



**Presentation to The Manitoba Bar
Association Mid-Winter Conference**

**First Nations Land Management and
Westbank First Nation Self-Government**

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Chairman, Lands Advisory Board**

Winnipeg, MB - [January 25, 2019](#)

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My presentation will be divided into two parts:

- First Nations Land Management;
- Westbank First Nation Self-Government



Part I – First Nations Land Management

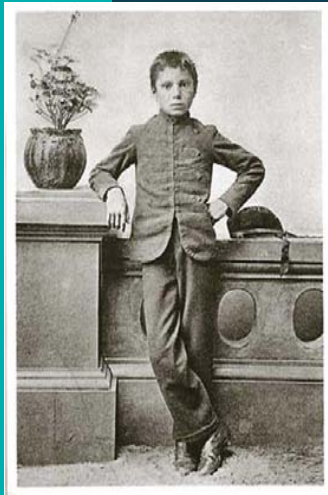
Historical Background:

- Historically, First Nations (FNs) were self-governing people and occupied most of Canada from coast to coast;
- Europeans began populating Canada in the 1600's;
- Internal wars occurred. After Britain won the Seven Years War, King George III issued the Royal Proclamation of 1763 claiming British territory in North America. The Proclamation sets out that only the Crown can buy land from FNs and explicitly stated that Aboriginal Title existed and continues to exist, and that all land would be considered Aboriginal land until ceded by Treaty;



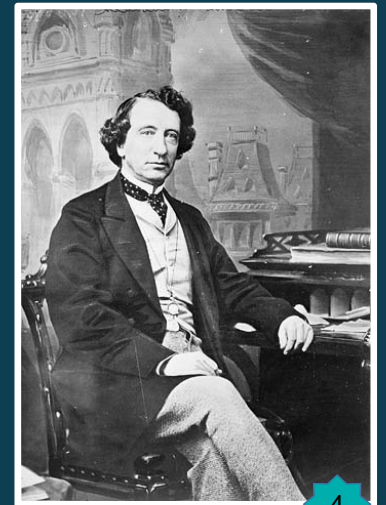
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- Between 1760 and 1923 the British Crown signed 56 land treaties in Canada;
- The first Canadian legislation affecting Indigenous Peoples of Canada was the Indian Act enacted in 1876 (IA);
- The IA gave Canada a co-ordinated approach to implement and enforce policies over Indians and lands reserved for Indians. There was no FN consultation;
- Tribal systems were done away with and the Indian people were to be assimilated into the white society.



“The great aim of our legislation has been to do away with the tribal system and assimilate the Indian people in all respects with the other inhabitants of the Dominion as speedily as they are fit to change.”

- Sir John A Macdonald, 1887





Cont'd:

- The legacy of the IA remains today;
- Constitutional amendments were enacted in 1982 and 1984 (ss 25 and 35) which explicitly recognized and affirmed aboriginal, treaty or other rights or freedoms including the Royal Proclamation of 1763 and broadened the definition of aboriginal peoples of Canada to also include Inuit and Metis peoples.



Modern Land Management Context:

- The IA contains two sections (ss 53 & 60) which provides delegated authorities to FNs;
- As of 1986, only 9 FNs in Canada had developed land management authorities, including Westbank First Nation (WFN) in BC;
- Unrest in WFN during the mid 1980's resulted in the Hall Commission Inquiry and the subsequent revocation of WFN's delegated land management authorities;
- Law suit filed by WFN;
- Indian Affairs were conducting its Lands, Reserves & Trust Reviews;

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- Agreement reached with Canada and settlement occurred;
- Chief Robert Louie asked by Indian Affairs to make recommendation to improve the land management provisions;
- Framework Agreement (FA) signed February 12, 1996;
- First Nation Land Management Act passed June 1999.



*The Framework Agreement
on First Nation Land
Management*

**A government to government
agreement signed in 1996 by 14
First Nations and Canada.**



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Purpose of the *Framework Agreement*

“This may be the single most historic accomplishment for First Nations this century, to have First Nations recognized as governments with their own law-making powers and control over their own lands...”

Chief Joe Matthias
Squamish Nation



To enable First Nations to resume control over their lands and resources for the use and benefit of their members without Government interference, by replacing the land provisions of the *Indian Act* with First Nation made laws.



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A New Millennium. A New Beginning.



On January 1, 2000 three *Framework Agreement* signatories began to govern their own lands and resources.

- Chippewas of Georgina Island (ON),
- Mississaugas of Scugog Island (ON), and
- Muskoday First Nation (SK).

This was Historic!



ULTIMATE GOALS SERVED BY THE *FRAMEWORK AGREEMENT ON FIRST NATION LAND MANAGEMENT*

All First Nations will be aware of the option to exercise their right to govern their reserve lands.



Effective land and resource governance will become a cornerstone of decolonization community by community.

Each First Nation community will decide how to govern its reserve lands and natural resources.

Each First Nation will have sufficient resources to govern its reserve lands and resources effectively.

Government-to-government relationships will strengthen Canada.

What Do FN Land Codes Mean to the FNs that Choose to Pass and Implement Those Land Codes?

- It unshackles communities from the land management provisions of the Indian Act;
- It means that the FN resumes its inherent right as the recognized governmental decision making body over its reserve lands and resources;
- The FN has recognized law making powers and jurisdiction;
- An operational FN can exercise those governmental powers without Federal and Provincial governmental interference;

Cont'd:

- It replaces the Indian Act land provisions with its own FN made laws;
- It puts decision making back into the hands of the community and its members;
- It protects reserve lands from never being diminished in size;
- It provides increased accountability to the members and citizens of the community;
- It helps allow decision making to take place at the speed of business;
- FNs decide their own future and to implement what they want to happen over their lands and resources without being hand-held or dictated to by government.



First Nations Involved

- The Framework Agreement has been extremely successful in getting FNs into sectoral self government throughout Canada;
- As of July 26, 2018, 81 FNs have successfully voted and passed Land Codes;
- They include FNs from Vancouver Island through to Newfoundland;
- Three of the FNs have moved onto expanded self-governance which include Westbank, Tsawwassen and Sliammon.



Cont'd:

- Presently, there are 58 FNs in the developmental phase of getting their communities ready to vote on their Land Codes; and
- 61 FNs are presently waitlisted for their opportunity to be accepted into the developmental phase.

Framework Agreement Signatory Communities



Natural Resources Canada
Ressources naturelles Canada

First Nations Land Management

Gestion des terres des Premières nations

January 2018 Edition / Édition janvier 2018

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Scale 1:18 000 000 or one centimetre represents 180 kilometres
Échelle 1:18 000 000 ou un centimètre représente 180 kilomètres

0 180 360 540 KM

Lambert Conformal Conic Projection, Standard Parallels 49° N and 77° N
Projection conique conforme de Lambert, parallèles d'échelle conservés à 49° N et 77° N

LEGEND

Developmental First Nations

Operational First Nations

*Operational date to be determined

Indian Reserves

City

Provincial Boundary

International Boundary

200 Mile Limit

LÉGENDE

Premières nations - En développement

Premières nations - En opération

*Date opérationnelle à déterminer

Reserves indiennes

Ville

Limite provinciale ou territoriale

Frontière internationale

Limite de 200 milles



Sources / Références:
Department of Natural Resources Canada, Geomatics Canada, GeoAccess Division, 1992.
1:7 500 000 and 1:30 000 000 base map.
Surveyor General Branch, 2012. Canada Lands Administrative boundary.
Le ministère des Ressources naturelles Canada, Géomatique Canada, Division GeoAccess, 1992.
Carte de base 1:7 500 000 et 1:30 000 000.
Direction de l'arpenteur général, 2012. Limites administratives des terres du Canada

British Columbia

1. Lheidli T'enneh
2. McLeod Lake
3. Beecher Bay
4. Ts'kw'aylaxw
5. T'Sou-ke
6. Kitselas
7. Shxwha:y Village
8. Tsawout
9. Tsleil-Waututh
10. Squiala
11. Matsqui
12. Tzeachten
13. Leq'a:mel
14. Seabird Island
15. We Wai Kai
16. Skawahlook
17. Sumas
18. Nanoose
19. Songhees
20. Musqueam
21. Campbell River
22. Stz'uminus
23. Skowkale
24. Aitchelitz
25. Yakweakwioose
26. St. Mary's
27. Williams Lake
28. Haisla
29. Shuswap
30. Shxwowhamel
31. Malahat
32. Kwantlen
33. Soowahlie

34. Chawathil
35. Scowlitz
36. Cheam
37. Lower Nicola
38. Komoks
39. Metlakatla
40. Nak'azdli
41. Katzie
42. Lake Cowichan
43. Kwaw Kwaw Apilt
44. Sts'ailes
- Westbank ^(a)
- Tsawwassen ^(b)
- Sliammon ^(b)

Saskatchewan

1. Muskoday
2. Whitecap Dakota
3. Kinistin
4. Muskeg Lake
5. Kahkewistahaw
6. Flying Dust
7. One Arrow
8. Yellow Quill
9. Mistawasis

Manitoba

1. Opaskwayak Cree
2. Chemawawin
3. Swan Lake
4. Brokenhead Ojibway
5. Misipawistik
6. Long Plain First Nation
7. Nisichawayasihk Cree Nation

Ontario

1. Georgina Island
2. Scugog Island
3. Nipissing
4. Whitefish Lake
5. Henvey Inlet
6. Mississauga
7. Anishnaabeg of Naongashiing
8. Dokis
9. Bingwi Neyaashi Anishinaabek
10. Shawanaga
11. Magnetawan
12. Long Lake #58
13. Wasauksing
14. Temagami
15. Chippewas of Rama

Quebec

1. Conseil Des Abenakis Wolinak

New Brunswick

1. Madawaska Maliseet

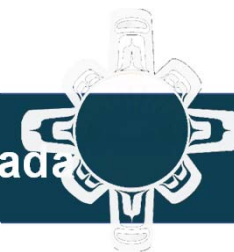
Newfoundland

1. Miawpukek Mi'kamawey Mawi'omi

^(a) Now implementing full self-government

^(b) Now implementing treaty

Listing of Operational First Nations across Canada



Lands Advisory Board (LAB) and First Nations Land Management Resource Centre (RC)



LAB functions are prescribed in the *Framework Agreement* and includes the provision of technical and advisory services to the signatories.

Chairman, Robert Louie
Lands Advisory Board



The RC was created to discharge the LAB's technical and support service functions to First Nations for the developmental and operational phases of the *Framework Agreement*.

Chair, Chief Austin Bear
First Nations Land Management Resource Centre
Inc.



www.labrc.com

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Latest FA and Legislative Amendments

- The latest round of FA and legislative amendments were finalized in November and December 2018;
- Bill C-86 received Royal Assent on December 13, 2018;
- See summary of FA amendments (handout).

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Next Proposed Round of FA Amendments

- The most substantive proposed change in the next round of FA amendments is to include lands outside the reserve boundaries;
- Presently, the FN Land Code jurisdiction only applies to reserve lands. We are proposing that the jurisdiction be expanded to include other lands that may fall within S.91(24) of the Constitution. This could include Aboriginal Title Lands and Federal land categorized as “lands set aside” (in the North). This would have huge ramifications in FN capacity development and expanding self-determination initiatives and could open doors for FN fiscal opportunities;

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Part 2 – WFN Self-Government

- Briefly, I will describe the WFN transitioning process into self-government;
- Challenges WFN faced;
- Transfer payments/formulas negotiated;
- Pitfalls to avoid;
- Enforcement issues

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WFN Transitioning Process into Self-Government

- The first negotiated Self-Government Agreement (SGA) in Canada was the Sechelt Indian Band in 1985. It is primarily a municipal styled agreement;
- WFN had early aspirations to go into self-government but didn't want to follow the municipal model;
- By mid 1980's, extreme discontent was happening within the WFN community at all levels. The majority of the membership wanted to see a dramatic change and wanted a guaranteed system of governance that promoted fairness and good governance;
- After the infamous Hall Commission Inquiry in the late 1980's, the direction was determined by the membership that change had to occur;

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Cont'd:

- An opportunity opened up with INAC to enter into self-government negotiations;
- In excess of 50 FNs in Canada were given the opportunity to negotiate a bi-lateral agreement with Canada in the 1990's;
- The only successful bi-lateral agreement reached with Canada was with WFN. Why? The reason was that heads of families and dedicated band members selflessly volunteered their time and worked tirelessly to identify and put into place the principles of a governance structure that was acceptable to them;



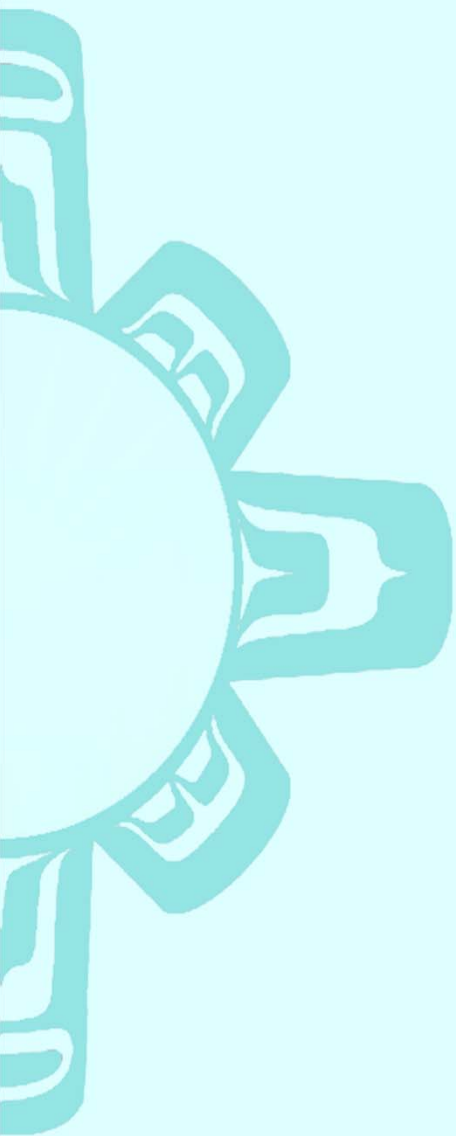
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- The Chief and Council took a back seat in the internal committee discussions and only pushed issues when it was deemed absolutely necessary in the Government discussions;
- The process took 14 years of intensified discussions and government negotiations with successive Chief and Councils and was finally ratified in a third community referendum;
- Incremental self-governance occurred first with the passage and implementation of the WFN Land Code in 2003. WFN was the 8th community in Canada to pass a Land Code;

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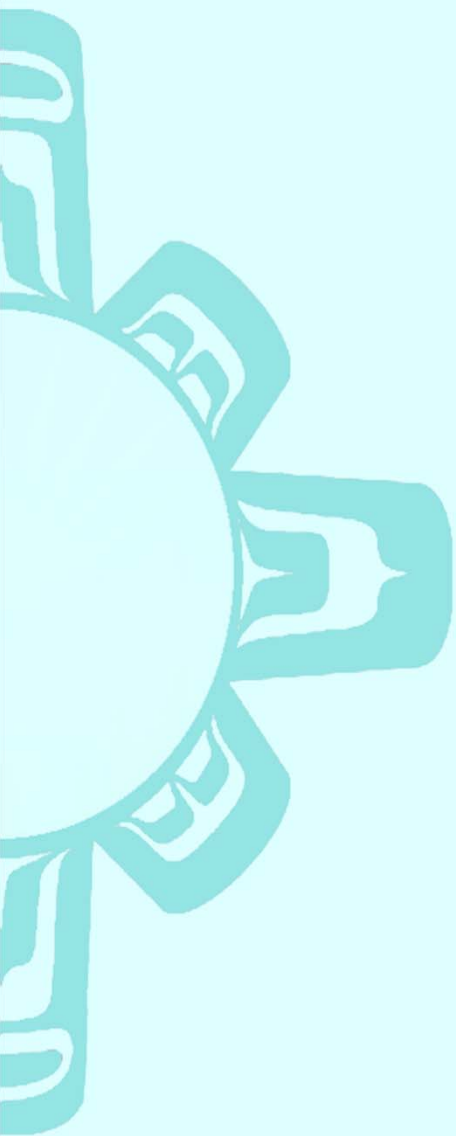
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- The WFN Land Code was voted on at the same time as the SGA and WFN Constitution. On April 1st, 2005, WFN became self governing. It was the first community with an SGA under the inherent rights policy;
- The WFN Land Code provisions were encompassed within the SGA and the WFN Constitution;
- The WFN Constitution and the Land Code contained identical rules for the management and administration of WFN lands.



WFN Constitution

- The Constitution sets out how WFN will be governed and exercise jurisdiction pursuant to the SGA including;
 - Guiding principles;
 - Definitions and Interpretation;
 - Rules for WFN Membership;
 - Duties & Responsibilities of the Council;
 - Officers and Employees;
 - Election procedures;
 - Council procedures;
 - Law enactment procedures;
 - Conflict of interest guidelines
 - Land rules
 - Financial management & accountability
 - Referendum procedures
 - Amendment of Constitution;
 - General



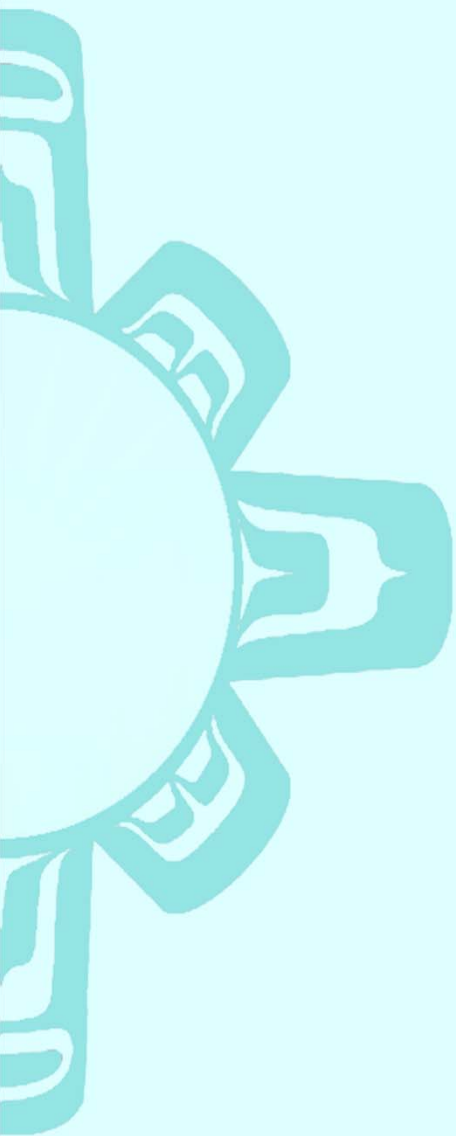
Challenges WFN Faced

- Prior to final ratification of the SGA, three non-native family residents (Hardy, White, Mann) challenged the constitutionality of the SGA. They argued that they should have a more fuller say in the governance of WFN lands (right to be elected to Council) and that the proposed Advisory Council did not go far enough for their liking. They lost and WFN was awarded full costs;
- Determining the cost of governance - it was unclear as to how much it would cost to run a government. WFN retained a professional Economist who analyzed WFN's internal and external resources, production output and comparisons were made to municipal costing of infrastructure requirements, etc. Recommendations were made as to what should be included in our governance cost needs. These were used in the negotiations;

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- A complete review had to be done of all existing bylaws and these bylaws had to be updated and turned into WFN laws;
- Regulations for a new lands registry had to be developed for the instantaneous registration of all interests on WFN lands along with land manuals etc;
- Communications – internal and external communications at all levels including ensuring every member on or off the reserve were properly and fully informed, public meetings for non-members and businesses, local government information sessions, workshops and months of governmental lobbying in Parliament and Senate;
- Own Source Revenue and retaining full property taxation revenue was a challenge;
- Five year blocks of re-negotiations of funding continues to be a challenge;



Cont'd:

- The huge amount of work and time necessary to properly put in place suitable governance structure is a challenge to any community;



Transfer Payments/Formulas Negotiated

- It became abundantly clear during the negotiations that Canada could not guarantee adequate social and health payments needed to satisfy WFN requirements. Consequently, WFN opted to leave that jurisdictional responsibility with Canada. This may be revisited at a later date;
- Other areas left to be negotiated at a later date included land claim negotiations, gaming jurisdiction and additional revenue making capacity;
- On education, we have ability to exercise jurisdiction but refused to do so. We had 2 categories of funding, A & B. On the A side, we exercise jurisdiction for SG. On the B side, we remain under IA funding. However, we receive education funding on the A side and receive an increase in our government costs;
- Full Canada payment up front beginning April 1st of each year was negotiated;

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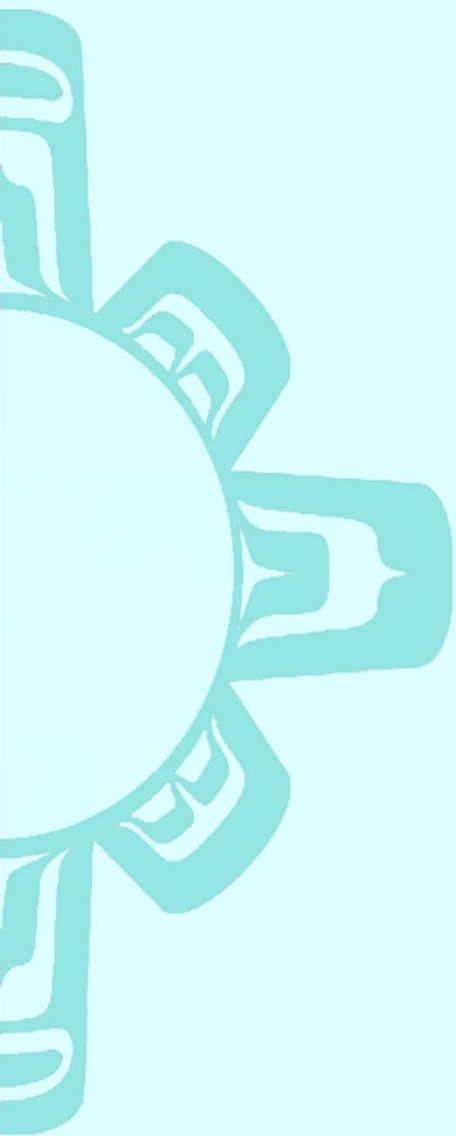
Pitfalls to Avoid

- Be as certain as you can on the governance costs of running a government including your future capital projected infrastructure cost;
- Government will jump at the chance to transfer health, social services and education to you. Be careful of what they offer;
- Be aware of Own Source Revenue issues and what is negotiated in an SGA;
- Many band members, through such instances as Bill C-31 etc, may be tough to convince as they may feel more secure under the IA. Some feel they may lose their status cards or lose their taxation exemption privileges. Therefore extensive communication may be necessary to address misinformation issues;
- Don't have referendum votes too close to Chief and Council elections.

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- If you have property taxation jurisdiction, have a period of “catch up” before you give any taxation revenues to the adjoining Provincial District or Municipality. We went for 15 years with minimum payments out and then agreed to pay prevailing taxation amounts for services such as fire protection, etc.



Enforcement Issues

- Policing costs are an important consideration. In WFN's case, we were able to negotiate the continuation of the RCMP on WFN lands at no extra cost to WFN;
- Several years ago, we had an issue with a Provincial Court judge who initially declared the court had no monies set aside to deal with a landlord/tenant dispute but that was over-ruled with the BC Attorney General's involvement. WFN's landlord/tenant laws had to be followed with the Provincial Court as the proper mechanism;
- WFN has its own Law Enforcement Officers in place who handle matters ranging from animal control law, fire protection, noise and disturbance, outdoor events, safe premises, traffic and parking control and unsightly premises, to enforcing stop work orders on projects. On serious criminal matters, they will accompany the RCMP. The WFN logo is on the RCMP vehicles that patrol WFN lands.

Questions and Answers