



Woodward & Company LLP Newsletter

September 2014

Our Amazing Lawyers!

Melissa Daniels is one of only 38 people chosen to attend the UN 2014 Climate Summit in New York on September 23rd. The Native Women's Association of Canada had nominated Melissa for this invitation-only event. There will more than 100 heads of state in attendance.

Congratulations to **Leigh Anne Baker**, the new Chair of the Aboriginal Law section for CBA Yukon.

DEADLINE: Federal Societies Must Transition by October 17, 2014

Any societies or charities originally created under Part II of the old *Canada Corporations Act* must transition to the new *Canada Not-For-Profit Corporations Act* by October 17, 2014 or they will be dissolved. *...continued on page 2*

UPCOMING EVENTS:

September 10: **Drew Mildon** presents at 8th Annual Circle For Aboriginal Relations Society Conference, Edmonton Airport Marriott Hotel and Conference Centre

September 18-19: **Drew Mildon** will speak at the **6th NE BC Natural Gas Summit**, The Morris J. Wosk Centre for Dialogue | Vancouver, B.C.

September 25: **Jack Woodward** speaks on a panel entitled *Securing the Homeland: Innovative Legal Strategies* at the International Funders of Indigenous Peoples conference, New York.

September 26: **David Robbins** chairs the Affinity Institute conference on the *Tsilhqot'in Nation* decision in Vancouver.

October 1: **Heather Mahony** will speak to the CBA Atlantic Aboriginal Law Section re: The Role of the Evidence in proving Tsilhqot'in Aboriginal title.

W&Co's Expanding Legal Team

Over the summer, Woodward and Company LLP added two more lawyers to our roster, and an articling student. Here is a brief introduction to our newest team members.

Camille Israël



Camille first joined W&Co as a summer student in 2012. After completing her law degree at the University of British Columbia, she returned as an articling student in 2013-14. Camille was called to the British Columbia bar on August 18, 2014.

Her areas of interest include environmental protection, employment law and governance. Prior to law, Camille completed a Bachelor of Arts in Anthropology at UBC and was involved in choirs, bands and musical theatre around Vancouver. Camille hails from Montreal, QC, but has always been a west coaster at heart.

Jessica Thompson



Jessica joined the Whitehorse office of W & Co. in August 2014. Prior to that Jessica practiced law in Iqaluit, Nunavut, mainly in the areas of criminal and administrative law. Jessica completed law school at the University of Victoria in 2003, and was called to the Bar in 2008. She has been an adjudicator with the Nunavut Human Rights Tribunal since 2012.

Jessica's areas of interest include litigation, legislative drafting, and governance. She completed a M.A. in 2006, and is currently working part-time towards an LL.M. in Constitutional Law through Osgoode Hall Law School. Jessica enjoys languages, camping, and life in the North.

Expanding Team: Alan Hanna...continued on page 2

Many treaty organizations, business entities, general partners, and charitable associations working for First Nations were created under the old Act. There are a number of important steps to take to transition to the new Act and we strongly recommend that directors and Councils review their existing entities and take steps immediately to instruct their lawyers to get this transition moving.

If you are not sure whether your society is incorporated provincially or federally, a keyword search is available at the Corporations Canada website. Simply go to www.ic.gc.ca and click through to their menu. On the left you will find a button "Search for a Federal Corporation" and you can enter the name or a part of the name of a society and it will tell you its status and whether, if it is a federal society, it needs to be transitioned. In order to transition, societies will need to:

1. Review existing Constitution and Bylaws in the light of operations and the new Act;
2. Draft new Articles of Continuance (which basically replace existing Constitutions);
3. Draft new Bylaws which address certain required new provisions;
4. Hold a meeting of Members (not just Directors) to approve the new Articles and Bylaws; and
5. Submit the appropriate forms.

If the society or not-for-profit is a registered charity, its dissolution for failure to transition could lead to the revocation of its registration as a charity and result in paying a revocation tax. In order to avoid this risk, and increased legal costs, we suggest acting as soon as possible. ❖

Case Comment: Grassy Narrows First Nation v Ontario (Natural Resources), 2014 SCC 48 ("Keewatin")

On July 11, 2014, the Supreme Court of Canada released its decision in the Keewatin case, an action brought by the Grassy Narrows First Nation in 1997 when the province of Ontario issued a forestry licence on Treaty 3 lands. This first phase of the case concerned the threshold question of whether Ontario has the authority to "take up" Treaty 3 lands, thereby limiting the harvesting rights protected pursuant to the Treaty.

The Court found that, although the Treaty was negotiated

by the federal government, it was ultimately an agreement made between the Ojibway and the "Crown". Therefore, when the province exercises its sole authority under the Constitution to take up Treaty lands, it must assume all of the obligations imposed on the Crown. These include upholding the honour of the Crown as well as acting in accordance with the fiduciary duties of the Crown when dealing with First Nation interests. This means that Ontario's right to take up Treaty lands is subject to the duty to consult and to potentially accommodate First Nation interests and that Ontario must ensure that harvesting rights protected by the Treaty are not unjustifiably infringed. Ultimately, this decision makes it clear that when Treaty lands are "taken up", First Nations will deal directly with the provincial, rather than the federal Crown.

The Court also made it clear that the province must justify any infringement. In the past, it has been an open question as to whether a province has the constitutional authority to infringe a treaty right. The Court found that Ontario has the authority to take up treaty lands but section 35 of the *Constitution Act*, 1982 is a limit on that power and if Treaty rights are infringed, the standard for justification test established in the *Sparrow* and *Badger* decisions will apply to the actions of the province to determine whether the infringement was justified.

In confirming its 2005 decision of *Mikisew Cree First Nation v Canada*, the Court explained that a Treaty infringement will occur in instances when no meaningful right to hunt, fish, or trap remains **in the territories over which a First Nation traditionally exercised these rights**, and a legal action brought against the Crown would be a legitimate response. However, the Court did not address the question as to what extent a First Nation may need to act in advance to protect the meaningful exercise of their rights in situations where serious impacts on their ability to exercise their rights are threatened by developments. We note that the trial level decision in the *Tsilhqot'in* case made it clear that intact ecosystems are required in order to ensure there is a surplus of wildlife species available to be hunted, trapped and fished, which will thereby ensure the continuance of constitutionally-protected rights. ❖

Expanding Team continued: Alan Hanna

Subsequent to working as a summer student with W& Co. in 2013, Alan returned to complete his articles with the firm in spring 2014 upon graduating from the University of Victoria Faculty of Law. Alan also holds a Master of Arts and Bachelor of Arts (Hons) in Anthropology with a Minor in Indigenous Studies from UVic. His areas of interest are Indigenous legal traditions, First Nations jurisdiction, rights and title, environmental protection and sustainability, and social justice in reconciling settler society with First Nations.