



**UPDATE:  
WOODLAND  
CARIBOU  
JUDICIAL REVIEW**

Under pressure from the Federal Court, the Minister of the Environment issued a draft recovery strategy for boreal caribou in late August 2011 - more than four years past the mandatory statutory deadline for doing so. We still don't have a final recovery strategy. The Minister continues to violate s. 43 of the Species at Risk Act, which required that the recovery strategy be finalized within 90 days of the draft being posted. The court overturned the Minister's original decision not to issue an Emergency Order. The Minister still refuses to issue an Emergency Order, justified largely on a promise to finalize the Recovery Strategy in 'late spring' 2012. The Minister's actions seem inconsistent with the first component of the rule of law that is fundamental to Canada's constitutional structure:

"the law is supreme over officials of the government as well as private individuals . . . The first principle requires that legislation be applied to all those, including government officials, to whom it, by its terms, applies."

British Columbia v. Imperial Tobacco Canada Ltd., 2005 SCC 49 at paras. 58-59 ❖

**ALBERTA'S LOWER REGIONAL  
ATHABASCA PLAN – Critique by Matt Boulton**

On August 22, 2012, the government of Alberta approved the Lower Athabasca Regional Plan (the "Plan"). The government

**PROFILE: LAURA BONENFANT**

Laura's first experience at the firm was in 2011 as a summer student, where she worked extensively on Beaver Lake Cree Nation's legal action against the expansion of the tar sands. After that experience she was hooked on Aboriginal law and on the work of Woodward & Co. Laura received her J.D. from the University of Victoria in May 2012 and returned to the firm as an articled student. "It is a true privilege to work in this area of law and to have such amazing mentors."

Growing up on Vancouver Island, Laura had many great wilderness adventures in the Nitnat Triangle, Cowichan Valley and Clayoquot Sound. By contrast, Laura spent a few years as a fashion model in New York and Paris before moving to Montreal where she studied International Development and Environmental Studies at McGill University. After earning a BA with Great Distinction, Laura worked as a consultant and communications coordinator in the environmental nonprofit sector.

Laura is interested in many different aspects of Woodward and Company's work. She is particularly passionate about Aboriginal taxation issues as well as First Nation economic development and self-governance initiatives. She is also excited to continue working on and learning about the connection between the protection of Aboriginal rights and the preservation of the environment and wild spaces. Laura expects to be called to the bar in the fall of 2013. ❖



**UPCOMING EVENTS:**

**September 13:** Matt Boulton's Call - Woodward & Co's newest lawyer will be called to the British Columbia Bar at 4:30pm.

**September 27:** Heather Mahony will present during part I of CBA webinar [Business Transactions with First Nations](#).

of Alberta has heralded the Plan as protecting approximately 2 million hectares of land in Northeastern Alberta from oil sands operations – “an area three times the size of Banff National Park.” However, First Nations and Environmentalists are critical of the Plan and have voiced a number of concerns and criticisms.

The Alberta government touts the Plan as the product of more than three years and three rounds of consultation with more than 10,000 Albertans, including First Nations and experts on social, economic and environmental issues. On the other hand, throughout the development of the Plan First Nations have criticized Alberta for failing to meaningfully consult with them and for failing to incorporate the input they provided on a number of important matters. Indeed, upon reviewing and comparing various drafts of the Plan, several First Nations concluded that it appeared as though Alberta did not consider or incorporate their concerns or submissions at any stage of the Plan’s development process; submissions made on previous drafts were completely ignored.

Consequently, the Plan’s frameworks do not reflect an understanding of what ecosystems and resources are fundamental to the exercise of Aboriginal and treaty rights, and the framework thresholds, triggers and management responses don’t relate to the meaningful exercise of the rights of First Nations. Chief Allan Adam of the Athabasca Chipewyan First Nation said the following about the Plan, “this is not our plan, it’s the government’s plan to annihilate our lands and our future. There are no commitments to our people and no protection for our lands and rights. We thought we were working towards a partnership with the government, but this plan doesn’t reflect that.”

Further, while the Plan protects over 2 million hectares of land from oil sands development, “conventional” oil and gas developments on existing tenures will be allowed to operate in the protected areas, though no new tenures for conventional oil and gas developments will be granted in those areas. Moreover, the protected areas make up only 22.5% of the total land in the Lower Athabasca Region and critics say this is not enough to protect the Region, nor the Woodland Caribou that

are its most threatened species. The size and location of the protected areas are inadequate to protect the eight threatened Woodland Caribou herds in the tar sands region. The Pembina Institute noted that while the establishment of new conservation areas is a step forward, the Plan still does not adequately address caribou conservation needs in the Lower Athabasca Region. A 2011 analysis by Global Forest Watch Canada indicated that approximately 64% of caribou habitat had been disturbed by industrial activity in the region, far more than what Environment Canada deemed sustainable for caribou survival. Alberta also declined to place caps on how much development can happen at once. The Pembina Institute asked for only 5% of the region to be available for oil sands development at any time. Industry, however, fought hard against such efforts to regulate the pace of development and it appears to have won; oil sands production is forecasted to more than double to 3.5 million barrels a day by 2020. In fact, production is going to grow faster, not slower, with the Plan in place.

A limit on groundwater withdrawals is also conspicuously absent, as is a policy to protect and reclaim wetlands. “Interim triggers” have been developed for the not yet complete Groundwater Management Framework, but “a management response will not be a mandatory requirement of the regional plan until there is better understanding of the current state of groundwater in the region and final triggers and limits have been established.” In other words, a violation of the “interim triggers” will not necessarily prompt an intervention by Alberta.

Not surprisingly, Industry is pleased with the Plan. For example, on the environmental threshold limits, Dave Pryce, vice-president of operations at the Canadian Association of Petroleum Producers, was quoted as saying, “for the most part we’re well below” what has been proposed, indicating Alberta may have set the bar so low for industry that the Plan’s thresholds and weak environmental standards will offer little real protection for the environment. In sum, while the Plan may result in some improvements, it is essentially business-as-usual as the pace of tar sands production will not be slowed. ❖

*Continued in next column*

## CHANGES AT W&CO’S FRONT DESK



**Leanne Goodwin** rejoins the firm on September 4<sup>th</sup> taking on reception as well as accounts payable.

And we wish **Micki Keenlside** – receptionist and party planner extraordinaire - the best in her return to university. ❖



## W&Co Joins CBA Equality and Diversity Committee

Woodward and Co LLP is pleased to announce that **Leigh Anne Baker** has been chosen to serve on the Equality and Diversity

Committee of the Canadian Bar Association BC Branch. Leigh Anne’s one-year term begins in September. The committee’s mandate is to assist in the implementation of strategies and programs which will assist the Bar to recognize, reflect and promote equality and diversity within CBABC, the profession as a whole and the justice system. ❖