

Editorial

## Introduction: Law in the Canadian North

Ken Coates\*

For over thirty years, the *Northern Review* has published the occasional article, commentary, or book review on various aspects of law in the Circumpolar North. Those topics have included policing in the Klondike, criminal and restorative justice in Alaska, the legal status concerning Indigenous peoples in Russia, and issues of sovereignty and governance.

However, the journal has never published a special issue or collection specifically focused on law in the Canadian North. We decided the time was long overdue. Thanks to Yukon Chief Justice Ron Veale's vision and to the Law Society of Yukon's sponsorship of the project, this, our fiftieth issue, is the first devoted exclusively to exploring some of the diverse topics facing law and legal practice in the North.

Law in the North has historical roots, both in Indigenous legal orders, concepts of justice, and enforcement of the peace, and in the prominent role of the North-West Mounted Police (RCMP) across the Far North. But as the essays, reflections, and other contributions in this issue demonstrate, the law is much more than high profile declarations of sovereignty or the routine enforcement of national and regional laws.

For non-lawyers, generalists, practising lawyers, and legal faculty members alike, "the law" is a multifaceted and dynamic concept, particularly in the North. Yet there has been relatively little scholarship about the unique experiences and issues involved with northern law in Canada. This volume is intended to make a contribution toward addressing that gap.

The Law Society of Yukon (LSY) has been an active and enthusiastic supporter of serious study of the Canadian North. Their education sessions have featured leading academics and northern practitioners to discuss issues of historical, societal, or contemporary legal interest; and the law society has encouraged open discussions of the challenges and accomplishments of the legal profession in the North.

This collaboration of the LSY and the *Northern Review* is an excellent case in point. It's important to note that as sponsors of this publication, the law society imposed no constraints on the initiative. The LSY and the guest editors have helped to promote an expansive view of the role and impact of law in society, from the inner workings of the profession to the sweeping complexities of international law. We hoped that the contributions would include commentaries on the realities of practising law in the North, as well as on the centrality of legal issues in shaping the present and future prospects for the region. And we were not disappointed. As this collection came together, it became clear that academics and legal professionals involved with law in the North were eager to share their research and analysis.

The five research articles in this issue include examinations of constitutional law, international law, and the legal duties that reconciliation presents to Canadians. In her article, "The Constitutional Status of Yukon—A Normative Analysis," Pamela Muir (Whitehorse) looks at the legal position of the Yukon in Canada and concludes that the traditional binary view of provinces and the federal government needs to be reimagined. Nigel Bankes (University of Calgary) examines the three main bodies of law that apply to the discovery of the Franklin expedition ships in his article, "Her Majesty's Ships *Erebus* and *Terror* and the Intersection of Legal Norms." Rebecca Johnson (University of Victoria), in her essay "Questions about Questions: Law and Film Reflections on the Duty to Learn," takes up challenges of reconciliation and the duty to learn, and uses the film *The Journals of Knud Rasmussen* (2006) to offer thoughts on cinematic stories as a particularly productive site for legal thinking. Natalia Loukacheva (University of Northern British Columbia) explores the "law-making" activities of the Arctic Council and the agreements concluded under its aegis, and investigates how these agreements have shaped the nature and evolution of this forum, in her article "The Arctic Council and 'Law-Making.'" Finally, Maegan Hough (Ottawa/Whitehorse/New Liskeard) reviews the thirteen reparations provided for harms caused by the Indian Residential Schools policy in her article, "Taking Responsibility for Intergenerational Harms: Indian Residential Schools Reparations in Canada," and she draws on transitional justice theories to suggest additional mechanisms of responsibility for Canadians.

Five commentaries reflect on both the big picture and on the practicalities of legal practice and justice in the North. In “Drawing upon the Wealth of Indigenous Laws in the Yukon,” Darcy Lindberg (University of Alberta) reflects on how the practices and institutions of Yukon First Nations can be used to inform both lawyerly approaches to First Nations law and the interactions of the non-Indigenous Yukon public with Indigenous laws. Jessi Casebeer (Yellowknife) comments on the practice of law in the three territories, in “A Northern Lawyer,” and reflects on how those who move north need to engage with what it means to be a lawyer practising in the context of a northern community. In his commentary, “The Quest for Representative Juries in the Northwest Territories,” Charles B. Davison (Yellowknife) offers his perspective, as a practising criminal defence lawyer, on the challenges lawyers face in trying to obtain juries that truly represent the communities from which their clients originate. Michael d’Eça (Ottawa), in his essay “Proposed Administrative Tribunal Policies Concerning Indigenous Ecological Knowledge and Values, and the Duty to Consult,” argues that every northern land claim board empowered to consider questions of law should develop a useful tribunal policy concerning the Crown’s duty to consult and, where appropriate, accommodate Indigenous groups. Chief Justice Ron Veale (Supreme Court of Yukon) and Andrea Bailey (Whitehorse), in their commentary “The Crest Affair: Judicial Independence and Yukon’s Supreme Court,” recount the remarkable story of a 1986 public conflict between the Yukon’s Minister of Justice, the Senior Judge of the Yukon Supreme Court, and the president of the Law Society, highlighting the important role that court and judicial independence play in Canadian society.

As always, this issue of the *Northern Review* also includes a terrific collection of book reviews from insightful reviewers—we thank Eden Alexander, Ellen Bolger, Luke S. Faught, Scott Duke, Andreas Kuersten, and Kate Mercier for their time and thoughts. If we had been able to publish reviews of all the books received, this volume would be very hefty indeed. This is a sampling, and we hope to continue publishing reviews of books that touch on law in the North. We invite contributions.

This volume was designed to spark region-wide discussion about the role of law, from legislation to enforcement to Indigenous legal orders, and it does so admirably. Contributions from northern practitioners and academic analysts illustrate the range of research interests in the field and open new lines of inquiry.

And yet, despite the range of topics included in this issue, there is a sense that we are just looking at the tip of the iceberg. There are topics we were not able to include—such as Inuit law, and reviews of the terrific books published by Nunavut Arctic College Media, and there is no case commentary or analysis of

any northern court decisions. We are not pretending to present a definitive and comprehensive volume of law in the Canadian North. This is a snapshot; a taster. And our hope is that the volume inspires further scholarly engagement with legal topics in both the provincial and territorial Norths of Canada.

The law is not static or immutable. Instead, it is fluid, culturally-bounded, and reflective of national and institutional priorities. It is also intensely human, reflecting the personalities and priorities of the people—the police, lawyers, judges, and legislators—and the peoples whose cultures engage with legal concepts in different ways. As such, the study of law and society in the North takes us from the darkest corners of the human condition to the broadest strokes of international relationships.

Law and life are both different in the North. Whether readers are curious generalists, practising lawyers, or students and academics at southern Canadian law faculties, we trust that the contributions in this collection will provoke and inspire, provide intriguing insights into the legal profession, and test long-held assumptions about northern law and justice. More than anything, we hope that the collection reminds readers of the complex and comprehensive roles that law and the pursuit of justice have within society at large and, most emphatically, that there are uniquely northern aspects to the management of legal systems and processes in the Canadian North.

**Ken Coates** is a founding and senior editor of the *Northern Review*; professor and Canada Research Chair in Regional Innovation, Johnson Shoyama Graduate School of Public Policy, University of Saskatchewan; and a fellow, Royal Society of Canada.

### **Guest Editors**

Chief Justice Ron Veale, Supreme Court of Yukon  
Justice Suzanne Duncan, Supreme Court of Yukon  
Ken Coates, University of Saskatchewan  
Bruce Warnsby, Whitehorse  
Andrea Bailey, Whitehorse (ex officio)