

**WESTBANK FIRST NATION
NOTICE ENFORCEMENT LAW NO. 2008-02**

WHEREAS Westbank First Nation Council deems it advisable and in the best interests of Westbank First Nation to enact a Law to provide for the enforcement of notices issued under the Laws of the Westbank First Nation;

NOW THEREFORE Westbank First Nation Council enacts the following Law:

1. TITLE

- 1.1 This Law may be cited for all purposes as "WFN Notice Enforcement Law No. 2008-02".

2. DEFINITIONS

- 2.1 In this Law, unless the context otherwise requires:

"Adjudicator" means a person appointed as an Adjudicator under the *WFN Dispute Adjudication Law*;

"Enforcement Notice" means an Enforcement Notice under section 3;

"Motor Vehicle Act" means the *Motor Vehicle Act of British Columbia, [RSBC 1996] c. 318*, as amended or replaced from time to time;

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

"Screening Officer" means a person appointed as a Screening Officer under section 9;

"Vehicle" means a Vehicle as defined in the *Motor Vehicle Act*;

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

"WFN Dispute Adjudication Law" means the *WFN Dispute Adjudication Law 2008-01*, as amended or replaced from time to time;

"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. ENFORCEMENT NOTICE

- 3.1 Council may, by resolution, and in accordance with this Law, designate contraventions of Westbank Laws to which this Law applies, and this Law applies to each designated contravention.
- 3.2 Nothing in this Law precludes Westbank from pursuing any other enforcement action or remedy provided for in any other Westbank Law.
- 3.3 For each designated contravention, a WFN Law Enforcement Officer may complete and issue an Enforcement Notice to a person against whom a contravention is alleged.
- 3.4 An Enforcement Notice must contain all the following information:
- (a) particulars of the alleged contravention of the Westbank Law in sufficient detail that a recipient of the Enforcement Notice would be able to identify the Westbank Law and the contravention alleged;
 - (b) the amount of the penalty that the recipient is liable to pay in respect of the contravention, the amount of a discount for early payment of the penalty, the amount of a surcharge for late payment of the penalty and the consequences of failing to respond to the Enforcement Notice;
 - (c) methods of paying the penalty; and
 - (d) how to dispute the allegation in the Enforcement Notice.
- 3.5 An Enforcement Notice may be completed, issued and stored in electronic format by electronic means, or by another means that allows the Enforcement Notice to be reproduced in intelligible form.
- 3.6 An Enforcement Notice must be issued to a named person unless it is issued in respect of a contravention involving a Vehicle, in which case it may be issued to the Vehicle's licence plate, or the Vehicle's identification number, temporary operation permit or interim permit under the *Motor Vehicle Act*.
- 3.7 If an Enforcement Notice is issued under section 3.6 to the Vehicle's licence plate, or the Vehicle's identification number, temporary operation permit or interim permit, the Enforcement Notice is deemed to have been issued to each registered owner of the Vehicle as contained in the records of the Government of British Columbia, or a person responsible for maintaining records of Vehicle registrations in British Columbia or in another province of Canada.

4. LIMITATION PERIOD FOR ENFORCEMENT NOTICE

- 4.1 An Enforcement Notice must not be issued more than 6 months after the contravention in respect of which the Enforcement Notice is issued is alleged to have occurred.

5. AMOUNT OF PENALTY FOR ENFORCEMENT NOTICE

- 5.1 Council may, by resolution, and in accordance with this Law, establish penalties for contraventions designated under section 3.1.
- 5.2 Subject to sections 5.3 and 5.4, the penalty for a contravention referred to in section 3.1 is the penalty amount established by resolution of Council.
- 5.3 If payment of the penalty is received by Westbank within 14 days of the person receiving or being presumed to have received the Enforcement Notice, the penalty amount is the Early Payment Penalty established by resolution of Council.
- 5.4 If payment of the penalty is received by Westbank more than 28 days after the person received or is presumed to have received the Enforcement Notice, the penalty amount is the Late Payment Penalty established by resolution of Council.

6. DELIVERY OF ENFORCEMENT NOTICE

- 6.1 An Enforcement Notice may be delivered in any of the following ways:
- (a) in person to the named person;
 - (b) by mailing a copy of the Enforcement Notice to the actual or last known address of the named person;
 - (c) if the Enforcement Notice is in respect of a contravention involving a Vehicle, by mailing a copy of the Enforcement Notice to the address for each registered owner of the Vehicle involved as contained in the records of the government, or a person responsible for maintaining records of Vehicle registrations in British Columbia or in another province of Canada;
 - (d) if the Enforcement Notice is in respect of a parking contravention, by leaving the Enforcement Notice on the Vehicle involved;
 - (e) if the Enforcement Notice is in respect of a particular parcel of Westbank Lands or an improvement on a particular parcel of Westbank Lands, by delivering the Enforcement Notice to a person who appears to be at least 16 years old and is present on that particular parcel of Westbank Lands;
 - (f) if the named person is a corporation or a business, by mailing a copy of the Enforcement Notice to the registered office or head office as contained in the records of the Registrar of Companies, or by delivering the Enforcement Notice to a director, manager or other executive officer of the corporation or business, or of a branch of it; or
 - (g) if the named person is an extraprovincial company as defined in the *British Columbia Business Corporations Act*, by delivering the Enforcement Notice to the attorney for the extraprovincial company.

- 6.2 An Enforcement Notice delivered under subsection 6.1 (b) or (c) is presumed to have been received by the person to whom it is addressed on the 7th day after mailing.
- 6.3 An Enforcement Notice delivered under subsection 6.1 (d) is presumed to have been received by each registered owner of the Vehicle, as contained in the applicable records described under subsection 6.1 (c), on the day it is left.
- 6.4 An Enforcement Notice delivered under subsection 6.1 (e), (f) or (g) is presumed to have been received by the named person,
 - (a) if delivered personally, on the date of delivery; and
 - (b) otherwise, on the 7th day after mailing.

7. OPTIONS ON RECEIPT OF NOTICE

- 7.1 A person who receives an Enforcement Notice must, within 14 days of the date on which the person received or is presumed to have received the Enforcement Notice:
 - (a) pay the penalty in accordance with the Enforcement Notice; or
 - (b) request dispute adjudication in respect of the allegation made in the Enforcement Notice in accordance with the instructions on the notice.
- 7.2 A person may pay the indicated penalty after 14 days of receiving the Enforcement Notice, subject to the applicable surcharge for late payment in accordance with section 5.3 of this Law, but no person may dispute the Enforcement Notice after 14 days of receiving the Enforcement Notice.

8. IF A PERSON DOES NOT TAKE AN ACTION UNDER PARAGRAPH 7

- 8.1 If a person who receives or is presumed to have received an Enforcement Notice does not comply with paragraph 7, the penalty set out in the Enforcement Notice is immediately due and payable by the person.
- 8.2 If an Enforcement Notice has been issued to a Vehicle licence plate and paragraph 7 is not complied with in respect of the Enforcement Notice, the penalty set out in the Enforcement Notice is immediately due and payable by each registered owner of the Vehicle who receives or is presumed to have received the Enforcement Notice, but in no case may Westbank collect more than the penalty set out in the Enforcement Notice and any authorized surcharge.
- 8.3 An amount due and payable under sections 8.1 or 8.2 may be recovered in accordance with paragraphs 11, 12 and 13, but collection procedures may not be started until 42 days after the date the Enforcement Notice was received or presumed to have been received.

- 8.4 If a person to whom an Enforcement Notice was delivered in any other manner than in person under subsection 6.1 (a) has not responded to the Enforcement Notice within 28 days after the date the Enforcement Notice was received or presumed to have been received, the Screening Officer must deliver a notice to that person indicating the amount owing under the Enforcement Notice and how and where payment may be made.
- 8.5 A notice under section 8.4 must be delivered in a manner authorized under section 6.1, with the exception of the manner authorized under subsection 6.1(d).
- 8.6 If, before a certificate is filed under section 11.1, a person to whom a notice has been delivered under section 8.3 advises Westbank that they did not receive a copy of the original Enforcement Notice,
- (a) the debt that arose under section 8.1 is cancelled, and
 - (b) a Screening Officer must reissue and deliver the Enforcement Notice to the person in a manner authorized under section 6.1, with the exception of the manner authorized under subsection 6.1 (d).

9. SCREENING OFFICER

- 9.1 Council must, by resolution, appoint at least one Screening Officer.
- 9.2 A Screening Officer must review a request for dispute adjudication under subsection 7.1 (b) and, after reviewing the Enforcement Notice, may either:
- (a) cancel the Enforcement Notice if, in the Screening Officer's opinion, the contravention did not occur as alleged, the Enforcement Notice does not comply with section 3.4, or any other ground for cancellation authorized by the this Law or Westbank Policy is satisfied; or
 - (b) confirm the Enforcement Notice and refer it to an Adjudicator unless the request for dispute adjudication is withdrawn.
- 9.3 For greater certainty, the powers, duties and functions of the Screening Officer set out in section 9.2 include the following:
- (a) where requested by the person against whom a contravention is alleged, the authority to communicate information respecting the nature of the contravention, the facts on which the contravention allegation is based, the penalty for a contravention, the opportunity to proceed to dispute adjudication and the fee or fees payable in relation to the notice enforcement process;
 - (b) the authority to communicate with any or all of the following for the purposes of performing their functions under this Law:
 - (i) the person against whom a contravention is alleged or their representative;
 - (ii) the WFN Law Enforcement Officer issuing the notice;
 - (iii) the complainant or their representative;

- (iv) Westbank staff; and
- (c) the authority to cancel Enforcement Notices in accordance with this Law or Westbank policies and guidelines.

10. DISPUTE ADJUDICATION

- 10.1 If an Enforcement Notice is referred to an Adjudicator by a Screening Officer under subsection 9.2 (b), the matter must be heard and determined in accordance with the WFN Dispute Adjudication Law.

11. COST OF DISPUTE ADJUDICATION

- 11.1 Every person who is unsuccessful in a dispute adjudication in relation to a notice must pay the WFN an additional fee of \$40.00.

12. AMOUNTS OWING ENFORCED AS PROVINCIAL COURT JUDGMENT

- 12.1 An amount due and payable to the Westbank under this Law may be recovered by filing a certificate in the form set out in Schedule "A" in the Provincial Court.
- 12.2 A certificate under section 12.1 that is in respect of an amount that has been owed to Westbank for more than 2 years before the date of the certificate may not be filed under this section.
- 12.3 A certificate under this section must be signed by the Director of Operations or a delegate, and must include all the following information:
- (a) the details of the notice, including the date and place of the contravention;
 - (b) the total amount owing in respect of the notice and, separately, the amount of the penalty, any surcharges that apply and any adjudication fees payable;
 - (c) the name of the person who is required to pay the penalty;
 - (d) the date that the penalty became due and payable; and
 - (e) whether the amount outstanding is payable because of a determination by an Adjudicator or because of a default referred to in section 8.1 or 8.2.
- 12.4 A certificate filed under section 12.1 is of the same effect, and proceedings may be taken on it, as if it were a judgment of the Provincial Court for the recovery of a debt in the amount stated against the person named.
- 12.5 A certificate under section 12.1 is admissible in any proceedings to recover the certified debt without proof of the signature or official position of the person appearing to have signed the certificate, and is proof of the certified facts.

13. SUSPENDING A CERTIFICATE FILED WITH THE COURT

- 13.1 On the application of a person named in a certificate within 30 days after the date the certificate is filed, a justice may order that the certificate is suspended if the justice is satisfied that:
- (a) the notice described in the certificate was not delivered in accordance with subsection 6.1 (a);
 - (b) the amount owing under the certificate is payable because of a default described in section 8.1 or 8.2; and
 - (c) through no fault of the person, the person did not receive the notice, and did not know of the notice or the outstanding penalty at any time before a certificate was filed under section 12.1.
- 13.2 Proceedings described in section 12.4 may not be taken on a certificate while it is suspended.
- 13.3 If a justice suspends a certificate under section 13.1, a Screening Officer must deliver a copy of the Enforcement Notice to the person in a manner authorized under section 6.1, except the manner authorized under subsection 6.1 (d).
- 13.4 Paragraph 7 of this Law applies to a person in respect of whom a certificate is suspended by order under section 13.1 as if the person received the notice on the date of the order.
- 13.5 If, within 14 days from the date the certificate is suspended, the person:
- (a) has complied with paragraph 7, the certificate is deemed to have been withdrawn and the debt that arose under section 8.1 or 8.2 in relation to the person is cancelled, and
 - (b) has not complied with paragraph 7, the suspension under section 13.1 ends.

14. CANCELLING A CERTIFICATE FILED WITH THE COURT

- 14.1 On the application of a person named in a certificate within 30 days after the date the certificate is filed, a justice may order that the certificate is cancelled and a new adjudication be scheduled if the justice is satisfied that
- (a) the person requested dispute adjudication under section 7.1,
 - (b) through no fault of the person, the person failed to be heard on the adjudication and the Adjudicator made an order in relation to the person, and
 - (c) the certificate was filed by Westbank to recover the amount ordered due and payable by the person by the Adjudicator.

14.2 If a justice makes an order described in section 14.1, the debt ordered by the Adjudicator in relation to the person is cancelled and Westbank must refer for adjudication the dispute in relation to which the person requested or required dispute adjudication.

BE IT KNOWN that this Law entitled, "WFN Notice Enforcement Law No. 2008-02" is hereby:

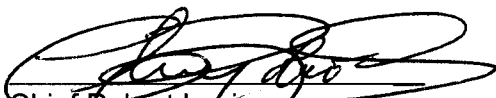
Read a first time by Council of Westbank First Nation at a duly convened meeting held on the 21st day of January, 2008;

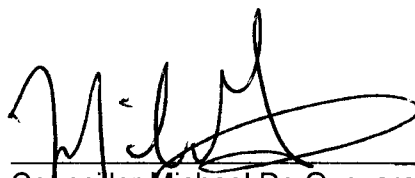
Presented to the Membership at a Special Membership Meeting held on the 13th day of March, 2008;

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

SCHEDULE "A" - FORM OF CERTIFICATE

Registry File Number
Registry Location



CERTIFICATE OF AMOUNTS OWING

BETWEEN: WESTBANK FIRST NATION

Enforcement Notice

Creditor

AND: _____

Enforcement Notice

Debtor

CERTIFICATE

(Section 12.1 of the WFN Notice Enforcement Law 2008-02)

I, _____, having been designated to file certificates under section 12.1 of the WFN Notice Enforcement Law 2008-02, hereby certify that:

1. _____ (the "Debtor"), having an address at _____, city, town, municipality _____, Province of _____, Postal Code _____, Phone # _____,

has incurred a debt arising from an Adjudicator's determination or default that is due and payable in accordance with the WFN Notice Enforcement Law 2008-02. As a result of the determination or default, the Debtor is required to pay the amounts listed below.

2. The Debtor has failed to pay all or part of the penalty so that, as of the date of this Certificate, the amounts contained within column 3 became due and payable on the dates indicated in column 2, for the reasons provided in the Enforcement Notice, Adjudicator's Determination, or default referred to in column 1.

CERTIFICATE (continued)

(Section 12.1 of the *WFN Notice Enforcement Law 2008-02*)

	1 Authority for Enforcement Notice, Adjudicator's Determination or Default (WFN Law and section)	2 Date of Adjudicator's Determination or Default (dd/mm/yyyy)	3 Amount (\$)
Penalty			\$
Late Payment Penalty			\$
Dispute Adjudication Fee Recovery			\$
TOTAL			\$

3. The attached copy of Enforcement Notice # _____ forms part of this Certificate; the Certificate is not complete unless a copy of the Enforcement Notice is attached.

Signed at _____, British Columbia, on _____
(dd/mm/yyyy)

Signature

Title

Westbank First Nation, 301 – 515 Highway 97 South, Kelowna, BC V1Z 3J2