



The Future of the Columbia River Treaty

By Kylie Buday

Since its inception, the Columbia River Treaty has failed to properly consider or protect Aboriginal rights. While government actions have infringed Aboriginal fishing rights in the rivers of the Columbia River Basin to varying degrees since the arrival of settlers in British Columbia, the 1942 construction of the Grand Coulee Dam and the signing of the Treaty represent two of the more damaging events that have affected the lives and cultures of the First Nations who depend on the river and its tributaries to practice their fishing and other water-based rights.

In September 2014, for the first time in the Treaty's history, it will be open to either the Canadian or American governments to give notice to unilaterally terminate the now more than 50-year-old Treaty. A decision to terminate would take effect ten years after notification.

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Update on 'Woodward & Company North'

Woodward and Company LLP's service in the north continues to expand! Mitchell Couling was called to the bar of the Northwest Territories on July 18, 2013.

Mitchell works with Final Agreement and non-Treaty Nations in the north including the Yukon and Northwest Territories and is one of our lawyers who periodically works out of our Yukon office with Leigh Anne Baker.



Mitchell Couling



Leigh Anne Baker

Woodward and Co's Yukon office opened in September 2011 to help us better serve the needs of Yukon-based First Nations with and without final agreements.

We are grateful for the exciting opportunities presented by our new clients in the Yukon and look forward to continuing our relationships in the future. ❖

UPCOMING EVENTS:

September 2013: *Consolidated Native Law* has been released - the 2013-2014 edition is now available.

Recently added papers to our website's Resources section:

["Do Aboriginal Laws Make a Difference?"](#) and ["Land Interests in Reserves"](#).

The coming deadline for unilateral termination has resulted in a push for government reviews with the aim of identifying, assessing and weighing the strengths and weaknesses of all available options for future negotiations. Under an existing agreement between B.C. and Canada, which saw millions of dollars in benefits flow to B.C., Canada is legally required to obtain the province's agreement before amending or terminating the Treaty. Therefore, the position taken by the provincial government will also influence the course adopted by Canada in any negotiations with the U.S.

In light of these events, 2014 presents a landmark opportunity for First Nations to assert their concerns with respect to the future of this important Treaty and how it impacts the diversity and abundance of salmon and other aquatic resources in the Columbia River Basin. Unlike when the Treaty was first signed in 1961, the law is now clear that B.C. and Canada are required to take Aboriginal rights into consideration in reaching any decisions on the future of a Treaty that infringes constitutionally-protected rights. Given the historic infringement of the right to fish of the First Nations of the Columbia River Basin, it is an opportune time for First Nations to take a strong stance on this issue and advocate for B.C. and Canada to adopt a protective, rights-oriented stance in any negotiations with the U.S., and to consider the significant damages that have resulted from past infringements.



TZEACHTEN GET PROPERTY TRANSFER TAX LAW PASSED

The first ever property transfer tax law for a First Nation was enacted on July 2, 2013. The *Tzeachten First Nation Property Transfer Tax Law, 2013* applies to transfers in all residential interests in land in the reserve, and all such transfers are subject to taxation under the new law.

W&Co's **Murray Browne** is proud of this accomplishment and honoured that he could assist the Tzeachten in this important step. Murray worked closely with Tzeachten leadership and staff to carry out extensive consultations with taxpayers, developers and other stakeholders and the draft law was amended many times to address their input and suggestions. The First Nations Tax Commission was also very helpful in working through procedural issues.

Murray noted: "We are hoping that this will open up opportunities for other First Nations to pursue this and other revenue sources where it makes sense to do so."

An online notice at the Nation's website reads: "Under the proposed law, people who buy a home on leased or sub-leased land on the Reserve would pay Property Transfer Tax, similar to off-Reserve." Until now, there has been a tax gap because purchasers of homes in British Columbia paid the property transfer tax but not for property on reserve land. This law closes that gap.

Under the law the transfer tax would be:

- 1% of the first \$200,000 of the fair market value of the interest in land at the time of the transfer; and
- 2% of the remaining fair market value of the interest in land at the time of the transfer.

Tzeachten has the power to enact the transfer tax law under the *First Nations Fiscal and Statistical Management Act*. The tax will help the Nation fund local infrastructure improvements. ❖

First Nations Financial Transparency Act



A reminder to our clients about your obligation under the *First Nations Financial Transparency Act*.

Under this new law, First Nation governments are required to publicize audited financial statements and the salaries and expenses of their Chiefs and Councillors. The information must be available on a website maintained by or for the First Nation and on the AANDC website by June 29, 2014.

There is more information at: <https://www.aadnc-aandc.gc.ca/eng/1322056355024/1322060287419>