

# THE OSGOODE CERTIFICATE IN FUNDAMENTALS OF INDIGENOUS PEOPLES AND CANADIAN LAW

March 3, 10, 24, 31 & April 7, 2020  
5 Non-consecutive Days over 6 Weeks  
In Person, Webcast or On Demand

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

Join our expert faculty from across Canada – representing government, Indigenous and industry perspectives – as they deliver the crucial knowledge and strategies you need. Topics include:

- The most significant cases 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
- History and development of modern day treaties: current policies, opportunities and challenges
- Duty to Consult & Accommodate – hear from Crown, Proponent and Indigenous perspectives

## Program Directors

Sandra A. Gogal  
Miller Thomson LLP, Toronto

Renée Pelletier  
Olthuis, Kleer, Townshend LLP

## Location

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

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[osgoodepd.ca/Indigenous-Peoples](http://osgoodepd.ca/Indigenous-Peoples)



# The Osgoode Certificate in Fundamentals of Indigenous Peoples and Canadian Law

*Take advantage of this unique opportunity to tap into the deep reservoir of practical, relevant knowledge and extensive experience of both faculty and your peers.*

**The *Osgoode* Certificate in Fundamentals of Indigenous Peoples and Canadian Law** was specifically 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.

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

A truly outstanding faculty of practicing lawyers, industry and government representatives, and academics 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 Indigenous rights and title, the constitutional and legislative framework, reserve lands and developments on reserve, treaty interpretation, modern treaties and consultation and accommodation.



## Topics Include:

- 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
- The duty to consult and accommodate – its origins, recent case law developments and current trends
- 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

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## Who Should Attend?

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



Drawing on the expertise and experience of leading lawyers, government and industry representatives, and academics, including:

## Program Directors



**Sandra A. Gogal**  
Miller Thomson LLP, Toronto



**Renée Pelletier**  
Olthuis, Kleer, Townshend LLP

## Advisory Board

**Keith B. Bergner**  
Lawson Lundell LLP, Vancouver

**Christopher Devlin**  
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**Katherine Hensel**  
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**Peter W. Hutchins**  
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**Robert Janes**  
JFK Law Corporation, Victoria

**Peter R. Lemmond**  
Counsel, Ministry of the Attorney General,  
Crown Law Office – Civil

**Naiomi W. Metallic**  
Burchells LLP, Halifax

## Program Faculty Includes

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

**Sonia L. Eggerman**  
Formerly Crown Counsel, Constitutional  
Law Branch, Saskatchewan Justice, Regina,  
currently MLT Aikins, Regina

**Douglas R. Eyford, Q.C.**  
Eyford Partners LLP

**Manizeh Fancy**  
Senior Counsel, Crown Law Office – Civil,  
Ministry of the Attorney General

**Nuri G. Frame**  
Pape Salter Teillet LLP, Toronto

**John Gailus**  
Devlin Gailus Watson, Victoria

**Brian J. Hebert**  
McKiggan Hebert Lawyers, Halifax

**Derek Hoffman**  
Miller Thomson LLP, Saskatchewan

**Larry Innes**  
Olthuis, Kleer, Townshend LLP, Yellowknife

**Thomas Isaac**  
Cassels Brock & Blackwell LLP, Vancouver

**Robert Janes**  
JFK Law Corporation, Victoria

**Nancy J. Kleer**  
Olthuis, Kleer, Townshend LLP, Toronto

**Patricia Lawrence**  
Senior Counsel, Westaway Law Group, Ottawa

**Jason T. Madden**  
Pape Salter Teillet LLP

**Sara Mainville**  
Olthuis, Kleer, Townshend LLP, Toronto

**Julie Mugford**  
Senior Director, Modern Treaty  
Implementation Office, Crown-Indigenous  
Relations and Northern Affairs Canada

**Dr. Dwight Newman, Q.C., D.Phil.**  
Professor, Canada Research Chair in  
Indigenous Rights in Constitutional and  
International Law, College of Law at the  
University of Saskatchewan

**Kaitlin Ritchie**  
Olthuis, Kleer, Townshend LLP, Toronto

**Mary Jean Rolando**  
Counsel, Crown-Indigenous Relations and  
Northern Affairs & Indigenous Services,  
Legal Services, Department of Justice Canada

**David Schulze**  
Dionne Schulze, Montreal

**Paul Seaman**  
Gowling WLG (Canada), Vancouver

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

**Jean Teillet**  
Pape Salter Teillet LLP, Vancouver

**John Topping**  
Director, Strategic Policy Development  
Directorate, Policy Development and  
Coordination Branch, Treaties and Aboriginal  
Government Relations, Crown-Indigenous  
Relations and Northern Affairs Canada

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

# Agenda

\* Registration begins at 8:30 a.m.

## DAY 1

March 3, 2020  
9:00 a.m. – 4:30 p.m.  
The Foundations

### Overview of the Historic Narrative

- The pre-existence of Indigenous Peoples and the assertion of sovereignty
- Canada's creation, expansion and settlement
- 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

### 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*

## Faculty

**Manizeh Fancy**, Senior Counsel, Crown Law Office – Civil, Ministry of the Attorney General

**Sara Mainville**, Olthuis, Kleer, Townshend LLP, Toronto

**Jean Teillet**, Pape Salter Teillet LLP, Vancouver

## DAY 2

March 10, 2020  
9:00 a.m. – 4:30 p.m.  
The Historic Treaties, 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
- Issues surrounding the negotiation of self-government and other agreements with Bands under the *Indian Act*

### An Overview of the Most Significant Cases and Key Legal Concepts from the Last 40 Years

- The key cases you need to know about and their practical implications

## Faculty

**Thomas Isaac**, Cassels Brock & Blackwell LLP, Vancouver

**Nancy J. Kleer**, Olthuis, Kleer, Townshend LLP, Toronto

**Paul Seaman**, Gowling WLG (Canada), Vancouver

**David Schulze**, Dionne Schulze, Montreal

**Mary Jean Rolando**, Counsel, Crown-Indigenous Relations and Northern Affairs & Indigenous Services, Legal Services, Department of Justice Canada

## DAY 3

March 24, 2020  
9:00 a.m. – 4:30 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
- What are the trends and emerging s.35 issues for Practitioners and Policy-Makers

### *First Nation Land Management Act* and the First Nations Finance Authority

- Overview of the *First Nation Land Management Act* and related land code (including templates and best practices)
- The role and function of the FNFA, including how it finances and deals with security issues
- Finance Agreements: examples of what they should include, how they operate

## Faculty

**John Gailus**, Devlin Gailus Watson, Victoria

**Derek Hoffman**, Miller Thomson LLP, Saskatchewan

**Robert Janes**, JFK Law Corporation, Victoria

**Patricia Lawrence**, Senior Counsel, Westaway Law Group, Ottawa

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

## DAY 4

March 31 2020  
9:00 a.m. – 4:30 p.m.  
The Modern Day Treaties

### Evolution of the Treaty Making Process

### 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
- Ongoing and emerging issues in modern treaty implementation

### Luncheon Keynote Speaker

*Reconciliation with the Métis: Recent Developments and the Road Ahead*

**Jason T. Madden**, Pape Salter Teillet LLP, Toronto

## Faculty

**Douglas R. Eyford, Q.C.**, Eyford Partners LLP

**Nuri G. Frame**, Pape Salter Teillet LLP, Toronto

**Larry Innes**, Olthuis, Kleer, Townshend LLP, Yellowknife

**Julie Mugford**, Senior Director, Modern Treaty Implementation Office, Crown-Indigenous Relations and Northern Affairs Canada

**John Topping**, Director, Strategic Policy Development Directorate, Policy Development and Coordination Branch, Treaties and Aboriginal Government Relations, Crown-Indigenous Relations and Northern Affairs Canada

## DAY 5

April 7 2020  
9:00 a.m. – 4:30 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

### Introduction to Consultation: Who, What and Why?

### 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

### Understanding the United Nations Declaration on the Rights of Indigenous People

### The Crown, Proponent and Indigenous Perspectives on the Duty to Consult and Accommodate

- The key Challenges, Solutions and Strategies for dealing with them

## Faculty

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

**Sonia L. Eggerman**, Formerly Crown Counsel, Constitutional Law Branch, Saskatchewan Justice, Regina, currently MLT Aikins, Regina

**Brian J. Hebert**, McKiggan Hebert Lawyers, Halifax

**Sara Mainville**, Olthuis, Kleer, Townshend LLP

**Dr. Dwight Newman, Q.C. D.Phil.**, Professor, Canada Research Chair in Indigenous Rights in Constitutional and International Law, College of Law at the University of Saskatchewan

**Kaitlin Ritchie**, Olthuis, Kleer, Townshend LLP, Toronto

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

*Acquire the key knowledge and strategies you need in an engaging and interactive learning environment. There will be ample opportunity for discussion, questions and lively debate.*

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# Registration Details

## Fee per Delegate

**\$3,595 plus HST**

**Newly Licensed (2017 – 2020): \$1,847.50 plus HST**

**Government Rate: \$3,195 plus HST**

Fees include attendance, program materials, lunch and break refreshments.

Visit [www.osgoodepd.ca/financial-assistance](http://www.osgoodepd.ca/financial-assistance) for details 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:

Alison Hurst, Program Lawyer: [ahurst@osgoode.yorku.ca](mailto:ahurst@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. To receive a certificate, participants **must attend all five program days** (either in person, via webcast or on demand) and **receive a passing grade on the post-program multiple choice assessment**.

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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