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REAL ESTATE DEVELOPMENT ON FIRST NATION LANDS

Co-Chaired by

Andrea East
Pushor Mitchell LLP

Michael McDonald, KC
Clark Wilson LLP

November 23rd & 24th, 2022 • UBC Robson Square (800 Robson Street) • Vancouver, BC
Live Webinar also available!



CO-CHAIRS



Andrea East, Partner, Pushor Mitchell LLP, Kelowna, BC. Ms. East assists First Nations and the organizations that do business with them to navigate the regulatory systems governing their economic and real estate development projects. Ms. East also provides advice on the liability and governance considerations of various business structures, and prepares and reviews the associated agreements. Ms. East has been involved in numerous successful on-reserve real estate developments in British Columbia.



Michael McDonald, KC, Partner, Clark Wilson LLP, Vancouver, BC. Mike McDonald is a partner with Clark Wilson LLP, with their Indigenous Law Group and Business Law Group. Over the course of his 30+ year career, Michael has been a principal proponent of Indigenous economic reconciliation and growth, leading many of Canada's most intricate and complex precedent-setting development projects totaling more than \$20 billion in the mining, oil & gas, energy and infrastructure sectors, including various business ventures and wealth management structures flowing from these deals. A member of the Peguis First Nation in Manitoba, Michael couples his broad business experience with distinct cultural understanding to serve his Indigenous and Business clients from a holistic and practical perspective, crafting solutions that unite legal, commercial, governance and social interests. Mike has also served on numerous boards and volunteer positions with the Indigenous Bar Association, World Vision Canada and the Law Society of BC and is currently serving on the Board of Governors at Simon Fraser University.

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](#).

REAL ESTATE DEVELOPMENT ON FIRST NATION LANDS

Developing real estate on First Nation lands presents unique challenges and opportunities. This comprehensive two-day forum assembles expert faculty, from a variety of perspectives, with extensive experience dealing with real estate development on First Nation lands. They will review the various legal processes, offer insights on negotiations and how to structure the deal, and highlight the practical considerations and key elements of successful projects.

YOU WILL LEARN:

- How to navigate the different land regimes and the laws that can impact development
- How to structure the deal and the relationship
- Review laws governing development
- How to structure the headleases and subleases
- How to design participatory "tenure" developments
- How to prepare financing agreements
- How to prepare successful servicing agreements
- How and when to use reconciliation agreements

THIS FORUM IS DESIGNED FOR:

- First Nations leaders and officials
- First Nations development company managers
- Municipal officials, managers, planners and lawyers
- Federal and provincial officials involved in the development of reserve lands
- Developers and resource company managers
- Lawyers and in-house resource company counsel
- Owners and managers of real estate development companies
- Energy and utility company managers
- Banking officials and other lenders
- Consultation and treaty negotiators
- Lawyers, accountants and other advisors acting for First Nations and/or developers

FACULTY



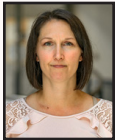
Tracy Antoine, MBA, Vice President Commercial Financial Services, Indigenous Markets BC Region, Royal Bank of Canada, Vancouver, BC. Tracy's current position allows her to devote her time to her passion – giving back to Indigenous peoples. Tracy leads a team of Indigenous Markets specialists, including Commercial Account Managers, who go into Indigenous communities to work closely and provide customized financial plans based on community goals. Before joining RBC, Tracy worked for First Nations Governments for 20 years in various roles such as Community Planning, Housing, in Senior Management roles and as an elected leader. Tracy began her career with RBC in 2006. She joined the Commercial Financial Services team as a Senior Commercial Account Manager, Indigenous Markets from 2011 to 2017. Then spent 1 year as Senior Manager, Indigenous Credit Initiatives & Implementation working with the National Director with a focus on two key policies: Housing and Commercial Indigenous Market Credit. Tracy is a current executive co-chair for the B.C. Royal Eagles, RBC's Indigenous employee resource group. She graduated from Athabasca University with a Master of Business Administration Degree and is currently a Doctoral student. Tracy enjoys reconnecting with her Indigenous culture through culture and language revitalization activities with her community. Tracy also volunteers at the seasonal gatherings within the Secwepemc Territory where land-based learning takes place.



Danalee Baker, Assistant Manager, Business and Economic Development, Tk'emlups to Secwépemc, Kamloops, BC. Danalee earned her graduate MBA from Capilano University and SFU in International Business Leadership and received her Bachelor's Degree in Human Geography at UBC. Born and raised in Kamloops, she returned to her hometown after traveling, studying, and working abroad for nearly twenty years. Danalee has excelled in many roles from running an international school in Vancouver, to serving as Executive Director of the United Way, to providing in-house tech support at bclc to her current position as Assistant Manager of the Tk'emlups to Secwépemc Business and Economic Development Department. She is passionate about innovative, sustainable economic development rooted in environmental stewardship and genuine, mutually beneficial partnerships. Danalee sits on the corporate board of School District #73's business entity, on the non-profit board of The Phoenix Centre Detox Facilities and is a mentor for the Minerva BC inspiring the next generation of female leaders. She is a member of Rotary and was named volunteer of the year in Kamloops in 2021. As a lifelong learner, Danalee continues to earn certifications in a variety of areas including indigenous land development, leadership, finance, and project management.



Mary Childs, General Counsel, Tsawwassen First Nation, Tsawwassen, BC. Mary Childs is general counsel for Tsawwassen First Nation. Previously, she was associate counsel in the social impact group at Miller Thomson LLP. Mary sits on the board of governors of the Law Foundation of British Columbia and is a part-time member of the Passenger Transportation Board; she is vice-chair of the Motor Dealer Customer Compensation Fund Board. She has law degrees from UBC law school and Oxford University. Mary has contributed her time to several community groups including working with many of Pivot Legal Society's social justice campaigns.



Alana DeGrave, Partner, Woodward & Company LLP, Victoria, BC. Alana is a solicitor and has had the privilege to work with, and learn from, Indigenous organizations and individuals in BC and across Canada for nearly 20 years. Alana's solicitor work focuses on working with First Nations in developing and implementing tools for self-government related to their lands, including land code implementation, drafting laws and policies, adding lands to reserve and pursuing development on their lands. Originally from Winnipeg, Alana took an undergrad in psychology back in her home city. Her educational background in both psychological and sociological studies motivated her to pursue justice and truth from an early stage and would eventually lead her to study law at the University of Victoria. Now with more than a decade of experience with Woodward and Company, Alana has contributed to a number of significant cases, including the ground-breaking Tsilhqot'in Aboriginal Title case.



Janelle Dwyer, Partner, Mandell Pinder LLP, Vancouver, BC. Janelle Dwyer is a partner with Mandell Pinder LLP and a member of Splatins First Nation. Janelle regularly advises on land transactions both on- and off-reserve, including land acquisitions, developments on and management of reserve land, and additions to reserve. She also advises First Nations on business and governance issues and negotiates on behalf of First Nations with private companies and the Crown.



Peter W. Jones, Partner, Woodward & Company LLP, Victoria, BC. In his practice as a lawyer at Woodward and Company, Peter provides strategic and practical advice to Indigenous governments and organizations across Canada to support and implement self governance and economic development. His primary areas of practice are governance matters, lands issues, business and economic development resource negotiations, business associations, and employment. Peter regularly develops and advises on First Nations laws and policies. Peter also has a background in litigation, having represented clients at all levels of court of British Columbia, and the Supreme Court of Canada, as well as appearing before many administrative tribunals. He has been at Woodward and Company since 2015, and he became a partner in 2021. Peter holds a law degree from the University of Alberta and a Bachelor of Music (with distinction) in music performance from the University of Victoria. He is called to the British Columbia, Manitoba and Yukon Bars.



Allan Koebel, AACL, P. App, Senior Associate, Kent-Macpherson, Kelowna, BC. Allan began his real estate career as a research analyst with Kent-Macpherson and earned his designation as an accredited appraiser. Allan specializes in valuation and consulting on First Nations lands, including Specific Claims, valuation/appraisal, rent reviews, development, highest and best use and feasibility studies, permit/right-of-way valuation & negotiation, and appraisal reviews. His extensive experience includes numerous valuations for First Nations' Specific Claims throughout British Columbia and Western Canada, often involving complex valuation issues dating back to the late 1800's. He is well-versed in current and historic valuations on Reserve and has assisted First Nations throughout Canada on Specific Claims, land development, leasing, and valuation issues.



Margot McMillan, Partner, McMillan Dubo Law Group, Kamloops, BC. Margot is a founding partner of McMillan Dubo LLP. She practices exclusively for lenders in the area of commercial finance, with a particular emphasis on real estate, aircraft finance and Indigenous lending. She works for a variety of institutional lenders in all types of transactions and is focused on delivering solutions that meet the specific needs of lenders and their borrowers. Margot has extensive experience in complex commercial transactions involving a range of business entities, including limited partnerships, joint ventures, and trusts. She also consults regularly on legislation relating to First Nations land management, taxation, and borrowing. Margot is also able to provide a broad range of legal services and advice to aviation clients regarding the sale, purchase, and financing of aircraft and all matters relating to the Cape Town Convention and International Registry.



Betty Nguyen, Associate, Mandell Pinder LLP, Vancouver, BC. Before joining Mandell Pinder LLP, Betty was in-house counsel for a city in the Lower Mainland, delivering legal services across all departments. She has experience drafting bylaws and policies and advising on a variety of contracts and regulatory matters. In her work at Mandell Pinder, Betty supports Indigenous clients and their businesses with negotiations, land transactions – both on-reserve and off-reserve, commercial transactions of all types, policy and law development and governance issues.



Mike Nienhuis, Counsel, Singleton Urquhart Reynolds Vogel LLP, Vancouver, BC. Mike Nienhuis is Counsel practising in the Indigenous Business Law, Commercial Real Estate and Corporate Commercial Law Groups at Singleton Urquhart Reynolds Vogel LLP. Prior to joining the legal profession, Mike worked as an executive with companies in Vancouver, San Diego and Seattle, with responsibility for sales and operations in North America, Europe and Asia. He frequently draws on that experience to develop an understanding of his clients' businesses and transactions, which span a range of industry sectors and areas of law. Mike Nienhuis served as a mentor to law students in the University of Victoria's Business Law Clinic and has represented clients in various pro bono matters. In addition, Mike has participated on several non-profit boards and committees.



Chris Roine, Counsel, Borden Ladner Gervais LLP, Vancouver, BC. Chris is Counsel for BLG's Corporate Commercial Group whose practice focuses on Indigenous law. Prior to joining BLG, Chris served as the Director General for the western negotiations branch of Crown-Indigenous Relations. In that role, he led a large team of federal negotiators at more than 60 sets of tables across British Columbia and the Yukon. From 2014 to 2018 Chris was a senior counsel at BC Hydro, leading many different aspects of their First Nations engagement. From 2001 to 2014 Chris was in private practice where he represented dozens of Indigenous organizations on a range of matters including treaty negotiations, governance, lands and economic development, Aboriginal rights and title, consultation & accommodation, and specific claims. Chris was Recognized in the 2022 edition of *The Canadian Legal Lexpert® Directory* (Aboriginal Law) as well as in the 2022 edition of *Best Lawyers in Canada* (Aboriginal Law).



Kam Sandhu, CPA, CAFM, Partner, MNP LLP, Nanaimo, BC. Kam Sandhu is a Partner and Business Advisor with MNP's Indigenous Services group based in Nanaimo. Kam works closely with First Nations across B.C., delivering a broad range of customized services and advice to support his clients in moving their communities and businesses forward. Kam earned a Bachelor of Business Administration (BBA) from the University of the Fraser Valley in 2012. He is a Chartered Professional Accountant (CPA), qualifying in 2016 and a Certified Aboriginal Financial Manager (CAFM) since 2020.



Sam Shury, Associate, Clark Wilson LLP, Vancouver, BC. Sam assists real estate developers, landlords, First Nations and individuals in overcoming legal challenges. He helps with everything from structuring transactions and drafting lease agreements, to financing and land development. Sam leverages his experience working in business, real estate and consulting to provide thoughtful and strategic advice to his clients as they navigate the opportunities and risks of land development projects both on- and off-reserve.



Clifford Smirl, AACL, P. App, Partner, Kent-Macpherson, Kelowna, BC. After completing his undergraduate degree (History) and Masters of Business Administration degree, Mr. Smirl completed post graduate certificates in Real Property Valuation and agriculture studies (wine business management and sustainable urban agriculture). As a designated appraiser specializing in on-reserve real estate valuation and consulting assignments throughout the province, Mr. Smirl has an extensive background in completing complex appraisal assignments on and off reserve lands.



Matthew Tolan, Senior Associate, Borden Ladner Gervais LLP, Vancouver, BC. Matt is a Senior Associate for BLG's Commercial Real Estate Group whose practice focuses on, among other things, real estate development and project structuring. Matt advises on a wide range of development matters including, acquisition, marketing, financing and development of residential, commercial and mixed-use developments, including strata property, phased strata property, airspace subdivision, ground lease and First Nations' developments.



Mic Werstuik, Chief Executive Officer, Ntityx Development Corp., Westbank, BC. Mic recently joined the NDC executive team in summer 2021. As a Westbank First Nation Member, he has been actively involved in the evolution and success of WFN and its Corporate Entities. With over 30 years of experience in all aspects of Forestry and Natural Resource Management, Mic is excited to work with WFN Membership and the Ntityx Team to continue to grow future opportunities for both. Since an early age Mic spent most of his time on the land, in 1998 he graduated from Nicola Valley Institute of Technology with a diploma in Natural Resource Management. In 2018, he received his Master of Business Administration degree from Simon Fraser University. In his 30+ year career Mic has run chainsaw, worked for the Ministry of Forests, been an elected Councillor for WFN, been sole proprietor of his own business and held management positions in WFN and other organizations. Mic's passion is being on the land and working with our people for the benefit of the community.

REAL ESTATE DEVELOPMENT ON FIRST NATION LANDS

NOVEMBER 23RD, 2022 (DAY ONE)

9:00 Welcome and Introduction by PBLI

9:05 Chairs' Welcome and Introduction

Andrea East
Pushor Mitchell LLP
Michael McDonald, KC
Clark Wilson LLP

9:15 Overview of Different types of Indigenous Lands and Jurisdictions

Janelle Dwyer
Mandell Pinder LLP
Betty Nguyen
Mandell Pinder LLP

- Indian Act Lands
- Land Codes
- Self Government
- Treaty Lands
- Fee Simple Lands pursuant to Reconciliation Agreements

10:15 Questions and Discussion

10:30 Refreshment Adjournment

10:50 Structuring the Deal and the Relationship

Chris Roine & Matthew Tolan
Borden Ladner Gervais LLP

- Options and considerations for key issues, including:
 - Parties & Roles – including partnership models
 - Development Agreements
 - Head Leases, Sub-leases & Associated tenures
 - Financing
 - Servicing & Infrastructure

11:50 Questions and Discussion

12:00 Catered Lunch

1:00 Indigenous, Federal and Provincial Laws Governing Development

Mike Nienhuis
Singleton Urquhart Reynolds Vogel LLP
Mary Childs
Tsawwassen First Nation

- Which laws apply
- Which laws don't
- What jurisdiction does the municipality have?

2:00 Questions and Discussion

2:10 Refreshment Adjournment

2:25 Negotiating and Structuring the Leases: Head Leases and Subleases

Andrea East
Pushor Mitchell LLP

- Common head lease structures
 - ISC's current leases
 - Other lease structures
 - Review of some of the structures for head leases in older projects
- Subleases
 - Provisions for strata-style subleases with common costs for common property
 - Other sublease structures
- CMHC Considerations
- Stand alone leases

3:25 Questions and Discussion

3:35 Case Study: Westbank First Nation Update

Mic Werstuik
Ntityix Development Corp.

- Evolution of leasing on FN Lands – Lakeridge Park WFN
- Partnerships – Political / Business

4:15 Questions and Discussion

4:25 Chairs' Closing Remarks

4:30 Forum Concludes for Day One

REGISTER TODAY!

REAL ESTATE DEVELOPMENT ON FIRST NATION LANDS

NOVEMBER 24TH, 2022 (DAY TWO)

9:00 Welcome and Reflections on Day One

Andrea East
Pushor Mitchell LLP
Michael McDonald, KC
Clark Wilson LLP

12:50 Questions and Discussion

1:00 Catered Lunch

9:10 Participatory “Tenure” Developments

Andrea East
Pushor Mitchell LLP
Clifford Smirl
Kent-Macpherson
Kam Sandhu
MNP LLP

- Considerations for projects where land is contributed to partnership in anticipation of a share of profits
- Putting the team together for financial, valuation and legal advice
- Risks, challenges and analysis

2:00 First Nation and Municipal Relationships

Alana DeGrave
Woodward & Company LLP
Peter W. Jones
Woodward & Company LLP

- Legal Obligations
- Reconciliation and Relationship Building
- Servicing Agreements
- Land Use Planning, Zoning and Bylaws

10:10 Questions and Discussion

10:20 Refreshment Adjournment

3:00 Questions and Discussion

10:40 Real Estate Valuation on First Nations Lands Overview: Addressing Common Myths & Misconceptions

Clifford Smirl & Allan Koebel
Kent-Macpherson

3:10 Fee Simple Lands pursuant to Reconciliation Agreements

Michael McDonald, KC
Clark Wilson LLP
Sam Shury
Clark Wilson LLP

- Uses of Reconciliation Agreements
- Timing of Reconciliation Agreements

11:40 Questions and Discussion

11:50 Commercial Financing of the Development

Margo McMillan
McMillan Dubo Law Group
Danalee Baker
Tk'emlúps te Secwépemc
Tracy Antoine
RBC Royal Bank

- What Lenders want
- Registered security

4:10 Questions and Discussion

4:20 Chairs' Closing Remarks for Day Two

4:25 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/fnredev22

Registration: The registration fee for in-person attendance is \$1,295.00 plus GST of \$64.75 totalling **\$1,359.75**. The registration fee for webinar attendance is \$1,095.00 plus GST of \$54.75 totalling **\$1,149.75**. Registration fee covers your attendance at the program, electronic materials, a catered lunch and refreshments throughout each day.

Early Bird Discount: For in-person attendance, register by October 24th, 2022 and receive a \$200 discount on the registration fee (\$1,095.00 plus GST). Early Bird Discount does not apply to webinar attendees. Discounts cannot be combined.

Group Discount: Register four persons from the same organization at the same time and you are entitled to a complimentary fifth registration. Discounts 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. (PST)** each day. UBC Robson Square is located at the basement level of 800 Robson Street in Vancouver, BC. Please visit <https://robsonsquare.ubc.ca/contact-directions/> 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 electronic 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/Transfers: Refunds will be given for cancellations or transferring registration from in-person to webinar (less a \$60.00 administration fee) if notice is received in writing five full business days prior to the program (**November 16th, 2022**). 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 credits with the Law Societies of BC and Ontario. For practitioners in other jurisdictions, please check your governing body's CPD requirements.

Registration Form Pacific Business & Law Institute

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E-mail: registrations@pbli.com

REAL ESTATE DEVELOPMENT ON FIRST NATION LANDS

November 23rd & 24th, 2022

UBC Robson Square, 800 Robson Street, Vancouver, BC

- In person (\$1,295+GST)
- In person (Early Bird, \$1,095+GST)
- Live webinar (\$1,095+GST)

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