



THE CANADIAN
BAR ASSOCIATION

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2012 National Aboriginal Law Conference

Aboriginal Peoples and Natural Resources



Presented by the Canadian Bar Association's
National Aboriginal Law Section and the
Professional Development Committee

June 14-15, 2012
Delta Bessborough Hotel,
Saskatoon, SK

Sponsors:



Co-Chairs:

Allison Fenske, *Thompson Dorfman Sweatman LLP (Winnipeg)*
Jeff Howe, *Howe Legal Professional Corporation (Saskatoon)*

Mark your calendar! The intersection between Aboriginal Peoples and the development of natural resources is at the heart of aboriginal law and policy in Canada. Issues arising around natural resource extraction and allocation, together with constitutional obligations rooted in treaty and aboriginal rights, the honour of the Crown and duties of consultation and accommodation often lead to complex economic and social arrangements.

What does this mean for Aboriginal Peoples, for industry, for court, for Canadians? What are the legal implications of natural resource use and management? Resource development often frames our modern conversations around reconciliation. Does reconciliation require compromise and balancing with the broader public interest? Is reconciliation a process or a goal?

Join our knowledgeable panelists to discuss emerging issues alongside best practices and lessons learned in this increasingly important area of aboriginal law.

Inscrivez cette date à votre agenda! Au Canada, le point de rencontre des droits de peuples autochtones et de l'exploitation des ressources naturelles se situe au cœur des lois et des politiques qui touchent les Autochtones. Les questions soulevées par l'affectation et l'extraction des ressources naturelles, ainsi que les obligations constitutionnelles découlant de traités et de droits des peuples autochtones, aussi bien que l'honneur de la Couronne et son devoir de consultation et d'accommodement, entraînent souvent des ententes économiques et sociales complexes entre les parties.

Quelles en sont les conséquences pour les peuples autochtones, pour l'industrie, pour les tribunaux, pour le peuple canadien? Quelles sont les répercussions juridiques de l'exploitation et de la gestion des ressources naturelles? L'exploitation des ressources dirige souvent les discussions contemporaines portant sur la réconciliation. Est-ce que cette réconciliation doit faire l'objet de compromis et faire l'équilibre avec l'intérêt public général? La réconciliation consiste-t-elle en un processus ou bien un objectif?

Participez aux discussions d'experts sur les questions émergentes, les meilleures pratiques et les leçons tirées dans le cadre de ce domaine du droit des autochtones qui prend de plus en plus d'envergure.

Ce programme est offert uniquement en anglais.



Program

Thursday, June 14, 2012

8:00 | 9:00

REGISTRATION

9:00 | 9:15

WELCOME AND OPENING PRAYER

Welcome by Conference Co-Chairs and Opening Prayer by Elder Wes Fineday

9:15 | 10:30

TREATY RIGHTS AND NATURAL RESOURCES

This panel will consider the treaty right to natural resources in Canada. The discussion will include principles from case law and events highlighting the legal issues facing treaty rights-holders who seek to fully benefit from the natural resources within their traditional territory. In many cases, judicial interpretation and governmental action have altered the beneficial sharing of resources contemplated by the Aboriginal signatories. This panel will address issues endemic in the numbered and early treaty areas concerning treaty rights to Natural Resources; whether modern treaties are achieving equitable resource sharing; and decisions concerning natural resources in territories where no treaty yet exists and a claim to the land and resources has been made.

Moderator: Aimée Craft, Public Interest Law Centre (Winnipeg)

Speakers: Chief Perry Bellegarde, Perry Bellegarde Campaign (Balcarres)

Christopher G. Devlin, Devlin Gailus (Victoria)

W. Thomas Molloy, Q.C., Miller Thomson LLP (Saskatoon)

John Merritt, Nunavut Tunngavik Inc (Ottawa)

10:30 | 10:45

REFRESHMENT BREAK

10:45 | 12:00

TREATY RIGHTS AND NATURAL RESOURCES CONTINUED

12:00 | 13:30

LUNCH

13:30 | 14:45

MÉTIS PEOPLES AND NATURAL RESOURCE ISSUES

The panel will explore the legal relationship of the Métis to the natural resources within their traditional territories and reflect upon the historic and ongoing cultural practices that inform current approaches to reconciliation of Métis interests and benefit sharing.

Moderator: Kathy Hodgson-Smith, Hodgson-Smith Law (Saskatoon)

Speakers: Mitch McAdam, Ministry of Justice & Attorney General Aboriginal Law Branch (Regina)

Garth Wallbridge, Wallbridge Law Office (Yellowknife)

14:45 | 15:00

REFRESHMENT BREAK

15:00 | 16:30

DUTY TO CONSULT AND ACCOMMODATE

Guiding principles relating to the duty to consult and accommodate have continued to evolve through the courts and through legislative amendments and the issuance of new government policy and directives. Notwithstanding this progress, the implementation of the duty to consult by the Crown and the delegation of certain responsibilities to proponents has been inconsistent, creating uncertainty as to expectations both for proponents and the aboriginal communities that have the right to be consulted.

This uncertainty is seen at a variety of levels within the consultation framework. This panel will review the key findings in consultation cases to help navigate through these issues and better equip counsel in advising their clients. As part of this discussion, speakers will review practical questions such as who to consult, the interplay between procedural aspects of consultation and the Crown's fulfillment of their obligations and the adequacy of consultation.

Moderator: Krista Robertson, Janes Freedman Kyle Law Corporation (Victoria)

Speakers: Sandra Gogal, Miller Thomson LLP (Toronto)

Elisabeth Patterson, Dionne Schulze S.E.N.C. (Montreal)

Ronald Stevenson, Department of Justice Canada (Ottawa)

18:00

NETWORKING DINNER WITH ENTERTAINMENT

Enjoy a historical and culinary experience at Wanuskewin Heritage Park - the place to meet, share and learn through history, nature and each other. Come experience Northern Plains culture at the incredibly beautiful unspoiled natural prairie landscape with 360 acres of scenic trails, interpretive sites, archeological digs, fauna, flora and herbs.



Friday, June 15, 2012

9:00 | 11:30 ECONOMIC RELATIONSHIPS

A major trend in Canada's natural resource development is the commitment to increasing economic opportunities for Aboriginal people. Aboriginal peoples are seeking a greater share of the benefits and opportunities that come with natural resource development and forward-thinking companies who want to do business or access resources in the traditional territories of Aboriginal peoples are trying to find ways to work with them. These development opportunities are not without their challenges - legal, political and social. Our panellists will offer their take on some of the "hot topics" that arise when Aboriginal Peoples and Industry sit down together with a view to building economic relationships.

Moderator: Brad Regehr, D'Arcy & Deacon LLP (Winnipeg)

Speakers: Bob Adkins, Thompson Dorfman Sweatman LLP (Winnipeg)
Jack Blacksmith, Cree Regional Economic Enterprise Company Inc (Oujé-Bougoumou)
Maxime Faille, Gowling Lafleur Henderson LLP (Ottawa)
Sara Filbee, Indian and Northern Affairs Canada (Ottawa)

11:30 | 13:00 LUNCH

13:00 | 14:30 THE INTERSECTIONALITY OF ENVIRONMENTAL LAW AND ABORIGINAL LAW

The goal of consultation is the reconciliation of aboriginal interests and the Crown. The process and outcome can take many forms depending on the circumstances but the overlap between environmental assessment processes and the accommodation of potential impacts on the ability of aboriginal peoples to exercise harvesting activities is clear. Moreover, recent case law has intimated that the study of cumulative effects may be a necessary element of the consultation and accommodation process. This expert panel will review the intersection of environmental law, and in particular the study of cumulative effects, and aboriginal law.

Moderator: Jeffrey F. Harris, Myers Weinberg LLP (Winnipeg)

Speakers: Adam Chamberlain, Borden Ladner Gervais LLP (Toronto)
Larry Inness, Olthuis, Kleeer, Townshend LLP (Toronto)

14:30 | 14:45 REFRESHMENT BREAK

14:45 | 16:15 PERSPECTIVES ON RECONCILIATION

The Supreme Court has found that the basic purpose of s. 35(1) is "the reconciliation of the pre-existence of aboriginal societies with the sovereignty of the Crown". Lamer, C.J. said: "Let us face it, we are all here to stay." What is reconciliation? Does it mean compromise and balancing? And how is it achieved? Our panellists will discuss various understandings and approaches to reconciliation, and the roles of parties in working toward reconciliation. They will share their experience and attempts at reconciliation, including best practices and lessons learned, with a particular emphasis on natural resources management and use. Our panellists will offer their views on if and how reconciliation can be achieved.

Moderator: Allison Fenske, Thompson Dorfman Sweatman LLP (Winnipeg)

Speakers: C. Kenning Marchant, The Marchant Practice (Mississauga)
Peter R. Grant, Peter Grant & Associates (Vancouver)

16:15 | 16:30 CLOSING REMARKS

Closing Remarks by the Conference Co-Chairs and Closing Prayers by Elder Wes Fineday

CONFERENCE ACCREDITATION:

The time spent attending this program (12 hours) may be applied towards the annual CPD requirement in all MCPD jurisdictions.

Please note that these CPD hours are not accredited by the LSUC for the New Member Requirement or the Professionalism Credit.

Detailed accreditation and conference information is available at:
http://cba.org/pd/details.aspx?id=NA_ABO12

Speakers subject to change

Registration Form

MEETING VENUE & ACCOMMODATION

The Delta Bessborough
601 Spadina Crescent East, Saskatoon, SK
1-800-268-1133 or 306-244-5521

HOTEL RESERVATION

Please contact the hotel directly and refer to the group name: **2012 National Aboriginal Law Conference**. The preferred room rate is available until **May 11, 2012**.

TRAVEL

Book online at www.aircanada.com to take advantage of a 10% discount on Tango Plus, Latitude and Executive airfares to **Saskatoon (YXE)**. You must quote promotion code **CF7P7JMI** at the time of booking and must book online.

CAR RENTAL

AVIS, the official rental car supplier of the CBA, offers several special rates. Call 1-800-879-2847 or visit www.avis.com to reserve your car. You must quote discount number **C136400**.

REGISTRATION

Pay by credit card (Amex, Visa or MasterCard **only**), or send cheque or money order made payable to the Canadian Bar Association together with this registration form to:

Mahoganey Jones

Professional Development Coordinator
Canadian Bar Association
500-865 Carling Ave., Ottawa, ON, K1S 5S8 or
fax information to 613-237-0185 or
e-mail: mahoganeyj@cba.org

PAYMENT MUST BE RECEIVED PRIOR TO THE CONFERENCE. ALL RECEIPTS ARE MAILED OUT AFTER THE CONFERENCE.

CANCELLATION POLICY

There will be a 20% administrative charge for any cancellation received in writing prior to **May 14th, 2012**. **No refunds will be issued after May 14th.**

There will be no refunds for "no-show" registrants.

INFORMATION

For further information about this program, please contact Mahoganey Jones at the CBA National Office by telephone at 613-237-2925 or 1-800-267-8860 ext. 189, or by e-mail at mahoganeyj@cba.org.

For updates on the CBA PD programs, please visit our website at www.cba.org/PD

2012 NATIONAL ABORIGINAL LAW CONFERENCE Aboriginal Peoples and Natural Resources

June 14 – 15, 2012
Delta Bessborough Hotel, Saskatoon

	FEE	TOTAL
<input type="checkbox"/> CBA Members	\$580.00 + Tax	\$609.00
<input type="checkbox"/> Students (CBA Members)	\$325.00 + Tax	\$341.25
<input type="checkbox"/> Non-Members	\$745.00 + Tax	\$782.25

- Yes**, I would like to attend the dinner and entertainment at Wanuskewin Heritage Park, Thursday June 14th at 6:00PM for the cost of \$25.00 plus tax (**TOTAL: \$26.25**)
- Yes**, I would like to join the CBA now and pay the member fee to attend this program. I understand that a membership representative will be contacting me.

CBA Membership No.

Mr. Ms.

Surname Given Name

Firm or Organization

Address

City Province Postal Code

Office Phone No. Fax No.

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Please indicate special needs (dietary, wheelchair access, etc.)

Method of Payment (payment due with registration application)

Cheque (payable to the CBA) Visa Mastercard Amex

Card No. Expiry Date

Authorized Signature

PERSONAL INFORMATION CONSENT

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By checking this box , I do not wish my contact information disclosed to the preferred suppliers, sponsors, and exhibitors of this program.

By checking this box , I do not wish my name to appear on the delegate list.