



### ***Louie and Beattie v. Indian and Northern Affairs Canada, 2011 CHRT 2***

This case represents the first application of the Canadian *Human Rights Act* to the *Indian Act* and to INAC.

The complainants applied for a locatee lease under s. 58(3) of the *Act*; INAC refused to approve the lease on the basis that the applicants had not complied with INAC's policy requirements. Among other things, INAC stated that they required confirmation that Mr. Louie had received independent legal and financial advice.

The Canada Human Rights Tribunal called INAC's conduct "paternalistic" and "discriminatory", demonstrating "...how the [*Indian*] *Act* has become an anachronism that is out of harmony with the guaranteed individual liberty, freedom and human rights enjoyed by all Canadians." The CHRT ordered that INAC should accept a determination by a mentally competent, adult Indian that a proposed lease is in that individual's best interest and that INAC amend its Land

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### **Gitxaala Nation Intervenes at the SCC in the *Lax Kw'alaams* Appeal**

On February 17, 2011, Woodward & Company legal counsel David M. Robbins and Jay Nelson appeared in the Supreme Court of Canada on behalf of the Intervener Gitxaala Nation in the appeal of *Lax Kw'alaams v. Canada*, 2009 BCCA 593.

The appeal in *Lax Kw'alaams* was the first aboriginal fishing rights case from the northwest coast of British Columbia to go before the Court. It was also the first appeal to the Supreme Court of Canada raising questions relating to aboriginal rights to fish, including on a commercial or lesser scale, since the Court's 1996 decision in *R. v. Van der Peet*, *R. v. Gladstone* and *R. v. Smokehouse*.

Judgment from the Court is expected sometime in 2011. First Nations can anticipate that the Court's decision will have implications for aboriginal rights to sell a resource (e.g. fish) and how to proceed with aboriginal rights infringement litigation against the Crown.



### **UPCOMING EVENTS:**

**March 19** : Speaking Engagement - **Jack Woodward** will join Ron Lameman of Beaver Lake Cree Nation at the G2 Gallery in Venice, CA for "**Truth, Trials and Tar Sands: Beaver Lake Cree Nation's Fight to Save the Boreal.**" 2:30pm start.

**March 25**: **Climate Change, Kids & Caribou** – Jack Woodward will take to the ArtSpring stage on Salt Spring Island with **Raffi** and **Dr. Andrew Weaver** to discuss global warming, habitat destruction and our children's futures. 7 – 9pm. Tickets on sale at the ArtSpring box office. Details for both events on our web site. [www.woodwardandcompany.com](http://www.woodwardandcompany.com)

Management Manual and other policies to provide that where such persons “have determined that a transaction will be for their benefit, INAC will accept that determination and conduct the processing of requested lease on that basis.” The CHRT gave INAC 6 months to make these amendments.

The Attorney General of Canada has filed for Judicial Review of this decision. ❖

### Drew Mildon Wins Appeal Case to Protect Clients from Conflict of Interest



Drew Mildon won in Yukon Court of Appeal on behalf of Liard First Nation. The win is significant for advancing a legal point on the rights of all litigants, Aboriginal and non-Aboriginal, to be protected from conflict of interest. The decision strengthens the rights of clients to rely on the undivided loyalty of their lawyers.

Congratulations Drew!

### W&Co Joins Reconciliation Roundtable

On February 8, 2011, **Leigh Anne Baker** participated in a Reconciliation Roundtable held by the University of Victoria Indigenous Law Club. The event was held at the Ceremonial Hall of the First Peoples House at the University of Victoria.



Students and local community members were invited to join a panel of Indigenous and non-Indigenous people in discussing what reconciliation means to them, and how it influences their work.

The other panel members included Victor and Joyce Underwood of Tsawout First Nation, Eric Swanson of the Dogwood Initiative, Aimee Craft, a Métis lawyer from Manitoba, and Mavis Underwood, Executive Director of Nil/Tu,O Child & Family Services.

Leigh Anne left the experience inspired and humbled by the words of her fellow panellists and community members. ❖

### UPDATE ON THE CARIBOU CASE....



In February, Woodward & Company filed written argument in the woodland caribou judicial review brought on behalf of Athabasca Chipewyan First Nation, Beaver Lake Cree Nation and Enoch Cree Nation. These three Aboriginal groups are arguing that the federal government has a mandatory duty under the federal *Species at Risk Act* to protect caribou herds that the groups rely on for the exercise of their treaty rights in northeastern Alberta.

Woodland caribou face imminent threats from the rampant expansion of industrial tar sands development in the region; tar sands development also threatens the traditional way of life of the three Aboriginal groups. The federal government has until the middle of March to file their own written argument, after which the case will be set down for hearing in Federal Court. ❖



### W&Co says a fond farewell to Linda Romaniec

*At the end of March I will be taking my retirement from the workforce and leaving Woodward & Company. I would like to thank all my wonderful colleagues and our great clients for the memories I have accumulated over the past 6 years.*  
~ Linda Romaniec