Westbank Self-Government Agreement (Bill C-11)

Presentation to the Senate StandingCommittee on Aboriginal Peoples
May 4, 2004

(Check with delivery)

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April 2004

About the Canadian Taxpayers Federation

The Canadian Taxpayers Federation (CTF) is a federally incorporated, non-profit and non-partisan, advocacy organization dedicated to lower taxes, less waste and accountable government. The CTF was founded in Saskatchewan in 1990 when the Association of Saskatchewan Taxpayers and the Resolution One Association of Alberta joined forces to create a national taxpayers organization. Today, the CTF has over 61,000 supporters nation-wide.

The CTF maintains a federal office in Ottawa and offices in the five provincial capitals of British Columbia, Alberta, Saskatchewan, Manitoba and Ontario. In addition, the CTF has a Centre for Aboriginal Policy Change in Calgary dedicated to monitor, research and provide alternatives to current aboriginal policy and court decisions. Provincial offices and the Centre conduct research and advocacy activities specific to their provinces or issues in addition to acting as regional organizers of Canada-wide initiatives.

CTF offices field hundreds of media interviews each month, hold press conferences and issue regular news releases, commentaries and publications to advocate the common interest of taxpayers. The CTF's flagship publication, *The Taxpayer* magazine, is published six times a year. An issues and action update called *TaxAction* is produced each month. CTF offices also send out weekly *Let's Talk Taxes* commentaries to more than 800 media outlets and personalities nationally.

CTF representatives speak at functions, make presentations to government, meet with politicians, and organize petition drives, events and campaigns to mobilize citizens to effect public policy change.

All CTF staff and board directors are prohibited from holding a membership in any political party. The CTF is independent of any institutional affiliations. Contributions to the CTF are not tax deductible.

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About the Centre for Aboriginal Policy Change

The Centre for Aboriginal Policy Change (the Centre), was founded in 2002, under the auspices of the CTF to provide a permanent and professional taxpayer and democratic advocacy presence to monitor, research and offer alternatives to current aboriginal policy and analyze the impacts of court decisions under the guiding principles of support for individual property rights, equality, self-sufficiency, and democratic and financial accountability.

The Centre's five-fold mandate is:

1. Demand Accountability for Money Spent: Billions of tax dollars are spent by governments each year – with little accountability – in a seemingly futile attempt to help improve conditions for Canada's aboriginal people;

2. Thoroughly Examine Proposed New Treaties: New treaties being signed along the lines of the Nisga'a template will cost taxpayers untold billions of dollars. In addition, existing treaties are being reopened. Land ownership and resources in Canada are increasingly becoming a Pandora's Box;

3. Support the Equality of Individuals: Commercial fishing, hunting, paying tax and voting are increasingly being assigned on the basis of racial ancestry;

4. Track Government Policies and Court Developments: Aboriginal-related legislation and court decisions with significant long-term ramifications are coming down virtually every day; and

5. Offer Positive Alternatives: Efforts to watchdog and critique are of little value without providing positive, proactive alternatives to the status quo.

In addition to fulfilling its mandate, the Centre will publish a minimum of one position paper each year, make presentations to government committees and legislative hearings, and be available for media comment.

Aboriginal issues are a growing area of public policy. Billions of tax dollars are spent each year of which little seems to be properly accounted for or find its way to people it is intended to help. The implication of treaties, in particular, will change the landscape of Canada for all time. The Centre is dedicated solely to examining current aboriginal policy and court decisions from the perspective of those – Indian and non-Indian – who will pay the bill: the taxpayers.

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Introduction:

Let me start today by first saying what an honour and privilege it is to speak before the Senate Standing Committee on Aboriginal Peoples.

The Canadian Taxpayers Federation opposes the Westbank Self-Government Agreement (Bill C-11) for three reasons: in our opinion the agreement will shield the Westbank government from application of the *Charter of Rights and Freedoms*, establish a "third order" of government, and perpetuate a situation of taxation without representation.

Charter Exemption:

The proposed Westbank Self-Government Agreement (Bill C-11) will shield the Westbank government from application of the *Charter of Rights and Freedoms*. By doing so, Westbank laws would be immune from a *Charter* challenge. In other words, Westbank laws could discriminate between residents of Westbank based on their race, religion, or gender and the victim of discrimination could not use the *Charter* to strike down the offence.

Immunity from the Charter would also enable the Westbank government to pass legislation which violates freedom of expression, religion and association, and such laws could not be challenged in court as violating those fundamental rights.

There are some who will argue that the Westbank agreement is not a Treaty, therefore, it is merely a piece of legislation that can be amended and/or abolished at anytime. They will further argue that the *Charter* will still apply to Westbank. Not necessarily.

The Supreme Court of Canada has repeatedly rejected the claim that "inherent-right" to self-government for Aboriginal peoples is contained within the *1982 Constitution Act*. However, the Westbank agreement is written on the premise that the "inherent-right" to self-government is implied under Section 35 of the *Constitution*. Section 35 of the *Constitution* protects existing ("existing" meaning existing as of 1982) Aboriginal and Treaty rights. This Agreement could be interpreted or construed as a Treaty, and would thereby become "written in stone" as part of Canada's *Constitution* , not subject to change or repeal like other legislation.

Once this Agreement is entrenched in the *Constitution* as an Aboriginal or Treaty right which existed in 1982, Section 25 of the *Constitution* would apply to the Agreement, with the result that the *Charter* would not apply to the Westbank government.

"Third Order of Government"

Further, the Westbank agreement does not define what the "inherent right" to self-government means.

According to some native leaders, and according to the Royal Commission on Aboriginal Peoples (RCAP), the inherent right to self-government means the right of native peoples to govern themselves by laws passed by their own institutions to the exclusion of laws passed by other governments in Canada (i.e., a quasi-sovereign status.) This assertion of exclusive authority to make laws affecting native peoples includes the right to be exclusively governed by their own laws.

Sovereignty, in our Constitution, is divided between the Parliament of Canada and the legislatures of the provinces. Sections 91 and 92 of Canada's *Constitution Act, 1867* confer all authority to these two levels of government, with no mention or possibility of sovereign power being exercised by a third or other level of government. Canada's federal and provincial governments may delegate powers to lower levels of government, such as Municipal Government, but our Constitution does not allow or provide for a third order of government.

That said, the British Columbia and federal governments established a *de facto* third order style of government within the Nisga'a Treaty. It is worth mentioning that a group of Nisga'a people opposing this style of governance are challenging its constitutionality in court.

According to the RCAP the core jurisdiction of native self-governments should include "all matters that are of vital concern to the life and welfare of a particular Aboriginal people, do not have a major impact on adjacent jurisdictions, and are not otherwise the object of transcendent federal or provincial concerns." In other words, the RCAP envisions a native government wielding a tremendous amount of power and influence over the people they govern, for example: child and family services; adoption; marriage, divorce, property rights – including succession and estates, health, language, and pre-school to Grade 12 education.

Powers exercised by current native governments already reach almost as far as those proposed by RCAP. It is not a lack of powers, but rather a serious lack of accountability –according to recent auditor general reports – which must be

addressed. Giving band governments additional authority – without insisting on better accountability first – is likely to lead to further corruption and abuse.

Currently, aboriginal governments rely heavily on fiscal transfer payments from government. There is little evidence that this trend would cease if a third order government were to be established, since only a few band governments have the economic resources to be self-sufficient. The RCAP suggests that the federal and provincial governments provide unconditional grants to native governments rather than having bands raise their own revenues through taxes. In other words, Canadian taxpayers are being asked to continue to foot the bill.

Municipal governments, already used successfully in Canada for the governance of small communities, are far more appropriate than a third order style of government. Municipal government is delegated from a higher level of government, and is capable of being changed in the light of actual experience with how things work. Provinces – accountable to the same voters as municipalities -- can correct problems, and can address new issues and concerns as they arise, by amending legislation whenever necessary. Local government also has limitations on the powers it holds and has established checks and balances, thus providing a greater degree of certainty and accountability.

There is no place within the Canadian Constitution for a third order of government. A growing economic base and real political accountability will do far more for the viability and success of a native self-government than any recognition of new powers or "sovereignty" ever could.

Taxation Without Representation:

It has been said that the Westbank Agreement is widely supported in the community and is "democracy in action".

It took three votes by Westbank Band members to finally agree to the deal. The Agreement successfully passed on the third vote because the required majority was reduced from a super majority to a simply majority. Of the 430 Westbank eligible voters, 195 voted for and 170 against: obviously a divided community. Furthermore, the 7,500 non-natives who live or own businesses in Westbank were not allowed to vote on the Agreement at all.

Not being able to vote in community elections will be ongoing at Westbank. If passed, the self-government agreement will give the Westbank Indian Band members absolute power over the entire community of 8,000 people. The Westbank Indian Band will collect taxes from non-Aboriginal people who live or

own businesses on the reserve, but the Indian Band will not let these people participate in community elections – a clear violation of the *Charter*'s Section 3 right to vote. This amounts to taxation without representation.

If someone is a full-time resident of a municipality, voting rights are assumed. Under aboriginal governance, non-aboriginals living on reserves have no democratic right to participate in the local political community, even though they must pay taxes to the local native band.

Since 1884, under what was called the *Indian Advancement Act*, band councils have had the power to tax the real property of all band members on reserves. This was later incorporated into the *Indian Act* under section 83, in 1951. To date, most of this revenue is created by taxing non-aboriginal businesses operating on reserves and non-aboriginals living on reserves. All taxation is accrued to the band government.

Under section 83 of the *Indian Act,* native bands may collect property taxes, and fees and levies from non-aboriginal leaseholders residing on reserve land and from non-aboriginal businesses operating on reserves. Native bands that exercise this right use the monies collected to fund a variety of public works, community projects and services that benefit the entire reserve community – aboriginal and non-aboriginal alike.

On some reserves, non-aboriginals exist in greater numbers than aboriginals. Voting rights are not extended to the non-aboriginals due to the fear that if non-aboriginals were granted the right to vote, they may vote *en masse* and swamp the governing band council.

Aboriginal governments may bestow the right to vote to non-aboriginals and provide them with "citizenship", as is the case within the Nisga'a Treaty. But as of yet, no such "citizenships" have been granted.

Since it is a fundamental right for citizens to participate in meaningful decision-making in Canada, some bands have established advisory boards as a means to allow for non-aboriginal participation. For example the Sechelt reserve, located on British Columbia's west coast, and the Westbank agreement provide for advisory councils for non-aboriginal residents. It will be interesting to see in the long-run if it offers an adequate form of participation for non-aboriginals, or if it simply serves as a way to pacify the non-aboriginals.

In British Columbia, there are over 50 land claims. The issue of democracy for non-aboriginals affects approximately 20,000 non-aboriginal British Columbians

who live on native reserves. Further, it also affects people who may one day live or operate a business in a treaty jurisdiction as these land claims are settled.

The issues raised today are not isolated to British Columbia. According to Indian and Northern Affairs Canada, as of March 31, 2002 there were 491 specific land claims under review in Canada. Given the trend towards increasing the scope and depth of powers of native governance, this is an issue that may affect tens of thousands of Canadians now, and even more Canadians in the future.

Granting non-aboriginals voting rights on reserves would not entitle a non-aboriginal to explicit benefits negotiated for aboriginals themselves, i.e., cash transfers from other levels of government. It would, however, grant voting rights in a manner that is standard in any other jurisdiction in Canada.

The federal government plans to use the Westbank self-government agreement as a template for future negotiations. This piece of legislation will set a precedent which other Indian Bands will follow. Clearly, this Agreement will have national repercussions for generations of Canadians.

Conclusion:

The Canadian Taxpayers Federation believes Canadians – all Canadians – are fundamentally alike. Therefore all legislation and government policy must be based on treating people equally regardless of their race or ancestry. Passing even more legislation, such as the Westbank Self-Government Agreement (Bill C-11), only serves to further segregate native Canadians from the rest of society. Furthermore, treating one group of Canadians differently is wrong both morally and intellectually. Passing Bill C-11 would move Canada further down the path of inequality, favouritism, balkanization and racism.

As former Prime Minister Trudeau once stated, "The time is now to decide whether the Indians will be a race apart in Canada or whether [they] will be Canadians of full status." In other words, the time for equality is now.

I would like to thank the Senate Committee for the opportunity to speak and welcome any questions.