

June 23 – 24, 2011 • Metropolitan Hotel, Toronto



The Canadian Institute's Course on

THE FUNDAMENTALS OF ABORIGINAL LAW

An In-Depth, Practical Guide for Proponents, Government
and Aboriginal Communities to Minimize Legal Risks



Course Leaders:

John Rowinski
The Law Office of John Rowinski

Grant Wedge
Legal Director
Ontario Ministry of Aboriginal Affairs

PLUS! Put the fundamentals into practice
immediately by attending our half-day,
post-course Masterclass:

Developing a Model Impact
Benefit Agreement

This comprehensive and practical two-day course will help you catch
up on ALL the CRITICAL legal issues in Aboriginal law, including:

- Exploring the complicated overlaps of Aboriginal claims, title, traditional territories and treaties with INAC to provide clarity in negotiations
- Grasping the crucial statutes and laws which are the foundation for all the policies that impact you and your work
- Analyzing the legal basis and obligation of consultation from the perspective of Industry, government and Aboriginal communities to avoid litigation and delays
- Knowing and applying the key tests laid out in the landmark legal decisions to protect your project and/or community
- Growing your awareness of the differences amongst Aboriginal communities to respectfully build successful relationships

And much more!

Sponsored by:



If you are new to Aboriginal Law or need a refresher –
this is the course for you!



Register Now • 1-877-927-7936 • CanadianInstitute.com/ABLAW



AVOID THE RISKS OF LITIGATION AND PROJECT DELAYS BY UNDERSTANDING THE KEY ISSUES IN ABORIGINAL LAW!

Aboriginal law is one of the most challenging and complex areas of law to master. For instance, the 'honour of the crown' is a constantly evolving and difficult-to-define term. Also, the obligations for consultation and accommodation are completely different depending on a variety of factors which you must know. As well, determining the certainty of Aboriginal rights and title is becoming more of an issue everyday. And that's just the beginning!

This unique, comprehensive course, taught by leading experts, will provide you with **in-depth, nuts-and-bolts coverage** of the fundamentals of Aboriginal law and practice in Canada, including:

- A comprehensive review of the essential **laws and statutes** that impact your work
- Navigating the new **Specific Claims Tribunal** effectively
- Avoiding project delays by understanding and fulfilling your **duty to consult and accommodate**
- Understanding how the **Crown's fiduciary duties** affect you
- Creating **lasting and binding agreements** with Aboriginal communities
- Managing **tax issues** to minimize expensive mistakes when planning your projects on reserves

At this new course, you will also have ample opportunity to **ask questions and compare notes** with your peers.

PLUS! Make sure to take advantage of our half-day, post-course Masterclass, **Developing a Model Impact Benefit Agreement**.

Don't miss this opportunity to gain the background you need to be confident on the job! Register today by calling **1-877-927-7936**, or by faxing your registration to **1-877-927-1563**, or online at www.CanadianInstitute.com/ABLAW.

We look forward to seeing you at the program in June!



This program can be applied towards 9 of the 12 hours of annual Continuing Professional Development (CPD) required by the **Law Society of Upper Canada**. Please note that these CPD hours are not accredited for the New Member Requirement.

This program has been approved by the **Law Society of Saskatchewan** for 9 CPD hours for the conference. Members will also receive 3 additional CPD credit hours for the attendance at the workshop.

The same number of hours may be applied toward your continuing legal education requirements in **British Columbia**.

The **Barreau du Quebec** automatically recognizes the same number of hours for this training activity, the latter having been accredited by another Law Society subject to MCLE.

Attendance at this program by members of the **Law Society of Alberta** may be submitted to the Law Society for Continuing Professional Development credits.

SPEAKER FACULTY

Course Leaders:

John Rowinski
Barrister and Solicitor
Law Office of John Rowinski

Grant Wedge
Legal Director
Ontario Ministry of Aboriginal Affairs

Speakers:

Juli Abouchar
Partner
Willms Shier Environmental Lawyers LLP

R. Martin Bayer
Partner
Weaver Simmons LLP

Christa Big Canoe
Policy Counsel, Aboriginal Justice Strategy
Legal Aid Ontario

Susan M. Hare
Principal
Hare Law Firm

Katherine Hensel
Stockwoods LLP

Manny Jules
Chief Commissioner
First Nations Tax Commission

Stephen Lindley
Vice President, Aboriginal & Northern
Affairs
SNC Lavalin Inc.

Candice Metallic
Maurice Law

Jean-Pierre Morin
Historian, Treaty Relations Directorate,
Treaties and Aboriginal Government
Sector
INAC

David C. Nahwegahbow
Partner
Nahwegahbow Corbiere

Doug Paget
Principal, Doug Paget Consulting
(Formerly Chief, Special Projects, INAC)

Daniel Ricard
Director General, Litigation Management
and Resolution Branch, INAC

Representative
Consultation and Accommodation Unit
INAC

Harvey Sands, C.A.
RSM Richter

Garth Wallbridge
Principal
Wallbridge Law Office

Cynthia Westaway
Gowling Lafleur Henderson LLP

DAY 1 – THURSDAY, JUNE 23, 2011

8:00 Registration and Coffee Served

8:30 **Opening Remarks from the Co-Chairs**

John Rowinski

Barrister and Solicitor
Law Office of John Rowinski

8:45 **Gaining an Understanding and Respect of Canada's Indigenous Peoples For Successful Relationships**

Christa Big Canoe

Policy Counsel, Aboriginal Justice Strategy
Legal Aid Ontario

- What does the term 'Aboriginal' mean and who does it encompass?
 - clarifying the differences between First Nations, Métis and Inuit
 - what are the main language groups in Canada?
 - grasping the variety of Aboriginal communities and their different customs and traditions
- Getting up-to-date on the law governing Indian status and band membership rules
 - what is the impact of the *McIvor v. Canada* decision?
- Learning the history of Aboriginal people in Canada from a legal and policy perspective
 - understanding and learning to start mitigating the legacy of mistrust created by centuries of uneasy relations
- Exploring pluralism and Aboriginal legal concepts which are different than in Canadian law (e.g. 'ownership' of land)
- Situating Aboriginal rights in a Constitutional framework
- Respectfully communicating and approaching a particular community to begin negotiations successfully

10:00 **Networking Refreshment Break**

10:15 **Learning the Key Statutes and Laws Comprising the Aboriginal Law Framework to Clear up Legal Confusion**

John Rowinski

Barrister and Solicitor
Law Office of John Rowinski

- Reviewing and making sense of the essential legal provisions in:
 - *Indian Act, R.S.C. 1985*
 - *Constitution Act, 1867*
 - *Constitution Act, 1982*
- Grasping the breadth of laws which affect and impact Aboriginal communities as well as industries and governments working with these communities

- Under what jurisdiction do Aboriginal issues fall?
Reviewing *St. Catherines Milling*
 - identifying what level of government is responsible for dealing with your concerns

11:00 **How the Courts Have Shaped Aboriginal Law and Knowing How to Use the Tests Laid Out By the Supreme Court of Canada**

Candice Metallic

Maurice Law

- How has the *Royal Proclamation of 1763* informed and shaped the law?
- Examining the controversial non-decision in *Calder* and the ensuing policy changes
- Reviewing *Guerin* to understand the birth of modern Aboriginal Law and Policy
- Key "Integral to a Distinctive" test laid out in *Van Der Peet*
- Exploring the *Sparrow* case and its 4-step test for the applicability of s.35 of the *Constitution*
 - what is the impact of this test on legal proceedings today?
- How do you know if and when you are infringing upon a right?

12:00 **Networking Luncheon for Delegates and Speakers**

1:15 **Clarifying Who is Métis in Aboriginal Law and Historically**

Garth Wallbridge

Principal
Wallbridge Law Office

- Effectively applying the *Powley* test to determine 'rights holding' members of the Nation:
 - how can you meet the duty to consult when there is so much confusion about who has the right to be consulted?
- Reviewing recent case law on Métis consultation and accommodation to avoid pitfalls and identify best practices
 - what are 'harvesting rights'?
- Examining the Crown's duty to consult and accommodate Métis rights and the impact of this on other Aboriginal groups and on proponents
- Distinguishing the roles and responsibilities of national, provincial and local Métis bodies

2:00 **Analyzing Treaties and Their Implications For Modern Day Negotiations**

Jean-Pierre Morin

Historian, Treaty Relations Directorate, Treaties and Aboriginal Government Sector
INAC

- Exploring the treaty making amongst First Peoples pre-European contact

- Understanding the reasons behind treaty making
- What is a historical treaty and how do they affect us today?
- Grasping the ‘nation to nation’ nature of treaties
- Reviewing some of the key treaties in Canada today, pre and post Confederation
 - friendship Treaties in Ontario
 - Robinson Treaties
 - Numbered treaties
- Analyzing modern treaties and the challenges posed

2:45 Networking Refreshment Break

3:00 Clarifying the Complicated Interplay of Aboriginal Rights, Title, Claims, Treaties and Traditional Territories to Minimize Litigation Risks

Susan M. Hare

Principal
Hare Law Firm

Daniel Ricard

Director General, Litigation Management and Resolution Branch
INAC

- What is the nature and scope of “Aboriginal rights”?
 - what is the relationship between s.15 of the *Charter* and sections 25 and 35 of the *Charter*?
 - analysing *R. v. Kapp*, *Sappier* and *Gray*, and other key cases
- What is the difference between reserve land and/or a traditional territory?
- What is “Aboriginal title”? Has the concept of title changed since *Delgamuukw*?
- What have courts required for proving Aboriginal title?
- What is the impact of Aboriginal title on private rights, including leasehold interests?
- How can you assess the likelihood of a title claim?
- Is it possible to extinguish Aboriginal title? If so, how?
- What is the difference between a Comprehensive vs. Specific claim?
- Understanding the latest developments and navigating the Specific Claims Tribunal effectively
- Evaluating the pros and cons of utilizing the specific claims process vs. litigation
- Interpreting treaties through exploring recent decisions
- Can provinces have jurisdiction to impact treaty rights?

4:00

Deconstructing the ‘Duty to Consult & Accommodate’: What Does It *Really* Mean for Industry, Government and Aboriginal Stakeholders?

Katherine Hensel

Stockwoods LLP

Stephen Lindley

Vice President, Aboriginal & Northern Affairs
SNC Lavalin Inc.

Representative

Consultation and Accommodation Unit
INAC

- What triggers the duty to consult? What is the latest legal definition?
 - how have courts applied *Mikisew Cree, Haida & Taku River*?
- Exploring the practical implications of the “duty to consult” for Aboriginal stakeholders, industry and government
 - whose duty is it? who is the Crown?
 - what are First Nations and federal/provincial government responsibilities in the consultation process?
 - what is the role of industry?
- Assessing the extent of required consultation
- Does the “duty to consult” require consensus on all points? Do First Nations have a veto?
- How can parties contract out of the duty to consult? Can the duty to consult affect existing permits and approvals?
- When can the duty to consult imply a government or industry obligation to fund the consultation process? How can funding obstacles be addressed?
- When and how can the duty be delegated?

5:30

Concluding Remarks from the Co–Chair

DAY 2 – FRIDAY, JUNE 24, 2011

8:15 Coffee Served

8:30 Opening Remarks from the Co-Chairs

Grant Wedge

Legal Director
Ontario Ministry of Aboriginal Affairs

8:45

Defining the Ever-Changing Concepts of ‘Honour of the Crown’ and the Crown’s Fiduciary Duties: What Do They Mean in Practice?

David C. Nahwegahbow

Partner
Nahwegahbow Corbiere

- How has the ‘Honour of the Crown’ been interpreted?
- Can this ‘honour’ be delegated?
- What is the ‘duty of good faith’?

SPONSORSHIP & EXHIBITION OPPORTUNITIES

Maximize your organization’s visibility in front of key decision-makers in your target market. For more information, contact Senior Business Development Executive Patrick Savoy at 416-927-0718 ext. 7313, toll-free 1-877-927-0718 ext. 7313 or by email at p.savoy@CanadianInstitute.com

- What are 'fiduciary duties'? Who owes them? And to whom?
- Why has the term 'fiduciary duty' been used less frequently in recent case law?
- What is the relationship between fiduciary duties and the honour of the crown? Do they overlap? How do they affect First Nations' aspirations?
- Understanding the importance of the 'honour of the crown' in relations with Aboriginal communities
- Where do these issues leave the private sector and local non-Aboriginal governments?
- Learning about the '*sui generis*' relationship between Aboriginal peoples and the Crown

9:30 Negotiating and Making Successful Agreements Between Stakeholders

Doug Paget

Principal, Doug Paget Consulting
(Formerly Chief, Special Projects, INAC)

Cynthia Westaway

Gowling Lafleur Henderson LLP

- Understanding the history and development of agreements between stakeholders in Canada
- Basic overview of the types of agreements available to start building relationships between stakeholders
- Knowing how to effectively avoid litigation through successful relationship building
- What are the hot issues that still need to be resolved when making agreements?
- Analyzing case law on "Who speaks for the band?"
- Understanding the contractual relationship: What is the authority of the band to contract?
- What critical, individual rights are affected by agreements made by the band?
- Enforcing contracts and judgments: Best practices

10:30 Networking Refreshment Break

10:45 Effectively Managing Taxation Concerns When Dealing with Aboriginal Communities, Reserves and Companies

Manny Jules

Chief Commissioner
First Nations Tax Commission

Harvey Sands, C.A.

RSM Richter

- Clarifying what forms of taxation impact Aboriginal communities, reserves and companies
- Knowing how to troubleshoot taxation issues before they delay your project
- Getting tools to clearly understand the taxation concerns
- Assessing and limiting the risks associated with taxation issues

11:45 How is the Advancement of Aboriginal Governance Changing Negotiations?

R. Martin Bayer

Partner
Weaver Simmons LLP

- What is self-government? Communicating the facts and clearing up misconceptions
- Understanding key legal issues in Aboriginal self-government
- Analyzing the right of self-government
- Reconciling Western and traditional Aboriginal governance principles: When and how can you have both?
- In light of stronger Aboriginal governance, how should parties change their negotiating strategies?

12:30 Concluding Remarks from Co-Chair

**Lunch will be served for those attending the post-course Masterclass*

POST-COURSE MASTERCLASS FRIDAY, JUNE 24, 2011 (1:45 P.M. – 4:45 P.M.)

Developing a Model Impact Benefit Agreement

Juli Abouchar

Partner
Willms Shier Environmental Lawyers LLP

In this half-day workshop, delegates will have a forum to discuss the challenges faced in developing an impact benefit agreement from the perspective of First Nations and the proponent. Our experienced workshop leader will lend her extensive hands-on experience to ensure you walk away with a clear grasp on how to develop an IBA from scratch.

- Assessing specific IBA clauses to determine which ones have worked and which ones do not
- Resolving financial management issues through careful planning and drafting
- Ensuring jobs and training are considered and accounted for in the agreement
- Addressing environmental concerns successfully
- Drafting provisions to resolve disputes without resorting to costly litigation

SPONSORED BY



Enhance your meetings and add to your bottom line by offering audience response solutions from Turning Technologies Canada, the global leader in audience response technology. The first choice of presenters everywhere, our simple, intuitive, polling products add engagement, encourage interaction, collect valuable data and provide instant feedback in meetings and events using RF or web-based devices. Invest in workplace training and employee development with the press of a button. Visit us at www.turningtechnologies.ca

June 23 – 24, 2011 • Metropolitan Hotel, Toronto

The Canadian Institute's Course on

THE FUNDAMENTALS OF ABORIGINAL LAW

An In-Depth, Practical Guide for Proponents, Government and Aboriginal Communities to Minimize Legal Risks

TOP REASONS TO ATTEND

- ✓ LEARN how the key legal cases and laws impact you
- ✓ UNDERSTAND how to fulfill your consultation obligation
- ✓ ACQUIRE top strategies for dealing with taxation issues on reserves
- ✓ NETWORK with experts, community leaders & peers

REGISTRATION FORM

To expedite your registration, please mention your Priority Service Code

287L11.S

| | |
|-------------------------------------|---|
| CANADA POST | POSTES CANADA |
| Postage paid Adressed 7243028 | Port payé Médiaposte avec adresse |

ATTENTION MAILROOM: If undeliverable to addressee, please forward to:
Aboriginal Law/Relations Manager, Legal Counsel, Economic Development Officer, Negotiator,
Mediator, Chief & Councillors



Can be recycled

5 EASY WAYS TO REGISTER

- Phone:** 1-877-927-7936 or 416-927-7936
- Fax:** 1-877-927-1563 or 416-927-1563
- Email:** CustomerService@CanadianInstitute.com
- Mail:** The Canadian Institute
1329 Bay Street
Toronto, Ontario M5R 2C4
- Online:** www.CanadianInstitute.com/ABLaw

PROGRAM CODE: 287L11-TOR

Register 4 for the price of 3!

YES! Please register the following delegate for **THE FUNDAMENTALS OF ABORIGINAL LAW**

| FEE PER DELEGATE | Register & Pay by April 15, 2011 | Register & Pay by May 26, 2011 | Register & Pay after May 26, 2011 |
|--|----------------------------------|--------------------------------|-----------------------------------|
| <input type="checkbox"/> ELITEPASS: Program + Masterclass | \$2290 + 13% HST | \$2490 + 13% HST | \$2690 + 13% HST |
| <input type="checkbox"/> Program (on site) | \$1795 + 13% HST | \$1995 + 13% HST | \$2195 + 13% HST |
| <input type="checkbox"/> Live Webcast (Program Only) | \$1595 + 13% HST | | |
| SPECIAL DISCOUNT FOR EMPLOYEES OF ABORIGINAL COMMUNITIES* | | | |
| <input type="checkbox"/> ELITEPASS: Program + Masterclass | \$1890 + 13% HST | \$1890 + 13% HST | \$2090 + 13% HST |
| <input type="checkbox"/> Program (on site) | \$1395 + 13% HST | \$1395 + 13% HST | \$1595 + 13% HST |
| <input type="checkbox"/> Live Webcast (Program Only) | \$1095 + 13% HST | | |

Program participants will receive a CD-ROM of the program materials as part of their registration fee

Please add a copy of the *Program Proceedings (BINDER) to my order for \$195 + \$21.95 (S&H) + applicable taxes *Published and shipped within 4 weeks from program

I cannot attend, but I would like to purchase the CD-ROM for \$320 + 15.95 (S&H) + applicable taxes

ADMINISTRATIVE DETAILS

VENUE: Metropolitan Hotel
ADDRESS: 108 Chestnut Street, Toronto, ON
TEL.: 416-977-5000

Hotel Reservations

For information on hotel room availability and reservations, please contact the Metropolitan Hotel at 416-977-5000.

Registration Fee

The fee includes the program, all program materials, continental breakfasts, lunches and refreshments.

Program Materials

Program participants will receive a comprehensive set of program materials prepared by the speakers. If you have paid and are unable to attend, these will be shipped to you upon request only. Request must be received within 30 days upon conclusion of the program.

Payment Policy

Payment must be received in full by the program date to ensure admittance. All discounts will be applied to the Program Only fee (excluding add-ons), cannot be combined with any other offer, and must be paid in full at time of order. Group discounts available to individuals employed by the same organization. *Employees of Aboriginal councils, boards, bands, governments, and nations qualify for the special Aboriginal discount. Group discounts available to individuals employed by the same organization. Groups of 4 will be invoiced individually at 25% off the available rate at the time of registration. For groups of 5 or more please call 1-877-927-7936 for additional discounts.

Cancellation and Refund Policy

You must notify us by email at least 48 hrs in advance if you wish to send a substitute participant. Delegates may not "share" a pass between multiple attendees without prior authorization. If you are unable to find a substitute, please notify **The Canadian Institute** in writing no later than 10 days prior to the program date and a credit voucher will be issued to you for the full amount paid. Credit Vouchers are valid for 1 year and are redeemable against any other program by **The Canadian Institute**. If you prefer, you may request a refund of fees paid less a 25% service charge. No credits or refunds will be given for cancellations received after 10 days prior to the program date. **The Canadian Institute** reserves the right to cancel any program it deems necessary and will, in such event, make a full refund of any registration fee, but will not be responsible for airfare, hotel or other costs incurred by registrants. No liability is assumed by **The Canadian Institute** for changes in program date, content, speakers or venue.

STEP 1

STEP 2

STEP 3

CONTACT DETAILS

NAME _____ POSITION _____

ORGANIZATION _____

ADDRESS _____

CITY _____ PROVINCE _____ POSTAL CODE _____

TELEPHONE _____ FAX _____

EMAIL _____

TYPE OF BUSINESS _____ NO. OF EMPLOYEES _____

APPROVING MANAGER _____ POSITION _____

PAYMENT

Please charge my VISA MasterCard AMEX

NUMBER _____ EXP. DATE _____

CARDHOLDER _____

I have enclosed my cheque for \$ _____ including applicable taxes made payable to **The Canadian Institute** (GST No. 84221 1153 RT0001)

Wire Transfer (\$CAD)

Please quote the name of the attendee(s) and the program code 287L11 as a reference.

Beneficiary: **The Canadian Institute**

Bank Name: HSBC / Account #: 362-055319-001

Address: 150 Bloor St, Suite M100, Toronto, ON

Swift Code: HKBCCATT / Branch #: 10362