

WESTBANK FIRST NATION
SECOND-HAND DEALERS AND PAWNBROKERS
LAW NO. 2005-09

WHEREAS Council of Westbank First Nation deems it advisable and in the best interests of Westbank First Nation to enact a law to regulate the businesses of second-hand dealers and pawnbrokers within Westbank Lands for the purpose of protecting the public by preventing or minimizing misleading business practices;

NOW THEREFORE Council of Westbank First Nation hereby enacts the following law:

1. TITLE

1.1 This Law may be cited as the "*WFN Second-Hand Dealers and Pawnbrokers Law No. 2005-09*".

2. DEFINITIONS

2.1 In this Law, unless the context otherwise requires:

"**Council**" means the governing body of Westbank elected pursuant to *the Westbank First Nation Constitution*;

"**Licensee**" means any holder of a valid business licence for a second-hand dealer or pawnbroker;

"**Officer in Charge**" means the officer in charge of the detachment of the RCMP responsible for policing Westbank Lands, or any delegate;

"**pawn**" means to deposit goods or chattels as security for the payment of money or other consideration;

"**pawnbroker**" means a person who carries on the business of taking goods or chattels in pawn;

"**peace officer**" means a member of the local detachment of the Royal Canadian Mounted Police responsible for policing Westbank Lands, or any delegate;

"**person**" in addition to its ordinary meaning, includes any association, household, society, corporation, partnership or party, whether acting by themselves or by a servant, agent or employee, and the successors, assigns and personal or other legal representatives of such person to whom the context can apply according to law;

"**Second Hand Dealer**" means:

- (a) every person who carries on a business of any kind that includes as part of the business, purchasing or selling of second-hand or used goods or chattels but does not include second-hand clothing stores, thrift stores, antique dealers, duly licensed auctioneers, flea markets, or recycling depots;

- (b) every person who, while licensed or required to obtain a licence for any business other than businesses referred to in this Law, purchases or stores, either as principal or agent, any goods or chattels but does not include second-hand clothing stores, thrift stores, antique dealers, duly licensed auctioneers, flea markets, conventional moving and storage businesses, or recycling depots;

"thrift stores" means any store or business operated by a society registered pursuant to the *Society Act* of British Columbia;

"Westbank" or **"WFN"** means the Westbank First Nation as defined in the *Westbank First Nation Constitution*;

"Westbank Lands" means:

- (a) the following Westbank Indian Reserves:
- (i) Mission Creek Indian Reserve No. 8
 - (ii) Tsinstikeptum Indian Reserve No. 9
 - (iii) Tsinstikeptum Indian Reserve No. 10
 - (iv) Medicine Hill Indian Reserve No. 11
 - (v) Medicine Creek Indian Reserve No. 12; and
- (b) lands set apart by Her Majesty the Queen in right of Canada in the future as lands reserved for the use and benefit of Westbank, within the meaning of subsection 91(24) of the *Constitution Act, 1867*; and

"WFN Law Enforcement Officer" means the person or persons appointed by Council, from time to time, to administer and enforce the provisions of Westbank Laws enacted by Council, and includes any delegate or any peace officer.

2.2 Unless otherwise provided in this Law, words, expressions and rules of construction used in this Law have the same meaning as in the *Westbank First Nation Constitution*.

3. BUSINESS LICENCE

3.1 All persons carrying on the business of a second-hand dealer or pawnbroker must apply for, obtain and hold a business licence and comply with all provisions of the *WFN Business Licence Law*.

3.2 Every person carrying on the business of a second-hand dealer or pawnbroker must supply the WFN Law Enforcement Officer and the Officer in Charge with the full name, date of birth, current address and description of every individual proposed to be employed prior to their employment, and every individual engaged in the management or control of the business.

3.3 Every Licensee must notify the WFN Law Enforcement Officer and Officer in Charge of any changes in the persons engaged or employed in the business during the business licence period by supplying the information listed in subsection 3.2 of this Law with respect to those persons.

- 3.4 All Licensees must receive and keep all inventory only on the designated premises listed on the business licence, or on another site which has been pre-approved by the WFN Law Enforcement Officer.
- 3.5 The WFN Law Enforcement Officer must notify the Officer in Charge of all business licence applications for second-hand dealers or pawnbrokers and provide the Officer in Charge with a copy of the applications.

4. INSPECTION OF PREMISES

- 4.1 The WFN Law Enforcement Officer is hereby authorized to enter during business hours and at all reasonable times, the premises that are licensed or proposed to be licensed for second-hand dealing for the purposes of determining compliance with the provisions of this Law, the *WFN Business Licence Law* and all other Westbank Laws.
- 4.2 All Licensees or persons seeking to be licensed for second-hand dealing must admit the WFN Law Enforcement Officer entry to the premises for the purposes of inspection and must not in any way hinder or obstruct the inspection and must on request supply information relevant to the inspection for the purposes of determining compliance with all Westbank Laws and relevant provincial legislation.

5. PURCHASE OF GOODS

- 5.1 No person shall purchase or receive in pawn goods or chattels unless the person depositing the goods or chattels is:
- (a) eighteen (18) years of age or older;
 - (b) not under the influence of alcohol or drugs; and
 - (c) able to produce valid, photographic identification showing the actual person pawning the goods or chattels, with such identification in the form of a valid driver's licence issued by a Canadian Province or Territory, a Canadian Passport, a Certificate of Indian Status, a provincial identity card issued by a Canadian Province or Territory, or a valid Federal identity card issued by the Canadian government.

6. RECORDS OF GOODS

- 6.1 All persons holding a valid WFN Business Licence to carry on the business of a second-hand dealer or pawnbroker must deliver, or send by fax or other electronic means, to the Officer in Charge prior to 9:30 a.m. on Monday of each week, a statement of all goods and chattels purchased or received by the Licensee during the previous week, which statement must:
- (a) be made on a form of Second-Hand and Pawnbroker Dealers' Report, or an electronically produced report, in a format which has been approved by the Officer in Charge;
 - (b) be accurate, legible, in the English language and written by the Licensee or an employee of the Licensee;

- (c) include a separate entry for each item purchased or received which must include the date pawned, date returned and/or sold;
 - (d) include a description of the item including all descriptive marks, colours, and name and serial number, including an indication that the item is "new" when it is received in its original packaging;
 - (e) include the price paid and whether the item was deposited in pawn or purchased;
 - (f) include the date and time of purchasing or receiving the goods and chattels;
 - (g) include the full name, date of birth, current address, description (including height and weight), and the contact telephone number of the person depositing the goods and chattels, along with a copy of the photographic identification produced pursuant to section 5.1 of this Law which is to be attached to the master log book;
 - (h) include the make, description, and licence number of any vehicle used by the person depositing the goods and chattels, if available;
 - (i) include the name of the person receiving the goods and chattels; and
 - (j) in the case of jewellery, include a description of the type, colour, style and apparent type of gem.
- 6.2 A master logbook of all purchased and pawned goods containing all of the information listed in section 6.1 of this Law must be kept on the premises listed on the business licence. The master log book must be a separate record of every item purchased or taken in pawn, and must include all of the information listed in section 6.1 of this Law and includes an electronic record system approved in accordance with subsection 6.1(a) of this Law.
- 6.3 No Licensee shall permit any entry made in the master log book containing the record of goods outlined in section 6.1 of this Law to be erased, obliterated or defaced in any way.
- 6.4 No Licensee shall permit the master logbook containing the records outlined in section 6.2 of this Law to be removed from the licensed premises except upon the request of the WFN Law Enforcement Officer and/or the RCMP upon demand.
- 6.5 No second-hand dealer or pawnbroker shall take in pawn or purchase an article or thing where its serial number or other identifiable marking has been tampered with or removed.
- 6.6 A second-hand dealer or pawnbroker must identify and mark each article pawned or purchased with the identity number listed on the Second-Hand and Pawnbrokers Dealers' Report during the holding period listed in section 7.1 of this Law and for the duration of the time that the item is held in pawn.

7. DISPOSAL OF GOODS

- 7.1 No Licensee shall alter, sell, exchange, or otherwise dispose of goods or chattels deposited with or delivered to the Licensee until after the expiration of twenty-one (21) days, exclusive of Sundays and holidays provided that the Licensee may, upon request, return goods or chattels to the person who originally deposited them with the Licensee must keep such goods and chattels segregated from other goods and chattels located on the premises so as to allow inspection by the WFN Law Enforcement Officer at all reasonable times.
- 7.2 The Officer in Charge or WFN Law Enforcement Officer may waive compliance with this requirement of the Law by so advising the Licensee in writing.

8. FEES AND FORMS

- 8.1 Council may, by resolution passed at a duly convened meeting, establish, correct, revise or update the terms of any applicable fee schedules, forms, protocols or other related documentation which complement and support this Law, and will post notice of same in a public area of the WFN administration building and make a copy of same available for viewing free of charge at the administrative offices of Westbank and available for distribution at a nominal charge.

9. NOTICES & CHARGES AGAINST REGISTERED HOLDERS

- 9.1 Where Westbank is required to give notice to or imposes an additional cost or charge against the registered holder and two or more persons are shown as registered holders in respect of a parcel of land, then a notice given to or a cost or charge imposed against one registered holder is not invalidated by the failure to give notice to or impose a charge against any other registered holder.

10. OFFENCES

- 10.1 No person shall obstruct, interfere with or hinder Council, the WFN Law Enforcement Officer or any authorized employee, officer or agent in the carrying out of their duties and responsibilities under this Law.
- 10.2 Any person who violates any of the provisions of this Law or who suffers or permits any act or thing to be done in contravention or in violation of any of the provisions of this Law, or who neglects to do or refrains from doing any act or thing required by any of the provisions of this Law, is guilty of an offence under this Law, and is liable to the penalties imposed by this Law.
- 10.3 Each day a violation of this Law continues will be deemed to be a separate offence for which a fine or imprisonment may be imposed.
- 10.4 Any person who is guilty of an offence under this Law is liable, on summary conviction to a fine of not more than One Thousand Dollars (\$1,000.00) or to a term of imprisonment not exceeding thirty (30) days, or both.

11. IMMUNITY

- 11.1 No action for damages lies or may be instituted against present or past Council; WFN Law Enforcement Officer; or members, employees, servants or agents of either Westbank or Council:
- (a) for anything said or done or omitted to be said or done by that person in the performance or intended performance of the person's duty or the exercise of the person's authority; or
 - (b) for any alleged neglect or default in the performance or intended performance of the person's duty or the exercise of the person's authority.
- 11.2 Section 11.1 does not provide a defence if:
- (a) Council, WFN Law Enforcement Officer, members, employees, servants or agents have, in relation to the conduct that is the subject matter of the action, been guilty of dishonesty, gross negligence or malicious or wilful misconduct, or
 - (b) the cause of action is libel or slander.
- 11.3 Westbank, present or past Council, or members, employees, servants or agents of any of Westbank or Council is not liable for any damages or other loss, including economic loss, sustained by any person, or to the property of any person, as a result of neglect or failure, for any reason, to discover or detect any contravention of this Law or any other Westbank Law, or from the neglect or failure, for any reason or in any manner, to enforce this Law or any other Westbank Law.
- 11.4 All actions against Westbank for the unlawful doing of anything that:
- (a) is purported to have been done by Westbank under the powers conferred by this Law or any Westbank Law, and
 - (b) might have been lawfully done by Westbank if acting in the manner established by law,
- must be commenced within six (6) months after the cause of action first arose, or within a further period designated by Council in a particular case, but not afterwards.
- 11.5 Westbank is in no case liable for damages unless notice in writing, setting out the time, place and manner in which the damage has been sustained, is delivered to Westbank, within two (2) months from the date on which the damage was sustained. In case of the death of a person injured, the failure to give notice required by this section is not a bar to the maintenance of the action. Failure to give the notice or its insufficiency is not a bar to the maintenance of an action if the court before whom it is tried, or, in case of appeal, the Court of Appeal, believes:
- (a) there was reasonable excuse, and
 - (b) Westbank has not been prejudiced in its defence by the failure or insufficiency.

12. APPLICATION OF LAW

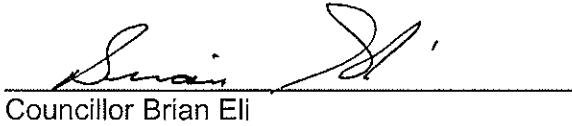
- 12.1 Where any federal Act or regulation or provincial Act or regulation or any other Westbank Law may apply to any matter covered by this Law, compliance with this Law will not relieve the person from also complying with the provisions of the other applicable Act, regulation or law.
- 12.2 If any section of this Law is for any reason held invalid by a decision of a court of competent jurisdiction, the invalid section or subsection will be severed from and not affect the remaining provisions of this Law.
- 12.3 The headings given to the sections and paragraphs in this Law are for convenience of reference only. They do not form part of this Law and will not be used in the interpretation of this Law.
- 12.4 Unless otherwise noted, any specific statute named in this Law is a reference to a statute of British Columbia and the regulations thereto, as amended, revised, consolidated or replaced from time to time, and any Law referred to herein is a reference to a law of Westbank, as amended, revised, consolidated or replaced from time to time.

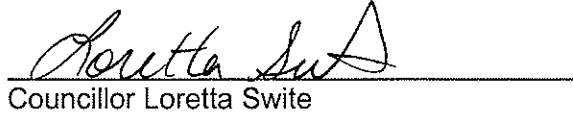
BE IT KNOWN that this Law entitled, "WFN Second-Hand Dealers and Pawnbrokers Law No. 2005-09" is hereby read for the first, second, and third and final time and is hereby enacted as Law No. 2005-09 by Council of Westbank First Nation at a duly convened meeting of Council held on the 7th day of February, 2005.

Voting in favour of the Law are the following members of Council:


Chief Robert Louie


Councillor Michael De Guevara


Councillor Brian Eli


Councillor Loretta Swite


Councillor Michael Werstuik

being a majority of those members of Council of Westbank First Nation present at the aforesaid meeting of Council.

The Quorum of Council is three (3) members.

Number of members of Council present at the meeting: 5.