Indigenous Law

In the ever-changing and evolving area of Indigenous 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 Indigenous Law Group provides support to clients in all areas of Indigenous law and in all regions of Canada.

The Indigenous 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 Indigenous organizations and development corporations, particularly in northern Canada.

Defending Clients’ Interests

We have represented resource-sector clients in the defence of challenges brought by Indigenous 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 Indigenous rights litigation and other Indigenous law matters before the courts and regulatory tribunals. We work with resource sector clients to defend their interests in disputes between Indigenous 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 Indigenous
groups, and negotiation of agreements and other arrangements aimed at accommodating the groups’ concerns and interests. The result has been that Indigenous 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 Indigenous 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 Indigenous matters is tailored to helping our clients achieve their business objectives.

**Areas of Indigenous Law Advice**

We assist clients with issues such as:

- Indigenous consultation requirements and strategies for project approval and regulatory processes
- Structuring and negotiation of impact benefit agreements, participation agreements, cooperation protocols and other arrangements with Indigenous groups
- Defending project tenures and approvals from legal challenges related to Indigenous and treaty rights, including adequacy of consultation and the Crown’s duty to consult
- Joint ventures and other cooperative business arrangements with Indigenous 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
Indigenous issues specific to forestry, aquaculture, mining and utilities, and accommodation of Indigenous interests in resource development planning processes

We represent clients in the following areas:

- Negotiations with Indigenous 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 Indigenous groups to challenge project approval or permits under federal and provincial statutes and regulations
- Civil litigation including Indigenous rights-based and nuisance-based damage claims and applications for injunctions and other relief

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

Recognitions & Rankings

- *Chambers Canada* recognizes Lawson Lundell for Aboriginal law
- *Chambers Global* recognizes Lawson Lundell for Aboriginal law
- *Canadian Lexpert Directory* recognizes Lawson Lundell as a leading firm in Aboriginal Law
- *Best Lawyers in Canada* recognizes our lawyers for Aboriginal law
- *Best Lawyers in Canada* top-lists Lawson Lundell for Aboriginal Law both in Alberta and Canada overall
- *Benchmark Canada awarded “Aboriginal Law Firm of the Year“ for 2018 & 2019*
- *The Legal 500 Canada* recommends Lawson Lundell for Aboriginal Law

Experience

Members of our group have:

- Helped a diamond producer negotiate impact benefits agreements with Indigenous groups and successfully address Indigenous 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 Indigenous consultation guidelines.

• Helped an Alberta oil sands developer successfully address Indigenous 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.

• 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 Indigenous issues related to exploration and development activities in Alberta, northeast British Columbia, Saskatchewan, Quebec and the Northwest Territories.

• Advised a mining company on Indigenous 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 Indigenous 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 Indigenous groups on B.C.’s coast.

• Acted for a public utility in large-scale litigation in the defense of claims brought by Indigenous groups over the impact of the construction and operation of hydro-electric generation facilities.

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

• Advising an Indigenous development corporation on structuring its participation in a major northern natural gas pipeline proposed for the Northwest Territories.

• Advising Indigenous governments and organizations on labour and employment matters, including wrongful dismissals claims and drug testing policies.
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- Advising Indigenous organizations in the Northwest Territories with respect to the formation of limited partnerships and other business organizations, and related tax matters
- Advising Indigenous organizations in the Northwest Territories and Nunavut with respect to the formation of joint ventures with non-aboriginal businesses
- Advising an Indigenous organization on acquisition of real estate investments; and
- Providing legal support to an Indigenous group in the Northwest Territories in self-government negotiations

News & Publications

- 34 Lawson Lundell Lawyers Ranked Across 20 Practice Areas in 2020 Canadian Legal Lexpert® Directory
  24.4.20
- 10 Lawson Lundell Lawyers Recognised by Chambers Global 2020
  Chambers Global, 24.2.20
- Keith Bergner's article featured in Supreme Court Law Review and LexisNexus
  Supreme Court Law Review / LexisNexus, 29.3.18
- Toby Kruger, Keith Bergner and John Olynyk's article featured in the Canadian Mining Journal
  The Canadian Mining Journal, 18.1.18
- “Supreme Court of Canada to hear appeal on Yukon Peel watershed decision”
  13.6.16
- Government of Canada Proposes Methodology for Estimating Upstream GHG Emissions in Major Project Review
  22.3.16
- Keith Bergner quoted in Listed Magazine's article, "An uneasy duty."
  Listed | Mining PDAC 2016, 4.3.16
- Federal Government Releases Guiding Principles for Project Review
  27.1.16
- Mapping the Territory: Aboriginal Title and the decision in Tsilhqot’in Nation v. British Columbia
  Published by the Rocky Mountain Mineral Law Foundation in the Proceedings of the 61st Annual Rocky Mountain Mineral Law Institute, 15
- Keith Bergner featured in BCBusiness magazine's November 2015 issue
  11.15
- Losing the Battle but Winning the War?
  6.11.15
Indigenous Law continued

- Aligning Resource Development with the Interests of Aboriginal Peoples in Canada
- JoAnn Jamieson quoted in Lexpert Special Edition - Mining article, "First Nations Developments"
  23.9.15
- Court suspends implementation of Mackenzie Valley “Superboard”
  2.3.15
- "The Peel watershed decision's broader implications,"
  The Northern Miner, 22.1.15
- Court strikes down Yukon’s Peel watershed land use plan
  4.12.14
- Water Use in BC: Recurrent short-term water use approvals are lawful
  15.10.14
- Keith Bergner quoted in the National Post discussing two recent Supreme Court of Canada Aboriginal law decisions
  30.7.14
- Keith Bergner speaks to the National Post, Edmonton Journal and others about the Grassy Narrows Decision.
  11.7.14
- Supreme Court of Canada Confirms Provincial Power to Take Up Lands under Treaty – Grassy Narrows First Nation v Ontario (Natural Resources), 2014 SCC 48
  11.7.14
- Developing the North: Poised to expand, but challenges are complex
  Lexpert, July/August 2014
- The Crown’s Duty to Consult and the Role of the Energy Regulator
  Energy Regulation Quarterly, 6.5.14
- Canada Joins the Global Push towards Mandating Disclosure of Payments to Governments
  5.11.13
- Cooperation Agreements and Benefits Agreements with First Nations
  26.9.13
- John Olynyk quoted in Alberta Oil article, "An inside look at the bitter legal battle over cumulative impacts of oil sands activity"
  16.9.13
- Keith Bergner quoted in the Daily Oil Bulletin article, "Northern Gateway Needed, Says CAPP"
  19.6.13
Indigenous Law continued

- Keith Bergner quoted in The Prince George Citizen article, "Petroleum producers defend pipeline plan"
  18.6.13
- Keith Bergner quoted in the CFTK-TV article, "CAPP, Haida Nation Present Final Arguments JRP"
  18.6.13
- Keith Bergner quoted in the Financial Post article, "Canadian oil producers plead for Northern Gateway approval"
  18.6.13
- Keith Bergner quoted in Canadian Press article, "Northern Gateway needed to deliver excess oil supply, hearing told"
  18.6.13
- John Olynyk quoted in the Canadian Lawyer InHouse article, "The pros and cons of Alberta’s Bill 2"
  10.4.13
- Keith Bergner featured in Canadian Lawyer Magazine article, "Aboriginal law rising"
  4.4.13
  16.11.12
- Chris Sanderson quoted in Lexpert Magazine, "Energy's Westward Shift"
  15.11.12
- Keith Bergner quoted by Canadian Press, "Need for Gateway clear, hearing told"
  26.9.12
- Keith Bergner quoted in Canadian Lawyer 4Students, "UBC making aboriginal law course mandatory"
  3.9.12
- Energy Law Bulletin: Cumulative Impacts on Treaty Rights: Update on the Beaver Lake Cree Nation Litigation
  14.5.12
- Keith Bergner quoted in The Daily Oil Bulletin article, "Gaining Native Buy-in On Projects A Challenge, CERI Conference Told"
  26.4.12
- Project Law Bulletin: Environmental Assessment Streamlining Federal Government Initiatives
  20.4.12
- Project Law Bulletin: Environmental Assessment - Improving the Process
  23.3.12
Indigenous Law continued

- Keith Bergner quoted in The Financial Post article on the duty to consult with First Nations and the legal consequences for mining companies 6.3.12
- "Supreme Court of Yukon Considers Duty to Consult and “Free Entry” Mining System" 9.12.11
- Keith Bergner quoted in The Vancouver Sun article, "Certainty still a question in land rights and resource development" 12.11.11
- "Oil Sands and Shale Gas - Western Canada’s Unconventional Answer to Global Energy Demand" 25.10.11
- Supreme Court of Canada Confirms Utility of Administrative Law in Aboriginal Consultation Cases 29.8.11
- Keith Bergner quoted in Lexpert Magazine article, "Gold Rush, No Rush" 17.6.11
- Chris Sanderson and Keith Bergner Receive the Premier's Collaboration Award (NWT) 18.5.11
- Keith Bergner interviewed by Business in Vancouver on Aboriginal consultation 8.3.11
- Keith Bergner interviewed by The Vancouver Sun on Aboriginal commercial fishing rights case 17.2.11
- Keith Bergner appears on CBC Radio's BC Almanac to discuss Aboriginal commercial fishing rights 17.2.11
- Keith Bergner interviewed by CBC North to discuss the North Arrow Minerals decision 16.11.10
- Chris Sanderson interviewed by Lawyers Weekly, "Supreme Court of Canada clarifies ‘duty to consult’" 15.11.10
- "Supreme Court of Canada Clarifies (some of) the Limits of the Duty to Consult" 29.10.10
• Lawson Lundell represents BC Hydro in the $825 million purchase of a 1/3 interest in the 493 megawatt Waneta Dam from Teck Metals Ltd.  
22.3.10
• Aboriginal Issues Related to Heavy Oil Refining  
30.5.08
• "Mining Law Update - Winter 2008"  
18.4.08
• The Tsilhqot’in Nation v. British Columbia Case: What it Means and What it Doesn't Mean  
5.12.07
• Aboriginal Title Declaration Dismissed, For Now: Tsilhqot’in Nation v. British Columbia  
28.11.07
• Aboriginal Caselaw Summary: Aousaht First Nation v. Canada (Fisheries and Oceans)  
16.7.07
• Aboriginal Law Update - December 15, 2006  
15.12.06
• "The Crown's Duty to Consult and Accommodate"  
The Canadian Institute’s 2nd Annual Conference on Aboriginal Consultation: Best Practices and Leading Edge Strategies for Managing Aboriginal Consultations, 30.6.06
• Doing Business on Metis Settlements in Alberta: The Legal Framework for Oil and Gas Activities on Metis Settlement Lands  
8.6.06
• "Implications of the Recent Supreme Court of Canada Decision in: R. v. Marshall; R. v. Bernard"  
19.5.06
• "Consultation Requirements in the Post-Treaty Context"  
14.5.06
• Aboriginal Law Update - November 24, 2005  
24.11.05
• "Consultation Requirements in the Post-Treaty Context"  
1.11.05
• "The Crown's Duty to Consult and Accommodate"  
21.10.05
• Supreme Court of Canada Rejects Aboriginal Commercial Logging Rights  
21.7.05
• The Haida Nation and Taku River Tlingit Decisions: Clarifying Roles and Responsibilities for Aboriginal Consultation and Accommodation
Indigenous Law continued

21.2.05
• "Update on Land Claims and Devolution in the Yukon and the Northwest Territories"
1.10.02

Events

• The Real Effect on an Aboriginal Title Declaration: Damages, Remedies, Judicial Review and Beyond
Aboriginal Title Litigation: Best Practices and Essential Legal Considerations conference, 26.2.16

• "Landmark Developments in Aboriginal Consultation Law", Western Aboriginal Consultation & Negotiation, The Canadian Institute Energy Group
Edmonton, AB, 11.2.15

• "The Legal Framework for Aboriginal Consultation in Alberta", Alberta Law Conference, Canadian Bar Association, Alberta Branch
Edmonton, AB, 30.1.15

• 7th Annual Aboriginal Energy Forum
5.12.13

• Environmental Law & Regulation in Alberta - Complying With The New Regulatory Framework
21.11.13

• 7th Edition Environmental Law in BC Conference
18.11.13

• Environmental Law and Regulation in Alberta
5.6.13

• The Daniels Case: Recognition of Métis and Non-Status Aboriginal Peoples
11.4.13

• Contaminated Sites vs. Brownfield Development: Old and New Approaches to Problem Sites in British Columbia Conference
26.9.12

• Aboriginal Law: Current Issues Conference
6.3.12

• 6th Edition Environmental Law in BC Conference
25.1.12
Indigenous Law continued

Blog Posts

- BC Environmental Assessment Act – Significant Changes Proposed in Bill 51
  Project Law Blog, 7.11.18

- West Moberly’s Application for Injunctive Relief Denied
  Project Law Blog, 2.11.18

- Supreme Court of Canada Confirms There is No Duty to Consult Indigenous Groups in the Development of Legislation
  Project Law Blog, 11.10.18

- Reconciliation with Indigenous Peoples Central to Overhaul of Federal Environmental Assessment Process
  Project Law Blog, 19.2.18

- Bill C-68 and Bill C-69: The Federal Government Releases Overhaul of Environmental Legislation
  Project Law Blog, 8.2.18