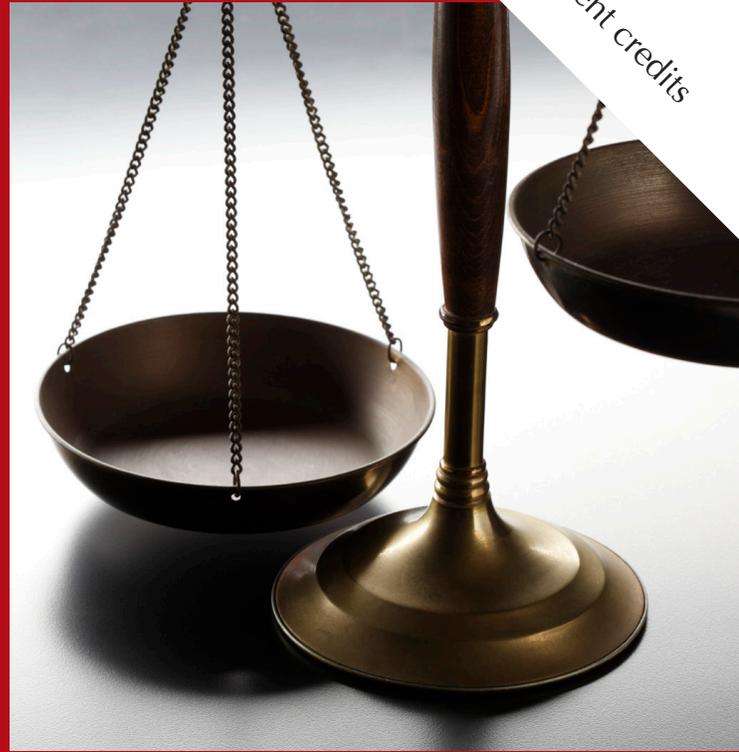




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# Aboriginal Litigation and Negotiation

Co-Chaired by

**Rosanne Kyle**  
Mandell Pinder LLP

**Paul Yearwood**  
Ministry of Attorney General

December 12<sup>th</sup> & 13<sup>th</sup>, 2017 • UBC Robson Square • Vancouver, BC

*Live Webinar also available!*



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## CO-CHAIRS



**Rosanne Kyle**, Partner, Mandell Pinder LLP, Vancouver, BC. Ms. Kyle has practised Aboriginal law for over 20 years. Her practice focuses on litigation, regulatory processes for resource development projects, consultation issues, and negotiations. She has appeared as litigation counsel in British Columbia, Alberta, and Ontario courts, as well as the Supreme Court of Canada. She has also been counsel to First Nations before regulatory bodies such as the National Energy Board and environmental assessment panels. For the last several years, she has been recognized as one of the leading lawyers in the Aboriginal law field in the Canadian Lexpert Directory and is also listed in Best Lawyers in Canada.



**Paul Yearwood**, Lawyer, B.C. Ministry of Attorney General, Victoria, BC. Paul Yearwood was called to the BC Bar in 1993 and has practised exclusively for the Province of British Columbia in the area of Aboriginal litigation since 2000. He is currently the Supervisor of the Aboriginal Law and Litigation group in the Ministry of the Attorney General. Paul has been fortunate to be counsel on a number of the leading Supreme Court of Canada decisions on Aboriginal law as well as a number of lower court decisions.

## FACULTY



**Daniel R. Bennett, Q.C.**, Norton Rose Fulbright Canada LLP, Vancouver, BC. Mr. Bennett is Co-Chair of Norton Rose Fulbright's Dispute Resolution and Litigation Department. Mr. Bennett has appeared before the British Columbia, Yukon, and Alberta Superior Courts and Courts of Appeal as well as the Federal Courts including the Supreme Court of Canada. He was an adjunct professor for 13 years at UBC law school teaching civil litigation and legal writing and co-authored the book *Procedural Strategies for Litigators in British Columbia*.



**Becky Black**, Lawyer, Ministry of Attorney General, Victoria, BC. Becky Black is a solicitor with the Ministry of Attorney General, Legal Services Branch. Becky provides advice to the Province of BC on consultation and accommodation obligations, as well as the negotiation and implementation of reconciliation, shared decision making, and revenue sharing agreements. Becky was called to the BC Bar in 2006 and has been practising Aboriginal law with the Province of BC since 2007.



**Debbie Chan**, Lawyer, Ministry of Attorney General, Victoria, BC. Debbie Chan has practised in the area of Aboriginal law for 15 years, primarily with the Province of British Columbia. She advises various provincial ministries on consultation and accommodation matters, including the Environmental Assessment Office. Debbie has an LLM from the University of Toronto and an LLB from the University of Victoria.



**Kate Gower**, Lawyer, DGW Law Corporation, Victoria, BC. Kate works in all areas of Aboriginal Law, specializing in Aboriginal consultation and litigation. She helped DGW Law Corporation run an Aboriginal Treaty Interpretation Case - *West Moberly First Nation et al. v. B.C.* - as the first digital trial in Victoria, involving 8 parties and thousands of digital maps and historic documents. Her litigation experience also includes securing the right to harvest caribou for Métis in the Northwest Territories and arguing before the Federal Court regarding the significance of Métis being included as Aboriginal people in section 35 of Canada's Constitution.

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**Robin Junger**, Partner, McMillan LLP, Vancouver, BC. Mr. Junger practises in the areas of administrative, environmental, and Aboriginal law, and has acted for resource companies, First Nations, and government. He previously served as Deputy Minister of Energy, Mines & Petroleum Resources, head of the BC Environmental Assessment Office and a Chief Provincial Treaty Negotiator. Mr. Junger holds degrees from Harvard Law School, UBC, and the University of Calgary, and has served as a law clerk to the BC Court of Appeal.

BC Court of Appeal.



**F. Matthew Kirchner**, Partner, Ratcliff & Company LLP, North Vancouver, BC. Mr. Kirchner practises in the areas of Aboriginal rights, land and resource issues, rights under the *Indian Act*, specific claims, fiduciary duties, and general litigation for Aboriginal clients. He also practises in the areas of civil litigation, administrative law, and environmental law. Mr. Kirchner has appeared before administrative tribunals, all levels of court in B.C. and the Supreme Court of Canada, particularly on First Nations issues. He was counsel for the plaintiffs in *Ahousahit et al. v. Canada* where the Nuu-chah-nulth plaintiffs successfully established Aboriginal rights to harvest any species of fish from their territories and sell that fish into the commercial marketplace.

was counsel for the plaintiffs in *Ahousahit et al. v. Canada* where the Nuu-chah-nulth plaintiffs successfully established Aboriginal rights to harvest any species of fish from their territories and sell that fish into the commercial marketplace.



**Michael Manhas**, Associate, Norton Rose Fulbright Canada LLP, Vancouver, BC. Michael is an Associate with Norton Rose Fulbright's Vancouver office. His practice is a mix of litigation, regulatory, and administrative law matters relating to environmental, natural resources, Aboriginal, and energy law, as well as economic regulation. Michael has assisted on or appeared before all levels of court in British Columbia and Alberta, as well as a number of administrative tribunals. In particular, he has environmental law experience dealing with contaminated sites, common law claims in nuisance and negligence, and water law issues, and has also assisted clients in their negotiations with First Nations.

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**Nancy A. Morgan**, Principal, Morgan & Associates, West Vancouver, BC. Ms. Morgan has been practising law for over 25 years. She works primarily in the field of Aboriginal law representing First Nations and regional First Nations organizations. She represents clients in the negotiation of treaties, impact benefit agreements, accommodation agreements, and other sectoral governance agreements. She is also involved in the development of legislation and policy for First Nations.



**Sonya Morgan**, Lawyer, Woodward & Company LLP, Victoria, BC. Sonya practises Aboriginal and commercial litigation. She has extensive experience in large-scale litigation and arbitration, addressing issues in contract and statutory interpretation, Aboriginal law, administrative law, injunctions, and property ownership and transfer. Sonya has appeared as co-counsel before the Supreme Court of Canada, all levels of Court in Alberta, the Federal Courts, and the British Columbia Supreme Court.



**Jay Nelson**, General Counsel, Tsilhqot'in National Government and Associate Counsel, Woodward & Company LLP, Victoria, BC. Jay has served as General Counsel to the Tsilhqot'in Nation since June 2013. He graduated from the University of Victoria Faculty of Law in 2000, where he received the Law Society Gold Medal. Upon graduation, he served as a law clerk for the Chief Justice of Canada, Beverley McLachlin. Jay was a member of the

## ABORIGINAL LITIGATION AND NEGOTIATION

Aboriginal litigation is a complex and dynamic area of law that includes claims based on Aboriginal rights and title, breaches of fiduciary obligations on the part of Government, and environmental and land disputes. The case law impacting each of these areas is constantly evolving, and litigating these claims presents complex challenges, including distinct rules of evidence, practice issues, and ethical considerations. New technologies provide new opportunities to manage and effectively resolve these challenges. But even successful litigants can find themselves in strange waters, as a judicial declaration of Aboriginal rights or title can result in the need for negotiations to implement such declarations and work through the myriad details that need to be addressed in the interests of reconciliation. This program will bring together experts in the field of Aboriginal litigation to address some of the most pressing issues in this area of law. Attendees will learn about the latest legal developments while also gaining a practical perspective from professionals who have faced these challenges.

### YOU WILL LEARN ABOUT:

- Nuisance and trespass claims founded in Aboriginal title and rights
- Considerations in determining the proper rights holder in a dispute
- Using new technology in the courtroom and working with experts in Aboriginal litigation
- Negotiating a resolution to Aboriginal claims, including after a declaration of Aboriginal title
- Other important issues affecting Aboriginal litigation

### WHO SHOULD ATTEND?

- Lawyers practising in Aboriginal law, administrative law, human rights law, natural resources, or general litigation
- Indigenous leaders, officials, councillors, community leaders, and elders
- Consultation professionals
- Federal, Provincial, and Municipal Government officials involved with Indigenous issues
- Officers of resource companies operating on land that is potentially subject to Aboriginal claims
- Negotiators, mediators, and consultants

legal team for the Tsilhqot'in Nation in their historic Aboriginal title and rights claim, *Tsilhqot'in Nation v British Columbia*, at trial, on appeal, and before the Supreme Court of Canada. Most recently, Jay has taken on the role of Executive Lead, Negotiations & External Affairs, for the Tsilhqot'in National Government, supporting the Tsilhqot'in Chiefs in reconciliation efforts, nation-building, and implementing the *Nenqay Deni* Accord and the Tsilhqot'in-Canada *Letter of Understanding*.



**Mitchell R. Taylor, Q.C.**, Senior General Counsel, Federal Department of Justice, Vancouver, BC. Mr. Taylor was called to the BC bar in 1981 and the Saskatchewan bar in 2015, and he has been legal counsel with the Department of Justice since 1981; practising mainly in civil litigation, Aboriginal law, and Public Safety law. He was appointed Queen's Counsel in January 2008. Mr. Taylor was lead counsel for the Government of Canada in the Cohen Commission of Inquiry into the decline of Fraser River sockeye salmon (final report dated October 29, 2012) and is presently lead counsel in various pending Aboriginal law and Public Safety cases, class proceedings, and cases involving the *Charter of Rights and Freedoms*.



**Terri-Lynn Williams-Davidson**, Principal & Senior Legal Counsel, White Raven Law Corporation, Surrey, BC. A citizen of the Haida Nation and also its General Counsel, Ms. Williams-Davidson has practised in the area of Aboriginal-environmental law since she was called to the BC Bar in 1996. She has represented the Haida Nation at all levels of court, including the Supreme Court of Canada in the *Haida* case. She is counsel for the Haida Nation's Aboriginal title case, as well as the related reconciliation negotiations – which have resulted in innovative interim agreements with British Columbia and Canada – and other litigation such as that challenging the Enbridge Northern Gateway Project. Ms. Williams-Davidson holds an LLB and a BSc from UBC. In the past she served as Founding Executive Director of the charity EAGLE (Environmental-Aboriginal Guardianship through Law and Education), an Advisory Council member for the Vancouver Foundation's Environment Program, a juror for the Ecotrust (US) Buffet Award for Indigenous Leadership, and on the board of Ecotrust Canada. She is an Honorary Director of Ecojustice and in 2014 received the Andrew Thompson Award for environmental advocacy.

# ABORIGINAL LITIGATION AND NEGOTIATION

## DAY ONE - DECEMBER 12<sup>TH</sup>, 2017

### 9:00 Chairs' Welcome and Introduction to Day One

Rosanne Kyle, Mandell Pinder LLP  
Paul Yearwood, Ministry of Attorney General

### 9:10 Keynote: Embracing UNDRIP in Negotiations and Disputes

Ministry of Indigenous Relations and Reconciliation,  
Representative - *Invited*

- Incorporating the principles of the United Nations Declaration on the Rights of Indigenous Peoples into negotiations

### 9:30 Questions and Discussion

### 9:40 Aboriginal Case Law Update

Rosanne Kyle, Mandell Pinder LLP  
Paul Yearwood, Ministry of Attorney General

- A discussion of recent important cases in Aboriginal litigation

### 10:20 Questions and Discussion

### 10:35 Refreshment Adjournment

### 10:50 Nuisance and Trespass Claims Founded in Aboriginal Rights and Title

Daniel R. Bennett, Q.C., Norton Rose Fulbright Canada LLP  
F. Matthew Kirchner, Ratcliff & Company LLP  
Michael Manhas, Norton Rose Fulbright Canada LLP

- Issues such as appropriate parties, severance, applicable common law principles, and possible remedies

### 11:40 Questions and Discussion

### 11:50 Networking Lunch

## AFTERNOON SESSION: THE HOW-TO OF ABORIGINAL LITIGATION

### 12:50 Determining the Proper Rights Holder in a Dispute

Robin Junger, McMillan LLP

- Advice for determining rights holders before proceeding with litigation or other dispute resolution mechanisms

### 1:25 Questions and Discussion

### 1:35 Aboriginal Litigation Case Management

Sonya Morgan, Woodward & Company LLP

- Tips for efficiently and effectively managing Aboriginal litigation cases

### 2:10 Questions and Discussion

### 2:20 Using Technology in Aboriginal Litigation

Kate Gower, DGW Law Corporation

- Highlights of the successful electronic trial in *West Moberly et al. v. BC*
- Litigating in an electronic environment and where to expect new technology in the courts
- When a database is helpful and when it is not

### 2:55 Questions and Discussion

### 3:05 Refreshment Adjournment

### 3:20 Working With Experts in Aboriginal Litigation

Mitchell R. Taylor, Q.C., Federal Department of Justice

- When and how to use joint experts
- Selecting what topics will benefit from expert evidence
- Reviewing and commenting on expert draft reports

### 3:55 Questions and Discussion

### 4:05 Getting an Aboriginal Title Case to Trial

Terri-Lynn Williams-Davidson, White Raven Law Corporation

- Notice and joinder of third party tenure holders
- Commissioning of elders' evidence
- Concurrent Reconciliation Initiatives

### 4:40 Questions and Discussion

### 4:50 Chairs' Closing Remarks – Program Concludes for Day One

## DAY TWO - DECEMBER 13<sup>TH</sup>, 2017 NEGOTIATING RESOLUTIONS

### 9:00 Chair's Welcome and Introduction to Day Two

Paul Yearwood, Ministry of Attorney General

### 9:10 You Have a Declaration of Aboriginal Title: What Now?

Jay Nelson, Woodward & Company LLP

- Negotiating substantive resolutions after a declaration of Aboriginal title

### 9:50 Questions and Discussion

### 10:00 Tools for Negotiating More Meaningful Engagement and Reconciliation

Debbie Chan & Becky Black, Ministry of Attorney General

- A Crown perspective on effective tools for meaningful negotiations involving Aboriginal parties

### 10:40 Questions and Discussion

### 10:50 Refreshment Adjournment

### 11:05 Moving from a Certainty Focus to a Rights Recognition Approach

Nancy A. Morgan, Morgan and Associates

- A review of methods and frameworks for approaching negotiations involving Aboriginal rights

### 11:45 Questions and Discussion

### 11:55 Chair's Closing Remarks – Program Concludes for Day Two

# INFORMATION

## Four Ways to Register:

1. Telephone us: 604-730-2500 or toll free: 1-877-730-2555
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/1382](http://www.pbli.com/1382)

**Registration:** The registration fee is \$995.00 plus GST of \$49.75 totalling **\$1,044.75** covering your attendance at the program (in person or by live webinar), written materials, a light breakfast, a networking lunch and refreshments throughout the day.

**Early Bird Discount:** Register by November 14<sup>th</sup>, 2017 and receive a \$150 discount on the registration fee (\$845.00 plus GST).

**Group Discounts:** Register four persons from the same organization at the same time and you are entitled to a complimentary fifth registration. Early Bird and Group Discount cannot be combined.

**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 program.

**When and Where:** Check-in begins at 8:30 a.m. The program starts at **9:00 a.m.** UBC Robson Square is located at the basement level of **800 Robson Street** in Vancouver, BC. Please visit <http://robsonsquare.ubc.ca/find-us/> for directions.

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

**Your Privacy:** We will keep all information that you provide to us in strict confidence, other than to prepare a delegate list containing your name, title, firm and city for our faculty and the program delegates. We do not share our mailing lists with any non-affiliated organization.

**Cancellations:** Full refunds will be given for cancellations (less a \$60.00 administration fee) if notice is received in writing five full business days prior to the program (**December 5<sup>th</sup>, 2017**). After that time we are unable to refund registration fees. Substitutions will be permitted. We reserve the right to cancel, change or revise the date, faculty, content, venue, or the availability of webinar for this event.

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## Aboriginal Litigation and Negotiation

December 12<sup>th</sup> & 13<sup>th</sup>, 2017

UBC Robson Square • Vancouver, BC

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