

CONSULTATION 2021: *Critical and Emerging Issues*

Consultation is complex and changing constantly. Do you have what you need to engage effectively?

As the consultation landscape evolves, so do the challenges and the strategies for navigating them. Join our expert faculty, including government, community and industry representatives as they drill down on such key issues as:

- Who should be at the table? Identifying the decision makers and other key parties
- Cumulative Effects: what are they and how do they impact consultation?
- Studies: when are they appropriate? Required? Who should fund it?
- Consultation Agreements – Tips, Traps and Pitfalls

Register today at:

osgoodepd.ca/consultation

Program Chairs

Robert H. Brent
Senior Counsel,
Ministry of the Attorney General,
Ministry of Energy,
Northern Development and Mines

Sandra Gogal
Miller Thomson LLP

Date and Time

Wednesday, February 3, 2021
9:00 a.m. – 4:30 p.m. EST

Online Replay: March 3, 2021

Location

ONLINE – Live & Interactive

*You will have online access
to the program for 120 days.*

Consultation 2021: *Critical and Emerging Issues*

Who, what and when? These questions are central to the consultation process and the answers can determine success or failure.

Knowing who the key decision makers are and ensuring that they are at the negotiating table is paramount. Understanding if and why a study may be required and how it may impact the consultation process is critical. Having a grasp of the current state of the law, and how the Courts are dealing with rights and consultation issues is also key. Over one intensive day, acquire the most current information and practical strategies you need to manage these and other complex issues.

Topics Include

- Critical case law update: the key cases from the past year and what they mean for you
- Role and responsibilities of Tribunals and Municipalities in consultation: has *Vavilov* changed consultation?
- The intersection of Indigenous Law and Canada's legal and constitutional framework (and why you need to understand this)
- UNDRIP Update: where do we go from here?
- Unravelling the distinction between hereditary and *Indian Act* leadership
- Cumulative effects and how they impact treaty rights
- Drafting and negotiating Impact and Benefit Agreements/Resource Development Agreements

Plus! For those looking to obtain a solid grounding in the basics, don't miss our full day **Intensive Primer: Fundamentals of Consultation and Accommodation** (recorded on **November 8, 2018**, available on demand). Learn from Canada's top experts and obtain a thorough grounding in this complex and evolving area.

Who Should Attend

- In-House Counsel, particularly those working in the energy, resource and infrastructure development sectors
- Government policy advisors, lawyers and officials
- 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

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Agenda

9:00 a.m.

Welcome from the Chairs

Robert H. Brent

Senior Counsel, Ministry of the Attorney General, Ministry of Energy, Northern Development and Mines

Sandra Gogal

Miller Thomson LLP

9:05 a.m.

Critical Case Law Update

Jeremy Barretto

Cassels Brock & Blackwell LLP (Calgary)

Grace Wu

Cassels Brock and Blackwell LLP (Grace Wu)

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

9:50 a.m.

Reconciling Indigenous and Canadian Law

Karen Drake

Associate Dean (Students) & Associate Professor, Osgoode Hall Law School

Understanding the duty to consult and accommodate from the perspective of Anishinaabe law and constitutionalism.

10:35 a.m.

Health Break

10:50 a.m.

Who Should Be at the Table?

Julia Brown

Olthuis Kleer Townshend LLP

Joe Heil

Senior Engagement Advisor, Nuclear Waste Management Organization

Michelle Wood

Counsel, Ministry of Natural Resources and Forestry, Ontario

Determining who should be involved in the negotiations and knowing who the key decision makers are is challenging – and critical to the success of any consultation. Our expert panel will provide you with the industry, community and government perspectives on this complex issue as they drill down on some of the key issues, including:

- Identifying WHO is the rights holder and WHO speaks for the community (and WHY this is so important)
- Strategies for unravelling the overlapping leadership roles
- Understanding the history and implications of the distinction between hereditary and *Indian Act* leadership
- Indigenous/First Nation perspectives on leadership, including how to interpret historical evidence and governance

11:30 a.m.

UNDRIP Update: Where Do We Go from Here?

Robert Janes, Q.C.

JFK Law Corporation

- Implementation of UNDRIP and Free Prior Informed Consent (FPIC)
- Lessons learned from what's happening in B.C
- How do FPIC and UNDRIP interact with consultation. Are they really that different?

12:00 p.m.

Mid-Day Break

1:00 p.m.

Role of Studies in Consultation Process

Julie Abouchar

Willms & Shier

Susan Morgan

Counsel, Ministry of the Attorney General – Ministry of Environment, Conservation and Parks

The use of studies has become increasingly more common in the consultation regime, adding a complex new dimension. In this session, our expert panel will tackle some of the thornier issues, including:

- When and where are studies appropriate? When are they required?

- Understanding the implications of studies and how they relate to the consultation process
- Who is responsible? To what extent are communities obligated to understand their own knowledge and views of their rights and when does or should the Crown have an obligation to fund this understanding?
- What evidence is needed to understand nature of impacts and to ensure meaningful consultation?

2:00 p.m.

Cumulative Effects

Robert H. Brent

Senior Counsel, Ministry of the Attorney General, Ministry of Energy, Northern Development and Mines

Jessica Orkin

Gold Blatt Partners LLP

- What is the current state of the law and where is it headed?
- How are cumulative effects relevant to the scope of consultation?
- Understanding the relationship between cumulative effects and treaty rights
- The impact of cumulative effects on the consultation process

2:45 p.m.

Health Break

3:00 p.m.

Role and Responsibilities of Tribunals and Municipalities in Consultation

Sandra Gogal

Miller Thomson LLP

Sarah Valair

Counsel, Crown Law Office Civil at Ontario Ministry of the Attorney General

Has the SCC expanded the role and responsibilities of Tribunals? Has government delegated consultation to Municipalities? If so, what does this mean for you?

- What is the effect of SCC decision in the *Vavilov* trilogy upon consultation and the standard of review?
- Update on the state of the law post-*Vavilov*

- Understanding who is the final decision-maker

3:40 p.m.

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

Renée Pelletier & Kay Turner

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, ongoing consultation requirements, changes to project scope and modifications
- Is the agreement evidence of adequate consultation?
- Does the ESTMA apply?
- The relationship between financial payments by proponents and government resource revenue sharing

“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

Chairs

Robert H. Brent
Senior Counsel, Ministry of the Attorney General, Ministry of Energy, Northern Development and Mines

Sandra Gogal
Miller Thomson LLP

Faculty Includes

Julie Abouchar, Willms & Shier

Jessica Orkin, Gold Blatt Partners LLP

Jeremy Barretto, Cassels Brock & Blackwell LLP (Calgary)

Renée Pelletier, Olthuis Kleer Townshend LLP

Julia Brown, Olthuis Kleer Townshend LLP

Kay Turner, Olthuis Kleer Townshend LLP

Karen Drake, Associate Dean (Students) & Associate Professor, Osgoode Hall Law School

Sarah Valair, Counsel, Crown Law Office Civil at Ontario Ministry of the Attorney General

Joe Heil, Senior Engagement Advisor, Nuclear Waste Management Organization

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

Robert Janes, Q.C., JFK Law Corporation

Grace Wu, Cassels Brock and Blackwell LLP (Vancouver)

Susan Morgan, Counsel, Ministry of the Attorney General – Ministry of Environment, Conservation and Parks

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: \$595 + HST

Newly Licensed (2017 – Present): \$297.50 + HST

Primer + Course Bundle: \$795 + HST

Fees include attendance, electronic materials and technical support. 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.



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