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# IMPACT BENEFIT AGREEMENTS: ADVANCED NEGOTIATION ISSUES

Co-Chaired by

**Janelle Dwyer**  
Mandell Pinder LLP

**Merle Alexander**  
Miller Titerle Law Corporation

November 19<sup>th</sup> & 20<sup>th</sup>, 2019 • UBC Robson Square • Vancouver, BC

*Live Webinar also available!*



## CO-CHAIRS



**Merle Alexander**, Principal, Miller Titerle Law Corporation, Vancouver, BC. Merle is a member and hereditary chief of Kitasoo Xai'xais First Nation on the mid-coast of British Columbia. He is co-leader of Miller Titerle's First Nation Economic Development group and practises Indigenous Resource Law empowering Nations through Title and Rights affirmation,

sustainable economic development and environmental conservation. Merle is a "life of project" lawyer assisting with negotiations of all stages of impact benefit agreements, joint ventures, regulatory engagement, traditional knowledge collection and other corporate and tax-related advice. He is continuously engaged in Nation-building through emerging government-to-government negotiations in all resource areas including: mining, oil & gas, forestry, pipelines, run-of-river and hydro projects. Merle adapts his solicitor experience and skill set to the infinitely emerging and developing needs of Indigenous clients.



**Janelle Dwyer**, Partner, Mandell Pinder LLP, Vancouver, BC. Janelle is a member of the Splatshin First Nation and a business lawyer at Mandell Pinder LLP. She provides legal advice related to commercial matters, real estate, financing and corporate structuring, including impact benefit agreements, asset purchases and other matters tied to the economic development of First Nations. Janelle negotiates on behalf of First Nations with private companies and the Crown, and drafts and advises on agreements from the memorandum of understanding stage to the final agreement. Her real estate practice encompasses all aspects of land transactions: acquisitions, financing, development approvals, sales and leasing. She also regularly advises on setting up or re-designing corporate entities such as partnerships, corporations, societies and trusts. She also works closely with First Nations on governance issues, including drafting regulations, constitutions, bylaws and policies. Janelle has been a lawyer for 19 years and is proud to be serving First Nations in her work.

## YOUTH SPONSORSHIP PROGRAM

We are pleased to offer our successful sponsorship program for First Nation, Métis and Inuit youth to attend forums offered by Pacific Business & Law Institute. For further information about applying to attend this or other programs, please go to [www.pbli.com/aboriginal-youth-sponsorship](http://www.pbli.com/aboriginal-youth-sponsorship).

## Impact Benefit Agreements: Advanced Negotiation Issues

First Nations are entering into commercial agreements and engaging in economic activities in ways that are much broader than the original models of Impact Benefit Agreements. These activities are essential for Crown, industry and First Nations seeking to maximize the economic benefits of development, apply Indigenous laws and advance reconciliation of Crown, proponent and Indigenous interests. An in-depth understanding of these agreements is vital for anyone interested in resource development and working with First Nations.

This program assembles expert faculty to discuss key negotiation issues and the current standards in the impact benefit agreement process. Faculty will share their knowledge and experience in negotiating, drafting, and implementing agreements, as well as how to best maximize the benefits that flow from these agreements and relationships. Practical advice on overcoming common issues will be shared and discussed, and attendees will gain useful insights into the ways Indigenous laws can influence the process. Delegates will leave better prepared to protect and advance their interests in a mutually beneficial way.

### KEY ISSUES TO BE ADDRESSED:

- Member consultation, gender discrimination, free, prior & informed consent, and other issues to be aware of when negotiating an IBA
- Building an agreement that will last
- Handling foreign investments on Aboriginal territory
- Equity ownership as a source of leverage
- A case study of the Trans Mountain Expansion Project
- Implementing Indigenous legal orders through Indigenous-led environmental assessments and commercial laws
- Economic development corporations and how to structure them

### WHO SHOULD ATTEND?

- Lawyers practising in the areas of Aboriginal law, Indigenous law and/or resource development
- Treaty and consultation/accommodation negotiators
- Indigenous government leaders and negotiators
- Owners, managers and negotiators of resource development companies
- Federal, provincial and municipal government officials involved in Indigenous relations and/or resource development
- Investment managers and professionals
- Consultants
- Accountants, business development professionals, financial planners, and others assisting First Nations with negotiations and business operations



## FACULTY



**Aref Amanat**, Associate Counsel, Mandell Pinder LLP, Vancouver, BC. Aref brings his varied and international experience in law, commerce, government and international organizations to serve First Nations in their path towards self-determination and economic development. Aref feels privileged to work together with the distinguished team at Mandell Pinder to serve First Nations entering into increasingly complex areas of governance and economic development, and is honored to assist First Nations further their processes of self-determination by providing innovative solutions informed by his experience.



**Conrad Browne**, CEO, K'awa't'si Economic Development Corporation, Port Hardy, BC. Conrad joined the Gwa'sala-'Nakwaxda'xw Nations as an economic development officer in 2010 after leaving his position as District Compliance Leader/ Operations Manager with the then BC Ministry of Forests and Range. After working with the community and leadership to form KEDC in 2014, he was asked to become the first CEO to provide leadership in realizing the many great initiatives planned for the community. Conrad has over 30 years of experience in the resource sector combined with hospitality and restaurant businesses. Growing up in Alberta, Conrad spent his formative years in agriculture and ranching. Conrad is currently on a leave of absence from the Association of BC Forest Professionals where he is an RFT. Conrad also has his 4th class Power Engineer's ticket as well as his Chef's papers.



**Ginger Gibson**, Director, Firelight Group, Edmonton, AB. Dr. Gibson is a Director of the Firelight Group. She works predominantly on the negotiation and implementation of Impact and Benefit Agreements (IBAs). She is the co-author of the IBA Community Toolkit for Negotiation of Impact and Benefit Agreements. As a Trudeau Scholar, she completed a PhD in Mining Engineering at the University of British Columbia and is now an Adjunct Professor there.



**Rebecca Johnson**, Professor, University of Victoria, Victoria, BC. Professor Johnson joined the UVic Faculty of Law in 2001, after 6 years on the Faculty at the University of New Brunswick. Before that, she clerked for Madame Justice Claire L'Heureux-Dubé at the Supreme Court of Canada, and completed her LLM and SJD at the University of Michigan. The work there resulted in her award-winning book, *Taxing Choices: the Intersection of Class, Gender, Parenthood and the Law*. Her research interests are marked by interdisciplinary, and include judicial dissent, cinema as a site of inter-cultural legal encounter, the economic imaginary, Indigenous legal methodologies, and sexuality. A pioneer in Canadian law-and-film scholarship, she has written on such topics as same-sex family formation, colonialism, dissent, mothers and babies in prison, cinematic violence, the Western, affect and emotion, and Inuit cinema. She co-edited a special issue of *The Canadian Journal of Women and the Law* on "Law, Film and Feminism", and has a blog dedicated to the same. Professor Johnson's internationally acknowledged collaborative work on judicial dissent with Professor Marie-Claire Belleau (University of Laval), has been published nationally and internationally in both French and English. Their work, funded by the Social Science and Humanities Research Council, has also been translated into Russian. Professor Johnson has also been working for several years on a number of initiatives with the Indigenous Legal Research Unit. She has also worked on the development of the TRC-inspired blog #ReconciliationSyllabus.



**Sunny LeBourdais**, Director, Sunny LeBourdais & Associates, Kamloops, BC. Sunny LeBourdais, B.Sc., B.Ed., M.Sc., AMP is a member of the Pell't'iq'te Secwepemc Nation (Whispering Pines/Clinton Band of the Shuswap Nation). She facilitates community-based development of strategies and decision-making processes which respect the inherent responsibility to manage activities on traditional territories. Sunny has managed and coordinated businesses and projects for the Okanagan, Ktunaxa and Secwepemc Nations. She led the corporate restructure as COO for the Skeetchestn Indian Band's Economic Development Company. Sunny developed, coordinated and implemented the Stk'emlúps'emc te Secwepemc Nations Impact Assessment Process for the proposed KGHM Ajax Project copper-gold mine near Kamloops BC. She also served as an advisor to the Canadian Expert Panel for

the legislative review of the Environmental Assessment Process, lending her experience in Indigenous impact assessment and Indigenous governance, and was appointed to the Provincial Advisory Committee for the Revitalization of the Environmental Assessment Act in 2018. She is currently the Director of Transformation for the Qwel'mínte Secwepemc, a collective of 7 signatories from the southern Secwepemc Nation united through a G2G Letter of Commitment.



**Rob Miller**, CEO, Miller Titerle Law Corporation, Vancouver, BC. Rob is co-founder and CEO of Miller Titerle, a group of forward-thinking professionals who are building a new kind of law firm based on a more passionate and more personal way of practising law. His practice includes providing advice on development of, and investment in, large resource and infrastructure projects; industry and government-to-government negotiations; structuring and governance of economic development groups; and consultation and accommodation. Rob has represented a number of high-profile First Nations in negotiations with government and industry regarding large resource projects. He has also provided advice to large resource companies on social licence, Aboriginal law, and project development. Rob is recognized in the *Expert Directory* and *Chambers Canada* in the area of Indigenous law (2019); *Best Lawyers in Canada* in the areas of Aboriginal law and natural resource law (2019); the 2019 *Expert Special Edition Canada's Leading Energy Lawyers*; and was a 2019 finalist for "Canada's Most Influential Lawyers" (Changemaker Category).



**Sarah Morales**, Associate Professor, University of Victoria, Victoria, BC. Sarah Morales, JD (UVic), LLM (University of Arizona), PhD (UVic), PostDoc (Illinois) is Coast Salish and a member of Cowichan Tribes. She was an Associate Professor at the University of Ottawa, Common Law Section, where she taught torts, Aboriginal law, Indigenous legal traditions and international human rights with a focus on Indigenous peoples. Sarah's research centres on Indigenous legal traditions, specifically the traditions of the Coast Salish people, Aboriginal law and human rights. She has been active with Indigenous nations and NGOs across Canada in nation building, inherent rights recognition and international human rights law.



**Tamara Napoleon**, Principal, Miller Titerle Law Corporation, Vancouver, BC. Tamara is a member of Saulteau First Nations and among a handful of Indigenous female solicitors in Canada. Tamara is a well-established advisor focusing on Indigenous economic development, corporate structuring, Indigenous governance, and natural resource stewardship. Tamara's practice involves negotiations with resource companies and government-to-government negotiations with both levels of Crown, drafting and advising on a range of project agreements and reconciliation agreements. Throughout her work, it remains an important objective that the legal orders of the Indigenous clients she serves are fundamentally integrated and upheld. Tamara shares her skills with East Vancouver Indigenous community non-profits, provincial educational institutions, as a member of the First Nations Women Advocating Responsible Mining and her own Nation's economic development corporation, Mistahiya Development Corp. She is also a former Vice President of Aboriginal Mothers' Centre Society, director of Vancouver Native Health Society and Governor of The Justice Institute of BC.



**Chief Larry Nooski**, Nadleh Whut'en First Nation, Fort Fraser, BC. Chief Larry Nooski is the Chief of Nadleh Whut'en First Nation, located in north-central BC. He was first elected to Council in 1992 and has served Nadleh Whut'en in various capacities since, including Band Manager, Councillor, Pipeline Coordinator and Chief.



**Mark Podlasly**, Economic Lead, First Nations Major Projects Coalition, Vancouver, BC. Mark Podlasly (Nlaka'pamux Nation) is the Economic Lead to the First Nations Major Projects Coalition, a 50+ nation collective seeking ownership of major projects such as pipelines and electric infrastructure, and Chair of the First Nations Limited Partnership, a 16-First Nations \$2 billion partnership with Chevron's Kitimat LNG project. A Harvard University graduate, Mark has been at the forefront of governance and infrastructure issues, with extensive experience in the planning, permitting and construction of energy, resource extraction and community infrastructure projects around the world. Mark also manages an eight community Indigenous Sovereign Wealth Fund to invest revenues from resource extraction projects.

# IMPACT BENEFIT AGREEMENTS: ADVANCED NEGOTIATION ISSUES

NOVEMBER 19<sup>TH</sup>, 2019 (DAY ONE)

**9:00 Welcome and Introduction by PBLI**

**9:05 Chairs' Welcome and Introduction**

**Merle Alexander**  
Miller Titerle Law Corporation

**Janelle Dwyer**  
Mandell Pinder LLP

**9:10 Member Consultation on IBAs**

**Janelle Dwyer**  
Mandell Pinder LLP

- What have the courts said about when and how member consultation should be done?
- When council can sign off on an IBA

**10:00 Questions and Discussion**

**10:20 Refreshment Adjournment**

**10:35 Re-opening an IBA**

**Rob Miller**  
Miller Titerle Law Corporation

- Material change = re-negotiation?
- Considerations in building an agreement for survival
- After the agreement: looking for vulnerabilities to cause termination

**11:25 Questions and Discussion**

**11:35 Gender Discrimination in IBAs**

**Sarah Morales**  
University of Victoria

- Identifying implicit gender inequality in IBAs
- Key areas of discrimination: skills & training; male-centered higher waged positions; violence against Indigenous women on job sites and camps; pathways forward
- MMIWG recommendations for extractive resource industries

**12:20 Questions and Discussion**

**12:30 Networking Lunch**

**1:25 Panel: Foreign Investments in First Nations**

**Facilitated by:**  
**Aref Amanat**  
Mandell Pinder LLP

- Negotiation challenges and steps
- Foreign investment standards on Aboriginal territory
- Cross-cultural education challenges and recommendations
- UNDRIP compliance in foreign investments

**2:35 Questions and Discussion**

**2:45 Refreshment Adjournment**

**3:00 Indigenous-led Environmental Assessments**

**Sunny LeBourdais**  
Sunny LeBourdais & Associates

- Building understanding through Indigenous knowledge and law
- Respectful recognition, impact benefit agreements and environmental assessments

**3:50 Questions and Discussion**

**4:00 Chairs' Closing Remarks**

**4:05 Program Concludes for Day One**

# IMPACT BENEFIT AGREEMENTS: ADVANCED NEGOTIATION ISSUES

NOVEMBER 20<sup>TH</sup>, 2019 (DAY TWO)

## 9:00 Welcome & Reflections on Day One

**Merle Alexander**

Miller Titerle Law Corporation

**Janelle Dwyer**

Mandell Pinder LLP

## 9:10 Equity Ownership: Game Changer Or Spoiler?

**Mark Podlasly**

First Nations Major Projects Coalition

- Equity ownership as one of the better financial tools in the IBA toolkit
- Whether equity ownership allows nations to better direct projects
- Considerations for different sectors: pipelines, mining, renewables

## 10:00 Questions and Discussion

## 10:10 Refreshment Adjournment

## 10:25 Case Study: Trans Mountain Expansion Project

**Tamara Napoleon**

Miller Titerle Law Corporation

- The Trans Mountain Expansion Project

## 11:15 Questions and Discussion

## 11:25 Free, Prior & Informed Consent in IBAs

**Merle Alexander**

Miller Titerle Law Corporation

- Consent-based Indigenous legal orders
- “Free, prior and informed consent” as the new incarnation of Indigenous legal orders

## 12:10 Questions and Discussion

## 12:20 Networking Lunch

## 1:20 Implementing Indigenous Laws with Private Companies

**Ginger Gibson**

Firelight Group

**Rebecca Johnson**

University of Victoria

**Chief Larry Nooski**

Nadleh Whut'en First Nation

- Indigenous commercial laws
- The keys to successful implementation: What it takes to make agreements workable in the implementation years, as well as renegotiate them
- Nadleh Water Law

## 2:40 Questions and Discussion

## 2:50 Refreshment Adjournment

## 3:05 First Nations Economic Development Corporations

**Conrad Browne**

K'awat'si Economic Development Corporation

- Governance issues between the nation and its corporate entity, challenges and solutions
- Strategic planning for economic development corporations

## 3:45 Questions and Discussion

## 3:55 Chairs' Closing Remarks

## 4:00 Program Concludes

## INFORMATION

### Four Ways to Register:

1. Telephone us: 604-730-2500 or toll free 877-730-2555
2. Fax us: 604-730-5085 or toll free 866-730-5085
3. Mail your registration form with payment
4. Register at [www.pbli.com/1496](http://www.pbli.com/1496)

**Registration:** The registration fee is \$1,195.00 plus GST of \$59.75 totalling **\$1254.75** covering your attendance at the program, materials, a light breakfast, a networking lunch and refreshments on each day. In-person attendees have the option to receive their materials electronically in advance of the program, or in a hard copy binder on the day of the program. If an in-person attendee requests both hard copy and electronic materials, an additional \$50 charge will apply with applicable taxes. Webinar attendees will always receive their materials electronically.

**Early Bird Discount:** Register by October 21<sup>st</sup>, 2019 and receive a \$200 discount on registration fee (\$995.00 plus GST).

**Group Discount:** Register four persons from the same organization at the same time and you are entitled to a complimentary fifth registration. Early Bird and Group Discount cannot be combined.

**Payment:** You may pay by VISA, MasterCard or cheque. Cheques should be made payable to the Pacific Business & Law Institute. Registration fees must be paid prior to the program.

**When and Where:** Check-in begins at 8:30 a.m. The program starts at **9:00 a.m.** UBC Robson Square is located at the basement level of 800 Robson Street in Vancouver, BC. Please visit <http://www.robsonsquare.ubc.ca/find-us/> for directions.

**Materials:** The faculty will prepare papers and/or other materials explaining many of the points raised during this program. Please contact us at [registrations@pbli.com](mailto:registrations@pbli.com) if you are unable to attend the program and wish to purchase a set of materials.

**Your Privacy:** We will keep all information that you provide to us in strict confidence, other than to prepare a delegate list containing your name, title, firm and city for our faculty and the program delegates. We do not share our mailing lists with any non-affiliated organization.

**Cancellations:** Full refunds will be given for cancellations (less a \$60.00 administration fee) if notice is received in writing five full business days prior to the program (**November 12<sup>th</sup>, 2019**). After that time we are unable to refund registration fees. Substitutions will be permitted. We reserve the right to cancel, change or revise the date, faculty, content, availability of webinar or venue for this event.

**Course Accreditation:** Attendance at this course can be listed for up to **11 hours** of continuing professional development with the Law Societies of BC and Ontario. For Alberta lawyers, consider including this course as a CPD learning activity in your mandatory annual Continuing Professional Development Plan as required by the Law Society of Alberta.

## Registration Form

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