

**WESTBANK FIRST NATION
IMMUNITY AND INDEMNITY LAW
NO. 2005-23**

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WHEREAS Westbank wishes to enact a Westbank Law concerning the personal immunity from liability of employees, officers and elected officials of the government of Westbank First Nation and its institutions, and the process by which those individuals may be indemnified by Westbank.

NOW THEREFORE Council of Westbank First Nation enacts the following law as a law of Westbank.

1. TITLE

1.1 This Law may be cited as the "*WFN Immunity and Indemnity Law No. 2005-23*".

2. DEFINITIONS

2.1 In this law, unless the context otherwise requires:

"Constitution" means the *Westbank First Nation Constitution*;

"Provincial" means the province of British Columbia;

"Westbank Funds" means funds held by Westbank.

2.2 Unless the context otherwise requires, words and expressions used in this law and not otherwise defined have the same meaning as in the Constitution.

3. IMMUNITY FOR INDIVIDUAL PUBLIC OFFICIALS

3.1 In this law:

"Public Official" means:

- a) a member of Council;
- b) an officer or employee of Westbank;
- c) A member of the Westbank Advisory Council;
- d) an Electoral Officer, Deputy Electoral Officer or Arbitrator;
- e) a volunteer who participates in the delivery of services by Westbank under the supervision of an officer or employee of Westbank; and

- f) a member of the Westbank Economic Development Commission, or other Westbank committee or Council committee, who is not also a member of Council.
- 3.2 No action for damages lies or may be instituted against a Public Official or former Public Official:
- 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 power; or
 - b) for any alleged neglect or default in the performance or intended performance of that person's duty or exercise of that person's power.
- 3.3 Section 3.2 does not provide a defence if:
- a) the Public Official has, in relation to the conduct that is the subject matter of the action, been guilty of dishonesty, gross negligence or malicious or willful misconduct; or
 - b) the cause of action is libel or slander.
- 3.4 Section 3.2 does not absolve Westbank from vicarious liability arising out of a tort committed by any of the individuals referred to in subsection 3.1 for which Westbank would have been liable had this section not been in force.

4. DIRECTOR OF FINANCE

- 4.1 It is a good defence to any action brought against the Director of Finance for unlawful expenditure of Westbank funds if it is proved that he or she gave a written and signed warning to Council that, in his or her opinion, the expenditure would be unlawful.

5. LIMITATION PERIOD FOR ACTIONS AGAINST WESTBANK

- 5.1 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 Westbank Law; and
 - b) might have been lawfully done by Westbank if acting in the manner established by law,

must be commenced within 6 months after the cause of action first arose, or within a further period designated by Council in a particular case, but not afterwards.

6. IMMUNITY UNLESS NOTICE GIVEN TO WESTBANK AFTER DAMAGE

- 6.1 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 2 months from the date on which the damage was sustained.
- 6.2 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.
- 6.3 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:
- c) there was reasonable excuse: and
 - d) the defendant has not been prejudiced in its defence by the failure or insufficiency.

7. IMMUNITY AGAINST CERTAIN NUISANCE ACTIONS

- 7.1 Westbank is not liable in any action based on nuisance or on the rule in the Rylands v. Fletcher case if the damages arise, directly or indirectly, out of the breakdown or malfunction of
- a) a sewer system;
 - b) a water or drainage facility or system: or
 - c) a dike or a road.

8. IMMUNITY IN RELATION TO FAILURE TO ENFORCE BUILDING LAWS

- 8.1 Neither Westbank nor a Public Official is 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 enforce, by the institution of a civil proceeding or a prosecution, a Westbank Law in relation to building or construction enacted pursuant to Part XXI of the Westbank First Nation Self-Government Agreement.

9. LIMITATION ON WESTBANK LIABILITY REGARDING BUILDING PLAN APPROVAL

- 9.1 If Westbank issues a building permit for a development that does not comply with Westbank Law or other applicable law respecting building safety, Westbank must not be held liable, directly or vicariously, for any damage, loss or expense caused or contributed to by an error, omission or other neglect in relation to its approval of the plans submitted with the application for the building permit if:
- a) a person representing himself or herself as a professional engineer or architect registered as such under Provincial legislation certified, as or on behalf of the applicant for the permit, that the plans or the aspects of the plans to which the non-

compliance relates complied with Westbank Law or other applicable law to which the non-compliance relates; and

- b) Westbank, in issuing the building permit, indicated in writing to the applicant for the permit that it relied on the certification referred to in paragraph (a).

9.2 Subsection 9.1 does not apply if Westbank knew that the person making the certification referred to in that subsection was not, at the time of certification, registered as a professional engineer or architect under Provincial legislation.

10. INDEMNIFICATION

10.1 Westbank will indemnify Public Officials against a claim for damages against a Public Official arising out of the performance of their duties, and in addition shall pay legal costs incurred in a court proceeding arising out of the claim, provided such claim is not a result of dishonesty, gross negligence, malicious or willful misconduct on the part of the Public Official.

10.2 Where indemnity under this law is or may be claimed by a Public Official, that Public Official must immediately upon receipt thereof, forward to the Director of Operations every Writ, Statement of Claim, letter or other document or advice and advise of any communication both verbal and written relating to a claim against them in respect of which indemnity is or may be claimed under this law.

10.3 Where indemnity under this law is or may be claimed by a Public Official, that Public Official must not:

- a) voluntarily assume any liability or settle any claim except at their own cost and in such case no indemnification will be paid in relation thereof;
- b) interfere with Westbank in any negotiation, settlement or in any legal proceedings with respect to such claim;

and whenever requested by Westbank, that Public Official must:

- c) aid in the securing of information and evidence and the attendance of witnesses and shall himself or herself, where required by Westbank, give evidence; and
- d) cooperate with Westbank in the defence of any action or proceedings or in the prosecution of any appeal taken by Westbank on behalf of a Public Official.

10.4 Compliance by Public Officials with the provisions of section 5.3 of this law constitutes a condition precedent to Westbank's responsibility to indemnify Public Officials as provided in this Law.

10.5 This law shall apply to any existing claim for damages against a Public Official arising, initiated or outstanding prior to the adoption of this law.

11. RELATIONSHIP TO WESTBANK CONSTITUTION

11.1 Nothing in this law is intended to diminish or otherwise affect the liability of Council or other Public Officials for actions contrary to the Westbank Constitution.

BE IT KNOWN that this Law entitled, "WFN Council Immunity and Indemnity Law No. 2005-23" is hereby:

Read a first time by the Council of Westbank First Nation at a duly convened meeting held on the 3d day of October, 2005;

Read a second time at a Special Membership Meeting held on the 17th day of November, 2005;

Read a third time, and enacted as a Westbank Law, by the Council of Westbank First Nation at a duly convened meeting held on the 28th day of November, 2005;

Signed by the following members of Council:

Chief Robert Louie



Councillor Michael De Guevara



Councillor Brian Eli



Councillor Loretta Swite



Councillor Michael Werstuik