One of the regular functions that I perform as President of the Law Society of Yukon is attend meetings of the Federation of Law Societies. Those meetings are wonderful opportunities to meet with leaders of the legal communities in other provinces and territories to discuss common issues. This spring I attended Federation meetings in Ottawa and, most recently, in October, I attended Federation meetings in Winnipeg.

At the meetings in Ottawa, the representatives from the Law Societies in the three northern territories engaged in a very important discussion with representatives from Quebec, Ontario and others regarding access to justice in remote and northern communities. I was impressed by the fact that the issues we struggle with as a community in Yukon are shared to some extent by every province and territory in this country. I was also profoundly struck by the passion exhibited by many of the members of the national legal community in their efforts to deal with those issues.

As we returned from our meetings in Ottawa, John Phelps and I began drafting our Access to Justice Initiative document.

Continued on page 2
This document is on the Law Society of Yukon website at www.lawsocietyyukon.com/access/tojustice.php.

When we were asked to attend the meetings in Winnipeg, we were advised that the topic of discussion for the meetings was the Truth and Reconciliation Recommendations—a Call to Action. We knew that we were going to continue our discussions from Ottawa, and I was asked to sit on a panel to present information on our Access to Justice Initiative and the work we have been doing in the Yukon.

In discussions following the presentation, it was apparent that most of our counterparts across the country had initially gone to the meetings feeling that the most appropriate way for Law Societies to respond to the Truth and Reconciliation Recommendations was to provide their members with cultural sensitivity training, as they had been specifically called upon to do by Recommendation 27.

“...the issues we struggle with as a community in Yukon are shared to some extent by every province and territory in this country.”

In our presentation, I noted that Recommendations 30 to 32 specifically call for action to address the overrepresentation of aboriginal people in the criminal justice system, and that is exactly the ailment that our Access to Justice Initiative addresses.

It was surprising and humbling to be commended and thanked by our counterparts in larger jurisdictions for the leadership role we have taken.

The question now is, what next? During our discussions in Winnipeg, our colleagues from Quebec described how, for the last several years, they have travelled to their remote northern communities to witness firsthand issues regarding access to justice. They have met with community leaders, elders, justice workers and social workers to gather their stories and have produced reports which they have presented to government in an effort to shed light on what is happening in the remote parts of their province. They are trying to do something to fix the problem.

I would like to follow that example. Access to justice in Yukon, or the lack of it, is our problem. We have to travel to the communities that are suffering from a lack of access to justice not only so that we can help identify what can be done to remedy the situation, but also so that we, as a legal community, can build relationships and structures that will allow us to be part of the solution, and not part of the problem. That is what we are going to do.

President’s Message, continued from Page 1

CLIA: For those of you with mandatory professional liability insurance coverage, the deadline to submit your second installment payment is Wednesday, December 16, 2015.

MEMBERSHIP: Annual Membership Renewals (Form 13) will be sent out shortly and memberships must be renewed by January 31, 2016. You are required to have one hour of CPD for every month of active practicing status. With the year end quickly approaching, now is the time to check to see if you need more eligible CPD hours before December 31 in order to meet your requirements for 2015.

If you do not intend to renew your membership, please contact the Law Society well before the deadline to discuss resignation or change-of-status options.

CHRISTMAS SOCIAL: Thursday, December 10 from 5 – 7 p.m. See full notice on page 8. RSVP by November 30.
The federation of law societies annual conference and council meeting was held in Winnipeg, Manitoba on October 1 to 3, 2015. The federation’s annual conference marked the beginning of a national dialogue on the Calls to Action issued by the Truth and Reconciliation Commission. The conference brought together representatives of all Canadian law societies, aboriginal leaders and other key stakeholders to explore the path to reconciliation and the role that regulators and members of the legal profession can play on this important issue.

The first day of the conference involved a variety of presentations including Justice Murray Sinclair, Chair of the Truth and Reconciliation Commission (TRC), who spoke about the important role of lawyers and regulators of the legal profession in achieving reconciliation with indigenous peoples. Noting that law is essential to reconciliation, he cautioned that indigenous people view lawyers and the legal system with significant mistrust, a feeling aggravated by the handling by some lawyers of residential school settlement agreement claims. Justice Sinclair emphasized the need for greater cultural awareness by lawyers, including recognition of the existence of indigenous legal orders, suggesting that a dialogue based on respect is central to reconciliation.

Most of the second day of the conference focused on how the federation and law societies might respond to the TRC recommendations. There was a consensus among participants that responding to the calls to action must be meaningful and prompt and must include direct collaboration with indigenous peoples from the outset. There was also a consensus on the value of working collaboratively through a national working group to maximize resources and send a message that the regulators are serious about responding to the TRC recommendations. Initiatives considered included the developing model national standards for cultural competence training and a training module. Participants also highlighted the implications of responding to the TRC recommendations for both the common law program approval process and the national admission standards project and the need to collaborate with law deans.

One of the panels was dedicated to work being done by select law societies towards access to justice and, in particular, addressing aspects of the TRC recommendations. The panel included our own James Tucker speaking about the Law Society of Yukon’s Access to Justice Initiative and highlighting the efforts here to address the issues in remote and northern communities. There was a lot of good dialogue on the topic of the TRC and conference participants were enthusiastic about continuing this conversation and exploring how we can respond to the TRC’s calls to action working collaboratively with indigenous peoples.

The Council of the Federation met on October 1, 2015. Council is the governing body of the organization and consists of 14 individuals nominated by the law societies and three Executive officers: the president, the vice president and president-elect and the past president. One of the law society nominees is also designated as a second vice president. The Council meets no fewer than four times each year – twice in conjunction with national conferences that bring together the top leadership of the law societies including presidents, vice presidents and senior staff, and at the beginning of June and December each year.

The leadership of the Federation is determined by an Executive ladder system with a regional rotation. The three territories comprise one region with an opportunity to elect one of its members once every nine years. It was the northern regions’ turn this year. It was my pleasure to nominate Sheila MacPherson, Council member from the Law Society of the Northwest Territories, who was selected to join the Executive as second vice president. She will become president in November 2017. I look forward to working with Sheila during her term on the executive and ensuring that northern issues are a consistent component of her agenda.

During the Council meeting we received updates and engaged in dialogue on the status of permanent committees and national initiatives. There are too many to list here, but some highlights from these updates are provided.

**Canadian Common Law Program Approval Committee**

The Approval Committee is mandated by Canada’s law societies to assess Canadian common law programs to determine whether they comply with the National Require-
ment that graduates must meet for entry into Canadian bar admission programs. The Committee met in June 2015 to evaluate 20 law school reports. As required in the committee’s iterative process, initial feedback and questions were sent to the law schools in the summer and all schools were responsive. The application of the National Requirement to joint, dual and one year programs for Canadian civil law graduates is deferred until 2017. The committee will next meet in January 2016 to discuss various issues including the evaluation of learning resources, a key issue for the committee due to challenges in evaluating facilities, libraries, etc. without visits to the schools and given the variation in funding, size, and organization of Canadian law schools.

Steering Committee on National Admission Standards Project

The mandate of the Steering Committee is to provide strategic direction for the development and implementation of high, consistent and transparent national standards for admission to the legal profession in Canada (“National Admission Standards”). In September, an assessment proposal, representing the next step in the National Admission Standards project, was circulated to law society Presidents and CEOs with a request that the proposal be passed on to the appropriate parties in each law society. The assessment proposal and supporting documents provide a vision and structure for moving forward with the development of a national qualifying assessment system for admission to the legal profession in Canada. Law societies have been asked to review the proposal carefully to determine whether they are prepared to move forward with a national assessment system. Meetings with law society leaders are planned throughout the fall.

Standing Committee on the Model Code

The mandate of the Standing Committee is to monitor changes in the law of professional responsibility and legal ethics, to receive and consider feedback on the Model Code from the law societies and other interested parties, and to make recommendations to Council with respect to any amendments to the Model Code. This fall the Standing Committee will launch an online tool that will permit users to compare Model Code provisions with the rules in place in each provincial and territorial law society. In addition, relevant case law for each rule will be displayed using search data from CanLII. This new feature will be available on the Federation’s public website.

Litigation Committee

The Litigation Committee is mandated to consider and make recommendations to Council on potential interventions in court proceedings on matters of national interest that raise issues of compelling importance to the law societies and on which the Federation can make a significant contribution to the court’s consideration. The Federation has been granted intervener status by the Supreme Court of Canada in the matter of Attorney General of Canada v. Chambre des notaires du Québec et al, a case that raises important issues about the scope of solicitor-client privilege in the context of demands from the Minister of National Revenue (Canada Revenue Agency) for the production of documents by members of the legal profession. The case will be heard on November 3, 2015. The matter raises issues that are closely related to those in Minister of National Revenue v. Duncan Thompson in which the Federation also intervened. The Thompson case was heard in December 2014, but the Court has not yet released its decision.

National Requirement Review

Council approved the establishment of the National Requirement Review Committee in October 2014. This Committee is mandated to review how the National Requirement and the law program approval process have worked thus far. It has as its first priority the task of studying whether a non-discrimination provision should be included in the National Requirement and if so, in what form. The Committee has developed a work plan for dealing with both aspects of its mandate. At this meeting, Council reaffirmed the mandate for the Committee. Next steps will involve review of the issues identified by the Committee, to identify their priority and urgency, gathering information on the issues and consulting with stakeholders including representatives of the legal academy. On the non-discrimination issue, background work to assist the committee’s deliberations is being undertaken.

The Federation is also undergoing an extensive governance review which will result in a number of changes to the way the organization does its work. I will report on the outcome and changes that are implemented when the project is concluded.

It continues to be my pleasure to serve as your Council member on the Federation of Law Societies Council.
YPLEA Report

Robert Pritchard’s tenure as the Executive Director of YPLEA and the voice of the Law Line is coming to an end. Robert is retiring on April 1, 2016. He has been with the association for several years and is well respected among the individuals he has served, the Yukon bar and the judiciary. Robert has provided an invaluable service to our community, answering 3,000 inquiries a year, and providing information and referrals in family law, criminal law, wills and estates, civil litigation and other areas. He has also made presentations to community organizations on topics such as “10 Common Questions about Wills and Estates.” Robert’s vast knowledge, experience and calming presence will be sorely missed. YPLEA wishes him all the best in his imminent retirement. There will be an invitation to Robert’s retirement party closer to the date!

YPLEA completed its fiscal year ending in September and will hold its Annual General Meeting on November 25 at 5:30 p.m. at the Java Connection.

YPLEA is instrumental in providing the Yukon public with legal education and information services which further the goal of increasing access to justice and the legal system for all Yukoners.

UPCOMING CLEs

The Continuing Legal Education (CLE) Committee is working on offering CLEs on the following topics:

• Child Protection — a one-day CLE about Yukon Child Protection Law that will encompass practical issues such as the role of parents’ counsel, children’s lawyers, and director’s counsel, as well as a presentation by an expert regarding parenting assessments, child assessments and psychological assessments. We also hope to cover the issues of family group conferencing best interests and views of the child.

• Victim Bill of Rights

• IP or Competitive Law

• Settlement Conferences — A discussion and presentation with James Vilvang with tips for settlement conference preparation and effectiveness, for civil litigation and family law practitioners.

• Judicial Reviews

• Ethics

The Law Society of Yukon makes every effort to ensure that locally offered CLEs are accredited by the Law Society of British Columbia and may be applied towards the British Columbia mandatory 12-hour continuing professional development requirement.

CPD: Please remember to keep track of your CLE hours in 2016. You will be required to attend the mandatory 12 hours of continuing professional development and report it annually on your membership renewal documentation (Form 13).

• Course name

• Provider (e.g., CBA, Law Society)

• Format (in person, DVD, webinar)

• Role (attendee, presenter, author)

• Date (day and month)

• Number of hours

Please note that unless otherwise stated ALL CLES organized by the Law Society of Yukon will count toward your required CPD hours.
Follow-up to the AGM and adoption of the Federation Model Code

At the May AGM, after the motion to approve adoption of Rule 221(1) was passed, the following questions were asked of the Executive:

1. Is the Law Society’s discretion being improperly delegated through the new Rule that says our members are being governed by the Model Code as adopted by the Federation and as amended from time to time?

2. If the discretion is not being improperly delegated, do the rules require the membership to approve any amendments made to the Model Code that the Executive agrees to adopt?

The Executive undertook to look into the questions raised and as a result obtained a legal opinion that, in summary, concluded that the Law Society could employ the legislative device known as “incorporation by reference.” In this case, because the Law Society retains the ability to modify or reject amendments or indeed the entire Model Code in the future, requiring members to conduct their practice “…in accordance with the Model Code of Professional Conduct adopted by the Federation of Law Societies, as amended from time to time” is a valid use of the device. Further, and in response to question 2, it is not necessary for the membership to approve future versions of the Model Code, although exceptions to the Model Code must be made by a rule that is confirmed by the membership.

Please note that the Code of Professional Conduct is available on the Law Society website: www.lawsocietyyukon.com/code.php

Yukon Law Foundation Update

Deana Lemke, YLF Executive Director

Granting sessions are held twice each year — one in the spring and one in the fall. The fall granting session also includes scholarship applications.

During the fall granting session, funding was provided to the following recipients:

- **Law Library Society of the Yukon**: $2,920.00
  New books for the Law Library

- **Northern Institute of Social Justice**: $1,723.40
  Indigenous dispute resolution workshop

- **Yukon Human Rights Commission**: $5,000.00
  YHRC’s grant application was for $20,000. Partial funding toward a research project regarding pay in the private sector was conditionally approved. Funding of $5,000 will be provided if YHRC can secure 80 percent of their required funding by January 31, 2016.

**Total grants approved**: $9,643.40

A total of four scholarships totaling $5,000 were awarded to the following Yukon students:

- Gavin Gardiner;
- Gregory Whiteside;
- Stephanie Dragomar; and
- Shandell McCarthy.

The deadline for our next grant session is March 15, 2016.

Visit our website for more information or to download grant and scholarship applications: www.yukonlawfoundation.com or contact Deana Lemke, Executive Director, at 667-7500, by fax at 393-3904 or e-mail: execdir@yukonlawfoundation.com
Kristi Zychowka grew up in Saskatchewan but spent most of her adult life in Vancouver and the Lower Mainland. After having kids, she and her husband wanted to move to a smaller city and a slower pace of life, and Whitehorse made the top of their shortlist — a great choice for avid outdoors people!

“I contacted a friend from law school who practises here and she put me in touch with a partner at Lamarche & Lang. Coincidentally, the firm was thinking of hiring an associate, and here I am,” says Kristi.

Kristi graduated from UBC Law in 2008 and was called to the BC Bar in 2009. Before moving to Whitehorse, she spent most of her law career as an associate at a boutique business law firm in Vancouver practising corporate/commercial law, wills and estates and trademark law. She is practising in the same areas at Lamarche & Lang, but appreciates that she also has the opportunity to practise in other areas, such as First Nation economic development.

“I have even filled in for one of our conveyancers and have learned what a challenging role it is,” Kristi adds.

Kristi took what she describes as a “winding road” to become a lawyer. She started out as a research chemist but after a seminar in southeast Africa and an internship in the Philippines she realized that she wanted to work more with people and explore a wider range of issues. She completed studies in Community Economic Development, intending to work in small business development and rural and First Nation economic development, but concluded that she could best combine her analytical skills and technical aptitude with her desire to work one-on-one with people by pursuing a career in law.

“She appreciates that she also has the opportunity to practise in other areas, such as First Nation economic development.”

Moving to Whitehorse has been the right choice for Kristi and her family.

“It’s always challenging moving to a new city with a young family, but we are excited to settle in and look forward to exploring the Yukon and all it has to offer,” she says. “The people are friendly. I can run to work in 20 minutes and am within walking distance of the cross-country ski hill. Who could ask for more?”

NEW MEMBERS
July 28, 2015 – November 13, 2015

Brackstone, Paul – Vancouver, BC
Chan, Michelle – Whitehorse, YT
De Rijcke, Izaak – Guelph, ON
Gerbach, Shauna – Vancouver, BC
Labine, Kelly – Whitehorse, YT
Larochelle, Vincent – Whitehorse, YT
Lehmann, Robert – Vancouver, BC
Starks-Jacob, Anna – Whitehorse, YT
Williams, Lance – Vancouver, BC

ACTIVE CERTIFICATES OF PERMISSION TO ACT: 118

COMINGS AND GOINGS

Natascha Joncas left the Yukon to move to Nova Scotia
Tracy McPhee left the Yukon government to take on the role of Executive Director of the Kwanlin Dün Cultural Centre and resume her private practice
Dave Joe has moved back to the Yukon to practise law
Carmen Gustafson left Cabott & Cabott
Laura Cabott closed her office downtown and is now working from her home location
This year’s 27th Annual Law Society Golf Tournament had 59 golfers enjoy a fabulous day at Mountain View Golf Course. Golfers at all levels participated in this fun best-ball format. The after-tournament banquet and awards ceremony was every bit as enjoyable as the tournament itself. The food was incredible and the refreshments bountiful.

The competition was closer than ever. A tie among four teams with 38 strokes resulted in a “putt off.” Shayne Fairman of Team Fairman (including Anna Pugh, Celia Petter and Mike Reynolds) won the tournament by sinking a 12-foot putt on the second playoff hole.

Prizes were also awarded for Closest to the Pin, Closest to the Water, Longest Drive and for just playing the game.

Once again we thank the Law Society for making this tournament a great success and enjoyable experience. Join us next year!

HOLIDAY COCKTAIL PARTY

and 25-year membership pin presentations

Thursday, December 10, 2015  5:00 – 7:00 p.m.
MacBride Museum

Members of the LSY who have been practicing in the Yukon for more than 25 years will be presented with their 25-year membership pins.

Resident members entitled to receive pins:  Non-resident members entitled to receive pins:
Judy Hartling  Peter Sheen
Lee Kirkpatrick  Donald Sorochan
Alan Winter

This year we will also be introducing resident members who were called to the Bar in 2015, including:
Michelle Chan  Megan Seiling
Rita Davie  Anna Starks-Jacob
Kelly Labine  Kristi Zychowka
Vincent Larochelle

Please remember to RSVP to shannon.kmyta@lawsocietyyukon.com no later than November 30th.
We receive many calls from lawyers who are struggling to determine their ethical responsibilities to clients who have, or appear to have, diminished capacity, whether from age, injury or mental health issue.

A healthy relationship between a lawyer and client is one in which the lawyer provides competent legal advice to the client, who then instructs the lawyer to act on his or her behalf. The client may choose not to follow the lawyer’s advice, but the lawyer must follow the client’s instructions provided that in doing so, the lawyer is not breaching any of his or her ethical duties. A client is allowed to make poor decisions, and the lawyer must either comply with the given instructions or withdraw.

There is a difference between making poor decisions and being incapable of making decisions. An example of a client’s poor decision might be to agree to settle for less money than the lawyer thinks the client is entitled to receive. There are many reasons why a client may choose to settle, and a poor decision in the lawyer’s eyes does not mean the client’s ability to make decisions is impaired. Commentary [1] under rule 3.2-9 of the Code of Professional Conduct offers the following guidance:

[1] The key is whether the client has the ability to understand the information relative to the decision that has to be made and is able to appreciate the reasonably foreseeable consequences of the decision or lack of decision. Accordingly, when a client is, or comes to be, under a disability that impairs his or her ability to make decisions, the lawyer will have to assess whether the impairment is minor or whether it prevents the client from giving instructions or entering into binding legal relationships.

If you feel your client is not capable of making legal decisions, your client may be experiencing diminished mental capacity. Rule 3.2-9 of the Code instructs lawyers to maintain a normal lawyer and client relationship when representing a client with diminished mental capacity. However, you should decline to act in a matter if you believe your client is incapable of giving instructions. If your client has any relatives, you should speak to them about your concerns. Your client may wish to authorize a close family member to act on their behalf under a power of attorney. If your client has no relatives, you can apply for a legal representative to be appointed through the Office of the Public Trustee. If you believe a failure to act could result in imminent or irreparable harm, Commentary [2] under rule 3.2-9 allows you to act for your client until a legal representative can be appointed. Commentary [3] continues:

[3] …In any event, the lawyer has an ethical obligation to ensure that the client’s interests are not abandoned. Until the appointment of a legal representative occurs, the lawyer should act to preserve and protect the client’s interests.

The Canadian Mental Health Association can also provide you with advice on how to assist clients with dementia or other mental illnesses.

“There is a difference between making poor decisions and being incapable of making decisions.”

Just as a client may not decide to follow the lawyer’s advice, a legal representative may disagree with the lawyer as to what action is in the client’s best interest. Commentary [4] under rule 3.2-9 of the Code addresses such a situation:

[4] In some circumstances when there is a legal representative, the lawyer may disagree with the legal representative’s assessment of what is in the best interests of the client under a disability. So long as there is no lack of good faith or authority, the judgment of the legal representative should prevail. If a lawyer becomes aware of conduct or intended conduct of the legal representative that is clearly in bad faith or outside that person’s authority, and contrary to the best interests of the client with diminished capacity, the lawyer may act to protect those interests. This may require reporting the misconduct to a person or institution such as a family member or the Public Trustee.

Continued on page 10
If you feel your client is being coerced or unduly influenced, either by a legal representative, family member, or other third party, you should contact Adult Protection Services immediately.

“A healthy relationship between a lawyer and client is one in which the lawyer provides competent legal advice to the client, who then instructs the lawyer to act on his or her behalf.”

While you are prohibited from disclosing confidential information about your client to third parties under rule 3.3-1 of the Code, there is an exception under Commentary [10]:

[10] The client’s authority for the lawyer to disclose confidential information to the extent necessary to protect the client’s interest may also be inferred in some situations where the lawyer is taking action on behalf of the person lacking capacity to protect the person until a legal representative can be appointed. In determining whether a lawyer may disclose such information, the lawyer should consider all circumstances, including the reasonableness of the lawyer’s belief the person lacks capacity, the potential harm that may come to the client if no action is taken, and any instructions the client may have given the lawyer when capable of giving instructions about the authority to disclose information. Similar considerations apply to confidential information given to the lawyer by a person who lacks the capacity to become a client but nevertheless requires protection.

If you feel it is in your client’s best interest to disclose confidential information, the Code recommends that you prepare a written note as soon as possible, which should include:

[5] … (a) the date and time the disclosure was made; (b) the grounds in support of your decision to communicate the information, including the harm intended to be prevented, the identity of the person who prompted communication of the information as well as the identity of the person or group of persons exposed to the harm; and (c) the content of the communication, the method of communication used and the identity of the person to whom the communication was made (Commentary [5] under Rule 3.3-3).

The Code allows you to disclose confidential information to another lawyer when you need legal or ethical advice (rule 3.3-6).

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.

In 2014 the Law Society Executive increased the number of allowable hours from seven to 12 per year. YLAP services cover 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.

IN MEMORIAM

William (Bill) Byers passed away September 8, 2015 in Qualicum Beach, B.C. Mr. Byers was called to the bar in Ontario in 1963 and moved to the Yukon in 1984 to become Deputy Minister of Justice for the Yukon government. He served as a deputy minister in several portfolios over his 18 years in the Yukon.