

THE OSGOODE CERTIFICATE IN FUNDAMENTALS OF INDIGENOUS PEOPLES AND CANADIAN LAW

February 28 - April 25, 2018
5 Non-Consecutive Days over 8 Weeks
Available In Person or Webcast

Do you have the knowledge and practical skills you need to effectively address legal issues involving Indigenous Peoples?

An expert faculty of over 25 legal experts representing government, Indigenous and industry perspectives will deliver the crucial knowledge you need on a variety of topics, including:

- An overview of the case law and key legal concepts from the last 40 years
- The *Indian Act*: key issues for practitioners and policy makers
- Section 35 - understanding its purpose, framework and emerging issues
- The Crown, Proponent and Indigenous perspectives on the duty to consult and accommodate

Register today at:

osgoodepd.ca/Indigenous-Peoples

PROGRAM DIRECTORS

Sandra A. Gogal
Miller Thomson LLP

Jason T. Madden
Pape Salter Teillet LLP

LOCATION

Osgoode Professional
Development
1 Dundas St. West, 26th Floor,
Toronto, ON



Drawing on the expertise and experience of leading lawyers and experts from across Canada, including:

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Sandra A. Gogal

Miller Thomson LLP, Toronto



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Program Faculty

Jim R. Aldridge, Aldridge + Rosling

Merle C. Alexander, Miller Titerle +
Company, Vancouver

Keith B. Bergner, Lawson Lundell LLP,
Vancouver

Sarah Clarke, Clarke Child & Family Law

Michael Coyle, Associate Professor
and Assistant Dean, Graduate Studies,
Faculty of Law, Western University

Signa A. Daum Shanks, Assistant
Professor & Director, Indigenous
Outreach, Osgoode Hall Law School,
York University

Karen Drake, Associate Professor,
Osgoode Hall Law School,
York University

Mary Eberts, The Law Office of Mary
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Thomas Isaac, Cassels Brock &
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Robert Janes, JFK Law Corporation,
Victoria

Gwynneth C. D. Jones, Independent
Historian, Vancouver

Nancy Kleer, Olthuis, Kleer,
Townshend LLP, Toronto

David de Launay, Deputy Minister,
Ontario Ministry of Northern
Development and Mines

Andrew Lokan, Paliare Roland
Rosenberg Rothstein LLP, Toronto

Allan MacDonald, Director General,
Implementation Branch, Indigenous
and Northern Affairs Canada

Sara Mainville, Olthuis, Kleer,
Townshend LLP, Toronto

Bruce McIvor, First Peoples Law

Drew Mildon, Woodward & Company

Robert J. Potts, Blaney McMurtry LLP,
Toronto

Justin Safayeni, Stockwoods LLP
Barristers, Toronto

Paul Seaman, Gowling WLG (Canada) LLP,
Vancouver

S. Ronald Stevenson, Senior General
Counsel, Department of Justice

Jean Teillet, Pape Salter Teillet LLP,
Vancouver

Maggie Wente, Olthuis, Kleer,
Townshend LLP, Toronto

Cynthia Westaway, Westaway Law
Group

The Osgoode Certificate in Fundamentals of Indigenous Peoples and Canadian Law

Designed by an expert faculty drawn from across Canada, this essential program will help you develop a comprehensive knowledge of the fundamental issues relating to Indigenous Peoples and the law while expanding your professional and personal networks. You will have the opportunity to tap into the deep reservoir of practical, relevant information and extensive experience of top lawyers and experts in the field.

Created to help you understand this complex and vitally important body of law, this certificate is a deep dive into the knowledge and content needed to be able to work more effectively when dealing with these complex legal issues.

A truly outstanding faculty of practicing lawyers, academics and historians drawn from across the country will concentrate on the core aspects of Indigenous Peoples and the law, focusing not just on the law itself, but also those practical considerations that are key to understanding the rapidly changing legal environment.

The aim of the program is to give you a practical understanding of s.35 rights, the constitutional and legislative framework, reserve lands and developments on reserve, treaty interpretation, modern treaties and consultation and accommodation. The certificate wraps up with an interactive panel discussion on consultation and the way forward.

Throughout the program there will be ample opportunity for questions, discussion and debate.

What You Will Learn

- The historic narrative and constitutional framework
- Understanding historic treaties – the context, perspectives and contemporary realities
- The relationship between the historic treaties and the role of the Crown, the division of powers, treaty rights and the *Indian Act*
- Understanding modern day treaties using case studies and a Canada-wide comparative analysis, including First Nation, Inuit and Métis perspectives
- Addressing overlapping territories, private lands, submerged land and waterways
- The duty to consult and accommodate – its origins, recent case law developments and current trends
- *Tsilhqot'in* and its implications for Canada, the provinces and Indigenous Peoples
- Consultation approaches and policies across Canada, including current and developing practices in resource development, impact benefit agreements, participation agreements, cooperation agreements and revenue sharing agreements and policies

Who Should Attend?

- Lawyers practicing in the areas of Aboriginal law/Indigenous Peoples and the law, natural resources, environmental and Constitutional law
- In-House Counsel, particularly those working in the energy, resource and infrastructure development sectors
- Indigenous leaders, councillors and advisors
- Government lawyers/officials – federal, provincial and municipal sectors
- Negotiators and mediators for industry, government and Indigenous communities



Agenda

DAY 1: February 28, 2018
9:00 a.m. – 4:45 p.m.

Registration and continental breakfast
begin at 8:30 a.m.

The Foundations

Overview of the Historic Narrative

- The pre-existence of Indigenous Peoples and the assertion of sovereignty
- Treaty making with Indigenous Peoples (pre- and post-Confederation)
- The ongoing national project of treaty making and reconciliation with Indigenous Peoples
- Acknowledging the existence of Indigenous Laws

Understanding the Constitutional Framework

- The Royal Proclamation, 1763
- The Division of Powers and Section 91(24) of the *Constitution Act*, 1867
- The 1870 Order, the *Manitoba Act*, 1870, the Natural Resources Transfer Agreements and other constitutional instruments
- The *Constitution Act*, 1982
- The role of international norms and principles and the United Nations Declaration on the Rights of Indigenous Peoples

An Overview of the Case Law and Key Legal Concepts from the Last 40 Years

- Understanding title, site-specific and treaty rights, the division of powers, inter-jurisdictional immunity, the Honour of the Crown and its related duties (i.e., fiduciary duty, treaty interpretation and implementation, the duty to consult and accommodate) and reconciliation through the evolution of the Supreme Court of Canada's jurisprudence (*Calder*, *Guerin*, *Vanderpeet*, *Powley*, *Haida*, *Manitoba Métis Federation*, *Tsilhqot'in*, *Keewatin* and everything in between)

- The top 5 cases you need to know, and why

Faculty

Karen Drake, Associate Professor, Osgoode Hall Law School, York University

Gwynneth C. D. Jones, Independent Historian, Vancouver

Thomas Isaac, Cassels Brock & Blackwell LLP, Vancouver

Andrew Lokan, Paliare Roland Rosenberg Rothstein LLP, Toronto

DAY 2: March 7, 2018
9:00 a.m. – 5:00 p.m.

The Historic Treaties, Treaty Rights and the *Indian Act*

- Understanding the historic treaties: Context, perspectives and contemporary realities
- The relationship between the historic treaties and the role of the Crown, the division of powers, treaty rights and the *Indian Act*
- An overview of the history and development of the *Indian Act* and its ongoing evolution
- The *Indian Act*: Key Issues for practitioners and policy-makers
 - 'Status' registration under the *Indian Act*, including the *Descheneaux* case and Canada's response
 - Legal issues for business operations as well as taxation on-reserve
 - *First Nation Land Management Act* and related land codes, including templates and best practices
 - Issues surrounding the negotiation of self-government and other agreements with Bands under the *Indian Act*

Faculty

Michael Coyle, Associate Professor and Assistant Dean, Graduate Studies, Faculty of Law, Western University

Mary Eberts, The Law Office of Mary Eberts, Toronto

Paul Seaman, Gowling WLG (Canada) LLP, Vancouver

John Gailus, Devlin Gailus Watson, Victoria
Nancy Kleer, Olthuis, Kleer, Townshend LLP, Toronto

Sara Mainville, Olthuis, Kleer, Townshend LLP, Toronto

Maggie Wente, Olthuis, Kleer, Townshend LLP, Toronto

DAY 3: April 4, 2018
9:00 a.m. – 4:45 p.m.

The Aboriginal Rights Framework in Section 35

- Section 35 Aboriginal Rights Framework
 - The history, development and evolution of s.35 of the *Constitution Act*, 1982
 - Understanding how the s.35 case law "fits" together from a litigation and negotiation perspective, including the legal tests and "best practices" for litigating s.35 rights and claims
 - Ethical and professionalism issues in advancing s.35 litigation
 - Trends and emerging s.35 issues for practitioners and policy-makers
 - Addressing Indigenous law and customs
 - Cumulative effects and infringement litigation
 - Water rights, spiritual practices and other litigation
- Aboriginal Title and the "Land Question": Understanding the *Tsilhqot'in* Case and its implications for Canada, provinces and Indigenous groups
 - The legal test and evidentiary requirements for Aboriginal title
 - Who is the Aboriginal title-holder?
 - What are the legal and practical implications of recognized Aboriginal title lands?
 - The issues for "another day" (overlapping territories, private lands, submerged land and waterways)
 - Putting *Tsilhqot'in* and other Supreme Court decisions into practice: The AOO Treaty process

Faculty

Robert Janes, JFK Law Corporation, Victoria

Bruce McIvor, First Peoples Law

Agenda

Drew Mildon, Woodward & Company

Robert J. Potts, Blaney McMurtry LLP,
Toronto

S. Ronald Stevenson, Senior General
Counsel, Department of Justice

Cynthia Westaway, Westaway Law Group

DAY 4: April 20, 2018
9:00 a.m. – 4:30 p.m.

The Modern Day Treaties

- An overview of the history and development of the modern day treaties: Current policies, opportunities and challenges
- Understanding the modern day treaties through case studies and a comparative analysis across Canada, including First Nation, Inuit and Métis perspectives
- Key emerging issues in modern day treaty implementation and the road ahead
 - Participation in environmental assessments and land and water management issues
 - Funding treaty implementation and self-government (Financial Transfer Agreements)
 - Business and wealth creation
 - Case law (existing and emerging) on interpreting and implementing modern day treaties, including the Yukon Peel Watershed case

Luncheon Keynote Speaker

Reconciliation with the Métis: Recent Developments and the Road Ahead

Jason T. Madden, Pape Salter Teillet LLP,
Toronto

Sarah Clarke, Clarke Child & Family Law

Faculty

Jim R. Aldridge, Aldridge + Rosling

Nuri G. Frame, Pape Salter Teillet LLP,
Toronto

Larry Innes, Olthuis, Kleer, Townshend LLP,
Yellowknife

Allan MacDonald, Director General,
Implementation Branch, Indigenous
and Northern Affairs Canada

Jean Teillet, Pape Salter Teillet LLP,
Vancouver

DAY 5: April 25, 2018
9:00 a.m. – 4:45 p.m.

The Duty to Consult and Accommodate

- Understanding the duty to consult and accommodate
 - Origins of the duty as a part of the Infringement Test
 - Journey of the duty since *Haida* and *Taku*
 - An overview of recent developments and case law
 - Non-treaty context (*Haida, Taku*)
 - Historic treaty context (*Mikisew*)
 - Modern treaty context (*Little Salmon*)
 - What we know and don't know about the duty
- An overview of consultation approaches and policies across Canada
 - Current and developing practices in resource development
 - By proponents: impact benefit agreements, participation agreements, cooperation agreements
 - By governments: revenue sharing agreements/policies, facilitating partnerships/ownership opportunities, economic participation policies
 - By Indigenous groups: internal laws, policies and guidelines
- The Crown, Proponent and Indigenous perspectives on the duty to consult and accommodate
- Consultation in 2020 and beyond: Practical guidance to get you there
 - Update on new and emerging case law: *Clyde River*, *Chippewas of the Thames*, and *Ktunaxa Nation*
 - United Nations Declaration on the Rights of Indigenous People
 - How can it be used to advance consultation?

- Reconciliation with federal principles
- What does it mean to implement the United Nations Declaration on the Rights of Indigenous People through section 35 of the Constitution?
 - What does "free, prior and informed consent" mean? Does this equate to a veto?
 - How does it apply in practice?
 - How do you know when consent is achieved?
- Truth and Reconciliation Commission
 - Understanding the relationship between the United Nations Declaration on the Rights of Indigenous People and the TRC, Calls to Action generally
 - Effect of Article 92: Call to action for corporate Canada
- The new horizon – the Duty to Negotiate
- Policy Issues: The relationship between consultation and reconciliation

Luncheon Keynote Speaker

David de Launay, Deputy Minister, Ontario
Ministry of Northern Development and
Mines

Faculty

Merle C. Alexander, Miller Titerle +
Company, Vancouver

Keith B. Bergner, Lawson Lundell LLP,
Vancouver

Signa A. Daum Shanks, Assistant Professor
& Director, Indigenous Outreach, Osgoode
Hall Law School, York University

Sonia Eggerman, MLT Aikins LLP

Sandra A. Gogal, Miller Thomson LLP,
Toronto

Justin Safayeni, Stockwoods LLP Barristers,
Toronto

What past participants have said:

“The best thing about the program was the quality and knowledge of the presenters, and how well the topics relate to the work we do in government every day.”

Janet Leader, Executive Assistant, Office of the Assistant Deputy Minister, Provincial Highways Management, Ministry of Transportation

“The range of topics and breadth of speakers was very impressive. Furthermore the contacts I made via networking with students and faculty were invaluable.”

Megan E. Peck, Senior Counsel, Assessment Review Board

Registration Details

Fee per Delegate

\$3,595 plus HST

Fees include attendance, program materials, continental breakfast, lunch and break refreshments. Group discounts are available. Visit www.osgoodepd.ca/group-discounts for details. Please inquire about financial assistance.

Program Changes

We will make every effort to present the program as advertised, but it may be necessary to change the date, location, speakers or content with little or no notice. In the event of program cancellation, York University's and Osgoode Hall Law School's liability is limited to reimbursement of paid fees.

Cancellations and Substitutions

Substitution of registrants is permitted at any time. If you are unable to find a substitute, a full refund is available if a cancellation request is received in writing 21 days prior to the program date. If a cancellation request is made with less than 21 days notice, a \$150 administration fee will apply. No other refund is available.

For Further Program-Related Information please contact:

Jessica Foster, Program Lawyer at 416.673.4673
or email jfoster@osgoode.yorku.ca

Certificate of Program Completion

You will receive a certificate upon completion of The *Osgoode* Certificate in Fundamentals of Indigenous Peoples and Canadian Law. Participants must attend all program modules and pass the post-program multiple choice assessment to receive a certificate.

4 Convenient Ways to Register



Register today at:

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