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DEVELOPMENTS IN ABORIGINAL AND INDIGENOUS LAW 2021

Co-Chaired by

Karey Brooks
JFK Law Corporation

Robert J. M. Janes, Q.C.
JFK Law Corporation

November 18th & 19th, 2021 • Attend via Live Webinar



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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.



Robert J. M. Janes, Q.C., Principal, JFK Law Corporation, Victoria, BC. Mr. Janes is a litigator with extensive experience in Aboriginal law. Recognized by Lexpert for many years as a leading lawyer in Aboriginal law, he has appeared at all levels of court in British Columbia, Ontario and Alberta acting for Aboriginal

people. He has also appeared many times at the Supreme Court of Canada, the Federal Court and the Federal Court of Appeals. In addition to his litigation work, Mr. Janes advises nations involved in the BC Treaty Process.

WHO SHOULD ATTEND?

- Lawyers practising in the areas of Aboriginal law, administrative law, and business law
- Aboriginal leaders, officials, councillors, elders, negotiators, administrators, and advisors
- Owners, managers and representatives of resource development companies and companies operating on Crown land
- Federal, provincial and municipal government officials and policy advisors
- Consultants, accountants, financial planners, and others assisting First Nations with financial matters and business operations

DEVELOPMENTS IN ABORIGINAL AND INDIGENOUS LAW 2021

The state of Aboriginal law in Canada is constantly evolving, and for those working in this dynamic area, including those who advise First Nations or governments, it is essential to remain current on the latest developments. Staying abreast of the changing landscape is fundamental for advisors to practise effectively, and for First Nations to exercise their rights to their greatest benefit. This program assembles leaders in the field of Aboriginal law to provide delegates with in-depth information and practical insights to ensure that they are prepared to effectively address current challenges and to take proactive steps to avoid common pitfalls. For those who wish to remain current and informed, this program should not be missed.

KEY AREAS ADDRESSED:

- Treaty infringement and cumulative effects
- Recent important court decisions, including Treaty 8 Western Boundary, *Southwind, Saugeen Ojibway Nation v Canada*, and more
- Métis self-government
- The Honour of the Crown
- The latest on accommodation agreements

YOUTH SPONSORSHIP PROGRAM

We are pleased to offer our successful sponsorship program for First Nation, Métis and Inuit youth to attend forums offered by Pacific Business & Law Institute. For further information about applying to attend this or other programs, please click [here](#).

FACULTY



The Honourable Paul Crampton, Federal Court of Canada, Ottawa, ON. Paul Crampton was appointed Chief Justice of the Federal Court on December 15, 2011. He was appointed to the Federal Court on November 26, 2009 and to the Competition Tribunal on March 18, 2010. From 2004 to 2009, he was a partner in the Competition and Foreign Investment Law Group at Osler, Hoskin & Harcourt LLP, Toronto. In 2006, he was included in Lexpert's Guide to the 100 Most Creative Lawyers in Canada. In 2002 he was awarded the Queen's Golden Jubilee Medal. Between 2002 and 2004, he was Head of Outreach, in the Competition Division of the OECD. In that capacity, he was responsible for overseeing the OECD's work in the competition field with developing and transitioning countries.



Christopher Devlin, Director, DGW Law Corporation, Victoria, BC. Christopher's practice focuses on Aboriginal and Treaty law on behalf of First Nations, tribal councils, Métis groups and other Indigenous organizations. Christopher works with Indigenous peoples throughout Western Canada, as a litigator, negotiator, and strategic advisor. He has appeared as counsel at all levels of court, including the Supreme Court of Canada, as well as before administrative tribunals and regulatory panels. He has negotiated multi-party agreements on behalf of Indigenous clients, including specific claim settlements, consultation process agreements and Impact Benefit Agreements. Christopher is consistently recognized as a leading lawyer in the area of Aboriginal Law in the Canadian Legal Lexpert Directory, and was recognized by Best Lawyers as the 2020 Aboriginal Law "Lawyer of the Year" for Vancouver Island.



Maegen Giltrow, Partner, Ratcliff & Company LLP, North Vancouver, BC. Maegen works in litigation, negotiation and law & policy development. She is lead counsel for the plaintiffs in *Blueberry River First Nations v. HMTQ (BC)*, currently before the BC Supreme Court, the first case to go to trial alleging breach of treaty rights arising from the cumulative impacts of development. She clerked at the BC Court of Appeal in 2003 for Justices Rowles and Southin, and has appeared as counsel and co-counsel before every level of court in Canada.



Jason Harman, Associate, JFK Law Corporation, Vancouver, BC. Jason's journey to working in law has taken a number of detours. Despite writing the LSAT in 2005 while he worked at Access Justice (the predecessor of Access Pro Bono), he elected to enroll in graduate school where he spent 7 years studying political theory and philosophy in Toronto. After returning home to British Columbia, Jason began teaching part-time in the Criminology department at Kwantlen University before enrolling in law school. In law school, Jason enjoyed the continuity between his background in political philosophy and public law. As a result, he focused on courses in Aboriginal, Charter, and constitutional law. He was selected to represent UBC in the Wilson Charter Litigation Moot in 2016. Before coming to JFK, Jason articulated and worked at a leading Vancouver firm where he focused on employment, human rights, and privacy law issues.



Rosanne Kyle, Partner, Mandell Pinder LLP, Vancouver, BC. Ms. Kyle has practised Aboriginal law for almost 30 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.



Jason Madden, Co-Managing Partner, Pape Salter Teillet LLP, Toronto, ON. A graduate of Osgoode Hall Law School, Jason is called to the bar in Ontario, Manitoba, Alberta, the Yukon and the Northwest Territories. His practice exclusively focuses litigation and negotiations related to Indigenous lands, rights and self-governments, including, the negotiation and implementation of modern day treat-

ties. He has represented Indigenous clients before the Supreme Court of Canada twelve times and has appeared before every level of court from Ontario westward. Jason is also recognized as being at the forefront of the development of Métis rights law in Canada. He has acted as counsel the majority of cases addressing Métis rights, as well as in the negotiations leading to Métis harvesting agreements being reached in Ontario, Manitoba and Alberta, the interim reconciliation plan reached between Canada and the Manitoba Metis Federation in September 2018 in response to the Supreme Court of Canada's 2013 decision bearing the Federation's name as well as the self-government agreements Canada signed with the Métis Nation of Alberta and the Métis Nation of Ontario in June 2019.



Roy Millen, Partner, Blake Cassels & Graydon LLP, Vancouver, BC. Roy carries on a diverse practice with particular experience in Indigenous rights and title, commercial litigation and international trade. In Aboriginal law, Roy advises private-sector clients across Canada on the development of energy, mining and other major projects, and relationships with Indigenous peoples. He negotiates commercial agreements, impact benefit agreements, consultation protocols and other arrangements with First Nations, Métis and other Indigenous groups. He also assists clients in navigating the regulatory processes necessary to secure project approval, including the implications of UNDRIP, and defends proponents from litigation challenges brought by Indigenous communities and individuals.



Allisun Rana, Barrister & Solicitor, Rana Law, Calgary, AB. Since 2000, Allisun has provided legal advice to First Nations on a variety of issues, including the Crown's legal obligation to consult, breach of fiduciary duty, treaty and Aboriginal rights, and various *Indian Act* and governance matters. She has appeared at all levels of court in British Columbia, Alberta and Saskatchewan, and has been involved in litigating a number of leading cases, including *Mikisew Cree First Nation v. Canada (Minister of Canadian Heritage)* in the Supreme Court of Canada and *West Moberly First Nations et al v. British Columbia et al* (the Western Boundary of Treaty 8 case) in the Supreme Court of British Columbia. She also litigates in the Specific Claims Tribunal. Allisun is recognized as a leading practitioner in Indigenous law by the Canadian Legal Lexpert® Directory and was a finalist for the 2017 Women in Law Leadership Award in the category of Leadership in the Profession (Private Practice).



Scott Robertson, Associate, Nahwegahbow Corbiere Genoodmagejig Barristers & Solicitors, Rama, ON. Scott is a member of the Six Nations of the Grand River and an associate in the law firm of Nahwegahbow, Corbiere practising exclusively in matters relating to Indigenous peoples. Scott is certified by the Law Society of Ontario as a specialist in Indigenous Law Issues: Litigation and Advocacy. Scott was originally elected to the Board of the Indigenous Bar Association in 2014, and served as the President from 2017 to 2019. In addition, Scott currently serves as a member of the Federal Court's Aboriginal Law Bar Liaison Committee as well as the Action Committee on Access to Justice in Civil and Family Matters and a Board Member with the Ottawa Chapter of Habitat for Humanity. Scott has dedicated his practice to improving the quality of life, health and prosperity for First Nation communities while preserving the unique identity of Canada's original inhabitants.



Elin Sigurdson, Associate, Mandell Pinder LLP, Vancouver, BC. Elin's practice focuses on aboriginal and constitutional litigation and dispute resolution. She is committed to finding the most effective long-term solutions for her clients, and has throughout her practice been involved in complex matters of significant importance to her clients and to the public. Elin's interest in the law is grounded in her commitment to finding legal solutions for people and groups seeking social justice. She has been honoured to work with First Nations to achieve their goals including recognition and protection of their rights, securing economic benefits, and achieving greater self-governance.

Roger Townshend, Founding Partner, Olthuis Kleer Townshend LLP, Toronto, ON. Roger Townshend has practised Aboriginal rights, constitutional, human rights, and administrative law. At present he primarily litigates land claims for First Nations, and is lead counsel in a lengthy trial involving a claim to Aboriginal title to portions of the beds of the Great Lakes, and involving a challenge to a treaty. He has appeared in Court and advised on numerous cases relating to Aboriginal title and other Aboriginal rights and treaty rights, and relating to the duty to consult and accommodate Aboriginal peoples.

Developments in Aboriginal and Indigenous Law 2021

NOVEMBER 18TH, 2021 (DAY ONE)

9:00 Welcome and Introduction by PBLI

9:05 Chair's Welcome and Introduction

Karey Brooks
JFK Law Corporation

9:10 Cumulative Effects and Treaty Infringement Claims

Maegen Giltrow
Ratcliff & Company LLP

- *Yahey v British Columbia*
- Latest developments

10:00 Questions and Discussion

10:10 Morning Break

10:25 Treaty 8 Western Boundary Litigation

Christopher Devlin
DGW Law Corporation

Allisun Rana
Rana Law

- The BCSC and BCCA decisions in *West Moberly First Nations v. British Columbia*
- Latest developments

11:15 Questions and Discussion

11:25 The Principle of Minimal Impairment

Karey Brooks & Jason Harman
JFK Law Corporation

- *Snaw-Naw-As First Nation v ICF (BCCA)*

12:15 Questions and Discussion

12:25 Lunch Break

1:15 Métis Self-Government

Jason Madden
Pape Salter Teillet LLP

- The Honour of the Crown and Accommodation Agreements: *Manitoba Metis Federation v. Brian Pallister and the Manitoba Government*
- Crown-Métis Consultation in Alberta, Alberta's Current Approach and Litigation on the Crown's Duty to Negotiate: *Métis Nation of Alberta v. Alberta Government*
- Recent Developments in Métis Self-Government
- Other Emerging Issues

2:05 Questions and Discussion

2:15 Afternoon Break

2:30 Equitable Compensation

Rosanne Kyle & Elin Sigurdson
Mandell Pinder LLP

- Fiduciary duties and equitable compensation in *Southwind v Canada*:
 - Significance of Crown obligations, which don't "melt away" in face of competing priorities
 - Understanding what is lost as a result of breaches of fiduciary duty and assessing compensation for the highest value based on what the Crown "ought to have done"
- Implications for other breach of fiduciary duty cases

3:20 Questions and Discussion

3:30 Chair's Closing Remarks

3:35 Forum Concludes for Day One

Developments in Aboriginal and Indigenous Law 2021

NOVEMBER 19TH, 2021 (DAY TWO)

9:00 Welcome & Reflections on Day One

Robert J. M. Janes, Q.C.
JFK Law Corporation

9:10 Title to Waterbeds

Roger Townshend
Olthuis Kleer Townshend LLP

- The decision in *Saugeen Ojibway Nation v Canada* (Ontario)

10:00 Questions and Discussion

10:10 Morning Break

10:25 Aboriginal Law Proceedings in Court

The Honourable Paul Crampton
Federal Court of Canada

- The newly released *Practice Guidelines for Aboriginal Law Proceedings* (4th Edition)

11:15 Questions and Discussion

11:25 The Honour of the Crown and the Courts

Robert J. M. Janes, Q.C.
JFK Law Corporation

- Jurisdictional rules and the honour of the Crown

12:15 Questions and Discussion

12:25 Lunch Break

1:25 Constitutional Status of Accommodation Agreements

Roy Millen
Blake Cassels & Graydon LLP

- *Ermineskin Cree Nation v Canada Environment and Climate Change*, 2021 FC 758
- Whether or not a decision affecting an accommodation agreement triggers the duty to consult

2:15 Questions and Discussion

2:25 Afternoon Break

2:40 Annuities

Scott Robertson
Nahwegahbow Corbiere Genoodmagejig
Barristers & Solicitors

- *Restoule v Canada*

3:30 Questions and Discussion

3:40 Chair's Closing Remarks For Day Two

3:45 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/aboutupdate21

Registration: The registration fee is \$1,045.00 plus GST of \$52.25 totalling **\$1,097.25** covering your access to the live webinar and electronic materials.

Group Discount: 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 program.

When and Where: The program starts at **9:00 a.m. (PT)**. Attend via Live Webinar: All you need is a computer with a good internet connection and external plug-in speakers or good headphones for optimal audio and volume.

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 electronic materials.

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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 (**November 10th, 2021**). 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 **10.5 hours** of continuing professional development credits 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.

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November 18th & 19th, 2021

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