

KDLA NEWS SEPTEMBER 2022



QUARTERLY NEWSLETTER OF THE
KENORA DISTRICT LAW ASSOCIATION



Phaedra Olinyk
Hook Seller & Lundin LLP
President of KDLA

Message from KDLA President

by Phaedra Olinyk

I hope everyone had a fantastic summer.

Fall seems to be off to a busy start. As I am certain many (if not all) of you have heard by now that many Northern Courts are resuming in person. The Executive will continue to provide updates periodically, but we encourage all members to pay special attention to all memorandums as they pertain to the return to specific communities and the COVID-19 protocols/testing requirements for each.

We will be having our semi-annual AGM this year! It will be held at the Log Cabin Tavern, here in Kenora on Friday, October 14th. There will be two guest speakers, and dinner will be provided by the Executive. Please refer to the poster for specifics.

This will be our first in person meeting in a long time so we are hoping to see you all there!

Maria will be keeping an RSVP list so we can give the restaurant an accurate count. Please let us know if you will be attending.
lawlib@kmts.ca

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Kenora District Law Association

PLEASE
JOIN US FOR THE

Semi-Annual General Meeting 2022

OCTOBER 14, 2022
3:30 P.M. - 6:30 P.M.

SPEAKERS

Cheryl Giran

Bencher, Law Society of Ontario

Rebecca Senior

Crown Lead, Kenora Justice Centres

THE LOG CABIN TAVERN
201 RABBIT LAKE ROAD
KENORA





CHANGING SEASONS



It still looks like summer in the picture, but twelve hours after this was taken, the sun crossed the equator on its way south for the winter, marking the beginning of autumn in the Northern Hemisphere.

Please remember that the KDLA library should not be used for audio or video court appearances. You are welcome to use the Lawyers' Lounge if necessary.



LSO UPDATE: Mandatory Succession Planning – Yes, this impacts you! CHERYL SIRAN - LSO Bencher

As you may or may not be aware, as a result of the election of Treasurer Horvath in June 2022, I was named the successor Bencher at Convocation for the resulting vacant out-of-Toronto seat. The Treasurer then directed me to the Professional Regulation Committee as part of my work. Pursuant to that, I am flagging an issue of substantial importance to rural/remote solo and smalls firms that is currently in a consultation phase, in the hopes you will take a moment for serious consideration of the impact on areas such as ours, and provide your feedback and ideas.

Mandatory Succession Planning for all licensees will go to Convocation for a vote after the consultation closes November 30th. The full details can be viewed here: <https://lso.ca/about-lso/initiatives/mandatory-succession-planning>. In short, the Law Society is considering making a Rule that you must have a named successor of your practice, and it would be a violation of the Rules not to have that in place. Clearly, this is good practice and should be considered without a Rule, particularly if operating as a sole practitioner. However, I emphasize mandatory provisions are being considered.

As outlined in the report, the Law Society's Trustee Services Division is responsible for stepping in where lawyers, who have become ill and/or unable to carry on their practice, or have died unexpectedly, have failed to make any plans for what happens to their practices. The cost of Trustee Services stepping into these practices when this occurs is substantial, and requires significant work to resolve the transition and support issues of both the business and the clients that otherwise would fall on the lawyer's families, executors, etc. It appears the vast majority of the work of Trustee Services relates to solo and smalls firms without succession plans in place.

An additional concern is the impact to clients. Clients rely on their lawyers and when they are no longer there to serve them, questions arise as to where the clients should go, what happens to their files, what happens to monies in trust, the status of actions, the status of deals in progress, documents held for safekeeping, and all other aspects of a particular file.

In our region, there are a number of practical considerations: who is available to do this? If you are a sole practitioner, is there even another lawyer in your area that could? What would the potential liability be if you were a successor licensee? What happens in small communities with conflicts if you are the successor licensee? What about bank rules and access to trust and general accounts? Will this apply to cross-border lawyers?

In my past work at FOLA, I know that it is time consuming and difficult for solos and smalls to respond to these consultations, and as a result, many frontline practitioners leave it to the associations, (FOLA, OBA, TLA and other initialized organizations) to provide input. However, I urge you not to let this one slide by without input, as consideration needs to be given to all the practical realities of what this could mean in a region as vast as the Northwest, which in my view, is already facing a serious erosion in the numbers of lawyers available to service the needs of our population. Even if you are in a partnership or firm now, one day you may be a sole practitioner and these Rules could affect you in the future.

Please read the report, consider the impact for you, and others in our region. Then please respond to it in writing – I have no doubt many of you can think of other challenges that would arise that I have not turned my mind to and I want to hear them. I can confirm all responses are read and considered, which means if you do not tell us at the Committee your concerns, then we may not know them. Mention it to colleagues who it may apply to, even if you do not think it applies to you.

Finally, consider your own circumstances and start planning now to have a clear succession plan, especially if you are a solo practitioner. It is just good business.

Redemption: An Indigenous Lawyer's Hope and Lament

BOOK REVIEW: PEACE AND GOOD ORDER: THE CASE FOR INDIGENOUS JUSTICE IN CANADA (HAROLD R. JOHNSON (1954 TO 2022), 2019)

submitted by Peter Kirby

In this short memoir, Harold R. Johnson (dec) makes a plea to change a punishment-based criminal justice system and to recognize Indigenous justice authority.

Johnson's views his legal career (1991 to 2015) with ambivalence. He entered law school as a mature student having served in the navy and worked in logging and in mining. He did not find the law hard, but the unnecessary stress put on students to master an unreasonable amount of work. He observes that the most important lessons are learned during practice.

He completed an LLM at Harvard and articulated with another Cree speaking, Indigenous lawyer but, despairing of being able to support a family he returned to mining. In 2002, he was taking steps to withdraw from the law society when an offer from another lawyer to help him set up practice convinced him to change his mind.

Johnson expresses shame and bitterness that he was part of an unproductive, elitist system and that he did not find the courage to change it. As defence counsel and then as a crown attorney practicing in northern Saskatchewan, Johnson wrestled with violence, substance abuse, over-incarceration, and recidivism.

Johnson tells us "what we are doing is not working . . . yet we continue to do it," including the use of deterrence as a rationale in sentencing, over-policing, and over-charging, labelling, making sentences longer, and increasing tensions between authorities and Indigenous people. Johnson notes that prior to the George Stanley trial, Saskatchewan armed conservation officers with assault rifles thus fuelling friction over harvesting rights. After the Stanley trial, while travelling through isolated farm country, Johnson's wife counselled her husband that if a bathroom break was needed, they were not stopping in any farmyard.

Johnson demonstrates the failure of a deterrence through the story of the man who killed Johnson's brother, Garry, while driving impaired. Incarcerating him for three years did nothing to replace Garry as caregiver for an FASD child, Brennan, who himself ended up serving time; nor did it find a replacement for the driver to care for his thirteen-year-old granddaughter. Why, Johnson asks, was the offender not ordered to care for her and for Brennan?

As a Woods Cree member of Treaty Number 6, Johnson's experience with violence and oppression was deeply personal.

When he was ten, his father died, leaving his mother and siblings on a trap line. Under threat that the children would be taken into care if they missed school, the family moved to La Ronge (pop. 4000) and lived on welfare. Johnson lost two brothers to drunk driving.

In observations this reader would have liked fully fleshed out, Johnson laments that few community-based sanctions were available to him as a crown attorney and, curiously, that Gladue, encourages offenders to see themselves as victims instead of taking responsibility and working their way back into society.

He suggests that we measure the work of all actors and institutions in the justice system, including courts, by the rate of recidivism of offenders passing through their hands and using the results to determine best practices.

His second plea for reforming the justice system is to recognize the treaty right (Treaty Number 6 and other treaties), of Indigenous people to administer their own justice system according to their culture and beliefs.

At the end of his time in the law, in 2015, Johnson got the satisfaction of tackling the roots of crime through a community-led project, the Northern Alcohol Strategy. The Strategy was able to reduce alcohol abuse and crime by limiting the hours the La Ronge liquor store was open on paydays.

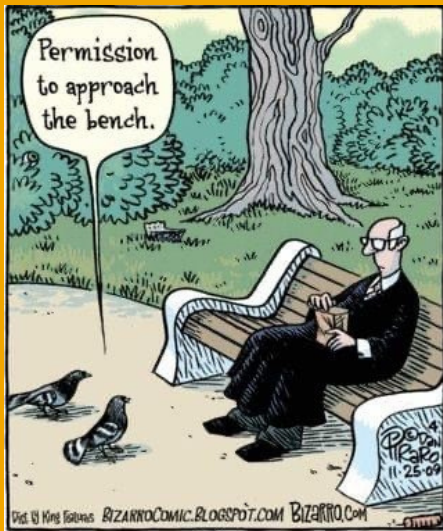
Johnson makes two cautionary observations: changing the colour of those administering justice will not change the system and people sometimes plead guilty to crimes they did not commit.

Peace and Good Order is a spare but forceful examination of the justice system and one lawyer's life in it.

KDLA member Dustin Fuller has moved back to Thunder Bay.

NEW CONTACT INFO

Dustin Fuller
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151 Brock Street West
Thunder Bay, ON P7E 4H9
Direct Telephone: (807) 708
5512
www.dustinlaw.ca



New Staff Lawyers Joining LAO in Fort Frances and Kenora

LAO is very pleased to have added two new staff lawyers to its team in the Northwest. Chenoah Down and Breanna Sheppard are both recent Calls from the University of Manitoba.

Chenoah Down

Chenoah recently graduated from the University of Manitoba's Faculty of Law and was called to the Manitoba Bar on June 16, 2022. She has since been called to the Ontario bar and has been practicing as a Criminal Law Staff lawyer with Legal Aid Ontario in Kenora since July 18, 2022.

You may remember Chenoah from her time as a legal assistant in Kenora. In her new role as a lawyer, she is optimistic to create positive change in our justice system. Most prominently, Chenoah hopes to successfully eliminate access to justice barriers in our district.

Breanna Sheppard

Breanna Sheppard is originally from Burditt Lake, Senn Township, and grew up next to the lake about an hour outside of Fort Frances. She has joined Legal Aid Ontario as a hybrid duty counsel for Criminal and Family Law in Fort Frances

Always keen to travel, after completing a Bachelor of Arts in English Literature (2015) and a Bachelor of Education (2016) at the University of Winnipeg, she worked abroad as a teacher for a few years.

Keen to gain practical experience, she was involved heavily in legal clinics throughout her law degree. Upon graduation, she subsequently articulated with the Riel Community Law Centre (Legal Aid Manitoba). She was called in June 2022 and started working with Legal Aid Ontario the following month in July.

Breanna is excited to practice in a new province and looks forward to serving Northwestern Ontario, her home community, as a member of the Bar.

A View From My Window



Float planes passing my window are a fairly common sight most days.

Less common is this view: a plane being towed into the dock by boat.

Note the quadropedal navigator in the bow of the boat.

Recent Library Acquisitions

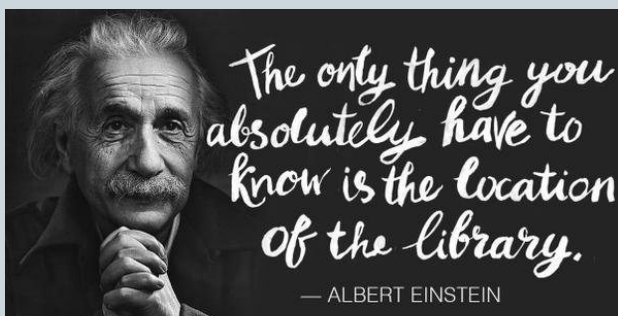
NEW BOOKS

Administrative Law in Canada (Blake) 7th ed.
2022 Annotated Bankruptcy & Insolvency Act (Houlden, Morawetz & Sarra)
2022/23 Annotated Ontario Personal Property Security Act (McLaren)
2022 Annotated Ontario Provincial Offences Act (Segal & Libman)
Artificial Intelligence & the Law in Canada (Martin-Bariteau & Scassa)
Canadian Animal Law (Shroff)
Canadian Family Law (Payne & Payne) 9th ed.
Canadian Law of Mining (Barton) 2nd ed.
The Canadian Law of Obligations: access to justice (Young)
Canadian Private Law (Atkinson)
Child Support Guidelines in Canada 2022 (Payne & Payne)
Child Victims in Canada's Justice System (Beniuk, Hughes, Reynolds)
Condominium Development in Ontario: a practical guide (Mikkola)
Consolidated Ontario Estates Statutes & Regulations 2023
Consolidated Ontario Family Law Statutes & Regulations 2022-23 (Siegel)
Criminal Procedure in Canada (Penney, Rondinelli & Stribopoulos) 3rd ed.
Dangerous Offender Law (Laroche, Yule, & Botting)
Digital Commerce in Canada (Deturbide & Scassa)
Environmental Regulation in Canada (Dunn)
Every Cyclist's Guide to Canadian Law (Waters) 2nd ed.
Forgotten Foundations of the Canadian Constitution (Bird & Ross)
The Forgotten Fundamental Freedoms of the Charter (Newman, Ross & Bird)
A Guide to Consent & Capacity Law in Ontario (Hitlz & Szigeti) 2023 ed
Law & Disability in Canada: cases and materials (Jacobs et al)
The Law of Evidence in Canada (Lederman, Fuerst, Stewart) 6th ed.
The Law of Objections in Canada: a handbook (Marseille & McArthur)
Law's Expression: communication, law & media in Canada (Hamilton & Robinson) 2nd ed.
Management of Nonprofit & Charitable Organizations in Canada (Seel) 4th ed.
Misrepresentation & (Dis)Honest Performance in Contracts (MacDougall) 2nd ed.
Non-Citizens in Canada: status and rights (Carasco) 2nd ed.
Ontario Business Corporations Act & Commentary 2022/23 (Fasken)
Ontario Litigator's Pocket Reference (Nishisato) 2023 ed.
Ontario Municipal Act & Commentary 2022 (Mascarin & Williams)
2022 Ontario Planning Legislation & Commentary (Harrington & Skinner)
Ontario Superior Court Practice 2023 (Archibald, Firestone & Sugunasiri)
Personal Property Security Law (Cuming, Walsh, Wood) 3rd ed.
Power of Attorney Litigation (Hall & Popovic-Montag) 2nd ed.
Sentencing Ranges for Criminal Offences (Ruby & Brown)
Sullivan on the Construction of Statutes (Sullivan) 7th ed
Wilson on Children & the Courtroom (Hudani, ed.)
Writing Reasons: a handbook for judges (Berry)

NEW CLE

From LSO

The Eight-Minute Employment Lawyer 2022
The Eight-Minute Labour Lawyer 2022
The Six-Minute Estates Lawyer 2022
The Six-Minute Municipal Lawyer 2022



KDLA EXECUTIVE

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