

ABORIGINAL LAW

CONSULTATION AND OTHER EMERGING ISSUES

VANCOUVER November 22 CALGARY November 23 TORONTO November 29

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ABORIGINAL LAW

CONSULTATION AND OTHER EMERGING ISSUES

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DATES AND VENUES:

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Federal and Provincial Government Officials from:

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Legal Counsel practising Aboriginal, Energy, Environmental, Natural Resources, Property or Constitutional Laws

- Project Development Directors
- Policy Officers, Analysts and Advisors
- Aboriginal Affairs Officers
- Business Development Officers
- Sustainable Development Managers
- Land and Resource Managers
- Negotiators and Mediators

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As Aboriginal consultation continues to develop, how to master its evolution in practical ways continues to top the list of major issues facing industry and project development. This course is a must-attend for Industry, Government Executives, and Corporate Counsel who need to understand the rapidly changing legal obligations relating to Aboriginal legal matters and how to assess and to mitigate associated risks, and negotiate win-win agreements with Aboriginal groups.

Course sponsored by

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COURSE HIGHLIGHTS

- UPDATE ON CROWN'S DUTY TO CONSULT AND ACCOMMODATE ABORIGINAL PEOPLES
- CONSULTATION AND BEST PRACTICES
- AGREEMENTS WITH ABORIGINAL GROUPS
- MÉTIS RIGHTS – LEGAL AND PRACTICAL DEVELOPMENTS
- UPDATE ON FEDERAL CONSULTATION DEVELOPMENTS
- JURISDICTIONALLY BASED TRENDS IN ABORIGINAL LAW
- INTERNATIONAL TRENDS AND RELEVANCE TO CANADA

THE COURSE LEADER

TOM ISAAC, PARTNER, MCCARTHY TÉTRAULT LLP
LEXPERT® TOP RANKED IN ABORIGINAL LAW IN THE 2010
CANADIAN LEGAL LEXPERT® DIRECTORY.

GUEST SPEAKERS

SAM ADKINS, MCCARTHY TÉTRAULT LLP

KRISTYN ANNIS, MCCARTHY TÉTRAULT LLP

JASON MADDEN, LAWYER, JTM LAW

BRUNO STEINKE, DIRECTOR OF THE CONSULTATION AND
ACCOMMODATION UNIT, INDIAN AND NORTHERN AFFAIRS
CANADA

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VANCOUVER, THE VANCOUVER CLUB NOVEMBER 22, 2010

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ABORIGINAL LAW CONSULTATION AND OTHER EMERGING ISSUES

program outline

- 8:15 – 8:45** | REGISTRATION AND BREAKFAST
- 8:45 – 9:00** | OPENING REMARKS & INTRODUCTIONS
PRESENTER: T. ISAAC
- 9:00 – 10:15** | UPDATE ON CROWN'S DUTY TO CONSULT AND ACCOMMODATE ABORIGINAL PEOPLES
 - » Current law on consultation and accommodation and discussion of recent case law
 - » Role of regulatory and quasi-judicial boards
 - » Role of Crown corporations and other Crown actors when acting as proponent in regulatory processes
 - » Federal and provincial approaches to consultation
 - » Consultation and modern treaties/land claims agreements
 - *Quebec (Attorney General) v. Moses*
 - *Little Salmon/Carmacks First Nation v. Yukon (Ministry of Energy, Mines and Resources)*
- 10:15 – 10:30** | COFFEE BREAK
- 10:30 – 11:30** | CONSULTATION AND BEST PRACTICES
 - Risk assessment and management
 - » Lessons learned – recent litigation examples
 - » Due diligence and Aboriginal matters
 - » Tips and best practices for consultation
 - » Whom to consult?
 - » Maintaining consultation records
 - » Coordination with Crown decision makers
- 11:30 – 12:15** | AGREEMENTS WITH ABORIGINAL GROUPS
 - » Role of agreements with Aboriginal groups and relationship with consultation and accommodation
 - » Agreements between government and Aboriginal groups
 - When is an agreement not a treaty?
 - Reconciliation agreements in BC
 - » Resource revenue sharing and other forms of Aboriginal equity interests
 - Update on resource revenue sharing proposals – Ontario, BC and Manitoba
 - » Agreement between First Nations and governments
 - » Potential benefits and risks with resource revenue sharing and equity interests
 - » Drafting agreements and best practices
- 12:15 – 1:15** | NETWORKING LUNCH
- 1:15 – 2:15** | MÉTIS RIGHTS – LEGAL AND PRACTICAL DEVELOPMENTS
PRESENTER: JASON MADDEN
 - » Update on the State of Métis Litigation across Canada: *R. v. Corneau* (Métis harvesting rights in Québec); *R. v. Jones* (Métis harvesting rights in Alberta);

- Manitoba Métis Federation v. Manitoba* (implementation of the Métis land grant provisions of the *Manitoba Act, 1870*); *Cunningham v. Alberta* (membership issues on the Alberta Métis Settlements); *Daniels v. Canada* (Métis inclusion in s. 91(24) of the *Constitution Act, 1867*).
 - » The Emerging Importance of the Relationship between Métis Identity and the *Indian Act*: The Impact of the *Mclvor* case and the *Cunningham v. Alberta* case at the Supreme Court of Canada.
 - » Consulting with Métis: Answering the Who, What, Where, When and Why and an overview of some Best Practices.
- 2:15 – 3:15** | UPDATE ON FEDERAL CONSULTATION DEVELOPMENTS **PRESENTER: BRUNO STEINKE (INAC)**
 - » Overview of what the Government of Canada heard during its recent engagement sessions with Aboriginal communities provinces and territories and industry on consultation and accommodation
 - » Outline ways to move consultation process forward by:
 - addressing the Crown's duty to consult and, where required, accommodate in an effective and efficient manner;
 - seeking practical options to coordinate consultation activities;
 - integrating consultation into day-to-day activities, eg. regulatory process;
 - acknowledging and respecting the Crown's unique relationship with Aboriginal peoples;
 - promoting reconciliation of Aboriginal and non-Aboriginal interests; and,
 - fostering better relations between the federal government and Aboriginal peoples, provinces, territories and industry.
- 3:15 – 3:30** | COFFEE BREAK
- 3:30 – 4:30** | TRENDS IN ABORIGINAL LAW – JURISDICTIONALLY BASED – ONTARIO, ALBERTA, BRITISH COLUMBIA & INTERNATIONAL
 - » Reconciliation
 - » Pragmatic policy and regulatory consultation frameworks
 - » Emerging litigation issues
 - Class actions
 - Quasi-Judicial tribunals
 - Cumulative effects and scope of governmental decision-making
 - *Tolko Industries Ltd. v. Okanagan Indian Band*, 2010 BCSC 24
 - » "Free, prior and informed consent" – relevance to Canada
 - » U.N. Declaration on the Right of Indigenous Peoples
- 4:30 – 5:00** | INTERACTIVE QUESTION-AND-ANSWER SESSION
- 5:00** | COURSE CONCLUSION



TOM ISAAC

Tom Isaac is a partner in the Vancouver office of McCarthy Tétrault LLP and he is one of Canada's leading authorities on Aboriginal law. Mr. Isaac advises industry and government clients across Canada on Aboriginal legal matters, and related litigation, environmental assessment, regulatory and negotiations issues. Mr. Isaac has represented clients before the Supreme Court of Canada (*Haida Nation v. B.C. and Weyerhaeuser*), the British Columbia Court of Appeal, the British Columbia Supreme Court, the Northwest Territories Supreme Court and the British Columbia Environmental Appeal Board. He is a former chief treaty negotiator for the Province of British Columbia and prior to that was assistant deputy minister for the Government of the Northwest Territories responsible for establishing Nunavut. Mr. Isaac is the author of *Aboriginal Law: Commentary, Cases and Materials* (three editions) along with five other books and numerous articles on Aboriginal legal matters. His published work in this area has been cited with approval by courts across Canada, including the Supreme Court of Canada and the Federal Court of Appeal. Mr. Isaac appears in the *2010 Canadian Legal Lexpert® Directory* as one of Canada's leading practitioners in Aboriginal law. Mr. Isaac is a member of the law societies of British Columbia, Alberta, Northwest Territories, Nunavut and Yukon.



SAM ADKINS

Sam Adkins is an associate in the business and Aboriginal law groups in the Vancouver office of McCarthy Tétrault LLP. He advises clients on corporate and commercial law issues in a wide range of industry sectors, most frequently in the resource and mining sector. Mr. Adkins' experience includes advising clients with respect to First Nations issues, in particular, the negotiation of consultation and impact benefits agreements and advising Crown corporations and industry on First Nations issues and the consultation process. Mr. Adkins received his BA from the University of Victoria in 2001, and his LLB and BCL from McGill University in 2005. Mr. Adkins is a member of the Canadian Bar Association and the Law Society of British Columbia.



BRUNO STEINKE

Bruno Steinke presently is the Director of the Consultation and Accommodation Unit, in the Policy Strategic Direction Sector at Indian and Northern Affairs Canada. This Unit is responsible for the implementation of the Government of Canada's Action Plan on consultation and accommodation, and working with federal departments and agencies, INAC sectors and regions to support federal officials fulfilling their legal duty obligations; addressing policy and programs gaps; coordinating federal departments and agencies; and providing information to other departments and agencies. Before joining the federal government, Mr. Steinke was a private consultant conducting research and policy work for the federal government, Aboriginal communities and organizations. He is originally from Barrhead, Alberta, and currently lives in Ottawa with his wife and two sons.



KRISTYN ANNIS

Kristyn Annis is an associate in the business and Aboriginal law groups in the Toronto office of McCarthy Tétrault LLP. Her practice is in the area of energy (regulatory and commercial) and Aboriginal law. Ms. Annis advises a wide range of clients across the energy sector and has experience advising clients with respect to First Nations and Métis issues. She also has experience advising clients in the mining sector. Prior to joining McCarthy Tétrault, she served as senior policy advisor to two successive Ministers of Energy of Ontario: the Honourable Dwight Duncan and the Honourable Gerry Phillips. Ms. Annis has a degree in Civil Engineering from McGill University (2000) and a French Common Law Degree (LLB) from l'Université d'Ottawa (2004), as well as a CSC from the Canadian Securities Institute (2006). She is fluent in French and Spanish.



JASON MADDEN

Jason Madden is a Métis lawyer and the former General Counsel to the Métis National Council (MNC). He returned to private practice in 2005 forming his own firm (JTM LAW) based in Toronto. Mr. Madden has been at the forefront of the new prominence of Métis rights and claims in Aboriginal jurisprudence. He acted as counsel for the MNC in its interventions in *R. v. Powley* and *R. v. Blais* – the first Métis rights cases before the Supreme Court of Canada. He has also acted as counsel in a majority of the Métis harvesting rights cases that have applied the Powley decision from Ontario westward (*R. v. Laviolette*, 2005 SKQB 61; *R. v. Belhumeur*, 2007 SKPC 114; *R. v. Goodon*, 2008 MBPC 59; *R. v. Laurin*, 2007 ONCJ 265; *R. v. Kelley*, 2007 ABQB 41). He regularly represents Métis from Ontario westward in litigation, governance and consultation-related issues.

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