

**WESTBANK FIRST NATION  
DISPUTE ADJUDICATION LAW NO. 2008-01**

WHEREAS Westbank First Nation deems it advisable and in the best interests of Westbank First Nation to enact a Law to provide for the independent review of certain Decisions made under Westbank Laws;

NOW THEREFORE Westbank First Nation Council enacts the following law:

**1. TITLE**

1.1 This Law may be cited for all purposes as "*WFN Dispute Adjudication Law No. 2008-01*".

**2. DEFINITIONS**

2.1 In this Law, unless the context otherwise requires:

"**Adjudicator**" means a person appointed under section 5.1;

"**Administrator**" means a person appointed under section 3.1;

"**Applicant**" means a person who applies for dispute adjudication under section 9.1;

"**Application**" means an Application for dispute adjudication made under section 9.1;

"**Court**" means the Supreme Court of British Columbia;

"**Decision**" includes a Decision, notice, penalty, fine, ticket, charge or any other disposition made under a Westbank Law;

"**Determination**" means a disposition made by an Adjudicator under this Law;

"**Dispute Notice**" means a dispute notice as described in section 9.2;

"**Intervener**" means a person who is permitted by an Adjudicator to participate as an Intervener in a hearing;

"**Peace Officer**" means the WFN Law Enforcement Officer or a member of the local detachment of the Royal Canadian Mounted Police responsible for policing Westbank Lands, or any delegate;

"**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. APPOINTMENT OF ADMINISTRATOR**

3.1 Council must, by resolution, appoint one or more Administrators to carry out the duties of the Administrator as set out in this Law.

**4. RESPONSIBILITIES OF ADMINISTRATOR**

4.1 In addition to the responsibilities set out elsewhere in this Law, the Administrator is responsible for:

- (a) maintaining and making available to the public all forms and other documents required for the proper administration of proceedings under this Law; and
- (b) maintaining all records relating to an Application.

## **5. APPOINTMENT OF ADJUDICATORS**

5.1 Council must, by resolution, appoint one or more Adjudicators to make Determinations regarding Applications, each of whom:

- (a) must:
  - (i) have the qualifications established by Council from time to time; and
  - (ii) swear or affirm the oath set out in Appendix "A" to this law; and
- (b) must not:
  - (i) be an employee of WFN; or
  - (ii) be a member of the Council.

5.2 An Adjudicator may be appointed for an initial term of 1 to 3 years.

5.3 An Adjudicator may be reappointed for a second or subsequent term of 3 to 5 years.

5.4 Council must rescind an appointment under section 5.1 or 5.2 if satisfied that:

- (a) the person has ceased to be qualified for the appointment; or
- (b) on reliable evidence of the person's misconduct, neglect of duty or incapacity, the person is not suitable for the appointment.

5.5 If Council is satisfied that the grounds for the rescission of an appointment under section 5.4 were false or inaccurate or have been remedied or otherwise ameliorated, Council may reappoint the person.

5.6 If an Adjudicator resigns, or if an Adjudicator's appointment expires other than by a rescission under section 5.4 and the Adjudicator has started to hear a dispute, the Adjudicator may continue to act as an Adjudicator until the Adjudicator has decided the dispute and provided a Determination to WFN, and this Law continues to apply.

## **6. ADJUDICATOR'S REMUNERATION AND EXPENSES**

6.1 WFN must pay the Adjudicator for all work performed by the Adjudicator in relation to an Application an amount in accordance with policies established by Council from time to time.

6.2 In addition to the amounts under section 6.1, if an Adjudicator must travel more than 50 kilometres from the Adjudicator's usual place of employment for a hearing in person, an Adjudicator must be paid:

- (a) travel costs; and
- (b) expenses;

in accordance with policies established by Council from time to time.

## **7. ADJUDICATOR'S DUTIES**

- 7.1 An Adjudicator must faithfully, honestly and impartially perform his or her duties and must not, except in the proper performance of those duties, disclose to any person any information obtained as an Adjudicator.

## **8. CONFLICT OF INTEREST**

- 8.1 An Adjudicator may not hear an Application if the Adjudicator has or is reasonably apprehended to have a bias or an interest in relation to the outcome of the Application.

## **9. DISPUTE NOTICE**

- 9.1 Where a Westbank Law provides that a Decision may be disputed under this Law, a person named in the Decision may, subject to:
- (a) this Law;
  - (b) the Westbank Law under which the Decision being disputed was made; and
  - (c) the Westbank Law which provides for the Decision to be disputed under this Law;
- make an Application for adjudication under this Law by delivering to the Administrator a Dispute Notice.

- 9.2 A Dispute Notice must:

- (a) be in a form established by Council under section 43.1;
- (b) identify the Decision that is being disputed;
- (c) state why the Decision should be changed;
- (d) state the outcome requested;
- (e) contain the name, address and telephone number of the Applicant, and if the Applicant has an agent to act on the Applicant's behalf in respect of the dispute, the name of the agent and a telephone number at which the agent may be contacted during regular business hours;
- (f) include an address for delivery of any notices in respect of the dispute; and
- (g) be signed by the Applicant or the Applicant's agent.

- 9.3 A Dispute Notice must be accompanied by payment of any fee required by this Law or any other Westbank Law.

- 9.4 Despite anything in this section, if a Dispute Notice is deficient or if the prescribed fee is outstanding, the Administrator must notify the Applicant and allow a reasonable period of time within which the Dispute Notice may be corrected or the fee paid.

## **10. TIME LIMIT FOR APPLICATIONS**

- 10.1 A Dispute Notice must be filed within 30 days of the date on which the Decision being disputed was made, unless another Westbank Law provides otherwise.

- 10.2 Despite section 10.1, the Administrator may extend the time to file a Dispute Notice, even if the time to file has expired, if satisfied that special circumstances exist.

**11. APPLICATION DOES NOT OPERATE AS STAY**

- 11.1 The filing of an Application does not operate as a stay or suspend the operation of the Decision being disputed, unless the Adjudicator makes an order otherwise under section 19.1.

**12. ACTION UPON RECEIPT OF DISPUTE NOTICE**

- 12.1 Upon receipt of a Dispute Notice, the Administrator must:
- (a) acknowledge receipt of the Dispute Notice in writing to each person named in the Application; and
  - (b) appoint an Adjudicator to make a Determination regarding the Application.

**13. ADJUDICATION PROCEDURES**

- 13.1 Before making a Determination in regards to an Application, an Adjudicator must provide the parties to the Application with an opportunity to be heard.
- 13.2 A proceeding under this Law is a new hearing.
- 13.3 For the purposes of section 13.1, a party may be heard:
- (a) in writing, including by facsimile transmission or electronic mail; or
  - (b) by video conference, audio conference, telephone or other electronic means, if available.
- 13.4 Despite section 13.3, on Application by a party, the Adjudicator may permit oral submissions where the adjudicator considers such submissions necessary in order to facilitate the just and timely resolution of the matters before the Adjudicator.
- 13.5 If the Adjudicator permits oral submissions under section 13.4, the Administrator must provide appropriate facilities in which to conduct the oral hearing.

**14. REPRESENTATION OF PARTIES**

- 14.1 A party to an Application may be represented by counsel or an agent and may make submissions as to facts, law and jurisdiction.

**15. GENERAL POWER TO MAKE RULES RESPECTING PRACTICE AND PROCEDURE**

- 15.1 Subject to this Law and the Westbank Law under which the Decision being disputed was made, the Adjudicator has the power to control the Adjudicator's own processes and may make rules respecting practice and procedure to facilitate the just and timely resolution of the matters before the Adjudicator.
- 15.2 Without limiting section 15.1, the Adjudicator may make rules as follows:
- (a) respecting the holding of pre-hearing conferences, including confidential pre-hearing conferences, and requiring the parties and any Interveners to attend a pre-hearing conference;

- (b) respecting receipt and disclosure of evidence, including but not limited to pre-hearing receipt and disclosure and pre-hearing examination of a party on oath, affirmation or by affidavit;
- (c) respecting the exchange of records and documents by parties;
- (d) respecting the filing of written submissions by parties;
- (e) respecting the filing of admissions by parties;
- (f) specifying the form of notice to be given to a party by another party or by the Adjudicator requiring a party to diligently pursue an Application and specifying the time within which and the manner in which the party must respond to the notice;
- (g) respecting service and filing of notices, documents and orders, including substituted service;
- (h) requiring a party to provide an address for service or delivery of notices, documents and orders;
- (i) providing that a party's address of record is to be treated as an address for service;
- (j) respecting procedures for preliminary or interim matters;
- (k) respecting amendments to an Application or responses to it;
- (l) respecting the addition of parties to an Application;
- (m) respecting adjournments;
- (n) respecting the extension or abridgement of time limits provided for in the rules;
- (o) respecting the transcribing or tape recording of its proceedings and the process and fees for reproduction of a tape recording if requested by a party;
- (p) establishing the forms it considers advisable;
- (q) respecting the joining of Applications;
- (r) respecting exclusion of witnesses from proceedings;
- (s) respecting the effect of a party's non-compliance with the Adjudicator's rules;
- (t) respecting access to and restriction of access to Adjudicator documents by any person;
- (u) respecting witness fees and expenses;
- (v) respecting Applications to set aside any summons served by a party.

15.3 The Adjudicator may waive or modify one or more of the Adjudicator's rules in exceptional circumstances.

15.4 The Adjudicator must make accessible to the public any rules of practice and procedure made under this paragraph.

## **16. SERVICE OF NOTICE OR DOCUMENTS**

16.1 If the Adjudicator or the Administrator is required to provide a notice or any document to a party or other person, the Adjudicator or the Administrator may do so by personal service of a copy of the notice or document or by sending the copy to the person by any of the following means:

- (a) ordinary mail;
- (b) electronic transmission, including facsimile transmission and electronic mail;
- (c) if specified in the Adjudicator's rules, another method that allows proof of receipt.

16.2 If the copy is sent by ordinary mail, it must be sent to the most recent address known to the Adjudicator and must be considered to be received on the fifth day after the day it is mailed, unless that day is a holiday, in which case the copy must be considered to be received on the next day that is not a holiday.

16.3 If the copy is sent by electronic transmission it must be considered to be received on the day after it was sent, unless that day is a holiday, in which case the copy must be considered to be received on the next day that is not a holiday.

16.4 If the copy is sent by a method referred to in section 16.1 the Adjudicator's rules govern the day on which the copy must be considered to be received.

16.5 If through absence, accident, illness or other cause beyond the party's control a party who acts in good faith does not receive the copy until a later date than the date provided under sections 16.2, 16.3 or 16.4, that subsection does not apply.

## **17. WHEN FAILURE TO SERVE DOES NOT INVALIDATE PROCEEDING**

17.1 If a notice or document is not served in accordance with paragraph 16, the proceeding is not invalidated if:

- (a) the contents of the notice or document were known by the person to be served within the time allowed for service;
- (b) the person to be served consents; or
- (c) the failure to serve does not result in prejudice to the person, or any resulting prejudice can be satisfactorily addressed by an adjournment or other means.

## **18. NOTICE OF HEARING BY PUBLICATION**

18.1 If the Adjudicator is of the opinion that because there are so many parties to an Application or for any other reason it is impracticable to give notice of a hearing to a party by a method referred to in section 16.1, the Adjudicator may give notice of a hearing by public advertisement or otherwise as the Adjudicator directs.

## **19. POWER TO STAY DECISION**

19.1 Despite section 11.1, the Adjudicator may, at the request of the Applicant, make an order staying the Decision under dispute.

## **20. SUMMARY DISMISSAL**

20.1 At any time after an Application is filed, the Adjudicator may dismiss all or part of it if the Adjudicator determines that any of the following apply:

- (a) the Application is not within the jurisdiction of the Adjudicator;
- (b) the Application was not filed within the applicable time limit;
- (c) the Application is frivolous, vexatious or trivial or gives rise to an abuse of process;

- (d) the Application was made in bad faith or filed for an improper purpose or motive;
- (e) the Applicant failed to diligently pursue the Application or failed to comply with an order of the Adjudicator;
- (f) there is no reasonable prospect the Application will succeed;
- (g) the substance of the Application has been appropriately dealt with in another proceeding.

20.2 Before dismissing all or part of an Application under section 20.1, the Adjudicator must give the Applicant an opportunity to make written submissions or otherwise be heard.

20.3 If the Adjudicator dismisses all or part of an Application under section 20.1, the Adjudicator must inform the parties and any Interveners of its Decision in writing and give reasons for that Decision.

## **21. APPLICATIONS INVOLVING SIMILAR QUESTIONS**

21.1 If 2 or more Applications before the Adjudicator involve the same or similar questions, the Adjudicator may:

- (a) combine the Applications or any part of them;
- (b) hear the Applications at the same time;
- (c) hear the Applications one immediately after the other; or
- (d) stay one or more of the Applications until after the Determination of another one of them.

21.2 The Adjudicator may make additional orders respecting the procedures to be followed with respect to Applications under this paragraph.

## **22. INTERVENERS**

22.1 The Adjudicator may allow a person to intervene in a hearing if the Adjudicator is satisfied that:

- (a) the person can make a valuable contribution or bring a valuable perspective to the hearing; and
- (b) the potential benefits of the intervention outweigh any prejudice to the parties caused by the intervention.

22.2 The Adjudicator may limit the participation of an Intervener in one or more of the following ways:

- (a) in relation to cross examination of witnesses;
- (b) in relation to the right to lead evidence;
- (c) to one or more issues raised in the Application;
- (d) to written submissions;
- (e) to time limited oral submissions.

22.3 If 2 or more Applicants for Intervener status have the same or substantially similar views or expertise, the Adjudicator may require them to file joint submissions.

## **23. GENERAL POWER TO MAKE ORDERS**

- 23.1 In order to facilitate the just and timely Determination of an Application, the Adjudicator, if requested by a party or an Intervener, or on the Adjudicator's own initiative, may make any order:
- (a) for which a rule is made by the Adjudicator under paragraph 15;
  - (b) in relation to any matter that the Adjudicator considers necessary for purposes of controlling proceedings.

## **24. INTERIM ORDERS**

- 24.1 The Adjudicator may make an interim order in a proceeding.

## **25. ADJOURNMENTS**

- 25.1 An Adjudicator may adjourn a hearing on the Adjudicator's own motion or if a party shows to the satisfaction of the Adjudicator that the adjournment is required to permit an adequate hearing to be held.
- 25.2 In considering whether a hearing should be adjourned, the Adjudicator must have regard to the following factors:
- (a) the reason for the adjournment;
  - (b) whether the adjournment would cause unreasonable delay;
  - (c) the impact of refusing the adjournment on the parties;
  - (d) the impact of granting the adjournment on the parties;
  - (e) the impact of the adjournment on the public interest.

## **26. POWER TO COMPEL WITNESSES AND ORDER DISCLOSURE**

- 26.1 A party may prepare and serve a summons in the form established by Council under section 43.1, requiring a person:
- (a) to attend an oral hearing to give evidence on oath or affirmation or in any other manner that is admissible and relevant to an issue in the Application; or
  - (b) to produce for the Adjudicator, that party or another party a document or other thing in the person's possession or control that is admissible and relevant to an issue in the Application;
- 26.2 A party may apply to the Court for an order:
- (a) directing a person to comply with a summons served by a party under section 26.1; or
  - (b) directing any directors and officers of a person to cause the person to comply with a summons served by a party under section 26.1.
- 26.3 At any time during a hearing the Adjudicator may make an order requiring a person:
- (a) to attend an oral hearing to give evidence on oath or affirmation or in any other manner that is admissible and relevant to an issue in an Application; or



- (b) to produce for the Adjudicator or a party a document or other thing in the person's possession or control, as specified by the Adjudicator, that is admissible and relevant to an issue in an Application.

26.4 The Adjudicator may apply to the Court for an order:

- (a) directing a person to comply with an order made by the Adjudicator under section 26.3; or
- (b) directing any directors and officers of a person to cause the person to comply with an order made by the Adjudicator under section 26.3.

## **27. EXAMINATION OF WITNESSES**

27.1 Subject to section 27.2, in an oral hearing, a party to an Application may call and examine witnesses, present evidence and submissions and conduct cross-examination of witnesses as reasonably required by the Adjudicator for a full and fair disclosure of all matters relevant to the issues in the Application.

27.2 The Adjudicator may reasonably limit further examination or cross examination of a witness if the Adjudicator is satisfied that the examination or cross examination has been sufficient to disclose fully and fairly all matters relevant to the issues in the Application.

27.3 The Adjudicator may question any witness who gives oral evidence in an oral hearing.

## **28. INFORMATION ADMISSIBLE IN ADJUDICATION PROCEEDINGS**

28.1 The Adjudicator may receive and accept information and evidence that the Adjudicator considers relevant, necessary and appropriate, whether or not the information would be admissible in a court of law.

28.2 An Adjudicator may accept information and evidence in any manner the Adjudicator considers appropriate including, without limitation, any of the following manners:

- (a) orally;
- (b) in writing;
- (c) electronically.

28.3 Despite section 28.1, the Adjudicator may exclude anything unduly repetitious.

28.4 Nothing is admissible before the Adjudicator that is inadmissible in a court because of a privilege under the law of evidence.

28.5 Nothing in section 28.1 overrides the provisions of any law expressly limiting the extent to or purposes for which any oral testimony, documents or things may be admitted or used in evidence.

28.6 Notes and records kept by a person appointed under a Westbank Law to conduct a dispute resolution in relation to the Decision under dispute are inadmissible in a proceeding.

## **29. ORAL HEARINGS OPEN TO PUBLIC**

- 29.1 An oral hearing must be open to the public.
- 29.2 Despite section 29.1, the Adjudicator may direct that all or part of the information be received to the exclusion of the public if the Adjudicator is of the opinion that:
- (a) the desirability of avoiding disclosure in the interests of any person or party affected or in the public interest outweighs the desirability of adhering to the principle that oral hearings be open to the public; or
  - (b) it is not practicable to hold the oral hearing in a manner that is open to the public.
- 29.3 The Adjudicator must make a document submitted in an oral hearing accessible to the public unless the Adjudicator is of the opinion that section 29.2 or section 30.1 applies to that document.

## **30. DISCRETION TO RECEIVE EVIDENCE IN CONFIDENCE**

- 30.1 The Adjudicator may direct that all or part of the evidence of a witness or documentary evidence be received by the Adjudicator in confidence to the exclusion of a party or parties or any Interveners, on terms the Adjudicator considers necessary, if the Adjudicator is of the opinion that the nature of the information or documents requires that direction to ensure the proper administration of justice.

## **31. MAINTENANCE OF ORDER AT HEARINGS**

- 31.1 At a hearing, the Adjudicator may make orders or give directions that the Adjudicator considers necessary for the maintenance of order at the hearing, and, if any person disobeys or fails to comply with any order or direction, the Adjudicator may call on the assistance of any Peace Officer to enforce the order or direction.
- 31.2 A Peace Officer called on under section 31.1 may take any action that is necessary to enforce the order or direction and may use such force as is reasonably required for that purpose.
- 31.3 Without limiting section 31.1, the Adjudicator, by order, may:
- (a) impose restrictions on a person's continued participation in or attendance at a hearing; and
  - (b) exclude a person from further participation in or attendance at a hearing until the Adjudicator orders otherwise.

## **32. CONTEMPT PROCEEDING FOR UNCOOPERATIVE WITNESS OR OTHER PERSON**

- 32.1 The failure or refusal of a person summoned as a witness to do any of the following makes the person, on Application to the Court by the Adjudicator, liable to be committed for contempt as if in breach of an order or judgment of the Court:
- (a) attend a hearing;
  - (b) take an oath or affirmation;
  - (c) answer questions;

(d) produce the records or things in their custody or possession.

32.2 The failure or refusal of a person to comply with an order or direction under paragraph 33 makes the person, on Application to the Court by the Adjudicator, liable to be committed for contempt as if in breach of an order or judgment of the Court.

32.3 Sections 32.1 and 32.2 do not limit the conduct for which a finding of contempt may be made by the Court in respect of conduct by a person in a proceeding.

### **33. RECORDING HEARINGS**

33.1 The Adjudicator may transcribe or tape-record a hearing.

33.2 If the Adjudicator transcribes or tape records a hearing, the transcription or tape recording must be considered to be correct and to constitute part of the record of the hearing.

33.3 If, by a mechanical or human failure or other accident, the transcription or tape recording of a hearing is destroyed, interrupted or incomplete, the validity of the hearing is not affected.

### **34. POWER TO AWARD COSTS**

34.1 The Adjudicator may make orders for payment as follows:

- (a) requiring a party to pay part of the costs of another party or an Intervener in connection with the Application;
- (b) requiring an Intervener to pay part of the costs of a party or another Intervener in connection with the Application;
- (c) if the Adjudicator considers the conduct of a party has been improper, vexatious, frivolous or abusive, requiring the party to pay part of the actual costs and expenses of the Adjudicator in connection with the Application.

34.2 An order under section 34.1, after filing in the Court registry, has the same effect as an order of the Court for the recovery of a debt in the amount stated in the order against the person named in it, and all proceedings may be taken on it as if it were an order of the Court.

### **35. ADJUDICATOR'S DETERMINATION**

35.1 The standard of proof for determining an Application is proof on a balance of probabilities.

35.2 After providing the parties with an opportunity to be heard, the Adjudicator must:

- (a) confirm, vary or revoke the original Decision; or
  - (b) refer the Decision back to the Decision-maker, with or without instructions;
- and the Adjudicator may dismiss all or part of the Application.

35.3 If an Applicant is not heard by the Adjudicator because the Applicant fails to make a submission or fails to appear, the Adjudicator must confirm the Decision under dispute.

- 35.4 The Adjudicator must render a Determination in writing and give reasons for the Determination.
- 35.5 If the Adjudicator makes an order for the payment of money as part of a Determination, the Adjudicator must set out in the order the principal sum, and the rate of interest and the date from which it is to be calculated.
- 35.6 The Adjudicator may attach terms or conditions to a Determination.
- 35.7 The Adjudicator's Determination is effective on the date on which it is issued, unless otherwise specified by the Adjudicator.
- 35.8 The Adjudicator must make a Determination accessible to the public.

## **36. LIMITATION ON JURISDICTION OF ADJUDICATOR**

- 36.1 Whether or not the matter arises in the course of a proceeding, the Adjudicator must not decide any of the following:
- (a) a matter involving the *Canadian Charter of Rights and Freedoms*;
  - (b) a matter for which notice under section 8 of the *Constitutional Question Act* is required;
  - (c) a matter involving the *Criminal Code*;
  - (d) a matter involving the *British Columbia Human Rights Code*;
  - (e) a matter involving a Determination of aboriginal title and rights;
  - (f) a challenge to the validity of the law that is alleged to have been contravened;
  - (g) a matter involving the *Westbank First Nation Self-Government Agreement*;
  - (h) a matter involving the *Westbank First Nation Constitution*.
- 36.2 If, in the opinion of the Adjudicator, a matter described in section 36.1 is raised in the course of a proceeding, the Adjudicator must:
- (a) complete the proceeding and make a Determination as if the matter under section 36.1 had been determined against the Applicant by a court of competent jurisdiction;
  - (b) in the Determination of the Adjudicator, identify the matter raised and specify the assumption made under subsection 36.2 (a) for the purposes of determining the dispute; and
  - (c) advise the parties to the dispute of:
    - (i) the procedures the Adjudicator is required to follow under paragraph 36.2 (a); and
    - (ii) what will be recorded in the Adjudicator's Decision because of paragraph 36.2 (b).

## **37. TIME FOR DELIVERING ADJUDICATOR DETERMINATION**

- 37.1 The Adjudicator must provide a written Determination to WFN:

- (a) for an oral hearing or a hearing by telephone, within ten business day after the hearing;
- (b) for a hearing in writing, within ten business days after the date the Adjudicator receives the written materials for the Application.

37.2 Subject to section 37.3, upon receipt of the Determination from the Adjudicator the Administrator must send to each party and any Interveners in an Application a copy of the Adjudicator's Determination.

37.3 If the Administrator is of the opinion that because there are so many parties to an Application or for any other reason that it is impracticable to send a Determination to each party as provided in section 37.2, the Administrator may give reasonable notice of the Determination by public advertisement or otherwise as the Adjudicator directs.

37.4 A notice of a Determination given by the Administrator under section 37.3 must inform the parties of the place where copies of that Determination may be obtained.

### **38. AMENDMENT TO DETERMINATION**

38.1 If a party applies, or on the Adjudicator's own initiative, the Adjudicator may amend a Determination to correct any of the following:

- (a) a clerical or typographical error;
- (b) an accidental or inadvertent error, omission or other similar mistake;
- (c) an arithmetical error made in a computation.

38.2 Unless the Adjudicator determines otherwise, an amendment under section 38.1 must not be made more than 30 days after all parties have been served with the Determination.

38.3 Within 30 days of being served with the Determination, a party may apply to the Adjudicator for clarification of the Determination and the Adjudicator may amend the Determination only if the Adjudicator considers that the amendment will clarify the Determination.

38.4 The Adjudicator may not amend a Determination other than in those circumstances described in sections 38.1, 38.2 and 38.3.

38.5 This section must not be construed as limiting the Adjudicator's ability, on request of a party, to reopen an Application in order to cure a jurisdictional defect.

### **39. ENFORCEMENT OF DETERMINATION**

39.1 A party in whose favour the Adjudicator makes a Determination, or a person designated in the Determination, may file a certified copy of the Determination with the Court.

39.2 A Determination filed under section 39.1 has the same force and effect, and all proceedings may be taken on it, as if it were a judgment of the Court.

### **40. DETERMINATION BY ADJUDICATOR FINAL**

40.1 The Determination of an Adjudicator is final and conclusive, and is not open:

- (a) to review in any court; or
- (b) to dispute to any body.

#### **41. COMPULSION PROTECTION**

- 41.1 An Adjudicator, a person acting on behalf of or under the direction of a Adjudicator, the Administrator or other officer who makes a Decision in an Application or an interim or preliminary matter must not be required to testify or produce evidence in any proceeding, other than a criminal proceeding, about records or information obtained in the discharge of their duties.

#### **42. IMMUNITY PROTECTION FOR ADJUDICATOR AND OTHERS**

- 42.1 Subject to section 42.1, no legal proceeding for damages lies or may be commenced or maintained against:

- (a) an Adjudicator or a person acting on behalf of or under the direction of a Adjudicator;
- (b) the Administrator or other officer who makes a Decision in an Application or an interim or preliminary matter; or
- (c) Westbank ;

because of anything done or omitted to be done:

- (a) in the performance or intended performance of any duty under this Law or any other Westbank Law; or
- (b) in the exercise or intended exercise of any power under this Law or any other Westbank Law.

- 42.2 Section 42.1 does not apply to a person referred to in that subsection in relation to anything done or omitted by that person in bad faith.

#### **43. FEES AND FORMS**

- 43.1 Council may, by resolution, 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.

#### **44. APPLICATION OF LAW**

- 44.1 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.
- 44.2 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.

44.3 The headings given to the sections and paragraphs in this Law are for convenience of reference only, and do not form part of this Law and will not be used in the interpretation of this Law.

44.4 Unless otherwise noted, any specific statute named in this Law is a reference to an enactment 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.

## **45. IMMUNITY**

45.1 No action for damages lies or may be instituted against present or past Council; 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.

45.2 Section 11.1 does not provide a defence if:

- (a) Council, 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.

45.3 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.

45.4 In case an action is brought against Westbank to recover damages sustained by reason of any obstruction, excavation works or repairs to the sanitary sewer system within West bank Lands, placed, made or maintained by any person, other than an employee or agent of Westbank, or to recover damages sustained by reason of any negligent or wrongful act or omission of or failure to comply with the provisions of this Law or any other Westbank Law, or any contract, covenant, or agreement by any person, other than an employee or agent of Westbank, then Westbank will have a remedy against such person. for the damages and costs, if any, which the plaintiff in the action may recover against Westbank.

45.5 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.

45.6 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.

BE IT KNOWN that this law entitled, "*WFN Dispute Adjudication Law No. 2008-01*" is hereby:

Read a first time by Council of Westbank First Nation at a duly convened meeting held on the 21<sup>st</sup> day of January, 2008;

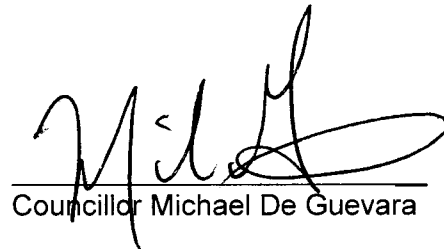
Presented to the Membership at a Special Membership Meeting held on the 13th day of March, 2008;

Read a second time by Council of Westbank First Nation at a duly convened meeting held on the 14th day of April, 2008;

Read a third time and enacted by Council of Westbank First Nation at a duly convened meeting held on the 28th day of April, 2008;

Signed by the following Members of Council:

  
Chief Robert Louie

  
Councillor Michael De Guevara

  
Councillor Brian Eli

  
Councillor Loretta Swite

\_\_\_\_\_  
Councillor Larry Derrickson



**APPENDIX 'A'**

**Adjudicator Oath**

*(section 5.1)*

I, .....[*name of adjudicator*]..... do swear/affirm that I will faithfully, honestly and impartially fulfill the duties and exercise the powers entrusted to me as an adjudicator under the *WFN Dispute Adjudication Law 2008-XX* and that I have not received and will not receive any payment or reward, or any promise of payment or reward, for the exercise of any partiality or other improper execution of my office.

Sworn/Affirmed by me, at .....[*place*], on .....[*date*].

.....  
[*Signature of person swearing or affirming oath*]

.....  
[*A commissioner for taking affidavits for British Columbia*]