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ABORIGINAL AND ENVIRONMENTAL LAW: NAVIGATING THE NEW WORLD OF IMPACT ASSESSMENTS

Co-Chaired by

Karey Brooks
JFK Law Corporation

Kevin O'Callaghan
Fasken Martineau DuMoulin LLP

February 11th & 12th, 2020 • UBC Robson Square • Vancouver, BC

Live Webinar also available!



CO-CHAIRS



Karey Brooks, Principal, JFK Law Corporation, Vancouver, BC. Karey practises civil litigation with a focus on Aboriginal, constitutional and administrative law. She has appeared in all levels of court, including in British Columbia, Alberta and Ontario. Karey primarily acts for First Nations and First Nations organizations in court and negotiations

with government and industry on matters relating to Aboriginal rights and title, consultation, regulatory matters, including environmental assessments, and general governance matters, including status and membership issues. Karey also has experience in other public law related work, including with respect to Charter rights litigation and public inquiries. Karey was co-counsel to the Aseniwuche Winewak Nation in *Daniels v. Canada*. In 2016, Karey was awarded the UBC Law School Outstanding Young Alumnus Award and in 2015, she was recognized as one of *Canada's Legal Rising Stars* by Lexpert.



Kevin O'Callaghan, Partner, Fasken Martineau DuMoulin LLP, Vancouver, BC. Kevin is leader of his firm's Indigenous Law group, and provides strategic advice on managing projects through environmental assessment and consultation with Indigenous peoples, including advice on negotiations and agreements. However, if unavoidable conflicts arise

during project development, Kevin appears before courts, tribunals and arbitration panels to assist his forestry, mining, and oil and gas clients on challenges to licenses (including judicial review and title litigation) by local communities, non-governmental organizations and Indigenous communities, as well as related injunction proceedings. Kevin has appeared as counsel for industry stakeholders in a number of critical Aboriginal cases at the Supreme Court of Canada. He is recognized in the area of Aboriginal law by Chambers Canada, and was named Benchmark Canada's 2017 "Litigation Star" for Aboriginal Law in BC.

YOUTH SPONSORSHIP PROGRAM

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ABORIGINAL AND ENVIRONMENTAL LAW: NAVIGATING THE NEW WORLD OF IMPACT ASSESSMENTS

The control and maintenance of land, water and other natural resources are of the highest importance to First Nations and the provincial and federal governments. In these contexts, nation to nation consultation and cooperation are necessary in order to balance protection of the environment and Indigenous rights with proposed developments. Ongoing legislative and regulatory reforms in this area are changing the way governments engage in consultation, and the way project proponents and First Nations navigate various government agencies. These changes require First Nation administrators, developers, and legal counsel to stay up to date on environmental legal frameworks in Canada.

This program will bring together experts in the fields of Aboriginal and environmental law to address some of the most pressing issues facing Aboriginal communities, governments, and industry. Attendees will learn about the latest legal developments while also gaining a practical perspective from leaders who have faced and overcome challenges.

KEY ISSUES TO BE ADDRESSED:

- Changes to environmental assessment processes in BC and Canada
- Indigenous-led environmental assessments
- Indigenous rights in the context of assessments
- Rights impact assessments and working with consultants
- The role of indigenous knowledge
- Cumulative impacts
- Mitigation by the proponent and the Crown
- A case study of the Teck Frontier joint review panel
- An update on the Trans Mountain Expansion Project
- Division of powers

WHO SHOULD ATTEND:

- Aboriginal leaders, officials, councillors, community leaders, and elders
- Lawyers practising in Aboriginal law, environmental law, or natural resources and energy law
- Consultation professionals
- Federal, Provincial, and Municipal Government officials involved with environmental issues and First Nations
- Business leaders with a focus on sustainable resource management
- Negotiators, mediators, and consultants
- Academic and environmental stakeholders

FACULTY



ADM Scott Bailey, Environmental Assessment Office, Ministry of Environment and Climate Change Strategy, Victoria, BC. Scott was appointed Assistant Deputy Minister of the Environmental Assessment Office on February 10, 2017 after spending the previous five and a half years in the Office leading EAs across various sectors. After four years of environmental consulting, Scott joined the BC Public Service in early 2000, holding various roles in natural resources agencies. Scott holds a diploma in Aviation technology, a Bachelor of Science in Geography and Environmental Studies, and a Master of Arts in Environment and Management. Scott has two children (12 and 16), and they enjoy a variety of activities together including hockey, sailing and movie watching.



Catherine Boies Parker, Q.C., Partner, Arvay Finlay LLP, Victoria, BC. Catherine Boies Parker, Q.C. was called to the Bar of the Law Society of British Columbia in 1998. Her areas of practice include constitutional, administrative, privacy, environmental and indigenous law, as well as labour and employment law. Catherine has appeared at all levels of Court, and before numerous administrative and regulatory tribunals. Catherine provides litigation and policy support for a wide range of public bodies, and conducts workplace investigations for both private and public clients. Catherine is a frequent guest lecturer on topics such as constitutional law, privacy law and civil liberties. She is the founding president of the Pacific Centre for Environmental Law and Litigation, a former director of the Mary Manning Centre, Child Abuse Prevention and Counselling Society of Greater Victoria and a former Chair of the ORCA Children's Advocacy Centre Society.



Jan Brongers, Senior General Counsel, Department of Justice (British Columbia Regional Office), Vancouver, BC. Jan has been a civil litigator throughout his 22-year career with the Department, which began in Ottawa before he returned to his home town of Vancouver in 2006. Jan has appeared before courts at all levels, including the Supreme Court of Canada, several administrative tribunals, and two commissions of inquiry. He is also a co-author of the *Annotated Crown Liability and Proceedings Act*. Jan is a graduate of McGill University and maintains his membership with the Bars of Quebec, Ontario and British Columbia.



Aaron Bruce (Kelts'-Tkinem), Partner, Ratcliff & Company LLP, North Vancouver, BC. Aaron is member of the Squamish Nation and is passionate about working with First Nations to balance economic development opportunities with the protection of Aboriginal rights and title interests and environmental conservation. He advises on land and resource issues, Aboriginal rights and title, matters under the *Indian Act*, First Nation governance issues, economic development opportunities, and acts as general counsel for First Nations governments. Aaron specializes in the negotiation of impact benefit agreements, accommodation agreements with the Crown, and other interim agreements concerning land and natural resources.



Dani Bryant, Associate, Fasken Martineau DuMoulin LLP, Vancouver, BC. Dani Bryant is a litigation and dispute resolution lawyer primarily focusing on Indigenous, environmental and regulatory law, and complex commercial litigation. She is also a member of the firm's Global Mining Group advising clients on natural resource development and corporate social responsibility issues. As part of a team providing strategic advice on the development of major projects throughout British Columbia and the North, Dani focuses on relations with Aboriginal groups on issues arising from environmental assessment and permitting. Dani also represents clients on judicial review matters related to permitting, environmental assessment, and Aboriginal consultation in British Columbia Supreme Court and British Columbia Court of Appeal.

Marja J. Bulmer, Legal Counsel, Department of Justice Canada, Vancouver, BC. Marja has worked with what is now called the Impact Assessment Agency of Canada (IAAC) since 2013. Prior to working at IAAC Legal Services, she was counsel with the Aboriginal Law Centre within Justice Canada and counsel for the department now referred to as the Crown Indigenous Relations and Northern Affairs Canada (CIRNA). She has worked on several resource projects, litigation files and federal policy responses to the duty to consult. She has used my legal experience in the area of Aboriginal law to assist the IAAC develop new approaches to consultations, as well as in the development of the *Impact Assessment Act* and subsequent policy guidance materials. Previously, she worked with Human Rights Commission, in private practice and clerked for the Federal Court of Appeal.



Tim Dickson, Principal, JFK Law Corporation, Vancouver, BC. Before joining JFK, Tim practised for over a decade at a leading Vancouver firm, where he was a partner. He has litigated in many areas of law, but with particular emphases on acting for Indigenous peoples in Aboriginal law matters and on cases involving other aspects of public law. He advises and acts for First Nations on matters involving Aboriginal rights and title and governments' duty to consult and accommodate, and he represents First Nations in negotiations with industry proponents. He has substantial experience in environmental assessment and regulatory hearings, including before the National Energy Board. Tim is ranked by Benchmark Canada as a Vancouver "litigation star" in Aboriginal law, and he is listed by Best Lawyers in Canada in administrative and public law, as well as corporate and commercial litigation. He was recognized by Lexpert Magazine as one of Canada's Leading Lawyers under 40 and a US/Canada Cross-Border Litigation Lawyer to Watch.



Eli Enns, Research Associate, University of Victoria, Victoria, BC. Eli Enns is the great grandson of Na'waas'um (historian and public speaker for Wickanninish) from Tla-o-qui-aht on his father's side. On his mother's side, Eli is a 2nd generation immigrant from the Netherlands, grandson of Peter Enns (Dutch Mennonite). Eli is an internationally recognized expert in bio-cultural heritage conservation and Indigenous economic development. He is a nation builder and Canadian political scientist focused in constitutional law, geopolitics and ecological governance. Eli has recently joined the board of directors for the Canadian Committee for IUCN and the Canadian network of UNESCO Global Geoparks. Co-founder of the Ha'ukmin Tribal Park in the Clayoquot Sound UNESCO Biosphere Reserve on Vancouver Island, Eli was Co-Chair for The Indigenous Circle of Experts for The Pathway to Canada Target 1 (Aichi Target 11), is a Research Associate at The Polis Project on Ecological Governance at the University of Victoria and serves as the Regional Coordinator North America for the Indigenous Peoples and Community Conserved Territories and Areas (ICCA) Consortium.



Jeff Langlois, Principal, JFK Law Corporation, Vancouver, BC. Jeff acts for First Nations in a broad range of matters, including constitutional litigation, environmental assessments and engagement with the Crown and businesses relating to diverse areas such as land use planning, oil and gas, mining, hydroelectric development and the implementation of land claims agreements. Jeff has appeared before all levels of Court in British Columbia, as well as the Yukon Supreme Court and the Ontario Court of Appeal, and has assisted clients in the Federal Court and the Supreme Court of Canada. His practice includes clients in British Columbia, Yukon, the Northwest Territories, Alberta, Saskatchewan and Ontario. Prior to joining JFK Law, Jeff practiced at a national law firm in Vancouver where he represented First Nations and businesses in a broad range of contexts, including Aboriginal law, commercial litigation, insolvency and dispute resolution.



Melody Lepine, Director, Government & Industry Relations (GIR), Mikisew Cree First Nation. Ms. Lepine is a member of the Mikisew Cree First Nation and was raised in the beautiful community of Fort Chipewyan, Alberta. Melody is currently enrolled in the Masters of Science program at Royal Roads University. Melody has worked for her community and First Nation for the past eleven years as the Director of Government and Industry Relations. She is responsible for overseeing all government and industry consultation pertaining to resource development that may impact the Mikisew Cree. During her time with the GIR, she has been managing hundreds of government and industry consultation files some of which include six oil sands regulatory interventions and judicial reviews. Melody has led the development of consultation protocols and guidelines, numerous traditional land use studies and is one of the key negotiators of impact benefit agreements. Ms. Lepine is also quite proud to have initiated a community based environmental monitoring program, cultural impact assessments, land use plans and indigenous knowledge studies. Ms. Lepine serves as a board member for the Cumulative Environment Management Association and as a trustee for the MCFN IBA trust.



Robin Sidsworth, Corporate Counsel, Teck Resources Ltd., Vancouver, BC. Robin Sidsworth has been in his role as Corporate Counsel for Teck since 2011, serving as primary legal counsel on negotiations with Indigenous peoples at Teck's Canadian operations, and advising on community, regulatory and sustainability matters within Canada and abroad. Robin has provided legal support in the development of Teck's Indigenous Peoples Policy, and participated in the negotiation of each long-term participation agreement for the proposed Frontier Project.



Trefor Smith, Senior Regulatory Advisor, Firelight Group, Vancouver, BC. Trefor Smith has been a Senior EA and Regulatory Advisor with the Firelight Group since 2014. He has worked in the areas of impact assessment and Aboriginal-Crown relations for over 25 years, including working as a senior advisor with the Canadian Environmental Assessment Agency from 2009 to 2014. Trefor specializes in rights impact assessment policy and methodologies, as well as extensive experience and knowledge regarding the intersection of impact assessment with the legal duty to consult and accommodate.



Justin Straker, Principal, Integral Ecology Group, Duncan, BC. Justin is a soil scientist and forest ecologist, and a principal at IEG, which he co-founded in 2010. In 1992, Justin completed his B.A. at McGill University in anthropology, and in 1998 he completed a M.Sc. in soil science at the University of British Columbia. Justin has over 20 years of experience in applied terrestrial ecology, and primarily focuses his practice on three fields: reclamation of surface-mining disturbances, including design, implementation, assessment, review and regulatory inspection of reclamation and reclamation-research programs; assessment of the cumulative effects of human activities on ecosystems; and, assessment of environmental effects of industry (e.g., air pollution) on terrestrial ecosystems. Justin has worked throughout Canada, and in Alaska, South America, and South Asia.



Michelle Wilsdon, Indigenous Co-Chair, TMX Indigenous Advisory and Monitoring Committee; Council Member, Enoch Cree Nation, Enoch, AB. Michelle Wilsdon is from the Enoch Cree Nation, located just west of Edmonton, Alberta in the heart of Treaty Six Territory. She currently serves her Nation as an elected member of Council, providing leadership for the planning, development and corporate functions of the Nation. Michelle's focus is on community development initiatives that allow her Nation to reconstruct systems of governance that strike a balance between meeting modern challenges and opportunities, while still reflecting the Cree values and traditions. Before becoming an elected leader, she worked in both the government and non-profit sectors leading initiatives related to community economic development, lands and resource management as well as intergovernmental, community and industry relations. Michelle currently holds a Bachelor of Science degree from the University of Victoria, a Certificate of Indigenous Peoples Resource Management Program from the University of Saskatchewan and Professional designation as a Certified Aboriginal Lands Manager.

ABORIGINAL AND ENVIRONMENTAL LAW: NAVIGATING THE NEW WORLD OF IMPACT ASSESSMENTS

FEBRUARY 11TH, 2020 (DAY ONE)

9:00 Welcome and Introduction by PBLI

9:05 Chairs' Welcome and Introduction

Karey Brooks

JFK Law Corporation

Kevin O'Callaghan

Fasken Martineau DuMoulin LLP

9:15 Changes to BC's Environmental Assessment Process

ADM Scott Bailey

Ministry of Environment and Climate Change Strategy

- Bill 51 - the *Environmental Assessment Act*
- What changes are coming?

10:05 Questions and Discussion

10:15 Refreshment Adjournment

10:30 Changes to Canada's Environmental Assessment Process

Marja J. Bulmer

Department of Justice Canada

- Bill C-69 - the *Impact Assessment Act*
- Key elements of the new impact assessment process
- Indigenous participation and collaboration in impact assessment

11:20 Questions and Discussion

11:30 Indigenous-led Environmental Assessments

Aaron Bruce

Ratcliff & Company LLP

To be announced

FortisBC

- Building environmental assessment criteria/processes
- What they cover, how they differ from federal and provincial processes
- How to enforce
- Community support and avoiding judicial review

12:20 Questions and Discussion

12:30 Networking Lunch

1:30 Reviewing the Law on Environmental Assessments and Indigenous Rights

Dani Bryant

Fasken Martineau DuMoulin LLP

- *Clyde River* case
- Administrative tribunals and the duty to consult

2:20 Questions and Discussion

2:30 Refreshment Adjournment

2:45 Rights Impact Assessments in the Field

Trefor Smith

Firelight Group

- Evolution of rights impact assessments (RIA) in environmental assessments, 2004-2019
- Implications of new legislation, policy and guidance for RIA
- Emerging RIA best practices
- RIA and decision-making (Crown and Indigenous)

3:35 Questions and Discussion

3:45 Rights Impact Assessments as Effective Evidence

Jeff Langlois

JFK Law Corporation

Justin Straker

Integral Ecology Group

- Translating rights impacts in the regulatory or court process
- Best advocacy practices for lawyers

4:25 Questions and Discussion

4:30 Chairs' Closing Remarks - Forum Concludes for Day One

ABORIGINAL AND ENVIRONMENTAL LAW: NAVIGATING THE NEW WORLD OF IMPACT ASSESSMENTS

FEBRUARY 12TH, 2020 (DAY TWO)

9:00 Welcome and Introduction to Day Two

Karey Brooks
JFK Law Corporation
Kevin O'Callaghan
Fasken Martineau DuMoulin LLP

9:05 Reframing the Relationship Between Indigenous Knowledge and Environmental Assessment

Eli Enns
University of Victoria

- Indigenous legal and knowledge systems come from the land - *iisaak olam*
- Constitutional law - a bridge between Indigenous and Canadian legal orders
- Fostering better environmental assessment outcomes in "ethical space"

9:55 Questions and Discussion

10:05 Refreshment Adjournment

10:20 Addressing Cumulative Impacts – Where and How

Karey Brooks
JFK Law Corporation
Kevin O'Callaghan
Fasken Martineau DuMoulin LLP

- Recent decisions
- Regional-based assessments
- Litigation

11:10 Questions and Discussion

11:20 Potential Project Mitigations for Impacts to Rights - The Role of the Proponent and the Role of the Crown

Robin Sidsworth
Teck Resources Ltd.

- What proponents can and can't do
- Getting beyond basic mitigations

12:10 Questions and Discussion

12:20 Networking Lunch

1:20 Case Study: Teck Frontier Joint Review Panel

Melody Lepine
Mikisew Cree First Nation

- MCFN joint framework for rights assessment

2:10 Questions and Discussion

2:20 Refreshment Adjournment

2:35 Update on the Trans Mountain Expansion Project

Tim Dickson
JFK Law Corporation
Michelle Wilsdon
TMX Indigenous Advisory and Monitoring Committee

- Recent Federal Court decisions
- Project oversight committees: how to make them meaningful

3:25 Questions and Discussion

3:35 Environmental Laws and Division of Powers

Catherine Boies Parker, Q.C.
Arvay Finlay LLP
Jan Brongers
Department of Justice

- What are the applicable laws relating to the environment
- Does "environment" have a different meaning under those laws
- What is the purpose of the various laws regulating the environment
- What is the concurrency or paramountcy of such environmental laws in relation to each other

4:25 Questions and Discussion

4:35 Chairs' Closing Remarks For Day Two – Forum Concludes

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/1568

Registration: The registration fee is \$1,245.00 plus GST of \$62.25 totalling **\$1307.25** covering your attendance at the program, materials, a light breakfast, a networking lunch and refreshments on each day. In-person attendees have the option to receive their materials electronically in advance of the program, or in a hard copy binder on the day of the program. If an in-person attendee requests both hard copy and electronic materials, an additional \$50 charge will apply with applicable taxes. Webinar attendees will always receive their materials electronically.

Early Bird Discount: Register by January 13th, 2020 and receive a \$200 discount on registration fee (\$1,045.00 plus GST).

Group Discount: 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://www.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. Please contact us at 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 (**February 4th, 2020**). 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, availability of webinar or venue for this event.

Course Accreditation: Attendance at this course can be listed for up to **12 hours** of continuing professional development with the Law Societies of BC and Ontario. For Alberta lawyers, consider including this course as a CPD learning activity in your mandatory annual Continuing Professional Development Plan as required by the Law Society of Alberta.

Registration Form

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- Live webinar [PDF]

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