



SCC Ruling Reinforces First Nation Tax Immunity

On July 22nd, the Supreme Court of Canada ruled that Indians are exempt from taxes on income earned on fixed investments made at on-reserve financial institutions. The decision in the *Bastien Estate v. Canada* and *Dubé v. Canada* cases solidifies Indian tax exemption for property that is of a so-called “commercial” nature if it is located on reserve, and is being hailed as an important victory for native fiscal rights in Canada.

The cases centered on two registered Indians who had invested in term deposits at on-reserve financial institutions. In the *Bastien* case, the man invested income earned from his on-reserve moccasin manufacturing business. CRA had assessed the interest income earned on the accounts as taxable, suggesting the funds were invested in Canadian and global markets and therefore the income was part of the “commercial mainstream” and should not be protected from taxation by s.87 of the *Indian Act*. Both the Tax Court of Canada and the Federal Court of Appeal agreed. However, the SCC found the income to be tax-exempt, ruling that the courts had “wrongly elevated the ‘commercial mainstream’ consideration to one of determinant weight.”

The ruling is considered a sweeping win because it upholds Indian tax status and counters nearly two decades of decision-making from the Federal Court of Appeal and the Tax Court that had narrowed the scope of tax exemption to being almost non-existent. ❖

Big Win for Woodland Caribou

Court finds federal environment Minister acted unlawfully in refusing to recommend emergency order for woodland caribou

On July 29th, Athabasca Chipewyan First Nation, Beaver Lake Cree Nation and Enoch Cree Nation as represented by **Woodward & Co LLP** received a favourable judgment from the Federal Court of Canada. Mr. Justice Paul Crampton held that federal environment Minister Peter Kent “... clearly erred in reaching his decision by failing to take into account the First Nations Applicants’ Treaty Rights and the honour of the Crown in interpreting his mandate under [the federal *Species at Risk Act*].” The Court set aside the Minister’s decision, and sent the matter back to the Minister for reconsideration in light of the Court’s reasons.

The Court noted the federal government’s various concessions in the case, including that: caribou are threatened by habitat loss; all 13 herds of caribou in Alberta are at elevated risk of local extinction (largely because of industrial development in their habitat); the population and habitat conditions of all the herds in northeastern Alberta are “insufficient for those herds to be self sustaining”; there is a developing gap in caribou distribution in Canada centred around northeastern Alberta (the area of intensive tar sands activity); and Alberta’s failure to protect caribou will likely have consequences for the national population of the species.

The Court then went on to say: “I acknowledge that it is not immediately apparent how, given the foregoing facts, the Minister reasonably could have concluded that there are no imminent threats to the national recovery of boreal caribou.” The federal government conceded in the Court case that it was more than four years past the mandatory statutory deadline for completing a recovery strategy for boreal caribou. Further relief may follow from the Federal Court if the environment Minister does not complete a proposed recovery strategy by September 1st of this year. ❖

UPCOMING EVENTS:

NEW WHITEHORSE OFFICE OPENS - Coming soon! Stay tuned for details in our next newsletter.

Tsartlip First Nation agrees to grocery store plan with Peninsula Co-op

After more than two years in development, Tsartlip Chief Wayne Morris has signed a deal on behalf of Tsartlip First Nation to lease approximately five acres of land to Peninsula Co-op to build a grocery store, retail centre and gas bar. The new store with auxiliary rental units and gas bar will be built near the corner of Gowdy Road and Stelly's X Road.

This project came about after the Peninsula Co-op ran into problems with an application to build its new store in a different area of Central Saanich. The Co-op board was on the verge of having to move its headquarters out of the area, and was pleased to have the opportunity to join with Tsartlip First Nation in this agreement. The Co-op wanted to keep its new store and offices in the area where they started business 35 years ago.

The interim agreement between the Peninsula Co-op board and Tsartlip First Nation will be ratified by a referendum expected to be held this fall.

Tsartlip First Nation worked with Woodward & Company's **Heather Mahony** and **Alana DeGrave** to finalize the deal, which they see as having many benefits to the whole community, including employment and increased services for the area. ❖

W&Co's Sean Nixon expands role to include EcoJustice



Sean Nixon has recently expanded his practice, becoming EcoJustice's Victoria representative in the provincial capital. Sean will continue as associate counsel with Woodward & Co LLP.

W&Co attends BLCN Pow Wow

Jack Woodward and special guests Michael Mansfield and his wife Yvette Vanson joined the entourage to this year's annual Beaver Lake Cree Nation Pow Wow on the July 1st long weekend. Mr. Mansfield took in the dance celebration as part of his trip to Alberta investigating the tar sands industries and their impact on BLCN land and livelihood.



Yvette Vanson, Michael Mansfield, Jack Woodward, Jackie and Chief Hank Gladue

BC EAO CALLED INTO QUESTION BY AUDITOR GENERAL AND COURT

It's been a one-two blow for British Columbia's environmental review office. First BC's auditor general issued a report in early July saying the public office entrusted with monitoring environmental compliance in multi-billion-dollar industrial projects around the province is not doing its job. The A-G's report noted in particular that when it comes to overseeing major industrial projects that have been certified such as mines, there is no formal tracking to ensure the project follows conditions and commitments for compliance. "The Environmental Assessment Office is expected to provide sound oversight of such projects. However, this has not been happening."

The second hit came from BC's Supreme Court in rendering the *Halalt* decision. On July 13, 2011 the BCSC stopped any action being taken under a BC environmental assessment certificate that was successfully challenged in *Halalt First Nation v. British Columbia (Minister of Environment)* 2011 BCSC 945. In doing so, the Court noted that the current BC *Environmental Assessment Act* provided a process that was a far cry from that under the previous legislation condoned by the Supreme Court of Canada in *Taku River Tlingit v. British Columbia (Project Assessment Director)*, 2004 SCC 74. ❖