



### **The HST Referendum: Implications for BC First Nations, Governments and Businesses**

On August 5, 2011, British Columbians voted in a tax referendum to return to the goods and services tax (GST) and the provincial sales tax (PST), thereby rejecting the harmonized sales tax (HST).

The province will slowly reinstate the 12 per cent PST and GST tax system during a transition period that is expected to take a minimum of 18 months. During the transition period, the HST will continue to apply at the full 12 per cent rate until the PST is re-implemented.

Eligible lower-income British Columbians will continue to receive the B.C. HST credit until the PST is re-implemented at which point the B.C. HST credit will be replaced by the re-implemented PST credit. Ultimately, the PST will likely be reinstated at seven per cent along with pre-existing PST exemptions.

*...continued on page 2*

### **UPCOMING EVENTS:**

**October 17:** Pre-trial motion for Beaver Lake Cree Nation - **Jack Woodward** will join David Rosenberg Q.C. in Edmonton to present the argument against Canada and Alberta's motion to strike. The hearing is scheduled for 5 days in Alberta's Court of Queen's Bench.

**October 26:** Workshop: Part of the W&Co Governance Seminars - Tax Exemptions Under the Indian Act: Business after *Bastien* and *Dubé*. At the Cove Lakeside Resort in Kelowna – [www.covelakeside.com](http://www.covelakeside.com)

### **JENNY BIEM CALLED TO YUKON BAR**

The third lawyer at Woodward and Company LLP has now been called to the Yukon bar. Jenny Biem joins Drew Mildon and Shaunagh Stikeman.

While in Whitehorse for the recent opening of the new W&Co office, Jenny made it official. Donning the required white gloves, she penned her name in the historic *Official Register & Roll of Barristers and Solicitors of the Yukon Territory* registry. The roll has been signed by lawyers practicing in the Yukon since the time of the gold rush. Jenny signed in at # 893. In case you were curious, the first signature in the registry is dated October 27, 1898.



**Congratulations Jenny!**



### *Impacts on Exemptions Available to First Nations Governments and Band-Empowered Entities*

Since the Federal government has generally taken a broader view of the exemptions available to First Nations governments than has the Provincial government, the return to the PST may result in a reduction of the exemptions available to First Nations governments.

For example, a First Nation or an incorporated or unincorporated “band empowered entity” that was able to claim an exemption for the full HST where it acquired goods or services for band management activities (i.e., non-commercial activities for which the entity would not otherwise be entitled to an input tax credit) will in certain circumstances have to pay PST on such goods and services again.

### *Impacts on First Nations’ Transaction Taxation under the FNGST*

The introduction of the HST resulted in an additional administrative burden for First Nations named in the schedule to the *First Nation Goods and Services Act*, since status Indians were liable only for the federal portion of the HST (5%) on taxable supplies sold or provided on the reserve, whereas non Status Indians were liable for the full 12% HST, meaning that merchants had to check status cards each time when making an HST-taxable supply. Re-implementing the PST will result in a return to the situation where these First Nations collect the same rate of Federal tax from everyone acquiring taxable goods and services on the reserve, eliminating this administrative burden. This is particularly the case in situations where the supply is FNGST-taxable, but PST-exempt, such as restaurant food.

### *Impacts for First Nation Businesses*

First Nations’ and First Nation individuals’ on-reserve un-incorporated businesses whose purchases of supplies previously qualified for *Indian Act* PST exemptions prior to the implementation of the HST should see this exemption reinstated once the PST is

re-implemented. This will result in First Nations’ and First Nation individuals’ on-reserve un-incorporated businesses regaining a business advantage that was lost under the HST as other businesses had been able to claim input tax credits for the full amount of the HST.

*With thanks for contributions from our article student, Matt Boulton. This article contains general information only. If you have specific questions about how the re-introduction of the PST may affect you or your business, please contact Woodward and Company lawyers Heather Mahony or Drew Mildon. ❖*

## **New Whitehorse office is open for business**

**Jack Woodward** was on hand for the official opening of the new Woodward & Company LLP Whitehorse office. The firm hosted an open house for clients and for area lawyers on September 21<sup>st</sup>. The doors will be open 9 to noon, Monday to Friday and lawyer Shaunagh Stikeman will run the practice.



The office is located at 3059 3<sup>rd</sup> Ave, 2<sup>nd</sup> floor, Whitehorse, Yukon. Phone/Fax: (867) 633-5940.

Continued in next column...