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Unpacking the BC Court of Appeal Decision in *West Moberly First Nations v. British Columbia*

Chaired by

Christopher Devlin
DGW Law Corporation

September 22nd, 2020 • Attend via Live Webinar



CHAIR



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 regularly 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.

FACULTY



Judith Hoffman, General Counsel, Department of Justice, Vancouver, BC. Ms. Hoffman is counsel in trials and appeals involving Aboriginal title and rights as well as treaty interpretation and judicial reviews engaging the duty to consult in several contexts including large controversial resource projects such as Site C and Pacific Northwest LNG. She is also experienced inquiry counsel, having been a member of the teams representing Canada in the BC Missing Women Inquiry, the National Inquiry into Murdered and Missing Indigenous Women and Girls and the Cullen Commission into Money Laundering in BC. From 2001 to 2005, Ms. Hoffman was the legal officer to the late Chief Justice Brenner. Before serving the Court, Ms. Hoffman practised in the areas of insurance defence, commercial litigation, civil sexual assault, administrative and Aboriginal law.



Virginia Mathers, Associate, Mandell Pinder LLP, Vancouver, BC. Virginia's practice includes advocacy, negotiations, and strategic advice with respect to Aboriginal and treaty rights, natural resource management, and Crown consultation and accommodation. She has been counsel to First Nations in regulatory reviews conducted by the National Energy Board, the Canadian Environmental Assessment Agency, the B.C. Environmental Assessment Office, the B.C. Oil and Gas Commission, and the Alberta Energy Regulator. Her approach in regulatory reviews includes developing strategies for integrating Indigenous knowledge and values into environmental assessments, working with experts to conduct technical reviews of projects, and negotiating with government and industry representatives on matters relating to consultation and accommodation. Her regulatory practice covers a wide range of industries including oil and gas, mining, marine terminals and shipping, forestry, and hydroelectric projects. Virginia's litigation practice includes appeals and judicial reviews of regulatory permits and authorizations as well as general civil litigation matters. She has also been involved in negotiating and drafting consultation and accommodation agreements with governments and industry.



Karena Williams, Lawyer, Huberman Law Group, Vancouver, BC. Karena is Turtle Clan Kanyenke:háka (Mohawk) from Six Nations, Grand River Territory, Ontario. She carries on her grandmother's teaching that a career must be of service to Indigenous peoples. She is primarily a litigator advocating for Indigenous peoples' rights, title, cultures, languages and ways of life. Her litigation is strategic and bettered by the relationships she maintains with her clients. She remains grateful for their teachings. She provides effective, passionate and creative advocacy for clients. Although she acts within the Canadian legal system as a lawyer, Karena does her best to live under the Kayanerenkó:wa, or Great Law of Peace of the Haudenosaunee. Her commitment to her own ways of being permeates her work. A proud Onkwehonwe (original, or Indigenous, person), she believes that Indigenous peoples and laws are powerful and deserve respect. She has appeared at all levels of court in British Columbia, at the Federal Court, and the Supreme Court of Canada as well as the Manitoba Queen's Bench, the Ontario Superior Court and Court of Appeal.



Chief Roland Willson, West Moberly First Nations, Moberly Lake, BC. Roland Willson was first elected as Chief of the West Moberly First Nations in August 2000, and has continued to serve in that position for the past 20 years. Chief Willson sits on several boards and councils, including the BC First Nations Energy and Mining Council, the BC First Nations Gaming Committee, the Pacific Trails Pipeline First Nations Limited Partnership and the Northeast Aboriginal Business and Wellness Centre. Chief Willson is a prolific presenter. In recent years, he has made numerous presentations at various forums and seminars concerning issues important to First Nations, including the duty to consult, Aboriginal land and resource management, and the impacts of the oil and gas and shale gas industries on First Nations in northeastern BC. He has also appeared twice before the Standing Senate Committee on Aboriginal Peoples, once with respect to the federal Specific Claims policy and once on the topic of Aboriginal economic development. Chief Willson is an active enthusiast of Land and Treaty preservation.



Paul Yearwood, Supervisor, Natural Resources, Transportation and Indigenous Legal Group, Ministry of Attorney General, Victoria, BC. Paul Yearwood was called to the BC Bar in 1993 and has practised exclusively for the Province of British Columbia in the area of Aboriginal litigation since 2000. He is currently the Supervisor of the Aboriginal Law and Litigation group in the Ministry of the Attorney General. Paul has been fortunate to be counsel on a number of the leading Supreme Court of Canada decisions on Aboriginal law as well as a number of lower court decisions.

WHO SHOULD ATTEND:

- Lawyers practising in the area of Aboriginal law, Indigenous law or administrative law
- Indigenous leaders, officials, councillors, community leaders, and elders
- Consultation professionals
- Federal, Provincial, and Municipal Government officials involved with Indigenous issues
- Negotiators, mediators, and consultants

Unpacking the BC Court of Appeal Decision in *West Moberly First Nations v. British Columbia*

The British Columbia Court of Appeal's recent decision in *West Moberly First Nations v. British Columbia* addressed a number of issues of import to Indigenous communities and the legal profession, with potentially profound impacts on the future of Aboriginal and treaty rights litigation. The majority of the Court affirmed the view shared by Canada and a number of Treaty 8 First Nations as to the location of the western boundary of Treaty 8, which BC and a number of other First Nations asserted were not within the Treaty territory. The decision affirms the ability of Treaty First Nations to ask the court for clarity about aspects of their historic treaties with the Crown outside the full litigation process, and "opens the door to a less acrimonious relationship between the parties".

This half day intensive program brings together key participants in the litigation to look at four main themes in the judgment: the availability of declaratory relief; the standard of review on appeal; principles of treaty interpretation; and the Honour of the Crown. Join us as representatives for the plaintiff Nations, Provincial and Federal Crown, and intervenor nations unpack the meaning of the decision and what the future might hold.

Agenda – September 22nd, 2020

1:00 Welcome and Introduction by PBLI

1:05 Chair's Welcome and Introduction

Christopher Devlin

DGW Law Corporation

- Overview of the BCSC and BCCA decisions
- The four major themes:
 - Declaratory relief
 - Standard of review: the role of an appellate court
 - Treaty interpretation
 - Honour of the Crown

1:20 Perspectives from the Treaty 8 Nations

Christopher Devlin

DGW Law Corporation

Chief Roland Willson

West Moberly First Nations

2:00 Questions and Discussion

2:10 Break

2:20 Perspectives from the Federal and Provincial Crown

Judith Hoffman

Justice Canada

Paul Yearwood

BC Ministry of Attorney General

3:00 Questions and Discussion

3:10 Perspectives from the Intervenors

Virginia Mathers

Mandell Pinder LLP

Karena Williams

Huberman Law Group

3:50 Questions and Discussion

4:00 Chair's Closing Remarks – Program 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/1615

Registration: The registration fee is \$299.00 plus GST of \$14.95 totalling **\$313.95** 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: Check-in begins at 12:30 p.m. The program starts at **1:00 p.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 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 15th, 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 **3 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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SEPTEMBER 22ND, 2020

Attend via Live Webinar

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