



Pacific Business & Law Institute

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REAL ESTATE DEVELOPMENT ON FIRST NATION LANDS

Co-Chaired by

Andrea East
Pushor Mitchell LLP

Michael Nienhuis
Kornfeld LLP

December 3rd & 4th, 2019 • UBC Robson Square • 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 Nienhuis, Associate, Kornfeld LLP, Vancouver, BC. Mike Nienhuis practises primarily in the areas of commercial real estate and Indigenous law. 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 has developed a strong understanding of First Nations land issues in particular. He regularly advises clients – both First Nations and their partners in the larger business community – on transactions involving First Nations lands and other Indigenous law matters.

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 go to www.pbli.com/aboriginal-youth-sponsorship.

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 highlight the practical considerations and key elements of successful projects.

YOU WILL LEARN:

- How to navigate the different land regimes
- The federal and provincial laws of general application that can impact development projects
- Key risks and how to do your due diligence
- How to negotiate, structure and draft headleases and sub-leases
- Important considerations for ensuring environmental compliance
- How to structure the developer
- Financing and title insurance issues
- How to develop a property taxation scheme on reserve lands
- Preparing for and negotiating successful servicing agreements
- Special considerations for aging leases
- A case study on law development and enforcement

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



Bruce Davies, Partner, Waterstone Law Group LLP, Chilliwack, BC. Bruce practises in the area of business law with a particular emphasis on commercial lending. With his expertise in real estate and personal property security, Bruce frequently represents lenders in a wide array of loan transactions, ranging from traditional construction and

term financing to multi-jurisdictional transactions. His clients include numerous institutional and private lenders. In addition to his commercial lending practice, Bruce also represents businesses in a wide range of sectors including agriculture, residential and commercial real estate development, industrial and service professionals. Bruce has recently developed expertise in developing First Nations lands, acting primarily for proponents of development, although he also represents several First Nations Bands. Bruce also has experience in commercial real estate development from a developer's perspective, and currently acts in the capacity as property manager for several commercial developments.



Brett Horton, Counsel, Stewart Title, Vancouver, BC. Brett Horton was called to the bar in British Columbia in 2004. He attended McGill University for his undergraduate degree in philosophy and then attended UBC law. Prior to joining Stewart Title in 2013, Brett operated his own firm providing commercial and real estate services, and prior to that Brett worked with TELUS, Chicago Title Insurance Company and a high volume residential real estate firm. Brett is a member of the Law Society of British Columbia, Canadian Bar Association and a licensed member of the Insurance Council of BC. Brett is currently on the executive of the Canadian Bar Association Vancouver Real Estate Section, and is an active member of the Edmonton and Calgary Real Estate Sections. He is also a former board member of the MIABC.

to that Brett worked with TELUS, Chicago Title Insurance Company and a high volume residential real estate firm. Brett is a member of the Law Society of British Columbia, Canadian Bar Association and a licensed member of the Insurance Council of BC. Brett is currently on the executive of the Canadian Bar Association Vancouver Real Estate Section, and is an active member of the Edmonton and Calgary Real Estate Sections. He is also a former board member of the MIABC.



Rosemary John, Partner, Clark Wilson LLP, Vancouver, BC. Rosemary's work includes structuring, negotiating and drafting agreements. Rosemary prides herself on being an approachable, efficient and highly technical lawyer. She has spent a number of years overseas working on highly complex multi-jurisdictional transactions. That experience

has greatly helped to expand her knowledge of financial products, as well as provided her with the ability to successfully navigate intricate and multi-faceted debt finance structures.



Kevin Kingston, Legal Counsel, Westbank First Nation, Kelowna, BC. Kevin began as WFN's Legal Counsel/Council Secretariat, January 2014, after 23 years as a private sector lawyer in BC. He works with Westbank First Nation's Chief, Council and all departments to provide WFN with a practical, efficient and creative perspective towards its

government's legal and procedural affairs.



Selina Lee-Andersen, Partner, McCarthy Tétrault LLP, Vancouver, BC. Selina is an experienced lawyer in the areas of environmental, Aboriginal, and corporate/commercial law across a range of industries including energy, oil and gas, mining, and infrastructure. Having worked in an advisory capacity in both the public and private sectors,

she values being able to deliver practical legal and business advice to organizations. In addition to advising clients on environmental and regulatory issues, Selina has worked extensively with proponents and Aboriginal groups in negotiating business agreements for the development of resource projects across Canada. She also regularly provides advice on procurement processes within the context of employment and business opportunities for Aboriginal groups and how to structure business arrangements to facilitate Aboriginal participation in energy and resource projects. Prior to joining McCarthy Tétrault, Selina was in-house legal counsel at SNC-Lavalin Environment & Water and she has been endorsed as a leading Canadian environmental lawyer in *PLC Which Lawyer? Environment Handbook*.



Rhonda Maskiewich, Environmental Planner, Urban Systems Ltd., Kamloops, BC. Rhonda Maskiewich, R.P.Bio., P.Ag., R.P.P. is a senior environmental professional and partner with Urban Systems, and is located in the corporate head office in Kamloops, BC. Rhonda is the corporate lead for Urban Systems' integrated environmental services team

and is a corporate resource for environmental planning initiatives. She is a strong advocate of integrated design, sustainability and community involvement. She holds a degree in natural resource science and a post-graduate certificate in Aboriginal relations. She is a registered professional biologist, a registered professional agrologist and a registered professional planner. She is also a member of the BC Association of Professional Biologists and the International Association of Impact Assessment.



Michael McDonald, Q.C., Partner, Clark Wilson LLP, Vancouver, BC. Mike McDonald is a Partner with Clark Wilson LLP, where he serves as co-chair of the Aboriginal Business group. Over the course of his 30+ year career, Michael has been a principal proponent of Aboriginal economic growth, leading many of Canada's most intricate and complex precedent-setting Aboriginal 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 vast business experience with distinct cultural understanding to serve his clients from a holistic perspective, crafting solutions that unite legal, commercial, governance and social interests.



Kirk McIntosh, Project Manager, Urban Systems Ltd., Vancouver, BC. Kirk McIntosh is a project manager with Urban Systems, one of Western Canada's leading multi-disciplinary consulting firms. Urban Systems offers a broad range of complementary skills in the fields of civil engineering, community planning and landscape architecture, which allow them to take

projects from start to finish including vision, concept, pre-design, design, and construction. Kirk received his training in civil engineering technology at Ryerson Polytechnical Institute. Kirk has over 35 years experience in land development and related infrastructure projects. Most recently Kirk has assisted Tsawwassen First Nation with several development initiatives.



Barry Porrelli, Principal, Porrelli Law, Westbank, BC. Mr. Porrelli is a lawyer practising since 1986. He was featured in National Lawyer magazine for his considerable experience in First Nations land development and conveyancing. On behalf of developers, band members, and lenders he has been involved in the development of more than 30 First Nations leasehold subdivisions including big box retail, commercial, resort, and residential developments. Porrelli Law has offices in Kelowna and on the Westbank First Nation reserve.



Marie L. Potvin, Barrister & Solicitor, Kamloops, BC. Marie has been practising for over 20 years with a focus on local government, Indigenous and environmental law. For the past 14 years, Marie has worked closely with the First Nations Tax Commission to support First Nation tax jurisdiction through policy and law development. She has provided advice on the

development of federal legislative amendments and regulatory reform, and has worked with numerous First Nations to implement taxation regimes on their lands. Marie is an online faculty member at Thompson Rivers University and an instructor with the Tulo Centre of Indigenous Economics. Marie holds a B.Sc. from McGill University, an LL.B. from UBC and an LL.M. from the University of Victoria.



Clifford Smirl, AACI, 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.



Jada Tellier, Associate, Kornfeld LLP, Vancouver, BC. Jada Tellier follows a business-minded approach and assists clients with a wide variety of real property matters, including acquisitions and dispositions, financing, ownership structuring, real property development and leasing. Jada also has a keen interest in Indigenous land and economic development. She

has experience reviewing First Nation land codes and drafting impact and benefit agreements between First Nations and proponents in relation to proposed development projects in various industries.

REAL ESTATE DEVELOPMENT ON FIRST NATION LANDS

DECEMBER 3RD, 2019 (DAY ONE)

9:00 Welcome and Introduction by PBLI

9:05 Chairs' Welcome and Introduction

Andrea East
Pushor Mitchell LLP
Michael Nienhuis
Kornfeld LLP

9:15 Developing in Different Land Regimes

Bruce Davies
Waterstone Law Group LLP

- Fee simple vs. First Nations land
- Highlights of key aspects of different First Nations land regimes in British Columbia
 - *Indian Act* regime
 - *First Nations Land Management Act*
 - Self-governing legislation in British Columbia
 - Modern day treaties

10:05 Questions and Discussion

10:15 Refreshment Adjournment

10:30 Application and Non-Application of Federal and Provincial Laws Governing Development

Michael Nienhuis
Kornfeld LLP

- Which federal, provincial and municipal laws normally applicable to off-reserve development (e.g., *Local Government Act*, *Land Title Act*, *Builders Lien Act*, *Real Estate Development and Marketing Act*, *Strata Property Act*, *BC Building Code*, *Agricultural Land Commission Act*, *Water Sustainability Act*, etc.) apply on-reserve?
- First Nation laws and bylaws governing development

11:20 Questions and Discussion

11:30 Due Diligence

Jada Tellier
Kornfeld LLP

- Understanding the key risks for acquisitions (of head leases and subleases) and financing
- Overview of key tools and resources (mapping, registries, First Nations Gazette, etc.)
- Traditional holdings and buckshee leases
- Sample due diligence checklists

12:20 Questions and Discussion

12:30 Networking Lunch

1:30 Negotiation, Structuring & Drafting of Headleases

Andrea East
Pushor Mitchell LLP

- Advantages and disadvantages of different lease structures
- Negotiating and drafting the headlease
- Using an Owner Association
- Making the head lease attractive to lenders
- CMHC requirements

2:20 Questions and Discussion

2:30 Refreshment Adjournment

2:45 Subleases

Barry Porrelli
Porrelli Law

- Key terms
- Drafting: errors and best practices
- Making subleases attractive to homeowners and lenders
- Prepaid rent
- Terms of sublease
- Assignability
- CMHC approval and ability to mortgage
- Lender protections
- Owner Associations

3:35 Questions and Discussion

3:45 Impact Assessment & Environmental Management

Selina Lee-Andersen
McCarthy Tétrault LLP
Rhonda Maskiewich
Urban Systems Ltd.

- Key provisions of the new federal *Impact Assessment Act* and management of impact assessment issues on First Nation lands
- Application of First Nation, federal and provincial environmental laws and bylaws
- Environmental provisions in development on reserve land

4:25 Questions and Discussion

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

REAL ESTATE DEVELOPMENT ON FIRST NATION LANDS

DECEMBER 4TH, 2019 (DAY TWO)

9:00 Welcome and Introduction to Day Two

Andrea East
Pushor Mitchell LLP
Michael Nienhuis
Kornfeld LLP

12:05 Questions and Discussion

12:15 Networking Lunch

1:15 Servicing Your Project

Kirk McIntosh
Urban Systems Ltd.

- Infrastructure capacity
- Staged development and cost apportionment
- Planning for continued growth
- Agreements with developers
- Servicing agreements with neighbouring municipalities

9:05 Structuring the Developer

Andrea East
Pushor Mitchell LLP

- Structuring options available including corporations, partnerships and LLPs
- Taxation and governance considerations

2:05 Questions and Discussion

2:15 Refreshment Adjournment

2:30 Case Study: Westbank First Nation

Kevin Kingston
Westbank First Nation

- Westbank's experience
- Law development and law enforcement on reserve

9:50 Questions and Discussion

10:00 Financing On-Reserve Development

Brett Horton
Stewart Title
Rosemary John & Michael McDonald, Q.C.
Clark Wilson LLP

- Lender's requirements: What does lender's counsel look for?
- Appraising First Nations land
- Title issues and title insurance
- Current issues

3:20 Questions and Discussion

3:30 Aging Leases

Clifford Smirl
Kent Macpherson

- What happens to leases in their golden years?
- Lease extensions and financing

10:50 Questions and Discussion

11:00 Refreshment Adjournment

11:15 Property Taxation

Marie L. Potvin
Barrister & Solicitor

- Understanding the property taxation regime on First Nations lands
- Developing a property taxation system under Federal frameworks
- Required laws and administration
- Tax exemption issues
- Securitizing tax revenues to build infrastructure
- Expanded First Nation local revenue powers

4:20 Questions and Discussion

4:30 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/1542

Registration: The registration fee is \$1,195.00 plus GST of \$59.75 totalling **\$1254.75** 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 November 4th, 2019 and receive a \$200 discount on registration fee (\$995.00 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 (**November 26th, 2019**). 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

Pacific Business & Law Institute

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December 3rd & 4th, 2019
UBC Robson Square • Vancouver, BC

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- In person [PDF ONLY]
- In person [PDF & HARDCOPY (+\$52.50)]
- Live webinar [PDF]

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