

# Agenda

## HUMAN RIGHTS LAW CONFERENCE 2021

Tuesday, November 16 and 23, 2021 at 9:00 am – 4:00 pm

Course Chairs:	<b>Sandra F. Guarascio</b> – Roper Greyell LLP, Vancouver <b>Lindsay Waddell</b> – Moore Edgar Lyster LLP, Vancouver
Planning Committee:	<b>Tonie Beharrell</b> – Southern Butler Price LLP, North Vancouver <b>Devyn Cousineau</b> – BC Human Rights Tribunal, Vancouver <b>Sara Forte</b> – Forte Law Corporation, Surrey <b>Koml Kandola</b> – Kandola Arbitration Services Ltd., North Vancouver <b>Raji Mangat</b> – Executive Director, West Coast LEAF, Vancouver <b>Christopher M. McHardy</b> – McCarthy Tétrault LLP, Vancouver <b>Laura Track</b> – Community Legal Assistance Society, Vancouver <b>Robyn P.M. Trask</b> – BC Teachers' Federation, Vancouver <b>David G. Wong</b> – Fasken Martineau DuMoulin LLP, Vancouver
CLEBC Program Lawyer:	<b>Genevieve Chang</b>

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### Day 1: Tuesday, November 16, 2021

- 9:00 – 9:10 WELCOME AND LAND ACKNOWLEDGEMENT  
**Sandra F. Guarascio** — Roper Greyell LLP, Vancouver  
**Lindsay Waddell** — Moore Edgar Lyster LLP, Vancouver
- 9:10 – 10:10 HONOURING THE CHILDREN: HUMAN RIGHTS, TRUTH, RECONCILIATION AND JUSTICE [60 MINUTES]
- In 2021, reports of the discovery of unmarked graves of hundreds of Indigenous children have been reported in Canada. These unmarked graves, of which it is anticipated many more will be found, are part of Canada's legacy of colonialism, and in particular the residential school system. The goal of this system, much of which was run by religious institutions, was to "civilize" Indigenous children, and destroy their Indigenous identity. For many generations, Indigenous children were removed from their families, forced into the schools, and subject to widespread abuse, assault and death. Thousands of children never returned home.
  - The discovery of these unmarked graves is a long overdue reckoning for Canada. But the fact that Canadians, and many around the world, are shocked by this discovery reveals an important challenge in determining what action we need to take as individuals and groups in response. There is only shock, because the predominant narratives and discourses of history of settler colonial societies, including Canada and the United States, rest upon fictions about the lands that make up their countries, the Indigenous peoples who were here before Europeans arrived, and what violent and racist systems were put in place in order to create these countries.
  - When we come to understand that the stories we tell about ourselves are not true, it challenges us to change. This presentation will explore the social, cultural, legal, political, and spiritual dimensions of the challenge of building human rights

approaches grounded in truth, and taking social action that can achieve justice and reconciliation, in responses to the discovery of these unmarked graves.

**Dr. Mary Ellen Turpel-Lafond/Akikwe** – Senior Associate Counsel, Woodward & Company Lawyers LLP, Victoria

10:10 – 10:40 “DIRECT ATTACKS” AND BLOWBACKS: THE AFTERMATH OF *ANDREWS/MATSON* AND CHALLENGES TO LEGISLATION BEFORE HUMAN RIGHTS TRIBUNALS [30 MINUTES]

- what did Andrews/Matson decide and what was unresolved?
- how have tribunals applied Andrews/Matson?
- what does the primacy clause in section 4 of the Code mean?
- what is the legal framework for justification/accommodation in such cases?
- what remedies are available?

**E.W. (Heidi) Hughes** – Ministry of Attorney General, Vancouver

**Joana Thackeray** – Ministry of Attorney General, Vancouver

10:40 – 10:55 BREAK [15 MINUTES]

10:55 – 12:10 CASE LAW UPDATE [75 MINUTES]

- key cases
- analysis and trends
- effects on practice
- The trend is upwards: recent injury to dignity awards at the BCHRT

**Christopher M. McHardy** – McCarthy Tétrault LLP, Vancouver

**Lauren Soubolsky** – McCarthy Tétrault LLP, Vancouver

**Laura Track** – Community Legal Assistance Society, Vancouver

12:10 – 1:10 LUNCH [60 MINUTES]

1:10 – 1:55 PROTECTING HUMAN RIGHTS DURING THE COVID-19 PANDEMIC [45 MINUTES]

- an overview of recent human rights cases involving COVID-19 and mask mandates, proof of vaccination requirements, visitation restrictions and whether COVID-19 constitutes a disability
- an overview of recent court decisions regarding challenges to COVID-19 public health orders on equality and other Charter grounds as well as due to claims of legislative arbitrariness
- a discussion of other COVID-19 related issues including:
  - the impact of COVID-19 and related public health orders on the vulnerable and/or immunocompromised, including:
    - access to K-12 and post-secondary education;
    - long-term care/assisted living - visitation rights and insufficient care;
    - access to vaccines and vaccine prioritization;
    - access to appropriate PPE for hospital workers, patients and visitors; and
    - access to services in the absence of protective measures

- further legal challenges to vaccine passports and other public health measures
- discriminatory speech
- rights and obligations of employers and employees
- adverse effect discrimination arising from public health measures

**Derek G. Knoechel** – HHBG Employment Lawyers, Vancouver

**Amy B. Pressman** – DLA Piper (Canada) LLP, Vancouver

1:55 – 2:40      **PRIVACY IN A PANDEMIC: A REVIEW OF COVID-19’S IMPACT ON PRIVACY [45 MINUTES]**

- an overview of privacy legislation, including amendments relating to COVID-19
- a discussion of privacy rights, obligations, and considerations relating to:
  - collection, use, and disclosure of personal health information from individuals and public bodies;
  - COVID-19 testing;
  - collection, use, and disclosure of vaccination information; and
  - vaccine passports
- a review of the law and guidance from the Privacy Commissioners in Canada from the beginning of the pandemic to the present time

**Sonya Sabet-Rasekh** – BC Government and Service Employees’ Union, Burnaby

**Kristen Woo** – Director, Human Rights Office, Simon Fraser University, Burnaby

2:40 – 2:55      **COVID-19 PANEL Q&A [15 MINUTES]**

2:55 – 3:10      **BREAK**

3:10 – 4:10      **BC HUMAN RIGHTS TRIBUNAL UPDATE [60 MINUTES]**

- snapshot of Tribunal backlog
- tribunal Processes and Practice Directives
- the view ahead

**Emily Ohler** – Chair, BC Human Rights Tribunal, Vancouver

4:10 – 4:15      **CLOSING COMMENTS**

**Sandra F. Guarascio** — Roper Greyell LLP, Vancouver

**Lindsay Waddell** — Moore Edgar Lyster LLP, Vancouver

**Day 2: Tuesday, November 23, 2021**

- 9:00 – 9:05      WELCOME BACK  
**Sandra F. Guarascio** — Roper Greyell LLP, Vancouver  
**Lindsay Waddell** — Moore Edgar Lyster LLP, Vancouver
- 9:05 – 9:55      JUDICIAL REVIEW UPDATE [50 MINUTES]  
• review and update of significant BC Supreme Court, BC Court of Appeal and Supreme Court of Canada cases  
**Matthew Allard** – Fasken Martineau DuMoulin LLP, Vancouver  
**Katherine A. Hardie** – BC Human Rights Tribunal, Vancouver
- 9:55 – 10:40    WHY HAVE WE LEFT HUMAN RIGHTS OUT OF MENTAL HEALTH AND SUBSTANCE USE CARE? [45 MINUTES]  
• overview of human rights issues in BC’s mental health and substance use system documented by independent officers and human rights organizations  
• summary and discussion of relevant human rights case law developments  
• analysis of access to justice barriers for patients to enforce human rights in BC and the resulting impacts on health and human rights  
**Laura Johnston** – Legal Director, Health Justice, Vancouver  
**Kendra Milne** – Executive Director, Health Justice, Vancouver
- 10:40 – 10:55    BREAK
- 10:55 – 12:10    INVESTIGATION AND EVIDENTIARY ISSUES IN SEXUAL HARASSMENT COMPLAINTS POST #METOO [75 MINUTES]  
• the history of the #MeToo movement  
• investigating sexual harassment complaints post-#MeToo  
• evidence of extrinsic sexual conduct: problems and a proposed admissibility framework for tribunal proceedings  
**Sara Hanson** – Moore Edgar Lyster LLP, Vancouver  
**Rebecca Kantweg** – Victory Square Law Office LLP, Vancouver  
**Rose A. Keith, QC** – Harper Grey LLP, Vancouver  
**Daniel McBain** – Moore Edgar Lyster LLP, Vancouver  
**Lisa Southern** – Southern Butler Price LLP, North Vancouver
- 12:10 – 1:10     LUNCH [60 MINUTES]
- 1:10 – 2:25      INVESTIGATING RACIAL MICROAGGRESSION IN THE WORKPLACE [75 MINUTES]  
• overview of how commissions, tribunals & courts have historically dealt with race issues/complaints – focus on comparative research of race based & sexual Harassment Complaints at the BC Human Rights Commission  
• case law considering workplace complaints of racial microaggression  
• recommendations for investigating such allegations  
• how workplace standards related to racial discrimination have evolved over time

- what happens after the investigation: rebuilding / repairing workplace relationships

**Natasha Jategaonkar** – Mathews, Dinsdale & Clark LLP, Vancouver

**Yuki Matsuno** – Southern Butler Price LLP, North Vancouver

**Ana Mohammed** – ARM Mediation and Consulting, Coquitlam

**Jennifer D. Wiegele** – Mathews, Dinsdale & Clark LLP, Vancouver

2:25 – 2:40

BREAK

2:40 – 4:10

ETHICS FACT PATTERNS [90 MINUTES]

- what would / should you do?
- discussions in context

**Koml Kandola** – Kandola Arbitration Services Ltd., North Vancouver

**James D. Kondopulos** – Roper Greyell LLP, Vancouver

**Clea Parfitt** – Clea F. Parfitt, Lawyer, Vancouver

4:10 – 4:15

CLOSING COMMENTS