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ABORIGINAL LITIGATION

Co-Chaired by

Rosanne Kyle
Mandell Pinder LLP

Mark Underhill
Arvay Finlay LLP

January 12th, 2021 • Attend via Live Webinar



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CO-CHAIRS



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.



Mark Underhill, Partner, Arvay Finlay LLP, Vancouver, BC. Mark maintains a broad general civil litigation practice, with particular expertise in Aboriginal, administrative, and environmental law. He has appeared at all levels of Court, including the Supreme Court of Canada, where he most recently acted in *R v Desautel*. He acts regularly for a number of independent administrative tribunals and officers of the legislature. Mark has been selected by his peers to be included in Best Lawyers in Canada in the areas of Aboriginal, administrative and public, and environmental law, and has been L'expert rated in the areas of environmental and Aboriginal law.

FACULTY



Jamie Arbeau, Associate, Ratcliff & Company LLP, North Vancouver, BC. Jamie is an associate with Ratcliff & Company LLP. Jamie primarily works in Ratcliff's litigation group. He has provided support on a wide range of files that have come before courts in British Columbia, the Federal Courts, and administrative tribunals such as the National Energy Board and the Specific Claims Tribunal.



Angela Bessflug, Associate Counsel, Murphy Battista LLP, Vancouver, BC. Angela is a class action lawyer with extensive experience representing the interests of class members in large-scale, national class actions. She has acted as class counsel in a number of high profile class actions, with combined settlement values totalling over \$800 million, and has been recognized by the Federal Court of Canada as "a leading practitioner in this field." She has been

class counsel in several class actions focused on Indigenous rights, including the Sixties Scoop class action, the Indigenous Boarding Homes class action and the Indigenous Hospitals class action. She was also counsel on motion for Gowling WLG at their fee approval hearing in the Indigenous Day Schools class action litigation, where they were awarded a \$55 million fee.



Jennifer Chow, Q.C., Senior Counsel, Department of Justice Canada, Vancouver, BC. As Senior Counsel at the Department of Justice in Vancouver, Jennifer Chow brings almost two decades of experience at all levels of court, including the Supreme Court of Canada. She is a civil litigator who practices in the areas of Crown law, constitutional and administrative law, commercial law and Aboriginal law.



Dr. Roshan Danesh, Q.C., Lawyer, Victoria, BC. Roshan is a lawyer, conflict resolution innovator, and educator whose areas of work, teaching, and writing include international peace-building, constitutional law, Indigenous rights, and inter-ethnic and inter-religious dialogue. Roshan completed his S.J.D at Harvard Law School and LL.B at the University of Victoria, and has taught at a number of universities around the world. Roshan has served as legal

counsel to the UBCIC, BCAFN, and First Nations across the country, as special counsel on Indigenous reconciliation to the Minister of Justice and Attorney General of Canada, and as an advisor on implementing the United Nations Declaration on the Rights of Indigenous Peoples to political and executive leadership in the Government of British Columbia.



Prothonotary Kathleen Ring, Federal Court of Canada, Ottawa, ON. Prothonotary Kathleen Ring was born in Saskatoon, Saskatchewan. At the time of her appointment to the Federal Court, she was General Counsel with the Department of Justice in Vancouver, where she practised primarily in the areas of Aboriginal law and class actions. She served as the Departmental representative on the Federal Court's Indigenous Bar Liaison Committee from its inception in 2005 until

2013, and was involved in the development of the Federal Court's Aboriginal Litigation Practice Guidelines. She was also the co-chair of the Department's Federal Courts Practice Group in Vancouver. She was a frequent presenter at legal conferences and in-service training events, and was the author of the chapter "The Crown as a Fiduciary" in the loose-leaf publication, *Government Liability: Law and Practice*. She was appointed a Prothonotary of the Federal Court on December 19, 2017.



Kris Statnyk, Associate, Mandell Pinder LLP, Vancouver, BC. In his practice, Kris provides strategic advice, negotiation support and advocacy over a broad range of areas including land and resource management, development assessment, regulatory process, modern treaty and self-government implementation, law and policy development, fiscal relations and government-to-government relations. Kris is Gwich'in from the Vuntut Gwitchin community

in Old Crow, Yukon. Kris' wife Shawna and their children Armayah and Jackson are Gitksan and belong to the Lax Skiik (Eagle Clan) Wilp (House) of Sakuum

ABORIGINAL LITIGATION

Aboriginal litigation is a complex and dynamic area of law that includes claims based on Aboriginal rights and title, breaches of fiduciary obligations on the part of Government, and environmental and land disputes. The case law impacting each of these areas is constantly evolving, and litigating these claims presents complex challenges, including distinct rules of evidence, practice issues, and ethical considerations. New technologies provide new opportunities to manage and effectively resolve these challenges. This program will bring together experts in the field of Aboriginal litigation to address some of the most pressing issues in this area of law. Attendees will learn about the latest legal developments while also gaining a practical perspective from professionals who have faced these challenges.

Key Issues Addressed:

- An update on recent case law
- The role of the Honour of the Crown in litigation
- Arguing Charter issues
- Recent Federal Court practice developments and the growing role of online advocacy
- The complicated litigation of overlapping claims
- Ethical issues, including navigating conflicts

Who Should Attend:

- Lawyers practising in Aboriginal law, administrative law, environmental law, human rights law, natural resources, or general litigation
- Indigenous leaders, officials, councillors, community leaders, and elders
- Consultation professionals
- Federal, Provincial, and Municipal Government officials involved with Indigenous issues
- Officers of resource companies operating on land that is potentially subject to Aboriginal claims
- Negotiators, mediators, and consultants

Higookw. Kris is called to the bars of BC (2014) and the Yukon (2016), and is a board member of West Coast Environmental Law and Yellowhead Institute.



Erin Thomson-Leach, Associate, JFK Law, Victoria, BC. Erin practices Aboriginal and administrative law in JFK's Victoria office with a focus on Treaty negotiations and Crown consultation. Erin assists clients involved in Treaty negotiations in the BC Treaty Process. She also advises First Nations involved in Crown consultation and negotiations with industry, and provides advice regarding band governance issues, the application of the *Indian Act* and many other matters.

Erin has developed broad experience working on a variety of issues including resource development, fisheries, forestry, land use planning on and off-reserve, environmental assessments and regulatory hearings.



Jack Woodward, Q.C., Lawyer, Campbell River, BC. Jack Woodward is a practising lawyer specializing in Indigenous law. With a law firm in Campbell River, Jack is a longtime advocate for First Nations, Métis and Inuit people of Canada, and has been on the forefront of Canada's relationship with Aboriginal communities for decades. The designation "Q.C." comes from his appointment as Queen's

Counsel in 2011 for his dedicated work in his field. Jack specializes in Aboriginal rights and title work and prepared the first draft of what would eventually become section 35 of the Constitution Act, 1982.

ABORIGINAL LITIGATION

JANUARY 12TH, 2021

9:00 Welcome and Introduction by PBLI

9:05 Chairs' Welcome and Introduction

Rosanne Kyle

Mandell Pinder LLP

Mark Underhill

Arvay Finlay LLP

9:10 Case Law Update

Jamie Arbeau

Ratcliff & Company LLP

- A discussion of recent important cases in Aboriginal litigation

10:00 Questions and Discussion

10:10 Morning Break

10:25 The Honour of the Crown

Jack Woodward, Q.C.

Lawyer

- Recent case law on the Honour of the Crown

11:15 Questions and Discussion

11:25 Litigating Charter Issues on behalf of Indigenous Peoples

Angela Bespflug

Murphy Battista LLP

Kris Statnyk

Mandell Pinder LLP

- Indigenous class actions and *Charter* rights
- *Dickson v Vuntut Gwitchin First Nation*: Indigenous self-determination, inherent rights and the *Charter*

12:15 Questions and Discussion

12:25 Lunch Break

1:25 Litigating Aboriginal Claims in the Modern Era

Jennifer Chow, Q.C.

Department of Justice Canada

Prothonotary Kathleen Ring

Federal Court of Canada

- Case management in Federal Court: recent developments
- Practice tips at the Federal Court
- Online advocacy
- Recent significant practice cases at the Federal Court

2:15 Questions and Discussion

2:25 Afternoon Break

2:40 Addressing the Challenges of Overlapping Claims

Dr. Roshan Danesh, Q.C.

Lawyer

Erin Thomson-Leach

JFK Law

- The case law on overlaps
- Finding a better way forward: an institution to resolve overlaps between Nations
- Designing appropriate resolution approaches, grounded in the UN Declaration and Indigenous legal orders

3:30 Questions and Discussion

3:40 Ethical and Practice Issues

Rosanne Kyle

Mandell Pinder LLP

Mark Underhill

Arvay Finlay LLP

- Knowing your client and who you're acting for
- Dealing with band council changes and disputes
- The growing challenge of navigating conflicts

4:30 Questions and Discussion

4:40 Chairs' Closing Remarks

4:45 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/1639

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: Check-in begins at 8:30 a.m. The program starts at **9:00 a.m. (PST)**. 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 (**January 5th, 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 **6.25 hours** of continuing professional development with the Law Societies of BC and Ontario, including up to 1 hour of ethics and practice management in BC. 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

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Unit 2 - 2246 Spruce Street
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ABORIGINAL LITIGATION

January 12th, 2021

Attend via Live Webinar

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