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# DEVELOPMENTS IN ABORIGINAL AND INDIGENOUS LAW

Chaired by

**Robert J. M. Janes, Q.C.**  
JFK Law Corporation

April 10<sup>th</sup> & 11<sup>th</sup>, 2019 • UBC Robson Square • Vancouver, BC

*Live Webinar also available!*



## CHAIR



**Robert J. M. Janes, Q.C.**, Principal, JFK Law Corporation, Victoria, BC. Mr. Janes is a litigator with extensive experience in Aboriginal law. Recognized by Lexpert for many years as a leading lawyer in Aboriginal law, he has appeared at all levels of court in British Columbia, Ontario and Alberta acting for Aboriginal people. He has also appeared many times at the Supreme Court of Canada, the Federal Court and the Federal Court of Appeals. In addition to his litigation work, Mr. Janes advises nations involved in the BC Treaty Process.

## WHO SHOULD ATTEND?

- Lawyers practising in the areas of Aboriginal law, administrative law, and business law
- Aboriginal leaders, officials, councillors, elders, negotiators, administrators, and advisors
- Owners, managers and representatives of resource development companies and companies operating on Crown land
- Federal, provincial and municipal government officials and policy advisors
- Consultants, accountants, financial planners, and others assisting First Nations with financial matters and business operations

## DEVELOPMENTS IN ABORIGINAL AND INDIGENOUS LAW

The state of Aboriginal law in Canada is constantly evolving, and for those working in this dynamic area, including those who advise First Nations or governments, it is essential to remain current on the latest developments. Staying abreast of the changing landscape is fundamental for advisors to practice effectively, and for First Nations to exercise their rights to their greatest benefit. This program assembles leaders in the field of Aboriginal law to provide delegates with in-depth information and practical insights to ensure that they are prepared to effectively address current challenges and to take proactive steps to avoid common pitfalls. For those who wish to remain current and informed, this program should not be missed.

### KEY AREAS ADDRESSED:

- Indigenous representation and laws in the Canadian legal system
- Indian status and discrimination
- New developments in environmental assessments and consultation processes
- Recent caselaw on major projects, including the Trans Mountain Expansion
- UNDRIP

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## FACULTY



**Kate Blomfield**, Partner, Ratcliff & Company LLP, Vancouver, BC. Kate has been acting for First Nations since 2003 when she joined Ratcliff & Company LLP after clerking with the Nunavut Court of Justice. Her practice focuses on litigation, negotiations and governance matters for First Nations clients in BC and the Yukon. Kate has appeared before every level of court in Canada, as well as the Specific Claims Tribunal. Kate also represents First Nations in multi-party negotiations and assists First Nations with internal governance matters. Kate engages with communities, structures and undertakes negotiations, and drafts agreements, laws and policies for First Nations relating to lands, resources, and governance.



**Jan Brongers**, Senior General Counsel, Department of Justice (British Columbia Regional Office), Vancouver, BC. Jan has been a civil litigator throughout his 22-year career with the Department, which began in Ottawa before he returned to his home town of Vancouver in 2006. Jan has appeared before courts at all levels, including the Supreme Court of Canada, several administrative tribunals, and two commissions of inquiry. He is also a co-author of the *Annotated Crown Liability and Proceedings Act*. Jan is a graduate of McGill University and maintains his membership with the Bars of Quebec, Ontario and British Columbia.



**Elizabeth Bulbrook**, Associate, White Raven Law, Vancouver, BC. Elizabeth has an interest in Aboriginal, Indigenous, Environmental and Constitutional law, and brings extensive professional experience working with indigenous peoples to her position. Prior to studying law, Elizabeth received a Master's degree in Archaeology and worked as an archaeological consultant for the Haida Heritage and Forest Guardians to protect and document archaeological sites on Haida Gwaii. Elizabeth has had the opportunity to work on high-profile litigation for the Haida Nation directed at environmental protection.



**The Honourable Paul Favel**, Federal Court of Canada, Ottawa, ON. Prior to his appointment, effective December 11, 2017, The Honourable Paul Favel was a partner at McKercher LLP in Saskatoon, specializing in Aboriginal law with an emphasis on corporate and commercial law related to First Nations economic development. In that role, he acted as legal counsel to various First Nations, advising on issues such as land designations, leases for commercial developments, land claims, and self-government negotiations. Justice Favel had served as Deputy Chief Commissioner with the Saskatchewan Human Rights Commission and as a member of the Oversight Committee established pursuant to the Indian Residential Schools Settlement Agreement. In addition, he was a sessional lecturer for a course on First Nations economic development at the University of Saskatchewan's College of Law. Justice Favel obtained a B.A. from the University of Saskatchewan and a law degree from Dalhousie University. A member of both the Saskatchewan and Nova Scotia Bars, he was appointed Queen's Counsel for Saskatchewan in 2010. A member of Poundmaker Cree Nation, Justice Favel maintains close connections with his community.



**Lisa C. Fong**, Partner, Ng Ariss Fong, Vancouver, BC. Lisa is honored to be able to assist Aboriginal peoples with their legal representation and governance needs. Her work with Aboriginal groups extends to litigation, providing strategic advice, consulting or negotiating with government and third parties, and assisting her clients to build and maintain governance infrastructures. She and her firm have a special interest in environmental regulatory reviews.



**Robert C. Freedman**, Principal, JFK Law Corporation, Vancouver, BC. Mr. Freedman practises Aboriginal law with a focus on advising clients in complex negotiations with a particular focus on IBA negotiations and treaty negotiations. In addition, his practice focuses on advising First Nations and First Nation organizations on a variety of matters including environmental assessments, treaty and Aboriginal rights, environmental issues, oil and gas related matters, hydro-electric matters, and water rights.



**Leah George-Wilson**, Lawyer, Miller Titerle Law Corporation, Vancouver, BC. Leah is a lawyer practising in the area of Indigenous law, and is also a well-known and respected Indigenous leader. Leah is the former Chief of the Tsleil-Waututh Nation and was the first woman to serve in this position, which she held for 6 years. She is currently an elected Co-Chair of the First Nations Summit, a Director on the Land Advisory Board and an appointed member of the First Nations Health Council.



**Bridget Gilbride**, Partner, Fasken Martineau DuMoulin LLP, Vancouver, BC. Bridget is a litigator in Vancouver specializing in Aboriginal, environmental, and maritime law. She advises clients seeking provincial and federal project approvals and permits, including environmental assessments, and represents clients in regulatory hearings and litigation. Bridget acts as counsel at administrative tribunals and at all levels of court in British Columbia and the Federal Court, and has appeared as counsel at the Supreme Court of Canada. She has extensive Aboriginal law experience, and assists clients in understanding both the law and their obligations. She advises clients who are consulting with Aboriginal groups and represents their interests in court challenges, injunctions and regulatory proceedings.



**Lisa C. Glowacki**, Partner, Ratcliff & Company LLP, Vancouver, BC. Lisa strives to use the law to support First Nations' communities. The main focus of her practice is Aboriginal rights and title litigation. She also advises and represents First Nations and others on environmental, natural resources, regulatory, constitutional (Charter and jurisdictional), administrative law, social justice, employment and human rights matters. Over her years of practice, she has developed a particular knowledge of Pacific fisheries, including DFO management and the interests at stake. She recognizes the importance of fisheries to many First Nations in British Columbia. Lisa was counsel for environmental organizations at the Cohen Commission. She has appeared at all levels of court in British Columbia, the Federal Court and the SCC. She is a current member of the executive and past co-chair of the constitutional section of the CBA, participates in Access ProBono, and works with numerous community organizations.



**Arthur M. Grant**, Partner, Grant Kovacs Norell, Vancouver, BC. Since being called to the British Columbian bar in 1985, Art has practised in civil litigation in a wide variety of cases, ranging from Aboriginal and constitutional law, administrative law, intellectual property, class actions, construction litigation, professional liability, commercial disputes, insurance law and personal injury law. He has appeared in every level of court in the Province, from the Provincial Court of British Columbia to the Supreme Court of Canada and has been counsel in cases in administrative tribunals, commercial arbitrations and mediations.



**The Honourable Harry S. LaForme**, Senior Counsel, Olthuis Kleer Townshend LLP, Toronto, ON. The Honourable Harry S. LaForme is Anishinabe of the Mississaugas of the Credit First Nation, Ontario. He was born and mostly raised on his reserve where some of his family continues to reside and remain active in the First Nation's government. Judge LaForme graduated Osgoode Hall Law School, 1977 and was called to the Ontario Bar, 1979. He articulated with Osler, Hoskin and Harcourt, and shortly thereafter commenced private practice in Indigenous law focused on Constitutional and Charter issues. In 1994 he was appointed a judge of the Superior Court of Justice, Ontario – then, one of 3 Indigenous judges ever appointed to this level of trial court in Canada. In 2004, he was appointed a judge of the Ontario Court of Appeal. He is the first Indigenous appointment to any appellate court in Canada's history. He retired from the judiciary in 2018 and commenced a position as Senior Counsel to Olthuis Kleer Townshend, LLP. Judge LaForme has been honoured with numerous awards, including the gift of Eagle Feathers at his swearing in at the Ontario Court of Appeal, and by the National Indian Residential School Survivors Society. Judge LaForme has published numerous articles on issues related to Indigenous law and justice, and speaks frequently on these topics.



**Jamie Lickers**, Partner and National Leader of the Indigenous Law Group, Gowling WLG, Hamilton, ON. Ms. Lickers is a member of the advocacy department and her practice is focused on the areas of Indigenous, environmental and construction law. In 2018, Ms. Lickers was appointed as the national leader of Gowling WLG's Indigenous Law Group. Ms. Lickers has experience with First Nations on a variety of matters, including taxation, trusts, self-government, regulatory matters and consultation issues. Ms. Lickers has appeared before the Supreme Court of Canada, the Ontario Superior Court of Justice, the Tax Court of Canada, the Federal Court of Canada, the Federal Court of Appeal and the Ontario Court of Appeal. She regularly presents at conferences on topics related to First Nations taxation, First Nations trusts, Indigenous litigation, and consultation and accommodation.



**Dr. Bruce McIvor**, Lawyer and Historian, Principal, First Peoples Law Corporation, Vancouver, BC and Toronto, ON. Dr. Bruce McIvor is principal of First Peoples Law Corporation, a law firm dedicated to defending and advancing Aboriginal title, Aboriginal rights and Treaty rights. His work includes both litigation and negotiation on behalf of Indigenous Peoples. Bruce is dedicated to public education. He recently published the third edition of his collection of essays entitled *First Peoples Law: Essays in Canadian Law and Decolonization*. He is also an Adjunct Professor at the University of British Columbia's Allard School of Law where he teaches the constitutional law of Aboriginal and Treaty rights. Bruce is a proud Métis from the Red River in Manitoba. He holds a law degree, a Ph.D. in Aboriginal and environmental history, and is a Fulbright Scholar. Bruce is recognized nationally and internationally as a leading practitioner of Aboriginal law in Canada.



**Sonya Morgan**, Lawyer, Woodward & Company LLP, Victoria, BC. Sonya practises Aboriginal and commercial litigation. She has extensive experience in large-scale litigation and arbitration, addressing issues in contract and statutory interpretation, Aboriginal law, administrative law, injunctions, and property ownership and transfer. Sonya has appeared as co-counsel before the Supreme Court of Canada, all levels of Court in Alberta, the Federal Courts, and the British Columbia Supreme Court.

**Tim Timberg**, General Counsel, Department of Justice Canada, Vancouver, BC. Tim practises Aboriginal, environmental, and administrative law. He has worked extensively in matters involving Aboriginal rights and title, fisheries law, and judicial reviews of Ministerial decisions regarding the management of fisheries, environmental reviews, international trade, and administrative law. He earned his LL.B. in 1996 from the University of British Columbia and his B.A. from Simon Fraser University.



**Claire Truesdale**, Associate, JFK Law Corporation, Victoria, BC. Claire practises Aboriginal, environmental and constitutional law in JFK's Victoria office with a particular focus on litigation, modern treaty negotiation and Indian registration (Indian status). She advises Indigenous governments and individuals on a variety of issues including governance, consultation, fisheries, on-reserve leasing and land use, band membership or citizenship, and Indian registration (status). Claire assisted First Nation clients with participating in the federal government's review of the Canadian Environmental Assessment Act, 2012, the Fisheries Act, the Navigation Protection Act, and the National Energy Board Act. She was initially drawn to working for Indigenous peoples through studying ecology and natural resource management and brings her interest in these areas to her legal practice. Claire has appeared at the British Columbia Supreme Court, British Columbia Court of Appeal, Alberta Court of Queen's Bench, Alberta Court of Appeal and Supreme Court of Canada.



**Mary Ellen Turpel-Lafond**, Professor, Peter A. Allard School of Law; and Academic Director of the Indian Residential School Centre for History and Dialogue, University of British Columbia, Vancouver, BC. Professor Turpel-Lafond or *Aki-kwe* is a member of the Indigenous bar as well as the Law Societies of British Columbia, Nova Scotia and Saskatchewan. She was a Saskatchewan Provincial Court judge for 20 years (1998-2018) and served as B.C.'s first Representative for Children and Youth from 2006-2016, an independent Officer of the Legislative Assembly. During her time on the bench, Professor Turpel-Lafond was actively involved in projects relating to improving supports for Indigenous peoples, especially in addressing the unique circumstances and needs of children and youth involved in the justice system. Her work as Representative for Children and Youth included detailed and systemic examination of the child services system and she advocated for the human rights of children, resulting in many needed improvements. Professor Turpel-Lafond holds a Doctorate in Law from Harvard Law School (SJD), a Masters in international law from Cambridge University (Gonville and Caius College), a JD from Osgoode Hall at York University and a Bachelor of Arts degree from Carleton University. She also holds a Certificate in the International and Comparative Law of Human Rights from the University of Strasbourg. She was awarded the distinction of Indigenous Peoples' Counsel from the Indigenous Bar Association in 2006, and has been awarded honorary degrees from nine Canadian universities and schools of Law.

# DEVELOPMENTS IN ABORIGINAL AND INDIGENOUS LAW

APRIL 10<sup>TH</sup>, 2019 (DAY ONE)

**9:00** Welcome and Introduction by PBLI

**9:05** Chair's Welcome and Introduction

**Robert J. M. Janes, Q.C.**  
JFK Law Corporation

**9:10** Keynote Address: Indigenous Representation on the Bench

**The Honourable Harry S. LaForme**  
Olthuis Kleer Townshend LLP

**10:00** Questions and Discussion

**10:10** Refreshment Adjournment

**10:25** Indian Status, Discrimination and Proving Indigenous Identity

**Jaimie Lickers**  
Gowling WLG

- Recent case law review
- Legislative response to discrimination challenges to the status provisions of the *Indian Act*
- Proving Indigenous identity – the Qualipu Mi'kmaq example

**11:15** Questions and Discussion

**11:25** Infringement of Treaty Rights: Injunctions and Judicial Review

**Bridget Gilbride**  
Fasken Martineau DuMoulin LLP

**Sonya Morgan**  
Woodward & Company

- When is a treaty right infringed?
- How should an infringement case be brought?
- Injunctions in treaty infringement cases

**12:15** Questions and Discussion

**12:25** Networking Lunch

**1:25** The Duty to Consult, Legislation and the Honour of the Crown

**Robert J. M. Janes, Q.C.**  
JFK Law Corporation

- What did the Supreme Court of Canada decide?
- What does this imply for the duty to consult?
- How might the honour of the Crown apply to the legislative process?
- What about subordinate legislation?
- Legislative consultation in modern treaties

**2:15** Questions and Discussion

**2:25** Refreshment Adjournment

**2:40** Bill C-262 and Provincial Implementation of UNDRIP

**Mary Ellen Turpel-Lafond**  
University of British Columbia

- What is the current status of Bill C-262?
- What does Bill C-262 do and not do?
- Provincial implementation of UNDRIP

**3:30** Questions and Discussion

**3:40** Reconciling Sovereignties: The Division of Powers and s. 35 of the Constitution Act

**Elizabeth Bulbrook**  
White Raven Law

**Lisa C. Fong**

Ng Ariss Fong

**Arthur M. Grant**

Grant Kovacs Norell

- Reference re Proposed Amendments to the *Environmental Management Act*
- Whether "local" governments may apply environmental protection laws to federal oil projects
- The role of Indigenous sovereignties recognized under s. 35

**4:30** Questions and Discussion

**4:40** Chair's Closing Remarks for Day One

**4:45** Forum Concludes for Day One

**REGISTER TODAY!**

# DEVELOPMENTS IN ABORIGINAL AND INDIGENOUS LAW

APRIL 11<sup>TH</sup>, 2019 (DAY TWO)

## 9:00 Welcome & Reflections on Day One

Robert J. M. Janes, Q.C.  
JFK Law Corporation

## 9:10 Consultation on Pipelines and Major Linear Projects: the FCA's decision in *Tsleil-Waututh*

Jan Brongers

Department of Justice

Leah George-Wilson

Miller Titerle Law Corporation

- What happened in the Federal Court of Appeal?
- What happened in the BC Supreme Court (Squamish Nation challenge)?
- What is happening now?
- *Environmental Management Act* amendments reference

## 10:00 Questions and Discussion

## 10:10 Refreshment Adjournment

## 10:25 Major Project IBAs: What Circumstances Lead to Success?

Robert C. Freedman

JFK Law Corporation

- Examples from major projects

## 11:15 Questions and Discussion

## 11:25 Can Aboriginal Rights Cases Be Litigated?

Lisa C. Glowacki

Ratcliff & Company LLP

Tim Timberg

Department of Justice Canada

- The *Ahousaht* decisions

## 12:15 Questions and Discussion

## 12:25 Networking Lunch

## 1:25 Indigenous Peoples and Aboriginal Rights in Canada's New Environmental Assessment Legislation

Claire Truesdale

JFK Law Corporation

- How does the new legislation work?
- How are Aboriginal and Treaty Rights treated in the new EA process?
- How will environmental assessments relate to the duty to consult?
- How will consent and agreement be considered in the process?

## 2:15 Questions and Discussion

## 2:25 Refreshment Adjournment

## 2:40 Damages in Specific Claims and in Court

Kate M. Blomfield

Ratcliff & Company LLP

- What have the courts said about damages recently?
- How are equitable damages approached?
- Loss of use vs expropriation damages

## 3:30 Questions and Discussion

## 3:40 Indigenous Law and Legal Orders in Canadian Courts

The Honourable Paul Favel

Federal Court of Canada

Dr. Bruce McIvor

First Peoples Law Corporation

- Recent case law developments: *Beaver v Hill*, *Pastion v Dene Tha' First Nation*
- Risks and opportunities in applying Indigenous law in Canadian courts
- Is Indigenous law domestic or foreign law in Canadian courts?
- Recent initiatives in the Federal Court to prepare for Indigenous law disputes

## 4:30 Questions and Discussion

## 4:40 Chair's Closing Remarks

## 4:45 Forum Concludes

## INFORMATION

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1. Telephone us: 604-730-2500 or toll free 877-730-2555
2. Fax us: 604-730-5085 or toll free 866-730-5085
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**Registration:** The registration fee is \$1,195.00 plus GST of \$59.75 totalling **\$1254.75** covering your attendance at the program, materials, a light breakfast, a networking lunch and refreshments on each day. In-person attendees have the option to receive their materials electronically in advance of the program, or in a hard copy binder on the day of the program. If an in-person attendee requests both hard copy and electronic materials, an additional \$50 charge will apply with applicable taxes. Webinar attendees will always receive their materials electronically.

**Early Bird Discount:** Register by March 11<sup>th</sup>, 2019 and receive a \$200 discount on registration fee (\$995.00 plus GST).

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**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.** UBC Robson Square is located at the basement level of 800 Robson Street in Vancouver, BC. Please visit <http://www.robsonsquare.ubc.ca/find-us/> for directions.

**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](mailto: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 (**April 3<sup>rd</sup>, 2019**). 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.

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## Developments in Aboriginal and Indigenous Law

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