Real Estate Development on First Nation Lands

Co-Chaired by

Jean Yuen
Boughton Law Corporation

Andrea M. East
Pushor Mitchell LLP

February 20th & 21st, 2014 • SFU Harbour Centre • 515 West Hastings Street • Vancouver, BC
REAL ESTATE DEVELOPMENT ON FIRST NATION LANDS

Overcoming the Challenges and Seizing the Opportunities

Developing real estate on First Nation lands presents unique challenges and opportunities. This forum assembles expert faculty with extensive experience dealing with real estate development on First Nation lands. They will review the various legal processes, offer insights on negotiations, and highlight the practical considerations and key elements of successful projects.

YOU WILL LEARN:
• About the growing opportunities for First Nation community development
• How to navigate the different land regimes
• How environmental management is handled on First Nation lands, and how this is changing
• How to negotiate and structure leases and sub-leases
• How to structure owner associations
• What is required to finance development projects from the perspective of financiers
• How to develop a property taxation scheme on reserve lands
• Preparing for and negotiating successful servicing agreements
• Best practices for effective interaction between First Nations, the province of British Columbia, the federal government, municipalities and utility companies

THIS FORUM IS DESIGNED FOR:
• First Nation leaders and officials
• First Nation development company managers
• Municipal officials, managers, planners and lawyers
• Federal and provincial officials involved in the development of First Nation lands
• Developers and resource company managers
• Lawyers and in-house resource company counsel
• Owners and managers of real estate development companies
• Energy and utility company managers
• Banking officials and other lenders
• Consultation and treaty negotiators
• Lawyers, accountants and other advisors acting for First Nations and/or developers

CO-CHAIRS

Andrea M. East, Lawyer, Pushor Mitchell LLP, Kelowna, BC. Ms. East assists First Nations and the organizations that do business with them to navigate the regulatory systems governing their economic and real estate development projects. Ms. East also provides advice on the liability and governance considerations of various business structures, and prepares and reviews the associated agreements. Ms. East has been involved in numerous successful on-reserve real estate developments in British Columbia.

Jean Yuen, Shareholder, Boughton Law Corporation, Vancouver, BC. Ms. Yuen practises in the area of Aboriginal Law with a special emphasis on First Nation economic development. She has extensive experience in development work on reserve land, in particular under the Indian Act, and has assisted in the structuring of industrial, commercial and residential projects on Indian Act reserve lands. Ms. Yuen has also worked with several First Nations in developing their Land Codes under the First Nations Land Management Act and was counsel to a First Nation in negotiating and concluding the first arms-length commercial lease in Canada under FNLMA.

UPCOMING PROGRAMS

• First Nations Businesses: Maximizing Revenue & Minimizing Tax
  February 6th, 2014
  Vancouver, BC

• Aboriginal Law: Current Issues
  May 28th & 29th, 2014
  Vancouver, BC

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Faculty

**D.K. (Doug) Bourque**, Director, Aboriginal Banking, BMO Bank of Montreal, BC and Yukon. Mr. Bourque has worked in the financial services industry for 34 years with the majority being in Commercial Banking; the past 18 years of which have been in the aboriginal market. At BMO, he is responsible for the strategy and business development activities for First Nations and aboriginal entities in BC and the Yukon. He also works closely with BMO’s National Office Aboriginal Banking, assisting with the development of National strategies. Mr. Bourque, who is Cree, was born and raised in Peace River, Alberta. Currently he sits as a Board Member of Qathen Xwegus Management Corporation which manages all of the economic development for the Klahoose First Nation. He is also a member of the Aboriginal Financial Officers Association, National Aboriginal Trust Officers Association, Council for the Advancement of Native Development Officers (CANDO), and is committed to providing the Aboriginal communities with improved access to financial products and services.

**Dan Brown**, Manager of Planning and Development, Westbank First Nation, BC. Mr. Brown has twenty years of experience in real estate planning, development and sales. His education includes a Masters degree in Planning from the University of Guelph. Currently, Mr. Brown is the Manager of Planning and Development for Westbank First Nation where, over the last seven years, he has helped facilitate the preparation of a Land Use Plan and a Community Plan, as well as the planning, approvals and construction compliance of more than $300 million of on-reserve real estate development. Immediately preceding his time at Westbank First Nation, Mr. Brown was a Capital Specialist for Indian and Northern Affairs Canada where he helped facilitate the funding and construction of infrastructure and housing in twenty-five BC First Nation communities.

**John W. Gailus**, Partner, Devlin Gailus, Victoria, BC. Mr. Gailus has a varied law practice focused on consultation, Aboriginal and treaty rights litigation, Indian Act issues and economic development. He has served as counsel in all levels of Court, including the Supreme Court of Canada. He is general counsel for several First Nations and First Nation organizations. He has appeared on multiple occasions before the House of Commons Standing Committee on Aboriginal Affairs. Mr. Gailus is also a member of the Haida Nation.

**Eamon Murphy**, Partner, Woodward and Company, Victoria, BC. Mr. Murphy advises and represents First Nations on a variety of matters, including the Crown’s duty of consultation and accommodation, impact benefit agreements, economic development and corporate structures, employment matters, and reserve land issues, which include housing and development on reserve, and remediation of reserve lands. Mr. Murphy joined Woodward and Company in 1998, and has been a partner since 2009.

**Clarine Ostrove**, Managing Partner, Mandell Pinder LLP, Vancouver, BC. Ms. Ostrove is a founding partner of Mandell Pinder LLP. Since April 1, 1983, the firm has provided legal and strategic advice to First Nations and First Nation institutions. Ms. Ostrove has acted as counsel in several landmark aboriginal law cases and has appeared in all levels of courts, including the Supreme Court of Canada. She is also involved in negotiating settlements of historic grievances and appeared before the Indian Claims Commission (before its demise), and more recently before the Specific Claims Tribunal. Ms. Ostrove has advised and advocated on aboriginal taxation issues for many years. As counsel to the Indian Taxation Advisory Board, Ms. Ostrove worked with the Board to manage its transition into the First Nations Tax Commission, an independent statutory body under federal legislation. She has also acted as counsel on a number of cases that clarified taxation on reserve lands, including the CN and CP Railway taxation cases and the Osoyoos case in the Supreme Court of Canada.

**Barry Porrelli**, Porrelli Law, Westbank, BC. Mr. Porrelli is a lawyer practising since 1986. He was featured in National Lawyer magazine for his considerable experience in First Nation land development and conveyancing. On behalf of developers, band members, and lenders he has been involved in the development of more than 20 First Nation leasehold subdivisions including big box retail, commercial, resort, and residential developments. Porrelli Law is located on the Westbank First Nation reserve.

**Rick Siemens**, CEO, Sun Rivers Development Corp. Mr. Siemens joined the Sun Rivers team as the Vice-President of Finance in 1999 and has held the position of CEO since 2004. He has a wealth of experience and demonstrated success in resort planning, development and management, gained during his previous tenure in the BC ski industry, and over the past 14 years with Sun Rivers.

**Clifford Smirl**, AACI, P.App, Kent-Macpherson, Kelowna, BC. After completing his Undergraduate degree (History) and Masters of Business Administration degree, Mr. Smirl completed post graduate work in Real Property Valuation and is currently completing his PhD in Aboriginal Housing Economics. As a designated appraiser specializing in on-reserve real estate valuation and consulting assignments throughout the province, Mr. Smirl has an extensive background in completing complex appraisal assignments on and off reserve lands.

**Colin Ward**, Director of Public Services, Tsawwassen First Nation, Tsawwassen, BC. Mr. Ward started working for TFN in 2008, first as a Policy Analyst and then as Manager of Policy and Intergovernmental Affairs. As the Director of Public Services, he is responsible for overseeing the Legislative, Policy, Natural Resources, and referrals responsibilities of the TFN Government. Mr. Ward has also been involved in a variety of self-government initiatives, participating as a peer reviewer on the BC Assembly of First Nations development of their comprehensive First Nations governance tool-kit. He has an Honours undergraduate degree in History from Queen’s University and a Masters in Public Policy from Simon Fraser University’s School of Public Policy.

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# Real Estate Development on First Nation Lands

— February 20th, 2014 —

<table>
<thead>
<tr>
<th>Time</th>
<th>Session</th>
<th>Presenter/Representative</th>
<th>Topics</th>
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<tbody>
<tr>
<td>9:00</td>
<td>Welcome and Introduction to Day One</td>
<td>Jean Yuen, Boughton Law Corporation</td>
<td>• Making the head lease attractive to lenders</td>
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<td>Andrea M. East, Pushor Mitchell LLP</td>
<td>• CMHC approval</td>
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<td>9:10</td>
<td>Which Land Regime Are You In?</td>
<td>Jean Yuen, Boughton Law Corporation</td>
<td>• Highlights of key aspects of different First Nation land regimes in British Columbia</td>
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<td>- Indian Act regime</td>
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<td>- First Nations Land Management Act</td>
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<td>- Self-governing legislation in British Columbia</td>
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<td>- Modern day treaties</td>
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<tr>
<td>9:50</td>
<td>Questions and Discussion</td>
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<td>10:00</td>
<td>Environmental Assessment &amp; Management</td>
<td>Eamon Murphy, Woodward &amp; Co. Lawyers LLP</td>
<td>• Environmental management on First Nation lands</td>
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<td>• Effectiveness of existing environmental legal tools on reserve</td>
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<td>• Role of Aboriginal Affairs and Northern Development Canada</td>
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<td>• First Nation jurisdiction under the First Nations Land Management Act and Treaties</td>
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<td>• Application of the new Canadian Environmental Assessment Act</td>
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<td>10:40</td>
<td>Questions and Discussion</td>
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<td>10:50</td>
<td>Refreshment Adjournment</td>
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<td>11:00</td>
<td>Leases: Steps to Approval, Negotiation, Structuring &amp; Drafting</td>
<td>John W. Gailus, Devlin Gailus Barristers and Solicitors</td>
<td>• Designation, survey, appraisal</td>
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<td>• Advantages and disadvantages of different head lease structures</td>
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<td>• Negotiating and drafting the head lease</td>
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<td>11:50</td>
<td>Questions and Discussion</td>
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<td>12:00</td>
<td>Luncheon Adjournment</td>
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<td>1:30</td>
<td>Subleases</td>
<td>Barry M. Porrelli, Porrelli Law</td>
<td>• Key terms</td>
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<td>• Drafting: frequent errors and best practices</td>
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<td>2:15</td>
<td>Questions and Discussion</td>
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<td>Financing On-Reserve Development</td>
<td>Doug Bourque, BMO Bank of Montreal</td>
<td>• Lender’s requirements</td>
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<td>Clifford Smirl, Kent-MacPherson</td>
<td>• Appraising First Nation lands</td>
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<td>• Current issues</td>
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<td>3:15</td>
<td>Questions and Discussion</td>
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<td>3:25</td>
<td>Refreshment Adjournment</td>
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<td>Owner Associations</td>
<td>Andrea M. East, Pushor Mitchell LLP</td>
<td>• Structuring owner associations</td>
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<td>• Ongoing governance</td>
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<td>4:15</td>
<td>Questions and Discussion</td>
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<td>4:25</td>
<td>Chairs’ Closing Remarks</td>
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<td>4:30</td>
<td>Forum Concludes for Day One</td>
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9:00 Welcome and Introduction to Day Two

Jean Yuen
Boughton Law Corporation

Andrea M. East
Pushor Mitchell LLP

9:10 Taxation of Property on Reserve Land

Clarine Ostrove as Representative for the First Nations Tax Commission
Mandell Pinder LLP

- Developing a property taxation system
- Required laws and bylaws
- Property Transfer Tax
- Tax exempt issues
- Best practices

9:55 Questions and Discussion

10:05 Servicing Real Estate Development on Reserve Land

Dan Brown
Westbank First Nation

- Planning requirements
- Access to funding for servicing
- Service agreements with municipal governments

11:00 Questions and Discussion

11:10 Refreshment Adjournment

11:20 Case Study #1: Tsawwassen First Nation’s Role in Managing Land Development Post-Treaty

Colin Ward
Tsawwassen First Nation

- Application of a rules based framework for land development
- Update on recent real estate developments on Tsawwassen Lands
  - Regional shopping centre
  - Industrial lands
- Supporting member-led development of their fee simple lands
- Corporate structuring and economic development
- Leasing and commercial matters
- Ensuring adequate servicing is available

12:15 Questions and Discussion

12:30 Luncheon Adjournment

2:00 Case Study #2: Tk’emlups Te Secwepemc’s Sun Rivers Golf Resort Community

Rick Siemens
Sun Rivers Golf Resort Community

Andrea M. East
Pushor Mitchell LLP

- History of developing the Sun Rivers community: homes, neighbourhoods and infrastructure
- Structuring a Master Planned Community using a head lease, development agreement and replacement leases
- Ongoing governance through neighbourhood and community owner associations
- Operating under the development agreement and the development approval process
- Delivering services through a private utility: creating the structure and executing the sale

3:10 Questions and Discussion

3:20 Faculty Roundtable: Separating Politics & Business When Developing Real Estate on First Nation Lands

- The role of First Nations’ governments
- The need for community owned businesses
- Control and conflicts – the duties of Directors vs the duties of Chief and Council
- Unique challenges of real estate developments on First Nation lands
- Experiences and lessons learned

3:55 Chairs’ Closing Remarks

4:00 Forum Concludes

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2. Fax us: 604-730-5085 or toll free: 1-866-730-5085
3. Mail your registration form with payment
4. Register at www.pbli.com/1057

**Registration:** The registration fee is $1,175.00 plus GST of $58.75 totalling $1,233.75 for both days. Registration covers your attendance at the forum, written materials, a light breakfast and refreshments throughout each day.

**Group Discounts:** Register four persons from the same organization at the same time and you are entitled to a complimentary fifth registration.

**Payment:** You may pay by VISA, MasterCard or cheque. Cheques should be made payable to the Pacific Business & Law Institute. Registration fees must be paid prior to the forum.

**When and Where:** Check-in begins at 8:30 a.m. The forum starts at 9:00 a.m. SFU Harbour Centre is located at 515 West Hastings Street in Vancouver, BC.

### Materials:
The faculty will prepare papers and/or other materials explaining many of the points raised during this forum. Materials will be available for pick-up at the forum. Please contact us at registrations@pbli.com if you are unable to attend the forum and wish to purchase a set of materials.

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**Course Accreditation:** Attendance at this course can be listed for up to 11 hours of continuing professional development with the Law Society of BC.

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