Spring 2010

Lawson Lundell LLP Mining Law Update

This is Lawson Lundell's web-based publication dedicated to keeping readers informed about developments in Canadian mining law. For more information regarding the articles in this newsletter, please contact ***Chris Baldwin*** *at 604.631.9151 or cbaldwin@lawsonlundell.com or* ***Christine Kowbel*** *at 604.631.6762 or ckowbel@lawsonlundell.com*

Canadian Parliament Responds to Red Chris Decision

Bill C-9, An Act to implement certain provisions of the budget tabled in Parliament on March 4, 2010 and other measures, was introduced in the House of Commons on March 30, 2010. The bill (which is very lengthy) can be found at the following link: http://www2.parl.gc.ca/content/hoc/Bills/403/Government/C-9/C-9_1/C-9_1.PDF.

Of particular interest is Part 20 of the Act, which purports to amend the C*anadian Environmental Assessment Act* ("CEAA") to streamline certain process requirements for comprehensive studies, to give the Canadian Environmental Assessment Agency authority to conduct most comprehensive studies and to give the Minister of the Environment the power to establish the scope of any project in relation to which an environmental assessment is to be conducted. It also amends CEAA to provide, in legislation rather than by regulations, that an environmental assessment is not required for certain federally funded infrastructure projects and repeals sunset clauses in the Regulations Amending the Exclusion List Regulations, 2007. The changes appear to be a response to the Supreme Court of Canada's January 2010 ruling in the *MiningWatch* case.

Proposed Replacement of NI 43-101 – Standards of Disclosure for Mineral Projects Published for Comment

On April 23, 2010, the Canadian Securities Administrators published for comment proposed changes to National Instrument 43-101 – Standards of Disclosure for Mineral Projects with a request for comments by July 23, 2010. The proposed changes take into account the results of consultations with mining industry market participants and are designed to provide cost savings and efficiencies to mining companies without compromising investor protection. If implemented, the proposed changes should help facilitate the timely execution of M&A and corporate finance transactions.

BC Supreme Court Halts Exploration Project Pending Caribou Accommodation

In *West Moberly First Nations v. British Columbia (Chief Inspector of Mines*), 2010 BCSC 359 (the "First Coal Decision") West Moberly First Nation successfully challenged the issuance of three Crown permits to First Coal related to bulk sampling of coal, advanced exploration drilling, and timber cutting near Chetwynd on Treaty 8 lands.

Williamson J. held that although the Crown undertook consultation with respect to these decisions, the consultation was not sufficiently meaningful, and the accommodation put in place was not reasonable, for example, "*The prime concern of the West Moberly is the real potential for the extirpation of the Burnt Pine caribou herd. I conclude that at least since June of 2009, when the West Moberly presented a detailed report of the danger to that herd and its relationship to their treaty protected right to hunt, the Crown's failure to put in place an active plan for the protection and rehabilitation of the Burnt Pine herd is a failure to accommodate reasonably*."

As for remedy, the Court ordered specific accommodation with respect to Burnt Pine caribou: "*A pragmatic and reasonable step is to stay the effect of the issuing of the amendment of September 14, 2009 permitting the Advanced Exploration Program, and to suspend the effect of the licence to cut, for a determined period to permit and to mandate a proper accommodation of West Moberly's concerns with respect to the Burnt Pine herd. This accommodation should be the expeditious implementation of a reasonable, active, program for the protection and augmentation of the Burnt Pine herd. Given the research and information available, it would appear that such a program could be in place within a period of months*."