ABORIGINAL LAW: CURRENT ISSUES

Co-Chaired by

Maria Morellato, Q.C.
Mandell Pinder LLP

Janelle Dwyer
Mandell Pinder LLP

March 6th & 7th, 2012 • Renaissance Hotel Harbourside • Vancouver, BC
Co-Chairs

Maria Morellato, Q.C., Partner, Mandell Pinder LLP, Vancouver, BC. Ms. Morellato specializes in Aboriginal and treaty rights law. She is a civil litigator and negotiator with over 25 years of experience, having acted as legal counsel before all levels of the court system, including the Supreme Court of Canada. She has negotiated land and resource agreements for First Nations, both within the treaty context and in relation to consultation and accommodation measures with federal and provincial governments, as well as Impact Benefit Agreements. Ms. Morellato has been counsel on numerous Aboriginal title and rights cases of first instance. She has written numerous articles, has chaired and delivered papers at many conferences relating to Aboriginal law, and is Editor in Chief of the book “Aboriginal Law Since Delgamuukw,” published in 2009. Ms. Morellato is recognized in The Canadian Legal L’Expert Directory as one of the leading lawyers in Canada. In addition, she was voted by peers as one of the leading lawyers in Canada in the 2006 inaugural edition of The Best Lawyers in Canada, as well as each subsequent annual edition. She was awarded the Canadian Bar Association (British Columbia) Women Lawyers Forum Award of Excellence for 2008-09 and was very recently elected by her peers as a Bencher of the Law Society of British Columbia.

Janelle Dwyer, Partner, Mandell Pinder LLP, Vancouver, BC. Ms. Dwyer is a business lawyer practising in the area of economic development for First Nations communities. She provides legal advice related to land, financing, corporate and commercial matters, using her skill and knowledge of corporate models, trust and partnership structures, corporate and First Nations land tenure models to advise on the unique situation on-reserve. Ms. Dwyer’s practice encompasses all aspects of land transactions: acquisitions, financing, development approvals, sales, and leasing. She regularly advises on developing corporate entities such as limited liability partnerships, limited partnerships, corporations, societies and trusts. She also works closely with First Nations on commercial and Crown negotiations and advises on governance issues, including the development of property taxation regimes, drafting regulations, constitutions, bylaws and policies. She is a member of the Splatsin First Nation.

Additional Speaker

Margaret Buist, Director General of Lands and Environment, Lands and Economic Development Sector, Aboriginal Affairs and Northern Development, Gatineau, QC. Ms. Buist is a lawyer with Justice Canada specializing in Aboriginal law. She has practised in a number of areas including consultation, negotiations and Indian Act registration and land regimes. She was called to the Ontario Bar in 1986 and has lectured across the country on Aboriginal legal and policy issues. She is currently on assignment as Director General of Lands and Environment in the Lands and Economic Development sector of the federal Department of Aboriginal Affairs and Northern Development.

Aboriginal Law: Current Issues

Canadian Aboriginal law is complex and continually evolving. In order to effectively work in the field of Aboriginal law, properly exercise rights and responsibilities, realize opportunities for economic development and achieve true reconciliation, one must keep abreast of ongoing changes.

This forum assembles leading minds in the field of Canadian Aboriginal law, including lawyers and representatives from First Nations, the federal Department of Justice, the private sector, the British Columbia Ministry of Aboriginal Relations and Reconciliation, the Specific Claims Tribunal and the BC Treaty Commission to provide delegates with in-depth information, insight and practical advice with respect to current issues in Canadian Aboriginal law.

This forum will focus on ten key areas:

1. Aboriginal Rights and Title: The Latest Word from the Courts and the Aftermath of Court Judgments – What is the latest case law and what cases are currently before the courts? What happens once the court finds Aboriginal title? What issues remain unsettled? What are the recent developments on cost issues?

2. Aboriginal Rights and Title: What Issues is Industry Working On in Light of the Crown’s Duty to Accommodate? – What are possible solutions? What are the most effective policies and practices?


4. Aboriginal Rights and Title: Justification of a Rights Infringement – Justification vs. Accommodation. Does consultation as part of justified infringement matter anymore? Has the duty to consult become everything?

5. Update on Specific Claims – What is the current Specific Claims Tribunal procedure? What do you need to know about jurisdiction, tribunal powers and composition, case management, evidence, liability and compensation, and claims over $150 million?

6. Reconciliation and Shared Decision-Making – What is the latest on reconciliation tables beyond the treaty context, shared decision-making arrangements and implementation of the Haida Reconciliation Agreement?

7. First Nations Economic Development: Structuring for Business – What are the most recent case law considerations? What do you need to know about the new Canada Not-for-Profit Corporations Act? What are the current challenges?

8. Human Rights Update: The Repeal of Section 67 of the Canadian Human Rights Act and its Implications for First Nation Governments – What has changed? How can First Nations deliver services and programmes in compliance with the Canadian Human Rights Act?

9. First Nation Tax Exemptions: Latest Case Law and its Implications – What is the most recent word from the Supreme Court of Canada? What are the implications for the future?


This Forum is Designed For:

- Lawyers practising in the areas of Aboriginal law and/or resource development
- Treaty and consultation/accommodation negotiators
- Aboriginal government leaders and negotiators
- Owners and managers of resource development companies and companies operating on Crown land
- Federal, provincial and municipal government officials involved with resource development, the management of Crown land and Aboriginal peoples
- Consultants
The Faculty

Keith B. Berger, Partner, Lawson Lundell LLP, Vancouver, BC. Mr. Berger’s practice includes advising on Aboriginal law and energy/regulatory matters. He advises proponents and governments on the duty to consult and accommodate Aboriginal people in respect of environmental assessments and regulatory approvals for major industrial projects. Mr. Berger has appeared as counsel before numerous regulatory tribunals, all levels of court in Canada, and recently acted as co-counsel on three matters before the Supreme Court of Canada. He appears regularly before administrative tribunals and represents proponent and governments in appeals and judicial reviews challenging project approvals.

Patrick Foy, Q.C., B.Sc., LL.B., Senior Appellate Counsel and Partner, Botkin Lader Cervais LLP, Vancouver, BC. Mr. Foy’s practice is concentrated on Aboriginal law, appellate and judicial review, and investor-state arbitration. He has been counsel for numerous commercial clients and public bodies at all levels of court in Canada. He has acted as counsel at all levels of court for the Crown and for private clients on Aboriginal rights and title claims made by First Nations. In 1998, Mr. Foy was appointed Queen’s Counsel and is a Fellow of The American College of Trial Lawyers.

Anne Giardini, Q.C., Canadian President, Weyerhaeuser Company Limited, Vancouver, BC. Ms. Giardini served as In-House Counsel and General Counsel for Weyerhaeuser before her current tenure. She holds a B.A. (SFU), and an LL.M (Cambridge University). She is a member of the Board of Governors of SFU and the Board of Univerity. She chairs SFU’s Finance and Administration Committee and is Interim Chair of the Audit Committee. Ms. Giardini was named a UBC Faculty of Law Distinguished Alumnus in 2007, and in 2010 was appointed a BC Queen’s Counsel, received the 2010 Canadian General Counsel Award for Business Achievement and was named one of BC’s 100 Women of Influence. In 2011, she received the Canadian Corporate Counsel Association’s 2011 Robert V. A. Jones Award and was named one of Canada’s most influential lawyers.

Peter Grant, Partner, Peter Grant & Associates, Vancouver, BC. Mr. Grant has practised Aboriginal law from 1977 to 1995. Mr. Grant lived in the Gitxsan territory and practised law principally for the Gitxsan and the Wet’suwet’en. He was a lead counsel in Delgamuuk’w v. The Queen in the Supreme Court of Canada and has appeared in the Supreme Court of Canada on four other Aboriginal rights cases. Mr. Grant helped negotiate the Indian Residential Schools Settlement Agreement, has been elected the representative of Independent Counsel on the National Administration Committee (“NAC”), and is currently Chair of the NAC, which oversees the Settlement Agreement. He is a past Chair of the Aboriginal Law Section of the CBA, and has lectured extensively on Aboriginal law. He is the founding partner of Peter Grant & Associates which advises Aboriginal clients on tax structures, the duty to consult and accommodate, treaty rights, on-reserve land management and infrastructure projects, IBAs, financing and leasing agreements, commercial transactions and resource and energy projects. He has appeared before the Federal Court, the Federal Court of Appeal, the Federal Tax Court, the Canadian Human Rights Tribunal, the Ontario Superior Court of Justice as well as representing clients at Aboriginal sentencing and healing circles. He is a member of the Law Society of Upper Canada and the Indigenous, Canadian and Ontario Bar Associations.

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 BC and the Supreme Court of Canada. He was counsel for the plaintiffs in Ahousaht et al. v. Canada.

Rosanne Kyle, Principal, James Freedman Kyle Law Corporation, Vancouver and Victoria, BC. Ms. Kyle has practised Aboriginal law for 19 years. She provides advice on consultation issues to First Nations in BC, Alberta and Saskatchewan. She has represented clients on issues including determinations arising from resource development projects in their territories. She also advises on environmental and regulatory matters. She has been counsel in a number of Aboriginal law cases, including injunction applications relating to consultation issues arising from resource development projects. Ms. Kyle holds an LL.M in Aboriginal law. She is a regular speaker and has written extensively. She has also been an Adjunct Professor at the UBC Faculty of Law and is a Guest Lecturer at SFU.

Brian McLaughlin, General Counsel, Aboriginal Affairs Portfolio, Department of Justice, Vancouver, BC. Mr. McLaughlin holds a B.A. (University of New Brunswick) and an LL.B (UBC). He was called to the Bar of BC in 1982. Mr. McLaughlin practised civil litigation until 1996. He joined the Department of Justice in 1997 in the Federal Treaty Negotiation Office, Legal Services Unit. In 2000, he went to the BC Regional Office of the Department of Justice where he practised Aboriginal rights and title litigation, including acting as lead counsel in Roger William v. B.C. and Canada.

Garry Merkel, Negotiator, Ktunaxa Nation Council, Cranbrook, BC. Mr. Merkel is a member of the Tahltan Nation. He is a Registered Professional Forester but works primarily as a builder working to build relationships, organizations and processes tailored to unique characteristics and needs. Much of his work relates to the Tahltan people gaining ownership of natural resources and building capacity and exercising a role in the development of new foundations or other foundations to better shape their futures. He also works in public policy developing and negotiating federal-provincial-aboriginal recognition, reconciliation, revenue sharing and shared decision making policy and agreements.

Richard A. Neufeld, Q.C., Partner, Fraser Milner Casgrain LLP, Calgary, AB. Mr. Neufeld has significant experience in the areas of environmental, regulatory, and Aboriginal law. He has acted as environmental and regulatory counsel in respect of a variety of global projects, including petrochemical and oil sands plants, hazardous waste treatment facilities, and international pipelines. He has provided counsel to industry regarding their dealings with Aboriginal communities. Mr. Neufeld has also represented project proponents before many boards and tribunals. He has lectured and published in the areas of environmental and regulatory law. He is a past Chairman of the Canadian Institute of Resources Law and the Alberta Chamber of Resources. He was voted one of Alberta’s leading environmental law practitioners in a peer survey and was named as one of Canada’s Top 500 lawyers by a national legal publication.

Dominique Nouvet, Associate, Woodward & Company LLP, Victoria, BC. Ms. Nouvet practises in the area of Aboriginal law. She has been involved in the BC Treaty Process negotiations, judicial reviews concerning the Indian Act and the duty to consult and accommodate, the successful advanced cost application in Keewatin v. Ontario (MINR), as well as interventions at the Supreme Court of Canada for the following cases: Okanagan v. British Columbia; Haida Nation v. British Columbia; Mikisew Cree First Nation v. British Columbia; R. v. Bernard and Marshall; R. v. Spearay and Gray; R. v. Morris and Olsen; and Beckman v. Little Salmon/ Carmacks First Nation. She clerked with Justice Ian Binnie in 2000-2001 and has been updating Jack Woodward’s Native Law since 2009.

J. Peter Ranson, Office Managing Partner, Aboriginal Client Services, KPMG LLP, Kelowna, BC. Mr. Ranson has extensive experience in providing a broad range of services to First Nations across Canada, including: negotiations of business ventures and structures; specific land claims; the best structures for lenders and investors to preserve the Aboriginal integrity while providing adequate security; and advising on the management and governance structures of business ventures. 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.

Scott Robertson, Associate, Gowlingts LLP, Ottawa, ON. Mr. Robertson practises in the Aboriginal Practice Group. He is a member of the Six Nations of the Grand River. In addition to rights based advocacy, Mr. Robertson assists Aboriginal communities, businesses and organizations in partnering with private and public institutions to improve and change for the better. He also advises Aboriginal clients on tax structures, the duty to consult and accommodate, treaty rights, on-reserve land management and infrastructure projects, IBAs, financing and leasing agreements, commercial transactions and resource and energy projects. He has appeared before the Federal Court, the Federal Court of Appeal, the Federal Tax Court, the Canadian Human Rights Tribunal, the Ontario Superior Court of Justice as well as representing clients at Aboriginal sentencing and healing circles. He is a member of the Law Society of Upper Canada and the Indigenous, Canadian and Ontario Bar Associations.

Cheryl Sharvit, Associate, Mandell Pinder LLP, Vancouver, BC. Ms. Sharvit practises Aboriginal law with a particular focus on natural resource issues. Prior to joining Mandell Pinder LLP, she was legal counsel with EAGLE (Environmental-Aboriginal Guardianship through Law and Education). She has represented clients in the Supreme Court of BC, Court of Appeal for BC and Supreme Court of Canada. She has also been involved in tribunal work. She was on the legal team representing the Haida Nation in Haida Nation et al. v. British Columbia (Minister of Forests) et al. She has taught environmental law and published extensively.

The Honourable Justice Harry A. Slade, Q.C., Chairperson, Specific Claims Tribunal, Ottawa, ON. Justice Slade was initially appointed to the Specific Claims Tribunal in 2009. He was appointed Chairperson in December 2009 and became the Chief Justice of the Tribunal on March 1, 2011. Justice Slade was admitted to the Bar of BC in 1974. His primary area of practice as a lawyer was Aboriginal law. He has extensive experience in specific claims negotiation and was active in the advancement of Aboriginal rights issues. His work included intergovernmental relations among First Nations, Canada and provinces, including treaty processes, self-government initiatives, and commercial development of reserve lands. Justice Slade was appointed Queen’s Counsel in 1998 and became a Justice of the BC Supreme Court in March 2001.

Mark Smith, General Counsel and Process Manager, BC Treaty Commission, Vancouver, BC. Mr. Smith is a facilitator of treaty negotiations in the BC treaty process. He has worked extensively on overlapping and shared territory issues among First Nations at both a policy level and in dispute resolution processes. He currently participates in senior level tripartite discussions on developing options for improving the treaty negotiations process, including solutions to overlap disputes. Mr. Smith has been a member of the BC Bar since 1996 and has focused his career on Aboriginal law and treaty negotiations. Mr. Smith is also completing an LL.M at UBC focusing on First Nations legal issues.

Cindy Stern, CEO, Tseshaht First Nation, Port Alberni, BC. Ms. Stern is a Registered Professional Forester and previously was an executive with the Ministry of Forests and Senior Manager for the Ontario Ministry of Natural Resources. Ms. Stern has consulted for industry, First Nations and government regarding strategic forestry planning and sustainability. From May to October, Ms. Stern enjoys relaxing on a campsite on the Alberni Canal and fishing with her partner Mike, dog and two teenaged boys.

Peter Walters, Assistant Deputy Minister, Ministry of Aboriginal Relations and Reconciliation, Strategic Initiatives Division, Victoria, BC. Mr. Walters has been part of the BC public service since 1980 and has worked in Kamloops, Surrey and Victoria. While his first 25 years focused on Crown land management and projects, he has served as an Assistant Deputy Minister in several ministries, including Tourism, Culture and the Arts, Forests, Lands and Natural Resource Operations. Mr. Walters’ experience has given him a passion for positive change in the Province’s relationship with First Nations.
ABORIGINAL LAW: CURRENT ISSUES
MARCH 6TH, 2012

9:00 Welcome and Introduction
Maria Morellato, Q.C.  Janelle Dwyer
Mandell Pinder LLP  Mandell Pinder LLP

SPECIAL FOCUS ON ABORIGINAL RIGHTS AND TITLE

9:10 The Latest Word from the Courts and the Aftermath of Court Judgments
Keith B. Bergner  F. Matthew Kirchner
Lawson Lundell LLP  Ratcliff & Company LLP

- The latest case law and current cases before the courts
- Pleading issues
- What happens "on the ground" once the courts find there is Aboriginal title?
- Ahousat - where is the case now? New issues
- Remaining unsettled issues
- Recent developments on cost issues

10:00 Questions and Discussion
10:10 Refreshment Adjournment

10:20 What Issues is Industry Working On in Light of the Crown's Duty to Accommodate: Possible Solutions?
Anne Giardini, Q.C.  Cindy Stern
Weyerhaeuser  Tseshah First Nation Company Limited

- Elusive quest for "certainty"
- Best policies and practices
- Building relationships
- Finding and implementing new models
- What are the common goals?
- What do we and should we expect from each other?
- Who pays?
- How industry should approach First Nations
- How industry should NOT approach First Nations
- Finding the balance to a win-win outcome
- Do you want this to last, or is it just a one-night stand?

11:50 Questions and Discussion
12:00 Luncheon Adjournment

1:15 Aboriginal Rights and Environmental Issues: How do Environmental Regulators, Industry and First Nations Address the Duty to Consult and Accommodate?
Rosanne Kyle  Richard A. Neufeld, Q.C.
Janes Freedman Kyle  Fraser Milner Law Corporation  Casgrain LLP

- Consultation and accommodation issues in environmental assessment processes
- Assessing potential impacts to Aboriginal and treaty rights in an environmental assessment
- Northern Gateway Pipeline Project - what issues has the Joint Review process raised?

2:15 Questions and Discussion
2:25 Refreshment Adjournment

2:35 Justification of a Rights Infringement
Brian McLaughlin  Cheryl Sharvit
Department of Justice  Mandell Pinder LLP

- Justification vs. accommodation
- Case law and cases before the courts
- Examining valid legislative objectives
- Does consultation as part of justified infringement matter anymore?
- Has the duty to consult become everything?

3:35 Questions and Discussion

FIRST NATION TAX EXEMPTIONS

3:45 Latest Case Law and its Implications
Maria Morellato, Q.C.  Scott Robertson
Mandell Pinder LLP  Gowlings LLP

J. Peter Ranson
KPMG LLP

- Recent case law from the Supreme Court of Canada and its implications
- Property tax exemptions for First Nations under Taxation (Rural Area) Act: latest case law
- Current cases: the issue of first instance on taxability
- Section 87: recent case law from the Supreme Court of Canada and its implications
- Section 149 and section 87: How is this law actually being applied by Revenue Canada on the ground?
- Directions for the future

4:50 Questions and Discussion
5:00 Conference Concludes for Day One

REGISTER TODAY!
ABORIGINAL LAW: CURRENT ISSUES
MARCH 7TH, 2012

9:00 Welcome and Introduction to Day Two
Maria Morellato, Q.C.  Janelle Dwyer
Mandell Pinder LLP  Mandell Pinder LLP

RECONCILIATION

9:05 Reconciliation and Shared Decision-Making
Peter Walters  Garry Merkel
Assistant Deputy Minister, Ministry of Aboriginal Relations and Reconciliation
Ktunaxa Nation Council

• Update on reconciliation tables beyond the treaty context
• Update on shared decision-making arrangements
• Update on implementation of Haida Reconciliation Agreement
• Emerging models

10:15 Questions and Discussion

10:25 Refreshment Adjournment

FIRST NATIONS ECONOMIC DEVELOPMENT

10:40 Unlocking the Economic Potential of Reserve Lands
Margaret Buist
Aboriginal Affairs and Northern Development

• By examining potential improvements to policies and procedures related to additions to reserve, designations, leases and permits on reserve land
• Through improved land use planning and governance tools
• By developing legislative and regulatory models

11:05 Structuring for Business
Janelle Dwyer
Mandell Pinder LLP

• Case law considerations
• Canada Not-for-Profit Corporations Act: new legislation (October 17, 2011)
• Challenges on the ground

11:30 Questions and Discussion

HUMAN RIGHTS UPDATE

11:40 The Repeal of Section 67 of the Canadian Human Rights Act: Implications for First Nation Governments
Dominique Nouvet
Woodward & Company LLP

• The history of this section - what is changing?
• Bringing a complaint before the Canadian Human Rights Commission
• Current and future cases
• How can First Nations deliver services and programmes in compliance with the CHRA?

12:20 Questions and Discussion
12:30 Luncheon Adjournment

SPECIFIC CLAIMS

2:00 Update on Specific Claims
The Honourable Justice Harry A. Slade, Q.C.
Specific Claims Tribunal

• Jurisdiction
• Tribunal powers and composition
• Case management
• Evidence
  – Minimum standard
  – Supplemental evidence
  – Oral history evidence
• Liability and compensation
  – Determining compensation where liability has not been established
• Claims over $150 million

2:35 Questions and Discussion
2:45 Refreshment Adjournment

NEGOTIATIONS AND TREATY ISSUES IN 2012

2:55 Addressing Overlap Disputes
Mark Smith  Peter Grant
BC Treaty Commission  Peter Grant & Associates

• Update on treaty negotiations
• Reconciliation and bi-lateral negotiations

3:55 Questions and Discussion
4:05 Chairs’ Closing Comments
4:15 Conference Concludes

YOUTH SPONSORSHIP PROGRAM
We are pleased to offer our successful sponsorship program for First Nation, Métis and Inuit youth to attend conferences offered by the Pacific Business & Law Institute. For further information about applying to attend this or other conferences please go to www.pbli.com/aboriginal-youth-sponsorship.
**Course Accreditation:** Attendance at this course can be listed for up to **11.5 hours** of continuing professional development with the Law Societies of BC and Upper Canada.

**Materials:** The faculty will prepare papers and other materials explaining many of the points raised during this conference. Please contact us if you are unable to attend the conference 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 conference delegates. We do not share our mailing lists with any non-affiliated organization.

**Cancellations:** Full refunds will be given for cancellations if notice is received in writing five full business days prior to the conference (February 28th, 2012). 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.

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### Registration Form

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**Aboriginal Law: Current Issues**

March 6th & 7th, 2012  
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