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Courts provide guidance on contracting with Indigenous communities – Indigenous Law Insights October 2022 (webinar)

OCT 25, 2022 2 MIN READ

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In the October session of Osler's Indigenous Law Insights webinar series, moderated by partner Richard King (Co-Chair, Regulatory, Indigenous and Environmental), Litigation associates Clare Barrowman and Sean Sutherland discussed a trio of recent developments with implications for parties contracting with Indigenous communities or businesses located on a reserve.

Bogue v. Miracle considers the implications of placing an on-reserve business into receivership. The application judge had found that a "commercial mainstream" exception applied to section 89 of the *Indian Act* (which prohibits the seizure of property on a reserve by a non-Indigenous person or band), and a receiver had been appointed to take control of and recoup proceeds from the appellant's business. The Ontario Court of Appeal, however, found no broad "commercial mainstream" exception, meaning that the receiver's appointment contravened section 89.

Kehewin Cree Nation v. Kehew Construction Ltd. provides guidance to parties contracting with Indigenous communities under the *Indian Act*. In this case, the Alberta Court of Appeal unanimously found that the Chief and councillor who had signed agreements for two construction projects had the inferred designated authority to do so on behalf of the band, despite the absence of a specific, written band council resolution.

In early October, three First Nations in northern Ontario filed a claim echoing last year's precedent-setting decision in *Yahey v. British Columbia*, which found that the Blueberry River First Nation's treaty rights had been meaningfully harmed by the cumulative impacts of industrial development on their traditional territory. Along with a similar claim filed in northern Alberta by Duncan's First Nation this summer, it will be interesting to see how these developments could impact decision-making and regulatory processes governing land use and project approval.

Watch the full webinar