

8th Annual

ABORIGINAL LAW

October 26 – 27, 2009 | St. Andrew's Club and Conference Centre | 150 King Street West, Toronto



There has been no shortage of issues and developments in Aboriginal law over the last 12 months. Whether you advise indigenous peoples, government, or act for corporations engaged in projects with indigenous peoples, you can't afford to miss this 2-day forum providing the latest updates on critical developments in Aboriginal law.

This year's conference highlights include:

- Reconciling Aboriginal and treaty rights in land disputes and natural resource management
- Aboriginal energy partnerships in Ontario
- *British Columbia's Recognition and Reconciliation Legislation*: its origins and impacts
- Consultation and accommodation litigation developments across Canada
- Treaty process: current challenges and potential solutions
- Aboriginal taxation law update
- Industry and Aboriginal joint ventures – best practices
- Trends analysis: developments in Aboriginal law
- What do Aboriginal communities expect in terms of consultation?

and much more...

PROGRAM CO-CHAIRS

David Didluck
*Director, Negotiations
Ministry of Aboriginal Affairs,
Province of Ontario*



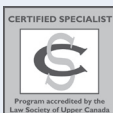
Kenneth R. Peel
*Barrister & Solicitor
KRPLaw.ca*



KEYNOTE ADDRESS

The Recognition and Reconciliation Legislation: Its Origins and Impacts

Louise Mandell, Q.C.
*Partner
Mandell Pinder*



This program has been accredited by the Law Society of Upper Canada towards the professional development requirement for certification. Civil Litigation/Environmental Law 12 hours

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Dear Colleague,

We are pleased to invite you to **Insight's Annual ABORIGINAL LAW FORUM**, an event that has earned a wide reputation for delivering the most need to know and current information on legal developments in the area of Aboriginal law and policy. With so many crucial developments and decisions emerging at such a fast pace in all jurisdictions, maintaining a sound knowledge base and good understanding of the implications of these new developments is no easy task. This annual conference provides the timely updates, in-depth analysis and the strategic perspectives that you need in order to be on track and fully up to date.

The conference will review recent influential case law, especially as it pertains to consultation, taxation, and land and resource issues. You will learn about the latest consultation and accommodation litigation developments and strategies including British Columbia's Recognition and Reconciliation Legislation.

Join over twenty distinguished speakers as they discuss current provincial and federal developments in relation to Aboriginal legal issues and other hot topics and developments in Aboriginal law. This forum will focus specifically on:

- *The "Discovery" and Management of Aboriginal Remains*
- *Aboriginal Administrative Law*
- *Treaty Implementation – a Platform for Engaging Solid Partnerships*
- *Trends Analysis: Developments in Aboriginal Law*

Don't miss this opportunity to learn about recent developments in Aboriginal law that can guide your community, business organization, professional group or practice to greater success. We look forward to meeting you in Toronto.

Yours truly,



David Didluck
Director, Negotiations
Ministry of Aboriginal Affairs, Province of Ontario



Kenneth R. Peel
Barrister & Solicitor
KRPLaw.ca

Are you a First Nation, Inuit or Métis student enrolled in a post-secondary education program? If so, we have exciting news for you: apply for one of Insight's Aboriginal Student Bursaries and attend this conference free of charge.

To find out more or to apply call us at 1-888-777-1707 today!

SPONSORSHIP OPPORTUNITIES

Gain additional presence and prestige in front of senior level decision makers through Insight's sponsorship opportunities.

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For further details, please contact Amy Leung at 416.642.6128 or Amy.Leung@incisivemedia.com

WHO SHOULD ATTEND

- Whether you're involved in commercial activities, policy creation, claim negotiations or litigation with or on behalf of Indigenous peoples, this conference is essential. Consider attending if you are a:
- Chief, Leader and Member of Aboriginal Communities and Associations
 - Band Council Member and Official
 - Federal, Provincial and Municipal Government Official and Employee (e.g. INAC, Dept. of Justice, Ministry of Aboriginal Affairs)
 - Legal Counsel practicing Aboriginal, Environmental and Constitutional Laws
 - Regulator and Environmental Policy Maker
 - Business Developer and Entrepreneur
 - Environmental Manager and Consultant
 - Academic or Professor specializing in Aboriginal, Environmental and Constitutional Law
 - Negotiator and Mediator
 - Senior Executive, Director and Manager of energy, hydropower, wind power – green energy, mining, forestry, pulp and paper, oil & gas (natural resources firms)
 - Consultant in natural resources and Aboriginal matters
 - Aboriginal Policy and Affairs Advisor, Regulator
 - Environmental, Aboriginal, Corporate, Commercial and Tax Lawyer
 - Consultant
 - Manager of Aboriginal Relations and Services

8:00 | 8:45

Registration and Continental Breakfast

8:45 | 8:50

Welcoming Remarks from Insight

8:50 | 9:00

Elder Invocation

9:00 | 9:10

Co-Chair's Opening Remarks

9:10 | 10:00

Land Development and Aboriginal Consultation and Accommodation

Kim Alexander Fullerton

Barrister & Solicitor

Professional Corporation

- What is the *Duty to Consult* as it relates to land development?
- Do Municipalities owe a *Duty to Consult*?
- Who is affected by the *Duty to Consult*?
- What do land developers need to know?
- What guidelines has the *Supreme Court of Canada* set down on these issues?
- What about the federal and provincial roles and responsibilities for land claims – what are the different kinds of land claims?
- What about overlapping claims?
- Success stories and strategies for engaging Aboriginal communities in successful consultation

10:00 | 10:15

Networking Coffee Break

10:15 | 11:00

The "Discovery" and Management of Aboriginal Remains

Jason J. Annibale

Senior Associate

McMillan LLP

Aboriginal remains are sacred to First Nations. The care and protection of Aboriginal remains are central to First Nation culture and spirituality. Jason will discuss the legislative and regulatory framework governing the discovery and management of Aboriginal remains and related questions respecting section 35 rights, consultation obligations and private property rights.

- *The Cemeteries Act* and related legislation across Canada
- Whether *section 35* rights and consultation obligations are engaged
- How private property rights affect and are affected by the legislative and regulatory framework

11:00 | 11:45

Aboriginal Administrative Law

Professor Lorne Sossin

Faculty of Law

University of Toronto

This field explores the intersection between administrative law concepts (such as procedural fairness, the impartiality and independence of administrative decision-makings, the exhaustion of internal remedies prior to seeking judicial review, and the standard of review when decisions do reach the courts) and concepts of aboriginal self-government, and band governance. Professor Sossin examines the development of this field and its implications both for Canadian administrative law, for parties affected by the decision-making of aboriginal government bodies and for aboriginal self-government. Aboriginal administrative law looks at the similarities and differences between Aboriginal self-governing institutional arrangements and standards of fairness and analogous municipal/provincial/federal arrangements and standards of fairness.

11:45 | 12:45

Networking Luncheon

12:45 | 1:30

Reconciling Aboriginal and Treaty Rights in Land Disputes and Natural Resource Management and Development

W.A. Derry Millar

Partner

WeirFoulds LLP

(Lead Commission Counsel, Ipperwash Inquiry)

- The historical context
- Case studies
- The government and police response
- The way forward

1:30 | 2:30

Consultation/Accommodation Litigation Developments Across Canada

Sandra A. Gogal

Partner

Miller Thomson LLP

The area of Aboriginal law is changing very rapidly, making it challenging to assess legal liability and to make informed decisions and plans. This presentation will address the latest developments in the law and "on the ground", as well as pragmatic implications and best practice approaches including:

- Updates on consultation/accommodation litigation cases across Canada (e.g. with specific reference to the new 2008 case law plus reference to the *Musqueam First Nation* case; *Tsilhqot'in* case, and the December 12, 2007 *Labrador Métis Nation v. Newfoundland and Labrador* case – 163 A.C.W.S. (3d) 330
- A review of key messages from the courts

- How to specifically address key difficulties and challenges from the industry and First Nation's perspective
- Updates on amendments to the *Ontario Mining Act* and its impact on mining activities in Ontario – does it adequately address consultation requirements? The amendments will be reviewed as they relate to consultation, accommodation issues and developments

2:30 | 2:45

Networking Refreshment Break

2:45 | 3:45

Treaty Implementation – A Platform for Engaging Solid Partnerships

Chief Isadore Day

Serpent River First Nation

Treaty Implementation is a modern topic of discussion filled with many historical challenges.

Emerging case law supports accommodation. Dialogue and reconciliation opens the door to greater development of partnerships, as Treaty Implementation becomes a catalyst of engagement. Many First Nations are now finding ways to see the measures of implementation established through negotiations with government on how policies and other legislative frameworks affect and apply to *Section 35*.

- Serpent River First Nation has taken the position that we can work with local and regional proponents of development in a manner that seeks to reconcile a historical inability to see its treaty rights recognized
- We have a number of assertions, oppositions, and petitions to government on policy issues and have impacted how our rights are accommodated during certain developments and implementation of policy
- Cultural values and customs of Anishnabe are being formally considered as we re-position the way treaties are observed in society and at government tables; thereby, we begin to see the duality and co-existence of two cultures at the base of Canada's constitution

3:45 | 4:30

What Are the Biggest Challenges Facing the Treaty Process & Status of Negotiations?

Anita F. Boscariol

Director General, Negotiations West, Treaties and Aboriginal Government Indian and Northern Affairs Canada (Vancouver)

- Status of negotiations: where are we and what have we achieved to date: Tsawwassen / Maa-nulth and other FAs and AIPs
- What are the biggest challenges facing the treaty process?
- First Nations wanting policy changes (Common Table); status
 - overlaps (Canada's responsibility to consult and accommodate)
 - sustainability of fisheries
 - loan funding to First Nations and accumulation of debt
 - First Nations priorities

- How might we overcome difficult issues? Possible solutions canvassed for:

- how is Canada dealing with overlaps
- role of BCTC / First Nations
- policy revisions
- Treaty Revitalization Table
- reconciliation

- Best practices (negotiation): other ways of negotiating treaties / alternatives to treaties? Plus:

- increased use of Live Meeting - travel costs / OT / life/work balance
- issues moving forward

4:30 | 5:00

Land Claims and Self-Government Negotiations: Ontario and Prairie Provinces

Joëlle Montminy

Director General, Negotiations Central, Treaties and Aboriginal Government Indian and Northern Affairs Canada

- Overview and status of negotiations
- Key challenges and opportunities
- Best negotiation practices

5:00

Co-Chair's Remarks and Conference Adjourns for the Day

TUESDAY | OCTOBER 27, 2009

8:00 | 9:00

Continental Breakfast

9:00 | 9:15

Co-Chair's Opening Remarks

9:15 | 10:15

Update on Aboriginal Taxation Law: Applying Recent Legal Cases and Decisions to Band and Business Management

Katherine Xilinas

*Partner
Miller Thomson LLP*

- Recent Aboriginal cases and decisions
- How the courts are viewing exemptions
- Review of Section 87 of the *Indian Act*, CRA guidelines and interpretations
- Investment income; strategies to maximize tax exemptions
- Tax as a source of revenue

10:15 | 10:30

Networking Coffee Break

10:30 | 11:15

Trends Analysis: Developments in Aboriginal Law

Dr. Mark S. Dockstator

Chairman

First Nations Statistical Institute

Associate Professor

Trent University

Understanding the implications of current legal developments in the field of Aboriginal law requires context. When dealing with Aboriginal issues, history is important. The focus of the presentation will be on providing an analysis of the overall trends that have developed over the last 40 years.

- Overview of Aboriginal issues
- Historical context
- Trend lines
- Analysis of contemporary development

11:15 | 12:00

KEYNOTE ADDRESS

The Recognition and Reconciliation Legislation in B.C.: Its Origins and Impacts

Louise Mandell, Q.C.

Partner

Mandell Pinder

- The origins of the recognition and reconciliation legislative initiative
- *The Discussion Paper*: what it says and what it means
- Going forward from here

12:00 | 1:00

Networking Luncheon

1:00 | 2:30

PANEL PRESENTATION

Aboriginal Energy Partnerships in Ontario

Chief Wilfred King

Kiashke Zaaging Anishinaabek (Gull Bay First Nation)

Juli Abouchar

Partner

Willms & Shier Environmental Lawyers LLP

With the emphasis by Ontario's Provincial renewable energy policies on consulting and partnering with Aboriginal people, the stage is set for Aboriginal communities to take advantage of new economic opportunities. This Panel will focus on the Little Jackfish River successful energy partnership and how six First Nations are partnering to get ready for the next opportunity.

- Ontario's renewable energy regime
- Opportunities for consultations and partnerships in renewable energy projects
- Little Jackfish River project

- An approach to dealing with overlapping traditional territories
- Developing community consultation guidelines
- Lessons learned for future partnerships in the energy sector

2:30 | 2:45

Networking Refreshment Break

2:45 | 4:45

IN-DEPTH PRESENTATIONS

Strategies for Working Together

Cyndy Vanier

C. Med., Senior Mediator

Dispute Resolution Services

- Key elements for building effective partnerships
- Common challenges and how to address them
- Situational analysis and how facilitated processes work most effectively
- Top ten mistakes in negotiation strategies
- Lessons learned

Assessing and Mitigating Risks During the Mediation Process

Zach Jones

Senior Consultant – Security Services

Control Risks

Organizing security for ongoing mediations and negotiations is a complex and delicate process and should never be overlooked or left to the last minute. Sometimes proximity to a geographical area of discord establishes relevance to protective measures in the interest of maintaining a safe negotiation theatre. These measures are essential to maintaining a level of security for mediators and community members. This can help enable community members and stakeholders to come forward and participate in resolutions without fear of reprisals or recrimination. Through proper planning, you can create a protective barrier for all parties to preserve a balanced negotiation environment which benefits First Nations, Government stakeholders and industry partners which would normally be established through lengthy and costly court applications. During this segment, we will address the following:

- The needs and process of assessing potential risks
- How to mitigate those risks
- What common activities and mediated dispute findings can be supported and resolved through coordinated security measures

4:45

Co-Chair's Closing Remarks and Conference Concludes

