



***First Nation of Nacho Nyak Dun v. Yukon, 2014 YKSC 69***

The Yukon Supreme Court handed down its decision in the Peel Watershed case on December 2, 2014. The Peel is a pristine wilderness area located in the north-central portion of the Territory and includes portions of the Traditional Territories of Na-Cho Nyak Dun, Tr’ondëk Hwëch’in, and Vuntut Gwitchin. The action was about how the Yukon Government responded to the joint development of a land use plan through a process established by the Final Agreements, comprehensive modern treaties, with Yukon First Nations.

The land use planning process required the formation of an independent and objective body, the Peel Watershed Planning Commission (the “Commission”), to oversee the consultative and collaborative process with the public and affected First Nations and produce the Final Recommended Land Use Plan. The final stage of the process permitted the Yukon Government to “approve, reject or modify” the Commission’s Final Recommended Plan.

*...continued on page 2*

**UPCOMING EVENTS:**

**February 26:** **Drew Mildon** presents to Friends of Clayoquot Sound on the *Tsilhqot’in* decision.

**March 27:** 50<sup>th</sup> Anniversary of Meares Island injunction to stop clear cutting. *MacMillan Bloedel Ltd. v. Mullin; Martin v. R. in Right of B.C. (1985) 61 B.C.L.R. 145 (B.C.C.A.).*

**WELCOME W&CO’S NEWEST LAWYER: Sonya Morgan**



We are pleased to welcome Sonya Morgan to our firm as a litigation associate.

Sonya graduated as the silver medalist from the University of Alberta law school in 2002, articulated with the Alberta Court of Appeal and Queen’s Bench, and obtained a master’s degree with distinction from Oxford. For the past 10 years, she has been practicing litigation at a large Calgary law firm.

Sonya is originally from Newfoundland and, after stops in Ontario and Alberta, is excited to make the west coast home. Sonya is looking forward to meeting our clients and working in support of Aboriginal rights. ❖

The Final Recommended Plan protected roughly 80% of the watershed from non-renewable resource (mineral, oil and gas) development. The Yukon Government responded by introducing a new land use designation system and concept tools that would open up 71% of the non-Settlement lands for industrial resource development.

The plaintiff First Nations, Na-Cho Nyak Dun and Tr'ondëk Hwëch'in, joined by two environmental groups, argued that rather than following the process according to the Final Agreements, the Yukon Government went off on a "frolic of its own" and replaced the Final Recommended Plan with a new plan through a process not contemplated in the Final Agreements. The Applicants argued that the Government's conduct amounted to a "rejection of the constitutionally protected land use planning process" provided for in the Agreements. The Yukon Government argued that the Agreements provided them with unfettered power to modify the Plan at the final stage of the process. The judge disagreed, ruling that the steps taken by Yukon were inconsistent with the honour and integrity of the Crown, and did not further the constitutional goal of reconciliation under s. 35 of the Constitution.

Justice Veale said the Yukon Government usurped the Commission's role and the planning process by introducing new tools at the final stage and he ordered the new plan quashed. The judge further ordered that the Yukon Government could not go back to an earlier stage in the process to rectify its error and introduce the sweeping new changes, but could only continue from the point where it deviated from the process.

The Government of Yukon has appealed the decision. ❖



## Corporate and Commercial Law

Woodward and Co. LLP works for First Nations clients in all facets of commercial business development and associated transactions. We can assist in creating new business structures, and restructuring existing businesses, so that your Nation can strike an appropriate balance between Council's governance responsibilities, community aspirations, and empowering development corporations to achieve profitability and success.

Common business structures, such as limited partnerships and standard incorporated companies, can make use of existing tools to safeguard Aboriginal rights and title while enabling sound, and timely, business response. A deep understanding of the legislation that impacts First Nations and their corporate structures, as well as the fiduciary responsibilities of First Nation governments, is important to arriving at a sound model for corporate governance and responsibility.

We are experienced in overseeing complex secured transactions and working with accountants to develop the best blend of equity investment and borrowing to provide the most affordable financing. We can also assist with structures and procedures that help to maximize income through the appropriate use of a) *Indian Act* exemptions; b) applicable sections of the *Income Tax Act*; and, c) common corporate strategies for limiting tax liabilities.

We understand commercial land development both on and off reserve and can assist with the designation process. We can help draft appropriate leases and agreements under the *Indian Act* or in the Land Code environment.

Woodward and Co. LLP helps develop both business and community trusts and work with clients to build internal capacity for the management of both, to ensure that impact benefits agreements and other economic development strategies can enable long-term economic stability and self-direction for your community.

Many years of hard fought rights and title cases have created the conditions for economic success; we're ready to help you with the next step. For assistance, please contact a member of our Corporate Practice Group: Gary Campo, Sonya Morgan, Drew Mildon, Berry Hykin, and Brock Roe. ❖