

MEMORANDUM OF UNDERSTANDING

Between

stqá?tk^wlniw^t sqilx^w

WESTBANK FIRST NATION

and

HER MAJESTY THE QUEEN IN RIGHT OF CANADA

represented by the

ROYAL CANADIAN MOUNTED POLICE

“E” DIVISION (BRITISH COLUMBIA)

Respecting

**ENFORCEMENT OF WESTBANK LAW
AND INFORMATION SHARING**



MEMORANDUM OF UNDERSTANDING

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MEMORANDUM OF UNDERSTANDING

BETWEEN:

stqá?tk^wlniw^t sqilx^w
Westbank First Nation
represented by
yílmix^wm na?l yi səx^wk^wínma?m'
Westbank First Nation Chief and Council

(hereinafter referred to as
"Westbank First Nation")

AND:

Her Majesty the Queen in Right of Canada
represented by
the Commanding Officer, "E" Division
Royal Canadian Mounted Police

(hereinafter referred to as the "RCMP")

PREAMBLE:

- A. The Royal Canadian Mounted Police (RCMP) and Westbank First Nation wish to establish a Memorandum of Understanding for the enforcement of Westbank Law on Westbank lands and for the disclosure of Personal Information.
- B. The i? sck^wlł skc^xípla?tat i? skc^qina?tat/*Westbank First Nation Self-Government Act* and the i? sck^wlł skc^xípla?tat i? sc^xənwix^wtət/*Westbank First Nation Self-Government Agreement* authorizes the RCMP to render services necessary for enforcement of offences established by Westbank Law where necessary for the effective and efficient delivery of policing services.
- C. The *Privacy Act* authorizes the RCMP to disclose Personal Information to Westbank First Nation under an arrangement, where that Personal Information is

relevant for the purpose of administering or enforcing any law or carrying out a lawful investigation, and where that disclosure complies with the *Canadian Charter of Rights and Freedoms*.

- D. Her Majesty the Queen in Right of Canada, represented by the RCMP, and Westbank First Nation therefore have signed this Memorandum of Understanding in the spirit of good faith to further implement the *Westbank First Nation Self-Government Agreement* for effective policing of Westbank Law on Westbank lands and to authorize disclosure of Personal Information by the RCMP under the *Privacy Act* for the purpose of enforcing any law or carrying out a lawful investigation.

THE PARTICIPANTS AGREE AS FOLLOWS:

SECTION 1.0 INTERPRETATION

- 1.1 In this Memorandum of Understanding each of the following terms has, unless the context otherwise requires, the meaning set out beside it:
- a) "Canadian Charter of Rights and Freedoms", means the *Constitution Act, 1982*, being Schedule B, Part I to the *Canada Act 1982 (UK)*, 1982, c 11;
 - b) "Commanding Officer", means the Commanding Officer of the Royal Canadian Mounted Police, "E" Division (British Columbia);
 - c) "Information", means Personal Information, general information and other information requested and disclosed under this Memorandum of Understanding, as authorized by section 294 of the *Westbank First Nation Self-Government Agreement*;
 - d) "Non-Commissioned Officer in Charge", means the RCMP member in charge of the West Kelowna / Kelowna Rural Detachment;
 - e) "Non-Commissioned Officer in Charge of the First Nations Policing Unit", means the RCMP member in charge of the West Kelowna First Nations Policing Unit;
 - f) "Participant" and "Participants", means the Royal Canadian Mounted Police and Westbank First Nation;
 - g) "Personal Information", has the meaning assigned by the *Privacy Act*, section 3;
 - h) "Privacy Act", means the *Privacy Act*, R.S.C. 1985, c. P-21;
 - i) "Provincial Police Service Agreement", or "PPSA", means the Memorandum of Agreement made between the Government of Canada and the Government of British Columbia for provincial policing services, dated April 1, 2012 and successor memoranda;

- j) "RCMP", or "R.C.M.P.", or "R.C.M. POLICE", means the Royal Canadian Mounted Police;
- k) "Royal Canadian Mounted Police Act", means the *Royal Canadian Mounted Police Act*, R.S.C. 1985, c. R-10;
- l) "Westbank First Nation", means the body of people described in the *Westbank First Nation Self-Government Agreement* (Part I);
- m) "Westbank First Nation Constitution", means the Constitution of Westbank First Nation established and ratified in accordance with the *Westbank First Nation Self-Government Agreement* and includes any amendments made to it from time to time in accordance with its provisions;
- n) "Westbank First Nation Freedom of Information and Protection of Privacy Law 2018", means the *Westbank First Nation Freedom of Information and Protection of Privacy Law 2018* enacted by Westbank First Nation on sknir'mn/February 26, 2018;
- o) "Westbank First Nation Self-Government Act", means the *Westbank First Nation Self-Government Act*, Stats. Can. 2004, c. 17;
- p) "Westbank First Nation Self-Government Agreement", means the agreement between Her Majesty the Queen in Right of Canada and Westbank First Nation, as defined in the *Westbank First Nation Self-Government Act*;
- q) "Westbank Lands", mean the lands as defined in the *Westbank First Nation Self-Government Agreement* (Part I); and,
- r) "Westbank Law", means the laws of Westbank First Nation enacted in accordance with the jurisdictions described in the *Westbank First Nation Self-Government Agreement* and the stqá?tkwłniwt i? Stkwnkwinpla?s/*Westbank First Nation Constitution*, that are listed in the Schedule to this Memorandum of Understanding.

1.2 The singular number includes the plural and the plural number includes the singular where such is consistent with the context.

SECTION 2.0 MEMORANDUM OF UNDERSTANDING AUTHORITY

2.1 This Memorandum of Understanding is entered into by the Commanding Officer under the authority of:

- a) section 5 of the *Royal Canadian Mounted Police Act* in aiding the administration of justice in the province and in carrying into effect the applicable legislation;
- b) section 8(2)(f) of the *Privacy Act*; and,
- c) sections 18 and 294 of the *Westbank First Nation Self-Government Agreement*.

- 2.2 This Memorandum of Understanding is entered into by Westbank First Nation under the authority of:
- a) sections 18 and 294 of the *Westbank First Nation Self-Government Agreement*; and,
 - b) section 8(2)(f) of the *Privacy Act*.

SECTION 3.0 SUBJECT MATTER

- 3.1 Section 196 of the *Westbank First Nation Self-Government Agreement* authorizes the RCMP to render such services as are necessary for enforcement of offences established by Westbank Law when such services are appropriate to the effective and efficient delivery of policing services in the Province of British Columbia. Pursuant to section 196, such services shall be rendered in accordance with either:
- a) the Memorandum of Agreement dated April 1, 2012 between the Government of Canada and the Government of British Columbia (Provincial Policing Services Agreement) or its successor memoranda; or,
 - b) the Memorandum of Agreement Providing a Framework for Community Tripartite Agreements for the Royal Canadian Mounted Police - First Nations Community Police Service dated April 1, 1993 or its successor memoranda,
- whichever is applicable.
- 3.2 The Non-Commissioned Officer in Charge, First Nations Policing (West Kelowna / Kelowna Rural Detachment) and Westbank First Nation s̓əxʷn̓c̓wiltm/Law Enforcement Officers will be the primary contacts for the Participants in the enforcement of Westbank Law listed in the Schedule to this Memorandum of Understanding. These primary contacts will develop enforcement procedures for the reporting, investigation, and prosecution of Westbank Law, pursuant to Part XVIII of the *Westbank First Nation Self-Government Agreement*, in consultation with the Commanding Officer and the Westbank First Nation Chief and Council.
- 3.3 Nothing in this Memorandum of Understanding regulates the policing activities of the RCMP in fulfillment of its policing mandate, including the discretion to investigate and recommend criminal and administrative charges for all laws of Canada and British Columbia and Westbank Law. In its law enforcement mandate, the RCMP and Canada retain control over the administration and internal management of the RCMP.

- 3.4 Pursuant to section 8(2)(f) of the *Privacy Act* in relation to Personal Information and sections 294 and 295 of the *Westbank First Nation Self-Government Agreement*, the RCMP has discretion to disclose Information in confidence to Westbank First Nation for the purpose of administering or enforcing the laws of Canada and British Columbia, and Westbank Law, or carrying out a lawful investigation by either Participant.
- 3.5 Pursuant to section 294 of the *Westbank First Nation Self-Government Agreement*, Westbank First Nation may enter into agreements for sharing Personal Information with the RCMP for the purposes of enforcement of Westbank Law.
- 3.6 The Participants will request disclosure of Information in writing, except in exigent circumstances where verbal requests will be documented in writing after the events, as soon as practicable. Requests for disclosure of Information may be made in writing and delivered by fax, hand, standard mail, and electronic mail.
- 3.7 Each Participant will not further disclose Information received from the originating Participant to third parties unless required by law. The Participants will not use the Information received for new purposes without first requesting the consent of the originating Participant.
- 3.8 The Participants will make every reasonable effort to ensure accuracy and completeness of Information requested and provided under this Memorandum of Understanding. Where possible, the receiving Participant will verify Personal Information with the originating Participant before using that Personal Information to make an investigative or administrative decision about an individual.
- 3.9 Pursuant to section 296 of the *Westbank First Nation Self-Government Agreement* which states that despite anything in the other sections of the *Westbank First Nation Self-Government Agreement*:
- a) The RCMP and Canada are not required to disclose Information that the RCMP and Canada are required to withhold under any law of Canada;
 - b) If the laws of Canada allow the disclosure of certain Information only if specified conditions for disclosure are satisfied, the RCMP and Canada are not required to disclose that Information unless those conditions are satisfied; and,
 - c) The Participants to this Memorandum of Understanding are not required to disclose Information that may be withheld under a privilege at law or under sections 37 to 39 of the *Canada Evidence Act*, R.S.C. 1985, c. C-5.

SECTION 4.0 LIMITATIONS

- 4.1 Nothing in this Memorandum of Understanding alters the arrangement for the enforcement of the laws of Canada and British Columbia on Westbank Lands by duly empowered federal or provincial officers as set out in the Memorandum of Agreement made between the Government of Canada and the Government of British Columbia, dated April 1, 2012 and its successor memoranda.
- 4.2 Nothing in this Memorandum of Understanding shall be construed as limiting or restricting Her Majesty the Queen in Right of Canada or Westbank First Nation with respect to aboriginal rights, title, status, jurisdictions or interests.
- 4.3 Nothing in this Memorandum of Understanding shall be construed to abrogate or derogate from aboriginal rights recognized and affirmed by section 35 of the *Constitution Act, 1982*. For greater certainty, nothing in this Memorandum of Understanding shall be construed as recognizing or denying any aboriginal rights recognized and affirmed by section 35 of the *Constitution Act, 1982*.
- 4.4 Nothing in this Memorandum of Understanding alters existing rights, responsibilities or obligations, and nothing in this Memorandum of Understanding creates additional rights, responsibilities or obligations.
- 4.5 Nothing in this Memorandum of Understanding alters the existing rights, responsibilities and obligations in the Community Tripartite Agreement for the Westbank First Nation.
- 4.6 Nothing in this Memorandum of Understanding is in any way intended to replace or amend any obligation that either Participant is bound to or required to perform by law.
- 4.7 Nothing in this Memorandum of Understanding shall be interpreted to conflict with or derogate from the *Canadian Charter of Rights and Freedoms*, the *Privacy Act*, the *Royal Canadian Mounted Police Act*, or *Royal Canadian Mounted Police Regulations, 2014*, or the *British Columbia Police Act*, R.S.B.C. 1996, c. 367 and Regulations under the *Police Act* but shall be interpreted in all respects to be subject to the *Royal Canadian Mounted Police Act* and *Royal Canadian Mounted Police Regulations, 2014* or the *Police Act* and *Regulations* under the *Police Act*. Should any provision of this Memorandum of Understanding be found in conflict or derogation of the *Canadian Charter of Rights and Freedoms*, the *Privacy Act*, the *Royal Canadian Mounted Police Act* or *Royal Canadian Mounted Police Regulations, 2014*, or the *Police Act* and *Regulations* under the *Police Act* such provision shall be null and void.

- 4.8 Nothing in this Memorandum of Understanding shall be interpreted as in any way derogating from the responsibilities and obligations of the RCMP pursuant to the PPSA entered into between Canada and the Government of the Province of British Columbia, effective April 1, 2012 and its successor memoranda.
- 4.9 This Memorandum of Understanding is cost and revenue neutral, meaning that each Participant will fund its own costs for the implementation and administration of this Memorandum of Understanding in accordance with the applicable agreements listed in section 3.1.

SECTION 5.0 SECURITY AND CONFIDENTIALITY OF INFORMATION

- 5.1 All Information and records provided to, collected by, delivered to or compiled on behalf of the Participants to this Memorandum of Understanding in the performance of their duties and responsibilities will be dealt with subject to and in accordance with federal statutes and Westbank Law, particularly the *Privacy Act*, the *Access to Information Act*, R.S.C. 1985, c. A-1, the *Westbank First Nation Freedom of Information and Protection of Privacy Law 2018*, and the *Westbank First Nation Self-Government Agreement*.
- 5.2 The Participants agree that for the purposes of section 13(1)(e) of the *Access to Information Act*, section 19(1)(e) of the *Privacy Act*, and section 295 of the *Westbank First Nation Self-Government Agreement*, all Information disclosed and received between the Participants under this Memorandum of Understanding is disclosed, received and retained in confidence.
- 5.3 The Participants will make every reasonable effort to ensure secure retention of Information disclosed and received between the Participants under this Memorandum of Understanding. Further, the Participants will provide secure disposal methods to destroy Information disclosed and received under this Memorandum of Understanding when the Information has reached its retention and disposal deadline under the laws and policies that govern each Participant.
- 5.4 If a Participant discovers an unauthorized collection, use, retention, disclosure or destruction of Information disclosed or received under this Memorandum of Understanding, that Participant will immediately notify the other Participant.

SECTION 6.0 DISPUTE RESOLUTION

- 6.1 Any issue, matter of general concern or dispute arising from this Memorandum of Understanding will be dealt with by a joint management group consisting of the following position holders or their delegate:

- a) Non-Commissioned Officer in Charge, West Kelowna / Kelowna Rural Detachment, "E" Division; and,
- b) Westbank First Nation səx^wk^wulm' kī yśayśat/Director of Operations.

6.2 Issues regarding the interpretation or implementation of this Memorandum of Understanding will be resolved only by consultation between the Participants and will not be referred to a national (or international) tribunal, Court, arbitration panel or any other third party for settlement.

SECTION 7.0 NOTICES AND COMMUNICATIONS

7.1 All notices or communications provided for in this Memorandum of Understanding will be in writing and will be mailed or delivered to the individuals or positions responsible for the discharge of the duties and obligations in this Memorandum of Understanding. For the purposes of delivery of notice, the addresses for delivery are:

For Westbank First Nation: WFN Legal Services Branch 301 – 515 Highway 97 South Kelowna, BC V1Z 3J2 Tel. 250.769.4999 Fax 250.769.4377	For the RCMP: Non-Commissioned Officer in Charge West Kelowna / Kelowna Rural Detachment 2390 Dobbin Road West Kelowna, BC V4T 2H9 Tel. 250.768.2880 Fax 250.768.0286
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or at such address as a Participant has advised in writing.

7.2 Any such notice or communication given by mail will be deemed to have been delivered after having been deposited in the mail service with first class postage prepaid. If given by personal delivery, then such notice or communication will be deemed effective when delivered to the receiving Participant's address. If delivered by electronic means, then such notice or communication will be deemed effective when opened by the intended recipient.

SECTION 8.0 LIABILITY

8.1 Sections 297 and 298 of the *Westbank First Nation Self-Government Agreement* and the laws of Canada and British Columbia govern liability arising from this Memorandum of Understanding.

- 8.2 If one Participant receives notice of a claim by a third party for damage of any kind, caused by one of the Participant's personnel, agents or contractors arising out of, or in connection with, the implementation and administration of this Memorandum of Understanding, the receiving Participant will notify the other Participant as soon as is practicable.

SECTION 9.0 TERM OF MEMORANDUM OF UNDERSTANDING

- 9.1 This Memorandum of Understanding will come into effect when signed by both Participants, on the date of signing by the second Participant.
- 9.2 This Memorandum of Understanding will remain in effect until replaced by another arrangement or terminated in accordance with this Memorandum of Understanding.
- 9.3 The Participants agree to establish a media relations plan to regulate contacts with the media and the public in relation to this Memorandum of Understanding. All media releases will be reviewed by the Participants before disclosing those media releases to the media and the public.
- 9.4 In compliance with the directive issued by the Solicitor General of Canada (2002) to the Commissioner of the RCMP that addresses arrangements entered into by the RCMP, the Participants agree:
- a) to reviews, audits and evaluations of any aspect of this Memorandum of Understanding;
 - b) to amendments by mutual written arrangement duly executed by the Participants; and,
 - c) that either Participant may terminate participation in this Memorandum of Understanding upon provision of ninety (90) days written notice to the other Participant of their intention to terminate this Memorandum of Understanding.
- 9.5 This Memorandum of Understanding reflects the good faith and spirit of cooperation of the Participants but is not legally binding on the Participants.

SCHEDULE

Westbank laws enforceable by the RCMP and Westbank Law Enforcement

Westbank First Nation has established and enforces its own laws which apply on WFN lands. The RCMP has authority and discretion to provide services when appropriate for the investigation of offences under the Westbank laws listed below, and reproduced at <http://www.wfn.ca/your-government/law-enforcement/laws.htm> This Schedule may be updated by exchange of letters between the Participants under section 9.4 b) of this Memorandum of Understanding.

2005-02	<i>WFN Noxious Weeds and Grass Law</i>
2005-03	<i>WFN Noxious Insect Control Law</i>
2005-04	<i>WFN Dog and Cat Control Law</i>
2005-05	<i>WFN Animal Control Law</i>
2005-06	<i>WFN Garbage Collection Law</i>
2005-07	<i>WFN Unsightly Premises Law</i>
2005-08	<i>WFN Noise and Disturbances Control Law</i>
2005-09	<i>WFN Second-Hand Dealers and Pawnbrokers Law</i>
2005-10	<i>WFN Discharge of Firearms Law</i>
2005-11	<i>WFN Fire Protection Law</i>
2005-12	<i>WFN Fireworks Law</i>
2005-13	<i>WFN Traffic and Parking Control Law</i>
2005-20	<i>WFN Outdoor Events Law</i>
2008-03	<i>WFN Residential Premises Law (amended March 22, 2010)</i>
2008-06	<i>WFN Disorderly Conduct and Nuisances Law</i>
2009-01	<i>WFN Community Protection Law</i>
2019	<i>WFN Safe Premises Law</i>



Signed on behalf of Westbank First Nation:

yílmixʷm/Chief, Christopher Derickson
Westbank First Nation Council

Sept 20, 2021.
Date

səxʷkʷínmaʔm/Councillor Andrea Alexander
Westbank First Nation Council

Sept 20, 2021
Date

səxʷkʷínmaʔm/Councillor Fernanda Alexander
Westbank First Nation Council

Sept 20, 2021
Date

səxʷkʷínmaʔm/Councillor Jordan Coble
Westbank First Nation Council

Sept 20, 2021
Date

səxʷkʷínmaʔm/Councillor Hogaboam
Westbank First Nation Council

Sept 20, 2021
Date



**Signed on behalf of the
Royal Canadian Mounted Police:**

Dwayne McDonald
Deputy Commissioner and
Commanding Officer, "E" Division

Sept 20, 2021
Date