

THE 2018 LEGAL AND PRACTICAL GUIDE TO CONSULTATION WITH INDIGENOUS PEOPLES

Are you tapped into the issues, perspectives, and strategies around today's evolving consultations?

Current and practical advice on how to engage in effective and thoughtful consultation. You will learn about:

- **Critical Caselaw Update:** The most significant decisions in the past year and their practical implications
- Successful strategies for building effective partnerships
- **UNDRIP:** Where We're at in 2018 and Beyond
- Impact of the *Canadian Environmental Assessment Act* amendments on consultation
- Expert Roundtable on the hottest issues in consultation

Plus! For those looking to obtain a solid foundation in the basics, don't miss the optional **Intensive Primer: Fundamentals of Consultation and Accommodation** on **November 8, 2018**.

Register today at:

osgoodepd.ca/duty-to-consult

Program Chair

Sandra A. Gogal
Miller Thomson LLP

Date and Time

Optional Primer:
November 8, 2018
9:00 a.m. – 5:00 p.m. EST
In Person or Webcast

Course:
November 9, 2018
9:00 a.m. – 4:00 p.m. EST
In Person or Webcast

Online Replay:
Optional Primer: December 10, 2018
9:00 a.m. – 5:00 p.m. EST
Course: December 11, 2018
9:00 a.m. – 4:00 p.m. EST

Location

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

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

Program Chair



Sandra A. Gogal

Miller Thomson LLP

Sandra Gogal has been nationally recognized as one of the Best Lawyers in Canada and Chambers Global for Aboriginal and Environmental Law. Her practice focuses on natural resource development, primarily in the mining, hydro and oil and gas sectors. Sandra has negotiated settlements with First Nations in excess of \$100 million and has customized commercial arrangements and impact and benefit agreements between industry and aboriginal communities across North America. She has also acted for industry and governments in regulatory matters and as counsel in litigation involving aboriginal rights and constitutional obligations.

Program Faculty

Julie A. Abouchar

Willms & Shier Environmental Lawyers LLP

Andrea Allen

Director, First Nations Affairs & Ombudsman, NB Power, New Brunswick

Jeremy Barretto

Cassels Brock & Blackwell LLP, Vancouver

Robert H. Brent

Senior Counsel, Ontario Ministry of Energy, Northern Development and Mines

Adam Chamberlain

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Miller Thomson LLP

Brian J. Hebert

McKiggan Hebert Lawyers, Halifax

Larry Innes

Olthuis, Kleer, Townshend LLP, Yellowknife

Yves Leboeuf

Senior Counsel, Environment Legal Services, Environment and Climate Change Canada

Patricia Lawrence

Westaway Law Group, Ottawa

Sara J. Mainville

Olthuis, Kleer, Townshend LLP

Renée Pelletier

Olthuis, Kleer, Townshend LLP

Denis Roux, LLB

President, Optimum Convergence, Vancouver

Paul Seaman

Gowling WLG (Canada) LLP, Vancouver

Michelle Wood

Counsel, Ontario Ministry of Natural Resources and Forestry

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THE 2018 LEGAL AND PRACTICAL GUIDE TO Consultation with Indigenous Peoples

In an era where stakeholders are working to achieve certainty in an evolving regulatory framework, matters surrounding the duty to consult are hotly debated among Indigenous communities, industry and government. This in-depth and timely *OsgoodePD* program, designed and delivered by Canada's leading experts, will provide you with the knowledge, **practical perspectives** and tools you need to engage in **effective consultation**.

In addition to being a valuable learning opportunity, this course enables you to meet and build relationships with others around the table. An interdisciplinary and cross-cultural faculty will take you through the key issues, including:

- What remedies are available when consultation fails?
- Strategies for dealing with consultation with projects involving multiple jurisdictions
- Critical drafting issues, including how to ensure future enforceability against successive band councils and governments
- Community Agreements, Permitting and Community Support – how to achieve the right balance
- How to identify and manage conflicts of interest

Plus! You will work through a case study focused on consent in practice and engage in constructive debate with ample opportunity for questions.

Who Should Attend?

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

Register today at:

osgoodepd.ca/duty-to-consult

November 8, 2018

(OPTIONAL)

Intensive Primer: Fundamentals of Consultation and Accommodation

8:30 a.m.

Registration

9:00 a.m.

Introduction to Consultation:
Who, What and Why

Brian J. Hebert, McKiggan Hebert Lawyers,
Halifax

Michelle Wood, Counsel, Ontario Ministry
of Natural Resources and Forestry

- What is the purpose of consultation?
Best practices for ensuring meaningful consultation
- What is the role of the Crown, the Proponent and affected Indigenous communities?
- Who is owed the duty? Who carries out the duty? How is the scope of consultation determined? Understanding the grey areas
- Is there a difference between engagement and consultation?
- What is the relationship between Industry – Indigenous Agreements and consultation?
- What is the connection between industry agreements and the regulatory approval process, including the environmental assessment process? What are the ramifications of not reaching an agreement?
- Case law, policy and other authoritative guidance

10:30 a.m.

Refreshment Break

10:45 a.m.

Implementing and Assessing Consultation

Robert H. Brent, Senior Counsel, Ontario Ministry of Energy, Northern Development and Mines

Larry Innes, Olthuis, Kleer, Townshend LLP, Yellowknife

- A review of provincial consultation guidelines: is it best approached from a legal or policy perspective?
- What is the appropriate level of procedural delegation? Are agreements a requirement of delegated duties to proponents?
- How do agreements affect the adequacy of consultation? Can parties to an agreement rely on project support provisions as an indication of adequate consultation?
- How are the Indigenous communities' concerns being taken into consideration regarding whether consultation is adequate?
- Are we *only* accommodating environmental impacts? Discussion of *Gitxaala Nation v. Canada*
- What if consultation fails? What remedies are available to parties?
- Are there ways to improve the consultation being done wrong? Is consultation working the way it is currently being done?

12:15 p.m.

Networking Luncheon

1:15 p.m.

Mechanics of Implementing Consultation: The Relationship and Timing

Julie A. Abouchar, Willms & Shier Environmental Lawyers LLP

Patricia Lawrence, Westaway Law Group, Ottawa

- Developing a consultation process: What are reasonable timelines? What's expected of each party?

- Creating a framework for dealing with disputes and other issues
- Use and implementation of consultation protocols
- Impact of the *Wabauskang First Nation v. Minister of Northern Development and Mines* decision
- What is the difference between "procedural" and "substantive" aspects of consultation?
- A review of the different approaches to consultation provincially and federally: Who has it right?
- How best to address consultation for projects involving overlapping jurisdictions

2:15 p.m.

Refreshment Break

2:30 p.m.

Consultation Agreements: The Essentials

Zachary Davis, Pape Salter Teillet LLP

- What is a "Consultation Agreement"?
- The goals of the consultation process
- Types of Consultation Agreements and their function
- The role of the Crown and Proponents
- Select considerations for Consultation Agreements

4:00 p.m.

Consultation Agreements: Specific Tips, Traps and Pitfalls to Watch Out For

Sandra A. Gogal, Miller Thomson LLP

Renée Pelletier, Olthuis, Kleer, Townshend LLP

- Drafting and negotiating Impact and Benefit Agreements or other similar Resource Development Agreements:
 - Understanding the basis for compensation

- Review of different financial models, net cash flow, gross revenue, NSR etc.,
- Enforceability as against successive band councils and governments
- Addressing project support provisions
- Addressing ongoing consultation requirements
- Addressing changes to project scope and modifications
- Is the agreement evidence of adequate consultation?
- Does the ESTMA apply?
 - Are payments to Indigenous groups captured under ESTMA?
 - What types of payments are captured?
 - How do payments under IBAs relate to the purpose of the Act, which is to prevent bribery and corruption?
- The relationship between financial payments by proponents and government resource revenue sharing

5:00 p.m.

Intensive Primer Concludes

November 9, 2018

Current and Emerging Issues in Consultation

8:30 a.m.

Registration

9:00 a.m.

Critical Case Law Update

Jeremy Barretto, Cassels Brock & Blackwell LLP, Vancouver

In this opening session, our expert will review some of the most important cases of the past year and assess the practical applications and implications for consultation.

10:00 a.m.

UPDATE on Implementation of United Nations Declaration on the Rights of Indigenous People and the Truth and Reconciliation Commission

Adam G. Chamberlain, Gowling WLG (Canada) LLP

Larry Innes, Olthuis, Kleeer, Townshend LLP, Yellowknife

Sara J. Mainville, Olthuis, Kleeer, Townshend LLP

United Nations Declaration on the Rights of Indigenous People

- How can it be used to advance consultation?
- What does “free, prior and informed consent” mean?
- How does it apply in practice?
- How do you know when consent is achieved?
- Case Study: Consent in practice

Truth and Reconciliation Commission

- Effect of Article 92: Call to action for corporate Canada to incorporate UNDRIP
- Legislative and policy initiatives: Implementing the TRC Calls to Action
 - Bill 262: United Nations Declaration on the Rights of Indigenous Peoples Act
 - Canada’s 10 Principles

10:45 a.m.

Refreshment Break

11:00 a.m.

Consultation, Reconciliation and the new *Impact Assessment Act*

Adam G. Chamberlain, Gowling WLG (Canada) LLP

Yves Leboeuf, Senior Counsel, Environment Legal Services, Environment and Climate Change Canada

- Is there a duty of reconciliation?
- What is the relationship between consultation and reconciliation
- Analyses of the Canadian Environmental Assessment Act amendments and their likely impact on reconciliation and consultation

12:00 p.m.

Networking Luncheon

1:00 p.m.

Building Effective Partnerships 101

Sandra A. Gogal, Miller Thomson LLP

Andrea Allen, NB Power, New Brunswick

- Practical strategies for identifying and aligning interests
- How to manage conflicts of interest
- Equity Contributions and other financial matters
- Decision Making: the who and why
- Examination of various strategic partnerships for specific initiatives

1:45 p.m.

Trans Mountain Pipeline Case: What it Says and What it Means Going Forward

Jeremy Barretto, Cassels Brock & Blackwell LLP, Vancouver

Paul Seaman, Gowling WLG (Canada) LLP, Vancouver

2:30 p.m.

Refreshment Break

2:45 p.m.

Agreements in Action: A View From the Trenches

Denis Roux, LLB, President, Optimum Convergence, Vancouver

With many years experience working in

Indigenous Relations with TransCanada and Shell, Denis Roux will dive into some of the key aspects of relationship and agreement building, including:

- Reconciling your clients’ interests and wishes with the different agreement models and realistic terms
- Devising a living agreement that will adapt to the relationship
- Learning from the faux-pas
- The right people in the right forum for a successful implementation of the agreement

3:30 p.m.

Hot Issues in Consultation: Expert Roundtable

Moderator: Sandra A. Gogal, Miller Thomson LLP

Andrea Allen, NB Power, New Brunswick

Larry Innes, Olthuis, Kleeer, Townshend LLP, Yellowknife

Sara J. Mainville, Olthuis, Kleeer, Townshend LLP

Join our expert panel as they grapple with some of the most challenging current and emerging issues in consultation. In this interactive Q&A, topics will include:

- What are the major challenges moving forward and practical strategies for navigating them
- The tension between Accommodation and Consultation – if and how it can be resolved?
- Community Agreements, Permitting and Community Support: Achieving the right balance

4:30 p.m.

Program Concludes

Here's what past attendees have said:

“Speakers were top notch in their conveying of information and experts on the subject matter. Presentations were pertinent to the topic matter. Personal experience always adds to the quality of information as well.”

Melanie Mathieson
Senior Advisor, Indigenous Relations
and Reconciliation Branch, Ministry of
Northern Development and Mines

“Really good knowledgeable speakers with practical on the ground experience and examples.”

Barbara Brownlee
Head, Environmental Services,
Ministry of Transportation, Ontario

“Excellent program.
Very informative!”

Christina Larkin
Assistant Land Administrator,
Lands Administration

Registration Details

Fee Per Delegate

Course Only: \$595 plus HST

Primer Only: \$595 plus HST

Course + Primer: \$995 plus HST

Fees include attendance, program materials, 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 14 days prior to the program date. If a cancellation request is made with less than 14 days notice, a \$75 administration fee will apply. No other refund is available.



OsgoodePD has been approved as an Accredited Provider of Professionalism Content by the LSO.

Eligible CPD Hours LSO (ON):

Course Only: LSO (ON): 6h CPD (4h 30m Substantive; 1h Professionalism; 30m EDI)

Primer Only: LSO (ON): 7h CPD (5h 15m Substantive; 1h 15m Professionalism; 30m EDI)

Course + Primer: LSO (ON): 13h CPD (9h 45m Substantive; 2h 15m Professionalism; 1h EDI)



OsgoodePD programs may be eligible for CPD/MCLE credits in other Canadian and US jurisdictions. To inquire about credit eligibility, please contact cpd@osgoode.yorku.ca



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Osgoode Professional Development



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