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# INDIGENOUS LAW 2018: CURRENT ISSUES

Chaired by

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

April 25<sup>th</sup> & 26<sup>th</sup>, 2018 • 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.

## INDIGENOUS LAW 2018: CURRENT ISSUES

The state of Indigenous 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 Indigenous 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.

### WHO SHOULD ATTEND:

- Lawyers practising in the areas of Indigenous law, administrative law, and business law
- Indigenous 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

### KEY AREAS ADDRESSED:

- UNDRIP
- Recent and current litigation around pipelines and Site C
- Important pronouncements from the Supreme Court of Canada in the areas of regulatory approval, religious freedoms, land use planning and more
- Métis consultation
- The Ring of Fire
- The ongoing treaty 8 boundary dispute

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## FACULTY



**Thomas Berger, O.C., Q.C., O.B.C.**, Aldridge + Rosling LLP, Vancouver, B.C. Now a practising lawyer in Vancouver, Thomas Berger served as a Justice of the Supreme Court of British Columbia from 1971 – 1983. During that time, he was Commissioner of the Mackenzie Valley Pipeline Inquiry 1974-77. From 1983-85, he was Chairman of the Alaska Native Review Commission. In 1991 – 1992 he served as deputy chairman of the World Bank's Sardar Sarovar Commission in India. Before going on the bench Mr. Berger was counsel for the Nisga'a in the *Calder* case. In 2013, he was counsel for the Métis in *Manitoba Métis Federation v. Canada*. In 2017 he was counsel for the plaintiffs in *Nacho Nyuk Dun et al v. Yukon* (the Peel Watershed case).



**Jan Brongers**, Senior General Counsel, Department of Justice (British Columbia Regional Office), Vancouver, BC. Jan has been a civil litigator throughout his 21-year career with the Department, which began in Ottawa before he returned to his home town of Vancouver 11 years ago. 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.



**Dr. Gordon Christie**, Professor of Law and Director of the Indigenous Legal Studies Program, Peter A. Allard School of Law, University of British Columbia, Vancouver, BC. Professor Christie is of Inupiat/Inuvialuit ancestry and specializes in Aboriginal law. He has a PhD (in philosophy) from the University of California, Santa Barbara and a LLB from the University of Victoria. His teaching is primarily in the fields of Aboriginal law and legal theory, and his research work is entirely concerned with these two realms (and their intersection). His most recent work focuses on how colonial systems of cultural meaning frame Canadian jurisprudence around Aboriginal rights.



**John W. Gailus**, Director, DGW Law Corporation, Victoria, BC. Mr. Gailus was one of the founding partners of Devlin Gailus, the predecessor to DGW Law Corporation. He is a member of the Haida Nation from the Cumshewa Clan, and has a varied law practice focused on consultation, Aboriginal and treaty rights litigation, *Indian Act* issues and economic development. Mr. Gailus has served as counsel in all levels of Court, including the Supreme Court of Canada. He is general counsel for several First Nations and First Nation organizations throughout Western Canada. He has appeared on multiple occasions before the House of Commons Standing Committee on Aboriginal Affairs. Mr. Gailus has been recognized as a leading practitioner of Aboriginal Law by the Canadian Legal Expert Directory (Lexpert).



**Bridget Gilbride**, Associate, Fasken Martineau DuMoullin 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.

**Judith Hoffman**, General Counsel, Department of Justice, Vancouver, BC (*Confirmed subject to approval*). Ms. Hoffman is counsel in trials and appeals involving Aboriginal title and rights as well as treaty interpretation and judicial reviews engaging the duty to consult in several contexts including large controversial resource projects such as Site C and Pacific Northwest LNG. She was also a member of the counsel team representing Canada in the BC Missing Women Inquiry and is currently a member of the counsel team for the National Inquiry into Murdered and Missing Indigenous Women and Girls. From 2001 to 2005, Ms. Hoffman was the legal officer to the late Chief Justice Brenner. Before serving the Court, Ms. Hoffman practised in the areas of insurance defence, commercial litigation, civil sexual assault, administrative and Aboriginal law.



**Jeffrey Huberman**, Principal, Grant Huberman Barristers & Solicitors, Vancouver, BC. Jeff has a considerable amount of experience working with Indigenous Nations and their members on a variety of legal issues and social development initiatives. He brings a unique combination of skill sets to his legal expertise, having worked for years within First Nations communities on governance, justice, and cultural issues, and also advancing Indigenous peoples' rights, title and interests in a more traditional law firm setting. He has appeared at all levels of court in BC, at the Supreme Court of Canada, and in Federal Court. He has also worked within a traditional Indigenous legal system guided by knowledge-holders and elders. He is passionate about culture and language, and advancing the interests of Indigenous peoples in ways that protect, preserve, and celebrate their societies, long histories, present situations, and aspirations.



**Matthew Mehaffey**, Consultant, Westaway Law Group, Vancouver, BC. Matthew Mehaffey has a law degree from the University of British Columbia and, prior to joining Westaway Law Group, had been the Principal at Mehaffey Consulting since 2005, having joined in 2003. In addition to administration of justice negotiations and treaty implementation management advice, Matthew specialized in fiscal negotiations, including financial transfer agreements, taxation and resource sharing agreements and funding for programs and services. Matthew participates in the Land Claims Agreements Coalition Fiscal Working Group, is a director of Da Daghay Development Corporation and recently co-authored a chapter in *The Right Relationship: Reimagining the Implementation of Historical Treaties*, Edited by John Burrows and Michael Coyle.



**Kevin O'Callaghan**, Partner, Fasken Martineau DuMoullin LLP, Vancouver, BC. Kevin is leader of his firm's Indigenous Law group, and provides strategic advice on managing projects through environmental assessment and consultation with Indigenous peoples, including advice on negotiations and agreements. However, if unavoidable conflicts arise during project development, Kevin appears before courts, tribunals and arbitration panels to assist his forestry, mining, and oil and gas clients on challenges to licenses (including judicial review and title litigation) by local communities, non-governmental organizations and Indigenous communities, as well as related injunction proceedings. Kevin has appeared as counsel for industry stakeholders in a number of critical Aboriginal cases at the Supreme Court of Canada. He is recognized in the area of Aboriginal law by Chambers Canada, and was named Benchmark Canada's 2017 "Litigation Star" for Aboriginal Law in BC.



**Joel Oliphant**, Litigation Counsel, Ministry of Attorney General (British Columbia), Victoria, BC. Joel is litigation counsel with the Government of British Columbia, specializing in Indigenous law. He has dealt with proceedings involving the duty to consult, Aboriginal rights and treaty rights in the BC Supreme Court, BC Court of Appeal and Supreme Court of Canada. He also instructs civil procedure at the University of Victoria law faculty.



**Krista Robertson**, Senior Counsel, JFK Law Corporation, Victoria, BC. A core area of Krista's practice is negotiating and drafting consultation and accommodation agreements between First Nations, governments and industry. She also represents Indigenous groups in regulatory review processes ranging from environmental assessments to judicial reviews of regulatory permits. Krista is experienced in designing and managing research projects to support the advancement of Aboriginal rights in negotiations, specific claims, and litigation processes. Krista is passionate about justice for Indigenous people and takes a practical, solutions based approach to her work. She is called to the bar in BC, Yukon, Northwest Territories and Ontario. Krista is the current Chair of the CBA National Aboriginal Law Section, and the former CBA representative on the Federal Court – Aboriginal Law Bar Liaison Committee.



**Allison Russell**, Managing Senior Associate, Rana Law, Vancouver, BC. Allison practises civil litigation with a focus on Aboriginal and treaty rights, environmental and regulatory issues. She has appeared in all levels of court in British Columbia, as well as the National Energy Board and British Columbia Utilities Commission, and has assisted clients in the Federal Courts and Supreme Court of Canada. In addition, Allison advises First Nations in negotiations with government and industry regarding environmental assessments, natural resource development and Specific Claim settlements. She has extensively researched and advised on First Nations' water rights and international human rights law, including undergraduate study at the University of Ghana.



**Elin Sigurdson**, Associate, Mandell Pinder LLP, Vancouver, BC. Elin's practice focuses on Aboriginal and constitutional litigation and dispute resolution. Elin recently worked with a First Nation client, alongside a group of Indigenous clients, environmental organizations and their counsel to challenge the approvals of the Northern Gateway Pipelines Project. She has worked with Aboriginal groups across Canada to advance both litigation and non-litigation strategies for attaining proper recognition of treaty rights; and with First Nation governments to develop internal capacity and policies, as well as strategies for the recognition and implementation of Indigenous law and jurisdiction. Elin also works with clients in their efforts to ensure that the duty to consult owed to Indigenous peoples is carried out honourably by the Crown. Elin has appeared in all levels of court in British Columbia and Ontario, the Federal Courts and the Supreme Court of Canada, as well as various tribunals.



**Jean Teillet**, IPC, Senior Counsel, Pape Salter Teillet LLP, Vancouver, BC. Jean specializes in Indigenous rights law and has long been engaged in negotiations and litigation with provincial and federal governments concerning Métis and First Nation land rights, harvesting rights, commercial harvesting and self-government. She is currently the chief negotiator for the Sto:lo Xwexwilmexw in the BC treaty process and was part of the legal team on the Tlicho Land Claims and Self-Government Agreement negotiations. Jean has served as counsel before all levels of court, including lead counsel before the Supreme Court of Canada. She was the first recipient of the Law Society of Upper Canada's Lincoln Alexander Award and, in 2011, was awarded the title "Indigenous Peoples Counsel" by the Indigenous Bar Association. In 2012, she was awarded the Queen Elizabeth II Diamond Jubilee Medal. She has been awarded two honorary doctorates: Guelph University (2014); Law Society of Upper Canada (2015). Jean is the great grand niece of Louis Riel.



**Kathryn Teneese**, Ktunaxa Nation Chair and Chief Negotiator, Ktunaxa Nation, Cranbrook, BC. Ms. Teneese is the Ktunaxa Nation Chair as well as Chief Negotiator for the ongoing treaty negotiations with Canada and British Columbia. Her active participation in public service began in the late 1960's at the Columbia Lake Band (now known as the Akisq'nuk First Nation) as a Band Councillor and Band Manager, and then later as the Area Coordinator for the organization now known as the Ktunaxa Nation Council. She was also employed in the area of Adult Education at EKCC, now the College of the Rockies. From 1981 to 1998 Ms. Teneese lived away from the area to pursue employment at a senior level with a number of provincial Aboriginal organizations based in Vancouver. She returned to the Ktunaxa ʔamakis (territory) in August 1998, and now resides in Cranbrook, BC.



**Terri-Lynn Williams-Davidson**, Principal & Senior Legal Counsel, White Raven Law Corporation, Surrey, BC. A citizen of the Haida Nation and also its General Counsel, Ms. Williams-Davidson has practised in the area of Aboriginal-environmental law since she was called to the BC Bar in 1996. She has represented the Haida Nation at all levels of court, including the Supreme Court of Canada in the *Haida* case. She is counsel for the Haida Nation's Aboriginal title case, as well as the related reconciliation negotiations – which have resulted in innovative interim agreements with British Columbia and Canada – and other litigation such as that challenging the Enbridge Northern Gateway Project. She is an Honorary Director of Ecojustice and in 2014 received the Andrew Thompson Award for environmental advocacy.

# INDIGENOUS LAW 2018: CURRENT ISSUES

APRIL 25<sup>TH</sup>, 2018 (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** The UN Declaration on the Rights of Indigenous People

**Kevin O'Callaghan & Bridget Gilbride**  
Fasken Martineau DuMoulin LLP

**Dr. Gordon Christie**  
University of British Columbia

- Background on the UN Declaration
- The Federal Government's commitment to implementation
- Enforcing the promises

**10:00** Questions and Discussion

**10:10** Refreshment Adjournment

**10:25** Pipeline Litigation: Where Have We Been, and What's Coming Down the Pipes?

**Jan Brongers**  
Department of Justice

**Elin Sigurdson**  
Mandell Pinder

**Terri-Lynn Williams-Davidson**  
White Raven Law Corporation

- Update on the pipeline litigation
- Enbridge, Kinder Morgan, Northern Gateway and Eagle Spirit

**11:45** Questions and Discussion

**12:00** Networking Lunch

**1:00** Consultation and the Regulatory Approval Process

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

- The SCC decisions in *Clyde River* and *Chippewas*
- The role of regulatory bodies in the consultation process
- What is required to meet consultation requirements when navigating the regulatory approval process?

**1:45** Questions and Discussion

**1:55** Refreshment Adjournment

**2:10** Site C: How to Litigate Issues around Infringement of Treaty Rights

**John W. Gailus**  
DGW Law Corporation

**Judith Hoffman** (*Confirmed subject to approval*)  
Department of Justice

- Current challenges to the Site C dam project
- Decisions from the FCA and SCC

**2:55** Questions and Discussion

**3:05** Métis Consultation

**Jean Teillet**  
Pape Salter Teillet LLP

- What is happening with the Métis post-*Daniels*?
- Métis in the North West Territories

**3:55** Questions and Discussion

**4:05** Chair's Closing Remarks for Day One

**4:10** Program Concludes for Day One

# INDIGENOUS LAW 2018: CURRENT ISSUES

APRIL 26<sup>TH</sup>, 2018 (DAY TWO)

## 9:00 Welcome & Reflections on Day One

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

## 9:05 Religious Freedom and the Duty to Consult

Kathryn Teneese  
Ktunaxa Nation Council  
Jeffrey Huberman  
Grant Huberman Barristers & Solicitors

- The SCC decision in *Ktunaxa Nation*
- Freedom of conscience and religion – Charter protections
- Section 35 considerations

## 9:55 Questions and Discussion

## 10:05 Refreshment Adjournment

## 10:20 The New Fiscal Framework

Matthew Mehaffey  
Westaway Law Group

- The Memorandum of Understanding
- The Federal Government's December 2017 fiscal report

## 11:20 Questions and Discussion

## 11:30 The Ring of Fire

Krista Robertson  
JFK Law Corporation

- Land use planning and the Far North Act
- Implementing the Regional Framework Agreement for the Ring of Fire – Limits and Opportunities

## 12:10 Questions and Discussion

## 12:20 Networking Lunch

## 1:30 Treaty Obligations and Land Use Planning

Thomas Berger, Q.C.  
Aldridge + Rosling LLP

- The *Peel Watershed* decision at the SCC
- The Crown's duties with respect to treaty implementation
- Where is the right place to start over?

## 2:30 Questions and Discussion

## 2:40 Refreshment Adjournment

## 2:55 Treaty 8 Boundary Dispute

Allison Russell  
Rana Law  
Joel Oliphant  
Ministry of Attorney General (BC)

- Historical background to the case/factual matrix
- Applicable law - treaty interpretation
- Overview of Justice Johnston's decision
- Parties use of expert witnesses, 'common book' and e-trial

## 3:45 Questions and Discussion

## 3:55 Chair's Concluding Remarks

## 4:00 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/1418](http://www.pbli.com/1418)

**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. Webinar attendees will always receive their materials electronically.

**Early Bird Discount:** Register by March 26<sup>th</sup>, 2018 and receive a \$200 discount on registration fee (\$995.00 plus GST).

**Group Discount:** Register four persons from the same organization at the same time and you are entitled to a complimentary fifth registration. Early Bird and Group Discount cannot be combined.

**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 18<sup>th</sup>, 2018**). 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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## INDIGENOUS LAW 2018: CURRENT ISSUES

April 25<sup>th</sup> & 26<sup>th</sup>, 2018  
UBC Robson Square • Vancouver, BC

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- ☐ In person [HARDCOPY]
- ☐ In person [PDF & HARDCOPY (+\$50.00)]
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