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ON THE FRONT COVER

Jan Lindsay, Q.C., is our current Law Society President and the first cover subject to appear in our new style. Check out her style at page 17.

REFLECTIONS OF A DEPUTY JUDGE OF THE YUKON SITTING IN WATSON LAKE, AUGUST 1994

By Marion Allan

I was appointed a deputy judge of the Yukon in 1990, and for many years I travelled to Whitehorse for a week every year. Sitting there in the spring or fall was a snap. The courthouse is a beautiful building—modern and light. The federal and territorial governments put an end to their dispute as to which coat of arms should grace the Supreme Court rooms. I believe that there was only one occasion when the senior resident judge draped his robes over the “wrong” coat of arms in protest.

Visiting judges are lodged in the Edgewater Hotel, which—once you haul all your luggage up three or four flights of stairs by yourself—has a modern suite far more luxurious than anything in the BCSC’s northern B.C. postings. As I recall, Whitehorse has a great bookstore, good restaurants and bakeries, and excellent espresso. Rumours of good bars abound. The scenery and the northern lights are magnificent.

In 1994, I was asked if I would like to sit “out of town”. Apparently, Watson Lake, at mile 635 on the Alaska Highway in southeastern Yukon, is the most civilized spot on the circuit. Ross River and Old Crow were reputed to be the most challenging destinations. The fact that Ross River is also known as Lost Liver speaks for itself. In Old Crow’s accommodation, the judge has one bedroom, and the court staff, regardless of gender, share the second bedroom with three bunks. All provisions, including bedding and food, have to be brought in each time.

The RCMP take the position that they would be compromised if they transported counsel, the judge or the court staff the eight blocks to the building in which they hold court. Accordingly, everyone has to make their own way by foot no matter the weather conditions. The court clerk is faced with the daunting task of transporting numerous court briefcases, exhibits and everything necessary for court in temperatures as low as minus 45 degrees. Our clerk said she used a toboggan to lug everything through the snow. On one occasion, she was required to transport four rifles. Everything was so cold and slippery that the guns kept falling off the sled. She stuffed

two rifles under each armpit facing forward, tied the toboggan's rope around her waist and set off.

On another occasion, in Pelly Crossing, the two accused were in custody, and during their trial they were closely guarded by two RCMP officers. (Sheriffs do not attend criminal trials in the Yukon; if the prisoner is in custody, one or more RCMP officers referred to as "proves" attend.) In the midst of the trial, a murder occurred in the house next door to the courthouse. The RCMP officers were paged, and they rushed out of the courtroom. The judge quickly called an adjournment and hurriedly left the bench. The clerk was left with the vexing problem of deciding what to do with the prisoners. She locked them in a small room and sternly told them to stay there. She learned later that another door in that small room led directly into the judge's chambers. Fortunately, the accused obeyed her and stayed where they were until court reconvened with the return of the officers.

In August 1994, an assize in Watson Lake came available. The first leg of this adventure involved a chartered plane from the Alkan Air hangar in Whitehorse at 7:30 a.m. A slick little six-seater Piper Chieftain transported me, the court clerk, the court reporter and a victim-services worker. For an hour and ten minutes, we flew over mountains and lakes and trees. Nothing else. No houses, no roads, no settlements. The court reporter told me that she had flown dozens of times over the Pacific to tiny islands in Micronesia and that it was much scarier looking down and seeing nothing but water. I did not tell her that I would sooner drown quickly and quietly than land safely on a mountain and then slowly freeze and be eaten by bears. After we landed safely, the sheriff, who had driven the 455 kilometres the day before, picked us up at the airport and took us to the Watson Lake "Hotel". The day after this blessedly uneventful flight, I talked to Mary-ellen Boyd on the telephone and told her where I was. She said the only thing she knew about Watson Lake was that it was the scene of a famous air crash.

It would be hard to describe the Watson Lake Hotel as a hotel. It was a grim institutional building. The only decorations in the hallways were large notices that reminded guests that all of the outside doors to the building had to be kept locked at all times. That afternoon, my neighbour across the hall propped open the security door at the end of the hall, opened his door and sat on a chair in the doorway, drinking beer. When I opened my door, he asked me if I wanted to come over to his suite and join him for "a cold one". I declined politely and went back to answer the phone. The call was from the front desk, from which an angry woman insisted that it could not be coincidental that, as soon as I arrived, the doors were left unlocked and

open. I pled not guilty and squealed like a rat on my neighbour. It became obvious that at least one of the outside doors was always propped open by someone, but it seemed easier not to dwell on the basis for the management's strong concerns about security.

My "suite" was equipped with a kitchen, but the refrigerator made more noise than the Piper Chieftain's engines. It was chronically unbalanced, but I soon found that if I banged it around a bit and stuffed the bathroom floor mat under one side of it, I could calm it for a half hour at a time.

The hotel would be right on the Alaska Highway were it not for a buffer zone provided by "The Signpost Forest". This consisted of more than 20,000 signs, mostly road signs of towns and cities from all over the world, attached to trees and posts spread out over an area of a couple of blocks. Apparently, a homesick American soldier who had been sent up north to work on the construction of the Alaska Highway in 1942 wistfully erected a signpost indicating the direction and mileage to his hometown of Danville, Illinois. The idea caught on; an informational sign said that approximately 2,000 new signs were erected each year, so it's a good thing there is a lot of open space up there. (In 2013, there were over 77,000 signs in the forest.)

The weather was pleasant initially, although it turned to lightning, thunder and rain the second night. That was no surprise—in the 11 days I spent in the Yukon that summer, prior to travelling to Watson Lake, I experienced the following weather phenomena: choking smoke from the forest fires that limited visibility to a few feet, howling winds and fog and rain in Skagway, rain and an early morning frost (minus 5 degrees) in Dawson City, bright sunshine in Haines Junction and uniformly beautiful weather in Whitehorse.

Court was held across the street from the hotel in the gym of the Community Recreation Centre—a great cavernous structure clad entirely in corrugated tin, with a vivid mural on one side of it. The entire structure housed a gigantic curling rink and appeared to be wholly dedicated to that sport. The judge's "chambers" were a small storage cupboard, which contained a desk and a number of curious articles: a snow shovel, spare light bulbs, gardening gloves, a couple of Husky hats (one chartreuse and one hot pink), a crib board made out of a moose's antler, uninscribed trophies in an old "Nutty Club" carton, and a box of pink and aqua ping pong paddles. A huge pile of paper boxes and other garbage sat in one corner; a case of broom bags and bags of things from the Home Hardware were piled in another. An odd metal structure, which presumably was essential to some aspect of curling, leant into a third corner. The wall sported only the Canadian Curling Rules and a newsletter headed *On the Rocks*.

The little office was set off in a corner of the lounge that sported a wet bar and a pool table overlooking the curling rink. Thankfully (or perhaps regrettably), the bar was not stocked during the trial. The lounge was populated by the complainant, her relatives, the victim services worker and, from time to time, Crown counsel. The office had a single window, which looked out into the lounge. Someone had covered some (but not all) of the window with cardboard. I peeked out through the crack periodically to account for all of the complainant's family, to make sure I could use the bathroom without running into them.

Robing presented a challenge—anyone in the lounge who wanted to look through the window into the office could do so easily. The bathroom had three small cubicles, too small for disrobing or enrobing. I decided to change in the hotel.

To get back into my little office, it was necessary to walk in full judicial robes through the main gym and past all the participants. To get from my office to the “court”, I had to enter behind the lawyers and the accused, pass in front of the jurors' chairs and climb up a series of rickety wooden stairs to my “bench” on the stage. The bench was a table with a forest-green tablecloth, which I seemed to kick out in front in great billowing lumps whenever I crossed my legs. Usually, however, I kept both feet on the floor to prevent my chair from rolling backward across the linoleum on the stage and into the piano, which was two feet behind me. I do not play the piano but, strangely, during the trial I was repeatedly struck by an urge to spin around and play a chord or two.*

Jury selection was set for 9 a.m. The sheriff complained that everyone runs on Yukon time. This apparently explained the fact that, although his office sent out 150 jury notices, by 9:55 there were about 15 bodies. By 10:10 there were probably 100 bodies. Both the accused and the complainant were local. Six of the panel members who were called up were excused because they were related to, or knew, the accused or the complainant or both. The charge was sexual assault, and the accused was described variously as the uncle or the second cousin of the complainant.

Feeling a bit out of my comfort zone, I stifled an inordinate fear of saying something foolish and resolved to sit quietly and look cool. That resolve lasted until counsel for the Crown, a courteous and pleasant man, introduced himself as counsel for the Attorney General of Canada. “For the Attorney General of Canada—in a sexual assault trial????” I shrieked mockingly, one second before I remembered that in the Yukon, territorial prosecutors

* “But first, ladies and gentlemen of the jury, Rachmaninoff's Piano Concerto No. 2 in C minor.” – *Ed.*

only deal with offences under Yukon statutes. Federal prosecutors handle all criminal offences, not just drugs and taxes and the like (although I understood there was a move afoot to change this).

While the office was freezing, the gym was sweltering and everyone who could remove layers of clothing did so during the first hour. The sheriff offered to turn on the air conditioning but warned me that it was *very* noisy. As it was, the complainant was so soft-spoken that she was required to repeat each of her answers several times before anyone could hear her. I was the hottest person in the building.

I walked briskly around Wye Lake the first morning. I concluded that I had the path to myself because the good burghers of Watson Lake had better things to do at 7 a.m. than walk outdoors in a circle and, no doubt, they engaged in more strenuous activities such as wrestling with large animals when they felt the need for exercise. When I got to court, one of the staff warned me that it was a bad idea to walk there in the mornings in August because the bears are out feeding on berries in preparation for hibernation. That afternoon, I decided to circumnavigate the lake once more for some exercise. Again I met no one, but this time, when I was about halfway around, I heard great claps of thunder accompanied by great billowing black clouds, which came closer and closer and moved significantly faster than I. I ran back to the hotel and got there just minutes before the storm struck overhead. The rain came down in sheets. In no time, the emerald green lawn outside my window was awash in brown mud. Surprisingly, by the next morning all of the water had drained, leaving the grass fresh and green. The lights flickered off a few times, and I contemplated the challenges of preparing a jury charge without electricity.

That night, there was a small window of opportunity for sleep between 1 a.m., when a loud live band playing country and western music (badly) shut down, and 5 a.m., when a contingent of large trucks revved their engines a few feet from my bedroom window until I abandoned the idea of sleep.

When I got to court the next day, the sheriff told me that a bear had been sighted in town the day before and two bear traps had been set.

The evidence at trial proceeded efficiently: 11 witnesses in two days, two for the Crown and nine alibi witnesses for the defence. Counsel's addresses and my charge went smoothly on the third day, although it rained heavily at one point. The sound of the downpour on the corrugated tin roof seemed to wake up the jury and interest them far more than the drone of counsel and the judge.

The jury deliberated for two hours before returning with a verdict of not guilty. They were obviously undeterred by the accused's criminal record,

which had been entered by the defence as the only exhibit in the trial. The record disclosed 23 convictions between 1985 and 1991, albeit none for sexual assault. It appeared that a good proportion of the community was in the courtroom to support the accused, and they broke into applause when the foreman announced the verdict.

After court, determined to avoid bears, I walked along the Alaska Highway to the end of town and back. This was only about seven kilometres, but I began to consider the challenges that getting fresh air and exercise posed to an unarmed cityslicker without mace. I went to dinner with the court staff. We had a great time telling stories, despite the fact that the restaurant was sold out of meat, chicken and fish.

That night, another live band, louder than the first and much worse, struck up at 10:30 p.m. and “played” through until 3 a.m. The lead “singer” invited audience participation and, presumably increasingly under the influence of strong drink, the audience grew ever louder and less melodic. I decided that the last words anyone in bed wants to hear at one in the morning are those of the leader of a country rock group yelling “We’ll just take a break and be right back!” I entertained fantasies beginning with phoning the front desk and asking “This is a hotel, isn’t it?” and escalating to unplugging the entire sound system and throttling the lead singer with the electrical cords. The last fantasy was fortified by the fact that there were no media in Watson Lake to report me.

We flew back to Whitehorse in an older Piper Chieftain that seemed smaller than the first one. While we were standing on the airport runway in Watson Lake, we learned that a Cessna 170 had just made a forced landing on the North Klondike Highway outside Whitehorse and then steered into a ditch to avoid traffic. Our flight back was turbulent, but happily we all had nerves of steel and stomachs of iron.

