 The band intends to have the authority to create entities and to delegate authority to those entities (eg. boards and commissions).
- 2.2 Westbank Band will have the power to enact laws.
- 2.3 The geographic areas where Westbank jurisdiction applies will be defined through negotiation.

FEDERAL RESPONSE

Local powers and capacity is considered to be an essential element of community government and will be included as a topic for negotiation. The power of the band to create other bodies should be discussed. The band may wish to consider assuming authority to create joint boards with other communities.

3.0 STRUCTURES AND PROCEDURES OF GOVERNMENT

PROPOSAL

- 3.1 Westbank proposes that there be an enabling Westbank Community Local Government Act of Parliament.
- 3.2 The Westbank mechanisms of government will be outlined in the Westbank Constitution.
- 3.3 Westbank intends to retain the existing band council structure, and delegate authority to band entities (eg. boards and commissions).
- 3.4 The Westbank Constitution will outline procedures such as, but not limited to:
 - Elections
 - Membership
 - Recall procedures
 - Removal of officers
 - Rights, responsibilities and roles of elected officers
 - Referenda and petitions
 - Rights, roles and functions of boards, commissions and other bodies.
 - wills and estates.
- 3.5 Westbank requires that there be clearly defined accountability of the chief, councillors, and band-created entities to the electors for both political and financial matters.

FEDERAL RESPONSE

This topic will be included for negotiation in the Framework Agreement.

Division of matters and relationship between proposed legislation and constitution must be negotiated. Westbank may want to consider leaving the amendment of the constitution largely within the authority of the band.

The question of delegation and/or subdelegation will have to be dealt with through negotiation.

Financial arrangements established under community local government agreements must include accountability provisions to the band membership.

4.0 FINANCIAL ARRANGEMENTS

PROPOSAL

- 4.1 Westbank wishes to negotiate a multi-year financial arrangement which would include annual fiscal transfers and discounting and indexing formulas.
- 4.2 The existing Alternative Funding Arrangement will provide part of the basis for the financial arrangement, but adequate financial support for Westbank government is required, consistent with the level of services provided under Westbank community government.
- 4.3 Westbank intends to retain full access to all government programs and funding not identified in the negotiated financial arrangement, as well as increases in funding in

identified programs.

- 4.4 Westbank intends to establish explicit arrangements for such items as the Capital Trust Accounts and Community Revenue.
- 4.5 The band will develop financial reporting procedures for band members and for the Minister.
- 4.6 Westbank will not assume responsibility over sectors that are not adequately funded.

FEDERAL RESPONSE

Financial arrangements are considered to be an essential element of community negotiations. This topic will be included in a framework agreement as a matter for negotiation.

Funding will be based on historical levels, and the provision of additional services would require the negotiation of financial arrangements.

Arrangements negotiated on matters such as Capital Trust Accounts must be acceptable to both the federal government and the band. An Accounting Guide for First Nations to be made available in 1990 may be used as a reference.

5.0 MEMBERSHIP

PROPOSAL

- 5.1 Westbank is developing a membership code which will be incorporated into the Westbank Constitution.

FEDERAL RESPONSE

Membership is considered to be an essential element of community government. It will be included in the framework as a matter for negotiation with the federal government. Indian status will continue to be defined by the Indian Act.

6.0 LANDS AND LAND MANAGEMENT

PROPOSAL

- 6.1 Westbank intends to hold Westbank lands in its own name.
- 6.2 Westbank intends to confirm and expand the existing Westbank land management regime.
- 6.3 Westbank lands will continue to remain Section 91(24) lands, within the Constitution of Canada.
- 6.4 Westbank intends to regulate the possession and allotment of Westbank lands.
- 6.5 The Westbank band constitution will codify and define types of interests in Westbank lands.
- 6.6 Negotiations will clarify and define Westbank Band interests in water: surface, sub-surface, and adjacent.

- 6.7 Negotiations will address the issue of Westbank's foreshore rights.
- 6.8 Westbank will develop an insurable Westbank-specific lands registry system.
- 6.9 The expropriation power of the band will be defined in the legislation.
- 6.10 The band constitution will describe the mechanisms for expropriation.
- 6.11 The roles and powers of the Westbank public trustee to manage the interests in lands of, for example, minors, the mentally incompetent, and intestate successions, will be defined through negotiations.
- 6.12 Negotiations must not prejudice Westbank's interests in lands adjacent to and beyond its boundaries.
- 6.13 Westbank would like to extend Westbank jurisdiction to acquired lands. The band understands that it has an existing commitment from the provincial and federal governments to declare lands purchased from cut-off claims and highways compensation funds, Indian reserve lands within the definition of the Indian Act.
- 6.14 Negotiation will address access on reserve lands, adjacent lands, and water bodies.
- 6.15 Expropriation by outside governments and public agencies will be addressed through negotiations.
- 6.16 All existing interests in Westbank lands will be addressed and clarified through negotiation.

FEDERAL RESPONSE

Lands and land management will be included for negotiation in the framework agreement.

Land tenure by the band, and the Minister's fiduciary responsibility with regard to surrender of land will need to be reconciled through negotiation. There is a degree of uncertainty regarding whether lands to which the band will hold title will remain "lands reserved for Indians" under section 91(24) of the Constitution.

The use by the band of powers analogous to, or going beyond Indian Act Sections 53 and 60, would be discussed in negotiation.

The band's interests, if any, in water and adjacent lands will require consultation or negotiation with the province.

The provincial lands registrar should be involved in discussions about Westbank lands registry. The band may want to consider whether they would like to regulate, but not necessarily operate, a land registry system.

The band can purchase additional lands but only Governor-in-Council may declare these reserve lands.

Negotiations should address the areas of environmental assessment and land use planning.

7.0 RESOURCE MANAGEMENT

PROPOSAL

- 7.1 The band intends to ensure that its interests in renewable and non-renewable resources both on and outside of band land be protected.

FEDERAL RESPONSE

Resource management is considered to be an essential element and will be included in negotiations. Provincial involvement will be necessary for any arrangement outside reserve boundaries. The band may want to consider involving the tribal council in such arrangements.

8.0 IMPLEMENTATION

PROPOSAL

- 8.1 The band is developing an implementation plan.

FEDERAL RESPONSE

An implementation plan is an essential element in community negotiations.

9.0 ADMINISTRATION OF JUSTICE

PROPOSAL

- 9.1 Westbank intends to develop better methods for policing on reserves.
- 9.2 Westbank intends to develop its own court system. This court system will hear appeals, by-law infractions, summary conviction offenses, and family court as well as civil suits.
- 9.3 The relationship between the Westbank court system and the provincial and federal court systems will be defined through negotiations.

FEDERAL RESPONSE

The band's intent to improve policing should be discussed in negotiations. The recent Indian Policing Policy Review will provide the basis for negotiations in this area. The federal policy does not provide for funding new programs developed through self-government negotiations. There are, however, a variety of existing programs which may be of use.

Because criminal law is administered by the provincial court system, the provincial government will have to be involved.

The band may wish to discuss the establishment of appeal mechanisms in addition to the court system. In general the band's proposals in the justice area will have to become more detailed.

10.0 TAXATION

PROPOSAL

10.1 Westbank intends to levy the following taxes:

- Real Property Taxation: Westbank plans a taxation by-law under the Indian Act which will eventually be incorporated into the Westbank community local government.
- Consumption Taxes: The band intends to establish consumption taxes for sales made on reserves.

10.2 Westbank intends to develop appropriate review mechanisms for parties being taxed.

10.3 Westbank has submitted a taxation and an assessment by-law to the Taxation Advisory Board.

10.4 Westbank intends that band corporations and band members be exempt from land and improvements taxation.

FEDERAL RESPONSE

This topic is considered an essential element and will therefore be included for negotiation in the Framework Agreement.

Whether sales taxes are possible is subject to negotiation. The relationship between the band's proposed consumption tax regime and the current provincial system is subject to negotiation.

OTHER OPTIONAL ELEMENTS

PROPOSAL

11.1 The band intends to take jurisdiction in education, social services, child welfare and health.

12. Public Order and Safety

12.1 The Westbank Band wants the authority to make laws concerning public order and safety.

13. Community Infrastructure and Public Works

13.1 The Westbank Band wants the authority to control community infrastructure and public works.

14. Licensing, Regulation and Operation of Businesses

14.1 The Westbank Band wants full authority over licensing, regulation and operation of businesses as this is an important basis for economic self-sufficiency.

15. Wildlife Management

15.1 The Westbank Band wants the authority over wildlife management on its lands. Westbank intends to play a role in wildlife management on adjacent lands

traditionally occupied by Westbank members.

16. Agriculture

- 16.1 The Westbank Band wants the authority and jurisdiction to administer and regulate agriculture enterprises on the Westbank reserve lands.

17. Environment

- 17.1 The Westbank Band wants the authority over the protection and management of the environment on reserve land and adjacent lands traditionally occupied by Westbank members.

18. Traffic and Transportation

- 18.1 The Westbank Band wants authority over traffic and transportation as it relates to control of traffic, roads and waterways, wharves and other related works.

19. Culture

- 19.1 The Westbank Band wants the authority over culture, which would include, but are not limited to, languages, customs, heritage, and art.

20. Access to and Residence on Reserve Lands

- 20.1 The Westbank Band wants the authority to determine and control who has access and can live on Indian lands.

21. Management of Indian Monies

- 21.1 The Westbank band wants the control and management of Indian monies.

22. Succession

- 22.1 The Westbank band wants the jurisdiction over succession, which shall include the administration, descent and distribution, hereditary succession and guardianship over property which now falls under the authority of the Minister under the Indian Act.

FEDERAL RESPONSE

As optional elements all these topics may be addressed through negotiations, following the negotiation of essential elements. Specific plans will have to be developed in these areas.

Aspects of these elements which relate to existing financial arrangements will be negotiated as essential elements, as will sub-issues related to land administration and tenure.

In the case of some optional elements the provincial government should be involved in negotiations as necessary.

13. Community Infrastructure and Public Works

The band may wish to consider how to provide for regulations in the areas of fire protection and emergency response planning and procedures.

17. Environment

The band may wish to consider how to provide for regulations in the areas of solid waste management; water quality and quantity; sewage treatment; and community parks.

APPENDIX C

PARAMETERS FOR SELF-GOVERNMENT NEGOTIATIONS

***AGREEMENT ON AN AGENDA AND PROCESS
FOR THE NEGOTIATION OF AN AGREEMENT-IN-PRINCIPLE
ON WESTBANK LOCAL GOVERNMENT***



GUIDELINES FOR COMMUNITY-BASED SELF-GOVERNMENT NEGOTIATIONS

PART I: GENERAL PARAMETERS

1. Negotiations are conducted without prejudice to treaty and aboriginal rights, existing or potential land claims or to future constitutional developments. The process is not intended to define, redefine or renegotiate aboriginal or treaty rights.
2. Community self-government arrangements will continue the special relationship between Indian people and the federal government.
3. Community self-government negotiations and/or arrangements will not alter the division of powers between the federal and provincial governments and will, through practical measures, attempt to accommodate Indian governments within the existing constitutional framework.
4. The negotiation of community self-government arrangements in areas which extend beyond the present reserve base and/or in which provincial legislation, regulations or standards are currently applicable, will require the cooperation and involvement of the provincial government concerned.
5. Community self-government arrangements must be compatible with the established principles, jurisdictions and institutions of government in Canada. For example, they must:
 - i) conform with the Charter of Rights and Freedoms;
 - ii) ensure political and financial accountability by the Indian government to the general community membership and;
 - iii) recognize the rights of redress of citizens.
6. Financial arrangements will be within the resource levels available to the department and consistent with the historical levels of funding provided to that community.

GENERAL PARAMETERS (Cont'd)

7. Agreements-in-principle and new self-government arrangements must be formally ratified by the community membership and the federal Cabinet.
8. Federal laws of general application will continue to apply under new community self-government arrangements except to the extent that these laws are inconsistent with the provisions of any legislation giving effect to the self-government arrangements.
9. Provincial laws of general application will continue to apply except to the extent that those laws are inconsistent with the terms of any treaty, the provisions of any legislation giving effect to the self-government arrangements, any other Act of the Parliament of Canada or a law of the community.
10. The negotiation of new community self-government arrangements will be conducted with Indian communities that occupy lands that are recognized as lands reserved for Indians or that hold blocks of land pursuant to comprehensive claims settlement. The population and geographical area over which the Indian government will exercise authority will be defined in the negotiation.

PART II: SUBJECT MATTERS FOR NEGOTIATION

The following items are considered to be essential to Indian government arrangements, and therefore must be dealt with in community self-government negotiations:

1. Legal Status and Capacity

How a community proposes to become a legal entity, separate and apart from its individual members, and the legal capacity of the new entity must be defined. The body (or bodies) through which the community will exercise its powers and carry out its duties must also be defined.

2. **Structure and Procedures of Government**

The structure and procedures of community government must be defined and must include:

- a clear description of the proposed institutions of government, including customary or traditional structures;
- a clear description of the functions and responsibilities of each institution;
- provisions for making government accountable, for communicating decisions to members and, where appropriate, for an appeal system;
- written rules and procedures for selecting and removing leaders;
- provisions for enforcement of laws passed by the community government; and
- provisions for amending the structures and procedures of government.

3. **Membership**

Communities may be empowered to define their own membership. However, community self-government arrangements must include written rules and procedures describing how membership may be confirmed or relinquished.

4. **Management of Lands and Resources**

Title to the community's reserve lands may remain with the Crown or be transferred to the community. If the community wishes, any lands now designated as lands reserved for Indians will continue to be recognized as such even if title is transferred to the community.

Land management powers now held by the Minister under the Indian Act may be transferred to the community. Before assuming these powers, the community must develop appropriate administrative mechanisms as well as rules and procedures for land management. If the community wishes the federal government to retain a role in land management, the federal role and responsibility must be clearly defined.

New arrangements as to the ownership or management of natural resources may require the involvement of the provincial government.

There must be provisions for disposing of reserve lands and natural resources. If the community wishes to have the federal government involved in such dispositions, the federal role and responsibilities must be clearly defined.

New arrangements may provide the Indian government with expropriation powers over community land.

5. **Financial Arrangements**

The financial powers (such as the power to tax, hold funds, enter into contracts) of the Indian government must be clearly spelled out.

There must be a financial agreement between the community and the federal government and written provisions for financial accountability to the community members and the federal government.

Monies held by the federal government pursuant to the provisions of the Indian Act for the use and benefit of Indian bands may be transferred to an Indian community provided appropriate accountability provisions have been developed.

(For more details in this area see Guidelines for Financial Arrangements)

SUBJECT MATTERS FOR NEGOTIATION (Cont'd)

6. Application of the Indian Act

Provisions of the Indian Act, (modified as circumstances may require) will continue to apply except where they are inconsistent with the agreed self-government arrangements.

The Indian Act will continue to apply for the purposes of determining which members of the community are "Indians" within the meaning of that Act.

7. Implementation Plan

A plan for implementing an agreement on community self-government arrangements will be prepared, specifying the responsibilities, financial obligations and procedures to which the parties have agreed.

Community self-government arrangements may also be negotiated for the subject matters listed below. The nature and extent of authority of the Indian government over these matters will be subject to the general parameters set out in Part I.

- community infrastructure and public works;
- education;
- social and welfare services, including custody and placement of children;
- justice;
- licensing, regulation and operation of business;
- taxation for local purposes;
- public order and safety;
- health and hygiene;
- wildlife management;
- management of Indian monies;
- agriculture;
- protection and management of the environment;
- succession;
- culture;
- traffic and transportation; and
- access to and residence on reserve.

Issues that affect the responsibilities of other federal departments will require the cooperation and involvement of those departments.

Any negotiation of taxation powers other than municipal type property taxes will require prior agreement by the Department of Finance.

PART III: PROCESS

1. Agreements on the terms of reference or framework for each negotiation will be submitted to an interdepartmental steering committee for approval before detailed negotiations begin.
2. The steering committee will coordinate interdepartmental participation in developing negotiating mandates for subject areas which affect each department's responsibilities. It will also identify any major issues requiring further Cabinet direction.
3. Any items not covered under the subject matter headings in Part II will not be negotiable without explicit Cabinet direction.
4. Agreements-in-principle and final agreements will be referred to Cabinet for approval and must be ratified by the community membership.

July 1988

GUIDELINES FOR FINANCIAL ARRANGEMENTS

Negotiation of financial arrangements for communities under self-government legislation will be guided by the following:

1. General Principles

Under self-government arrangements, the primary accountability of communities for the allocation and expenditure of funds is to community members. There will also be very general oversight by Parliament and the Minister as set forth in legislation and agreements.

Appropriate institutions and mechanisms for responsible financial administration will be established through legislation and self-government agreements.

The federal government will maintain its financial support of programs and services for these communities. Funding will be provided through multi-year comprehensive funding agreements which recognize the principles of cost-sharing between the two governments. This will provide predictable and stable funding for communities operating under self-government legislation.

Indian communities will have certain fiscal powers and jurisdiction to raise revenue and manage their affairs.

2. Community Responsibility and Accountability

Funding may be provided as a grant which may include both operating and capital funding. The objective is to permit communities to allocate resources according to locally determined priorities. Services covered by multi-year funding arrangements must meet applicable minimal national, provincial or other specified standards.

Financial arrangements established under self-government agreements must include financial accountability provisions that are consistent with Canadian democratic traditions.

3. Transfer Arrangements

Multi-year comprehensive funding agreements (up to five years) may incorporate the full range of programs or services for which the community is assuming responsibility. The funds will be provided through an annual appropriation by Parliament.

Transfer Arrangements (Cont'd)

Grants may be adjusted annually to take into account changes in price and volume, revenue generating capacity, and incentives to support economic self-sufficiency. Where formula funding is based on population, the population base will be defined as status Indians living on community lands.

Initial base year funding will be based on current funding available to the community with permissible adjustments to average out variable expenditure items. Some minor increase in funding may be considered to support higher operating costs that communities may incur because of assuming administrative responsibility for current programs. Short-term financial support may be available to defray some of the costs of establishing the legal and administrative framework needed for self-government.

Payments to self-government communities may be made on the same basis as approved for Alternative Funding Arrangements or other arrangements that may be negotiated and are consistent with the government's and the department's cash management policy.

Communities will continue to have access to services or programs not included in the multi-year comprehensive funding transfer agreement in accordance with established terms, conditions and reporting requirements.

The funding arrangement may be adjusted during the term of the comprehensive funding agreement when the department has introduced a major new program or improved a program in an area covered by the agreement. Financial assistance for contingencies will continue to be available in the event of fire, flood or natural disasters.

4. Financial Powers

Financial powers will be related to the governing powers agreed to in each particular self-government arrangement. They will include the authority to enter into contracts, borrow money, sue or be sued and to carry out commercial functions. They may also provide access to revenue sources now available to communities under the Indian Act or those powers normally assumed by local governing bodies including:

APPENDIX D

AGENDA AND TIMEFRAMES FOR NEGOTIATION

**AGREEMENT ON AN AGENDA AND PROCESS
FOR THE NEGOTIATION OF AN AGREEMENT-IN-PRINCIPLE
ON WESTBANK LOCAL GOVERNMENT**



WESTBANK INDIAN COUNCIL
LOCAL GOVERNMENT PROJECT

SUBSTANTIVE NEGOTIATIONS SCHEDULE

<u>ELEMENT*</u>	<u>TABLING SESSION</u>	<u>TECHNICAL SESSION</u>	<u>NEGOTIATION SESSION</u>
1. Legal Status and Capacity	April 23, 1990	May 25, 1990	September 11, 1990
2. Local Powers and Capacity	June 1, 1990	June 29, 1990	September 12-14, 1990
3. Structures and Procedures of Government	June 1, 1990	June 29, 1990	September 13, 1990
4. Taxation	June 1, 1990	September 10, 1990	October 2-3, 1990
5. Financial Arrangements	Nov. 15, 1990	(October 4-5, 1990)** December 6, 1990+	February 5-8, 1991
6. Membership	October 31, 1990	December 4, 1990+	January 7-11, 1991
7. Lands and Land Management	October 31, 1990	December 3, 1990+	January 7-11, 1990
8. Resource Management	November 15, 1990	December 5, 1990	January 7-11, 1991
9. Implementation	February 15, 1991	(October 4-5, 1990)** March 19, 1991	March 20-21, 1991

* Negotiations of the application of federal and provincial laws - also considered an essential element - will take place where appropriate when connected elements are under negotiation.

** Technical information sessions with Implementation Directorate, Community Negotiations Branch before position papers are tabled.

+ Session to be held in Ottawa.

WESTBANK INDIAN BAND
SELF GOVERNMENT WORKPLAN
APRIL 1990 - MARCH 1991

The Westbank Indian Band intends to run both process of the Position Paper, and Negotiations at the same time; with a target completion date for the position paper for _____; and a target date of completion of Negotiations by _____.

Overall, the Band has assigned the co-ordination and management of the Community Negotiations Process to the Westbank Band Planning Committee; which consists of the following members:

1. Larry Derrickson - Chairman
2. Brian Eli
3. Robert Louie
4. Mary Anne Eli
5. Pat Fosbery Sr.
6. Rosie Derrickson
7. Randy Brant
8. Bonnie Thompson

Furthermore, the Planning Committee has set up sub-committees for the purpose of dealing with the seven essential elements.

Those sub-committee members are listed in "Appendix A" for your information.

1. LANDS COMMITTEE

The Lands Committee, by April 1991, expects to have worked through all identified items related to lands; and to have done the following:

- . Provide recommendations to the Planning Committee
- . Participated in public meetings to discuss items with general Band Membership
- . Re-drafted recommendations as needed to reflect Community input
- . Developed Band's position on land items

A. SCHEDULE OF ACTIVITIES

(i) April - June 1990: Group One Items

- . Definitions and terminology to apply to Westbank lands.
- . Definition of "Ownership," "Certificate of Possession" (C.P.), and "Fee Simple", etc.
- . Definition of "Title"; i.e., who should have title to lands.
- . Land Use Planning; i.e. relationship to Band Council, etc.

(ii) June - August 1990 - Group Two Items

- . Land Registry Arrangements.
- . Expropriation; Easements; Leases; and Permits.
- . Heads of Compensation.

(iii) September - October 1990

- . Complete public review of positions on lands.
- . Review position papers.

(iv) December 1990

- . Final draft of Lands position.

B. METHOD

- (i) Retain Legal Counsel to assist Committee.
- (ii) Hire consultant(s) to undertake review/drafts.
- (iii) Set schedule for work/meetings.

C. ESTIMATED COSTS:

- (i) Anticipate ten consultant projects.
- (ii) Anticipate approximately \$50,000.00 legal costs from April to December for committee work alone.

2. Local Government Committee:

The Local Government Committee, by April 1991, expects to have worked through all the identified items related to Local Government; and to have done the following:

- . Provided recommendations to the Planning Committee.
- . Participates in public meetings to discuss items with general membership.
- . Re-drafted recommendations as needed to reflect community input.
- . Developed Band's position on Local Government items.

A. Schedule of Activities

(i) April - June 1990: Group One Items

- . Structures and Procedures of Government:
 - Structure of Council
 - Election procedures
 - Recall procedures - Council decisions.
 - Removal of Officers
 - Responsibilities of Officers
 - Referenda and petitions
 - Accountability of Council to Members
 - Management of Band funds
 - Legal Status and capacity

* First review and written preliminary position by June 30th, 1990.

(ii) April - June 1990: Group Two Items

- . Powers of Local Government:
 - Zoning and planning function
 - Public Order and Safety
 - Estates in Land
 - Bylaws, licensing, development permits.
 - Public works management.
 - Wildlife management
 - Environmental Regulation
 - Access to Reserve Lands
 - Residence on Reserve Lands

* First review and preliminary written position by June 30th, 1990.

(iii) July, August, September 1990

. Community review of work to date.

(iv) October - December 1990

. Draft and redraft final position of Band.

3. Human Services:

A1.

The Committee, by April 1991, plans to have reviewed the existing regulations and policies in the following areas:

- Health
- Social Services
- Education
- Social Assistance
- Culture
- Drug and Alcohol
- Recreational Programs
- Homemaker Services

. Taken community input, and prepared recommended changes/improvements.

. Recommendations to go to public meetings and provide input into Band's position for Negotiations.

A2. To have entered into discussions with Medical Services Branch to clarify what the transfer program could bring into Westbank Band Self Government.

B. WORKPLAN AND METHOD

. Continued meeting Schedule as established.

. Use consultant's services as required.

. Provide written positions to Planning Committee as developed.

4. MEMBERSHIP COMMITTEE:

A. The Membership Committee, by April 1991, plans to have its Membership Code fully developed and accepted by the general Band Membership.

B. METHOD

- . Hold two committee meetings monthly
- . Hold four public meetings over the year
- . Hold sub-committee meetings as required
- . Consultants reports and suggestions
- . Band referendum on membership

C. OUTPUT

- . Provided recommendations to the Planning Committee
- . Input into public meetings on Self Government
- . Written Membership Code for inclusion into the Westbank Band Legislation

5. IDENTIFIED SUB-COMMITTEES

The Band anticipates two other sub-committees will be needed to deal with the following issues:

- (i) TAXATION: This activity has been identified as possibly requiring a separate committee.
- (ii) JUSTICE: This item has not yet been integrated into the workplans.

* Have yet to estimate costs for both of the above.

APPENDIX E

BUDGET FOR NEGOTIATIONS

**AGREEMENT ON AN AGENDA AND PROCESS
FOR THE NEGOTIATION OF AN AGREEMENT-IN-PRINCIPLE
ON WESTBANK LOCAL GOVERNMENT**



PROJECT PLAN
WESTBANK SELF-GOVERNMENT FUNDING
FISCAL YEAR 1990/91

A. AUTHORITY

This project plan, including workplan and cash flow meets the requirements under the Self-Government Treasury Board authority.

" B. METHOD

The Westbank Band is preparing detailed proposals for negotiation in the essential elements as listed below:

1. Legal status and capacity
2. Local powers and capacities
3. Structures and procedures and government
4. Taxation
5. Financial Arrangements
6. Membership
7. Lands and lands manager
8. Resource Management
9. Implementation

This will be undertaken by the community, using the committees outlined in the workplan. The Committees will require the assistance of outside experts, and will have extensive legal review prior to their tabling in negotiations.

The Westbank Band Planning Committee Acts as the negotiating team for the Band, and funding is required to support the development of positions and strategies by the Band, as well as the actual negotiation costs.

C. REPORTING

The department will receive the position papers on the nine essential elements for self-government negotiation on a schedule mutually agreeable to the parties.

The negotiation schedule will be consistent with the time allocation available for substantive negotiations under the terms of the Treasury Board authority for community negotiations.



BUDGETADMINISTRATION & MANAGEMENT

Professional Services:

Consultant	18,000.00
Assistant	15,000.00
Legal Support	36,000.00

Committee

1. Lands	20,000.00
2. Local Government	20,000.00
3. Membership	10,000.00
4. Human Services	10,000.00

(Planning Committee)

Committee Costs	12,000.00
Consultants Support	6,000.00
Legal Support	6,000.00

Other Fixed Costs

Travel and Communications	30,000.00
Printing	3,000.00
Liason	<u>12,000.00</u>

TOTAL	198,000.00
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SALARIES:

Negotiator-Co-Ordinator	40,000.00
Benefits	4,000.00
Assistant	24,000.00
Benefits	2,400.00
Secretary (Self-Government)	18,000.00
Benefits	<u>1,800.00</u>
TOTAL	90,200.00

OVERHEAD	15%	13,530.00
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ADMINISTRATION	Phone	
	Fax	
	Supplies	
	Postage	
	Typing - (Documents)	21,600.00

Newsletter	3,000.00
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Co-Ordinators Travel	
Planning Committee's Travel	
and Cost (Hotel, Food, Misc.)	<u>20,000.00</u>

TOTAL	150,330.00
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Page .. 3

COMMUNITY APPROVAL PROCESS

Budget for preparation and negotiations of elements are based on expenditures of 4 Committees. (Essential elements are grouped under these committees).

(A) Research:
General
Existing Arrangements

(B) Draft: Review Policy
Consultant
Legal Support

(C) Planning Committee
Members
Consultants
Legal Support
Support

(D) Sub-Committees
Members
Consultants
Legal Support
Support

TOTAL 22,500.00

x 4 FOR THE 4 COMMITTEES = 90,000.00

Page ... 4

NEGOTIATION

TECHNICAL SESSIONS

Consultant		1,000.00	
Legal Support		2,000.00	
Planning Committee Members		1,242.50	
Consultant		2,000.00	
Legal Support		3,000.00	
Support		<u>1,000.00</u>	
Sub-Committees	X 4	10,242.50	=40,970.00
Travel			20,000.00
		TOTAL	60,970.00

RECAP

Page 1	198,000
Page 2	150,330
Page 3	90,000
Page 4	<u>60,970</u>
TOTAL	499,300

APPENDIX F

INDIAN REFERENDUM REGULATIONS

***AGREEMENT ON AN AGENDA AND PROCESS
FOR THE NEGOTIATION OF AN AGREEMENT-IN-PRINCIPLE
ON WESTBANK LOCAL GOVERNMENT***



CHAPTER 957

INDIAN ACT

Indian Referendum Regulations

REGULATIONS GOVERNING THE HOLDING OF REFERENDUMS ON INDIAN RESERVES

Short Title

1. These Regulations may be cited as the *Indian Referendum Regulations*.

Interpretation

2. In these Regulations,

“Act” means the *Indian Act*; (*Loi*)

“Assistant Deputy Minister” means the Assistant Deputy Minister, Indian and Eskimo Affairs of the Department of Indian Affairs and Northern Development; (*sous-ministre adjoint*)

“deputy electoral officer” means a person appointed by an electoral officer for the purposes of a referendum; (*président du scrutin*)

“electoral officer” means the field officer of the Indian Affairs Branch in charge of an agency or any officer of the Indian Affairs Branch acting under the directions of the Minister or Assistant Deputy Minister for the purposes of a referendum; (*président d'élection*)

“Minister” means the Minister of Indian Affairs and Northern Development; (*Ministre*)

“prescribed” means prescribed by the Minister; (*prescrit*)

“proclamation” means a proclamation issued by the Governor in Council pursuant to subsection 98(1) of the Act; (*proclamation*)

“surrender” means a surrender of reserve lands or any part thereof to Her Majesty. (*cession*)

Holding of Referendum

3. (1) The Minister may, at the request of the council of a band or whenever he considers it advisable, order a referendum be held to determine if

(a) the majority of the electors of a band are in favour of a surrender; or

(b) the majority of the electors who vote thereat are in favour of the issuance of a proclamation.

(2) Subject to subsection (3), the voting on a referendum held pursuant to these Regulations shall be by secret ballot.

(3) Where a referendum is ordered to determine whether the majority of the electors of a band are in favour of a surrender, the Minister may, at the request of the council of the band or whenever he considers it advisable, order that the

CHAPITRE 957

LOI SUR LES INDIENS

Règlement sur les référendums des Indiens

RÈGLEMENT RÉGISSANT LA TENUE DE RÉFÉRENDUMS DANS LES RÉSERVES INDIENNES

Titre abrégé

1. Le présent règlement peut être cité sous le titre: *Règlement sur les référendums des Indiens*.

Interprétation

2. Dans le présent règlement,

«cession» signifie une cession des terres des réserves indiennes ou de toute partie de ces terres à Sa Majesté; (*surrender*)

«Loi» signifie la *Loi sur les Indiens*; (*Act*)

«Ministre» désigne le ministre des Affaires indiennes et du Nord canadien; (*Minister*)

«prescrit» signifie prescrit par le Ministre; (*prescribed*)

«président d'élection» signifie le fonctionnaire local de la Direction des affaires indiennes qui administre une agence ou tout fonctionnaire de la Direction des affaires indiennes qui agit d'après les instructions du Ministre ou du sous-ministre adjoint pour les fins d'un référendum; (*electoral officer*)

«président du scrutin» signifie toute personne désignée par le président d'élection pour les fins d'un référendum; (*deputy electoral officer*)

«proclamation» signifie une proclamation publiée par le gouverneur en conseil conformément aux dispositions du paragraphe 98(1) de la Loi; (*proclamation*)

«sous-ministre adjoint» désigne le sous-ministre adjoint (Affaires indiennes et esquimaudes), ministère des Affaires indiennes et du Nord canadien. (*Assistant Deputy Minister*)

Tenue d'un référendum

3. (1) Le Ministre peut, à la demande du conseil de la bande ou quand il le juge opportun, ordonner la tenue d'un référendum pour déterminer si

a) la majorité des électeurs d'une bande sont en faveur d'une cession; ou si

b) la majorité des électeurs qui votent par référendum sont en faveur de la publication d'une proclamation.

(2) Sous réserve du paragraphe (3), le vote par référendum tenu sous le régime du présent règlement aura lieu au scrutin secret.

(3) Lorsqu'un référendum est ordonné pour déterminer si la majorité des électeurs d'une bande sont en faveur d'une cession, le Ministre peut, à la demande du conseil de la bande ou chaque fois qu'il le juge opportun, ordonner que le vote par

voting on the referendum be by a show of hands or in some other manner as the council of the band may approve.

Voting by Secret Ballot

4. (1) Where a voting on a referendum is to be by secret ballot, the electoral officer shall post a notice in the form prescribed at least 30 days prior to the date of the voting, in such places as he deems necessary.

- (2) The notice referred to in subsection (1) shall state
 - (a) the date on which the voting shall take place;
 - (b) the question to be submitted to the electors;
 - (c) the hours of the day the electors may vote; and
 - (d) the location of the polling booths.

5. (1) The electoral officer shall

- (a) prepare a list containing in alphabetical order the names of the electors entitled to vote on the referendum and designating the location of the polling booth where each elector shall be entitled to vote;
- (b) post a copy of the list of electors in such places as he deems necessary at least 15 days prior to the date of the voting;
- (c) prepare sufficient ballot papers in the prescribed form which shall state the question to be submitted to the electors;
- (d) procure a sufficient number of ballot boxes; and
- (e) before the poll is open cause to be delivered to the deputy electoral officer the ballot papers and a sufficient number of lead pencils for marking the ballot papers.

(2) Any elector may apply to the electoral officer within 10 days of the posting of the list of electors to have the list revised on the grounds that

- (a) the name of an elector has been omitted therefrom;
- (b) the name of an elector is incorrectly set out therein; or
- (c) the name of a person not qualified to vote is included therein.

(3) Where the electoral officer is satisfied that a revision is necessary in the list of electors, he shall make the revision and such revision shall be final.

6. The electoral officer or the deputy electoral officer shall provide a compartment at each polling place where the elector can mark his ballot paper free from observation.

7. The electoral officer or the deputy electoral officer shall, immediately before the opening of the poll, open the ballot box and call upon such persons who may be present to witness that it is empty and shall then lock and properly seal the box and place it in view for the reception of the ballots.

8. (1) Subject to subsection (2), the polls shall be kept open from 9 o'clock in the forenoon until 6 o'clock in the afternoon of the day set for the voting on the referendum.

référendum ait lieu à mains levées ou de toute autre manière que le conseil de la bande pourra approuver

Vote au scrutin secret

4. (1) Lorsque le vote par référendum doit avoir lieu au scrutin secret, le président d'élection devra afficher un avis, en la forme prescrite, au moins 30 jours avant la date fixée pour la votation, aux endroits qu'il juge nécessaires.

(2) L'avis mentionné au paragraphe (1) ci-dessus doit indiquer

- a) la date à laquelle le vote aura lieu;
- b) la question soumise à la sanction des électeurs;
- c) les heures du jour pendant lesquelles les électeurs peuvent voter; et
- d) l'adresse des bureaux de votation.

5. (1) Le président d'élection doit

- a) préparer une liste contenant, par ordre alphabétique, les noms des électeurs habiles à voter par référendum, et l'adresse du bureau de votation où chaque électeur a le droit de déposer son vote;
- b) afficher une copie de la liste des électeurs aux endroits qu'il jugera nécessaires, au moins 15 jours avant la date fixée pour la votation;
- c) préparer un nombre suffisant de bulletins de vote en la manière prescrite et qui énoncent la question soumise à la sanction des électeurs;
- d) fournir un nombre suffisant de boîtes de scrutin; et
- e) avant l'ouverture du bureau de votation, faire livrer au président du scrutin les bulletins de vote et un nombre suffisant de crayons de mine pour marquer les bulletins de vote.

(2) Tout électeur peut demander au président d'élection, dans les 10 jours qui suivent l'affichage de la liste des électeurs, de reviser cette liste parce que

- a) le nom d'un électeur en a été omis;
- b) le nom d'un électeur y est inexactement inscrit; ou
- c) le nom d'une personne inhabile à voter y figure.

(3) Quand le président d'élection juge qu'une revision de la liste des électeurs est nécessaire, il devra en effectuer la revision, qui sera finale.

6. Le président d'élection ou le président du scrutin doit, dans chaque bureau de votation, aménager un isoloir où l'électeur peut marquer son bulletin de vote à l'abri de tout regard.

7. Le président d'élection ou du scrutin doit, immédiatement avant l'ouverture du bureau de votation, ouvrir la boîte du scrutin et demander aux personnes présentes de constater qu'elle est vide, puis il doit la fermer à clef, la sceller convenablement et la placer bien en vue pour la réception des bulletins de vote.

8. (1) Sous réserve du paragraphe (2), le scrutin ouvre à 9 heures du matin et reste ouvert jusqu'à 6 heures du soir, le jour fixé pour le vote par référendum.

(2) Where it appears to the electoral officer that it would be inconvenient to the electors to have the poll closed at 6 o'clock, he may order that it be kept open for an additional period of time not exceeding 2 hours.

9. (1) The electoral officer or the deputy electoral officer after satisfying himself that a person presenting himself for the purpose of voting is entitled to vote at the polling place, shall provide such person with a ballot paper on the back of which the officer has affixed his initials, so placed, that when the ballot paper is folded the initials can be seen without unfolding the ballot paper.

(2) The electoral officer or the deputy electoral officer shall place on the list of electors a mark opposite the name of every elector receiving a ballot paper.

10. (1) The electoral officer or the deputy electoral officer shall explain the mode of voting to an elector when requested to do so by such elector.

(2) On the application of an elector who is

(a) not able to read, or

(b) incapacitated by blindness or other physical cause,

the electoral officer or the deputy electoral officer shall assist that elector by marking his ballot paper in the manner directed by the elector and shall place such ballot paper in the ballot box.

(3) The electoral officer or the deputy electoral officer shall make an entry in the list of electors opposite the name of the elector that the ballot paper was marked by him at the request of the elector and the reasons therefor.

11. Except as provided in subsection 10(2), every elector receiving a ballot paper shall

(a) proceed immediately to the compartment provided for marking the ballot paper;

(b) mark his ballot by placing a cross ("X") under the word "YES" or "NO" opposite the question stated on the ballot paper;

(c) fold the ballot paper so as to conceal the mark on the face of the paper but so as to expose the initials on the back of it; and

(d) forthwith deliver it to the electoral officer or the deputy electoral officer for deposit in the ballot box.

12. (1) An elector who receives a soiled or improperly printed ballot paper, or inadvertently spoils his ballot paper in marking it shall, upon returning the ballot paper to the electoral officer or the deputy electoral officer, be entitled to another ballot paper.

(2) An elector who has received a ballot paper and

(a) leaves the compartment for marking ballot papers without delivering the same to the electoral officer or the deputy electoral officer in the manner provided, or

(b) refuses to vote,

shall forfeit his right to vote on the referendum and the electoral officer or the deputy electoral officer shall make an entry on the list of electors opposite the name of the elector that the elector did not return the ballot paper or refused to vote as the case may be.

(2) Lorsque le président d'élection juge que la fermeture du scrutin à 6 heures serait malcommode pour les électeurs, il peut ordonner que le scrutin reste ouvert pendant une période de temps additionnelle qui ne doit pas dépasser 2 heures.

9. (1) Le président d'élection ou le président du scrutin doit, après avoir constaté qu'une personne qui se présente pour voter est inscrite sur la liste des électeurs pour l'arrondissement de votation, lui remettre un bulletin de vote au verso duquel le président d'élection ou du scrutin a apposé ses initiales de manière que les initiales puissent être vues lorsque le bulletin de vote est plié sans qu'on dépie le bulletin de vote.

(2) Le président d'élection ou du scrutin doit faire sur la liste des électeurs une marque en regard du nom de chaque votant qui reçoit un bulletin de vote.

10. (1) Le président d'élection ou du scrutin doit expliquer au votant comment voter lorsque demande lui en est faite.

(2) Sur la demande de tout votant

a) qui ne sait pas lire, ou

b) qui, à cause de cécité ou d'une autre infirmité corporelle, est incapable de voter,

le président d'élection ou du scrutin doit aider ce votant à marquer son bulletin selon la manière indiquée par le votant et déposer ce bulletin dans la boîte du scrutin.

(3) Le président d'élection ou du scrutin doit noter sur la liste des électeurs, en regard du nom de cet électeur, qu'il a marqué le bulletin de vote à la demande du votant, et en indiquer les raisons.

11. Sauf disposition contraire du paragraphe 10(2), chaque électeur qui reçoit un bulletin de vote doit

a) se rendre immédiatement à l'isoloir aménagé pour marquer le bulletin de vote;

b) marquer son bulletin en faisant une croix («X») sous le mot «OUI» ou «NON» en regard de la question énoncée sur le bulletin de vote;

c) plier le bulletin de vote de manière à ne pas laisser voir la marque qui apparaît au recto du bulletin, mais de façon à laisser voir les initiales au verso du bulletin; et

d) le remettre aussitôt au président d'élection ou du scrutin pour qu'il le dépose dans la boîte du scrutin.

12. (1) Un électeur qui a reçu un bulletin de vote souillé ou mal imprimé, ou qui, par inadvertance, gâche son bulletin de vote en le marquant, a droit, en le remettant au président d'élection ou du scrutin, d'obtenir un autre bulletin de vote.

(2) Un électeur, qui a reçu un bulletin de vote et qui

a) sort de l'isoloir aménagé pour marquer les bulletins de vote sans remettre, de la manière prévue, son bulletin au président d'élection ou du scrutin, ou

b) refuse de voter,

perd son droit de voter par référendum, et le président d'élection ou du scrutin doit faire une inscription sur la liste des électeurs, en regard du nom de cette personne, pour indiquer que telle personne n'a pas remis son bulletin de vote ou a refusé de voter, selon le cas.

13. The electoral officer or the deputy electoral officer shall allow only one elector in the compartment for marking ballot papers at any one time.

14. An elector who is inside the polling place at the time fixed for closing the poll shall be entitled to vote before the poll is closed.

15. No person shall interfere or attempt to interfere with an elector when marking his ballot paper or obtain or attempt to obtain at the polling place information as to how an elector is about to vote or has voted.

16. The electoral officer or the deputy electoral officer shall maintain peace and good order during the voting and for this purpose he may enlist the assistance of constables, peace officers or other persons present.

17. Whenever the electoral officer or the deputy electoral officer does not understand the language spoken by an elector, he shall appoint and swear an interpreter who shall be the means of communication between him and the elector with reference to all matters required to enable such elector to vote.

18. (1) Immediately after the close of the poll the electoral officer in the presence of the deputy electoral officer and any members of the council of the band that may be present shall

- (a) examine the ballot papers;
- (b) reject all ballot papers
 - (i) that have not been supplied by him or by the deputy electoral officer,
 - (ii) that have been marked incorrectly, or
 - (iii) upon which anything appears by which an elector can be identified;
- (c) count the votes given in favour of and against the question submitted in the referendum; and
- (d) prepare a statement in writing of the number of votes so given and of the number of ballot papers rejected.

- (2) The statement referred to in paragraph (1)(d) shall be
 - (a) signed by the electoral officer and by the chief or a member of the council of the band; and
 - (b) filed in the Indian agency office.

19. When the results of the voting at all the polls are known to the electoral officer, he shall

- (a) immediately prepare a statement in triplicate signed by himself and by the chief or a member of the council of the band indicating
 - (i) the number of electors who were entitled to vote,
 - (ii) the number of electors who voted,
 - (iii) the number of votes cast in favour of and against the question submitted in the referendum, and
 - (iv) the number of rejected ballots; and
- (b) deliver a copy of the statement to
 - (i) the Assistant Deputy Minister,
 - (ii) the regional supervisor or the Indian commissioner for the Province of British Columbia, as the case may be, and
 - (iii) the chief of the band.

13. Le président d'élection ou du scrutin ne doit admettre qu'un électeur à la fois dans l'isoloir aménagé pour marquer les bulletins de vote.

14. Un électeur qui se trouve à l'intérieur du bureau de votation à l'heure fixée pour la clôture du scrutin a le droit de voter avant la fermeture du scrutin.

15. Nul ne doit intervenir ou tenter d'intervenir auprès d'un votant lorsque celui-ci marque son bulletin de vote, ni obtenir, ni tenter d'obtenir au bureau de votation des renseignements sur la manière dont un votant se prépare à voter ou a voté.

16. Le président d'élection ou du scrutin doit maintenir la paix et le bon ordre à l'élection et peut requérir l'assistance de constables, d'agents de la sûreté ou d'autres personnes présentes.

17. Lorsque le président d'élection ou du scrutin ne comprend pas le langage d'un électeur, il doit nommer et assermenter un interprète qui sert d'intermédiaire entre lui et l'électeur au sujet de tout ce qui est nécessaire à l'exercice du droit de vote de ce dernier.

18. (1) Immédiatement après la fermeture du scrutin, le président d'élection doit, en présence du président du scrutin et de tout membre du conseil de la bande qui pourrait être présent,

- a) examiner les bulletins de vote;
- b) rejeter tous les bulletins de vote
 - (i) qui n'ont pas été fournis par lui-même ou par le président du scrutin,
 - (ii) qui ont été marqués inexactement, ou
 - (iii) sur lesquels apparaît quoi que ce soit qui puisse faire reconnaître l'électeur;
- c) compter les votes déposés en faveur et à l'encontre de la question soumise par référendum; et
- d) préparer un relevé par écrit du nombre de votes déposés et du nombre de bulletins de vote refusés.

- (2) Le relevé mentionné à l'alinéa (1)d) doit être
 - a) signé par le président d'élection et par le chef ou un membre du conseil de la bande; et
 - b) déposé au bureau de l'agence indienne.

19. Lorsque le président d'élection connaîtra les résultats du scrutin dans tous les bureaux de votation, il devra

- a) préparer immédiatement, en trois exemplaires, un relevé signé par lui-même et par le chef ou par un membre du conseil de bande, qui indique
 - (i) le nombre d'électeurs habiles à voter,
 - (ii) le nombre d'électeurs qui ont voté,
 - (iii) le nombre de votes déposés en faveur et à l'encontre de la question soumise par référendum, et
 - (iv) le nombre de bulletins de vote rejetés; et
- b) remettre un exemplaire du relevé
 - (i) au sous-ministre adjoint,
 - (ii) au surveillant régional ou au commissaire des Indiens pour la province de la Colombie-Britannique, selon le cas, et
 - (iii) au chef de la bande.

20. The electoral officer shall deposit the ballot papers used in the voting in a sealed envelope and retain it for 60 days after which time he may, unless directed otherwise by the Assistant Deputy Minister, destroy them in the presence of two witnesses.

Voting Other than by Secret Ballot

21. (1) Where voting on a referendum is to be by a show of hands or in some other manner as ordered by the Minister and approved by the council of the band, the electoral officer shall post a notice in the form prescribed at least 30 days prior to the date of the voting, in such places as he deems necessary.

(2) The notice referred to in subsection (1) shall state

- (a) the date, time and place of the meeting where voting on the referendum shall take place; and
- (b) the question to be submitted to the electors.

22. The electoral officer shall

- (a) prepare a list of electors containing in alphabetical order the names of the electors entitled to vote on the referendum and designating the meeting place where each elector shall be entitled to attend for the purpose of voting; and
- (b) post a copy of the list of electors in such places as he deems necessary at least 15 days prior to the date of the voting.

23. (1) An elector may apply to the electoral officer within 10 days from the posting of the list of electors to have such list revised on the grounds that

- (a) the name of an elector has been omitted therefrom;
- (b) the name of an elector is incorrectly set out therein; or
- (c) the name of a person not qualified to vote is included therein.

(2) Where the electoral officer is satisfied that a revision is necessary in the list of electors, he shall make the revision and such revision shall be final.

24. The electoral officer or the deputy electoral officer shall maintain peace and good order during the voting and for this purpose he may enlist the assistance of constables, peace officers or other persons present.

25. Whenever the electoral officer or the deputy electoral officer does not understand the language spoken by an elector, he shall appoint and swear an interpreter who shall be the means of communication between him and the elector with reference to all matters required to enable such elector to vote.

26. The electoral officer or the deputy electoral officer shall call the meeting to order and, after explaining to the electors the purpose of the meeting and the terms of the surrender, shall call for a vote of the electors by a show of hands or in the manner ordered by the Minister and approved by the council of the band.

27. No person shall cause or attempt to cause any disturbance at a meeting or interfere or attempt to interfere with the counting of the votes.

28. (1) The electoral officer or the deputy electoral officer shall

20. Le président d'élection doit déposer les bulletins de vote utilisés lors de l'élection dans une enveloppe scellée et les garder pendant 60 jours et, à moins qu'il n'en soit autrement ordonné par le sous-ministre adjoint, les détruire en présence de deux témoins.

Vote autrement qu'au scrutin secret

21. (1) Lorsque le vote par référendum doit se faire à mains levées ou de toute autre manière ordonnée par le Ministre et approuvée par le conseil de bande, le président d'élection devra afficher, en la forme prescrite, un avis dans les endroits qu'il juge nécessaires, au moins 30 jours avant la date fixée pour la votation.

(2) L'avis mentionné au paragraphe (1) doit indiquer

- a) la date, l'heure et le lieu de réunion où le vote par référendum doit avoir lieu; et
- b) la question soumise à la sanction des électeurs.

22. Le président d'élection doit

- a) préparer une liste contenant, par ordre alphabétique, les noms de tous les électeurs habiles à voter par référendum et indiquant le lieu de la réunion où chaque électeur a droit de se rendre aux fins de voter; et
- b) afficher une copie de la liste des électeurs dans les endroits qu'il juge nécessaires au moins 15 jours avant la date fixée pour le jour de la votation.

23. (1) Tout électeur peut demander au président d'élection la révision de la liste électorale dans les 10 jours qui suivront l'affichage de cette liste pour les motifs que

- a) le nom d'un électeur en a été omis;
- b) le nom d'un électeur y est incorrectement inscrit; ou
- c) le nom d'une personne inhabile à voter y figure.

(2) Si le président d'élection juge qu'une liste doit être corrigée, il y effectuera la correction nécessaire et cette révision sera finale.

24. Le président d'élection ou du scrutin doit maintenir la paix et le bon ordre à l'élection et peut requérir l'assistance de constables, d'agents de la sûreté ou d'autres personnes présentes.

25. Lorsque le président d'élection ou du scrutin ne comprend pas le langage d'un électeur, il doit nommer et assermenter un interprète pour servir d'intermédiaire entre lui et l'électeur au sujet de tout ce qui est nécessaire à l'exercice du droit de vote de ce dernier.

26. Le président d'élection ou du scrutin doit rappeler l'assemblée à la question et, après avoir expliqué aux électeurs le but de la réunion et les conditions de la cession, doit demander le vote des électeurs à mains levées ou de la manière prescrite par le Ministre et approuvée par le conseil de bande.

27. Nul ne doit porter le trouble ou tenter de porter le trouble dans une assemblée, ou intervenir ou tenter d'intervenir dans le comptage des votes.

28. (1) Le président d'élection ou du scrutin doit

- (a) count the votes at the meeting given in favour of and against the surrender; and
- (b) prepare a statement in writing of the number of votes so given.

(2) The statement referred to in subsection (1) shall be

- (a) signed by the electoral officer or the deputy electoral officer and by the chief or a member of the council of the band; and

- (b) filed in the Indian agency office.

29. When the results of the voting at all the meetings are known to the electoral officer, he shall

- (a) immediately prepare a statement in triplicate signed by himself and by the chief or a member of the council of the band indicating

- (i) the number of electors who were entitled to vote,
- (ii) the number of electors who voted, and
- (iii) the number of votes cast in favour of and against the surrender; and

- (b) deliver a copy of the statement to

- (i) the Assistant Deputy Minister,
- (ii) the regional supervisor or the Indian commissioner for the Province of British Columbia, as the case may be, and
- (iii) the chief of the band.

Subsequent Referendums

30. (1) Where the majority of the electors of a band did not vote on a referendum held to determine if the band is in favour of a surrender, the Minister may, if the surrender was assented to by the majority of the electors who did vote, call another referendum to be held in accordance with these Regulations.

(2) Where, on a referendum held to determine if a band is in favour of a proclamation, the majority of electors voting thereat reject the proclamation, another such referendum shall not be held until at least two years have elapsed from the date of the previous referendum unless the Minister otherwise directs.

Appeals

31. (1) Where a referendum is held pursuant to these Regulations, any elector who voted on the referendum and has reasonable grounds for believing that

- (a) there was a violation of these Regulations that may affect the results of the referendum, or
- (b) there was corrupt practice in connection with the referendum,

may, within 7 days from the date of the referendum, file an appeal by forwarding by registered mail to the Assistant Deputy Minister

- (c) a notice of appeal; and
- (d) a statutory declaration containing the grounds of appeal and particulars thereof.

(2) Where an appeal is filed pursuant to subsection (1), the Assistant Deputy Minister shall within 21 days from the

- a) compter les voix en faveur et à l'encontre de la cession, lors de la réunion; et
- b) préparer un relevé par écrit du nombre de voix ainsi recueillies.

(2) Le relevé mentionné au paragraphe (1) doit être

- a) signé par le président d'élection ou du scrutin et par le chef ou un membre du conseil de la bande; et

- b) déposé au bureau de l'agence indienne.

29. Lorsque le président d'élection connaîtra le résultat du vote recueilli à toutes les assemblées, il devra

- a) préparer immédiatement, en trois exemplaires, un relevé signé par lui-même et par le chef ou par un membre du conseil de la bande qui indique

- (i) le nombre d'électeurs habiles à voter,
- (ii) le nombre d'électeurs qui ont voté, et
- (iii) le nombre de voix données en faveur et à l'encontre de la cession; et

- b) envoyer un exemplaire de ce relevé

- (i) au sous-ministre adjoint,
- (ii) au surveillant régional ou au commissaire des Indiens pour la province de la Colombie-Britannique, selon le cas, et
- (iii) au chef de la bande.

Référendums ultérieurs

30. (1) Lorsque la majorité des électeurs d'une bande n'ont pas voté par référendum tenu pour déterminer si la bande est en faveur d'une cession, le Ministre peut, si la cession est agréée par la majorité des électeurs qui ont voté, tenir un autre référendum conformément au présent règlement.

(2) Lorsque, à la tenue d'un référendum pour déterminer si la bande est en faveur d'une proclamation, la majorité des votants rejettent la proclamation, il ne sera pas tenu d'autre référendum avant au moins deux ans à compter de la date du référendum précédent, à moins que le Ministre ne l'ordonne autrement.

Appels

31. (1) Lors de la tenue d'un référendum sous le régime du présent règlement, tout électeur qui a voté par référendum et qui a des motifs raisonnables de croire

- a) qu'il y a eu violation dudit règlement qui pourrait porter atteinte au résultat du référendum, ou
- b) qu'il y a eu manœuvre corruptrice à l'égard du référendum,

peut envoyer au sous-ministre adjoint, par poste recommandée, dans les 7 jours qui suivent la date du référendum,

- c) un avis d'appel; et
- d) une déclaration assermentée contenant les motifs de l'appel et les détails de cet appel.

(2) Lorsqu'un avis d'appel est déposé aux termes du paragraphe (1), le sous-ministre adjoint doit, dans les 21 jours qui

receipt thereof forward a copy of the appeal by registered mail to the electoral officer.

(3) The electoral officer shall within 10 days from the receipt of the appeal forward to the Assistant Deputy Minister by registered mail a statutory declaration containing an answer to the particulars stated in the appeal.

(4) The Assistant Deputy Minister shall forward the material filed pursuant to this section to the Minister.

32. (1) The Minister may, if the material filed pursuant to section 31 is not sufficient to decide the validity of the grounds of the appeal, conduct such further investigation as he deems necessary.

(2) Subject to subsection (3), the Minister may dispose of an appeal by allowing it and calling another referendum.

(3) Where the Minister is of the opinion that the grounds of appeal

(a) are not established, or

(b) do not affect the results of the referendum,

he shall dismiss the appeal.

Forms

33. The Minister may prescribe such forms as are required for the purposes of these Regulations.

suivent la réception de cet avis d'appel, en envoyer un exemplaire, par poste recommandée, au président d'élection.

(3) Le président d'élection doit, dans les 10 jours qui suivent la réception de l'appel, envoyer au sous-ministre adjoint, par poste recommandée, une déclaration statutaire contenant une réponse aux détails énoncés dans l'avis d'appel.

(4) Le sous-ministre adjoint doit envoyer au Ministre tous les documents déposés sous le régime du présent article.

32. (1) Le Ministre peut, si les documents déposés sous le régime de l'article 31 ne sont pas suffisants pour décider de la validité des motifs de l'appel, faire les enquêtes qu'il jugera nécessaires.

(2) Sous réserve du paragraphe (3), le Ministre peut admettre un appel et ordonner la tenue d'un autre référendum.

(3) Si le Ministre est d'avis que les motifs de l'appel

a) ne sont pas établis; ou

b) ne portent pas atteinte au résultat du référendum,

il rejettera l'appel.

Formules

33. Le Ministre peut prescrire les formules requises aux fins du présent règlement.

APPENDIX G

WESTBANK COMMUNITY PROFILE

**AGREEMENT ON AN AGENDA AND PROCESS
FOR THE NEGOTIATION OF AN AGREEMENT-IN-PRINCIPLE
ON WESTBANK LOCAL GOVERNMENT**



WESTBANK INDIAN COUNCIL

COMMUNITY PROFILE

Background Information

The first people of Westbank are historically and traditionally part of the larger cultural group of North Okanagan Indians. The Okanagans have covered most of the central south interior of British Columbia and north central Washington state along the Okanagan Valley since time immemorial. The North Okanagan are, in turn, one of five groups within the Interior Salish linguistic family.

Reserves for the Okanagan Band were allocated and organized by Sir James Douglas in 1860 under the colonial administration. Although the group residing at Westbank was identified, no specific reserve lands were set aside for that area, because the Westbank group was considered part of the "Okanagan Tribe".

Shortly after B.C. joined Canada in 1871, the Joint Reserve Commission confirmed the existing Okanagan reserves. At that time (1877), the group at Westbank requested reserves, but provincial representatives felt that the Okanagan Tribe as a whole had sufficient reserve lands. In 1888 the Tribe requested a re-allocation of the Okanagan commonage lands, to provide additional Indian reserve acreage to create more private landholdings for band members. In the process reserve lands were set aside for the first time at Westbank, and confirmed by Commissioner O'Reilly in the fall of that year.

"Westbank" is an English term given to the reserve by the post office in 1902, to indicate its position on Okanagan Lake. The band has discussed reverting back to its original Indian name, "Tsintikeptum", in the near future.

When Westbank became an independent band, development on the reserve level had an agricultural orientation. Much of the better land was on lease to non-Indian interests and a large proportion of the band's land holdings were undeveloped. In the region as a whole, the population of the Okanagan Valley grew rapidly as the area developed as a commercial, industrial and service centre. The area has also become an important centre for retirement. Kelowna emerged as a city in need of a larger land base, and Westbank became a prime target for development.

Community Description

Within the Okanagan Valley, Westbank has two reserves southwest from the town of Kelowna on Highway 97. The Coquihalla Highway extension will be on their doorstep by 1991.

Westbank consists of three reserves, I.R. No. 8 (Mission Creek), Tsintikeptum Nos. 9 and 10, of which only the latter two are populated. The Mission Creek reserve lost some 80 acres as a cut-off during the 1916 McKenna-McBride Royal Commission. The reserves encompass 2,705 acres and the band has purchased an additional 2,800 acres of land which they would like to have transferred to reserve status. The population of the band as of December 1989 was 410 members, 242 of whom live on Westbank or other reserves, 168 off-reserve. There are approximately 5000 non-Indians resident on reserve. Westbank Band Council is presently comprised of one elected chief and three elected councillors. In August 1990 there will be one additional elected councillor.

Address: Westbank Indian Band
301-515 Highway 97 South
Kelowna, BC V1Z 3J2

Westbank Indian Council
Community Profile
May 8, 1990

Telephone: (604) 769-5666

Fax: (604) 769-4377

Chief: Robert Louie

Councillors: Larry Derrickson
Rose Derrickson
Brian Eli

Linguistic Characteristic: Okanagan

Member of Parliament: Mr. Al Horning, P.C.

Federal Riding: Okanagan Centre

Member of Legislature: Mr. Cliff Serwa, S.C.
Mr. Larry Chalmers, S.C.

Provincial Riding: Okanagan South

Community Facilities:

- Church
- Three cemeteries
- 14 trailer parks, individually owned
- Three-storey band office building
- Fire hall
- Intermediate care facility
- pre-school
- private school (K-7)

There are 12 band owned companies:

- Lakeridge Property Management
- Sookinchute Utilities
- WIBCO Construction Ltd.
- Wild N' West Amusement Park Ltd.
- Realty World Lakeridge Realty Ltd.
- Lakeridge Travel Services Ltd.
- Lakeridge Insurance Services Ltd.
- Westbank Indian Band Development Co. Ltd.
- Toussowasket Custom Framers Ltd.
- Hype Park Image Creators Inc.
- Westbank Indian Band Holding Co. Ltd.
- Ogopogo Manufacturing Ltd.

Band By-Laws:

39 by-laws have been passed by the band which regulate such diverse matters as the disposal of garbage and waste and the subdivision of land. It is one of the most comprehensive sets of band by-laws in effect in the Province of B.C. Six by-laws have been disallowed by DIAND and are being redrafted. The band intends to implement a taxation and assessment by-law in the immediate future.

Conclusion

Because Westbank is situated in such a prime location, it envisions a close interface with the ever-expanding adjacent non-Indian community of Kelowna. Extensive development of reserve lands is therefore expected to continue. This provides an important economic base for the band, as well as providing extensive benefits for both Westbank and Kelowna.

Though small in size, Westbank has emerged as a leading entrepreneur like no other B.C. band.

APPENDIX H

EXISTING SITUATION

**AGREEMENT ON AN AGENDA AND PROCESS
FOR THE NEGOTIATION OF AN AGREEMENT-IN-PRINCIPLE
ON WESTBANK LOCAL GOVERNMENT**



EXISTING SITUATION

WESTBANK INDIAN BAND

1.0 LEGAL STATUS AND CAPACITY

The law in this area is unclear. The Indian Act does not define the status and legal capacity of the band or the band council. Nor does it define the relationship of the band council to the band membership. Such omissions have resulted in great uncertainty about the status and legal capacity of the band and band councils, which to a large extent has not been clarified by the courts. In the past this uncertain legal situation has been an impediment to band business initiatives, and non-Indian interests have limited assurances that band governments can enter into contracts, bring or defend law suits, and generally act in the name of the band.

Approximately eight years ago, as a result of the court decision in the Public Service Alliance vs Chief Francis, (1982) 139 DLR, 3rd. 9, the B.C. Attorney General expressed the opinion that although the legal capacity of a band or band council was not clearly defined in statute law, the courts were prepared to recognize sufficient capacity to enter into agreements and to sue or be sued, should a default occur. Based on that opinion, the provincial Municipal Act was amended to specifically authorize municipalities to enter directly into contracts for local services with Indian bands. At present there are some 297 such direct agreements in place.

In British Columbia, it is recognized practice that a band is considered able to enter into a contract, or provide surety for an undertaking on its own behalf, without the involvement of the Department of Indian Affairs.

2.0 LOCAL POWERS AND CAPACITY

Band currently operate under a delegated authority. Subdelegation is not possible in law. Band councils can enact by-laws under the Indian Act subject to varying degrees of control by the Minister.

3.0 STRUCTURES AND PROCEDURES OF GOVERNMENT

Institutions of Government

In terms of statute law, the Federal Government exercises primary jurisdiction under this heading by way of the provisions of the Indian Act.

Section 2(1) of the Indian Act defines and gives recognition to bands and band councils. The role of the band council and its relationship to the band is suggested in Section 74, where there is reference to the selection of band councils "for the good government of bands." Section 2(3) prescribes the manner by which a band and band council shall exercise the powers conferred by the Act.

The council of the Westbank Band is composed of a chief and three councillors, but because of the Bill C-31 additions to membership, the council will shortly have an additional councillor. The council is elected pursuant to the provisions of the Indian Act.

Westbank Band does not use Indian Affairs referenda regulations. Decisions are usually made by band membership at general band meetings as required under the Act.

Elections

The Indian Act and the regulations passed thereunder provides for the election of chiefs and band councils, or for the recognition of existing band custom in the choice of the chief and council. Bands may also revert to band Custom, with majority elector support, if they codify their system including appeal mechanisms and an amending provisions, and follow the principles of natural justice and the Charter of Rights and Freedoms.

Westbank Band uses the Indian Act Election procedures.

Financial Accountability

There are two types of financial accountability, internal to the band membership, and external to the federal government. The Westbank Band has an Alternative Funding Agreement with the federal government, which requires direct internal reporting to the band membership. The requirement for accounting of expenditures through annually audited financial statements remains.

Under the Indian Act there are three sources of funds - capital, revenue and loans - which are defined as Indian Moneys under the Act. Bands also receive funds through grants and contributions, which do not qualify as Indian Moneys. Both Indian Moneys under the Act and other types of funds may be controlled, managed and expended by bands.

There are no specific requirements for either internal or external reporting for the expenditure of band Government funds collected by band councils under Section 83 by-laws.

Under Section 69 of the Indian Act, where a band is given permission to control, manage and expend, in whole or in part, its revenue monies, the band is required to engage an auditor and to render an annual report on expenditures. This report is available on the reserve for examination by members.

Accounting for other federal funding in the form of government grants and contributions is to the funding source and to the membership.

3.0 FINANCIAL ARRANGEMENTS

Bands administer their monies and federal contribution funds under the terms of the Financial Administration Act. Bands also administer monies from other agencies following whatever arrangements are outlined in the specific agreements. In addition bands administer funds they generate themselves, or acquire through fee-for-service arrangements.

Bands report to the Minister on disbursements and expenditures for funds provided by DIAND, so the Minister can account to Parliament. Under the Indian Act, the bands accountability to the membership is limited.

With respect to the money or property of specific individuals (eg. "mentally incompetent" Indians living on reserve, the Minister assumes responsibility for the property of that individual, and the reporting relationship is not to the band but rather is a private matter between the Minister and that individual and/or their representative.

Under DIAND's Alternative Funding Arrangements (AFA) policy, band councils are primarily accountable to their membership and secondarily to the Minister through

the annual audit report. Alternative Financial Arrangements are "other transfer payments" subject to specific terms and conditions. The current five-year AFA was finalized in March 1989.

Non-status family members resident on reserve receive services from the band without cost recovery from the government. Westbank assists members of other bands to access DIAND services.

5.0 MEMBERSHIP

Indian Act provisions permit bands with majority elector consent, to enact membership rules, and maintain their own band lists. The decision about who has Indian status must still be made by the Registrar under the provisions of the Indian Act. Membership in a band does not automatically confer Indian status.

Under the terms of the Indian Act, membership rules must not deprive persons of membership by reason of situations existing prior to the enactment of the rules, and they must provide mechanisms for appeal. Membership in bands that do not enact membership rules continues to be governed by the Indian Act.

After the passage of Bill C-31 in 1986-87, Westbank drafted a membership code for the first time. Over \$30,000 was expended in drafting and community consultation, \$7000 of which came from the federal government. Thirteen full band meetings were held before the vote was taken. The band opened the voting to all band members both on and off reserve, but did not receive the 50% plus one of band membership required to pass the code.

Since Bill C-31 was passed, band membership has almost doubled, rising from 240 in 1986 to 410 today.

6.0 LANDS AND LAND MANAGEMENT

Generally speaking, all reserve lands are 91(24) lands, that is within the meaning of the Constitution Act, Federal lands reserved for use and benefit of Indians. The title to Indian Reserve lands is vested in the Federal Crown for the use and benefit in common of the band members. The power to legislate respecting Indians and Indian lands rests with the Federal Crown.

The federal government has legislated under the section 91(24) power with relation to reserves lands by enacting the provisions of the Indian Act. It is through the provisions of the Indian Act that Indian lands are administered by the federal government. The band council may pass by-laws on several aspects of lands management under Section 81, and more complete control of lands management can be delegated from the Minister to the band through Sections 53 and 60. The Westbank Band has both Section 53 and 60 powers.

The provincial government does not have the capacity to legislate so as to effect the special status of Indian lands. Section 88 of the Indian Act states that all laws of general application in the province shall apply on reserve, except where the federal government or band by-laws occupy the field. Reserve lands which have been absolutely surrendered to the Minister and sold, lose their special status as Indian lands and all provincial laws then apply.

Under Section 20 of the Indian Act, individual Indians are able to acquire a specific interest in reserve lands, which is reflected in the possession of a Certificate of Possession or a locatee ticket. In the case of Westbank Reserve lands over 80% are

presently held directly by individuals either under Certificates of Possession or through long-term leases.

7.0 RESOURCE MANAGEMENT

Renewable Resources

The jurisdictional situation in relation to Indian hunting, trapping and fishing is complex. Technically in British Columbia, provincial hunting regulations apply on reserve, except in the few areas where treaties have been signed. The provincial government does pursue prosecutions of reserve residents who hunt in contravention of the Wildlife Act. Generally however the provincial officials do not lay charges when the hunting on reserve is clearly for native consumption.

Indian fishing in British Columbia occurs in a mix of jurisdictions. The courts have held that a band by-law under Section 81 related to Indian fishing supersedes the B.C. regulations made under the (federal) Fisheries Act. Without a band by-law, the entire jurisdiction over Indian fishing both on and off reserve falls under the Fisheries Act and the B.C. regulations. The Department of Fisheries and Oceans issues Indian food fish permits and manages marine species. Responsibility for the management of fisheries in non-tidal waters has been delegated to the provincial government, through the B.C. fishing regulations.

Under the provincial Wildlife Act, Indians are exempt from the licensing requirements governing hunting, except for the limited entry hunting permit provisions. Indians however are required to abide by the open and closed season provisions of the Wildlife Act, and are regularly prosecuted for failure to abide by the Act. Westbank does not accept that the limited entry hunting provisions apply to their members.

The Wildlife Act has a provision making a special permit available to persons who make an application to hunt out of season for food. Indians are the usual recipients of these sustenance permits, but are often unwilling to apply to the province. Courts have held that an Indian who applies for a sustenance permit and is turned down, who subsequently hunts and is charged, will not be convicted. It is now quite rare for the province to press charges under these circumstances.

Since the reserve land base in British Columbia is so small, only a small portion of the Indian traditional traplines are on reserve. Provincial regulations apply to all traplines in the province, even to the part of an individual trapline which is on reserve.

Indian trappers are exempt from the requirement to hold a provincial trapping permit, and are not required to make annual royalty payments to the province. However all Indian traplines are required to be registered with the province, and have no special or protected status. Trappers are required to "maintain their trapline by building visible trapping cabins to a value of not less than \$500.00 and to carry \$1 Million in public liability insurance, renewable annually". Westbank has three members who have provincial traplines.

Timber off-reserve is administered under the provincial Forestry Act and regulations. Timber on reserve is administered under the Indian Timber Regulations, made under Section 57 of the Indian Act. There is an evolving policy manual which describes in detail how the regulations are interpreted in B.C. Pursuant to regulations, the Minister may issue permits to bands and licences to non-Indians to allow for the disposal of timber from reserve lands.

Westbank holds a timber sale license over approximately 1200 acres of provincial crown land adjacent to the Gallagher Canyon property. The band is developing a proposal to apply for a tree farm license under the provincial Forestry Act.

Non-Renewable Resources

Off-reserve mining is under provincial jurisdiction, and is administered under the Mineral Act, the Mineral Resource Tax Act, and the Mining Tax Act.

The Indian Act, specifically the Indian Mining Regulations under Section 57, does not apply to mining on Indian reserve lands in British Columbia. Mining activities on Indian reserves in B.C. are covered by the interlocking provincial Indian Reserve Mineral Resources Act (1943) and the federal B.C. Indian Reserve Minerals Act (1943). These pieces of legislation were required because the provincial government did not transfer precious metals to the federal government when the B.C. Indian reserves were transferred to Canada in 1938.

These acts provide that, upon designation of lands for mineral development, that the administration of all revenues from mining operations on reserve will fall to the province. The acts state that the province shall collect all revenues from Indian reserve mining activities, and at the end of the fiscal year, remit one-half of those revenues to the Receiver General for Canada. Although the legislation has never been used, the wording implies that "revenue" consists of funds provided from the sale of minerals, after the provincial royalties and taxes are collected.

The requirements of these acts are such that all mineral development involving reserve lands in B.C. has been done through surrender and direct sale of the lands to the mining company.

There are no merchantable minerals on Westbank reserves. However the Gallagher Canyon property - which was purchased with highways compensation and a cut-off claims settlement but is not yet reserve land - has merchantable mineral potential.

Westbank has sand and gravel on reserve.

Water Rights

The central Okanagan is an area of chronic water shortage which leads to major disputes between users. The water shortage hinders development on Westbank lands, as well as affecting current domestic use.

Both the federal and provincial governments have a capacity to regulate water. In the case of B.C. Indian reserve lands, the status of water rights relates to the date of setting aside the individual reserve, and the original comments, if any, related to a source of water for those lands. The location of a reserve inside the original railway belt may also be important.

The federal government ceased to lobby for Indian water rights in B.C. after they were successful in getting passage of the provincial Indian Water Claims Act (1921), which integrated the federal and provincial Indian reserve water records into the provincial system.

All Indian reserve water records related to surface water are registered with the provincial government, and managed under the terms of the provincial Water Act. There is no regulation of ground water under that legislation.

The provincial legislation requires the province to cancel an existing water record, if

there is evidence that beneficial use has not been made of the registered flow for the previous three years. There have been numerous cancellations of Indian Reserve Water Licences, with a resultant transfer of those water rights to non-Indian users.

Indian bands in B.C. are not satisfied that there has been adequate protection of the Indian interest in water, and have currently formed an "Indian Water Rights Committee" to deal with the province over the issues. Westbank is a member of this committee.

Westbank Band currently holds 17 water licences, one of which, on McDougall Creek, was recently reviewed through a provincial Water Act hearing. The band was successful in maintaining the licence.

Westbank recently lost its rights to water storage in Shannon Lake. The federal government had not maintained the easements required to transport Shannon Lake water to the reserves and the provincial government cancelled the provincial water license for lack of beneficial use. A similar situation exists with the Marlow Springs water license but the province has not proceeded with cancellation.

Westbank Indian reserves Nos. 9 and 10 front on Okanagan Lake, and the Band's position is that they have aboriginal and riparian rights to water in Okanagan Lake and streams crossing Westbank reserve lands.

Lakefront Foreshore

The ownership and jurisdiction over Okanagan lakefront foreshore is not clearly defined in law. The provincial government transferred lakefront foreshore to the provincial crown in 1961 through an amendment to the provincial Land Act. This was in response to a Supreme Court of Canada decision declaring riparian rights to be in existence in B.C. Because it is beyond the capacity of the province to change the status of Indian land, it is unlikely that the amendment applies to foreshore on reserve land. The extent of the band's foreshore rights have therefore not been established.

The regional districts and local municipalities are involved in a joint planning exercise to zone the Okanagan Lake foreshore. Westbank is making its position and jurisdiction known to the other levels of local government. The band is considering registering a caveat over the foreshore.

9.0 ADMINISTRATION OF JUSTICE

The federal government has jurisdictional authority for criminal law and criminal procedure. Provincial governments administer the criminal justice system. Matters of a civil nature generally fall under provincial jurisdiction. Within the Indian Act, Section 81 provides that the band council may make by-laws in relation to the observance of law and order (s. 81(c)) and the prevention of disorderly conduct and nuisance (s. 81(d)). Section 81 powers are, however, somewhat restricted. Sections 101 and 102 of the Act and other sections relate to offenses in relation to provisions of the Act. Section 103 pertains to forfeitures and penalties for offenses against various Indian Act sections. Section 107 gives Justices of the Peace authority over Indian Act offenses, including breach of by-laws and certain summary Criminal Code offenses. Currently there are only six of these Justices of the Peace in Canada and further appointments under this section have been suspended pending a policy review.

Policing

The Indian Act provides for the passage of band by-laws for the observance of law and order and the prevention of disorderly conduct and nuisances. Attempts have been made to pass by-laws regarding the establishment of police forces. The Minister has disallowed such by-laws pursuant to subsection 82(2) of the Indian Act.

There is no legislation at either the federal or provincial levels that provides for the establishment of a police force on a reserve.

10.0 TAXATION

Both the federal and provincial governments have jurisdiction over the three types of taxes: consumption taxes, income taxes and real property taxation. The provincial governments have a more limited taxing authorities than the federal government, but can validly enact all three types of taxation, as long as the tax is a direct levy against the person or legal entity intended to pay. In cases where the two levels of government have concurrent jurisdiction, normally political arrangements are made to share the tax field equitably.

The recent amendments to the Indian Act with respect to taxation, make it clear that bands have broad powers to tax reserve lands. The power to pass a taxation by-law under Section 83 allows the band to tax occupiers of reserve lands, and undertake all the normal business related to the administration and management of a band taxation regime. Section 87 of the Indian Act provides certain exemptions from taxation to Indians and Indian bands.

In British Columbia the courts have held that the provincial government may tax non-Indian interests in Indian reserve lands. Currently about 0.7% of the provincial real property tax base is levied against occupiers of Indian reserve lands. This figure includes general taxes, as well as school and hospital taxes.

Although these taxes are a small percentage of those levied in B.C., they create major problems for the province. Since the bands are generally opposed to provincial jurisdiction over on-reserve taxation, the bands do not co-operate with the province over collections.

The province of B.C. recently passed the Indian Land Cooperation Act (RSBC 1989), which allows for the vacating of certain tax fields on the introduction of a band taxation by-law. The degree to which bands make use of this Act remains to be seen, since it does not allow a band to occupy the whole range of provincial property taxation.

Indian-owned corporations are currently not tax-exempt.

Consumption Taxes

In British Columbia the province has not recognized an Indian exemption from provincial consumption taxes. Off-reserve, status Indians pay all provincial taxes.

On-reserve, the provincial government has made special arrangements designated individual retailers as able to sell tax-exempt goods to status Indians, with the restriction that the items must be for individual consumption on reserve lands.

This means that provincial consumption taxes are still collected on the majority of purchases by Indians on reserve lands.

11.0 OTHER OPTIONAL ELEMENTS

11.

Education

Westbank Band currently administers the post secondary education program for band members under an arrangement with DIAND.

Westbank opened a band school in September 1989 which delivers grades K-12 to some members. Members resident on Westbank lands who attend provincial schools are covered under the Canada/B.C. Master Tuition Agreement, and tuition costs are transferred to the province under the terms of that agreement.

Non-Indians resident on Westbank lands attend local public schools.

Social Services

The Westbank Band currently administers the DIAND-sponsored social development program for its on-reserve members. Until 1985, the band administered all Social Development funds on reserve, including those provided to non-Indian occupiers. DIAND changed the terms of its agreement for delivery of service on reserve, and the non-Indian cases were transferred to the province. Since funding for staff was based on the number of cases, the social development staff was cut from 3.5 to 1.

Child Welfare

Child welfare on Westbank reserves is provided by the band through several Social Development programs. When a child is apprehended - even off reserve - using the provincial Family and Child Welfare Act, the provincial legislation requires the involvement of the band social worker.

Placements under the provincial legislation are generally made with the concurrence of the band. Unless there is a requirement for specialized residential treatment for the child, s/he is usually placed with band members on reserve. At present there are two Westbank children in provincial care, and one of them is placed on reserve.

British Columbia has agreed to enter into joint child welfare agreements with interested bands.

Health

Under the terms of an exchange of correspondence in 1974, the provincial government takes responsibility for the provision of community health services for non-Indian occupiers of Westbank lands. This is currently under review, and some services have not recently been available. Status Indians have their provincial health insurance and their non-insured health benefits covered by Health and Welfare Canada.

Medical Services Branch, Health and Welfare Canada provides funding for one and a half community health workers, who work under the direction of the band. One of these is primarily a drug and alcohol counsellor. Medical Services Branch also provides the services of an environmental protection officer.

The provincial Ministry of Health has accredited the Pine Acres Intermediate Care Facility under the provincial Long Term Care program, and provides subsidies for residents. The Ministry of Health also provides funding for a community health

worker based in Pine Acres. This worker has responsibility for assuring that band members in need of some assistance can live independently as long as possible.

12. Public Order and Safety

The Westbank Band has the authority to pass band by-laws related to public order and safety.

13. Community Infrastructure and Public Works

Public Works and community infrastructure on reserve are essentially within the Federal sphere. The Federal powers over reserve lands, as outlined in the Indian Act suggests that the Minister of Indian Affairs has the jurisdiction to provide services and regulate standards for community infrastructure and service delivery.

The standards set for both community infrastructure and service delivery are determined by federal policy and the program delivery criteria which flow from that policy. The availability of a particular program or service to reserve lands is dependant on the current policy parameters, and the availability of funds.

At Westbank, the band has delegated authority from the Minister to manage both the lands and most financial resources. Community services are delivered directly by the band, or are provided through contracts with other levels of government, including the Central Okanagan Regional District, Areas G and H; Lakeview Irrigation District; and the Municipality of Kelowna.

Private contracts are also used for some services such as garbage pickup from trailer parks, though in many instances the contract may be between a locatee or a non-Indian lessee and the contractor, rather than with the band itself.

Since there are more than 5000 non-Indian occupiers on Westbank lands, service delivery to the non-Indians varies from parcel to parcel. In general the band delivers services to all band members on reserve, and the developers of reserve lands are expected to provide services to the non-Indian occupiers. However, over time, the band council, as the local government for the reserve lands has been forced to provide services, particularly sewer and water services, to the majority of the non-Indian occupiers. There have been no financial resources provided for non-Indian occupier services, either from DIAND or from the provincially-collected reserve tax base.

14. Licensing, Regulation and the Operation of Businesses

The Westbank Band has a band by-law which covers part of this area, and has the authority to develop and implement a broader by-law if it wishes to do so.

15. Wildlife Management

The Westbank Band has the authority to establish a by-law in this area.

16. Agriculture

The Westbank Band has the authority to establish a by-law in this area.

17. Environment

The federal and provincial governments have interlocking environmental legislation.

Federal environmental review processes apply to federal lands and to areas of federal jurisdiction. In certain circumstances, such as marine estuaries, federal environmental review processes also apply to provincial lands.

In British Columbia the provincial government has legislated review processes for metal mines, coal mines, and utility projects. The provincial Ministry of Environment (Waste Management Branch) is responsible for establishing permitted levels for effluent discharges, municipal waste disposal, and the like. The Waste Management Branch permit application process is the sole review mechanism for most industrial developments in the province.

Although the federal Department of Environment has jurisdiction for on-reserve developments, the required federal regulations have not yet been proclaimed. However the federal agencies involved in environmental protection, including Fisheries and Oceans, Health and Welfare Canada, Environment Canada and Indian Affairs have a federal/provincial committee structure which currently serves to identify environmental protection problems as they occur on reserve lands.

Indian reserve lands are included for impact assessment in all provincial environmental and socio-economic review impact assessments, and Indian reserve lands are specifically included within provincial Regional District boundaries, which allows for band use of a broad range of provincial services such as land fill sites, and safety inspections.

18. Traffic and Transportation

The Westbank Band has the authority to regulate these items, but it does not have any jurisdiction over a number of roads running through reserve lands because these roads are dedicated to the provincial Crown.

Under the Indian Act, the Minister can authorize the survey and subdivision of reserve lands, and determine the location of roads on reserve.

Indian reserves in B.C. were transferred from the provincial to the Federal government through Order-in-Council 1036 in 1938. One of the terms of that transfer, any roadway which existed prior to that transfer, whether simply a right of way, or a road actually in current use at the time, was excluded from the transfer to federal jurisdiction.

The province also reserved the right to take up to one-twentieth of the reserve lands transferred to the federal government back into provincial jurisdiction at any time, as long as the land was required for purposes related to public utilities.

There is no compensation payable to the band for Order-in-Council 1036 resumptions, except where the land is "developed", and the compensation payable is limited to compensation for the improvements on the land, not for the loss of the land itself. Neither notice nor negotiations are required for an Order-in-Council 1036 resumption, though in practise the province does negotiate and pay compensation prior to raising the Order-in-Council. Effectively then, most roads on Westbank lands are, in the opinion of the province, beyond the jurisdiction of the band. The band, however, is interested in addressing the Order-in-Council resumptive right with the province. Federal involvement may not be necessary to address this issue.

19. Culture

Limited authority is available to the band in this area. It would be restricted to non-legislated activities, such as policy related to use of culture and native languages in band schools.

21. Management of Indian Monies

See discussion under Land and Land Management and Financial Arrangements.

22. Succession

Under the Indian Act, the Minister or his representative is responsible for all matters relating to succession, wills and probate for Indians resident on reserve lands. None of these responsibilities has been delegated to bands.

