

WEBCAST  
AVAILABLE

*"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



Image courtesy of Christi Belcourt

# The *Osgoode* Certificate in Fundamentals of Aboriginal Law

Designed for those who need a working knowledge of  
the current and evolving Canadian framework

February 14 - April 12, 2017 | 5 Days over 8 Weeks | Toronto, Canada

A WORLD LEADER IN LAW SCHOOL  
LIFELONG LEARNING



## Program Details

### Dates

#### Day 1

Understanding the Historic Narrative and Constitutional Framework

February 14, 2017

#### Day 2

The Historic Treaties, Treaty Rights and the *Indian Act*

February 23, 2017

#### Day 3

The Aboriginal Rights Framework in Section 35

March 8, 2017

#### Day 4

The Modern Day Treaties

March 30, 2017

#### Day 5

The Duty to Consult and Accommodate

April 12, 2017

The program will be held at Osgoode Professional Development's Downtown Toronto Conference Centre.

Live webcast available

### For Further Program-Related Information

Please contact:

Jessica Foster  
Program Lawyer

at 416.673.4673 or email  
jfooster@osgoode.yorku.ca

## Why You Should Attend

Osgoode's Certificate in Fundamentals of Aboriginal Law was created to help you understand this complex and vitally important body of law. It is a short, deep dive into the knowledge and content needed to be able to work more effectively when dealing with Aboriginal law issues.

A truly outstanding faculty of practicing lawyers and academics drawn from across the country will concentrate on the core aspects of Aboriginal 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 Aboriginal rights and title, the constitutional framework, reserve lands and developments on reserve, treaty interpretation, modern treaties and consultation and accommodation. The certificate wraps up with an interactive panel discussion on the Supreme Court of Canada's upcoming trilogy on the duty to consult and accommodate.

Throughout the program there will be ample opportunity for questions, discussion and debate.

### Topics include:

- The historic narrative and constitutional framework
- An overview of the case law and key legal concepts from the last 40 years
- Understanding historic treaties – the context, perspectives and contemporary realities
- *The Indian Act*: key issues for practitioners and policy makers
- Section 35 - understanding its purpose, framework and emerging issues
- *Tsilhqot'in* and the implications for Canada, the provinces and Aboriginal peoples
- Understanding modern day treaties using case studies and a Canada-wide comparative analysis, including First Nation, Inuit and Métis perspectives
- Addressing overlapping territories, private lands, submerged land and waterways
- 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
- The Crown, Proponent and Aboriginal perspectives on the duty to consult and accommodate

### Who Should Attend

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

The *Osgoode Certificate in Fundamentals of Aboriginal Law* was specifically designed by an expert faculty drawn from across Canada. It will serve as an essential program in which participants will develop a comprehensive knowledge of the fundamental issues relating to Aboriginal law, expand their networks, and tap into a deep reservoir of practical, relevant information necessary to effectively work in this field or handle Aboriginal law issues as part of their work.

## THE CURRICULUM

### DAY 1

February 14, 2017, 9:00 a.m. – 4:45 p.m.

#### Understanding the Historic Narrative and Constitutional Framework

##### Overview of the Historic Narrative

- The pre-existence of Aboriginal peoples and the assertion of sovereignty
- Canada's creation, expansion and settlement
- Treaty making with Aboriginal peoples (pre and post-Confederation)
- The ongoing national project of treaty making and reconciliation with Aboriginal peoples

##### 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

##### An Overview of the Case Law and Key Legal Concepts from the Last 40 Years

- Understanding Aboriginal Title, Aboriginal and Treaty Rights, the Division of Powers, Inter-jurisdictional Immunity, the Honour of the Crown and its Related Duties (i.e., Fiduciary Duty, Treaty Interpretation and Implementation, the Duty to Consult and Accommodate) and Reconciliation through the evolution of the Supreme Court of Canada's jurisprudence (*Calder*, *Guerin*, *Vanderpeet*, *Powley*, *Haida*, *Manitoba Métis Federation*, *Tsilhqot'in*, *Keewatin* and everything in between)

##### Faculty

Jean Teillet, Pape Salter Teillet LLP, Vancouver  
 Gwynneth C. D. Jones, Independent Historian, Vancouver  
 Andrew Lokan, Paliare Roland Rosenberg Rothstein LLP, Toronto  
 Thomas Isaac, Cassels Brock & Blackwell LLP, Vancouver

### DAY 2

February 23, 2017, 9:00 a.m. – 5:00 p.m.

#### The Historic Treaties, Treaty Rights and the *Indian Act*

- 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*
- 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

This year's panel will focus on the following topics:

- *First Nation Land Management Act* and related land codes, including templates and best practices
- 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*
- 'Status' registration under the *Indian Act*, including the *Descheneaux* case and Canada's response

#### Luncheon Keynote Speaker

*Delivering Access to Justice in Aboriginal Communities*  
 Kimberly R. Murray, Ontario Assistant Deputy Attorney General,  
 Aboriginal Justice Division, Ministry of the Attorney General

#### Faculty

Aimée Craft, Assistant Professor, Faculty of Law, University of Manitoba  
 Shin Imai, Associate Professor, Osgoode Hall Law School, York University  
 John Gailus, Devlin Gailus Westaway, Victoria  
 Maxime Faille, Gowling Lafleur Henderson LLP, Vancouver  
 Nancy Kleer, Olthuis, Kleer, Townshend LLP, Toronto  
 David Schulze, Dionne Schulze, Montreal

### DAY 3

March 8, 2017, 9:00 a.m. – 4:45 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

- Addressing Indigenous law and customs
- Cumulative effects and infringement litigation
- Water rights, spiritual practices and other litigation
- Aboriginal Title and the “Land Question”: Understanding the *Tsilhqot’in* Case and its Implications for Canada, Provinces and Aboriginal Groups
  - The legal test and evidentiary requirements for Aboriginal title
  - Who is the Aboriginal title-holder?
  - What are the legal and practical implications of recognized Aboriginal title lands?
  - The issues for “another day” (overlapping territories, private lands, submerged land and waterways)
  - An update on implementing the *Tsilhqot’in* Case and an assessment of its implications across Canada

### Faculty

Jason T. Madden, Pape Salter Teillet LLP, Toronto

Robert Janes, JFK Law Corporation, Victoria

David M. Robbins, Woodward & Company Lawyers LLP, Victoria

Robert J. Potts, Blaney McMurtry LLP, Toronto

## DAY 4

March 30, 2017, 9:00 a.m. – 4:30 p.m.

### The Modern Day Treaties

- 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 before the Supreme Court of Canada

### Luncheon Keynote Speaker

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

Jason T. Madden, Pape Salter Teillet LLP, Toronto

### Faculty

Joe Wild, Senior Assistant Deputy Minister, Treaties and Aboriginal Government, Indigenous and Northern Affairs Canada

Matthew Mehaffey, Mehaffey Consulting Inc., Vancouver

Nuri G. Frame, Pape Salter Teillet LLP, Toronto

Allan MacDonald, Director General, Implementation Branch  
Indigenous and Northern Affairs Canada

Larry Innes, Olthuis, Kleer, Townshend LLP, Toronto

## DAY 5

April 12, 2017, 9:00 a.m. – 4:30p.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
- An Overview of Consultation Approaches and Policies Across Canada
  - Current and developing practices in resource development across Canada
  - By proponents: impact benefit agreements, participation agreements, cooperation agreements
  - By governments: revenue sharing agreements/policies, facilitating partnerships/ownership opportunities, economic participation policies
  - By Aboriginal groups: internal laws, policies and guidelines
- The Supreme Court of Canada's Upcoming Trilogy on the Duty to Consult and Accommodate
  - *The Hamlet of Clyde River et al. v. Petroleum Geo-Services Inc. (PGS) et al.*
  - *Chippewas of the Thames First Nation v. Enbridge et al.*
  - *Ktunaxa Nation v. British Columbia (Forests, Lands and Natural Resource Operations)*

### Luncheon Keynote Speaker

David de Launay, Deputy Minister, Ontario Ministry of Northern Development and Mines

### Faculty

Sandra A. Gogal, Miller Thomson LLP, Toronto

Keith B. Bergner, Lawson Lundell LLP, Vancouver

Merle C. Alexander, Gowling WLG, Vancouver

P. Mitch McAdam, Q.C., Director, Constitutional Law Branch,  
Saskatchewan Justice, Regina

Scott Robertson, Nahwegahbow, Corbiere

Nader Hasan, Stockwoods LLP Barristers, Toronto



## The *Osgoode Certificate in Fundamentals of Aboriginal Law* draws on the expertise and experience of leading Aboriginal Law lawyers and experts, including:

Merle C. Alexander, Gowling WLG, Vancouver  
Keith B. Bergner, Lawson Lundell LLP  
Vancouver

Aimée Craft, Assistant Professor, Faculty  
of Law, University of Manitoba

Maxime Faille, Gowling Lafleur Henderson  
LLP, Vancouver

Nuri G. Frame, Pape Salter Teillet LLP, Toronto

John Gailus, Devlin Gailus Westaway, Victoria

Sandra A. Gogal, Miller Thomson LLP, Toronto

Nader Hasan, Stockwoods LLP Barristers,  
Toronto

Shin Imai, Associate Professor, Osgoode Hall  
Law School, York University

Larry Innes, Olthuis, Kleer, Townshend LLP

Thomas Isaac, Cassels Brock & Blackwell LLP,  
Vancouver

Robert Janes, JFK Law Corporation, Victoria

Gwynneth C. D. Jones, Independent Historian,  
Vancouver

Nancy Kleer, Olthuis, Kleer, Townshend LLP  
Toronto

David de Launay, Deputy Minister, Ontario  
Ministry of Northern Development and Mines

Andrew Lokan, Paliare Roland Rosenberg  
Rothstein LLP, Toronto

Allan MacDonald, Director General  
Implementation Branch, Indigenous and  
Northern Affairs Canada

Jason T. Madden, Pape Salter Teillet LLP  
Toronto

P. Mitch McAdam, Q.C., Director, Constitutional  
Law Branch, Saskatchewan Justice, Regina

Matthew Mehaffey, Mehaffey Consulting Inc.,  
Vancouver

Kimberly R. Murray, Ontario Assistant Deputy  
Attorney General, Aboriginal Justice Division,  
Ministry of the Attorney General

Robert J. Potts, Blaney McMurtry LLP  
Toronto

David M. Robbins, Woodward & Company  
Victoria

Scott Robertson, Nahwegahbow, Corbiere

David Schulze, Dionne Schulze, Montreal

Jean Teillet, Pape Salter Teillet LLP  
Vancouver

Joe Wild, Senior Assistant Deputy Minister,  
Treaties and Aboriginal Government,  
Indigenous and Northern Affairs Canada

***“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**

### PROGRAM DIRECTORS

Sandra A. Gogal  
Miller Thomson LLP, Toronto

Jason T. Madden  
Pape Salter Teillet LLP, Toronto

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Osgoode Hall Law School's *Osgoode Professional Development* offers both credit and non-credit programming to meet the life-long learning needs of lawyers and other professionals who need legal information. Osgoode Hall Law School is one of the world's pre-eminent law schools. *Osgoode Professional Development* embodies the law school's commitment to meeting the educational needs of the broader community and has offered many continuing legal education programs for health care, law enforcement and other professionals.

# THE OSGOODE CERTIFICATE IN FUNDAMENTALS OF ABORIGINAL LAW - WINTER 2017

Learn from a who's who of more  
than 25 experts in the field

I will attend:  On site  Via webcast (single viewer)

Name:	Title:		
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## Fee Per Delegate

\$3,495 plus HST

Fees include attendance, program materials, continental breakfast, lunch and refreshments for each of the 5 days of the program. The price does not include accommodations. Please inquire about group discounts and financial assistance. Dress is business casual.

Payment Options – Payment must be made prior to the program

- Cheque enclosed (payable to York University – GST# R119306736)  
 Bill my credit card:  VISA  Mastercard

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Payment Amount: \_\_\_\_\_

## Cancellations/Rainchecks/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.

## Location

Osgoode Professional Development  
Downtown Toronto Conference Centre  
1 Dundas St. W., 26th Floor  
Toronto, ON, M5G 1Z3

## Program Changes

We will make every effort to present the certificate program as advertised, but it may be necessary to change the dates, location, speakers or content with little or no notice. In the event of program cancellation, York University and Osgoode Hall Law School's liability is limited to reimbursement of paid fees.



CPD Credits



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

Eligible CPD/MCLE hours:

LSUC (ON): 33.25 CPD Hours (3.25 Professionalism; 30.0 Substantive).

OsgoodePD programs may be eligible for CPD/MCLE credits in other Canadian jurisdictions. To inquire about credit eligibility, please contact [cpd@osgoode.yorku.ca](mailto:cpd@osgoode.yorku.ca).

## For Further Program-Related Information

Please contact: Jessica Foster, Program Lawyer at 416.673.4673 or email [jfoster@osgoode.yorku.ca](mailto:jfoster@osgoode.yorku.ca)

## Certificate of Program Completion

You will receive a certificate upon completion of The Osgoode Certificate in Fundamentals of Aboriginal Law. Participants must attend all program modules and pass a take-home assessment to receive a certificate.

Public CLE Seminars

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## 4 Convenient Ways to Register

1. **MAIL** your registration form to:  
Osgoode Professional Development  
Downtown Toronto Conference Centre  
1 Dundas St. W., 26th Floor  
Toronto, ON M5G 1Z3
2. **ONLINE** at [www.osgoodepd.ca/aboriginallaw](http://www.osgoodepd.ca/aboriginallaw)
3. **FAX** your registration to 416.597.9736
4. **CALL US** at 416.597.9724

