



## Structuring First Nation Businesses for Accountability and Rights Protection

By Drew Mildon



Chief and Council face important and difficult decisions when deciding how best to structure a First Nation's businesses.

It is important to ensure that:

- a) there is appropriate **liability protection** for the Nation;
- b) the businesses are **accountable** and responsive to the concerns of citizens;
- c) any impacts on the Nation's Aboriginal **rights**, treaty rights or Final Agreement rights are not compromised by the businesses without appropriate community approvals; and
- d) the best possible structure is used to take advantage of available **tax exemptions**.

...continued on page 2

## New Whitehorse Office opens!

*W&Co expands service in Yukon*

Woodward & Company LLP will be opening a new office to serve Yukon First Nations this September located at: **2nd Floor - 3059 3rd Ave., Whitehorse, Yukon.**

And W&Co is pleased to announce that **Shaunagh Stikeman** will run the new office. Shaunagh was called to the BC Bar in March 2009 and will join the Yukon Bar in September 2011. Shaunagh has a BA (honours) in Womens Studies & Political Science (McGill University), with an emphasis on international development. Shaunagh received her LLB at the University of Victoria, where she focused on aboriginal law, human rights and constitutional law. Shaunagh is bilingual in English and French.

After graduating from law school, Shaunagh clerked for justices of the Supreme Court of British Columbia. Shaunagh articulated with the Department of Justice in Vancouver, and acted as counsel conducting tax litigation until joining Woodward and Company LLP.

Shaunagh recently moved to Whitehorse with her husband, two kids and dog, and is enamored with Yukon life.



*Shaunagh Stikeman*

Stay tuned for more details as we expect the office to be functioning by mid-month. ❖

## UPCOMING EVENTS:

**September 26** : Ottawa Action Against the Tar Sands - a demonstration on Parliament Hill organized by the Indigenous Environmental Network, Council of Canadians and Greenpeace.

## UPDATE ON THE CARIBOU LEGISLATION:

### a. Liability Protection

Business carries inherent risk. Corporate limited liability has developed over hundreds of years to encourage development and innovation while offering protections for investors. A First Nation should not end up paying forever because of a single incidence of bad luck.

### b. Accountability

There are several options for structuring the shareholder relationship between a Nation, Chief and Council and the business. Corporate directors should have clear instructions that the decisions they make are not just about profit like a regular business but that the interests of a community of citizens is also at stake and that political powers reside with Chief and Council.

### c. Rights Impacts

In the consultation and accommodation context, corporate leaders must understand that financial benefits offered by government, third parties, and/or industry could be considered accommodation for Aboriginal, Treaty, or Final Agreement rights. Since those rights properly belong to the citizens and communities, it is important that appropriate approvals from Council or the community are obtained before the First Nation business accepts these benefits.

### d. Available Tax Exemptions

In the past, First Nations tended to rely on *Indian Act* exemptions for income tax reductions. However, there are other important tax incentives. For example, sections 149(1)(c) and (d) of the *Income Tax Act* are powerful tools that provide First Nations with the ability to earn income on and off-reserve tax exempt. In order to use these exemptions however, a First Nation must qualify as a body functioning as a government in Canada, which usually requires that the First Nation has instituted its own bylaws, including financial bylaws.

The reality is that First Nations business must operate in a complex field where political responsibilities and citizens' rights must shape their structure and behaviour while also competing aggressively in the marketplace. ❖

In July, Mr. Justice Crampton of the Federal Court ordered the Minister to reconsider whether an emergency order is needed to protect woodland caribou and their critical habitat in northeastern Alberta. Justice Crampton also threatened a further Court order against the federal government if the draft caribou recovery strategy wasn't released before **September 1st** of this year.

The federal government posted the draft recovery strategy on the SARA registry on Friday afternoon, August 26th (perhaps because a Friday afternoon release generally attracts less attention from the media). The draft recovery strategy is available at the following link:

[http://www.sararegistry.gc.ca/document/dspDocument\\_e.cfm?documentID=2253](http://www.sararegistry.gc.ca/document/dspDocument_e.cfm?documentID=2253) There will be a 60-day public consultation period about its contents.

In our initial review, this recovery strategy does not address the recovery needs of woodland caribou in northeastern Alberta, and it may not comply with the requirements of the federal *Species at Risk Act*. On top of that, it does not comply with the federal government's constitutional obligations to First Nations under s. 35 of the *Constitution Act*. Under the government's plan continued development will be allowed in most caribou ranges in Alberta so long as there are plans in place to "stabilize" caribou populations (this will likely be primarily through killing wolves). In essence, the recovery strategy "gives up" on most of the caribou herds in Alberta by failing to protect the critical habitat that would be needed for their long-term recovery and health.

We have written to the government explaining why we still believe an emergency order is necessary. If caribou are to survive in northern Alberta the government has to get serious about habitat protection. Further court action or political protest may be necessary or the only caribou left in Alberta will be on the backs of quarters. ❖

## A New Face for Fall: Welcome Maryse!



Woodward and Co LLP welcomes **Maryse Pelletier** to our legal support team! Maryse will be providing assistance to Murray, David, Mitch, Berry & Drew.

Maryse's extensive legal experience spans over 19 years and almost every province in Canada from Nova Scotia to the Yukon! She was fortunate to have been able to relocate to the various offices of Heenan Blaikie due to their national presence and their willingness to move her from office to office as certain opportunities presented. In addition to her legal skills, Maryse is fully bilingual and teaches French! ❖