

February 18-19, 2009 | Metropolitan Hotel, Toronto

The Canadian Institute's 3rd Annual

Aboriginal Law, Consultation & Accommodation

Creating Meaningful Consultation to Minimize
Unnecessary Costs and Stakeholder Disputes

Keynote Speaker:



National Chief Phil Fontaine

Assembly of First Nations

"The New Specific
Claims Tribunal"

Fully Updated for 2009!

Get critical legal updates on consultation, accommodation and other hot button issues to help you:

- **GAIN** practical consultation strategies: What works? What doesn't?
- **CLARIFY** the meaning of the duty to consult and accommodate
- **OBTAIN** injunctions: How have *Platinex and Frontenac* changed the rules?
- **RESOLVE** escalating disputes before they reach the crisis stage
- **GET UP-TO-DATE** on the Specific Claims Tribunal, Major Projects Management Office, & Ontario *Mining Act*
- **FIND OUT** how controversy over a municipality's duty to consult is affecting developers

PLUS! Sharpen your skills with our interactive workshops:

- A Mastering the Fundamentals of Aboriginal Law
- B Creating a Model Impact Benefit Agreement



See inside for details

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Do You Have the Right Negotiation Strategy to Maximize Your Opportunities?



With critical decisions and developments emerging at breakneck speed across Canada, staying up-to-date on Aboriginal law changes is a **vital business need** for industry, government and Aboriginal communities. The costs of **inadequate consultation** — unending delays, litigation and negotiation breakdowns — can be **overwhelming!**

At **The Canadian Institute's 3rd Annual "Aboriginal Law, Consultation & Accommodation"** conference, our outstanding and diverse **speaker faculty** will examine key issues affecting **your projects, regulatory approvals and litigation**. Hot topics will include:

- **Case studies** on Aboriginal consultation: **What works? What doesn't?**
- Analyzing the practical and financial impact of **key case law developments**
- **Obtaining injunctions**: How have the rules changed?
- How do you **resolve disputes** when consultation goes awry?
- Getting up to speed on **federal and provincial initiatives**: The Specific Claims Tribunal & more
- Evaluating a **municipality's duty to consult** and its effect on developers

As a special added value, take advantage of two essential workshops: **"Mastering the Fundamentals of Aboriginal Law"** and **"Creating a Model Impact Benefit Agreement"**.

This is your best opportunity to **network and hear wide-ranging perspectives!** **Register today** by calling **The Canadian Institute** toll-free at **1-877-927-7936**, by faxing your registration to **1-877-927-1563** or by registering online at www.CanadianInstitute.com/AboriginalLaw.

We look forward to seeing you at the conference in February!

DISTINGUISHED FACULTY

Co-Chairs

Derek Ground
Barrister & Solicitor

Cyndy Vanier
Senior Mediator, Dispute Resolution Services LP

John Beaucage
Grand Council Chief
Union of Ontario Indians

Philip Bousquet
Director, Regulatory Affairs
Prospectors and Developers
Association of Canada

Ralph Brant
Director General, Indian
and Northern Affairs Canada
– Specific Claims Branch

Zach Jones
Senior Consultant
Control Risks

Rosanne M. Kyle
Partner, Miller Thomson LLP

Stephen Lindley
Vice President, Aboriginal
& Northern Affairs
SNC Lavalin Inc.

John Rowinski
Barrister and Solicitor
Law Office of John Rowinski

Neal J. Smitheman
Partner, Fasken Martineau
DuMoulin LLP

Nada Vransy
Director General, Major
Projects Management Office

Speakers

Juli Abouchar
Partner, Willms & Shier
Environmental Lawyers LLP

R. Martin Bayer
Partner, Weaver, Simmons LLP

Jeff Cowan
Partner, WeirFoulds LLP

Carmen Diges
Partner, McMillan LLP

Sandra Gogal
Partner, Miller Thomson LLP

Jason Madden
JTM Law

Candice S. Metallic
Legal Counsel
Assembly of First Nations

Chris Reid
Barrister and Solicitor

Grant Wedge
Legal Director
Ontario Ministry
of Aboriginal Affairs

Keynote Speaker

National Chief Phil Fontaine
Assembly of First Nations

8:00 Registration Opens – Coffee Served ☞

8:45 Opening Remarks from the Co-Chairs

Derek Ground

Barrister & Solicitor

Cyndy Vanier

Senior Mediator

Dispute Resolution Services LP

9:00 Learning Lessons from Recent Consultation and Accommodation Cases: How Can Aboriginal, Government and Industry Stakeholders Avoid Liability?

Sandra Gogal

Partner

Miller Thomson LLP

Rosanne M. Kyle

Partner

Miller Thomson LLP

- What key messages are the courts sending to Aboriginal groups and to industry?
- How does recent case law clarify the duty to consult?
 - *Wii'litswx v. British Columbia (Minister of Forests)*
 - *Abousabt First Nation v. Canada*
 - *Little Salmon/Carmacks First Nation v. The Gov't of Yukon*
 - *Ka'a'Gee Tu First Nation et al. v. The AG of Canada and Paramount Resources Ltd.*
- Getting up-to-date on other key consultation and accommodation litigation including:
 - *Tsilhqot'in Nation v. BC*
 - *Musqueam First Nation cases*
 - *Mantioba Metis Federation et al v. AG Canada et al and R. Labrador Métis Federation Las'Kwalaams*
- Analyzing the effect of significant cases on mining, forestry and energy sectors including:
 - *Dene Tha' First Nation v. Canada (Minister of Environment)*
 - *Chipewyan Prairie First Nation v. Lieutenant Governor in Council of Alberta*

10:00 Networking Refreshment Break

10:15 Deconstructing *Frontenac* and *Platinex*: Understanding the New Rules for Negotiations, Consultation and Obtaining Injunctions

Chris Reid

Barrister and Solicitor

Neal J. Smitheman

Partner

Fasken Martineau DuMoulin LLP

The Ontario Court of Appeal recently released two noteworthy decisions commenting on the duty of private parties to negotiate in the face of Aboriginal protests. Find out what is required now to obtain an injunction and when protesters may be held in contempt of court orders.

- Learning lessons from the decisions in *Platinex* and *Frontenac*
 - what should private parties do before seeking an injunction to prevent protests?
 - when will a court issue an injunction to private parties to protect their interest?
- What is the remedy when private parties cannot obtain an injunction?
- Are these types of injunctions effective? Overcoming challenges in enforcing injunctions
- Analyzing the duty of private parties to negotiate when Aboriginal groups refuse to consult
- The “next best steps” for proponents to take: When consultation reaches an impasse
- Reconciling the claims of Aboriginal communities with the rights of the Crown
- When might protesters face contempt charges? Post-*Frontenac* and *Platinex*
- Case study: Best practices in consultation going forward

Q&A

11:15 What Happens When Consultation Goes Awry? New and Practical Strategies for Easing Tensions and Resolving Escalating Disputes

Zach Jones

Senior Consultant

Control Risks

Cyndy Vanier

Senior Mediator

Dispute Resolution Services LP

- Resolving disputes at the crisis stage: Essential legal tactics
- What types of court orders can you obtain?
- Enforcing court orders: Legal and practical strategies
- North Shore Community Issues: How did the conflict erupt? How was it contained?
- Assembling a crisis response team
 - who needs to be involved?
 - what is the role of each person?
- Using effective communication strategies to minimize conflict
 - understanding Aboriginal cultures and the impact on the mediation
 - adapting mediation strategies to reflect Aboriginal values

- Managing the media: Keeping the conflict from escalating
- Learning lessons from recent disputes: Key mistakes to avoid in mediation

Q&A

12:15 Networking Luncheon



1:30 Keynote Presentation:

National Chief Phil Fontaine

Assembly of First Nations

The New Specific Claims Tribunal: Transforming Aboriginal Economies from Dependence to Self-Reliance

2:15 How Will the Latest Federal Initiatives Change the Face of Consultation? The New Specific Claims Tribunal, Major Projects Office Management and More

Ralph Brant

Director General

Indian and Northern Affairs Canada – Specific Claims Branch

Candice S. Metallic

Legal Counsel

Assembly of First Nations

Nada Vranj

Director General

Major Projects Management Office

The New Specific Claims Action Plan: Will It Really Be More Effective?

- Understanding Bill C-30 and how it works in practice
- Maximizing the value of the process: Determining whether to file a claim before the Tribunal
 - when can a First Nation file a claim with the Tribunal?
 - understanding the mandate of the Tribunal: what types of claims will it hear?
 - who will sit on the Tribunal? how will members be selected?
 - what relief and compensation can the Tribunal award?
- Expediting the validation and negotiation processes
- Modifying the content of your claims submissions: What will the new legislation require?
- What is happening to inquiries already in progress by the Commission?
- What will be the Assembly of First Nations' role in the Tribunal?
- How will costs be handled by the Specific Claims Tribunal?
- Evaluating Aboriginal and industry concerns over the new Tribunal

What Do the New Interim Guidelines for Federal Officials Mean to Aboriginal Communities and Other Stakeholders?

- Clarifying roles and responsibilities
- Conducting consultations: The new checklist
- Key information for managers and practitioners

Facilitating Consultation: The New Major Projects Management Office

- What is the MPMO's mandate and role with respect to Aboriginal consultation?
- How does the MPMO define a major project?
- Must proponents of major resource projects engage the MPMO for their projects?
- How will MPMO interact with INAC and other agencies?
- How will the consultation process change for all stakeholders?

Q&A

3:30 Networking Refreshment Break

3:45 Getting Up-to-Date on New Provincial Issues Impacting Consultation: Critical Developments in Ontario's *Mining Act* and Other Major Initiatives

Juli Abouchar

Partner

Willms & Shier Environmental Lawyers LLP

R. Martin Bayer

Partner

Weaver, Simmons LLP

Philip Bousquet

Director, Regulatory Affairs

Prospectors and Developers Association of Canada

- What changes to Ontario's *Mining Act* are being considered?
 - outlining the requirements of the new *Mining Act*
 - assessing the impact of the new legislation impact on consultation and accommodation
 - what does "modernization" of the *Mining Act* mean for industry?
 - understanding the concerns of industry and the apprehensions of First Nations
- Critical updates on provincial initiatives: How are new guidelines affecting consultation?
 - Oil Sands Consultations under Alberta's First Nations Consultation Guidelines on Land Management and Resource Development
 - Saskatchewan's review of the duty to consult
 - Ontario's draft guidelines
 - The "New Relationship" in BC

Q&A

5:00 Concluding Remarks from the Co-Chairs: Conference Adjourns

8:30 Coffee Served ☞

9:00 Opening Remarks from the Co-Chairs

Derek Ground

Barrister & Solicitor

Cyndy Vanier

Senior Mediator

Dispute Resolution Services LP

9:15 Legal and Practical Strategies for Aboriginal Consultation for Industry Case Studies: What Works? What Doesn't?

Stephen Lindley

Vice President, Aboriginal & Northern Affairs
SNC Lavalin Inc.

- When is industry responsible for consultation?
 - what is the Crown's duty to consult?
 - how much of the Crown's duty to consult can be delegated to industry?
 - managing expectations regards Crown processes and response times when conducting a consultation
 - ensuring your project is not delayed or cancelled: best practices for beginning consultation
 - managing the intersection of environmental and Aboriginal law: securing project approvals
- Case studies of consultations with Aboriginal communities: What has worked/failed?
- Should you go to Aboriginal communities or regulators first?
- What steps should prudent developers take to establish efficient consultation?
- Making certain adequate consultation is taking place: Key requirements
- What do Aboriginal groups expect in terms of consultation?
- How can you integrate "traditional knowledge" (TK) into the EIA?
 - outlining terms of reference
 - data sharing agreements
 - reconciling TK with industry and government objectives
- What documentation do you need to compile and maintain? To whom should you provide it?
- Minimizing suggestions of failure to consult: Understanding the challenges faced by Aboriginal communities
- Avoiding excessive costs, delays and liability
 - checklist for developing an effective risk management strategy
 - tips for negotiating IBAs

Q&A

10:15 Networking Refreshment Break

10:30 Land Development and Aboriginal Consultation: What Is a Municipality's Duty to Consult? How Are Land Developers Impacted?

John Beaucauge

Grand Council Chief

Union of Ontario Indians

Jeff Cowan

Partner

WeirFoulds LLP

Grant Wedge

Legal Director

Ontario Ministry of Aboriginal Affairs

Demystifying Aboriginal Title, Land Claims and Treaty Rights

- Analyzing recent litigation over breach of treaty rights and fiduciary duty in Alberta, Manitoba and Ontario
- What are the differing positions of courts and First Nations on land claims? Why is there uncertainty?
- What is the status of current treaties in Ontario including the Robinson Huron Treaty?
- Contrasting the federal and provincial roles and responsibilities for land claims
- What are the different kinds of land claims?
- How do provinces determine whether or not to negotiate Aboriginal land claims?
- Analyzing key issues for developers and proponents:
 - how do you find out if lands are subject to a land claim
 - reconciling overlapping claims and multiple interests
 - developing consultation strategies for shared territories

The Municipality's Duty to Consult and the Impact on Land Developers

- How is the confusion over the municipalities' duty to consult affecting land development?
 - what do land developers need to know?
 - case studies: experiences of municipalities and developers
- What Aboriginal claims are arising in the land planning and development process?
 - archaeological and burial site issues
 - off-site impacts of projects on asserted or established rights
 - impact of growth on future settlement of land claims and hunting and fishing practices
 - claims related to private lands
- Assessing the extent to which the Crown has delegated its duty to consult to municipalities
- What do the federal and provincial governments expect of municipalities?
- What should the municipalities' role be in the consultation process?

- How can municipalities work with provincial and federal governments?
- Learning lessons from successful municipal consultations: Engaging Aboriginal communities

Q&A

12:00 Networking Luncheon 

1:15 **How Do You Determine Who to Consult With? Understanding Aboriginal Self-Government, Membership and Elections, and Consultation with Métis Communities**

Derek Ground

Barrister & Solicitor

Jason Madden

JTM Law

- Understanding key legal issues in First Nations self-government
 - what is the inherent right of self government?
 - what are the fiduciary obligations of the Crown?
 - what are the continuing federal obligations?
- What you need to know about membership and elections
 - how are status and membership established?
 - what rights of status Indians and Band members are under debate?
 - getting up-to-speed on recent case law
- What is the difference between elected and hereditary/traditional chiefs? How do you determine which you should be dealing with? How should you deal with each?
- Understanding consultation with Métis communities
 - what is a Métis community?
 - what rights do Métis communities hold?
 - why consult with Métis communities?
 - who do you consult with?
 - where are there rights-bearing Métis communities?
 - how should consultations with Métis take place?
- Some best practices in consultation and accommodation with Métis

Q&A

2:15 Networking Refreshment Break

2:30 **Balancing Industry and Aboriginal Interests in Accommodation: Who Bears the Cost?**

Carmen Diges

Partner

McMillan LLP

- Examining recent case law defining accommodation

- when is it necessary?
- what degree of accommodation is required?
- To whom is the duty to consultation owed?
- Who makes the final determination of whether to accommodate?
- Clarifying industry's role in the accommodation process
- Addressing Aboriginal concerns: Avoiding irreparable harm and minimizing infringement
- Why should industry accommodate even when it does not make economic sense?
- Designing and implementing accommodation
 - using effective techniques to achieve adequate and acceptable accommodation
 - concrete examples of successful initiatives

Q&A

3:30 **Damages and Costs: How Do You Measure Them? How Do You Get (or Avoid) Them?**

John Rowinski

Barrister and Solicitor

Law Office of John Rowinski

Damages

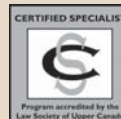
- How do you quantify the impact in Aboriginal claims?
- What are the formulae for breach of fiduciary duty, specific performance and other damages?
- Measuring damages for lost opportunity: *Whitefish Lake Band of Indians v. Canada*

Costs

- Obtaining advance cost orders against the Crown: When will they be awarded?
- What are the policy arguments for and against these awards?
- Assessing the propriety of these awards: Will they continue to be made?
- When is the Crown entitled to its costs? When is the Crown required to pay costs?
- Learning lessons from recent cases

Q&A

4:30 Concluding Remarks from the Co-Chairs – Conference Ends



This program has been accredited by the Law Society of Upper Canada towards the professional development requirement for certification.

	Main Conference	Workshop A	Workshop B
Civil Litigation	12 hours	3 hours	3 hours
Environmental Law	12 hours	3 hours	3 hours

A WORKSHOP February 17, 2009 2:00 p.m. – 5:00 p.m.

Mastering the Fundamentals of Aboriginal Law: Essential Concepts for Negotiation, Consultation and Litigation

John Rowinski

Barrister and Solicitor
Law Office of John Rowinski

This workshop will provide delegates with a comprehensive session on key Aboriginal law concepts and practices. Get your "jump start" in mastering complex issues through an in-depth discussion of "need to know" legal principles and case law. Ensure that you are up to speed on critical Aboriginal law factors that can impact project risk management, consultation, regulatory proceedings and litigation. By the end of this session, you will be well positioned to get the most out of the following two days of the conference.

- Getting up to speed on historical and ongoing developments in Aboriginal law
 - key statutes, constitutional provisions and case law
 - determining jurisdiction: which level of government is involved?
 - understanding the role of the *Indian Act*
- Demystifying "Fiduciary Duty" and the "Honour of the Crown"
- Clarifying the concepts of Aboriginal rights and title
 - what are Aboriginal water, fishing and hunting rights
 - what is the difference between Aboriginal rights and Aboriginal title?
 - what are historical and modern treaties?
- What is the "duty to consult"?
- Aboriginal rights and regulatory proceedings
- Judicial review of government decisions impacting Aboriginal rights
- Clarifying the distinctions between specific and comprehensive claims
- Litigating Aboriginal law cases
 - choosing your jurisdiction
 - strategic considerations: pre-trial motions and procedures
 - practical considerations regarding evidence in Aboriginal proceedings
- Deconstructing the concept and role of Aboriginal self-government

B WORKSHOP February 20, 2009 9:00 a.m. – 12:00 p.m.

Creating a Model Impact Benefit Agreement

Carmen Diges

Partner
McMillan LLP

In this innovative, interactive and unique workshop, participants will share sample IBAs (on an anonymous basis) with the goal of creating a "Model Impact Benefit Agreement". Our experienced practitioners will facilitate and guide you in the process.

- Getting an overview of the nature and content of IBAs
- Reviewing the legal framework for IBA requirements
- What are the potential types of impact and benefit arrangements?
- What are the requirements for benefits under settled land claims?
- Analyzing successful and failing IBAs and reasons for the outcomes
- Assessing specific IBA clauses
 - what has worked in practice?
 - what has not worked and why?
- Examples of enlightened IBAs
- Creating the template

WHO SHOULD ATTEND?

- Executives and in-house counsel from mining companies, oil & gas companies, pipeline companies, forestry companies and hydro-electric companies/developers
- CEOs, VPs, Directors and Managers of Aboriginal/ Stakeholder Relations
- VPs, Managers and Directors of Environmental Management, Planning and Projects
- Private practice lawyers specializing in Aboriginal law, natural resources law, energy law, environmental law, constitutional law, corporate law and litigation
- Government Lawyers, Managers, Policy Analysts, Researchers, Advisors and Regulators of Aboriginal and/or Environmental Policies
- Negotiators and Mediators
- Band Council Members, Officials and Elders
- Chiefs and Councillors
- Business Developers, Land Developers and Entrepreneurs
- Archaeologists and Geologists
- Academics and Professors specializing in Aboriginal, Environmental and Constitutional Law



Willms & Shier Environmental Lawyers LLP is Canada's foremost specialty firm practicing environment, energy, resources and Aboriginal law. Five of our 13 lawyers are Environmental Law Specialists certified by the Law Society of Upper Canada. W+SEL lawyers advise companies and First Nations on environmental issues, consultation, water rights and impact benefit agreements. We provide corporate due diligence and compliance advice and defence of prosecution. We represent clients in courts and tribunals on environmental assessment approvals, regulatory challenges and contaminated land litigation.

Sponsorship & Exhibition Opportunities

Maximize your organization's visibility in front of key decision-makers in your target market. For more information, contact Director Business Development **Dan Gellman** at 416-927-0718 ext. 389, toll-free 1-877-927-0718 ext. 389 or by email at d.gellman@CanadianInstitute.com

Register at 1-877-927-7936 or in Toronto 416-927-7936 or www.CanadianInstitute.com/AboriginalLaw

The Canadian Institute's 3rd Annual

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Creating Meaningful Consultation to Minimize Unnecessary Costs and Stakeholder Disputes

Top Reasons to Attend

- ✓ **STAY UP-TO-DATE** on key changes in Aboriginal law
- ✓ **DISCOVER** how to satisfy the "duty to consult"
- ✓ **GAIN** best practices to facilitate project approvals
- ✓ **HEAR** from *National Chief Fontaine* on the new *Specific Claims Tribunal*

REGISTRATION FORM

To expedite your registration, please mention your Priority Service Code

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1329 Bay Street
Toronto, Ontario M5R 2C4
- Online:** www.CanadianInstitute.com/AboriginalLaw

ADMINISTRATIVE DETAILS

VENUE: The Metropolitan Hotel
ADDRESS: 108 Chestnut Street, Toronto ON
TEL.: 416-977-5000

Hotel Reservations

For information on hotel room availability and reservations, please contact the Metropolitan Hotel at 1-800-668-6600.

Program Materials

Conference participants will receive a comprehensive set of conference materials prepared by the speakers, as an excellent reference source after the conference. If you have paid and are unable to attend, the conference materials will be shipped to you upon request only. Request must be received within 30 days upon conclusion of the conference.

Payment Policy

Payment must be received in full by the conference date. All discounts will be applied to the Conference Only fee (excluding add-ons), cannot be combined with any other offer, and must be paid in full at time of order. Group discounts available to individuals employed by the same organization.

Cancellation and Refund Policy

You must notify us by email at least 48 hrs in advance if you wish to send a substitute participant. Delegates may not "share" a pass between multiple attendees without prior authorization. If you are unable to find a substitute, please notify **The Canadian Institute** in writing no later than 10 days prior to the conference date and a credit voucher will be issued to you for the full amount paid. Credit Vouchers are valid for 1 year and are redeemable against any other **Canadian Institute** conference. If you prefer, you may request a refund of fees paid less a 25% service charge. No credits or refunds will be given for cancellations received after 10 days prior to the conference date. **The Canadian Institute** reserves the right to cancel any conference it deems necessary and will, in such event, make a full refund of any registration fee, but will not be responsible for airfare, hotel or other costs incurred by registrants. No liability is assumed by The Canadian Institute for changes in program date, content, speakers or venue.

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STEP 1

CONFERENCE CODE: 261L09-TOR

YES! Please register the following delegate for Aboriginal Law, Consultation & Accommodation

For group discounts please call 1-877-927-7936

FEE PER DELEGATE	Register & Pay by January 21, 2009	Register & Pay after January 21, 2009
<input type="checkbox"/> Conference Only	\$1895 + 5% GST = \$1989.75	\$2095 + 5% GST = \$2199.75
<input type="checkbox"/> Conference + Workshop <input type="checkbox"/> A or <input type="checkbox"/> B	\$2390 + 5% GST = \$2509.50	\$2590 + 5% GST = \$2719.50
<input type="checkbox"/> Conference + Both Workshops	\$2885 + 5% GST = \$3029.25	\$3085 + 5% GST = \$3239.25
<input type="checkbox"/> I am attending, please add the conference materials CD-ROM to my order \$195 + \$15.95 (S & H) (+ applicable taxes)		

STEP 2

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ORGANIZATION _____

ADDRESS _____

CITY _____ PROVINCE _____ POSTAL CODE _____

TELEPHONE _____ FAX _____

EMAIL _____

TYPE OF BUSINESS _____ NO. OF EMPLOYEES _____

APPROVING MANAGER _____ POSITION _____

STEP 3

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I have enclosed my cheque for \$ _____ including GST made payable to **The Canadian Institute** (GST No. R106361728)

Wire Transfer (\$CAD)

Please quote the name of the attendee(s) and the event code 261L09 as a reference.

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