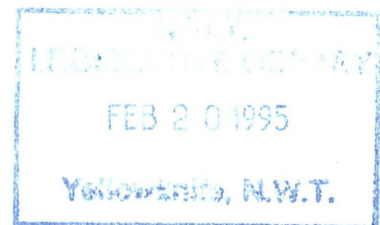


STANDING COMMITTEE ON LEGISLATION

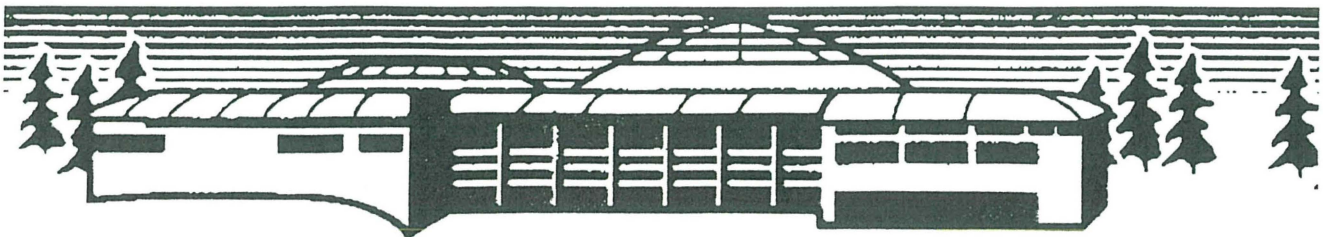
Report On The

**Review of the Legislative Action Paper Proposing New Heritage
Legislation for the Northwest Territories**

**Sam Gargan, M.L.A.
Chairperson**



12th Assembly



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Thursday, December 15, 1994

February 15, 1995

**THE SPEAKER
LEGISLATIVE ASSEMBLY OF THE NORTHWEST TERRITORIES**

Mr. Speaker:

The Standing Committee on Legislation is pleased to present its Report on the Review of the *Legislative Action Paper Proposing New Heritage Legislation for the Northwest Territories*.

SAM GARGAN, M.L.A.
CHAIRPERSON

STANDING COMMITTEE ON LEGISLATION

Report on the Review of the Legislative Action Paper Proposing New Heritage Legislation for the Northwest Territories

TABLE OF CONTENTS

	Page
1.0 OVERVIEW	1
2.0 THE REVIEW PROCESS	1
3.0 ISSUES AND CONCERNS	2
3.1 Principles	2
3.2 Linking the Legislative Framework	3
3.2.1 Jurisdiction: Commissioner's vs. Crown Land	3
3.2.2 Impact Assessment	3
3.3 Ownership and Display of Heritage Resources	4
3.3.1 Defining Heritage Resources	4
3.3.2 Display of Heritage Resources	4
3.3.3 Central vs. Local Control	5
3.3.4 Repatriation of Artifacts	5
3.3.5 Human Remains	6
3.4 Heritage Resources Fund	6
3.5 Consultation: Land Claims and Traditional Knowledge	6
3.5.1 Settled Claims	7
3.5.2 Traditional Knowledge	7
3.5.3 Heritage Boards	8
4.0 CONCLUSION	9
APPENDIX I	List of Witnesses
APPENDIX II	TD 4-12(6) Heritage Action Paper

COMMITTEE REPORT
on the
LEGISLATIVE ACTION PAPER PROPOSING NEW HERITAGE
LEGISLATION FOR THE NORTHWEST TERRITORIES

I.0 OVERVIEW

On April 6, 1994 the Minister of Education, Culture and Employment tabled TD 4-12(6), A Legislative Action Paper Proposing New Heritage Legislation for the Northwest Territories. A motion was subsequently passed to refer the Action Paper to the Standing Committee on Legislation for review.

The Action Paper outlines the proposed principles on which new Heritage Legislation will be developed to replace the existing *Historical Resources Act* and provide more adequate protection for the heritage resources of the Northwest Territories. The Action Paper proposes a legislative framework that will subject a wider range of significant heritage resources to protection and control while ensuring public participation in the designation and management of these resources. The rights and obligations of property owners and developers will also be included, as will the severe penalties for contraventions of the Act.

Current legislation is lacking in many of these important areas and the government feels that time is of the essence if the heritage resources in the Northwest Territories are to be preserved for future generations.

2.0 THE REVIEW PROCESS

In November 1994 the Standing Committee on Legislation established a date for the public review of the Legislative Action Paper on Heritage Resources. Stakeholders were notified and comments and submissions were encouraged. Regretfully, due to the short timeframe between notification and the public hearing, responses from interested parties were limited.

The public hearing on this paper was held on Thursday, December 15, 1994 in Yellowknife. The Minister of Justice introduced the Paper on behalf of the Minister of Education, Culture and Employment and then the Committee heard from the only scheduled witnesses, representatives of the Gwich'in Tribal Council and the Gwich'in Social and Cultural Institute.

The Committee also received a written response from the Inuit Heritage Trust, the body responsible for participating in the development of heritage policy and legislation in the Nunavut Settlement Area, and Dennis Patterson, MLA for Iqaluit, on behalf of the Nunatta Sunakkutaangit Society of Iqaluit.

After discussing the views and concerns presented, the Committee prepared this report.

3.0 ISSUES AND CONCERNS

A number of issues were identified, based on the comments and concerns expressed by witnesses and Committee Members during the public review of the Legislative Action Paper, and are presented in this report.

3.1 Principles

The Paper introduces a number of principles that will guide the development of new Heritage Legislation in the NWT. These principles were generally felt to be acceptable to the Committee and stakeholders who commented on the paper. However, Gwich'in representatives proposed an additional principle to ensure a cooperative approach to implementation of a new *Heritage Act*.

Government, in cooperation with Aboriginal groups, will work together in implementing the proposed Heritage Act in a manner that is consistent with Land Claim Agreements.

This principle embodies the spirit of the Gwich'in concerns with respect to the consultative process in the protection of heritage resources. These concerns are discussed in more detail in the section on consultation and land claims.

The Committee would like to raise another point with respect to the principles of new heritage legislation. In the Legislative Action Paper dated April 6, 1994 and tabled that same day, there is a principle which reads:

Protective measures should be clearly and specifically defined so as not to create unnecessary inconvenience for property owners and land developers.

However, in presenting the Paper to the Committee during the public hearing, the Minister of Justice, substituting for the Minister of Education, Culture and Employment, gave a revised version of this principle which read:

Protective measures should be clearly and specifically defined so there is greater certainty regarding the obligations of property owners and land developers.

The Standing Committee supports this new version which puts the onus on the owners and developers to fulfill their obligations under the Act. The legislation as proposed will endeavor to protect the rights and concerns of all parties through the formal designation process, which will include a process for public review and appeal. In addition, heritage impact assessments are proposed where development may impact on heritage resources.

3.2 Linking the Legislative Framework

3.2.1 Jurisdiction: Commissioner's vs. Crown Land

There was a concern expressed to the Committee that heritage legislation would only apply to Commissioner's Land, which comprises a small fraction of land in the NWT. In the absence of similar federal heritage legislation applicable to Crown Land, it seems that the efforts of the Government of the Northwest Territories to protect heritage resources would be seriously undermined. The Committee felt that the question of jurisdiction is a valid concern and would like to see the government examine solutions to achieve adequate authority over our heritage resources on Crown Land.

3.2.2 Impact Assessment

It was pointed out during the public hearing that in order to protect our heritage resources, there must be a mechanism in place to subject future resource development to rigorous scrutiny. This is true for the protection of our environment and renewable resources, where developments are subject to environmental impact assessment. The government has recognized the need for such a mechanism to protect heritage resources from developments by including in the legislative proposal a provision for convening heritage impact assessments where the Minister feels it is necessary.

What is not clear however, is the future relationship between these various assessment processes. Will one supercede the other or will they be applied in a compatible and complimentary manner. The Committee feels that these questions need to be answered and the respective assessment processes clarified before heritage legislation should be developed.

3.3 Ownership and Display of Heritage Resources

3.3.1 Defining Heritage Resources

During discussions in the public hearings, it became apparent to Committee Members that there is still work to be done in defining heritage resources, particularly archaeological and palaeontological resources. Discussions in this area gave rise to a number of questions. In defining an archaeological or heritage site or artifact, what criteria are proposed? For example, how old would something have to be for it to be considered an artifact and what are the other factors to be considered? Will this be dictated by the standards and criteria of the archaeological or palaeontological professions?

In addition, the paper does not engage in discussion regarding sites or artifacts not found on dry land. Given the extensive coastline and coastal waters in the NWT, and the discovery of sites and artifacts in the offshore waters in the past, it is imperative that the relevant legal implications of jurisdictional limits be examined with respect to heritage resources.

3.3.2 Display of Heritage Resources

It is the understanding of the Committee that not all communities will be fortunate enough to have museums to display their heritage resources. However, in consideration of the importance of heritage resources to local and regional cultural identities and education, the Committee was interested in whether consideration had been given to the possibility of local display of such resources. Such displays could be allocated to designated areas of local schools for example, where heritage resources would enrich the educational experiences of our young people.

There may be other opportunities for local display as well. An option suggested by the Gwich'in representatives was to combine the rich cultural heritage of the north with tourism by presenting and displaying heritage objects in Visitors Centres. Such an approach would achieve multiple objectives of enhancing tourism, and fostering pride in one's cultural heritage, while utilizing existing infrastructure in all communities.

In response to these ideas the Department acknowledged that the local display of artifacts was being considered within the context of the new Departmental Strategic Plan. However, the Committee is concerned that if the local display of local artifacts was somehow enshrined in legislation, it would then carry an air of permanence that could not be swayed by policy changes.

3.3.3 Central vs. Local Control

Further to the issue of the local display of heritage resources is the question of community control in acquiring and retaining artifacts, particularly when the community is represented by an established cultural society or organization committed to the preservation and enhancement of cultural artifacts.

In fact, in a written submission to the Committee, the 25 year old Nunatta Sunakkutaangit Society in Iqaluit iterated two specific concerns. The first derives from the proposed powers of the Minister to designate Territorial "Heritage Properties" with advice and input from interested groups and the public. What is not clear from the Action Paper is the anticipated role in such a process of established museum societies who have long acted as custodians of local artifacts. The Committee feels that such organizations are deserving of special consideration and recognition in legislation as it pertains to consultation processes and the disposition of artifacts.

The second concern deals with the proposed Territorial Museum Program and the subsequent role of community-based heritage groups and museum societies. The Action Paper proposes a strong central facility offering "a variety of extension programs and professional support services to a network of community-based heritage groups". The Iqaluit Museum Society maintains that "the proposed new legislation will reinforce continued centralized collection and retention of territorial heritage resources at the Prince of Wales centre." The Committee supports the Society's position that new Heritage Legislation should "be specific in encouraging and supporting responsible community groups to identify, acquire, protect and display local heritage resources" and urges the government to put more emphasis on community-based heritage initiatives.

3.3.4 Repatriation of Artifacts

The Committee also engaged in some discussion with regard to artifacts that have been removed from the north in the past and rightly belong to the people of the north. The Committee was assured by the Department that new heritage legislation would provide the necessary authority to pursue the repatriation of many, if not most, of these artifacts and certainly provide more control over the attempted removal of artifacts in the future.

The Committee was encouraged by the possibility of repatriation, which was a concern of Gwich'in representatives and the Iqaluit Museum Society as well. However, it was noted that in order to safeguard northern artifacts, adequate resources, authority, and control of heritage resources is necessary at the local level.

3.3.5 Human Remains

Some of the discussions on re-acquiring heritage resources from other jurisdictions brought out new questions about the ownership of certain specific heritage resources.

The intention is to provide in legislation, that the ownership of aboriginal human remains and related burial objects is vested with the aboriginal groups on whose traditional lands they are found. The question then arises as to who can claim the right to ownership - the descendants, or the community as a whole. Particularly with respect to human remains and burial sites, there is some uncertainty as to whether the onus should be on **individual** descendant's rights or the rights of the **collective**.

The Committee feels that this may be an area of contention which could depend on the particular cultural practice. Aboriginal cultures generally vest such rights with the community, while non-aboriginal societies place more emphasis on the rights of the individual. The Committee would like to see the Department examine and address the question of the relative age of the remains and at what point do the rights of the individual to familial remains become the property of the community or state?

3.4 Heritage Resources Fund

The paper proposes that the legislation establish a Northwest Territories Heritage Resources Fund that would involve setting up a special account in the Consolidated Revenue Fund. The fund would be used for depositing gifts and bequests related to heritage resources and the Minister would be allowed to control expenditures from the fund for heritage programs.

The Committee would like to recommend that the right of the Minister to refuse a gift or bequest should be in the legislation, given that such a gift or bequest may come with strings attached or from an undesirable source that may distort public perception of the government's actions or intentions.

3.5 Consultation: Land Claims and Traditional Knowledge

Much of the concerns expressed during the public hearings centred on the necessity that the Department continue a process of meaningful consultation with aboriginal organizations, land settlement groups and cultural organizations during the development of this important legislation. Of particular concern is being able to reconcile such legislation with land settlement agreements.

3.5.1 Settled Claims

All settled claims legislation except the Inuvialuit Final Agreement includes sections on protection of heritage resources. Articles 33 and 34 of the Nunavut Claim legislation provide for the establishment of the "Nunavut Heritage Trust" for participation with government and other agencies in archaeological, ethnographical (that branch of anthropology which deals with the scientific description of individual human societies) and archival matters.

Section 17 of the Sahtu Claim Agreement provides for the joint negotiation and management of "protected areas" which may include religious, cultural and historic sites. Section 26 also provides for consultation and involvement of the Sahtu Tribal Council in the formulation of government policies and legislation respecting heritage sites in the settlement area. This would include site management and permitting after designation.

The Gwich'in Agreement is much the same as the Sahtu with respect to "protected areas" (Section 16) and heritage resources (Section 25). It should be noted here that the government is fully cognizant of the requirements of the claim settlements with respect to participation and consultation in the development of heritage policy and legislation. While the Committee heard that there was considerable dissatisfaction with the nature of the consultations and involvement to date, the Department maintains that consultative efforts were extensive and marginally fruitful.

The Department also acknowledges that further consultation is required, particularly with respect to the proposed provisions for designation of heritage properties on settlement lands.

The Committee would like to encourage the Department to modify its consultation process wherever possible to engage in a more interactive, hands on approach to determining the wishes and needs of northerners.

3.5.2 Traditional Knowledge

The paper states that "the Government of the Northwest Territories has, through policy, recognized the importance of traditional geographic and community names to the language, culture and history of aboriginal people." The Department also proposes to establish heritage education and community-based heritage programs in the legislation.

Essentially the Minister would have the authority to undertake, support or sponsor programs which preserve and promote the heritage of the NWT. This would include publishing heritage

information, supporting educational and research programs, including oral history and traditions, and providing technical, professional and financial support to persons and agencies for the purposes of the Act.

In presenting their views on the proposed legislation, the Gwich'in representatives noted that in their view, their heritage is closely tied to their identity which is based on the oral history and traditional knowledge of their people. They went on to say that:

"because oral history and traditional knowledge are the basis of heritage resources in the north, we strongly suggest that there be a greater emphasis in the proposed legislation to document this important knowledge base. We believe that the situation is urgent. The elders who make the north unique and have spent a lifetime on the land, are dying before their knowledge can be recorded and passed on."

The Committee feels that this is an important and urgent consideration that must be addressed. The extremely close relationship between traditional knowledge and heritage in the north must be recognized and incorporated into heritage legislation. As noted in the preceding paragraphs, the Department evidently recognizes this knowledge base. However the Committee is concerned that their importance and prominence in the legislative proposal has been understated. Much of the oral traditions and traditional knowledge of all aboriginal people will be lost if more effort and emphasis are not placed on their preservation.

3.5.3 Heritage Boards

In the NWT, the Historical Advisory Board established under the *Historical Resources Act* has not met since 1979. This board would be dissolved by repealing the Act and the new legislation could provide for the establishment of the necessary boards or committees by the Executive Council.

The Committee understands the need for the establishment of heritage advisory boards or committees from time to time as the need arises. In response to concerns expressed regarding adequate consultation and involvement by stakeholders in the policy and legislative development processes, the Committee would like confirm that certain representation on such boards, as provided for in land settlement agreements, will be acknowledged in new heritage legislation.

4.0 CONCLUSION

Certainly, as the paper acknowledges, further consultation between the government and land settlement groups is warranted with respect to the options for the designation of heritage resources on settlement lands. The Committee would like to stress that further consultation of a meaningful nature is warranted with respect to other provisions of the proposed legislation as well. Questions of jurisdiction and the impact of other legislation on the protection and management of our heritage resources; ownership and display of heritage objects; and the preservation of oral histories and traditional knowledge, need to be addressed as this legislation is developed.

Generally, the Committee feels that the government has made a strong beginning towards addressing the urgent need for new heritage legislation. This view is shared by those parties the Committee heard from. While there is a need for further consultation, and refinement of certain provisions, the Committee is satisfied that the basis for the protection and preservation of our heritage resources has been presented.

APPENDIX I: LIST OF WITNESSES

The following witnesses appeared before the Committee:

Thursday, December 15, 1994

Department of Education, Culture and Employment

Hon. Stephen Kakfwi, Acting Minister
Mr. Mark Cleveland, ADM, Culture and Careers
Mr. Chuck Arnold, Director, Culture and Heritage

Gwich'in Tribal Council

Mr. David Krutko

Gwich'in Social and Cultural Institute

Ms. Ingrid Kritsch

Nunatta Sunakcutaangit Society

Written Submission by Dennis Patterson, M.L.A., Iqaluit

Inuit Heritage Trust

Letter from Ms. Debbie Kigjugalik Webster, Chairperson

APPENDIX II



TD 4-12(6)

*Legislative Action Paper Proposing New Heritage Legislation for the
Northwest Territories*

HERITAGE RESOURCES

A LEGISLATIVE ACTION PAPER PROPOSING NEW HERITAGE LEGISLATION FOR THE NORTHWEST TERRITORIES

April, 1994

**HON. RICHARD NERYSOO
MINISTER
EDUCATION, CULTURE AND EMPLOYMENT**

Table of Contents

Introduction	1
1. Registry Of Territorial Heritage Properties.....	3
2 Designating Heritage Properties In Land Settlement Areas.....	6
3. Emergency Powers	7
4. Heritage Resources Agreements.....	9
5. Archaeological Resources	10
6. Burial Sites and Human Skeletal Remains.....	11
7. Palaeontological Resources	12
8. Geographic and Community Names	13
9. Educational and Community Heritage Programs	14
10. Territorial Museum	15
11. Commemorative Markers	16
12. Advisory Boards and Committees	17
13. Penalties	18
14. Heritage Resources Fund	19
15. Implications for Territorial Division.....	20
Summary of Proposal	21

Appendix: *Historical Resources Act*, R.S.N.W.T. 1988, c. H-3

Introduction

The heritage resources of the Northwest Territories are numerous, varied and scattered over enormous distances. Whether an historic building, a cultural site, an archaeological artifact, or a record of oral traditions, our heritage resources provide us with a living context that contributes to both our identity and our direction for the future. These resources are a testimony to the accomplishments of earlier generations and a trust to be protected and passed on to future generations.

The importance of heritage resources was recognized by the Government of the Northwest Territories as early as 1973 when the Commissioner-in-Council proclaimed the *Historical Resources Act*. Over the past twenty years this legislation has become outdated, particularly with regard to new initiatives and directions in the heritage field, current political and economic realities, Land Settlement Agreements and modern land development and management practices. The challenge is to develop a new comprehensive legislative framework which will replace the *Historical Resources Act* and:

- (a) extend recognition and protection to a broader range of historic resources than is currently addressed under legislation;
- (b) provide the legislative mandate for a number of heritage programs already administered by the Government of the Northwest Territories; and
- (c) provide for greater levels of public participation in the protection, preservation and interpretation of heritage resources in the Northwest Territories.

The provisions outlined in this Action Paper are comparable to those found in heritage legislation across the country but have, through community and intergovernmental consultation, been specifically designed to address the unique needs of the Northwest Territories. The principles guiding the development of these provisions are:

1. Heritage legislation should provide opportunities for public participation in the identification, designation and protection of heritage resources.
2. Heritage legislation should be designed so as to give proper hearing to, and create a balance between, both the concerns of the community and the rights of the property owner.

Legislative Action Paper On New Heritage Legislation

3. Protective measures should be clearly and specifically defined so as not to create unnecessary inconvenience for property owners and land developers.
4. There should be penalties for those who unlawfully alter or destroy heritage resources.
5. Aboriginal groups should be assured a lead role in the identification and preservation of their heritage resources, especially those resources located on lands selected and deeded to land settlement groups.
6. Heritage legislation should foster co-operation between governments, the public, and special interest groups concerned with the protection of heritage resources in the Northwest Territories.

This paper proposes a new bill which would replace the current *Historical Resources Act*, and provide the people and Government of the Northwest Territories with the legal mechanisms required to protect our heritage resources for present and future generations.

1. REGISTRY OF TERRITORIAL HERITAGE PROPERTIES

Current legislation does not provide for the designation of heritage properties; however, there is considerable public support for the establishment of a designation process similar to those established at provincial levels across the country.

In keeping with the principles outlined above, a designation process should allow for adequate levels of public participation, provide for clear and specific mechanisms, and balance the interests of the public against the rights of property owners and developers.

The proposed bill would provide for a REGISTRY OF TERRITORIAL HERITAGE PROPERTIES. The Minister would be empowered to designate any property for inclusion in this Registry when satisfied that the property is of significance to the heritage of the Northwest Territories. Properties eligible for designation and inclusion in the Registry might include significant heritage buildings, historical sites, cultural sites and significant palaeontological and archaeological sites.

1.1 Designating TERRITORIAL HERITAGE PROPERTIES

A property's inclusion in the REGISTRY OF TERRITORIAL HERITAGE PROPERTIES would require a formal legal process. The process would enable the Minister to designate any property a TERRITORIAL HERITAGE PROPERTY when, in the opinion of the Minister, that property and the resources found on that property should be protected and preserved for the benefit and enjoyment of all the people of the Northwest Territories.

Public participation is critical to the success of any designation process. Members of the general public, property owners, local governments, aboriginal organizations and interested groups should be advised of the Minister's interest in a property and provided with opportunities to comment on the property's designation. There should be maximum opportunity for public participation, particularly for the hearing of private property interests which would be given special consideration.

There are a number of legislative models which the Government of the Northwest Territories might draw upon when developing a designation process. The processes established by other jurisdictions usually provide for legal notices to be served upon property owners, opportunities for comment and appeal, and the registration of designation against the property's title. The following model is offered as an example:

Notice of Consideration: A legal notice is issued to a property owner, lessee, or governing authority advising of the Minister's interest in designating the property a TERRITORIAL HERITAGE PROPERTY. This Notice would be issued at least 90 days before the actual designation. It would include the rationale for the proposed designation, a description of the property affected, an explanation of the designation process, the owner's obligations as a consequence of designation, and an invitation to comment or object. Where appropriate, a copy of the notice would be filed in the Land Titles Office. Legislation would also require the Minister to advise local government that the property is being considered for designation and to announce the same in the media. (Though not addressed in the proposed bill, the property owner would also be sent an information package explaining the designation program, opportunities for funding and other benefits resulting from designation)

Objections/Comments: The process would include provision for the owner, lessee, or any person or group interested in the designation to formally comment or object to the Minister within 60 days of the Notice of Consideration. At this point the Minister would have a further 30 days to consider any objections, and to discuss alternatives to the proposed designation. At the end of this period the Minister may decide to proceed with designation as outlined in the Notice of Consideration, to vary the designation, or not to proceed with designation.

Notice of Decision: The Minister's decision regarding designation would be recorded in a Notice of Decision and copies would be distributed to all parties which received the Notice of Consideration (owners, lessees, Land Titles, etc.). The Minister's decision would also be announced publicly in the same manner as was the Notice of Consideration.

Appeals: The proposed bill would also provide mechanisms for property owners, lessees and other interested parties to appeal a decision of the Minister to the Executive Council, and for the Executive Council to direct the Minister to revoke, vary, or allow the designation to stand.

1.2 Protecting Designated TERRITORIAL HERITAGE PROPERTY

No person would be permitted to carry out any activity that alters the character of a designated heritage property without first receiving the written approval of the Minister.

Owners, lessees or any other parties wishing to alter a designated heritage property would be obliged to make written application to the Minister before commencing any developments. The Minister would, on receipt of all necessary information,:

- (a) approve the proposed development and issue a permit authorizing the activity;
- (b) approve the development upon conditions the Minister thinks necessary to the property's protection; or
- (c) refuse to approve the development and provide in writing the reasons for the refusal.

The bill would also provide for applicants to appeal the Minister's decision to the Executive Council.

1.3 Amending Designations and Removing Properties from the Registry

Though the intent of a REGISTRY OF TERRITORIAL HERITAGE PROPERTIES is to provide for long term preservation of designated properties, the Minister may, from time to time, have reason to amend a designation or remove a property from the Registry.

The proposed bill would require the Minister to issue a Notice of Repeal or Amendment. This Notice would be announced and recorded in the same manner as the the Notice of Designation described above.

2. DESIGNATING HERITAGE PROPERTIES IN LAND SETTLEMENT AREAS

The Gwich'in, the Sahtu Dene and Metis, and the Inuit of the Nunavut Settlement Area have each made special provisions for the protection of heritage resources within their respective land settlement agreements. Future settlement agreements will most likely include similar provisions for the preservation and management of heritage resources.

The proposed legislation could also include provisions which would provide, in addition to land settlement legislation, for specific mechanisms addressing the protection of heritage resources on land selected and deeded to aboriginal groups. Under these provisions, interested land settlement groups would join with the Government of the Northwest Territories to establish designation processes comparable to those established at the territorial level. The provisions would be designed to be elective, with each settlement group determining if participation were in that group's own best interest. Preliminary public consultation has identified two options, both of which require further discussion with land settlement groups.

2.1 Joint Designation in Land Settlement Areas

Properties located on lands selected and deeded to aboriginal groups, which are judged by both the land settlement group and the Minister responsible to be significant to the whole of the territory, might be eligible for joint designation. Under this provision, both the Minister and the land settlement group would participate as signatories to the designation and share responsibilities for the property's protection.

2.2 Designation by Land Settlement Groups

Settlement groups may wish to designate heritage resources located on their lands regardless of whether those resources are designated at the territorial level. Provincial heritage legislation often provides for the establishment of municipal heritage designations comparable to, but independent of, provincial heritage designations. In the Northwest Territories, protection of community heritage resources is addressed under the *Cities, Towns and Villages Act*, the *Hamlets Act* and the *Charter Communities Act*.

The proposed bill might include provisions which would allow interested land settlement groups to establish local registries of heritage properties similar to those established by municipalities. Under this provision, land settlement groups could, independent of the Minister, designate and protect heritage properties located on lands deeded to the claimant group.

3. EMERGENCY POWERS

Though the intent of heritage legislation is to provide for the protection of heritage resources in a planned, logical and orderly fashion, it is possible that negotiation, planning and incentives will not always succeed. As is the case in other jurisdictions, the proposed bill would provide for the Minister's power to intervene when and where significant heritage resources are threatened.

3.1 Stop-work Orders

Where an activity threatens an area of known heritage resources, or an area with a high potential for the existence of significant resources, the Minister would be authorized under legislation to issue a written stop-work order requiring the owner to cease all activity for a specified period of time. The stop-work order would also direct the owner to present the Minister with a written application to proceed with the development. The Minister, upon receipt of all necessary information, would:

- (a) approve the proposed development and issue a permit authorizing the activity;
- (b) approve the development upon conditions the Minister thinks necessary to the heritage resource(s); or
- (c) refuse to approve the development and proceed with the designation process.

3.2 Remedy

Any person not in compliance with the conditions of a permit, stop-work order, or maintenance order, could be directed by the Minister to remedy that breach. If a person fails to obey an order to remedy a breach within a specified period of time, the Minister would have the option of applying to the courts for an order authorizing entry to the property, as well as authorizing whatever action may be required to remedy the breach.

3.3 Inspection and seizure

In keeping with most provincial legislation, the Minister responsible for heritage legislation would be authorized to designate qualified persons to act as inspectors. Inspectors may enter any property for the purposes of the Act, provided that entry is made at a reasonable hour and with reasonable notice to the occupant(s). If entry is refused, inspectors may apply to the courts to obtain

Legislative Action Paper On New Heritage Legislation

a warrant authorizing entry and seizure of any materials necessary to the enforcement of the legislation.

Legislation would also provide that the Minister's decisions with regard to emergency powers may be appealed to the Executive Council.

4. HERITAGE RESOURCES AGREEMENTS

Some Canadian jurisdictions have established special provisions for agreements designed to enhance levels of public, government and corporate involvement in the preservation of heritage resources. Under the *Historical Resources Act* the Commissioner has the authority to enter into agreements for "marking and commemorating historic places... and for the care and preservation of museums and any places so marked or commemorated."

The proposed bill would expand on this intent, allowing the Minister to enter into agreements with governments, land settlement groups, cultural organizations, corporations, societies and individuals for the purposes of the Act. Where appropriate, these agreements could be used to establish covenants running with a land's title which would be binding upon all subsequent property owners.

Along with providing for regulations governing these agreements the proposed bill would also provide:

- (a) that, where appropriate, the Minister may file a copy of any heritage resources agreements with the Land Titles Office;
- (b) a mechanism for amending or repealing these agreements;
- (c) remedies for failure to comply with signed agreements; and
- (d) provisions for parties to the agreement to appeal decisions regarding the agreement to the Executive Council.

5. ARCHAEOLOGICAL RESOURCES

Throughout most of Canada, archaeological resources are managed primarily by provincial governments. In the Northwest Territories, however, responsibility for these resources is shared between the federal and territorial governments and land settlement groups. The federal government has primary legal responsibility for these matters vested in it through the *Northwest Territories Act*, while the territorial government has been delegated responsibility for the management of the "Archaeologists Permit Program" established by the federal government under the *Northwest Territories Archaeological Sites Regulations (Canada)*.

Unfortunately, current protection is judged to be inadequate. It regulates permitted archaeological investigations, but does not protect sites or objects from looting or intentional damage.

Development of specific regulations must proceed in cooperation with land settlement groups and the Government of Canada. The proposed bill would include provisions for the establishment of archaeology regulations and provide that the Minister may:

- (a) investigate developments which might threaten archaeological resources, issue stop-work orders, confiscate artifacts, restrict export of artifacts and order remedy;
- (b) require, where necessary, private developers and government agencies proposing land-altering projects which might threaten archaeological resources to submit a heritage resource impact assessment;
- (c) require that reports of "discovery" be made to the Minister by any person who finds an archaeological object or an object-likely to be an archaeological object;
- (d) designate repositories for archaeological artifacts; and
- (e) provide penalties for any person or corporation which contravenes an order made under the legislation.

6. BURIAL SITES AND HUMAN SKELETAL REMAINS

6.1 Burial Sites

Throughout the north there are an uncounted number of historic burial sites located on lands outside designated cemeteries. These sites are not only significant to members of the surviving families, but as a group they form an important part of our cultural landscape. These burial sites are not addressed under current legislation.

The proposed bill would recognize the importance of historic burial sites not associated with designated community cemeteries, and provide for the establishment of regulations which would protect these burial sites from vandalism or intentional destruction.

6.2 Human Skeletal Remains

The recently established Heritage Services Policy addresses government's custody of human skeletal remains removed from archaeological sites. This Policy states that human skeletal remains will not be acquired for the Heritage Collections of the Prince of Wales Northern Heritage Centre, nor will Archaeologists Permits be issued for excavation of human skeletons unless permission in writing has been granted by the appropriate local authority. The Policy goes on to provide that human remains which have been found and turned in to the Department of Education, Culture and Employment will be returned, if possible, to their place of origin.

Policy, however, is not binding on the general public and possession of found human skeletal remains is not clearly addressed under any current legislation. Of particular concern is the unregulated removal of human skeletons and related burial objects from aboriginal grave sites. The proposed bill would provide that ownership of aboriginal skeletal remains and related burial objects is vested with the aboriginal groups on whose traditional lands the remains and related objects are found.

7. PALAEOLOGICAL RESOURCES

Protection of palaeontological resources (for example fossil remains and mammoth tusks) is not adequately addressed under current legislation. The *Historical Resources Act* provides the Commissioner with the authority to acquire and issue stop-work orders for "prehistoric" sites; however, it is not clear whether this term includes palaeontological resources. The *Scientists Act* provides that a scientific license is required to research or excavate palaeontological resources in the Northwest Territories, but the principal intent is information sharing. No attempt is made to define palaeontological resources or provide for their management beyond the licensing of investigations.

7.1 Defining Palaeontological Resources

The proposed bill would provide for the establishment of regulations which identify the most significant classes of palaeontological specimens and fossils likely to be found in the Northwest Territories. These regulations would serve to distinguish between significant palaeontological resources and common palaeontological specimens which are of no educational or commercial value.

7.2 Protecting Significant Palaeontological Resources

The bill would also address protection of palaeontological resources identified in the regulations. Excavation, sale, transfer and export of specimens, reports of discovery and the establishment of a registry of known sites are all issues which could be addressed.

In addition the Minister would be granted authority to investigate activities which might threaten palaeontological sites, issue stop-work orders and, where necessary, require impact assessments.

These recommendations do not require the establishment of any new licensing programs. Once palaeontological regulations are in place, protection of significant resources can be addressed through the licensing system currently administered by the Science Institute and various land use review procedures already in place.

8. GEOGRAPHIC AND COMMUNITY NAMES

The Government of the Northwest Territories has, through Policy, recognized the importance of traditional geographic and community names to the language, culture and history of the aboriginal people of the Northwest Territories. The importance of geographic and community names has also been recognized by a number of land settlement groups which have provided for specific articles addressing place names within their Land Settlement Agreements.

The proposed bill would also address geographic and community names and grant the Minister powers similar to those found in comparable provincial acts. Specifically, the proposed bill would provide that the Minister may:

- (a) gather, collate and record information, including oral histories, respecting the names of geographic features and populated places within the Northwest Territories;
- (b) consult with regard to the selection and suitability of official and proposed names for geographic features and populated places in the Northwest Territories;
- (c) consider and make recommendations to the Executive Council respecting any significant change in the name of any geographic feature or populated place;
- (d) collaborate with land settlement groups to provide that traditional names of geographic features and populated places are recognized in accordance with the terms and conditions of Land Settlement Agreements;
- (e) assure public input and participation in the process leading to the official recognition of any geographic feature's or community's name; and
- (f) supply information regarding names of geographic features and populated places in the Northwest Territories to government departments and agencies, community groups, cartographers, publishers, individuals and any other person engaged in the preparation of maps or other publications intended for official or scholarly use.

9. EDUCATIONAL AND COMMUNITY HERITAGE PROGRAMS

The Government of the Northwest Territories offers, in accordance with four heritage policies, a wide range of educational, financial and professional heritage services. Although many of these programs have been in operation for a number of years, the mandate to provide educational and community heritage programing has never been established in legislation.

The proposed bill would provide for the Minister's authority to undertake, support or sponsor programs which preserve and promote the heritage of the Northwest Territories. Specifically, the bill would provide that the Minister may:

- (a) publish information about the heritage resources of the Northwest Territories;
- (b) undertake, support or sponsor educational or research programs relating to heritage resources, including oral traditions which encompasses, but is not limited to, traditional place names, traditional music and oral history;
- (c) provide professional, technical and financial support to museums and other related institutions within the territory for purposes complementary to the legislation; and
- (d) provide professional, technical and financial support to any person, agency, organization or society whose aims and objectives are complementary to the purposes of the Act.

10. TERRITORIAL MUSEUM PROGRAM

The *Historical Resources Act* grants the Commissioner authority to acquire and provide for the administration and preservation of any object of "historic, artistic, cultural, economic, social or archaeological value." Following proclamation of the Act, the Government of the Northwest Territories established the Territorial Museum Program which consisted of a central museum facility offering a variety of extension programs and professional support services to a network of community-based heritage groups.

Today, the museum program, housed in the Prince of Wales Northern Heritage Centre, continues to fulfill this mandate and remains the only museum program administered by the Government of the Northwest Territories. This museum program is defined in large part through the Heritage Services Policy; however, unlike most Canadian jurisdictions, the Northwest Territories has not legislated the establishment of a government-operated museum program.

The proposed bill would, in keeping with the current provisions of the *Historical Resources Act*, establish in legislation the museum program currently managed by the Government of the Northwest Territories. The bill would also grant the Minister powers similar to those of Ministers responsible for provincial museums. Specifically, the bill would provide that the Minister may:

- (a) provide for the operation, maintenance and development of the Northwest Territories Museum Program;
- (b) acquire through donation, bequest, loan, purchase, or scientific research, objects, artifacts, specimens, works of art and published materials significant to the natural and cultural heritage of the Northwest Territories;
- (c) provide for the conservation, documentation, study and management of materials collected under the legislation;
- (d) exhibit and display, within or outside the territory, objects, artifacts, specimens, works of art and published materials significant to the natural and cultural heritage of the Northwest Territories; and
- (e) exhibit and display, within the territory, objects, specimens, documents, works of art and published materials for the general benefit, education and enjoyment of the people of the Northwest Territories.

11. COMMEMORATIVE MARKERS

Current legislation provides for the placement of plaques and markers commemorating heritage sites and historic events. This program should continue, but be designed to include properties of both territorial and local significance. Specifically, the proposed bill would provide that:

- (a) the Minister may, with the agreement of the owner, erect and maintain on any property deemed to be of territorial or local heritage significance a sign, plaque, or commemorative marker containing information about the heritage significance of that property; and
- (b) no person shall remove or alter, except with the permission of the Minister, any sign, plaque, or commemorative marker erected by the Minister.

12. ADVISORY BOARDS and COMMITTEES

The *Historical Resources Act* establishes the Northwest Territories Historical Advisory Board to advise the Commissioner on the collection and preservation of artifacts, the management of the museum program and the commemoration of places and sites. This Board has not met since 1979 and it is recommended that the Board be dissolved through the repeal of the *Historical Resources Act*.

The proposed bill would provide that the Executive Council may establish committees or boards necessary to the purposes of the legislation, and that the Executive Council may:

- (a) dissolve any committee or board established under the legislation when its services are no longer required;
- (b) appoint or provide for the manner of appointment of committee/board members;
- (c) prescribe the term of office for any member;
- (d) designate a chair, vice-chair, secretary or other officer as may be required; and
- (e) authorize, fix and provide for the payment of remuneration and expenses to members.

13.

PENALTIES

All Canadian jurisdictions provide penalties for persons who unlawfully damage or destroy heritage resources, or intentionally disregard an order made under heritage legislation. For example, the *Historical Resources Act* provides that every person failing to comply with an order to "provide for adequate investigation, recording and salvage" of historical resources is "guilty of an offence punishable on summary conviction. "

Some jurisdictions have also recognized that fines which may deter individuals are not always sufficient to deter corporations. These jurisdictions have provided maximum fines for individuals and substantially higher maximum fines for corporations.

In addition to fines, some provinces have provided that anyone who unlawfully damages, destroys or removes heritage resources may also be charged with the cost of the repair, restoration, reconstruction or return of those heritage resources.

The proposed bill would provide that:

- (a) any individual who contravenes a provision of the proposed legislation, or a regulation, permit or order made pursuant to that legislation, would be liable to a fine of up to \$5,000 for each day the offence continues, or to imprisonment for up to six months;
- (b) corporations which contravene a provision of the proposed legislation, or a regulation, permit or order made pursuant to that legislation, would be liable to a fine of up to \$50,000 for each day the offence continues; and
- (c) in addition, offenders may be charged with the cost of the repair, restoration or reconstruction of the heritage resource.

14. HERITAGE RESOURCES FUND

Individuals and corporations interested in the preservation and interpretation of heritage resources may wish to contribute financially to the programs administered under new heritage legislation. In order to provide for the public's financial participation in the protection, preservation and interpretation of heritage resources in the Northwest Territories, the bill will:

- (a) provide for the establishment of a special account in the Northwest Territories Consolidated Revenue Fund which shall be called the Northwest Territories Heritage Resources Fund;
- (b) allow the Minister to accept money, by way of gift or bequest, for the purposes of the legislation, and to deposit that money into the Heritage Resources Fund; and
- (c) allow the Minister control over expenditures from the fund (i.e. the Minister for the Department of Finance may make expenditures only upon the request of the Minister of Education, Culture and Employment).

15. IMPLICATIONS FOR TERRITORIAL DIVISION

Impending territorial division has not been addressed in the preceding proposals. Following division, elected members of each of the two new legislatures will be obliged to determine which statutes of the Legislative Assembly of the Northwest Territories will remain in force, and which statutes will be amended to better address the needs of the new jurisdictions. This fact notwithstanding, there is an immediate need to provide better protection for our most significant heritage resources. These resources are among our most important non-renewable assets; their survival is threatened by time and development and their protection must not be delayed.

The provisions described in this paper will provide a legislative framework for the protection of our most valued heritage resources; it would also provide an excellent model to be considered by elected members of each of the new legislatures.

Summary of Proposal

It is proposed that a Heritage Resources bill be developed to replace the existing *Historical Resources Act* (1973) and to establish a comprehensive legislative framework for the protection and preservation of the heritage resources of the Northwest Territories.

The proposed bill would be designed specifically to meet the unique needs of the Northwest Territories and would draw upon established heritage legislation in other Canadian jurisdictions. The following provisions would be included:

- ◇ The establishment of a Registry of Territorial Heritage Property which would allow the Minister to designate significant heritage properties, and require that no person may alter or destroy designated properties without the Minister's permission.
- ◇ Pending further discussions with land settlement groups, provisions providing for the designation of significant heritage properties located on lands selected and deeded to aboriginal groups. Options include joint designation by the Minister and land settlement groups and the establishment of local registries of heritage properties.
- ◇ Special emergency powers allowing the Minister to intervene when and where significant heritage resources are threatened. Emergency powers include authority to issue stop-work orders, to order remedy and to designate inspectors.
- ◇ Authority for the Minister to enter into agreements with any person for the purposes of the legislation, and, where appropriate, to file such agreements in the Land Titles Office as covenants on a property's title.
- ◇ Provisions addressing the protection of archaeological sites and objects and allowing for the development of further regulations.
- ◇ Provisions addressing the protection of burial sites and the possession of human skeletal remains.
- ◇ A provision for regulations which identify and protect significant palaeontological resources.
- ◇ A legislative mandate for the identification, documentation and preservation of geographic and community names.

Legislative Action Paper On New Heritage Legislation

- ◇ A legislative mandate for educational and community heritage programing.
- ◇ A legislative mandate for the Government of the Northwest Territories museum program.
- ◇ Provisions for commemorative markers.
- ◇ Authority for the Executive Council to establish any board or committee necessary to the purposes of the legislation.
- ◇ Penalties for those who unlawfully alter, remove, damage or destroy heritage resources, or contravene an order made under the legislation.

APPENDIX

Historical Resources Act, R.S.N.W.T. 1988, c. H-3

HISTORICAL RESOURCES ACT

LOI SUR LES RESSOURCES HISTORIQUES

Definitions	<p>1. In this Act,</p>	1. Les définitions qui suivent s'appliquent à la présente loi.	Défini-
"Board" «Commission»	<p>"Board" means the Northwest Territories Historical Advisory Board established by subsection 3(1);</p>	«Commission» La Commission consultative des ressources historiques des Territoires du Nord-Ouest constituée par le paragraphe 3(1).	«Comm. "Board"
"chairperson" «président»	<p>"chairperson" means the chairperson of the Board designated under subsection 3(4).</p>	«président» Le président de la Commission, désigné aux termes du paragraphe 3(4).	«présid. "chair"
Powers of Commissioner	<p>2. (1) The Commissioner may, out of moneys appropriated for the purpose,</p> <ul style="list-style-type: none"> (a) establish museums; (b) by means of plaques or other signs or in any other suitable manner, mark or otherwise commemorate places and sites of prehistoric or historic significance to the Territories; (c) enter into agreements with any person, the Government of Canada, or the government of a province or the Yukon Territory respecting the establishment of museums or for marking or commemorating historic places under this Act and for the care and preservation of museums and any places so marked or commemorated; (d) acquire for the beneficial use of the Territories any historic place or lands for museums or an interest in any historical place or lands by purchase, lease, gift or otherwise; (e) acquire by gift, donation, bequest, loan or purchase any object, relic, artifact, model, painting, document, book, paper, record, map, drawing or other thing of historic, artistic, cultural, economic, social or archaeological value or importance; and (f) provide for the administration, preservation and maintenance of any historic place acquired or museum established under this Act. 	<p>2. (1) Le commissaire peut, sur les fonds affectés à cette fin :</p> <ul style="list-style-type: none"> a) créer des musées; b) commémorer les événements ou personnages liés aux lieux et emplacements d'intérêt historique ou préhistorique des territoires, ou les signaler de toute manière appropriée, notamment par des plaques; c) conclure des accords, notamment avec le gouvernement d'une province, du territoire du Yukon ou du Canada, pour l'application des alinéas a) et b) ainsi que pour l'entretien et la conservation des musées et de ces lieux; d) acquérir pour le bénéfice des territoires des lieux historiques, des terrains destinés à des musées ou des droits sur ceux-ci, notamment par achat, location ou donation; e) acquérir par don, libéralité, legs, prêt ou achat des objets, vestiges, artefacts, modèles, peintures, documents, livres, archives, cartes, dessins ou autres choses d'importance ou d'intérêt historique, artistique, culturel, économique, social ou archéologique; f) prendre les mesures utiles à l'administration, à la conservation et à l'entretien des lieux historiques acquis ou des musées créés aux termes de la présente loi. 	Pouva:

Order of Commissioner where pre-historic or historic remains threatened	(2) Where, in the opinion of the Commissioner, any prehistoric or historic remains, whether or not designated as a historic place under this Act or under the <i>Historic Sites and Monuments Act</i> (Canada) is threatened with destruction by reason of commercial, industrial, mining, mineral exploration or other activity, the Commissioner may order the persons undertaking the activity to provide for adequate investigation, recording and salvage of prehistoric or historic objects threatened with destruction.	(2) Lorsque le commissaire estime qu'un lieu historique ou préhistorique, qu'il ait été ou non déclaré d'intérêt historique aux termes de la présente loi ou de la <i>Loi sur les lieux et monuments historiques</i> (Canada), risque d'être détruit en raison notamment d'activités commerciales, industrielles, minières, ou d'exploration minière, il peut, par décret, ordonner aux personnes qui exercent ces activités d'inventorier et de sauvegarder d'une façon appropriée les objets préhistoriques ou historiques menacés de destruction.	Décret : commis- pour la tion d'o historiq préhisto
Establishment of Board	3. (1) A board called the Northwest Territories Historical Advisory Board is established.	3. (1) Est constituée la Commission consultative des ressources historiques des Territoires du Nord-Ouest.	Création
Number of members	(2) The Board shall be composed of not less than five and not more than 10 members.	(2) La Commission est composée d'au moins 5 et d'au plus 10 membres.	Compos:
Appointment	(3) The members of the Board shall be appointed by the Commissioner.	(3) Les membres de la Commission sont nommés par le commissaire.	Nomina:
Chairperson	(4) One member of the Board shall be designated by the Commissioner as the chairperson of the Board.	(4) Le commissaire désigne le président parmi les membres de la Commission.	Présiden
Term of members	(5) The members, other than the chairperson, each shall hold office for a term, not exceeding five years, as may be fixed by the Commissioner.	(5) Les membres, autres que le président, exercent leurs fonctions pour le mandat maximal de 5 ans que fixe le commissaire.	Mandat commis:
Term of chairperson	(6) The chairperson shall hold office for a term, not exceeding 10 years, as may be fixed by the Commissioner.	(6) Le mandat du président est fixé par le commissaire et ne peut dépasser 10 ans.	Mandat présiden:
Expenses	4. The members of the Board shall serve on the Board without remuneration other than reasonable travelling and living expenses incurred in connection with the business of the Board.	4. Les membres de la Commission exercent leurs fonctions à titre gracieux, mais ils ont droit aux frais de déplacement et de séjour occasionnés par les activités de la Commission.	Frais
Secretary	5. (1) An officer of the public service shall be designated by the Commissioner to act as Secretary of the Board.	5. (1) Le commissaire nomme un fonctionnaire supérieur au poste de secrétaire de la Commission.	Secréta:
Duties of Secretary	(2) The Secretary shall administer the affairs of the Board and shall perform such other duties in connection with this Act and the <i>Scientists Act</i> as the Commissioner considers fit.	(2) Le secrétaire administre les activités de la Commission et exerce les autres fonctions se rapportant à la présente loi ou à la <i>Loi sur les scientifiques</i> , selon ce que le commissaire estime indiqué.	Fonctio: secrétaire
Meetings of Board	6. The Board shall meet at least once a year at the call of the chairperson and shall hold such other meetings at such times and places as the Commissioner may require.	6. La Commission se réunit au moins une fois l'an sur convocation du président et tient les autres réunions demandées par le commissaire aux dates, heures et lieux fixés par celui-ci.	Réunion: la Comm:

Duties of Board

7. The Board shall consider and advise the Commissioner on

- (a) the establishment of museums;
- (b) the acquisition, marking and commemoration of places and sites of prehistoric or historic significance;
- (c) the administration, preservation and maintenance of historic places and museums;
- (d) the administration of the Northwest Territories Archives established by the *Archives Act*; and
- (e) generally the exercise of any of the powers of the Commissioner under subsection 2(1).

7. La Commission examine les questions suivantes et donne son avis à leur sujet au commissaire :

- a) la création de musées;
- b) l'acquisition, la désignation et la commémoration des lieux et emplacements d'intérêt préhistorique ou historique;
- c) l'administration, la conservation et l'entretien des lieux historiques et des musées;
- d) l'administration des Archives des Territoires du Nord-Ouest créés par la *Loi sur les archives*;
- e) d'une façon générale, l'exercice des pouvoirs conférés au commissaire aux termes du paragraphe 2(1).

Fonction de la Commission

Offence and punishment

8. Every person who fails to comply with an order made under subsection 2(2) is guilty of an offence punishable on summary conviction.

8. Quiconque enfreint un décret pris en vertu du paragraphe 2(2) commet une infraction punissable sur déclaration de culpabilité par procédure sommaire.

Infraction et peine

Printed by
Territorial Printer, Northwest Territories
Yellowknife, N.W.T./1990©

Imprimé par
l'imprimeur territorial, Territoires du Nord-Ouest
Yellowknife, (T.N.-O.)/1990©
