WILLMS & SHIER ENVIRONMENTAL LAWYERS LLP

Report

ENVIRONMENT • ABORIGINAL • ENERGY

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Duty to Consult:

Two recent cases guide municipalities & First Nations

The Supreme Court has stated that while the Crown can delegate procedural aspects of the duty to consult, the "ultimate legal responsibility for consultation and accommodation rests with the Crown. The honour of the Crown cannot be delegated" (*Haida*). One area that is not entirely clear is the role of municipalities in Aboriginal consultation. This issue is important as local planning decisions have a significant effect on land use.

The latest pronouncement on the matter came from the British Columbia Court of Appeal in September. In *Neskonlith Indian Band v. Salmon Arm (City),* the municipality issued a development permit for the construction of a shopping mall on privately owned land bordering the Neskonlith Indian Reserve #3. The Neskonlith consider the land part of their traditional territory, and all Parties proceeded on the basis that Neskonlith have a strong claim for Aboriginal title.

Through an extensive community planning process, the municipality notified the Neskonlith of the permit application, provided information, heard objections at public meetings and received and reviewed expert reports from the Neskonlith. As a result of concerns from Neskonlith the proponent scaled back its development even after it received approvals.

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Willms & Shier Partner Cherie Brant named "Rising Star"

Willms & Shier Environmental Lawyers LLP is pleased to announce that our partner, Cherie Brant, has been named one of Lexpert® magazine's "Rising Stars, Leading Lawyers Under 40." Nominated by their peers and selected by Lexpert's advisory board, the annual list of Rising Stars includes some of the most respected senior lawyers in Canada. Nominees are ranked by professional achievements, leadership skills, business acumen, teamwork and interpersonal skills. The award was presented at the 6th annual Rising Stars Dinner and Awards Presentation on December 3, 2012, in Toronto.

As a member of the Mohawks of the Bay of Quinte and with family from Wikwemikong Unceded Indian Reserve, Cherie has a profound understanding of the opportunities and challenges both Aboriginal people and industry face as participants in economic and resource projects in Canada. She has a diverse transaction-based practice focused largely on renewable energy and Aboriginal commercial projects on First Nations lands and with First Nations entrepreneurs. Contact Cherie at 416-862-4829 or e-mail her at cbrant@willmsshier.com

In this issue …

Season's Greetings from all of us at Willms & Shier Environmental Lawyers LLP. Our best wishes for a happy holiday season and we look forward to working with you in 2013.

The Neskonlith claimed that the municipality had not adequately consulted them. The Neskonlith argued that the duty to consult automatically rests with a party making a decision that will affect Aboriginal or treaty rights, in this case, the municipality.

The *Local Government Act* in B.C. requires that municipalities consider whether consultation is required with First Nations when adopting or varying an Official Community Plan. The B.C. Court of Appeal has previously held that this does not engage the honour of the Crown or the duty to consult.

The Court of Appeal dismissed the Neskonlith's claim. The court held that municipalities do not have the authority to consult and accommodate First Nations when making decisions that are required by local governments. As a third order of government, municipal councils do not have remedial powers to, for example, suspend the application of by-laws to grant benefits to First Nations. And due to their varying tax bases and sizes, it is impractical for municipalities to be required to consider the complex legal and constitutional questions involved.

The Court of Appeal does consider the adequacy of the consultation. In this case, the extensive summary of communications, participation in public meetings, review of expert reports, preparation and consideration of their own experts' reports, and the voluntary scale back of the development was evidence that Neskonlith's concerns were taken seriously. The court concludes that the process was reasonable.

What can we learn from this litigation? In our view, reasonable and fair planning requires proponents and municipalities to consult and take First Nations' concerns seriously.

Determining whether the duty has been met

Who has the authority to determine if the duty to consult has been met? This is an important question in 2012 and the subject of a number of tribunal and court decisions over the past year. None have satisfactorily answered this question. In the latest, on November 26, the Alberta Court of Appeal released its decision in *Métis Nation of Alberta Region 1 v. Joint Review Panel*. The Court of Appeal denied several Aboriginal groups leave to appeal the Jackpine Review panel's decision that it did not have to assess the adequacy of consultation and accommodation.

Shell Canada applied to expand the Jackpine oil sands mine and processing facility. The expansion requires approval from the Energy Resources Conservation Board in Alberta and the Canadian Environmental Assessment Agency. A Joint Review Panel (JRP) was appointed by the governments of Alberta and Canada. The mandate of the Panel is set out in the Agreement that created the JRP. Under its mandate, the JRP is required to refer to

- potential adverse effects of the proposed expansion on asserted or established Aboriginal and treaty rights, and
- the strength of claims for Aboriginal and treaty rights.

Local improvement charges to help finance energy upgrades

On October 25, 2012, the Ontario Ministry of Municipal Affairs and Housing amended two local improvement charge (LIC) regulations to help homeowners finance expensive energy efficiency, renewable energy and water conservation projects. Municipalities typically use LICs to finance neighbourhood capital improvements, such as new sewers or sidewalks, and impose special charges on benefiting properties for their share of the total costs.

The changes to O. Reg. 586/06 under the *Municipal Act, 2001* and O. Reg. 596/06 under the *City of Toronto Act, 2006* will allow municipalities to enter into agreements with willing private land owners to undertake the upgrades on private property and add the cost as a surcharge on the owner's tax bill until it is paid off. The debt is attached to the property, rather than the owner; upon its sale, any remaining LIC obligation remains with the property.

If an LIC payment falls into arrears, the municipality can impose a tax lien, but only on the defaulted payments. If the default continues, the city could pursue a tax sale or foreclosure, and the new owner would resume the LIC payments.

The move was widely supported by municipal, industry and environment groups, including the Canadian Real Estate Association, the Association of Municipalities of Ontario, the Ontario Sustainable Energy Association and a number of individual municipalities.

The JRP is not required to determine the validity of asserted rights, the scope of the Crown's duty to consult or whether the Crown has met its duty to consult.

Prior to the hearing, the Métis Nation of Alberta Region 1 and Athabasca Chipewyan First Nation filed Notices of Questions of Constitutional Law with the JRP. The Aboriginal groups sought an assessment of whether the Crown had met its constitutional duty to consult.

During the hearing, Shell noted that consultation was ongoing.

The JRP declined to assess the adequacy of consultation, noting that the party before it was not the Crown, and stating that it did not have an express grant of statutory authority to consider the adequacy of Crown consultation. The JRP would consider if "legitimate Aboriginal concerns were dealt with" during the course of the upcoming hearing. At the close of the hearing, the JRP will make recommendations about the accommodation of Aboriginal interests that would enable the Crown to discharge its obligation to consult.

The Court of Appeal paid deference to the JRP's decision not to assess the adequacy of consultation at this stage of the proceedings and declined to substitute its consideration.

While the Court of Appeal's decision continues the uncertainty about who assesses whether the duty to consult has been met, it serves as a reminder to proponents and applicants that consultation is ongoing throughout the permitting phase of a project.

CCME adopts new air quality standards

During the October meeting of the Canadian Council of Ministers of the Environment (CCME), federal, provincial and territorial representatives adopted a new Air Quality Management System (AQMS). The System is intended "to protect the health of Canadians and the environment … while maintaining competitiveness in all regions of Canada." The AQMS consists of the following five components

- new Canadian Ambient Air Quality Standards (CAAQS) for fine particulate matter and ozone, which will take effect in 2015 and 2020 (see table). They are more stringent than the current Canada-wide standards. New CAAQSs will be developed for sulphur dioxide and nitrogen dioxide.
- base-level Industrial Emission Requirements (BLEIRs) are being set to achieve a "good base level of performance" for all major industries in Canada starting with the cement and base metal smelting sectors, among others. Requirements for petroleum refining, coal-fired electricity generation, reciprocating engines and volatile organic compounds (VOCs) will be addressed "through a continuing collaborative process." BLIERs are focused on nitrogen oxides, sulphur dioxide, VOCs and particulate matter. AQMS will include monitoring and reporting of outdoor air quality conditions and emissions from major industrial sources in Canada.
- a framework for "air zone" management within provinces and territories will enable action tailored to specific sources of air emissions in a given area and help "keep clean areas clean." The CCME has prepared a *Guidance Document on Air Zone Management*, as well as a *Code of Practice for Residential Wood Burning Appliances*, to support the implementation of air zones.
- six larger regional airsheds will provide a mechanism to coordinate action when air pollution crosses an inter-provincial or international border
- an intergovernmental working group will improve collaboration and develop a plan to reduce emissions from the transportation sector.

Fine Particulate Matter (PM2.5) and Ozone CAAQS				
Pollutant	**Averaging time**	**Standards (concentration)**		**Metric**
		2015	**2020**	
$PM_{2.5}$	24-hour (calendar day)	28 µg/m^3	27 µg/m^3	The 3-year average of the annual 98th percentile of the daily 24-hour average concentrations.
$PM_{2.5}$	annual (calendar year)	10.0 µg/m^3	8.8 µg/m^3	The 3-year average of the annual average concentrations.
Ozone	8-hour	63 ppb	62 ppb	The 3-year average of the annual 4th-highest daily maximum 8-hour average concentrations.

The new air quality standards will not be enforceable; they are designed to "set the bar" for jurisdictions working to either improve poor air quality or maintain good air quality. They will be incorporated as objectives under sections 54 and 55 of the *Canadian Environmental Protection Act*, and individual provinces and territories may also choose to incorporate them into their regulatory regimes.

With the exception of Quebec, the ministers agreed to begin implementing the AQMS. Although Quebec supports the general objectives of the AQMS, it will not implement the system since it includes federal industrial emission requirements that duplicate Quebec's Clean Air Regulation. However, Quebec will collaborate on developing other elements of the system, notably the air zones and airsheds.

During the October meeting, the ministers also approved a Canada-wide Approach for the Management of Wastewater Biosolids resulting from municipal wastewater treatment across Canada, as well as several packaging-related initiatives. These include further work to eliminate polyvinyl chloride from rigid plastic packaging, the development of a database on the current use of packaging in Canada by 2014, and preparation of a voluntary packaging design guide based on Éco Entreprises Québec's voluntary code and other international standards.

Bill C-45 Update:

Ottawa cuts more 'red tape' from its navigation assessments

The federal government's second – Bill C-45, the *Jobs and Growth Act, 2012* – is even bigger and, arguably, more far reaching than the first. Intended "to implement certain provisions of the budget tabled in Parliament on March 29, 2012 and other measures," Bill C-45 stretched to an impressive 443 pages before the Government hived off the sections dealing with MP's pensions for quick passage. By our count, the bill will introduce or amend some 64 federal statutes. Bill C-45 passed Third Reading on December 5, 2012 and is currently before the Senate.

Bill C-45 would make significant amendments to a number of federal environmental statutes, including the *Fisheries Act*, the *Canadian Environmental Assessment Act, 2012* and the *Hazardous Materials Information Review Act.* Perhaps the most far-reaching are the changes to *Navigable Waters Protection Act* (NWPA).

The package of 'red-tape-cutting' amendments to the *NWPA* spells out more precisely the application and approvals process necessary for the construction, placement, alteration, repair, rebuilding, removal or decommissioning of a works "in, on, over, under, through or across any navigable water that is listed in the schedule" to the revised statute. At the same time, amendments to the *National Energy Board Act* (under Bill C-38) give the NEB exclusive authority over international and interprovincial pipeline approvals, including the crossing of navigable waters.

The amendments would institute a fee system to recover some costs, fine tune several definitions and the provisions related to obstructions and abandoned vessels, allow administrative penalties to be levied, add additional offences to the enforcement provisions, and expand the types of "minor" or "designated" works (to be defined in a forthcoming Order) that are exempt from the impact assessment and approvals process (although not the other requirements of the Act). Even the name of the Act is changed to the *Navigation Protection Act*, which, according to Transport Canada, better reflects its "historic" emphasis on navigation rather than waters that float the boats.

Of course, the change that has attracted the greatest media attention is the move to dramatically narrow the *NWPA*'s oversight and review provisions to a much smaller number of prescribed navigable waters. The *NWPA* currently requires that almost every project on a waterway in Canada receives the approval of the federal government. Schedule 2 of the Bill lists just 100 lakes and coastal areas and 62 major rivers from among the millions that crisscross Canada from coast to coast.

Sections 3 to 18, constituting the bulk of the review and approvals process in the current *NWPA*, are repealed and replaced. To obtain written approval, an owner of a project on a designated waterway must file a notice with the Minister of Transport and pay a fee (even if the work has already begun or has been substantially completed). In turn, the Minister will assess the project to determine whether it "is likely to substantially interfere with navigation," taking into account any relevant factor, including

- the characteristics of the navigable water in question
- the safety of navigation
- the current or anticipated navigation in that water
- the impact of the work (for example, its construction, placement, alteration, repair, rebuilding, removal, decommissioning, maintenance, operation or use) on navigation
- the cumulative impact of the work on navigation in that water.

To help make this decision, the Minister can require the owner to provide any additional information considered appropriate and/or publish a notice inviting any interested person to provide written comments to the Minister within 30 days. Otherwise, public notification or an opportunity to comment is not guaranteed.

An owner of a work impacting a non-listed navigable waterway can choose to "opt in" to the review process, although he or she must make such a request to the Minister accompanied with the required form and information and pay the applicable fee.

Designated or minor works (to be defined by Order) won't require Ministerial approval, but must still comply with the requirements of the Act. Under earlier revisions to the *NWPA*, which took effect in March 2009, the Minor Works and Waters Order enabled certain low risk works (which currently include cottage docks, erosion control works, aerial and submarine cables, water intakes, etc.) that met certain criteria to be pre-approved under the Act. The revised Act will further expand the Order to include more classes of minor works, covering specific low-risk construction. The full list of proposed amendments is posted on the Transport Canada website at www.tc.gc.ca/eng/mediaroom/backgrounders-npa-6912.htm

Do environmental clean up orders have priority in bankruptcy?

In a closely watched case, the Supreme Court of Canada has addressed whether environmental clean up orders issued by Newfoundland and Labrador on AbitibiBowater Inc. should have priority over other claims in the bankruptcy queue. While the decision is specific to the particular facts of this case, we expect that environmental ministries across the country will be considering the impact of the ruling. We expect them to revise their enforcement policies (written or informal) accordingly. The inexorable conclusion is that environmental ministries should issue clean up orders sooner rather than later, and issue them against both a company and its directors and officers.

In *Her Majesty the Queen in Right of the Province of Newfoundland and Labrador v. AbitibiBowater Inc., et al*, the Court ruled that the Province had to wait in line like everyone else. The case was heard November 16, 2011, and the decision dismissing the appeal with costs was released December 7, 2012.

AbitibiBowater, which now operates as Resolute Forest Products Inc., had instituted restructuring proceedings under the federal *Companies' Creditors Arrangement Act* (*CCAA*) in 2009. Subsequently, the province filed Ministerial remediation orders for five sites where Abitibi had carried on industrial activities at different times between 1905 and 2008. The estimated costs of the clean up ranged between $50 and $100 million. The Province also expropriated three of the properties in question.

The Province contended that the ministerial orders were not "claims" under the *CCAA* as they do not require Abitibi to make payments to the Province. For its part, Abitibi argued that the orders essentially create a future financial liability. Abitibi is not in a position to do the work itself. Consequently the Province will do the work and bill Abitibi's successor. So, it argued, the claim is monetary in nature. As such they are subject to both the stay of proceedings and the claims process contemplated by the *CCAA*. Of course, most importantly to Abitibi/Resolute, the *CCAA* will extinguish the liability. Otherwise notwithstanding the bankruptcy Abitibi/ Resolute would still be on the hook to conduct the clean up.

C-45 impacts these environmental laws

The ***Fisheries Act*** – to amend the definition of an Aboriginal fishery, require certain fines be paid into the Environmental Damages Fund, expand the list of prohibited obstructions, and amend the transition provisions (see story on page 6).

The ***Canadian Environmental Assessment Act, 2012*** – to incorporate a series of housekeeping changes and close a loophole in s.128 that could have made an exempted project subject to EA under certain conditions (this option is eliminated as of January 1, 2014).

The ***Hazardous Materials Information Review Act*** – to transfer the powers and functions of the independent HMIR Commission (which reviewed applications for trade secret exemptions and other similar exemptions, as well as compliance with MSDS requirements) to the Minister of Health.

The ***Income Tax Act*** – to expand the accelerated capital cost allowance provisions to cover a range of bioenergy equipment.

The ***Bridge To Strengthen Trade Act*** – to exempt the proposed Detroit-Windsor bridge from *CEAA, 2012*, the *Fisheries Act*, the *Navigable Waters Protection Act*, and the *Species at Risk Act* and to require that proponents file a plan for addressing any adverse environmental effects with the Ministry of Transportation.

In a split 7-2 decision, the majority agreed that there was "sufficient certainty" that that the Province will perform the remediation work and assert a monetary claim for the work completed. Since the orders would result in a monetary obligation, they are subject to the stay of proceedings under the *CCAA*. The dissenting decisions held that the regulator had several other alternatives to doing the work itself and billing the company.

What's going on with the *Fisheries Act*?

Fisheries and Oceans Canada has set a tentative, "aspirational" date of January 1, 2013, for the implementation of the revised *Fisheries Act*. During a series of hearings held in November and December on proposed revisions to the Act, department officials told the House of Commons Standing Committee on Fisheries and Oceans, that they are currently developing three regulations to support the Act. These would cover (1) the information required by the department from a proponent seeking an authorization; (2) the timelines for making a decision on that authorization; and (3) aquatic invasive species. Additional regulations will be developed in the future.

All regulations would be subject to some form of "public engagement" with affected stakeholders, although no formal consultations have taken place to date.

"One of the things that Bill C-38 did was provide a lot of regulatory tools so you can provide regulatory clarity," Kevin Stringer, Assistant Deputy Minister, Ecosystems and Oceans Science Sector, told the Standing Committee. "You can have minor works regulations that say you don't need a site-specific review in certain types of waters or with certain types of works. You can establish ecologically significant areas. You can identify certain fisheries, such as bait fisheries, that you may wish to exclude. We don't need those regulations to be operational. We need sufficient direction and guidance for our staff and proponents. That's what we've been working on, and we have been working with some of the key stakeholders on that."

Ottawa's first 2012 budget bill, C-38, made a number of significant changes to the federal *Fisheries Act*. Some of these changes took effect when the *Jobs, Growth and Long-term Prosperity Act*, was proclaimed in force on July 6, 2012, others took effect retroactively and still others will kick in at a specified future date.

However, the most significant amendments – those focusing on commercial, recreational and aboriginal fisheries, those dealing with serious harm, and those concerning the ongoing productivity of fisheries – will require the filing of a Statutory Instrument by the Governor in Council. To date, this has not occurred.

The government's second budget Bill C-45 included several additional amendments to both the *Fisheries Act* and those sections of C-38 that amended the *Fisheries Act*.

- adding seines, nets, weirs or other fishing appliances to the provisions dealing with fishing obstructions in section 29 of the Act
- ensuring that certain fines are credited to the Environmental Damages Fund for conservation, fish protection and habitat restoration work

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OPA opens window for small FIT applications

On December 14, 2014, the Ontario Power Authority started accepting applications for small (between 10 and 500 kW) renewable energy projects under its Feed-in Tariff (FIT) Program. The application window will close January 18, 2013. Up to 200 megawatts of available capacity will be allocated among applicants, including Aboriginal and community based partnerships. Willms & Shier lawyers are working on several partnerships as part of this process.

The FIT rules and contracts have been revised based on two recent directives from the Ministry of Energy. Before submitting your application, carefully review the latest version 2.1 of the program documents.

"We will aim to be ready for January 1. It doesn't need to be January 1, it's not necessarily January 1, but that's the earliest date we thought we could be ready. So there's a lot of activity within the department to try to prepare guidelines for our staff, clear direction for our staff, and guidelines for proponents, should it come into effect on January 1, 2013."

– Kevin Stringer, ADM, Fisheries and Oceans Canada, November 6, 2012

Recent Postings to the Environmental Registry	
EBR# 011-5022 Policy Decision posted Dec. 10, 2012	**Guide to Applying for an Environmental Compliance Approval** – sets out the application requirements for preparing a complete application using the new ECA application form, and consolidates into a single document, information on supporting documentation and technical requirements (previously found in guides related to Cs of A). The draft guide was originally posted January 11, 2012, and this posting summarizes the public comments received and the resulting changes to the guide (including revisions related to Aboriginal consultation, identification of the operating authority, noise requirements, validation of an engineering review, protection of proprietary information, etc.).
EBR# 011-6615 Policy Proposal posted Nov. 30, 2012, for a 45-day public review	**Environmental Activity and Sector Registry (EASR) Technical Discussion Papers** – for small electricity generators (located in areas that are not connected to the IESO-controlled hydro grid or the electrical distribution system) with a rated capacity of less than 250 kW; evaporative cooling equipment (cooling towers) used to facilitate comfort cooling and excluding towers that are used to dissipate heat from manufacturing processes, large industrial natural draft cooling towers used in heavy industry and evaporative condensers used in refrigeration applications; and dust collection systems at retail locations used primarily to protect workers when resizing lumber or other types of wood products and building materials at hardware and home improvement stores. These three technical papers will form the foundation of future regulations under the *Environmental Protection Act*.
EBR# 011-7512 Information Notice posted Nov. 29, 2012, for a 60-day public review	***Waste Diversion Ontario's Report on the Review of Used Tires Program Incentives*** – Ontario Tire Stewardship's (OTS) incentive programs are generally considered fair and effective and have had a predominantly positive impact on the marketplace. Capacity of the industry has increased significantly since the inception of the program. OTS is currently achieving or exceeding its diversion targets, and recycling is migrating from less value-added products such as TDP5 or shred to more value-added products such as TDP1 or crumb. The most significant issue reported by service providers was the shortage of tires and the fiercely competitive marketplace as there is currently acknowledged overcapacity in the industry. In addition, OTS could consider implementing a less litigious and more operational dispute resolution process and reduce the administrative burden on providers.
EBR# 011-7523 Policy Proposal posted Nov. 19, 2012, for a 60-day public review	***Soil Management – A Guide for Best Management Practices*** – Addresses the management of excess "soil" (as defined by O. Reg. 153/04) generated, primarily, by excavation during construction and redevelopment activities, with a focus on those soils generated from brownfields redevelopment activities taken to commercial fill operations. It is not intended to apply to small scale construction, such as renovation, repair activities or construction activities at single-dwelling residential properties. The document provides guidance and promotes best practices on how to handle excess soil from a source site through transportation to its acceptance at a site where it can be reused for a beneficial purpose, such as site alterations, re-grading or filling in excavations, or to soil stockpiling sites for temporary storage. The ministry does not intend to introduce new standards for soil movement, but does anticipate supporting industry in the development of a complementary industry code of practice, such as guidance for Qualified Persons for the development of appropriate soil standards for receiving sites.
EBR# 011-6567 Regulation Decision posted Nov. 07, 2012	**Environmental Activity and Sector Registry (EASR) Regulations** – Three EASR regulations have been filed under the *EPA* for: small ground-mounted solar (O. Reg. 350/12); lithographic, screen and digital printing (O. Reg. 349/12); and non-hazardous waste transportation systems (O. Reg. 351/12). In addition, this posting also covers amendments to the standby power system regulation (O. Reg. 245/11) that clarify certain technical aspects, and amendments implementing training requirements for drivers of waste transportation systems in the General – Waste Management regulation (Reg. 347). The EASR regulations define the specific criteria that would make these activities eligible to be registered on the EASR, and set out specific operating and record keeping requirements for those activities that are eligible to register. If eligible, businesses must register these activities as of November 18, 2012.
EBR# 011-65-49 Notice posted Nov. 6, 2012	**Cost Recovery for the Environmental Activity and Sector Registry (EASR)** – While there was no initial charge to register an activity in the EASR, the Ministry will be introducing a $1,190 registration charge. Payment must be received in full for a registrant to receive the confirmation of registration that it requires to engage in its activity. The implementation date for the registration charge is November 18, 2012.

Meet Willms & Shier Legal Experts at these Upcoming Events		
Jan. 28 to 30	Educational Program Innovations Center—Understanding Environmental Regulations	**Jacquelyn Stevens** will speak about "Consultation and Aboriginal Issues" and "Property Transfer and Contaminated Sites". **Joanna Vince** will speak about Federal, Provincial and Municipal legislation relating to water.
Feb. 5	The Canadian Institute—19th Annual Provincial/Municipal Government Liability	**Marc McAree** will present on "Emerging Trends in Environmental Liabilities and Related Claims".
Feb. 7	Ontario Bar Association Institute 2013 Aboriginal Law	**Juli Abouchar** will present on "The Duty to Consult and Beyond: Hot Topics, Practical Tips and Pitfalls to Avoid for Aboriginal Law Practitioners."
Feb. 7	Ontario Bar Association Institute 2013 Environmental Law	**Donna Shier** will present on "Things You Thought You Knew About Environmental Law (But May Not)."
Feb. 12	Global Development Forum—3rd Resource Exploration & Development Summit	**Juli Abouchar** will present on "Effective Strategies for Reconciling Mining and First Nations" at this firm-sponsored event.
Feb. 13	Willms & Shier Information Session—The new *Canada Not-for-Profit Corporations Act*	**Cherie Brant**, **Katherine Koostachin** and **Carl McKay** will speak about how your corporation can prepare for the transition process.
Feb. 21	The Canadian Institute, 7th Annual Aboriginal Law, Consultation & Accommodation Conference	**Cherie Brant** will conduct a workshop on "Creating Key Model Documents: Impact Benefit Agreements, Partnership Agreements and Revenue Sharing Agreements."
Feb. 26	Law Society of Upper Canada—Six Minute Commercial Leasing Lawyer	**Cherie Brant** will present on "Leases on First Nation Lands."
Feb. 27	Ontario Bar Association Environmental Law Section Passport Breakfast Series	**Marc McAree** will be the legal speaker on a panel that includes technical speakers. Marc will discuss the regulation of vapour intrusion in Canada.

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- amending the definition of an Aboriginal fishery to include fishing "for the purposes set out in a land claims agreement entered into with the Aboriginal organization"
- adding transitional provisions for authorizations issued under s.32 or ss.35(2) of the *Fisheries Act* (setting certain conditions on work that might alter, disrupt or destroy fish habitat). Current holders of such authorizations would have 90 days (from the day ss.142(2) of Bill C-45 comes into force) to request that the Minister review the authorization, and the Minister would have the power to confirm, amend or cancel the authorization within 210 days (of the day ss.142(2) comes into force).

It is proposed that, if adopted, they would come into force at the same time as the outstanding C-38 amendments. Following the enactment of the outstanding amendments to the Act, full implementation will still require development of a new Fisheries Protection Policy and a regulatory plan to support the changes to the *Fisheries Act* and to provide a foundation for a new Fisheries Protection Program.

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