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# FIRST NATION TAXATION: IMPLICATIONS OF THE *BASTIEN* AND *DUBÉ* CASES

Chaired by  
**Maxime Faille**  
Gowlings LLP

October 19<sup>th</sup>, 2011 • Renaissance Harbourside Hotel • Vancouver, BC



## CHAIR



**Maxime Faille**, Partner, Gowlings LLP, Ottawa, ON. Mr. Faille practises in the areas of Aboriginal law, public law and general litigation. He is the National Leader of Gowlings' Aboriginal Law Group, and is counsel in several Aboriginal tax matters. Mr. Faille teaches trial advocacy at the University of Ottawa's Faculty of Law, and has also lectured on constitutional litigation. He has been a lecturer on the Law of Public Authorities in the Master's of Public Administration program at Carleton University. Mr. Faille is a member of the Barristers Advisory Group to the Law Society of Upper Canada, and has been called to the Bars of Ontario, Northwest Territories and Yukon.

## FACULTY



**John Hurley**, Partner, Gowlings LLP, Montréal, QC. Mr. Hurley has more than 30 years experience in commercial law, with special emphasis on First Nations, energy and infrastructure, environmental law, regulatory matters and international development. Mr. Hurley has long worked with Aboriginal peoples in Québec, especially the Crees and the Inuit, on a wide variety of matters, including government relations, energy and natural resources, environmental assessment, local and regional government, health, taxation, economic development and general commercial matters. He has advised both Aboriginal and non-Aboriginal clients on partnerships and collaboration agreements in the context of energy and resource projects. In energy matters, Mr. Hurley has assisted commercial clients for nearly 20 years with the development and execution of energy generation projects. He has also represented clients in environmental assessment procedures relating to large northern hydroelectric projects. Mr. Hurley has directed technical assistance projects in Eastern Europe related to international trade, civil law revision and judicial reform. He practises in English and French.



**Daniel Lacelle**, Partner, Gowlings LLP, Montréal, QC. Mr. Lacelle is the office leader of the Tax Law Group. He practises in taxation law with particular emphasis on corporate and transactional taxation. He has acted for financial institutions, equity investors and other corporate entities with respect to public and private corporate financing (debt and equity), financial products, lease and asset-backed financing, structuring of research and development funding and international taxation, as well as advised on tax issues related to the acquisitions, mergers or sales of businesses and companies. He practises in English and French.



**Bill Maclagan**, Managing Partner, Blake, Cassels & Graydon LLP, Vancouver, BC. Mr. Maclagan practises in the Tax Group. He is involved in all aspects of income and commodity taxation, including goods and services tax and transfer pricing. He practises in both the taxation planning and tax litigation fields. Mr. Maclagan's practice emphasizes corporate taxation with a focus on transactional advice, corporate reorganizations, and structuring business projects including joint ventures involving First Nations. Mr. Maclagan is recognized as a leading lawyer in *The Canadian Legal Expert Directory*, *The Best Lawyers in Canada* and *PLC Which Lawyer?*. Mr. Maclagan has written extensively in his area of expertise, has chaired conferences on general tax and corporate matters, and is a frequent lecturer at professional development programs. He is past chairperson of the Tax Subsection of the Canadian Bar Association in British Columbia, and is a Governor of the Canadian Tax Foundation.



**Randy Munro**, Associate Partner, Deloitte and Touche LLP, Langley, BC. Mr. Munro has over 20 years of experience in providing professional tax advice with an emphasis on tax-effective structuring for First Nation businesses. He has advised First Nations on a variety of tax issues including structuring of limited partnerships, establishment of settlement trusts and conversion of non-profit corporations to limited partnerships. In addition, Mr. Munro has advised First Nations on the tax components of Treaties. Mr. Munro has been extensively involved with tax training for the Canadian Institute of Chartered Accountants, including participation in the CICA In-depth tax program, the Wealth Preservation Course and the Income Tax Practice Course. He has also lectured and presented a number of papers relating to Aboriginal taxation and business structuring for First Nations.



**J. Peter Ranson**, Tax Partner, Aboriginal Client Services, KPMG LLP, Kelowna, BC. Mr. Ranson has extensive experience in providing a broad range of Aboriginal services to First Nations across Canada, including: Negotiations of business ventures and structures; assisting with specific land claim negotiations; negotiating with lenders and investors to determine the best structure to preserve the Aboriginal integrity while providing adequate security; and advising on the management and governance structures of business ventures and specific claims. He has also advised on a wide variety of Aboriginal/non-Aboriginal business ventures including forestry, retail, real estate development, building supply businesses and gaming businesses. He has negotiated financing and regulatory issues with governments and Aboriginal Business Canada. Mr. Ranson is the author of the KPMG book entitled *First Nations and Canadian Taxation*.

## First Nation Taxation: Implications of the *Bastien* and *Dubé* Cases

**After almost 20 years of court decisions that narrowed the section 87 First Nation tax exemption, the Supreme Court of Canada in the recent *Bastien* and *Dubé* decisions appears to have strengthened and broadened the *Indian Act* exemption. The impact of the decisions on First Nations' ability to enhance their own economic development has yet to be determined. Nonetheless, the direction offered by the Supreme Court will likely have significant ramifications.**

At this conference, you will hear from our expert faculty, including lawyers involved in the decisions and accountants who specialize in this area, on current issues in First Nation taxation and the implications of recent case law.

## ISSUES TO BE DISCUSSED:

- What role does taxation play in self-determination?
- Background of the *Bastien* and *Dubé* decisions
- The implications of recent case law on First Nation tax immunity
- Taxation of investment and business income — What is the impact of recent case law?
- How to determine the best structure for your project to improve tax efficiency and operation
- Tax planning tips related to employment income
- GST, HST and other taxes

## WHO SHOULD ATTEND:

- Aboriginal leaders, administrators, advisors and councillors
- Lawyers, project managers and accountants advising First Nation governments or businesses working with Aboriginal partners
- Business managers and developers
- Finance professionals
- Resource industry executives and Aboriginal liaisons
- Consultants
- Federal, provincial and municipal officers and lawyers

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# FIRST NATION TAXATION - OCTOBER 19<sup>TH</sup>, 2011

## 9:00 Welcome and Introduction

**Maxime Faille**  
Gowlings LLP

- Corporations
- Trusts
- Limited partnerships
- Planning to select the business structure: Strategy, planning, execution, continuous improvement

## 9:10 First Nation Tax Exemption: The Long Road to *Bastien and Dubé*

**Maxime Faille**  
Gowlings LLP

- History and origin of First Nation tax immunity
- The long decline and erosion of the tax immunity
- *Bastien and Dubé*: New life?

## 10:00 Questions and Discussion

## 10:10 Investment and Business Income in the Wake of *Bastien and Dubé*

**Bill Maclagan**  
Blake, Cassels & Graydon LLP

**John Hurley**  
Gowlings LLP

- Taxation of business income
- Situs of business activity
- Tax treatment of various types of investment income
- Ventures with other entities
- Implications of recent case law

## 11:10 Questions and Discussion

### 11:20 Refreshment Adjournment

## 11:35 Corporate Structuring for First Nation Businesses, Limited Partnerships & Joint Ventures

**Daniel Lacelle**  
Gowlings LLP

**Randy Munro**  
Deloitte & Touche LLP

- Considerations to maintain control, minimize liability and maximize tax benefits
- First Nations doing business in their own capacity
- Joint ventures

## 12:40 Questions and Discussion

### 12:50 Luncheon Adjournment

## 2:20 Taxation of Employment Income, GST, HST and Other Taxes

**J. Peter Ranson**  
KPMG LLP

- Tax planning for employees and employers
- Understanding the “commercial mainstream”
- What has changed?
- Practical tips
- GST, HST and other taxes

## 3:20 Questions and Discussion

### 3:30 Refreshment Adjournment

## 3:45 Faculty Roundtable:

**The Implications of *Bastien and Dubé*:  
Narrow or Far-reaching?**

## 4:15 Closing Remarks

## 4:30 Conference Concludes

## UPCOMING CONFERENCES

- **Consultation and Accommodation**  
Sept. 23<sup>rd</sup>, 2011 in Vancouver, BC
- **Corporate Governance**  
Sept. 29<sup>th</sup> & 30<sup>th</sup>, 2011 in Ottawa, ON
- **Advanced Tax Intensive**  
Oct. 13<sup>th</sup>, 2011 in Vancouver, BC
- **National Aboriginal Policing Forum**  
Oct. 27<sup>th</sup> & 28<sup>th</sup>, 2011 in Ottawa, ON
- **Construction Contracts**  
Nov. 17<sup>th</sup>, 2011 in Vancouver, BC
- **First Nation Trusts**  
Nov. 23<sup>rd</sup>, 2011 in Ottawa, ON
- **Canadian Aboriginal Law 2011**  
Nov. 24<sup>th</sup> & 25<sup>th</sup>, 2011 in Ottawa, ON
- **Collaborative Watershed Governance**  
Jan. 26<sup>th</sup> & 27<sup>th</sup>, 2012 in Vancouver, BC
- **Green Development**  
Feb. 2<sup>nd</sup> & 3<sup>rd</sup>, 2012 in Vancouver, BC

# INFORMATION

## Four Ways to Register:

1. Telephone us: 604-730-2500 or toll free 877-730-2555
2. Fax us: 604-730-5085 or toll free 866-730-5085
3. Mail your registration form with payment
4. Register at [www.pbli.com/936](http://www.pbli.com/936)

**Registration:** The registration fee is \$725.00 plus HST of \$87.00 totalling **\$812.00** covering your attendance at the conference, written materials, a light breakfast, and refreshments throughout the day.

**When and Where:** Check-in begins at 8:30 a.m. The conference starts at 9:00 a.m. Renaissance Harbourside Hotel is located at 1133 West Hastings Street in Vancouver, BC. For hotel reservations, please contact the hotel directly at 800-905-8582 or 604-689-9211.

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

**Course Accreditation:** Attendance at this course can be listed for up to **6 hours** of continuing professional development with the Law Societies of BC and Upper Canada.

be paid prior to the conference.

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

**Cancellations:** Full refunds will be given for cancellations if notice is received in writing five full business days prior to the conference (October 12<sup>th</sup>, 2011). Unfortunately, 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 or venue of this event.

## Registration Form

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## First Nation Taxation: Implications of the *Bastien* and *Dubé* Cases

October 19<sup>th</sup>, 2011

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