



HAPPY NEW YEAR!

Indian Act Amendments for April 2010

Sharon McIvor and her son Jacob challenged the sex-based registration scheme in the 1985 *Indian Act* arguing that Aboriginal women and their descendants continue to be discriminated against in the determination of who can obtain and transmit Indian status. The BC Supreme Court agreed with Sharon and Jacob and granted a broad remedy, essentially entitling anyone who traced their Aboriginal lineage through a woman to Indian status.

The BC Court of Appeal essentially agreed with the lower court, although on much narrower grounds: The fact that the 1985 *Indian Act* granted full s. 6(1)(a) status to patrilineal descendants who would have previously lost status under the old “double mother rule”. The Court of Appeal found that this was unjustified because it did not simply preserve existing rights acquired under the former discriminatory regime, but went further and enhanced them. Sharon and Jacob appealed this decision, and in November 2009, the Supreme Court of Canada denied Sharon’s application to appeal BC Court of Appeal decision.

This means that the federal government will be moving forward with its proposed amendments to the *Indian Act*,
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UPCOMING EVENTS:

Saturday, January 16: Speaking Engagement – “**Truth, Trials and Tar Sands**” 7pm at Art Spring Theatre on Salt Spring Island. James Hoggan, will discuss his current book *Climate Cover-Up*, flim-maker Alan Bibby will premiere excerpts from his new documentary *Liquid Truth* and Jack Woodward will give his transformative talk on the Beaver Lake Cree legal action.

Co-sponsored by RAVEN, I-SEA and DeSmogBlog.

January Profile: Drew Mildon

Celebrating 6 years with W&Co!

Drew was born and raised in what he fondly calls “Onterrible” and escaped to the Wet Coast in 1995. His travel bug endures though – and he lives by the code “have laptop, will travel.” Over the past couple of years he has been collecting “ports of call” and he now practices for First Nations in British Columbia, Yukon and Alberta.

Drew holds a BA in literature from the University of Victoria and a Masters degree from the University of British Columbia. He’s found that his pre-law background comes to the fore when drafting contracts and other corporate commercial documents: “A solicitor’s bread and butter is close reading, a skill my literature professors strove tirelessly to drive into my head.” Drew joined W&Co in January 2004 as a co-op student, started articling two years later and was called to the Bar of B.C. in May 2007.

Drew is interested in helping his First Nations clients to put themselves in the best possible negotiating position when they have discussions with companies and governments about projects that are proposed to be developed in their traditional territories. Drew is particularly interested in research by university scholars that looks at whether impact benefit agreements have successfully worked for First Nations and strategies proposed by researchers to make sure that his clients are properly resourced to have fair negotiations. His primary areas of practice are resource law, business associations and contracts drafting.



There’s not much time for play but Drew is looking forward to ski season – he does take time out for an occasional break on the slopes of Mt. Washington.

as ordered by the BC Court of Appeal. In August, 2009, the federal government circulated proposed amendments, which rely on the British Columbia Court of Appeal decision. Sharon, and many other First Nations still feel that the proposed amendments fall short of remedying the continued discrimination faced by First Nations women in Canada and have made submissions to the Federal Government asking it to reconsider the proposed amendments, and consult with First Nations on this important matter. First Nations may want to review their Membership Law, to ensure that the law is consistent with the proposed amendments and the membership criteria of the First Nation.

W&Co will be sending a letter to interested clients explaining the proposed amendments, and what to expect during the process to come. ❖



W&Co Congratulates Nuu-Chah-Nulth on Landmark Fisheries Decision

On November 3rd, the Supreme Court of British Columbia ruled that the Nuu-chah-nulth peoples (located on the west coast of Vancouver Island) have the right to commercially harvest and sell all species of fish within their traditional territorial waters.

Woodward and Company joins Aboriginal groups throughout B.C. in celebrating this major legal victory in *Ahousaht Indian Band and Nation v. Canada (Attorney General), 2009 BCSC 1494*.

Madame Justice Nicole Garson found that the rights stem from ancestral practice, and the court recognized the rights of five First Nations of the Nuu-chah-nulth (the Ahousaht, the Ehattesaht, the Mowachaht/ Muchalaht, the Hesquiaht, and the Tla-o-qui-aht) to harvest and commercially sell any species of fish within their respective territorial waters, including the rivers, inlets, and sounds within the area claimed, extending approximately nine miles out into the open sea.

Justice Garson also granted the parties two years in which to consult and negotiate an acceptable regulatory regime. Failing negotiations, the matter will return to the courts for a determination of whether Canada can justify infringements on the Nuu-chah-nulth's rights. ❖



Court Session in Nemiah was unveiled by David Robbins – a tribute painted by Victoria artist Caroline Sadowska during the *Tsilhqot'in Nation v. British Columbia* trial while court was sitting in the Nemiah Valley. The painting depicts various scenes out of Tsilhqot'in history as described by witness Frances Setah (seen seated far right in the painting.). ❖

REVIVING A TRADITION: THE WOODWARD & COMPANY LLP JAM

It was heartening to hear the walls shake and the windows rattle as the legal team reconvened as a band to celebrate the holidays with the first jam session in years.

Led by **Eamon Murphy** and **Murray Browne**, with assistance by guest **Ivan Elieff**, the night was fun for all who attended. W&Co's **David Robbins** and **Drew Mildon** also displayed their fine guitar talents. **Leigh Anne Baker** entertained the crowd with her energetic vocalizing and **Berry Hykin** was a hit with her jazz solo. Many thanks to Eamon, Murray and Ivan for organizing the jam – we hope to have another not too far into 2010!



Ivan, Eamon, David and Murray in the groove!





