



## Aboriginal Law

In the ever-changing and evolving area of aboriginal law, clients need solid, practical advice to help them navigate the legal and regulatory challenges that inevitably arise. As a leader in the field, Lawson Lundell's Aboriginal Group provides support to clients in all areas of aboriginal law and in all regions of Canada.

The Aboriginal Law Group is one of the largest and most experienced in western and northern Canada. Members in Vancouver, Calgary and Yellowknife provide legal advice to a wide variety of private and public sector clients, including clients involved in energy (hydroelectric power generation, conventional oil and gas and oil sands producers), pulp and paper, forest harvesting, mining, aquaculture, transportation (railways, public transit, marine transportation and port facilities) and real estate development. We also provide advice on commercial matters to aboriginal organizations and development corporations, particularly in northern Canada.

### *Defending Clients' Interests*

We have represented resource-sector clients in the defence of challenges brought by aboriginal groups before regulatory tribunals and courts at all levels, including decisions by the Supreme Court of Canada. We continue today to represent clients in precedent-setting aboriginal rights litigation and other aboriginal law matters before the courts and regulatory tribunals. We work with resource sector clients to defend their interests in disputes between aboriginal communities and governments related to the Crown's duty to consult.

### *Facilitating Agreements and Approvals*

Our clients generally prefer that their projects and operations not be the basis for precedent-setting litigation. Some of our more significant recent successes have avoided that. We have assisted our clients behind the scenes in developing strategic approaches to alternative dispute resolution and consultations with aboriginal groups, and negotiation of agreements and other arrangements aimed at accommodating the groups' concerns and interests. The result has been that aboriginal issues have not been determining factors in project approval processes for recent large resource development projects. We work with our clients to help them build collaborative relationships with aboriginal communities, to facilitate project approval processes, successful project construction and operations, and sustainable joint business ventures.

Our group members understand our clients' industries and their business objectives. We ensure that our advice on aboriginal matters is tailored to helping our clients achieve their business objectives.

### **Areas of Aboriginal Law Advice**

We assist clients with issues such as:

- Aboriginal consultation requirements and strategies for project approval and regulatory processes



### **Practices**

- Environmental
- Public Utility and Regulatory

### **Industries**

- Commercial Real Estate and Development
- Energy
- Forest Products
- Mining

### **Key Contacts**

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## Aboriginal Law (Cont.)

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- Structuring and negotiation of impact benefit agreements, participation agreements, cooperation protocols and other arrangements with aboriginal groups
- Defending project tenures and approvals from legal challenges related to aboriginal and treaty rights, including adequacy of consultation and the Crown's duty to consult
- Joint ventures and other cooperative business arrangements with aboriginal groups
- Issues arising under the *Indian Act* and *Regulations*, the *Indian Oil and Gas Act* and *Regulations*, the *First Nations Land Management Act*, the *First Nations Fiscal and Statistical Management Act*, the *First Nations Commercial and Industrial Development Act*, the *Alberta Métis Settlements Act* and other related legislation, including negotiation of leases, easements, permits and other interests in Indian reserve lands and Métis settlement lands
- Property taxation by First Nations
- Land claims and self government negotiations, and implementation and interpretation of treaties
- Aboriginal issues specific to forestry, aquaculture, mining and utilities, and accommodation of aboriginal interests in resource development planning processes

We represent clients in the following areas:

- Negotiations with aboriginal groups and federal, provincial and municipal regulatory authorities respecting major project approvals and the issuance of tenures, licences, authorizations and environmental permits
- Appeals and judicial review of administrative decisions, including applications by aboriginal groups to challenge project approval or permits under federal and provincial statutes and regulations
- Civil litigation including aboriginal rights-based and nuisance-based damage claims and applications for injunctions and other relief

We also provide advice to aboriginal organizations on a range of commercial matters, from labour and employment issues to taxation and structuring of aboriginal business organizations, development corporations, trusts and negotiation and creation of joint venture vehicles for commercial ventures with industry.

### Experience

Members of our group have:

- Helped a diamond producer negotiate impact benefits agreements with aboriginal groups and successfully address aboriginal issues in the regulatory approvals for a major diamond mine in the Northwest Territories
- Assisted a mining company in British Columbia in negotiating agreements with a First Nation to facilitate project development, and then successfully represented the mining company in removing legal and physical roadblocks raised by dissident members of the First Nation
- Represented an Alberta oil sands developer in defending a court challenge to the Government of Alberta's aboriginal consultation guidelines
- Helped an Alberta oil sands developer successfully address aboriginal and regulatory issues related to a \$600 million in-situ oil sands project, with the result that no regulatory hearing was required prior to project approval
- Represented a territorial government in precedent-setting litigation in the Supreme Court of Canada regarding the Crown's duty to consult under modern land claims agreements



Aboriginal Law (Cont.)

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- Represented oil and gas producers in precedent-setting litigation in the Federal Court of Appeal regarding the Crown's duty to consult in respect of regulatory approvals
- Advised oil and gas companies on aboriginal issues related to exploration and development activities in Alberta, northeast British Columbia, Saskatchewan, Quebec and the Northwest Territories
- Advised a mining company on aboriginal and regulatory requirements related for a project in Nunavut
- Represented a client whose property was the subject of a specific claim in New Brunswick between a First Nation and the Government of Canada
- Helped a national railway company negotiate 14 ground-breaking property taxation agreements with B.C. First Nations, including the negotiation of the *Property Assessment and Taxation (Railway Right-of-way) Regulations* under the *Indian Act*
- Helped major forestry companies in B.C. successfully respond to appeals by aboriginal groups of pest management plans, forest development plans and other operational matters
- Acted for a major aquaculture company in responding to judicial review proceedings brought by aboriginal groups on B.C.'s coast
- Acted for a public utility in large-scale litigation in the defense of claims brought by aboriginal groups over the impact of the construction and operation of hydro-electric generation facilities

We have also assisted aboriginal organizations with a range of commercial matters including:

- Advising an aboriginal development corporation on structuring its participation in a major northern natural gas pipeline proposed for the Northwest Territories
- Advising aboriginal governments and organizations on labour and employment matters, including wrongful dismissals claims and drug testing policies
- Advising aboriginal organizations in the Northwest Territories with respect to the formation of limited partnerships and other business organizations, and related tax matters
- Advising aboriginal organizations in the Northwest Territories and Nunavut with respect to the formation of joint ventures with non-aboriginal businesses
- Advising an aboriginal organization on acquisition of real estate investments; and
- Providing legal support to an aboriginal group in the Northwest Territories in self-government negotiations



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