

Forging Linkages & Finding Solutions A BC Treaty Commission Conference for First Nations

Chief Robert Louie, Westbank First Nation Workshop Overview Presentation (Governance) – October 29, 2008

Thank you very much, Jody, and good morning to everyone. Firstly, Jody, thank you very much for your encouragement and persistence and thank you for inviting me here. Thank you very much to Chief Leah George Wilson for the prayer, and I wish to acknowledge and thank the Coast Salish peoples and the ancestors of these lands to Musqueam, to Squamish, to Tsleil Waututh and Tsawwassen in particular. Thank you to you and your peoples and the ancestors. You have preserved these lands well and we appreciate that.

Elders, chiefs, elected leaders, commissioners, federal and provincial representatives, distinguished guests, ladies and gentlemen; it is a pleasure to be here today. My topic is about governance and I wish to go through that subject in a very brief format, hopefully to address the theme of forging linkages and finding solutions. I want to cover some of the work that my community has done at Westbank, and hopefully that will be of some assistance to you in your discussions and in your work towards governance.

When I looked at governance, I had to rethink, “what does it mean?” I know what it means to me, but I’m thinking about what the full context of it is. Last night I worked till about midnight and took the dictionary out and looked over all of our laws.

When I look at governance, it is either governance or it is to govern. The Webster’s dictionary of governance says governance means: “to govern means to control and direct, to rule, to be dominant in, to determine, to restrain, to serve as or constitute a law or rule for.” So in other words, governance is about authority, being a lawmaker. Governance is about responsibility. Governance is being a recognized decision maker.

I’ve tried to put this into context and how I put it is this. Governance in our society is about instituting and implementing a good and workable democratic government and organized in such a way to be fair and accountable to the people being served. That is the context I see governance in. In other words, it is about providing good government for all persons residing, occupying or otherwise doing business on one’s lands.

When I look at the benefits to us as First Nation peoples and referring that to Westbank in particular, in Westbank we have governance over our lands and peoples within our lands. So, we have that recognition and understanding by our membership, by the local community, the residents on the reserve, by other outside governments, be it federal, provincial, and local, third parties, First Nations who are part of our whole structure and the general public. That recognition and understanding is that Westbank is a recognized government with full decision-making powers. We have an authority and the legislative powers to make laws, and that is something that we do on a constant basis. So it is about perception as well as actually implementing.

For us governance forces us to be more organized in our processes and procedures. We cannot afford to make mistakes. Laws must be developed and it is a never ending process. We need to be more precise because you cannot pass the blame to someone else, which makes you more accountable. Clearer policies have to be developed; you have to have more focus.

When I think about governance and our past and I think about the children, five years ago let's say, the perception today with our children and the youth growing up I believe is different. It was not that many years ago that Westbank never had our flag flying on our building. We didn't have the flag being equal to Canada's flag to BC's flag or any other flag for that matter. So we fly our flag with pride. In our meetings our flag is alongside Canada's and BC's; it has more meaning. That generates more community pride.

Very clearly, each member of our council, the elected representatives and officials, have to follow the law, and it is a collective community law that is developed. If not there are legal consequences. Council members can be ousted out of office, expelled and have to answer before membership. That is pretty significant.

Many things are incorporated into our laws and lawmaking. We have self-governance now and we have put in our land management in our land rules. We have transferred our administrative-oriented decisions and land management over to our lands Department. So Council, the elected body, its officials do not necessarily make the day-to-day decisions. That is passed on to other departments and they have power to do certain things, and are required to do certain things. That is what governance, to us, has meant and that is how we practice it.

The truth is, today council has less discretionary authority, less free reign than under the *Indian Act*. It is easy to fall under the realm of the *Indian Act* and be a delegated body because with that you don't have the responsibility. It's a different situation than with our governance and Constitution in place.

Today all our laws are made or developed and have to go through three readings, like Canada and like British Columbia, before they can be passed into law. Under the *Indian Act* there is a bylaw system, a delegated authority, a delegated body which means that someone else is the decision maker – the Governor General, the minister of Indian Affairs and his or her delegates – that is who the decision makers are. Councils with their resolutions can do certain things, but it doesn't get enacted as true law unless someone else makes it. That is the difference; there is a tremendous difference to how we do business and how we perceive governance with First Nations happening. There is certainly more community input.

We operate with jurisdictional authorities incorporating four levels of government. Under the federal government, we have certain powers and authorities. We have powers and authorities under the provincial government, under local government, municipalities and we have our own governance as First Nations. That is the jurisdiction that we implement. That, in essence, is what we have.

Now our self government agreement and the legislation enacted: what we have negotiated with Canada, the bilateral agreement, is a self-government agreement and it was ratified and came into force April 1, 2005, about three-and-a-half years ago. There is now legislation in the *Westbank First Nation Self-Government Act* which ratifies that agreement. It says yes, we are a recognized governmental authority with lawmaking powers.

The self government agreement implements self government based on the recognition that the right of self government is an existing aboriginal right within section 35 of the *Constitution Act 1982*. That is important, the right as an existing aboriginal right.

We have chosen to have our lands remain under section 91(24) and we did so intentionally. All existing interests in our lands, prior to self government, were recognized and continued in accordance with the terms and conditions. All of the bylaws we have – the lawmaking, the leases and the permits – they continued under the realm and under the responsibility and jurisdiction of our new self government structure. That was quite intensive.

Some facts about our community: we are part of the Syilx people, the Okanagan. We are in the southern interior of British Columbia. Our language is Nsyilxcən; we are affiliated with seven member bands within the Okanagan Nation Alliance. Our leadership have five members of council, one chief and four council members who are elected every three years. People run every three years.

We have a land base of five parcels of land currently, which is over 5,300 acres of land and our population is just shy of 700 people. We are somewhat unique, because under our structure we now have close to 10,000 non-members, well 9,000 non-members plus the membership so it is pushing 10,000 in population that live and reside within our lands.

We have an advisory council, a five-member council that is elected every three years that represent the interest of the non-natives, and the non-members residing within our lands.

Our government employees...we have 115 by last count; total employees not just government is in excess of 200, and our annual budget is between \$30 and \$40 million a year. So with Indian Affairs monies under our self-government structure it is less than 20 per cent that we are dependent upon the federal government or the Indian Affairs, 80 per cent plus are our own monies, our own revenues that we generate.

Under our self-government structure are four key documents that form part of that package that include the self-government agreement that is the bilateral agreement with Canada. You'll find it on the Internet. It looks like this. It has been consolidated. It explains what jurisdiction we are empowered with. It explains an agreement of what Canada must do and, as such, it must recognize our inherent right of self government as an existing right as I mentioned within section 35 of the *Constitution Act 1982*.

We also have our Westbank First Nation Constitution. It has been summarized in a document which I have here, a very important document. This Constitution describes how we govern ourselves

internally. It describes who our members are, how they become members, the duties and responsibilities of the elected body, how we vote, what the Council procedures are, how they are operated, how we conduct ourselves, the financial accountability, what our land rules are, how we conduct referendums, how we can make and pass laws and things of that nature. It is our own internal constitution that forms part of our governance structure.

There is an implementation plan, how we implement self government and we work on that on a daily basis. There is a fiscal transfer agreement, how much monies are paid to us that is part of the agreement we have with Canada.

So under our self government the leadership is accountable first and foremost to our membership. That is the important thing – accountability. And that fosters good governance practices, which in turn results in economic stability and community prosperity.

And for us, over the last three-and-a-half years having an instituted governance structure in place, we have had a tremendous learning curve. There has been extensive, tremendous amount of work that has been done and we believe our journey has been extremely positive and has been well worth the effort. So we highly recommend that to you.

One indication of our success is the economic development, the economy, and the growth that has happened. Our growth is faster than all the municipalities around us. That is a fact.

Our lawmaking, we develop and enact laws as I mentioned, in accordance with our constitutions. All of our laws and amendments are subject to a process that is set out in the Constitution and again includes the community consultation input. You don't find that under the *Indian Act* or in that delegated responsibility.

Three readings are required before laws can be implemented. Our Constitution is a living document. We have already amended it once and we may be amending it again in future years. So it is a living treaty much like the Constitution that we are familiar with as other governments.

We currently have over 30 laws that have been passed. We have things like our land use law. It took us a long time to put that together. We are working on a comprehensive community plan that will fit with that, and that is an ongoing living treaty type of a process. Some of our laws that are in force other than land use laws include the first law that we passed when we became self governing. It was a promise, a commitment made to the non-residents – the 9,000 plus people that live there – and that is the Advisory Council law which creates that particular body as an elected body and they provide input to our council on matters that significantly and directly affect them, those who reside on our lands.

We have a long-term debt liability or debt guarantees law. That helps us to be accountable, that says what we can or cannot borrow and what we can or cannot guarantee. It is a cornerstone of any governance commitment to safely improve management of one's fiscal resources.

We have an allotment law that sets out the policies and procedures and criteria for granting lands and the interest in lands. We have a Council remuneration and expense law. We can't willy nilly

say this is the amount of dollars that the chief or council members are going to receive. It is set out in law and if it is going to be changed we have to take it back to the membership and they have to approve it. If they don't, you have no increase or remuneration coverage.

We have a family property law that governs the division of interests in our lands in the event of marriage breakdowns; an immunity and identity law to protect you as elected officials – that is extremely important; a notice of enforcement law which establishes the procedures governing the enforcement of our laws and the method of setting and collecting penalties for infractions, disputes, adjudication law and residential premises law and other laws.

We have other laws being worked on, including an expropriation law, a community protection law. That one I want to pause on just for a moment because it is an extremely important law and we have already had a lot of interest from other parts of Canada. Other First Nations have asked, "What's this all about?" What we are talking about is about banishment of peoples on our lands and protecting our community as a whole. So we have been working hard to develop that law. It has gone through many sessions now with our community members and is still going through sessions. It is for the protection of the community, our children, and our youth. It is protection from sexual predators or exploitation, from abuse, from exposure to the illegal drugs, to the criminal elements and it is controversial, without question. But it is important and it will be instituted in the weeks ahead and that is only a few weeks away.

Work we are doing on a false alarm law; environmental assessment law, dealing with environmental matters; a foundation law that will create charitable foundations and set rules for the expenditure of funds collected by that foundation; a heritage law; a road law, as right now we don't have a complete solid structure for our own roads – they are presently treated as land parcels rather than road dedications so we need a law to give special status to the roads and dedication process; the tree removal law; and the list goes on.

Those are the things that we have on the books either developed or in the developmental phase. But it is a continuing process, it's never ending. It is like the province and the federal government, the laws never seem to end. You always need amendments, you need regulations and you need to have self-regulation or a process that deals with that in the change of time.

Other considerations from a community social, or from an economic boom situation, as I mentioned, there has been a boom in the amount of development that has taken place. We have attracted financiers, we have attracted third parties, we have attracted developers and we have done it to such an extent that it has now created the land value estimated to be approximately \$1 billion dollars. That is growing on a daily basis.

Some of the statistics around that, very briefly... in 2007, last year, Council approved development of approximately 450,000 ft.² of commercial spaces. We now have Wal-Mart, London Drugs, the Canadian Superstore is to be built, we have Staples office supplies, Rogers Wireless, Tim Hortons, a hotel and the total value of permits, building permits just for 2007 was \$69 million that were issued. We have quite an extensive amount of development.

I have a whole list here I could go through. The first six months of this year we issued more than \$27 million of building permits, we have 32 projects on the go at any given time. We have 1.2 million plus square feet of commercial development. We have a community membership vote happening on November 18 that we are expecting, or hoping at least, will be passed that will bring on another 290,000 ft.², another development proposal is 240,000 ft.² in Westbank and that is to be started next year. So the list goes on.

The economic development is not without responsibility and from a governance point of view without looking at and addressing the social issues. It is one thing to be economically viable and prosperous in that area, but it is also important to build a healthy and vibrant community with social responsibility. So that is imported into the governance structure.

All of the development proposals must be high quality, environmentally sound and fit within the community vision. And thus is a need for the comprehensive community plan. It has taken a lot of time to put this plan – and we haven't got it fully developed, it is still being worked on and likely will be amended and changed as the years go by.

We have something called a community benefit charge which is levied on all developers and helps fund capital improvements for the community as a whole. Most reserves do not have streetlights or paved roads, proper sewage systems, the normal things that you would expect, sidewalks and things like that. We have a development charge that it is levied on all developers that says you must provide a community improvement charge. We use that for revenue so that we can actually put into the social programs of our membership and we just started that process now – new sidewalks for the safety of our residents and streetlights and things of that nature, elders and youth, sports and recreational programs, culture and health, all of those things.

In closing, we have had our share of social inequities and controversy, without question. We've had the demonstrations at our office saying: "Why are you selling out? You are selling out to the government by having a self-government agreement. You are selling out to the government by trying to negotiate a treaty or to go about in that fashion. You're selling out to the government by putting in taxation."

To all of that we say nonsense. We believe that we have addressed something that is far more important. That is to address the social need as a governing institute, as a governing body to be accountable, to be fair and to make things happen within our reserves for employment, for infrastructure, for the property assessment values, for all of the things that happen. To preserve our culture you need cash and you need time to do it. That has not been forgotten. And that is what we're working on now – the preservation of our cultural identity, revising all our Nsyilxcən language to speak Okanagan and to educate our members. Those are key priorities that can never be forgotten.

So that is an overview of governance and we look forward to further discussion. Hopefully it addresses some of the thoughts that you might be thinking about when thinking about governance. Lim lim, and thank you for having me.