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MEMBER STATISTICS:

(June 23, 2017)

Resident members	156
Non-resident members	210
Total members	366

SUMMER 2017

THE YUKON AMICUS

PRESIDENT'S REPORT

by James R. Tucker

As you are all aware, John Phelps and I, representing the Law Society of Yukon (LSY) have been visiting the communities outside of Whitehorse. We began conducting these visits in 2016 and so far we have been to Haines Junction, Carmacks, Teslin, Carcross, Old Crow, Mayo, Burwash Landing and Dawson City. Our hope is to visit the remainder of Yukon communities this calendar year.

The notion of conducting these visits arose from two sources. First, the work of the Truth and Reconciliation Commission, which highlighted a disconnect between First Nations and law societies across the country. Second was a document we produced entitled "Access to Justice in Remote Communities." This document identifies four main areas of concern regarding underlying causes for criminality and aboriginal overrepresentation in the criminal justice system: 1) lack of social resources; 2) lack of legal resources; 3) lack of alternative measures and restorative justice programs; and 4) lack of Gladue information before the courts.



(This document is on our website at lawsocietyyukon.com/accesstojustice.php).

Before we began conducting these visits, no one representing LSY had ever travelled to a Yukon community outside of Whitehorse. For the most part, people in the communities did not know we existed.

After discussing the matter, including the resources available and our mandate, we decided that representatives

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of the LSY would visit all Yukon communities to gather information about access to justice in the communities and to inform people about what the LSY is and what it does. We want to establish relationships with Yukon First Nations and Yukon communities so that we can fulfill our mandate outside of Whitehorse and work with all of Yukon towards enhancing access to justice.

In order to meet these objectives, we have contracted the services of Jonathan Preston to accompany us to the communities and record our discussions with residents and leaders. After we have visited all of the communities, Jonathan will draft a report detailing what we have learned regarding the state of access to justice in Yukon. Our intention is to provide that report to stakeholders and to make it available to the general public.

Our discussions thus far have been enlightening and fruitful. We have talked about access to justice issues in all areas of law, including criminal, family, civil and administrative law. We have engaged in discussions about the effect of a lack of access to justice on the day-to-day lives of people in Yukon communities. The subjects of our conversations include Legal Aid, lawyers, police, courts, judges, health and social services and the LSY itself.

We have been privileged to engage in discussions with Champagne and Aishihik First Nations, Little Salmon Carmacks First Nation, Teslin Tlingit Council, Carcross/Tagish First Nation, Vuntut Gwitchin First Nation, First Nation of Na-Cho Nyak Dun, Kluane First Nation, and Tr'ondëk Hwëch'in regarding traditional law and justice in Yukon First Nations in the context of the cultural sensitivity of our justice systems and the people in them. We have also had many conversations regarding the isolation of many Yukon communities and the effect that has on access to justice.

As we have travelled, we have encountered some skepticism. We are not the first people to travel to the communities to discuss justice issues. The meetings that have occurred before produced little in terms of tangible improvements. The people in the communities have expressed doubts about whether our visits, and our report, will have any real effect. Our response has been that we will do everything we can to complete the task that we have set

for ourselves, and that we will report on what we see and what we are told to advocate for, for better access to justice in our territory. We will report on the issue of access to justice from a first-hand and informed position, rather than just anecdotally.

Each time we meet with the people from a Yukon community, we take care to explain to them that the LSY is not an advocacy group advancing the interests of lawyers. We also clarify that we are not government. We explain that the LSY is a non-profit society created under the *Legal Profession Act*, whose mandate includes the obligation to uphold and protect the public interest in the administration of justice. With that understanding in place, we have been given a chance to do something about it.

So far, each time we have explained what we are doing and why we are doing it, the communities have agreed to work with us, to see if we do what we say we are going to do.

Every First Nation is unique and each community is different. While each has its own problems, we are seeing some common themes. These themes will be set out in detail in the report at the conclusion of this round of visits, and will include the importance of cultural sensitivity by everyone who is involved in providing justice related services to the communities. It will also highlight how critical it is for those people to not only provide the services to the communities

but to also become integrated in and be a part of the community.

These community visits have opened my eyes to just how important it is for the LSY to maintain relationships with, and to be a part of, those communities as well. The LSY regulates lawyers in the public interest, yet most of the people

we've met in the communities did not know that the LSY existed. It is incumbent on us to continue to meet and speak with the people in the communities outside of Whitehorse.

It is a big job to do all this travel, but I am of the view that my successors should commit to travel to the communities on a rotation basis that would have them visit all of the Yukon communities outside of Whitehorse every three or four years. If we are going to be effective as a Law Society, we have to know what is going on in here, and all the people in Yukon need to know who we are.

**The Law Society of Yukon
regulates the practice of law
and the legal profession by
promoting access to justice.**

FEDERATION OF LAW SOCIETIES

by John Phelps, Council Member

Each year there are four in-person Federation Council meetings. There are two meetings of a larger group including council members, CEOs, presidents and some other elected members from each law society based on their respective policies. These are held in the spring and in the fall of each year at a location hosted by a Federation member outside of Ottawa. Two smaller meetings of council and Federation staff take place in Ottawa in the summer and the winter.

The Law Society of Nunavut has for several years been lobbying for a Federation of Law Societies meeting to be held in Iqaluit. The barrier has been the significant cost of travel to Iqaluit and limited accommodations for a large group.

This year, in order to recognize the important contribution to the Federation of Nunavut and recognizing the limitations on hosting a larger meeting, the Federation summer council meeting was held in Iqaluit on June 21. Council members and Federation staff flew into Iqaluit on June 20 and departed on June 22.

Our hosts filled our time with cultural training and culturally relevant events held in conjunction with National Aboriginal Day and summer solstice. The highlight of the visit was celebrating solstice with a bonfire at Apex Beach during the evening of June 21. A local Inuit member of the bar is a throat singer and she brought a friend with her to explain throat singing and perform for the group. The trip was a truly remarkable opportunity to learn about Nunavut and Inuit culture.

The incoming president of the Federation in 2018 is Sheila MacPherson, a lawyer from Yellowknife, NWT. She was born in what is now Nunavut and has a practice that takes her across NWT and Nunavut.

Recognizing a northern president, the Federation wanted to have a meeting held in the North during Sheila's term and the Yukon has agreed to host the fall meeting of the Federation in October 2018.

The fall meeting each year includes a legal conference component and is the largest meeting of the Federation each year in terms of attendance and content. We are very pleased to be hosting the event and I look forward to updating you on what activities will be taking place. This will be an opportunity to showcase Yukon history, First Nation culture and our local bar (members and establishments). There will be numerous opportunities to volunteer at the conference and social activities and I hope that you will help us make this a memorable event.

“The Law Society of Yukon receives many benefits from membership in the Federation.”

The Law Society of Yukon receives many benefits from membership in the Federation. As one of the smaller law societies, we receive significant help from the larger law societies in Canada with the regulation of lawyers. We also benefit from the significant work of the Federation in areas such as the national accreditation of lawyers and the model code of conduct. I encourage you to peruse the Federation website (flsc.ca) for a comprehensive review of the significant work being done.



John Phelps

Despite our small membership, the Law Society of Yukon has an equal voice with all 14-member law societies at the Federation. Each law society has one council member and one vote on matters before Federation council. The cost of membership in the Federation is calculated based on the membership in each law society. What this means for the Yukon is that we receive significant benefit and a strong voice for a very modest fee. The Yukon membership is currently at 307 FTE (full-time equivalency), while the total membership for the Federation is 96,085, meaning that our fee is calculated at 0.31% of the total membership fees of the Federation. This year that's \$8,633.08 out of the Federation total of \$2,701,984.00 in fees.

Jim Tucker, Law Society of Yukon president, has written in his report in this issue of *The Yukon Amicus* about the access to justice initiative in which we are involved. This initiative is taking us to all Yukon communities to discuss access to justice issues.

The Federation has an Access to Justice Committee and several jurisdictions are active in this area, including the Barreau in Quebec, where they too have been visiting northern communities in order to raise awareness of the issues faced in remote communities within their province.

When our report is complete, we will work with our Federation partners to address the issues in remote communities across Canada. Our voice on this important topic is enhanced through cooperation and partnership with our Federation counterparts.

The Federation also participates in the Steering Committee of the Chief Justice of Canada's National Action Committee on Access to Civil and Family Justice (NAC) with past President Jeff Hirsch representing the Federation. With the assistance of Calibrate Solutions, the NAC launched a public education campaign titled "Justice for All" in May 2017 to raise awareness of the importance of justice issues and legal efforts being made to improve access to justice across Canada. The NAC is also in the process of creating an "Innovation Toolkit" which will be a national inventory of initiatives, best practices, contact information and other tools to further national coordination and collaboration.

“ Responding to the TRC Calls to Action is a priority for the Federation this fiscal year and I will continue to update our membership on the steps being taken. ”

At the June Council meeting in Iqaluit we received an update that the Truth and Reconciliation Commission Calls to Action Advisory Committee had held its first meeting. The Advisory Committee has agreed that it is important to amend the National Requirement (education for legal students) to include Indigenous cultural competency training. The intention is to provide education focused on the history and legacy of residential schools, the United Nations Declaration of the Rights of Indigenous Peoples, treaties and Indigenous rights and Indigenous law for law students as called for by the Truth and Reconciliation Commission (Call to Action 28).

The Advisory Committee will also be looking at working with the Standing Committee on the Model Code of Professional Conduct to consider adding to the commentary to the Model Code rules on competence to provide guidance to assist lawyers in interacting with and effectively representing Indigenous clients.

Responding to the TRC Calls to Action is a priority for the Federation this fiscal year and I will continue to update our membership on the steps being taken.

Another highlight at the June meeting was the work being done by the Anti-Money Laundering and Terrorist Financing Working Group. They are working on draft amendments to the Client Identification and Verification Rule. Most of the amendments are prompted by recent changes to the federal client verification regulations, but the Working Group is also considering adding requirements to strengthen the "know your client" provisions in the rule and making changes to respond to specific interpretive issues raised by some law societies. The Working Group is planning to have proposed amendments before Council at the October meeting.

REPORT OF LSY ACCESS TO JUSTICE COMMITTEE

by Paul Battin, Chair; and Eden Alexander, Vice Chair

In November of last year, the Law Society of Yukon (LSY) Executive established the Access to Justice Committee (A2JC) in an attempt to address access to justice issues in Whitehorse and other Yukon communities.

We have a variety of projects regarding access to justice issues that have been brought to our attention both by the public and LSY members. For example, John Phelps and Jim Tucker are meeting with community members outside of Whitehorse to hear their access to justice issues (see page 2). The goal is to visit all Yukon communities before the end of 2017.

Another focus of the A2JC is to create publicly available information on practice areas so that the public can connect with lawyers who can answer their specific practice area questions.

We are also reviewing the TRC's Calls to Action and are seeking indigenous LSY members to provide feedback on how the Society can best implement the them — specifically Call to Action 27, which calls for the federation of law societies “to ensure that lawyers receive appropriate cultural competency training, which includes the history and legacy of residential schools, the United Nations Declaration on the Rights of Indigenous Peoples, Treaties and Aboriginal rights, Indigenous law, and Aboriginal-Crown relations.”

Access to justice issues are longstanding and pervasive; however, the A2JC hopes that its work will help ameliorate some of these challenges.

If you have any questions about the work of the A2JC, or want to provide feedback, or join the committee, please contact Paul Battin:

- paul.battin@ppsc-sppc.gc.ca
- tel: 867-667-8100 or toll-free 1-877-587-8499

You can also contact Eden Alexander:

- eden.alexander@gov.yk.ca
- tel: 867-667-8049

Right, above: Paul Battin; right, below: Eden Alexander

We are also reviewing the TRC's Calls to Action and are seeking indigenous LSY members to provide feedback on how the Society can best implement them.



CALL FOR NEW MEMBERS

The Law Society of Yukon Access to Justice Committee (A2JC) is asking for new members. The A2JC seeks to resolve access to justice issues in the Yukon. The Committee works on access to justice projects from creation to completion. It meets once a month. Members serve a two-year term. Please contact Paul Battin or Eden Alexander.

THE UNAUTHORIZED PRACTICE OF LAW IN YUKON

by *Suzanne Duncan, Chair of the Discipline Committee*



Suzanne Duncan

The decision in *Knapp v. O'Neill* 2015 YKSC 22 is a solicitor's negligence case that presents cautionary tales for counsel in several ways. If you practise personal injury law, or any kind of civil litigation in which settlement or mediation are possible, please read this case. You may recall that a CLE was held about a year ago using this case as a basis for a discussion about preparing for and conducting a mediation, with Justice Veale, James Vilvang (one of the experts in *Knapp v. O'Neill*) and Kathy Kinchen presenting.

Another issue raised by this case is the unauthorized practice of law in the Yukon. Mr. O'Neill, the lawyer who was found liable for solicitor's negligence, was not called to the Bar of the Yukon, nor did he have a certificate of permission to act. The Writ of Summons and Statement of Claim were filed by another lawyer in his firm, James H. Brown and Associates, who was called in the Yukon. However, that lawyer did not do any other work on the file. Mr. O'Neill is called to the Bar in Alberta, and works in Edmonton. He was retained by Ms. Knapp when she saw a Yellow Pages advertisement in the Yukon phone directory for James H. Brown and Associates.

Ms. Knapp had suffered injuries in a motor vehicle accident and was suing to recover damages for those injuries and loss of income. The matter was settled after a mediation that occurred in Edmonton before the Statement of Defence was filed. As a result of the solicitor's negligence, which included settling the matter for an inordinately low amount, \$125,000, the solicitor was required to pay the difference between the \$125,000 and the assessment of damages made by Justice Veale, which was \$268,450, plus interest.

Part of the findings of negligence resulted from the solicitor's failure to research and advise on Yukon law. The Court wrote at paragraph 129:

While this lack of Law Society membership or a certificate of permission to act standing alone, would not amount to actionable negligence, it is part of a lack of attention to detail which is aptly demonstrated by the following discovery evidence given by Mr. O'Neill:

- (a) Up to 2001, he "suspected" he had handled other cases coming out of the Yukon;
- (b) Other than creating "some difficulty" in conducting the file to trial, he had no real concern about the fact that it was a Yukon matter;
- (c) Insofar as there are differences in the law between Yukon and Alberta, he did not need to learn more about the law of the Yukon up to the point that he had conducted the file;
- (d) In requesting students or young lawyer to prepare research on the Knapp claim, he did not consider it necessary to give instructions that it was a claim arising in Yukon. As to whether that was "a bit inappropriate" he answered "perhaps";

The Law Society of Yukon protects the public interest in the administration of justice by setting and enforcing standards of learning, competence and professional conduct for lawyers.

- (e) He acknowledged that he would look to Court of Appeal decisions for precedents but he had no specific knowledge of the Yukon Court of Appeal or its decisions; and
- (f) He “may have known” that the British Columbia Court of Appeal also served as Yukon’s Court of Appeal, but he had no specific recollection in that regard.

Specific examples of the negligence findings related to the lawyer’s failure to consider Yukon law included: on the issue of the seatbelt defence, the student’s research was limited to the Alberta statute and Alberta case law; Mr. O’Neill provided no BC or Yukon case law on his client’s claim for pain and suffering; and the settlement offer made in January 2002 did not include any case law to buttress it, let alone Yukon case law.

As you know, the three northern territories are not signatories to the National Mobility Agreement. This means that to practise law in the Yukon, a lawyer must obtain a certificate of permission to act in a particular file, or become a member of the bar of the Yukon.

There are good reasons of public interest protection for this requirement. Unless a lawyer is called to the bar in the Yukon or has a certificate of permission to act, there is no ability of the Law Society of Yukon to regulate that lawyer while he or she is providing legal advice and representation in the Yukon.

The lawyer’s home law society also may have difficulty exercising any jurisdiction over that lawyer for any advice or representation provided on the Yukon matter, except to the extent that they may have the ability to address the issue of the lawyer’s unauthorized practice of law. The home law society may not, however, be able to address any substantive matters that arise, such as in the *Knapp v. O’Neill* case. In other words, a regulatory gap is created.

In addition, there is at least one case that states that the client of a lawyer who is not authorized to practise in the jurisdiction cannot benefit from the protection of solicitor-client privilege.¹ This is an unsettled area of the law, as there is another case that says the privilege protection still exists, as long as the lawyer is licensed to practise in his or her home jurisdiction.² However, the possibility that lawyer-client communications may not be privileged if the lawyer is not authorized to practise in the Yukon should be cause for concern.

The definition of the practice of law in our current *Legal Profession Act* (s. 2) is broad. If you become aware that a lawyer may be practising law in the Yukon without a certificate of permission or a call to the Yukon bar, please raise it with the lawyer (as he or she may not be aware that the National Mobility Agreement does not apply here) or bring it to the attention of the Law Society of Yukon.

1. *Canada (Minister of National Revenue) v. Newport Pacific Financial Group SA* [2011] 3 W.W.R. 117.
2. *NEP Canada ULC v. MEC OP LLC* 2013 ABQB 540

LAW SOCIETY OF YUKON 2017 Annual General Meeting Report

by Paul Battin

We all know that Robert Service wrote that there are “strange things done in the midnight sun.” Well, the strangest of things took place on May 25, 2017, when almost twice as many LSY members (41 to be exact) attended the Annual General Meeting compared to 2016.

Clearly it’s the active engagement of LSY members that made this year’s AGM a success (the cocktail party immediately following had nothing to do with it!). While this might be a strange thing, it’s also a great thing. As Jim Tucker, LSY President noted in his message the day of the AGM, “It is extremely important for our membership to be involved if we are going to continue to be a self-governing profession.”

The cocktail social also had a great turnout, and members and LSY staff had a chance to touch base before disappearing into the Yukon wilderness over the summer. Thank you for your attendance and for your involvement with your law society.

NEW MEMBERS:

Chandler, Mark – Whitehorse, YT

Clark, Micah – Vancouver, BC

Cochrane, Christopher –
Vancouver, BC

Cordonier, Elizabeth –
Vancouver, BC

Driedger, Blair – Kamloops, BC

Fraser, Ian – Whitehorse, YT

Jones, Laura – Vancouver, BC

Lecorre, Marc – Wetaskiwin, AB

Maningas, Aileen – Whitehorse, YT

Markman, Sandra – Whitehorse, YT

McKinnon, Gordon – Winnipeg, MB

Orr, Karen – Victoria, BC

Rosling, Margaret – Vancouver, BC

Seaman, Paul – Vancouver, BC

Smith, Scott – Vancouver, BC

Statnyk, Kristopher – Vancouver, BC

Syer, Timothy – Yellowknife, NT

van Kessel, Katrina – Whitehorse, YT

Young, Matt – Yellowknife, NT

NEW ARTICLING STUDENT

Dickson, Emma –

Whittle & Company

Gillespie, Kevin – Yukon Government

McCarthy, Shandell –

Macdonald & Company

ACTIVE CERTIFICATES OF PERMISSION TO ACT: 113

COMINGS AND GOINGS

George Lee left the Yukon Human Rights Commission and has relocated to Vancouver:

Jocelyn Barrett joined the firm Lamarche & Lang

David McWhinnie retired from PPSC and is now a sole practitioner.

Graham Lang is taking an extended sabbatical from Lamarche & Lang.

Kristi Zychowka left the firm Lamarche & Lang.

UPCOMING CLEs

Insurance Law 101

- Date: September 7, 2017
- Speaker: Kurtis Kruse from Intact Insurance

In-Person Yukon First Nations 101

- Date: November 16, 2017

The online and in-person versions of this course were developed by the First Nations Initiatives department at Yukon College, working with the Council of Yukon First Nations, with material vetted by 14 Yukon First Nations, through the Yukon College President's Advisory Council on First Nations Initiatives. The primary difference between the online and in-person courses is that the in-person course enables discussion, invites participants to ask tough questions and concerns, and includes a presentation and discussion on residential schools.

Topics covered:

- Introduction
- Language Map, Historic Timeline, Clicker Quiz (for personal information)
- Residential School: film clip, presentation, discussion
- First Nations Overview: clans/moieties, worldview, cultural revitalization
- Self-government: presentation
- First Nations Jeopardy (test your knowledge through a Jeopardy-style game)
- Contemporary Topics and Common Misconceptions
- Questions/Wrap-up

UPCOMING CLE TOPICS

The CLE Committee is also working on the following topics:

- Regulatory Offences
- Financial Statements
- Affidavits

COMMUNITY PARTNERSHIPS IN ACCESS TO JUSTICE

by Carmen Gustafson, Executive Director, YPLEA



There are days at YPLEA when I jokingly refer to myself as “the Yukon’s lawyer,” because I’m sometimes the first lawyer a person makes contact with on their path to resolving a legal issue. It’s also because I receive calls and visits from people from all communities in Yukon. Access to legal services to the communities is something that I am sure we all agree is lacking. How we fill this obvious but challenging gap is less easy to agree on. One of the most effective ways to reach communities is through partnerships.

This past winter YPLEA travelled to Dawson City and Burwash Landing by invitation of the Tr’ondëk Hwëch’in and Kluane First Nation to deliver wills and estates education to their citizens. Without the invitations from these First Nations, these community visits would not have happened. The staff of the two First Nations were key in organisation and outreach to their contacts to get people out to the sessions.

Why is legal information an important element in access to justice? In the case of the Tr’ondëk Hwëch’in project, YPLEA gave a free session about wills and enduring power of attorney (EPOA) and met with citizens to take instructions for their wills ahead of a visit by Anna Starks-Jacob (Austring, Fendrick and Fairman) who drafted and executed the wills. Tr’ondëk Hwëch’in provided the space for meetings, dinner for the information session and scheduling for appointments.

The information session was open to any citizen of Dawson City and it assisted individuals to give better instructions to legal counsel and make better choices regarding their particular situation. Having a face and name to connect with from the beginning humanises the process and reduces intimidation and stress.

Access to justice isn’t just about printed or online information. YPLEA is working on a project to produce more legal education materials, but that can’t replace the important role of human interaction. Many Yukoners either face barriers to accessing computer-based legal information and services, or simply prefer to have somebody to talk through their matters with. In the communities, this need is even more acute, and this is where our efforts to improve access to justice face the biggest challenge. In order to provide a real person to connect and problem-solve with, resources are needed to get lawyers to the people who need them.



I hope that this example of working in partnership to address a community-identified need provides some insight into one way the legal profession can improve access to justice in the Yukon in a meaningful and effective way.



LAW SOCIETY ANNUAL GOLF TOURNAMENT AND BBQ

When: Friday, August 11, 2017 **Where:** Meadow Lakes Golf Course **Time:** 1 p.m.; shotgun start

Cost: \$65.00 or \$36.75 for the BBQ only

Registration: Shannon.kmyta@lawsocietyyukon.com

Deadline to register is Friday, August 4

Everyone is welcome! Law Society members, office staff, visitors and guests! The more the merrier!

No experience needed!

YUKON LAWYERS ASSISTANCE PROGRAM

YLAP — Yukon Lawyers Assistance Program — provides confidential support, education and referrals for Law Society members suffering from alcohol and/or chemical dependence, stress, anxiety, depression or just about any type of personal problem.

YLAP services cover 12 hours per year of private and confidential professional counselling for personal or work-related difficulties.

Strictly Confidential • Non-Disciplinary
Compassionate • Independent

The service is provided by Nimco & Co. and is available 24 hours a day, 7 days a week.
Call 668-4058 any time.