



## **K'ómoks Bands Challenges Gas N Go**

A legal petition was served on the Comox Valley Regional District on behalf of Chief Ernie Hardy and the K'ómoks First Nation aimed at stopping the proposed Gas 'n' Go station from being built on Comox (Dyke) Road. The petition was submitted by Woodward and Company LLP's **Murray Browne** on August 16th and makes eight claims against the regional district. Chief among the claims is a ruling to quash the development permit for the gas station, convenience and liquor store.

The petition denounces the consultation process as inadequate. The K'ómoks First Nation wants a declaration that the regional district accepts that  
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### **UPCOMING EVENTS:**

Sept. 8, 2010 – News Conference – **Jack Woodward** and **Sean Nixon** will speak at a press event in Edmonton, AB about the judicial review regarding the woodland caribou.

Sept. 13 – 17 – Speaking Engagements in UK – **Jack Woodward** and **Drew Mildon**, along with Chief Al Lameman of Beaver Lake Cree Nation will speak at various events in London, Manchester and Edinburgh. The trip is courtesy of the Cooperative Bank and is aimed at raising awareness of and funds for the legal action.

Sept. 15 – 17, 2010 : Speaking Engagement - **Heather Mahony** and **Berry Hykin** will present a session on the HST at the First Nations Tax Administrators Association's 17<sup>th</sup> Annual National Forum. The 3-day conference will be held at the Enoch Cree Marriot in Edmonton.

Sept. 30, 2010 – Speaking Engagement – **Dominique Nouvet** will present a Consultation and Accommodation Update at a conference in Vancouver at the Renaissance Vancouver Hotel Harbourside, hosted by PBLI.

## **"Privatization" of Reserves?**

By Jack Woodward



Three recent legislative initiatives would change the old Indian Act system in a way that has been described as a move to "privatize" the reserves of Canada's 600 First Nations. When you look at the details, the reality is not quite so sensational.

Firstly there is Bill C-24, passed quite suddenly by Parliament in June, just before the summer recess. The "First Nations Certainty of Land Title Act" enables some First Nations to have transactions on reserve lands recorded within the provincial land title system, rather than through the cumbersome Indian Land Registries in Ottawa. The Bill was rushed through Parliament at the last minute at the insistence of Squamish First Nation, who needed this flexibility for commercial developments on their North Vancouver reserve lands. The provincial land registry systems are much more efficient than the Ottawa system, so this is a valuable option for those bands whose reserves are subject to complex leases and commercial developments.

Secondly, the Senate passed Bill S-4 "Family Homes on Reserves and Matrimonial Interests or Rights Act", but the House of Commons did not yet pass this bill. Assuming that this passes in September, the new law will fix the gap in the Indian Act under which spouses do not have the same rights to the family home on marriage break-up as they would have off reserve. The injustice of this situation was pointed out by the Supreme Court of Canada in 1986 in the case of *Derrickson v. Derrickson*, so it has taken Ottawa a long time to fix things!

Finally, there has been talk of a proposed "First Nations Property Ownership Act" which would supplement the Indian Act by giving First Nations the option of choosing a land system for their reserves that is more like the provincial land systems. Recently advocated by Manny Jules and Tom Flanagan, and widely publicized in the national press, this system would end the rule that prevents outsiders from owning land on reserve. Mortgages and sales to non-members would be allowed, thus increasing the value of property on reserve. Eventually the reserves would blend into the surrounding provincial land system and as sales and foreclosures took place, the reserves would gradually pass into the hands of non-Indian owners. This proposed legislation is being actively discussed in Ottawa, but as of now, no Bill has been introduced into Parliament.

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"it owed a duty to consult with and, if necessary, accommodate the K'ómoks First Nation prior to approving the development permit." The petitioners also want a declaration that the region accepts that it breached its duty to consult with them.

In addition, the petition states the regional district either knew or ought to have known that the band has Aboriginal rights, including title to the lands surrounding the Courtenay River estuary when it was considering the application for the Gas and Go development permit.

The document seeks an interim stay on the issue of a separate building permit for the work pending final judicial review of the call to quash the development permit. ❖

**"Privatization?" ...continued from page 1**

There is nothing new about allowing First Nations to sell their lands. In 1763 the Royal Proclamation first stated that an Indian nation may sell land, provided the whole community gets to vote on the matter, and the Crown acts as intermediary to prevent bad deals with unscrupulous speculators. That rule has continued in the Indian Act to the present day. If reserve communities want to sell their land to non-Indians they are free to do so under the existing laws, provided the band members get to vote on the matter. (Ottawa's consent is now just a formality.) It is not clear how the "First Nations Property Ownership Act" would add to this ability – and so far no legal text has been proposed. ❖



**COHEN COMMISSION UPDATE**

*Public forums starting in August, evidentiary hearings begin October 25, interim report expected by October 29*

The Cohen Commission of Inquiry into the Decline of Sockeye Salmon in the Fraser River is planning a series of public forums in communities along the Fraser River and the sockeye's migratory route, where members of the public can make brief presentations to the Commissioner. **Public forums** are scheduled for Lillooet (August 18), Campbell River (August 25), Steveston/Richmond (September 13), Victoria (September 16), New Westminster (September 20), Prince George (September 23), Chilliwack (September 29) and Kamloops (October 21).

**Evidentiary hearings** will begin Monday, October 25 through mid- December. Hearings may continue in the new year if required. These hearings are open to the public and will be held in Vancouver at the Federal Court at 701 West Georgia Street.

The Commission will focus in part on DFO management issues, including those arising from this year's largest sockeye run since 1913. ❖



**Summer Departs, So Do Some of Our Staff – And Many New Faces Arrive!**

We say farewell to Legal Assistant Erica Huntley who leaves us to enjoy some travel time before moving Down Under. We also bid adieu to Steve Parr, our summer co-op student who rejoins his studies at UVic. And Dawn Imlach is moving to Salt Spring Island so she will not be returning from maternity leave. You will all be missed and we wish you well. On the flip side, Erin Fedotov joins W&Co on September 15<sup>th</sup> to replace Erica. Nicole Raynor will step into a Jr. Legal Assistant position to cover for Dawn, and a new receptionist will be hired. And Matt Boulton commences work on September 7<sup>th</sup> as our new coop student. A warm welcome to all those joining us! ❖

Farewells to:



Erica Huntley



Steve Parr



Dawn Imlach