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# REAL ESTATE DEVELOPMENT ON FIRST NATION LANDS

Co-Chaired by

**Andrea East**  
Pushor Mitchell LLP

**Michael Nienhuis**  
Kornfeld LLP

September 28<sup>th</sup>, 2021 • Attend via Live Webinar



## 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.

## FACULTY



**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.



**Catherine Musekamp**, Lawyer, First Peoples Law LLP, Vancouver, BC. Catherine's practise focuses primarily in the areas of governance and self-governance, helping First Nations to exercise their jurisdictional rights by developing and enforcing laws and frameworks that reflect the unique needs and visions of their communities. She works to assist clients in achieving their desired goals and outcomes in these areas, as well as in other related fields such as trust planning, navigating land use consultation processes and negotiating accommodations/ benefits agreements.



**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.



**Mindy Wight**, CPA, CA, National Leader, Indigenous Tax Services, MNP LLP, Prince George, BC. Mindy is a Partner and Tax Specialist with MNP and serves as National Leader, Indigenous Tax Services. Based in Prince George, BC and serving First Nation clients and communities across Canada, Mindy specializes in helping First Nation members and organizations to utilize and maintain their income tax exemptions when organizing their corporate structures. Her clients include proprietorships, corporations, trusts and partnerships owned by First Nation members and communities. Mindy is a member of the Squamish Nation in North Vancouver, BC. With more than a decade of experience, Mindy assists her clients with purchases and sales of businesses, reorganizing companies, and minimizing taxes. Recognizing that every client's situation and objectives are unique, she takes the time to develop an in-depth understanding of their tax needs and then works collaboratively to find and implement practical, workable solutions.



**Jean Yuen**, Shareholder, Boughton Law Corporation, Vancouver, BC. Jean practises primarily in the area of Indigenous law, with a special emphasis on First Nations economic development and is ranked as a leading Canadian Indigenous Law lawyer by LEXPERT. Jean has extensive experience in advising on land issues and development projects in respect of reserve land. She has assisted both First Nations and developers in structuring partnerships and

## REAL ESTATE DEVELOPMENT ON FIRST NATION LANDS

Developing real estate on First Nation lands presents unique challenges and opportunities. This comprehensive one-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 and the laws that can impact development
- Land uses
- How to structure and draft headleases and sub-leases
- How to structure the developer
- How to deal with expropriation on reserve
- How to prepare successful servicing 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

other business arrangements to pursue commercial and residential developments on reserve land, and advised lenders in securing their loans for on reserve projects. Jean is the author of the chapter entitled "Real Estate Development on First Nations Lands" in the CLE British Columbia Real Estate Development Practice Manual, was recently a member of British Columbia Real Estate Association Standard Forms First Nations Leasehold Land Task Force and is a frequent presenter at CLE and PBLI conferences.

# REAL ESTATE DEVELOPMENT ON FIRST NATION LANDS

SEPTEMBER 28<sup>TH</sup>, 2021

## 9:00 Welcome and Introduction by PBLI

## 9:05 Chairs' Welcome and Introduction

**Andrea East**  
Pushor Mitchell LLP  
**Michael Nienhuis**  
Kornfeld LLP

## 9:10 Land Regimes and Application of Laws

**Michael Nienhuis**  
Kornfeld LLP

- Land uses and types of projects
- Fee simple vs. First Nation land
- Highlights of key aspects of different First Nations land regimes in British Columbia
- Federal, provincial and municipal laws governing development
- First nation laws and bylaws

## 10:00 Questions and Discussion

## 10:10 Morning Break

## 10:20 Commercial and Industrial Land Uses

**Michael McDonald, Q.C.**  
Clark Wilson LLP

- Commercial and industrial land uses
- Mixed use projects

## 11:10 Questions and Discussion

## 11:20 Leasing Structure

**Jean Yuen**  
Boughton Law Corporation

- Direct leases v. head/sublease arrangement, why choose one over the other?
- A financeable lease/sublease- how to make a leasehold interest attractive to lenders
  - Special considerations for lease or sublease for market housing purposes
- Common Land Code provisions that impact on lenders' rights

## 11:50 Questions and Discussion

## 12:00 Lunch Break

## 1:00 Structuring the Developer

**Andrea East**  
Pushor Mitchell LLP  
**Mindy Wight**  
MNP LLP

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

## 2:00 Questions and Discussion

## 2:10 Afternoon Break

## 2:20 Expropriation on Reserve Lands

**Clifford Smirl**  
Kent-Macpherson  
**Catherine Musekamp**  
First Peoples Law LLP

- Challenges when developing on reserve lands without DCC law/bylaw or expropriation powers
- Perspectives of First Nations governance, CP holders, developers, and existing leaseholders

## 3:10 Questions and Discussion

## 3:20 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

## 4:10 Questions and Discussion

## 4:20 Chairs' Closing Remarks – 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/1683](http://www.pbli.com/1683)

**Registration:** The registration fee is \$720.00 plus GST of \$36.00 totalling **\$756.00** covering your access to the live webinar and electronic materials.

**Group Discounts:** 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. (PDT)**. 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](mailto: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 (**September 21<sup>st</sup>, 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 **6 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.

## Registration Form

### Pacific Business & Law Institute

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