LEGISLATIVE ASSEMBLY OF THE NORTHWEST TERRITORIES

7TH COUNCIL, 49TH SESSION

TABLED DOCUMENT NO. 10-49

TABLED ON JUNE 14, 1973

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Tabled June 14, 1973

INUIT TAPIRISAT OF CANADA
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June 5, 1973 **BY HAND**

GOV'T OF N.W.T.
YELLOWKNIFE, N.W.T.
JUN 11 1973
No. 516
FILE
REFER TO Mr. Hodgson

The Honourable J. Chretien
Minister
Department of Indian and Northern Affairs
Centennial Tower
400 Laurier Avenue West
Ottawa, Ontario
K1A 0H4

Dear Mr. Chretien

I enclose herewith, a brief in support of Inuit Tapirisat of Canada's request that you act immediately to disallow amendment to the "Ordinance Respecting the Preservation of Game", Bill 13-47 enacted June 30, 1972, by the Territorial Council of the Northwest Territories.

The Territorial Council did not provide an opportunity to native organizations to make submissions prior to Council's consideration of this Bill. The Bill was introduced and was given 3 readings and formally enacted within a few days time in June 1972.

Our request is supported by all other native organizations of the Northwest Territories.

Thank you for your immediate consideration.

Yours truly

13/6/73
Mr Bernard
For filing

Tagak E.C. Curley
PRESIDENT

Enclosure

c.c. Mr. Wally Firth, M.P.
✓Commissioner Hodgson, Indian Brotherhood of N.W.T.
James Wah-shee, President, I.B.N.W.T.
Chief Elija Smith, President, Y.N.B.
Joe Jacquot, President, Y.A.N.S.I.
Sam Raddi, President, C.O.P.E.
Dave McNabb, President, M.A.N.W.T.

BRIEF TO THE FEDERAL GOVERNMENT OF CANADA IN RESPECT TO DISALLOWANCE OF GAME LEGISLATION OF THE NORTHWEST TERRITORIES

Introduction

The question of native hunting and trapping rights is of considerable importance to the native peoples of the Northwest Territories. Although game may be of decreasing importance in the native diet, in certain instances the abrogation of native hunting rights has resulted in hardship and nutritional dep rivation. The issue of hunting and trapping rights also has a symbolic importance to the native peoples. By upholding its solemn promises made historically to protect native hunting and trapping rights, the governments of both the Northwest Territories and the Dominion of Canada can do much to restore the confidence of the native population in their respect for good intentions.

Moreover, the hunting rights of native peoples are simply an incident of general aboriginal rights in Canada and have been judicially recognized as such. For example, Mr. Justice Johnson, speaking for a unanimous Northwest Territories Court of Appeal in Regina v. Sikyea (1964), 43 D.L.R. (2d) 150 at 152, stated:

> "The right of Indians to hunt and fish for food on unoccupied crown lands has always been recognized in Canada. In the early days as an incident of their 'ownership' of the land and later by the treaties by which the Indians gave up their ownership right in these lands."

Although the current government of the Northwest Territories, perhaps unconsciously, and the current government of Canada, consciously, ignore aboriginal rights, an outline of some of the leading authorities from Confederation to the present will serve to reiterate the proposition that the aboriginal rights of Canada's native peoples have always been conceded as a matter of law and that those rights may not be disturbed without both consent and compensation. Moreover, this historical synopsis is illustrative of the historical and moral claims which native peoples have upon the government of Canada. The authorities which have particular relevance to the Northwest Territories are marked with an asterisk.

* (a) 1869-70: The purchase of the Hudson's Bay Company's territories and the acquisition of the North-western territory. The Federal Government accepted responsibility for any claims of the Indians to compensation for land in Rupert's Land and the Northwestern Territory. (The deed of surrender is reprinted in R. S. C 1970, Appendices, at pp. 257-77. In the December, 1867 Address to Her Majesty the Queen from the Senate and House of Commons of the Dominion of Canada upon the transference of Rupert's Land to Canada, it was stated:

"And furthermore that, upon the transference of the territories in question to the Canadian Government, the claims of the Indian tribes to compensation for land required for purposes of settlement will be considered and settled in conformity with the equitable principles which have uniformly governed the British Crown in its dealings with the aborigines." (Reprinted in R. S. C. 1970, Appendices, at p. 264)

(b) 1870: The Manitoba Act granted land to settle the Metis' aboriginal claims. (S. C. 1870, c.3, s. 31)

(c) 1871-1930: The numbered treaties and their adhesions speak of the Indians conveying land to the Crown. As the Order-in-Council for Treaty No. 10 demonstrates the treaty-making was done with a concept of aboriginal title clearly in mind:

"On a report dated 12th July, 1906 from the Superintendent General of Indian Affairs, stating that the aboriginal title has not been extinguished in the greater portion of that part of the Province of Saskatchewan which lies north of the 54th parallel of latitude and in a small adjoining area in Alberta...that it is in the public interest that the whole of the territory included within the boundaries of the Provinces of Saskatchewan and Alberta should be relieved of the claims of the aborigines; and that $12,000 has been included in the estimates for expenses in the making of a treaty with Indians and in settling the claims of the half-breeds and for paying the usual gratuities to the Indians." (Treaty No. 10 and Reports of Commissioners, Queen's Printer, Ottawa: 1966, p. 3)

(d) 1872: The first Dominion Act dealing with the sale of Crown land. Section 42 stated:

"None of the provisions of this Act, respecting the settlement of Agricultural lands, or the lease of Timber lands, or the purchase and sale of Mineral lands, shall be held to apply to territory the Indian title to which shall not at the time have been extinguished." (S. C. 1972, c. 23). This provision remained in the Various Dominion Land Acts until 1908.

(e) 1875: The Federal Government disallowed "An Act to Amend and Consolicate the Laws Affecting Crown Lands in British Columbia" stating "There is not a shadow of doubt, that from the earliest times, England has always felt it imperative to meet the Indians in council,

and to obtain surrenders of tracts of Canada, as from time to time such were required for the purposes of settlements." (W. E. Hodgins, Dominion and Provincial Legislation, 1867-1895 (Government Printing Bureau, Ottawa: 1896). As authority the Deputy Minister of Justice cites the 40th article of the Articles of Capitulation of Montreal and the Royal Proclamation of 1763. (id.)

(f) 1876: Speech of Governor General Dufferin in Victoria strongly upholding the concept of Indian title and criticizing the British Columbia Government. (The speech may be found in G. Stewart Canada Under the Administration of the Earl of Dufferin (Rose-Belford Publishing Co., Toronto: 1879 at pp. 491-493)

* (g) 1879: The Dominion Lands Act authorized the granting of land in the Northwest Territories to satisfy "any claims existing in connection with the extinguishment of the Indian title, preferred by half-breeds..." (S. C. 1879, c. 31, s. 125e).

(h) 1888: In the St. Catherine's case the Federal Government afgued that it obtained a full title to land from the Indians by Treaty No. 3. (1899), 14 App. Cas. 46, at p. 54.

(i) The Federal Provincial Agreements which followed the decision in the St. Catherine's case sometimes employed the following "whereas" clause (taken from the 1924 Ontario Agreement):

> "Whereas from time to time treaties have been made with the Indians for the surrender for various considerations of their personal and usufructuary rights to territories now included in the Province of Ontario...." (S. C. 1924, c. 48)

(j) 1889: The Federal Government disallowed the Northwest Territories Game Ordinance because it violated Indian treaty hunting rights. (re-printed in S. C. 1891, at p. LXl.)

(k) 1912: In the boundaries extension legislation for both Ontario and Quebec, the Federal Government made a special provision requiring treaties with the Indians. (S. C. 1912 c. 40, s. 2(a) (Ontario); S. C. 1912, c. 45, s. 2(c) (Quebec).)

(l) 1930: British North America Act. This act trans-

transferred the ownership of natural resources to the prarie provinces. In each of the provinces the Indians are protected in their right "of hunting, trapping and fishing game and fish for food at all seasons of the year on all unoccupied Crown lands and on any other lands to which the said Indians may have a right of access."

(m) 1946 - The evidence of Mr. R. A. Hoey, Director of Indian Affairs Branch, May 30, 1946, before the Joint Committee of the Senate and House of Commons:

> "From the time of the first British settlement in New England, the title of the Indians to lands occupied by them was conceded and compensation was made to them for the surrender of their hunting grounds...this rule, which was confirmed by the Royal Proclamation of October 7, 1763, is still adhered to." (Minute No. 1, at p. 31)

(n) 1946: The evidence of Mr. T. R. L. MacInnes, Secretary, Indian Affairs Branch, June 4, 1946:

> "Now it remained for the British to recognize an Indian interest in the soil to be extinguished only by bilateral agreement for a consideration. That practice arose very early in the contract between the British settlers and the aborigines in North America, and it developed into the treaty system which has been the basis of Indian policy both in British North America and continuing on after the revolutionary war in the United States." (Joint Committee of the Senate and House of Commons, Minute No. 2, at p. 54)

(o) 1966: The Canadian Indian, a pamphlet published by the Department of Indian Affairs, states:

> "Early in the settlement of North America the British recognized Indian title or interests in the soil to be parted with or extinguished by agreement with the Indians and then only to the Crown." (Dept. of Indian Affairs and N. Dev., The Canadian Indian (Ottawa: 1966) p. 3)

(p) 1971 - The Dorion Commission Report expressly recognizes aboriginal rights, urges an expansive view of the content of aboriginal title and acknowledges the need to compensate native peoples for the extinguishment of their native rights. (Vol. 4.1 at pp. 389-97).

See generally Cumming and Mickenberg et al., eds., Native Rights in Canada (2nd edn., General Publishing Co. Ltd., and The Indian-Eskimo Association of Canada, Toronto: 1972).

In making this brief to the Council of the Northwest Territories it is proposed to consider the history of Game Legislation in the Northwest Territories, the details of the amendments through Bill 13-47 which deleted the specific references to Indians and Inuit and, finally, to make submissions through the Inuit Tapirisat of Canada on behalf of the Inuit. However, it is emphasized that the Inuit Tapirisat of Canada firmly believes that the substance of this submission is supported fully by virtually all native peoples in the Northwest Territories, as well as the plitical organizations which represent various groupings thereof.

History of Game Legislation in the Northwest Territories

The recent amendments through Bill 13-47 to the "Ordinance Respecting the Preservation of Game", hereinafter referred to as the Game Ordinance, represent a further step in the diminution of special hunting rights guaranteed to the native peoples by the operation of the common law concept of aboriginal rights and, in respect to some Indian peoples, by treaty as well.

These amendments, which delete specific references to Indians and Inuit from the Game Ordinance, were asserted by the legislators on the basis that they would not substantively change the rights of native peoples in respect to hunting. The preamble to the amendments states that the Bill is intended "to delete where possible all specific references to Indians and Eskimos without interfering with any of their rights". During discussion of the amendments by the Council of the Northwest Territories, it was stated by Deputy Commissioner Parker that

> "...there was a request by Members of this Council to remove certain statements in the ordinance which appeared to be discriminatory and this is what we did. In removing, where it was not necessary to have it in, the words Indians and Inuit, and dealing in fact, as the ordinance should, with northern residents. Where it is necessary and important that they be named then this has been done and those words have been retained. There is no diminution whatsoever of the rights of the Indian or Inuit people by any changes that have been made in this ordinance."

However, it is submitted that the amendments although recognizing the existence of special rights which the native peoples possess, dilute these rights by extending the same rights to a limited game supply to almost all others residing in the Territories. Thus, the amendments amount to one more piece of legislation in the continuing flow of laws over the past century diminishing hunting rights and the value of those rights, both as a source of livelihood and as an important item of self-identify of native peoples.

Throughout Canadian history there have been many clear instances of the recognition of the aboriginal rights of Canada's native peoples in all parts of Canada. The Numbered Treaties of western Canada, including treaties 8 and 11, are one example of the recognition of these rights and indicate the importance of hunting rights to the native populace. Similarly, the historical development of game legislation in the Northwest Territories evidences the importance of the preservation of game and the rights of native peoples to hunt for food as of right. However, the complete picture of the development of this legislation in the Northwest

Territories is a confused one. There are several Federal acts dating back to the latter decades of the nineteenth century dealing directly with this subject as well as many territorial ordinances prescribing game regulations.

The area which is today known as the Northwest Territories was first organized as a territory by the government of Sir John A. MacDonald. On July 15, 1870, the areas formerly known as Rupert's land and the North-Western Territory were admitted into the Dominion as an unorganized territory although it was not until 1875, with the passing of the North-West Territories Act (38 Vic., c.49), that a government was provided for the area. Until then, the area was managed from Ottawa where records were centralized and control was exercised by easterners unfamiliar with the west and able to exploit their positions to gain land grants and other favours in the territory. Little initiative was allowed the inhabitants of the area to manage their own affairs and it seemed to be the policy of the Dominion Government that the Indians and Metis should be acculturated into white civilization as quickly as possible so that the area could be opened for settlement. The simple fact that the Government had any policy at all toward the native peoples may be viewed as further evidence of the conscious attempt of the Federal Government to pursue the objectives of the Royal Proclamation of 1763 which, it is strongly arguable, applies to lands in the Northwest Territories. Because of the Royal Proclamation, at Confederation the federal government was given the necessary power by the British North America Act (s.91(24)) to deal with Indians and the lands reserved to them by the Royal Proclamation. The great treaty-making era, which began in the 1870's and lasted until 1923 and includes a portion of the present Yukon Territory and Northwest Territories, is clear evidence of the desire of the Federal Government to follow the procedures for proper extinguishment of aboriginal rights as enunciated generally in British and Canadian common and statutory law, executive acts, government policy, and in particular, the Royal Proclamation.

With the passing of the Northwest Territories Act in 1875, provisions were made for the establishment of a government structure in the territories. The administration was to be headed by an appointed Lieutenant-Governor assisted by a five-man appointed council supplemented by elected members. Although intended to be an autonomous legislative body, the council had very little actual power. Administrative functions in respect to the territories were carried out by agents of the Federal Government or by the Lieutenant Governor in his capacity as agent of the Dominion Government. The Department of the Interior with its many branches continued its control and administration over the territories. Moreover, the powers of the council were further circumscribed by the over-riding effect of Federal legislation and the disallowance power in respect to territorial ordinances which was often exercised.

It would appear that the earliest legislation in respect to game in the Northwest Territories was passed by the Territorial Council. In 1877,

Ordinance # 5, "An Ordinance for the Protection of Buffalo", was passed, which provided that no buffalo could be killed by any person. No specific mention of native peoples was made. However, the ordinance did provide that a person in circumstances of immediate need could kill a buffalo to satisfy those immediate wants only. This ordinance was repealed in 1878.

No further legislation in respect to game appeared until 1883 when Ordinance No. 8, "An Ordinance for the Protection of Game", was passed. The ordinance provided for the setting of closed seasons on certain species of game; for penalties for violation of the ordinance; and, for the appointment of wardens to enforce the provisions. Section 18 of the ordinance provided that any traveller, family or other person in a state of actual want could kill any animal or bird to satisfy immediate want but not otherwise. This provision no doubt included native peoples in a state of actual want. In addition, by s.19, Indians were specifically excluded from the operation of the ordinance in any part of the territory with regard to any game actually for their use only, and not for purposes of sale or traffic. The section did not mention Metis or Inuit. (Note however, that the Supreme Court of Canada has held that the word "Indians" includes Inuit within the meaning of s.91(24) of the BNA Act.) With the publication of the revised ordinances in 1888, the above two sections remained although s.19 was amended to add that the prohibitions on taking the eggs of birds would not apply to Indians.

Ordinance No. 11 of 1889, which repealed the exemption in respect to Indians and further provided that no person could kill or take buffalo in any part of the territories was disallowed by the Dominion Government. Thus, there was an express continuing recognition of an aboriginal right in the native peoples to hunt for food for their livelihood. Moreover, the Federal Government was prepared to act forcefully to protect those rights.

The game legislation was again consolidated in 1893 by Ordinance No. 8 which continued the proviso in respect to the killing of game irrespective of locale or season if actual want necessitated. A new section provided that persons who were not resident in the territories were to pay a $5.00 fee to hunt there. The exemption for Indians from the operation of the ordinance was perpetuated.

One of the final pieces of legislation in respect to game passed by the Territorial Council during this period occurred in 1903. This unusual ordinance provided in part that no hunting whatsoever was to be allowed on Sundays; that there was to be no killing or hunting of bison or buffalo at any time; and, that no hunting was permitted from one hour after sunset to one hour before sunrise. The ordinance made no mention of native peoples. This ordinance was not disallowed by the Federal government. However, it seems that disallowance did not occur because the ordinance was of

of little effect. By this date, the Dominion government had become involved in legislating for the preservation of game in the Northwest Territories and legislation of the Territorial Council in respect to this matter was ineffective under the doctrine of paramountcy. Thus, because of the over-riding effect of the Federal legislation there was no need to disallow the territorial ordinance.

The Dominion Government first became involved in legislating in respect to game in the territories in 1894, stressing the almost negligible power of the Territorial Council in governing the territories. Their first legislation was "The Unorganized Territories' Game Preservation Act" of 1894 (57 - 58 Vic., c.31). The Bill was first introduced in the Senate by the former Prime Minister of Canada, the Honourable Mackenzie Bowell, conservative government leader in the Senate. On the first reading of the Bill he outlined the general purpose of the legislation and the pressing need for it in these terms:

> "...The preservation of the birds and animals in that region is of paramount importance to the Indians and native peoples who rely upon hunting for food, raiment and the necessary trade which supplies them with their other requirements. The object of this bill is to protect, as far as possible what remains of this important resource of the country for the Indians and native peoples who would, in the event of the extermination of the animals, either starve to death or make their way out to the settled parts and become the wards of the country. The native himself would appear to have no idea of protecting fur-bearing animals, but slaughters all that comes his way. It is true that the North-west Council has ordinances in force protecting game and animals, but the provisions do not extend beyond the legislative districts. It would be unreasonable, of course, to expect the Indians to observe laws preventing them from killing animals when they require them for food, and care has been taken in the bill proposed that it shall not operate to cause them any hardship, but it is considered of imperative urgency that some immediate steps should be taken to restrict the indiscriminate slaughter of fur-bearing animals

> by the adoption and enforcement of stringent regulations such as those contemplated by the provisions of the said bill...." (Senate Debates, 1894, p. 286).

The former Prime Minister continued his speech by discussing the need to protect certain species of animals such as buffalo, musk-oxen, caribou and beaver from slaughter, repeated again the purpose of the Bill. The Government, he stated,

> being convinced of the importance of adopting regulations for the preservation of the fur-bearing animals in the district mentioned and in compliance with the numerous appeals which have been made in that behalf by persons more particularly connected with the matter, it is considered that the Act proposed will to a great extent meet the object in view without imposing any hardship upon the Indians or traders. ...Past experience of this country proves the great necessity of taking steps at as early a day as possible for the preservation of the natural food supply of the natives and Indian tribes. ...There may be some difficulty in enforcing the provisions of this Act: still, by appointing guardians with magisterial powers to enforce it, and in securing the co-operation of the Hudson Bay Company, it can be done. It is as much in their interest as ours, that the game and the fur-bearing animals in the Northwest Territories should be preserved for the food supply of the Indians. I may add that this bill does not interfere with the killing of any animal by the Indians, when it is done for the sake of food, to prevent them from starving." (Senate Debates, 1894, p. 287).

Note the emphasis which the speaker placed upon the need for preserving the natural food supply of the Indians. Although not determined at this time, this would include Metis and Inuit by virtue of the Supreme Court of Canada's subsequent interpretation of s.91(24) of the British North America Act. The native peoples were to be the "first users" of the game resources based upon their need for the essentials of life such as food and clothing. Moreover, the bill was clearly intended to protect for native use not only game animals but also certain species of birds. Within the Act itself there are no specific definitions of "game" or birds". Rather the sections of the Act speak of "beasts

and birds mentioned in this Act". Beasts specifically referred to were buffalo, musk-ox, elk, moose, caribou, deer mountain sheep and goats, mink, fishers, marten, otter, beaver and muskrats. Birds referred to included grouse, partridge, pheasant, prairies chickens, wild swans, wild geese, and wild ducks. As the debate continued in the Senate, Senator Bowell indicated that if the Act provided for the establishment of a closed season in respect to any animal "it would necessarily be prohibitory during that season, except when the Indians need an animal for food; then it would not be prohibitory." (Senate Debates, 1894, p. 287).

Clause 8 of the Act exempted Indians who were inhabitants of the country, except in respect to closed seasons on buffalo, musk-ox and elk which were to apply to Indians. This clause received a great deal of discussion. Clause 8 read:

> "Notwithstanding anything is s.s. 4, 5, 6, and 7 of this Act, the beasts and birds mentioned in those sections may be lawfully hunted, taken or killed, and eggs of any of the birds or other wild fowl so mentioned may be lawfully taken, -
>
> (a) By Indians who are inhabitants of the country to which this Act applies, and by other inhabitants of the said Country. But this exception does not apply to buffalo, bison or musk-oxen during the closed seasons for those beasts; ..."

One member, Senator Lougheed, suggested, "Is there any reason why this should not be made to read 'food purposes for Indians'. I think the principle danger to-day arises from the indiscriminate slaughter of game by the Indians." In reply to this comment and to the question as to the meaning of the term "other inhabitants", Senator Bowell replied:

> "There are other inhabitants of that country who live in the same manner as the Indians do, and you will see by the clause (b) that explorers, surveyors and travellers, are excluded from the operation of the clause. The object of the Bill is to prevent, as far as possible, the indiscriminate slaughter of game for the purposes of mere pleasure or sport. All the inhabitants of the country to which the bill applies are pratically dependent upon game for food, and exceptions are made and must be made in their favour. Numbers of parties engaged by the Hudson Bay Company are what may be

> termed half-breeds, and do not come under the category Indians, but they live in the same manner and their habits are very much the same, and it is impossible to interfere with that class of people in that section of the country without endangering its peace." (Senate Debates, 1894, p. 337).

A statement by Senator Allan indicated the great concern which the Senate had that the Indians, and other native peoples, should be able to hunt for food:

> I presume the principle which underlies these subsections of clause 8 is just this - that in a country like our North-west the Indians and others who happen to be living there depend entirely upon these animals and birds for food, and it is not desired to restrict them in any way from obtaining whatever they require for their support, but while there is that desire, the object of the bill would be to some extent to prevent either the Indians or other inhabitants from slaughter-ing the animals except for food. They would undoubtedly have the right under this clause to kill fur-bearing animals and possibly eat them too." (Senate Debates, 1894, p. 338).

After further discussion of this provision it was passed, although the government leader, Senator Bowell, agreed to reconsider the matter and report at a later date. When the bill was reintroduced for third reading Senator Masson again raised the consideration of the exemption of Indians from the bill for food purposes only. "The honourable Minister," he stated, "was to reconsider clause 8 which gives Indians and other inhabitants liberty to kill animals out of the close season. There is no close season for buffalo." Senator Bowell replied:

> "I did make inquiry as to that, and it is not considered advisable to interfere with the habits of the Indians or other inhabitants of these territories, who are really more Indians than the Indians themselves, and any attempts to control them would be fraught with a good deal of danger until they become a little more civilized and more used to the habits of the civilized parts of the country. I may also say that the Indians there for years past received instruction from the Hudson

> Bay officials, who are as anxious to preserve the game of all kinds as we can possibly be and they dissuade them under all circumstances from killing any animal out of season when the fur is not good, except when they actually want for food; and if you attempted to punish them you might create Indian wars which would cost a great deal more than these animals are worth." (Senate Debates, 1894, p. 359-360).

In essence, clause 9 (a) of the bill was under attack because it was not limited to the killing of animals and birds for food. Rather, killing was to be allowed in all seasons indiscriminately except for buffalo and musk-ox. However, as was suggested in the debate, the clause in practice would not apply to animals such as mink, beaver, fisher, marten, etc., which were generally useless except for ther skins, and native hunters, knowing this, would not kill these animals in a closed season when their skins were inferior unless they were in the direst of need for food. The Senators in their discussions pointed to the Indians as, in their view, the greates cause of indiscriminate slaughter of birds and animals in the Northwest Territories. It is well to note that until the coming of the white man the native peoples had no use for many of these animals and it was only the result of the white man's demand for the skins of these animals that the native person hunted these fur-bearing animals. The Senators provided no evidence whatsoever to substantiate their accusations.

When the bill reached the House of Commons for debate, further time was spent on the provisions of clause 8. The bill was introduced by the Hon. T.M. Daly, Minister of the Interior and Superintendent General of Indian Affairs, who was questioned by a Mr. Flint in regard to this section:

> "I think clause 'a' of this section is too wide. It seems to me that even Indians and inhabitants of the country should not be allowed to destroy these animals during the closed season, except for food. This clause will practically almost annul the general provisions of the Bill, it is so bread. A party of Indians with one trapper or hunter might, during the close season, destroy many of these animals for pleasure or for commercial purposes. I think it would be wise to amend that so as to allow Indians or inhabitants of the country to shoot these animals in the close season for food purposes only." (House of Commons Debates, 1894, p. 3538).

The Minister replied:

> "But unfortunately, the inhabitants of the country are dependent upon the game for their food. The only thing we can do is to prevent these animals from being shot for pleasure by others than inhabitants. The inhabitants are mainly half-breeds, and it is impossible to make the Bill more stringent unless we are prepared to feed these people. So far as the fur-bearing animals are concerned, it is against these people's own interest to destroy them during the close season for the Hudson's Bay Company will not buy the skins of animals shot during that season. So far as other animals and birds are concerned, these peoples must have food, and it seems to me this is as far as we can go in providing against the destruction of these animals." (House of Commons Debates, 1894, p. 3538).

From the above discussion it is apparent that the major concern of the Government of the day was to prevent the Indians from becoming wards of the state, dependent upon the state for their food. In part, the basis of this policy can be said to be benevolence and concern for the welfare of Indians rather than on a strict aboriginal rights policy per se. However, it is implicit in the Federal Government's disallowance of the Territorial Ordinance of 1889, combined with the Government's recognition of the native peoples' primary dependence on hunting for their livelihood, that aboriginal rights in respect to the game supply of the Northwest Territories were to continue to receive the recognition given historically by both British and Canadian governments. Whether or not this legislation is based on an articulared aboriginal rights policy or on an "economy" policy of trying to keep native peoples off the welfare rolls, the effect is still that of recognizing a right in the native peoples in respect to that limited game supply.

The extent to which exemptions for Indians and persons with Indian blood applied specifically to Inuit may be questioned, since there was not a great deal known at this time about the Inuit or the extent of their geographical occupation. It is likely that they would be included under the term "native peoples" but the debates indicate that "native peoples" or "other inhabitants" referred more to the Metis of the Territories than the Inuit. Undoubtedly, the legislative intent was to include all native peoples although the draughtsman may not have consciously considered the Inuit. In addition, it is interesting to note the fear of the spectre of Indian wars which in part contributed to the eased restrictions in respect to Indians and native peoples hunting out of season. Moreover, the amount of debate time given to this Act and the careful consideration which certain parts received would indicate a great awareness on the part of members of the legislative houses of the importance of game in the livelihood of the native peoples of the west and north. This awareness and consideration is in contrast to the cursory discussion

which game legislation was to receive in later years. It seems that history is too easily overlooked or forgotten.

The Northwest Game Act of 1894 applied to all of the Northwest Territories and specifically stated that Ordinance No. 8 of 1893 of the Territorial Council was not to apply in the Territories, and that part of the country in which this Act applied. Specifically, the 1894 Act applied to the District of Keewatin and to those portions of the Northwest Territories not included within the provincial districts of Assiniboia, Alberta and Saskatchewan.

In 1917, the Northwest Game Act was repealed and replaced by a consolidation and partially re-written statute applicable to the Northwest Territories. This new act provided a list of birds and game that could not be killed and as before, provided for an exemption for Indians and Inuit or other bona fide inhabitants of the Northwest Territories except in respect to closed seasons on certain species such as buffalo, musk-ox, wapite or elk, and white pelicans. In addition, licences were made requisite for all non-native peoples. Indians, Inuit or Metis who were bona fide residents of the Territories were specifically exempted from obtaining licences.

During the debate on the Act in the House of Commons, the Hon. W.J. Roche, Minister of the Interior and the Superintendent General of Indian Affairs noted:

> "One of the essential things in connection with this Act is to protect the game of the Northwest Territories for the inhabitants of that country. It is their main source of food supply, and if any person is allowed to go in there and indiscriminately slaughter whatever he thinks fit the Indians and the inhabitants of that enormous territory will be deprived of their food supply and will become pensioners of the Government, which would entail large appropriations by this Parliament for supplying them with food. I did not say there was an invasion of this territory by people from the Yukon but I did mention Alaska, and we do not want a repetition of what occurred in Alaska. ...We are anxious to conserve the animal life, not only for the sake of the animals themselves but to ensure the food supply of the native peoples." (House of Commons Debates, 1917, p. 3669-70).

These sentiments were again repeated in another speech by the Minister on the debate of the bill. He stated:

> "So far as the Native Peoples in the Territories are concerned, they are exempted from many of the provisions of this Act in order to afford them an opportunity to secure a sufficient food supply unless they violate the law in some sanctuary. This legislation is designed to hit those who are coming in for exploiting purposes, and organized bands of hunters who go into the North-west Territories. One of the reasons for bringing in this legislation is that we have information of Americans going in through the North Passage and coming down and establishing trading posts in various parts of the country. I do not think the penalty is too severe for the class which I refer to, and that is the class to which this legislation will principally apply." (House of Commons Debates, 1917, p. 3674).

In the Sendate, the Act also received scrutiny and in answer to Senator Daniel's question "How is a knowledge of the Act to be disseminated amongst the people of the North West, especially where the population consists largely of Indians and Inuit?" Sir James Lougheed replied, "The Indians have certain rights which the whites do not." (Senate Debates, 1917, p. 667). (emphasis added)

Clearly, then, the government envisaged protecting the game of the Northwest Territories so that the native peoples could maintain their livelihood from hunting and trapping so as not to become wards of the state. In that same year, 1917, however, another Act was passed which would later severely curtail the rights of native peoples to hunt for food in respect to migratory birds. The Migratory Birds Convention Act (1917, 7 - 8 Geo. V, c. 18), which was passed in pursuance to the ratification of the Migratory Birds Convention between the United States and Great Britain, preceded the passing of the Northwest Game Act. The Migratory Birds Convention Act received first reading on June 21, 1917 while first reading for the Northwest Game Act was on June 22 of that same year. Second and third readings of the M.B.C.A. were completed on July 21, 1917 while second reading of the N.W.G.A. commenced after the passing of the M.B.C.A. on that date. Third reading was finally completed on the N.W.G.A. on August 17, 1917. In both the Commons and the Senate, however, none of the discussion relates to the effect which the Act would have on the native peoples abilities or rights to hunt for birds during close season for food or not. The point that the M.B.C.A. would appear to curtail the rights of native peoples in respect to hunting wildfowl was not argued in either of the legislative bodies. It is noteworthy, moreover,

that some of the species of birds covered in the Migratory Birds Act are also covered in the North West Game Act. The North West Game Act included provisions in respect to partridge, prairie chickens ptarmigans and other species of grouse as well as wild ducks, white pelicans and wild swans. Wild geese, wild ducks and wild swans were included in the definition of migratory game birds in the Migratory Birds Convention Act, although during the course of debate on the subsequent North West Game Act no one made mention of the overlap between the two. There can be only one explanation for the total absence of discussion on native rights in respect to the Migratory Birds Convention Act and the very extensive later discussion in this regard in connection with the Game Act.

Clearly, the discussion in relation to the Game Act implies not only that the food supplies of the native peoples were of paramount importance but also that they be allowed to hunt for food in spite of closed seasons though not in cases of certain endangered species - buffalo, musk-ox, wapite or elk, and white pelicans. This is the basis of the argument made by Mr. W.G. Morrow Q.C., (now Mr. Justice Morrow of the Supreme Court of the Northwest Territories) in arguing the Sikyea case ([1964] S.C.R. 642). In his submissions to the Supreme Court of Canada, Mr. Justice Morrow had argued that

> "The preamble to the Convention Act points to the purpose or reason for the Convention, namely 'many of these species are of great value as a source of food or in destroying insects which are injurious to forests and forage plants...as well as to agricultural crops...' Unless one is to consider that the above was merely a 'veiled' purpose and that the real reason was to provide sport for the more populated areas of Canada and the United States, it is submitted that the Convention, the Act and the Regulations thereunder must be for the purpose of preserving a source of food."

Moreover, it was argued that

> "in a case of an Indian hunting for food, the provisions of the Migratory Birds Convention Act and the Regulations thereunder, when read in conjunction with other legislation of equal importance and effect, namely, the Northwest Territories Act, as amended cannot have application...."

In other words, the major legislation in respect to game in the Northwest Territories is the Game Act which received wide discussion in respect to the rights of native peoples in hunting animals both in and out of season. Thus, the Migratory Birds Convention Act should not be read as a limitation on the hunting rights of the native peoples which had previously been clearly recognized in the Game Act. The term "game" as defined in the Game Act meant and included "all wild animals and wild birds protected by this Act or any Regulation and the heads, skins, and every part of such animal or bird." (emphasis added)

The primary purpose of the Migratory Birds Convention Act, too, was to prevent depletion of those migratory birds useful to man or harmless to him. In essence, the Convention and the Act were designed to preserve a source of food for the native peoples. Surely the signatories to the Convention could not have intended the provisions of the Convention to prevent the native peoples from pursuing their normal lifestyle. In comparison, the emphasis throughout the United States legislation is upon the control of sports hunting. Moreover, one of the most significant differences between the position of the native peoples in Canada and the United States in respect to hunting for food on reserves is that in the United States the government can impose no restrictions as to when and what kinds of birds may be killed by Indians on a reservation (U.S. v. Cutler 37 F. Supp. 724). In Canada, on the other hand, it has been held that the M.B.C.A. does abrogate hunting rights expressly guaranteed by treaty even though hunting on a reserve. (Sikyea, [1964] S.C.R. 642; George, [1966] S.C.R. 267)

The emphasis on the sport hunting aspect is even more pronounced in a similar Convention entered into between the United States and Mexico in 1936. That Convention was also to protect migratory birds and game mammals and as was stated in the preamble the purpose was to "permit a rational utilization of migratory birds for the purposes of sport as well as for food, commerce and industry". The United States in enacting this Convention merely amended their pursuant to the U.S. - Great Britain Convention, thus further emphasizing the fact that the expression in the United States Convention was more in terms of controlling sports hunting than the preservation of the food supply to native peoples. However, one underlying purpose of control was to protect the food supply of native peoples. In respect to Mexico it is interesting to note that although a close season was provided for wildfowl the Civil Code of Mexico allows indigents to take such fowl at any time regardless of season. (Article 857)

Doctrines of international law have developed in relation to the interpretation of treaties to the effect that a reasonable approach to the sense of words used rather than a literal sense should be followed, especially where there are two divergent possible interpretations. (See Hall, International Law 3rd edn. p. 338; and

Wheaton's International Law, 4th Edn., Article 287A). Thus, where there are two statutes in possible conflict such as the M.B.C.A. and the Game Act, the more reasonable interpretation is that it was never intended by Parliament to abrogate the right of native peoples to hunt for food.

It should also be noted that, in comparison to its predecessor, the North West Game Act of 1917 covered a wider geographic area than before since Northwest Territories was defined to mean "the Northwest Territories formerly known as Rupert's Land and the Northwestern Territory (except such portions thereof as are included in the provinces of Ontario, Quebec, Manitoba, Saskatchewan, Alberta and the Yukon Territory), together with all British territories and possessions in North America and all islands adjacent thereto not included within any province except the colony of Newfoundland and its dependencies."

The Federal Government remained in the area of game legislation in the Northwest Territories until 1948 when a decision was made to put the preservation of game clearly within the powers of the Commissioner-in-Council of the Northwest Territories. This involved an amendment to the Northwest Territories Act and the repeal of the North West Game Act. In the Senate, it was stated by Senator W.A. Buchanan that the purpose of the bill accomplishing the above was to give the Commissioner of the Northwest Territories in council the power to make ordinances respecting the preservation of game. "At present," he stated,

> "this can only be done by the Governor in Council under the North West Game Act. The intention of the Bill is the repeal of the North West Game Act and to permit a more convenient and speedy procedure to be followed for the regulation of game preservation in the Territories." (Senate Debates, 1948, p. 115).

In the House of Commons, the bill received a similar cursory discussion as the Acting Minister of Mines and Resources, J.A. MacKinnon explained to the House that provincial governments administer their own game and fur regulations. (Note, however, that a long line of cases have held that a provincial law cannot abrogate native hunting rights. Only the federal government has this power, under s. 91(24) of the BNA Act). "Similarly," he continued,

> "the Yukon Territorial government deals with these matters by territorial ordinances. It is desired to place the Northwest Territories Council in exactly the same position so that the administration of these particular resources which are of such intimate concern to the local people should be subject to control

> and administration by the Northwest Territories Council. This will enable necessary changes in policy to be made effective promptly to meet the changes which often occur suddenly owing to climate conditions or forest fires. Already the Northwest Territories Council has been authorized to fix and does fix the royalties which must be paid by those exporting furs from the Territories". (House of Commons Debates, 1948, p.3423).

There was no discussion of the native peoples special rights to hunt as they existed under the Northwest Game Act and no stipulations were made in respect to the enlargement of the Commissioner-in-Council's powers as to how native peoples should be treated in respect to their ancient rights. The Federal Government in one quick action abdicated this area of responsibility thus giving effect to game legislation of the Northwest Territories' Council. The special rights of native peoples, of particular importance because of their dependence upon game supplies for food, were being tossed aside without any apparent direction to the Northwest Territories' legislators that such special rights must continue. Consider the very cavalier way in which the Northwest Game Act was repealed with no discussion of the very reason and prime motivating force behind the passage of the Act in the first place - the preservation and protection of a limited game supply in the Northwest Territories so that the native peoples of the area would be able to pursue their livelihood as they always had done. The Northwest Territories" Council would continue the erosion of native rights, culminating in Bill 13-47.

A new game ordinance was passed by the Territorial Council in early 1949 to deal with the preservation of game. By this ordinance all those involved in hunting were required to have a hunting license of the necessary category for the game to be hunted, including native peoples. The fee for all non-natives was $5.00 for a general hunting license and nil for native peoples. Indians and Inuit who possessed a general hunting license were allowed to hunt caribou for food in March which was part of the closed season on caribou and allowed to kill a specified number of caribou for clothing between August 1 and September 15, which was also within the closed season for caribou. Such minor exemptions such as these to the native peoples in respect to the pursuit of their ancient hunting rights seem somewhat inadequate in comparison to their dependence on game for food and in comparison to the wide exemptions which were previously granted under Federal legislation. In 1953 this limited right to hunt during the closed season for caribou was a further restricted by an amendment to the effect that any person holding a general hunting license could hunt caribou with the commissioner's permission, thus in theory increasing the number of persons who had access to a limited game supply. In 1955, however, the rights of Indians and Inuit to hunt were expanded by allowing them to hunt on all unoccupied Crown lands at any time of year for food for themselves as well as to hunt on occupied Crown lands with permission of the occupier. Indians and Inuit with general hunting licenses were also to be allowed to hunt for big game

animals on game preserves although in succeeding years this was restricted by prohibiting the hunting of caribou, musk-ox and polar bears in these areas.

In 1960 a new consolidated ordinance was passed which consolidated the above provisions in respect to hunting although it should be noted that whereas the previous Federal legislation had been concerned only with the preservation of the game supply for the benefit of the native peoples, the Territorial legislation extended this to all general hunting license holders. The North West Game Act had included "all other inhabitants of the territories" in their exemption clause but as indicated in the discussion of the bill the "other inhabitants" referred to that class of people who lived like Indians, that is, the Metis. Today, the greater population of the Territories would make the group possessing general hunting licenses much larger, thus allowing a greater number of people to hunt a limited game supply upon which many native persons depend. In this respect, game legislation throughout this centruy can be viewed as a continuing chipping away at the rights of native peoples to pursue their ancient livelihood in respect to a limited game supply. Moreover, this limited supply is threatened more than ever at present by the encroachment of exploration firms.

The proposed amendments in Bill 13-47 deleting references to Indians and Inuit is one more step in this process. If these are allowed to stand, references to Indians and Inuit will remain in one section of the ordinance and one item of Schedule A thereto, that is, the definition section of the ordinance and the description of persons who may be granted a general hunting license.

The proposed amendments deleting references to Indians and Inuit represents a further step in the dilution of rights which Canada's native peoples have possessed in respect to hunting since time immemorial.

Details of those amendments which have eliminated specific reference to Indians and Inuit

1. Subsection 5(3) of the Game Ordinance is amended in respect to the hunting of bison. The present section reads: "No person other than an Indian, an Inuit or the holder of a general hunting licence, shall hunt bison with any other weapon than etc. ..." The proposed amendment deletes the reference to Indians and Eskimos and states "No person other than the holder of a general hunting licence etc. ..."

2. Section 20(2) (c) has also been amended to remove reference to Indians and Inuit. This section relates to applications for trapping area licences, upon which an applicant must state, according to the present Game Ordinance, "(c) whether or not he is an Indian or Eskimo or, if he is a naturalized Canadain, the number of his naturalization certificate". The proposed amendment stipulates that an applicant must only state "(c) if he is a Canadian citizen by virtue of a certificate of citizenship or naturalization". Not all native persons resident in Canada are necessarily citizens of Canada. What is the position of Inuit who emigrated from Alaska many years ago but who may not have become "Canadian citizens" (in the legal sense)?

3. Schedule A appended to the Game Ordinance providing for the issuance of licences and fees to be paid for them is also amended. Item 1 of the Schedule, which deals with general hunting licences, is amended to delete certain references to Indians and Inuit although one reference remains. Under the Game Ordinance prior to amendment there were seven different classifications of individuals able to apply for such a licence. The amendment reduces this to four. In so doing, one reference to Indians and Inuit has been removed completely, as is a reference to non-treaty Indians and Indians of mixed blood. The amended categories of persons to whom licences can be issued seems sufficiently wide to cover these groups.

The intent of Item 1 seems to be to limit the issuance of general hunting licences to persons who are resident in the Territories or one of whose parents or spouse were resident and who hold general hunting licences. All others, it would appear, must apply for specific licences relating to the game which they wish to hunt. In reference to Indians of mixed blood, the Game Ordinance as it formerly read permitted a licence to be issued to "(c) a non-treaty Indian or of mixed blood who is a member of a family or group that prior to June 30, 1953, hunted in the Territories". The amended version indicates that these individuals will still be eligible for a general hunting licence by virtue of proposed subsection (b) which reads any person "who is a member of a family or group that prior to June 30th, 1953, hunted lawfully in the Territories". This subsection is apparently wide enough to also include the other subsection which has been repealed which read "(b) an Indian or Eskimo who is a member of a family or group that prior to June 30th, 1953, hunted in the Territories".

Prior to amendment, the Game Ordinance provided that neither Indians, Inuit nor Metis were required to pay any fee for their general hunting licence whereas all others applying for such a licence were required to pay a fee of $5.00. By the new amendments, fees for all resident persons (as well as any non-resident person but one of whose parents, or spouse, is resident), have been removed, thus, in effect granting all non-natives at least part of the special rights which had previously only accrued to native peoples.

4. This is also true in respect to Item 8 of the same schedule which provides for licences to trap in that part of the Mackenzie River north of Point Separation in the Mackenzie District. Whereas, prior to amendment the Game Ordinance stipulated that Indians and Inuit did not have to pay any amount to get a licence and all others had to pay a fee of $10.00, the amendment provides that the special reference to Indians and Inuit is dropped and the fee is nil for all persons applying.

5. The same results arise from the amendments to Item 9, which deals with trapping area licences for any area in the N.W.T. not referred to in Item 8.

6. Item 16 of Schedule A provides for the licensing of trading posts. Prior to amendment the Ordinance stipulated that Indians and Inuit desiring such a licence did not have to pay any fee. However, the amendments repealed the reference to Indians and Inuit and instead provided that "any person who is the holder of a general hunting licence" may apply and receive a trading post licence without any charge. This amendment does alter the rights of Indians and Inuit since, by the former Game Ordinance, any Indian or Inuit could apply for a trading post licence whereas by the amendment only those with a general hunting licence are eligible. However, the probable extent to which this is a real limitation on the rights of Indians and Inuit is slight since all Indians and Inuit who have resided in the Territories since birth and not been absent for more than ten years are entitled to a general hunting licence. Nonetheless, Inuit from Quebec or Labrador, or Indians from other provinces coming to reside in the Territories, it would seem, will be required by the new amendments to pay the $150.00 fee for each of the first two years of operation of a trading post and $10.00 per year thereafter. What the Council of the Northwest Territories has done is alter the ability of Indians and Inuit not resident in the Territories to obtain without charge a trading post licence.

7. Further amendments have been made in relation to Schedule B or the Ordinance which are similar in nature and effect to those for Schedule A. Paragraph (e) of Item 1 of Schedule B under the heading Colum II is repealed, and Items 5 and 6 are amended to, among other things, delete specific references to Indians and Inuit. The amendment to Item 5(b) specific references to Indians and Inuit. The amendment to Item 5(b) suggests that the rights of native peoples may be must more limited since, by virtue of the amendment, only those who held a general hunting licence and lawfully hunted annually on a game preserve since 1950 are eligible to continue to do so. The Ordinance, prior to amendment, through Item 5(a)

of Schedule B - repealed by Bill 13-47, allowed an Indian or Eskimo born in the Territories and holder of a general hunting licence to hunt in game preserves. The new amendment, therefore, amounts to a further watering down of the native peoples' rights to hunting.

Submission

By s. 13(q) of the Northwest Territories Act (R.S.C. 1970, c. N-22) the Council is given legislative authority over the "preservation of game in the Territories". In addition, the Commissioner-in-Council has authority to make Ordinances "in relation to the preservation of game in the Territories that are applicable to and in respect of Indians and Eskimos and ordinances made by the Commissioner in Council in relation to the preservation of game in the Territories, unless the contrary intention appears therein, are applicable to and in respect of Indians and Inuit." (s. 14(2)). Subsection 3 of this section further stipulates that the Commissioner may not make ordinances which in any way restrict or prohibit Indians or Inuit from hunting for food on unoccupied Crown land, except for such species of game as are declared to be in danger of becoming extinct. Although it might appear that the amendments to the Game Ordinance do not literally transgress these provisions, in substance they do so, for the effect of extending privilege to others is to diminish further the rights of the native peoples to hunt or trap a limited supply.

This brief has already discussed some of the amendments through Bill 13-47 to the Game Ordinance. The amendments discussed have a threefold effect:

(1) The substantive effect of the amendments is to make it considerably easier for non-natives to hunt and trap the limited supply. Therefore, there is a corresponding dilution of the rights of the native people. This effect is compounded by other amendments through Bill 13-47, not discussed. The following provisions have the effect of changing the residency requirement to six months, being one-half of the residency requirement (1 year) hitherto - item 2, paragraph (a) Schedule A; item 4, paragraph (a) of Schedule A; item 5 of Schedule A; item 20, paragraph (a) of Schedule A under the heading Column KK (although this latter amendment does not seem to be all that consequential because of the limitation continuing under Column IV, i.e. that a person with a polar bear licence must be accompanied by a licenced guide who is in lawful possession of a subsisting polar bear tag or seal). In addition, Schedule A is amended by adding thereto, immediately after item 1, item 1A. This provides for a trapping licence to "any person who resided in the Territories for the six months immediately preceding the date of his application" upon payment of a fee of $5.00. It seems obvious that the abridged residency requirement benefits non-native peoples a good deal more than native peoples. The cumulative effect of these provisions, together with the provisions

discussed in detail in this brief, is to substantially qualify the rights of native people to hunt and trap. There is a very limited game supply, which is diminishing because of exploration activities and resulting adverse environmental and ecological effects; and, by the increasing numbers of non-native peoples coming in to the North.

In one sense the amendments represent a further attempt at assimilation of native peoples into Canadian society as a whole. This has been done historically by direct abrogation of native rights (an example being the Migratory Birds Convention Act, which unintentionally abrogated native rights, in respect to which successive Federal Governments and parliaments have refused to redress this unintentional abrogation). Bill 13-47 attempts a comparatively new indirect, approach at abrogating native rights. The indirect approach is employed because of the limitation imposed by parliament through s.14 (3) of the Northwest Territories Act. By extending privileges to others, native peoples suffer a substantial dilution of their rights. This tends to lessen the supply of game and fur-bearing animals to the native peoples who depend most upon it for sustenance and livelihood. Therefore, Bill 13-47 is creating an adverse affect upon the livelihood of native peoples in the Northwest Territories.

(2) Hunting rights represent an important incident of aboriginal rights. In Regina v. Sikyea, (1964), 43 D.L.R. (2d) 150, Mr. Justice Johnson, speaking for a unanimous Northwest Territories Court of Appeal commented that the Federal Government had always respected the aboriginal rights of "all Indians across Canada" (at p. 152) and further stated that:

> "The right of Indians to hunt and fish for food on unoccupied Crown lands has always been recognized in Canada - in the early days as an incident of their 'ownership' of the land and later by the treaties by which the Indians gave up their ownership right in these lands."

Apart from the adverse economic and sustenance consequences which Bill 13-47 has on native hunting and trapping rights by diluting these rights, there is also the important symbolic

significance of these rights as items of basic self-identity to be considered. Such rights are an integral part of the culture and heritage of native peoples. In addition to helping restore the confidence of native peoples in their on-going relations with government and non-native Canadian society attention by government to its historically, but freely assumed, obligations in respect to native hunting and trapping rights constitutes a recognition of the special status of Canada's native peoples. Perhaps the passage by Chief Dan George describes best the nature of this relationship:

> "Let no one forget it...we are a people with special rights guaranteed to us by promises and treaties. We do not beg for these rights, nor do we thank you...we do not thank you for them because we paid for them... and God help us the price we paid was exorbitant. We paid for them without culture, our dignity and self-respect. We paid and paid and paid until we became a beaton race, poverty stricken and conquered."
>
> ("My very good friends" in The Only Good Indian, Waubageshig ed., New Press, Toronto: 1970, at p. 188).

Therefore, it is respectfully submitted that the amendments to the Game Ordinance under Bill 13-47 be disallowed. It is submitted that these amendments do not represent the interests of constituents of the Northwest Territories. Disallowance can be allowed since by virtue of s. 14(3) of the Northwest Territories Act, the amendments are unconstitutional as they are in derogation of native rights. The amendments are also in violation of the provisions of the Canadian Bill of Rights which guarantee rights to the enjoyment of property and prohibit derogation of such rights without due process (and the passage of Bill 13-47 amounts to, in effect, expropriation without compensation).

It is respectfully submitted that for all the reasons mentioned above the Federal Government disallow Bill 13-47. The passage of Bill 13-47 has amounted to another nail in the coffin of native hunting and trapping rights North of 60°. It is respectfully submitted that the Federal Government urge and encourage the Council of the Northwest Territories to address itself to the disgraceful history of legislation in respect to native rights North of 60° and begin to represent its constituents forcefully in redressing the erosion of native rights. The Council of the Northwest Territories should be introducing legislation which redresses the injustices of history. For example, notwithstanding the fact that the Migratory Birds Convention Act was passed by Parliament in contemplation that native hunting rights were guaranteed by Federal legislation in 1917, as discussed at length in the commentary of this brief, the phrase "subject to the Migratory Birds Convention Act" has crept into the amended game ordinance of the Northwest Territories (see

the several references in this regard in Schedule B). In other words, the errors of history which abrogated native hunting rights have been compounded by being solidified in the Northwest Territories game ordinance. The Federal Government is requested to take positive action

(1) to have the Council of the Northwest Territories remove this limitation;
(2) to make the necessary amendments to the Migratory Birds Convention Act through Parliament to redress this injustice; and
(3) to have the Council consider and make all amendments to its legislation, i.e. the game legislation, necessary to advance and give realization to native hunting and trapping rights so as to increase the opportunities for natives to pursue their livelihood and source of sustenance, as well as to restore and make known these basic tenets of self-identity, culture and heritage.

The Inuit look forward to the Government's early reply to the above requests, in particular, in respect to the matter of disallowance of the amendments to the Game Ordinance under Bill 13-47.

TABLED DOCUMENT NO. 10-49

Tabled June 14, 1973

INUIT TAPIRISAT OF CANADA

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June 5, 1973 BY HAND

The Honourable J. Chretien
Minister
Department of Indian and Northern Affairs
Centennial Tower
400 Laurier Avenue West
Ottawa, Ontario
K1A 0H4

Dear Mr. Chretien

I enclose herewith, a brief in support of Inuit Tapirisat of Canada's request that you act immediately to disallow amendment to the "Ordinance Respecting the Preservation of Game", Bill 13-47 enacted June 30, 1972, by the Territorial Council of the Northwest Territories.

The Territorial Council did not provide an opportunity to native organizations to make submissions prior to Council's consideration of this Bill. The Bill was introduced and was given 3 readings and formally enacted within a few days time in June 1972.

Our request is supported by all other native organizations of the Northwest Territories.

Thank you for your immediate consideration.

Yours truly

13/6/73
Mr Rosenwald
for Mr Curley

Tagak E.C. Curley
PRESIDENT

Enclosure

c.c. Mr. Willy Firth, M.P.
Commissioner Hodgson, Indian Brotherhood of N.W.T.
James Wah-shee, President, I.B.N.W.T.
Chief Elija Smith, President, Y.N.B.
Joe Jacquot, President, Y.A.N.S.I.
Sam Raddi, President, C.O.P.E.
Dave Nahaba, President, M.A.N.W.T.

BRIEF TO THE FEDERAL GOVERNMENT OF CANADA IN RESPECT TO DISALLOWANCE OF GAME LEGISLATION OF THE NORTHWEST TERRITORIES

Introduction

The question of native hunting and trapping rights is of considerable importance to the native peoples of the Northwest Territories. Although game may be of decreasing importance in the native diet, in certain instances the abrogation of native hunting rights has resulted in hardship and nutritional deprivation. The issue of hunting and trapping rights also has a symbolic importance to the native peoples. By upholding its solemn promises made historically to protect native hunting and trapping rights, the governments of both the Northwest Territories and the Dominion of Canada can do much to restore the confidence of the native population in their respect for good intentions.

Moreover, the hunting rights of native peoples are simply an incident of general aboriginal rights in Canada and have been judicially recognized as such. For example, Mr. Justice Johnson, speaking for a unanimous Northwest Territories Court of Appeal in Regina v. Sikyea (1964), 43 D.L.R. (2d) 150 at 152, stated:

> "The right of Indians to hunt and fish for food on unoccupied crown lands has always been recognized in Canada. In the early days as an incident of their 'ownership' of the land and later by the treaties by which the Indians gave up their ownership right in these lands."

Although the current government of the Northwest Territories, perhaps unconsciously, and the current government of Canada, consciously, ignore aboriginal rights, an outline of some of the leading authorities from Confederation to the present will serve to reiterate the proposition that the aboriginal rights of Canada's native peoples have always been conceded as a matter of law and that those rights may not be disturbed without both consent and compensation. Moreover, this historical synopsis is illustrative of the historical and moral claims which native peoples have upon the government of Canada. The authorities which have particular relevance to the Northwest Territories are marked with an asterisk.

* (a) 1869-70: The purchase of the Hudson's Bay Company's territories and the acquisition of the North-western territory. The Federal Government accepted responsibility for any claims of the Indians to compensation for land in Rupert's Land and the Northwestern Territory. (The deed of surrender is reprinted in R. S. C 1970, Appendices, at pp. 257-77. In the December, 1867 Address to Her Majesty the Queen from the Senate and House of Commons of the Dominion of Canada upon the transference of Rupert's Land to Canada, it was stated:

"And furthermore that, upon the transference of the territories in question to the Canadian Government, the claims of the Indian tribes to compensation for land required for purposes of settlement will be considered and settled in conformity with the equitable principles which have uniformly governed the British Crown in its dealings with the aborigines." (Reprinted in R. S. C. 1970, Appendices, at p. 264)

(b) 1870: The Manitoba Act granted land to settle the Metis' aboriginal claims. (S. C. 1870, c.3, s. 31)

(c) 1871-1930: The numbered treaties and their adhesions speak of the Indians conveying land to the Crown. As the Order-in-Council for Treaty No. 10 demonstrates the treaty-making was done with a concept of aboriginal title clearly in mind:

"On a report dated 12th July, 1906 from the Superintendent General of Indian Affairs, stating that the aboriginal title has not been extinguished in the greater portion of that part of the Province of Saskatchewan which lies north of the 54th parallel of latitude and in a small adjoining area in Alberta...that it is in the public interest that the whole of the territory included within the boundaries of the Provinces of Saskatchewan and Alberta should be relieved of the claims of the aborigines; and that $12,000 has been included in the estimates for expenses in the making of a treaty with Indians and in settling the claims of the half-breeds and for paying the usual gratuities to the Indians." (Treaty No. 10 and Reports of Commissioners, Queen's Printer, Ottawa: 1966, p. 3)

(d) 1872: The first Dominion Act dealing with the sale of Crown land. Section 42 stated:

"None of the provisions of this Act, respecting the settlement of Agricultural lands, or the lease of Timber lands, or the purchase and sale of Mineral lands, shall be held to apply to territory the Indian title to which shall not at the time have been extinguished." (S. C. 1972, c. 23). This provision remained in the Various Dominion Land Acts until 1908.

(e) 1875: The Federal Government disallowed "An Act to Amend and Consolicate the Laws Affecting Crown Lands in British Columbia" stating "There is not a shadow of doubt, that from the earliest times, England has always felt it imperative to meet the Indians in council,

and to obtain surrenders of tracts of Canada, as from time to time such were required for the purposes of settlements." (W. E. Hodgins, Dominion and Provincial Legislation, 1867-1895 (Government Printing Bureau, Ottawa: 1896). As authority the Deputy Minister of Justice cites the 40th article of the Articles of Capitulation of Montreal and the Royal Proclamation of 1763. (id.)

(f) 1876: Speech of Governor General Dufferin in Victoria strongly upholding the concept of Indian title and criticizing the British Columbia Government. (The speech may be found in G. Stewart Canada Under the Administration of the Earl of Dufferin (Rose-Belford Publishing Co., Toronto: 1879 at pp. 491-493)

* (g) 1879: The Dominion Lands Act authorized the granting of land in the Northwest Territories to satisfy "any claims existing in connection with the extinguishment of the Indian title, preferred by half-breeds..." (S. C. 1879, c. 31, s. 125e).

(h) 1888: In the St. Catherine's case the Federal Government argued that it obtained a full title to land from the Indians by Treaty No. 3. (1899), 14 App. Cas. 46, at p. 54.

(i) The Federal Provincial Agreements which followed the decision in the St. Catherine's case sometimes employed the following "whereas" clause (taken from the 1924 Ontario Agreement):

> "Whereas from time to time treaties have been made with the Indians for the surrender for various considerations of their personal and usufructuary rights to territories now included in the Province of Ontario...." (S. C. 1924, c. 48)

(j) 1889: The Federal Government disallowed the Northwest Territories Game Ordinance because it violated Indian treaty hunting rights. (re-printed in S. C. 1891, at p. LXl.)

(k) 1912: In the boundaries extension legislation for both Ontario and Quebec, the Federal Government made a special provision requiring treaties with the Indians. (S. C. 1912 c. 40, s. 2(a) (Ontario); S. C. 1912, c. 45, s. 2(c) (Quebec).)

(l) 1930: British North America Act. This act trans-

transferred the ownership of natural resources to the prairie provinces. In each of the provinces the Indians are protected in their right "of hunting, trapping and fishing game and fish for food at all seasons of the year on all unoccupied Crown lands and on any other lands to which the said Indians may have a right of access."

(m) 1946 - The evidence of Mr. R. A. Hoey, Director of Indian Affairs Branch, May 30, 1946, before the Joint Committee of the Senate and House of Commons:

> "From the time of the first British settlement in New England, the title of the Indians to lands occupied by them was conceded and compensation was made to them for the surrender of their hunting grounds...this rule, which was confirmed by the Royal Proclamation of October 7, 1763, is still adhered to." (Minute No. 1, at p. 31)

(n) 1946: The evidence of Mr. T. R. L. MacInnes, Secretary, Indian Affairs Branch, June 4, 1946:

> "Now it remained for the British to recognize an Indian interest in the soil to be extinguished only by bilateral agreement for a consideration. That practice arose very early in the contract between the British settlers and the aborigines in North America, and it developed into the treaty system which has been the basis of Indian policy both in British North America and continuing on after the revolutionary war in the United States." (Joint Committee of the Senate and House of Commons, Minute No. 2, at p. 54)

(o) 1966: The Canadian Indian, a pamphlet published by the Department of Indian Affairs, states:

> "Early in the settlement of North America the British recognized Indian title or interests in the soil to be parted with or extinguished by agreement with the Indians and then only to the Crown." (Dept. of Indian Affairs and N. Dev., The Canadian Indian (Ottawa: 1966) p. 3)

(p) 1971 - The Dorion Commission Report expressly recognizes aboriginal rights, urges an expansive view of the content of aboriginal title and acknowledges the need to compensate native peoples for the extinguishment of their native rights. (Vol. 4.1 at pp. 389-97).

See generally Cumming and Mickenberg et al., eds., Native Rights in Canada (2nd edn., General Publishing Co. Ltd., and The Indian-Eskimo Association of Canada, Toronto: 1972).

In making this brief to the Council of the Northwest Territories it is proposed to consider the history of Game Legislation in the Northwest Territories, the details of the amendments through Bill 13-47 which deleted the specific references to Indians and Inuit and, finally, to make submissions through the Inuit Tapirisat of Canada on behalf of the Inuit. However, it is emphasized that the Inuit Tapirisat of Canada firmly believes that the substance of this submission is supported fully by virtually all native peoples in the Northwest Territories, as well as the plitical organizations which represent various groupings thereof.

History of Game Legislation in the Northwest Territories

The recent amendments through Bill 13-47 to the "Ordinance Respecting the Preservation of Game", hereinafter referred to as the Game Ordinance, represent a further step in the diminution of special hunting rights guaranteed to the native peoples by the operation of the common law concept of aboriginal rights and, in respect to some Indian peoples, by treaty as well.

These amendments, which delete specific references to Indians and Inuit from the Game Ordinance, were asserted by the legislators on the basis that they would not substantively change the rights of native peoples in respect to hunting. The preamble to the amendments states that the Bill is intended "to delete where possible all specific references to Indians and Eskimos without interfering with any of their rights". During discussion of the amendments by the Council of the Northwest Territories, it was stated by Deputy Commissioner Parker that

> "...there was a request by Members of this Council to remove certain statements in the ordinance which appeared to be discriminatory and this is what we did. In removing, where it was not necessary to have it in, the words Indians and Inuit, and dealing in fact, as the ordinance should, with northern residents. Where it is necessary and important that they be named then this has been done and those words have been retained. There is no diminution whatsoever of the rights of the Indian or Inuit people by any changes that have been made in this ordinance."

However, it is submitted that the amendments although recognizing the existence of special rights which the native peoples possess, dilute these rights by extending the same rights to a limited game supply to almost all others residing in the Territories. Thus, the amendments amount to one more piece of legislation in the continuing flow of laws over the past century diminishing hunting rights and the value of those rights, both as a source of livelihood and as an important item of self-identify of native peoples.

Throughout Canadian history there have been many clear instances of the recognition of the aboriginal rights of Canada's native peoples in all parts of Canada. The Numbered Treaties of western Canada, including treaties 8 and 11, are one example of the recognition of these rights and indicate the importance of hunting rights to the native populace. Similarly, the historical development of game legislation in the Northwest Territories evidences the importance of the preservation of game and the rights of native peoples to hunt for food as of right. However, the complete picture of the development of this legislation in the Northwest

Territories is a confused one. There are several Federal acts dating back to the latter decades of the nineteenth century dealing directly with this subject as well as many territorial ordinances prescribing game regulations.

The area which is today known as the Northwest Territories was first organized as a territory by the government of Sir John A. MacDonald. On July 15, 1870, the areas formerly known as Rupert's land and the North-Western Territory were admitted into the Dominion as an unorganized territory although it was not until 1875, with the passing of the North-West Territories Act (38 Vic., c.49), that a government was provided for the area. Until then, the area was managed from Ottawa where records were centralized and control was exercised by easterners unfamiliar with the west and able to exploit their positions to gain land grants and other favours in the territory. Little initiative was allowed the inhabitants of the area to manage their own affairs and it seemed to be the policy of the Dominion Government that the Indians and Metis should be acculturated into white civilization as quickly as possible so that the area could be opened for settlement. The simple fact that the Government had any policy at all toward the native peoples may be viewed as further evidence of the conscious attempt of the Federal Government to pursue the objectives of the Royal Proclamation of 1763 which, it is strongly arguable, applies to lands in the Northwest Territories. Because of the Royal Proclamation, at Confederation the federal government was given the necessary power by the British North America Act (s.91(24)) to deal with Indians and the lands reserved to them by the Royal Proclamation. The great treaty-making era, which began in the 1870's and lasted until 1923 and includes a portion of the present Yukon Territory and Northwest Territories, is clear evidence of the desire of the Federal Government to follow the procedures for proper extinguishment of aboriginal rights as enunciated generally in British and Canadian common and statutory law, executive acts, government policy, and in particular, the Royal Proclamation.

With the passing of the Northwest Territories Act in 1875, provisions were made for the establishment of a government structure in the territories. The administration was to be headed by an appointed Lieutenant-Governor assisted by a five-man appointed council supplemented by elected members. Although intended to be an autonomous legislative body, the council had very little actual power. Administrative functions in respect to the territories were carried out by agents of the Federal Government or by the Lieutenant Governor in his capacity as agent of the Dominion Government. The Department of the Interior with its many branches continued its control and administration over the territories. Moreover, the powers of the council were further circumscribed by the over-riding effect of Federal legislation and the disallowance power in respect to territorial ordinances which was often exercised.

It would appear that the earliest legislation in respect to game in the Northwest Territories was passed by the Territorial Council. In 1877,

Ordinance # 5, "An Ordinance for the Protection of Buffalo", was passed, which provided that no buffalo could be killed by any person. No specific mention of native peoples was made. However, the ordinance did provide that a person in circumstances of immediate need could kill a buffalo to satisfy those immediate wants only. This ordinance was repealed in 1878.

No further legislation in respect to game appeared until 1883 when Ordinance No. 8, "An Ordinance for the Protection of Game", was passed. The ordinance provided for the setting of closed seasons on certain species of game; for penalties for violation of the ordinance; and, for the appointment of wardens to enforce the provisions. Section 18 of the ordinance provided that any traveller, family or other person in a state of actual want could kill any animal or bird to satisfy immediate want but not otherwise. This provision no doubt included native peoples in a state of actual want. In addition, by s.19, Indians were specifically excluded from the operation of the ordinance in any part of the territory with regard to any game actually for their use only, and not for purposes of sale or traffic. The section did not mention Metis or Inuit. (Note however, that the Supreme Court of Canada has held that the word "Indians" includes Inuit within the meaning of s.91(24) of the BNA Act.) With the publication of the revised ordinances in 1888, the above two sections remained although s.19 was amended to add that the prohibitions on taking the eggs of birds would not apply to Indians.

Ordinance No. 11 of 1889, which repealed the exemption in respect to Indians and further provided that no person could kill or take buffalo in any part of the territories was disallowed by the Dominion Government. Thus, there was an express continuing recognition of an aboriginal right in the native peoples to hunt for food for their livelihood. Moreover, the Federal Government was prepared to act forcefully to protect those rights.

The game legislation was again consolidated in 1893 by Ordinance No. 8 which continued the proviso in respect to the killing of game irrespective of locale or season if actual want necessitated. A new section provided that persons who were not resident in the territories were to pay a $5.00 fee to hunt there. The exemption for Indians from the operation of the ordinance was perpetuated.

One of the final pieces of legislation in respect to game passed by the Territorial Council during this period occurred in 1903. This unusual ordinance provided in part that no hunting whatsoever was to be allowed on Sundays; that there was to be no killing or hunting of bison or buffalo at any time; and, that no hunting was permitted from one hour after sunset to one hour before sunrise. The ordinance made no mention of native peoples. This ordinance was not disallowed by the Federal government. However, it seems that disallowance did not occur because the ordinance was of

of little effect. By this date, the Dominion government had become involved in legislating for the preservation of game in the Northwest Territories and legislation of the Territorial Council in respect to this matter was ineffective under the doctrine of paramountcy. Thus, because of the over-riding effect of the Federal legislation there was no need to disallow the territorial ordinance.

The Dominion Government first became involved in legislating in respect to game in the territories in 1894, stressing the almost negligible power of the Territorial Council in governing the territories. Their first legislation was "The Unorganized Territories' Game Preservation Act" of 1894 (57 - 58 Vic., c.31). The Bill was first introduced in the Senate by the former Prime Minister of Canada, the Honourable Mackenzie Bowell, conservative government leader in the Senate. On the first reading of the Bill he outlined the general purpose of the legislation and the pressing need for it in these terms:

> "...The preservation of the birds and animals in that region is of paramount importance to the Indians and native peoples who rely upon hunting for food, raiment and the necessary trade which supplies them with their other requirements. The object of this bill is to protect, as far as possible what remains of this important resource of the country for the Indians and native peoples who would, in the event of the extermination of the animals, either starve to death or make their way out to the settled parts and become the wards of the country. The native himself would appear to have no idea of protecting fur-bearing animals, but slaughters all that comes his way. It is true that the North-west Council has ordinances in force protecting game and animals, but the provisions do not extend beyond the legislative districts. It would be unreasonable, of course, to expect the Indians to observe laws preventing them from killing animals when they require them for food, and care has been taken in the bill proposed that it shall not operate to cause them any hardship, but it is considered of imperative urgency that some immediate steps should be taken to restrict the indiscriminate slaughter of fur-bearing animals

> by the adoption and enforcement of stringent regulations such as those contemplated by the provisions of the said bill...." (Senate Debates, 1894, p. 286).

The former Prime Minister continued his speech by discussing the need to protect certain species of animals such as buffalo, musk-oxen, caribou and beaver from slaughter, repeated again the purpose of the Bill. The Government, he stated,

> being convinced of the importance of adopting regulations for the preservation of the fur-bearing animals in the district mentioned and in compliance with the numerous appeals which have veen made in that behalf by persons more particularly connected with the matter, it is considered that the Act proposed will to a great extent meet the object in view without imposing any hardship upon the Indians or traders. ...Past experience of this country proves the great necessity of taking steps at as early a day as possible for the preservation of the natural food supply of the natives and Indian tribes. ...There may be some difficulty in enforcing the provisions of this Act: still, by appointing guardians with magisterial powers to enforce it, and in securing the co-operation of the Hudson Bay Company, it can be done. It is as much in their interest as ours, that the game and the fur-bearing animals in the Northwest Territories should be preserved for the food supply of the Indians. I may add that this bill does not interfere with the killing of any animal by the Indians, when it is done for the sake of food, to prevent them from starving." (Senate Debates, 1894, p. 287).

Note the emphasis which the speaker placed upon the need for preserving the natural food supply of the Indians. Although not determined at this time, this would include Metis and Inuit by virtue of the Supreme Court of Canada's subsequent interpretation of s.91(24) of the British North America Act. The native peoples were to be the "first users" of the game resources based upon their need for the essentials of life such as food and clothing. Moreover, the bill was clearly intended to protect for native use not only game animals but also certain species of birds. Within the Act itself there are no specific definitions of "game" or birds". Rather the sections of the Act speak of "beasts

and birds mentioned in this Act". Beasts specifically referred to were buffalo, musk-ox, elk, moose, caribou, deer mountain sheep and goats, mink, fishers, marten, otter, beaver and muskrats. Birds referred to included grouse, partridge, pheasant, prairies chickens, wild swans, wild geese, and wild ducks. As the debate continued in the Senate, Senator Bowell indicated that if the Act provided for the establishment of a closed season in respect to any animal "it would necessarily be prohibitory during that season, except when the Indians need an animal for food; then it would not be prohibitory." (Senate Debates, 1894, p. 287).

Clause 8 of the Act exempted Indians who were inhabitants of the country, except in respect to closed seasons on buffalo, musk-ox and elk which were to apply to Indians. This clause received a great deal of discussion. Clause 8 read:

> "Notwithstanding anything is s.s. 4, 5, 6, and 7 of this Act, the beasts and birds mentioned in those sections may be lawfully hunted, taken or killed, and eggs of any of the birds or other wild fowl so mentioned may be lawfully taken, -
>
> (a) By Indians who are inhabitants of the country to which this Act applies, and by other inhabitants of the said Country. But this exception does not apply to buffalo, bison or musk-oxen during the closed seasons for those beasts; ..."

One member, Senator Lougheed, suggested, "Is there any reason why this should not be made to read 'food purposes for Indians'. I think the principle danger to-day arises from the indiscriminate slaughter of game by the Indians." In reply to this comment and to the question as to the meaning of the term "other inhabitants", Senator Bowell replied:

> "There are other inhabitants of that country who live in the same manner as the Indians do, and you will see by the clause (b) that explorers, surveyors and travellers, are excluded from the operation of the clause. The object of the Bill is to prevent, as far as possible, the indiscriminate slaughter of game for the purposes of mere pleasure or sport. All the inhabitants of the country to which the bill applies are pratically dependent upon game for food, and exceptions are made and must be made in their favour. Numbers of parties engaged by the Hudson Bay Company are what may be

> termed half-breeds, and do not come under the category Indians, but they live in the same manner and their habits are very much the same, and it is impossible to interfere with that class of people in that section of the country without endangering its peace." (Senate Debates, 1894, p. 337).

A statement by Senator Allan indicated the great concern which the Senate had that the Indians, and other native peoples, should be able to hunt for food:

> I presume the principle which underlies these subsections of clause 8 is just this - that in a country like our North-west the Indians and others who happen to be living there depend entirely upon these animals and birds for food, and it is not desired to restrict them in any way from obtaining whatever they require for their support, but while there is that desire, the object of the bill would be to some extent to prevent either the Indians or other inhabitants from slaughter-ing the animals except for food. They would undoubtedly have the right under this clause to kill fur-bearing animals and possibly eat them too." (Senate Debates, 1894, p. 338).

After further discussion of this provision it was passed, although the government leader, Senator Bowell, agreed to reconsider the matter and report at a later date. When the bill was reintroduced for third reading Senator Masson again raised the consideration of the exemption of Indians from the bill for food purposes only. "The honourable Minister," he stated, "was to reconsider clause 8 which gives Indians and other inhabitants liberty to kill animals out of the close season. There is no close season for buffalo." Senator Bowell replied:

> "I did make inquiry as to that, and it is not considered advisable to interfere with the habits of the Indians or other inhabitants of these territories, who are really more Indians than the Indians themselves, and any attempts to control them would be fraught with a good deal of danger until they become a little more civilized and more used to the habits of the civilized parts of the country. I may also say that the Indians there for years past received instruction from the Hudson

> Bay officials, who are as anxious to preserve the game of all kinds as we can possibly be and they dissuade them under all circumstances from killing any animal out of season when the fur is not good, except when they actually want for food; and if you attempted to punish them you might create Indian wars which would cost a great deal more than these animals are worth." (Senate Debates, 1894, p. 359-360).

In essence, clause 9 (a) of the bill was under attack because it was not limited to the killing of animals and birds for food. Rather, killing was to be allowed in all seasons indiscriminately except for buffalo and musk-ox. However, as was suggested in the debate, the clause in practice would not apply to animals such as mink, beaver, fisher, marten, etc., which were generally useless except for ther skins, and native hunters, knowing this, would not kill these animals in a closed season when their skins were inferior unless they were in the direst of need for food. The Senators in their discussions pointed to the Indians as, in their view, the greates cause of indiscriminate slaughter of birds and animals in the Northwest Territories. It is well to note that until the coming of the white man the native peoples had no use for many of these animals and it was only the result of the white man's demand for the skins of these animals that the native person hunted these fur-bearing animals. The Senators provided no evidence whatsoever to substantiate their accusations.

When the bill reached the House of Commons for debate, further time was spent on the provisions of clause 8. The bill was introduced by the Hon. T.M. Daly, Minister of the Interior and Superintendent General of Indian Affairs, who was questioned by a Mr. Flint in regard to this section:

> "I think clause 'a' of this section is too wide. It seems to me that even Indians and inhabitants of the country should not be allowed to destroy these animals during the closed season, except for food. This clause will practically almost annul the general provisions of the Bill, it is so broad. A party of Indians with one trapper or hunter might, during the close season, destroy many of these animals for pleasure or for commercial purposes. I think it would be wise to amend that so as to allow Indians or inhabitants of the country to shoot these animals in the close season for food purposes only." (House of Commons Debates, 1894, p. 3538).

The Minister replied:

> "But unfortunately, the inhabitants of the country are dependent upon the game for their food. The only thing we can do is to prevent these animals from being shot for pleasure by others than inhabitants. The inhabitants are mainly half-breeds, and it is impossible to make the Bill more stringent unless we are prepared to feed these people. So far as the fur-bearing animals are concerned, it is against these people's own interest to destroy them during the close season for the Hudson's Bay Company will not buy the skins of animals shot during that season. So far as other animals and birds are concerned, these peoples must have food, and it seems to me this is as far as we can go in providing against the destruction of these animals." (House of Commons Debates, 1894, p. 3538).

From the above discussion it is apparent that the major concern of the Government of the day was to prevent the Indians from becoming wards of the state, dependent upon the state for their food. In part, the basis of this policy can be said to be benevolence and concern for the welfare of Indians rather than on a strict aboriginal rights policy per se. However, it is implicit in the Federal Government's disallowance of the Territorial Ordinance of 1889, combined with the Government's recognition of the native peoples' primary dependence on hunting for their livelihood, that aboriginal rights in respect to the game supply of the Northwest Territories were to continue to receive the recognition given historically by both British and Canadian governments. Whether or not this legislation is based on an articulared aboriginal rights policy or on an "economy" policy of trying to keep native peoples off the welfare rolls, the effect is still that of recognizing a right in the native peoples in respect to that limited game supply.

The extent to which exemptions for Indians and persons with Indian blood applied specifically to Inuit may be questioned, since there was not a great deal known at this time about the Inuit or the extent of their geographical occupation. It is likely that they would be included under the term "native peoples" but the debates indicate that "native peoples" or "other inhabitants" referred more to the Metis of the Territories than the Inuit. Undoubtedly, the legislative intent was to include all native peoples although the draughtsman may not have consciously considered the Inuit. In addition, it is interesting to note the fear of the spectre of Indian wars which in part contributed to the eased restrictions in respect to Indians and native peoples hunting out of season. Moreover, the amount of debate time given to this Act and the careful consideration which certain parts received would indicate a great awareness on the part of members of the legislative houses of the importance of game in the livelihood of the native peoples of the west and north. This awareness and consideration is in contrast to the cursory discussion

which game legislation was to receive in later years. It seems that history is too easily overlooked or forgotten.

The Northwest Game Act of 1894 applied to all of the Northwest Territories and specifically stated that Ordinance No. 8 of 1893 of the Territorial Council was not to apply in the Territories, and that part of the country in which this Act applied. Specifically, the 1894 Act applied to the District of Keewatin and to those portions of the Northwest Territories not included within the provincial districts of Assiniboia, Alberta and Saskatchewan.

In 1917, the Northwest Game Act was repealed and replaced by a consolidation and partially re-written statute applicable to the Northwest Territories. This new act provided a list of birds and game that could not be killed and as before, provided for an exemption for Indians and Inuit or other bona fide inhabitants of the Northwest Territories except in respect to closed seasons on certain species such as buffalo, musk-ox, wapite or elk, and white pelicans. In addition, licences were made requisite for all non-native peoples. Indians, Inuit or Metis who were bona fide residents of the Territories were specifically exempted from obtaining licences.

During the debate on the Act in the House of Commons, the Hon. W.J. Roche, Minister of the Interior and the Superintendent General of Indian Affairs noted:

> "One of the essential things in connection with this Act is to protect the game of the Northwest Territories for the inhabitants of that country. It is their main source of food supply, and if any person is allowed to go in there and indiscriminately slaughter whatever he thinks fit the Indians and the inhabitants of that enormous territory will be deprived of their food supply and will become pensioners of the Government, which would entail large appropriations by this Parliament for supplying them with food. I did not say there was an invasion of this territory by people from the Yukon but I did mention Alaska, and we do not want a repetition of what occurred in Alaska. ...We are anxious to conserve the animal life, not only for the sake of the animals themselves but to ensure the food supply of the native peoples." (House of Commons Debates, 1917, p. 3669-70).

These sentiments were again repeated in another speech by the Minister on the debate of the bill. He stated:

> "So far as the Native Peoples in the Territories are concerned, they are exempted from many of the provisions of this Act in order to afford them an opportunity to secure a sufficient food supply unless they violate the law in some sanctuary. This legislation is designed to hit those who are coming in for exploiting purposes, and organized bands of hunters who go into the Northwest Territories. One of the reasons for bringing in this legislation is that we have information of Americans going in through the North Passage and coming down and establishing trading posts in various parts of the country. I do not think the penalty is too severe for the class which I refer to, and that is the class to which this legislation will principally apply." (House of Commons Debates, 1917, p. 3674).

In the Sendate, the Act also received scrutiny and in answer to Senator Daniel's question "How is a knowledge of the Act to be disseminated amongst the people of the North West, especially where the population consists largely of Indians and Inuit?" Sir James Lougheed replied, "The Indians have certain rights which the whites do not." (Senate Debates, 1917, p. 667). (emphasis added)

Clearly, then, the government envisaged protecting the game of the Northwest Territories so that the native peoples could maintain their livelihood from hunting and trapping so as not to become wards of the state. In that same year, 1917, however, another Act was passed which would later severely curtail the rights of native peoples to hunt for food in respect to migratory birds. The Migratory Birds Convention Act (1917, 7 - 8 Geo. V, c. 18), which was passed in pursuance to the ratification of the Migratory Birds Convention between the United States and Great Britain, preceded the passing of the Northwest Game Act. The Migratory Birds Convention Act received first reading on June 21, 1917 while first reading for the Northwest Game Act was on June 22 of that same year. Second and third readings of the M.B.C.A. were completed on July 21, 1917 while second reading of the N.W.G.A. commenced after the passing of the M.B.C.A. on that date. Third reading was finally completed on the N.W.G.A. on August 17, 1917. In both the Commons and the Senate, however, none of the discussion relates to the effect which the Act would have on the native peoples abilities or rights to hunt for birds during close season for food or not. The point that the M.B.C.A. would appear to curtail the rights of native peoples in respect to hunting wildfowl was not argued in either of the legislative bodies. It is noteworthy, moreover,

that some of the species of birds covered in the Migratory Birds Act are also covered in the North West Game Act. The North West Game Act included provisions in respect to partridge, prairie chickens ptarmigans and other species of grouse as well as wild ducks, white pelicans and wild swans. Wild geese, wild ducks and wild swans were included in the definition of migratory game birds in the Migratory Birds Convention Act, although during the course of debate on the subsequent North West Game Act no one made mention of the overlap between the two. There can be only one explanation for the total absence of discussion on native rights in respect to the Migratory Birds Convention Act and the very extensive later discussion in this regard in connection with the Game Act.

Clearly, the discussion in relation to the Game Act implies not only that the food supplies of the native peoples were of paramount importance but also that they be allowed to hunt for food in spite of closed seasons though not in cases of certain endangered species - buffalo, musk-ox, wapite or elk, and white pelicans. This is the basis of the argument made by Mr. W.G. Morrow Q.C., (now Mr. Justice Morrow of the Supreme Court of the Northwest Territories) in arguing the Sikyea case ([1964] S.C.R. 642). In his submissions to the Supreme Court of Canada, Mr. Justice Morrow had argued that

> "The preamble to the Convention Act points to the purpose or reason for the Convention, namely 'many of these species are of great value as a source of food or in destroying insects which are injurious to forests and forage plants...as well as to agricultural crops...' Unless one is to consider that the above was merely a 'veiled' purpose and that the real reason was to provide sport for the more populated areas of Canada and the United States, it is submitted that the Convention, the Act and the Regulations thereunder must be for the purpose of preserving a source of food."

Moreover, it was argued that

> "in a case of an Indian hunting for food, the provisions of the Migratory Birds Convention Act and the Regulations thereunder, when read in conjunction with other legislation of equal importance and effect, namely, the Northwest Territories Act, as amended cannot have application...."

In other words, the major legislation in respect to game in the Northwest Territories is the Game Act which received wide discussion in respect to the rights of native peoples in hunting animals both in and out of season. Thus, the Migratory Birds Convention Act should not be read as a limitation on the hunting rights of the native peoples which had previously been clearly recognized in the Game Act. The term "game" as defined in the Game Act meant and included "all wild animals and wild birds protected by this Act or any Regulation and the heads, skins, and every part of such animal or bird." (emphasis added)

The primar purpose of the Migratory Birds Convention Act, too, was to prevent depletion of those migratory birds useful to man or harmless to him. In essence, the Convention and the Act were designed to preserve a source of food for the native peoples. Surely the signatories to the Convention could not have intended the provisions of the Convention to prevent the native peoples from pursuing their normal lifestyle. In comparison, the emphasis throughout the United States legislation is upon the control of sports hunting. Moreover, one of the most significant differences between the position of the native peoples in Canada and the United States in respect to hunting for food on reserves is that in the United States the government can impose no restrictions as to when and what kinds of birds may be killed by Indians on a reservation (U.S. v. Cutler 37 F. Supp. 724). In Canada, on the other hand, it has been held that the M.B.C.A. does abrogate hunting rights expressly guaranteed by treaty even though hunting on a reserve. (Sikyea, [1964] S.C.R. 642; George, [1966] S.C.R. 267)

The emphasis on the sport hunting aspect is even more pronounced in a similar Convention entered into between the United States and Mexico in 1936. That Convention was also to protect migratory birds and game mammals and as was stated in the preamble the purpose was to "permit a rational utilization of migratory birds for the purposes of sport as well as for food, commerce and industry". The United States in enacting this Convention merely amended their pursuant to the U.S. - Great Britain Convention, thus further emphasizing the fact that the expression in the United States Convention was more in terms of controlling sports hunting than the preservation of the food supply to native peoples. However, one underlying purpose of control was to protect the food supply of native peoples. In respect to Mexico it is interesting to note that although a close season was provided for wildfowl the Civil Code of Mexico allows indigents to take such fowl at any time regardless of season. (Article 857)

Doctrines of international law have developed in relation to the interpretation of treaties to the effect that a reasonable approach to the sense of words used rather than a literal sense should be followed, especially where there are two divergent possible interpretations. (See Hall, International Law 3rd edn. p. 338; and

Wheaton's International Law, 4th Edn., Article 287A). Thus, where there are two statutes in possible conflict such as the M.B.C.A. and the Game Act, the more reasonable interpretation is that it was never intended by Parliament to abrogate the right of native peoples to hunt for food.

It should also be noted that, in comparison to its predecessor, the North West Game Act of 1917 covered a wider geographic area than before since Northwest Territories was defined to mean "the Northwest Territories formerly known as Rupert's Land and the Northwestern Territory (except such portions thereof as are included in the provinces of Ontario. Quebec, Manitoba, Saskatchewan, Alberta and the Yukon Territory), together with all British territories and possessions in North America and all islands adjacent thereto not included within any province except the colony of Newfoundland and its dependencies."

The Federal Government remained in the area of game legislation in the Northwest Territories until 1948 when a decision was made to put the preservation of game clearly within the powers of the Commissioner-in-Council of the Northwest Territories. This involved an amendment to the Northwest Territories Act and the repeal of the North West Game Act. In the Senate, it was stated by Senator W.A. Buchanan that the purpose of the bill accomplishing the above was to give the Commissioner of the Northwest Territories in council the power to make ordinances respecting the preservation of game. "At present," he stated,

> "this can only be done by the Governor in Council under the North West Game Act. The intention of the Bill is the repeal of the North West Game Act and to permit a more convenient and speedy procedure to be followed for the regulation of game preservation in the Territories." (Senate Debates, 1948, p. 115).

In the House of Commons, the bill received a similar cursory discussion as the Acting Minister of Mines and Resources, J.A. MacKinnon explained to the House that provincial governments administer their own game and fur regulations. (Note, however, that a long line of cases have held that a provincial law cannot abrogate native hunting rights. Only the federal government has this power, under s. 91(24) of the BNA Act). "Similarly," he continued,

> "the Yukon Territorial government deals with these matters by territorial ordinances. It is desired to place the Northwest Territories Council in exactly the same position so that the administration of these particular resources which are of such intimate concern to the local people should be subject to control

> and administration by the Northwest Territories Council. This will enable necessary changes in policy to be made effective promptly to meet the changes which often occur suddenly owing to climate conditions or forest fires. Already the Northwest Territories Council has been authorized to fix and does fix the royalties which must be paid by those exporting furs from the Territories". (House of Commons Debates, 1948, p.3423).

There was no discussion of the native peoples special rights to hunt as they existed under the Northwest Game Act and no stipulations were made in respect to the enlargement of the Commissioner-in-Council's powers as to how native peoples should be treated in respect to their ancient rights. The Federal Government in one quick action abdicated this area of responsibility thus giving effect to game legislation of the Northwest Territories' Council. The special rights of native peoples, of particular importance because of their dependence upon game supplies for food, were being tossed aside without any apparent direction to the Northwest Territories' legislators that such special rights must continue. Consider the very cavalier way in which the Northwest Game Act was repealed with no discussion of the very reason and prime motivating force behind the passage of the Act in the first place - the preservation and protection of a limited game supply in the Northwest Territories so that the native peoples of the area would be able to pursue their livelihood as they always had done. The Northwest Territories" Council would continue the erosion of native rights, culminating in Bill 13-47.

A new game ordinance was passed by the Territorial Council in early 1949 to deal with the preservation of game. By this ordinance all those involved in hunting were required to have a hunting license of the necessary category for the game to be hunted, including native peoples. The fee for all non-natives was $5.00 for a general hunting license and nil for native peoples. Indians and Inuit who possessed a general hunting license were allowed to hunt caribou for food in March which was part of the closed season on caribou and allowed to kill a specified number of caribou for clothing between August 1 and September 15, which was also within the closed season for caribou. Such minor exemptions such as these to the native peoples in respect to the pursuit of their ancient hunting rights seem somewhat inadequate in comparison to their dependence on game for food and in comparison to the wide exemptions which were previously granted under Federal legislation. In 1953 this limited right to hunt during the closed season for caribou was a further restricted by an amendment to the effect that any person holding a general hunting license could hunt caribou with the commissioner's permission, thus in theory increasing the number of persons who had access to a limited game supply. In 1955, however, the rights of Indians and Inuit to hunt were expanded by allowing them to hunt on all unoccupied Crown lands at any time of year for food for themselves as well as to hunt on occupied Crown lands with permission of the occupier. Indians and Inuit with general hunting licenses were also to be allowed to hunt for big game

animals on game preserves although in succeeding years this was restricted by prohibiting the hunting of caribou, musk-ox and polar bears in these areas.

In 1960 a new consolidated ordinance was passed which consolidated the above provisions in respect to hunting although it should be noted that whereas the previous Federal legislation had been concerned only with the preservation of the game supply for the benefit of the native peoples, the Territorial legislation extended this to all general hunting license holders. The North West Game Act had included "all other inhabitants of the territories" in their exemption clause but as indicated in the discussion of the bill the "other inhabitants" referred to that class of people who lived like Indians, that is, the Metis. Today, the greater population of the Territories would make the group possessing general hunting licenses much larger, thus allowing a greater number of people to hunt a limited game supply upon which many native persons depend. In this respect, game legislation throughout this centruy can be viewed as a continuing chipping away at the rights of native peoples to pursue their ancient livelihood in respect to a limited game supply. Moreover, this limited supply is threatened more than ever at present by the encroachment of exploration firms.

The proposed amendments in Bill 13-47 deleting references to Indians and Inuit is one more step in this process. If these are allowed to stand, references to Indians and Inuit will remain in one section of the ordinance and one item of Schedule A thereto, that is, the definition section of the ordinance and the description of persons who may be granted a general hunting license.

The proposed amendments deleting references to Indians and Inuit represents a further step in the dilution of rights which Canada's native peoples have possessed in respect to hunting since time immemorial.

Details of those amendments which have eliminated specific reference to Indians and Inuit

1. Subsection 5(3) of the Game Ordinance is amended in respect to the hunting of bison. The present section reads: "No person other than an Indian, an Inuit or the holder of a general hunting licence, shall hunt bison with any other weapon than etc. ..." The proposed amendment deletes the reference to Indians and Eskimos and states "No person other than the holder of a general hunting licence etc. ..."

2. Section 20(2) (c) has also been amended to remove reference to Indians and Inuit. This section relates to applications for trapping area licences, upon which an applicant must state, according to the present Game Ordinance, "(c) whether or not he is an Indian or Eskimo or, if he is a naturalized Canadain, the number of his naturalization certificate". The proposed amendment stipulates that an applicant must only state "(c) if he is a Canadian citizen by virtue of a certificate of citizenship or naturalization". Not all native persons resident in Canada are necessarily citizens of Canada. What is the position of Inuit who emigrated from Alaska many years ago but who may not have become "Canadian citizens" (in the legal sense)?

3. Schedule A appended to the Game Ordinance providing for the issuance of licences and fees to be paid for them is also amended. Item 1 of the Schedule, which deals with general hunting licences, is amended to delete certain references to Indians and Inuit although one reference remains. Under the Game Ordinance prior to amendment there were seven different classifications of individuals able to apply for such a licence. The amendment reduces this to four. In so doing, one reference to Indians and Inuit has been removed completely, as is a reference to non-treaty Indians and Indians of mixed blood. The amended categories of persons to whom licences can be issued seems sufficiently wide to cover these groups.

The intent of Item 1 seems to be to limit the issuance of general hunting licences to persons who are resident in the Territories or one of whose parents or spouse were resident and who hold general hunting licences. All others, it would appear, must apply for specific licences relating to the game which they wish to hunt. In reference to Indians of mixed blood, the Game Ordinance as it formerly read permitted a licence to be issued to "(c) a non-treaty Indian or of mixed blood who is a member of a family or group that prior to June 30, 1953, hunted in the Territories". The amended version indicates that these individuals will still be eligible for a general hunting licence by virtue of proposed subsection (b) which reads any person "who is a member of a family or group that prior to June 30th, 1953, hunted lawfully in the Territories". This subsection is apparently wide enough to also include the other subsection which has been repealed which read "(b) an Indian or Eskimo who is a member of a family or group that prior to June 30th, 1953, hunted in the Territories".

Prior to amendment, the Game Ordinance provided that neither Indians, Inuit nor Metis were required to pay any fee for their general hunting licence whereas all others applying for such a licence were required to pay a fee of $5.00. By the new amendments, fees for all resident persons (as well as any non-resident person but one of whose parents, or spouse, is resident), have been removed, thus, in effect granting all non-natives at least part of the special rights which had previously only accrued to native peoples.

4. This is also true in respect to Item 8 of the same schedule which provides for licences to trap in that part of the Mackenzie River north of Point Separation in the Mackenzie District. Whereas, prior to amendment the Game Ordinance stipulated that Indians and Inuit did not have to pay any amount to get a licence and all others had to pay a fee of $10.00, the amendment provides that the special reference to Indians and Inuit is dropped and the fee is nil for all persons applying.

5. The same results arise from the amendments to Item 9, which deals with trapping area licences for any area in the N.W.T. not referred to in Item 8.

6. Item 16 of Schedule A provides for the licensing of trading posts. Prior to amendment the Ordinance stipulated that Indians and Inuit desiring such a licence did not have to pay any fee. However, the amendments repealed the reference to Indians and Inuit and instead provided that "any person who is the holder of a general hunting licence" may apply and receive a trading post licence without any charge. This amendment does alter the rights of Indians and Inuit since, by the former Game Ordinance, any Indian or Inuit could apply for a trading post licence whereas by the amendment only those with a general hunting licence are eligible. However, the probable extent to which this is a real limitation on the rights of Indians and Inuit is slight since all Indians and Inuit who have resided in the Territories since birth and not been absent for more than ten years are entitled to a general hunting licence. Nonetheless, Inuit from Quebec or Labrador, or Indians from other provinces coming to reside in the Territories, it would seem, will be required by the new amendments to pay the $150.00 fee for each of the first two years of operation of a trading post and $10.00 per year thereafter. What the Council of the Northwest Territories has done is alter the ability of Indians and Inuit not resident in the Territories to obtain without charge a trading post licence.

7. Further amendments have been made in relation to Schedule B or the Ordinance which are similar in nature and effect to those for Schedule A. Paragraph (e) of Item 1 of Schedule B under the heading Column II is repealed, and Items 5 and 6 are amended to, among other things, delete specific references to Indians and Inuit. The amendment to Item 5(b) specific references to Indians and Inuit. The amendment to Item 5(b) suggests that the rights of native peoples may be must more limited since, by virtue of the amendment, only those who held a general hunting licence and lawfully hunted annually on a game preserve since 1950 are eligible to continue to do so. The Ordinance, prior to amendment, through Item 5(a)

of Schedule B - repealed by Bill 13-47, allowed an Indian or Eskimo born in the Territories and holder of a general hunting licence to hunt in game preserves. The new amendment, therefore, amounts to a further watering down of the native peoples' rights to hunting.

Submission

By s. 13(q) of the Northwest Territories Act (R.S.C. 1970, c. N-22) the Council is given legislative authority over the "preservation of game in the Territories". In addition, the Commissioner-in-Council has authority to make Ordinances "in relation to the preservation of game in the Territories that are applicable to and in respect of Indians and Eskimos and ordinances made by the Commissioner in Council in relation to the preservation of game in the Territories, unless the contrary intention appears therein, are applicable to and in respect of Indians and Inuit." (s. 14(2)). Subsection 3 of this section further stipulates that the Commissioner may not make ordinances which in any way restrict or prohibit Indians or Inuit from hunting for food on unoccupied Crown land, except for such species of game as are declared to be in danger of becoming extinct. Although it might appear that the amendments to the Game Ordinance do not literally transgress these provisions, in substance they do so, for the effect of extending privilege to others is to diminish further the rights of the native peoples to hunt or trap a limited supply.

This brief has already discussed some of the amendments through Bill 13-47 to the Game Ordinance. The amendments discussed have a threefold effect:

(1) The substantive effect of the amendments is to make it considerably easier for non-natives to hunt and trap the limited supply. Therefore, there is a corresponding dilution of the rights of the native people. This effect is compounded by other amendments through Bill 13-47, not discussed. The following provisions have the effect of changing the residency requirement to six months, being one-half of the residency requirement (1 year) hitherto - item 2, paragraph (a) Schedule A; item 4, paragraph (a) of Schedule A; item 5 of Schedule A; item 20, paragraph (a) of Schedule A under the heading Column KK (although this latter amendment does not seem to be all that consequential because of the limitation continuing under Column IV, i.e. that a person with a polar bear licence must be accompanied by a licenced guide who is in lawful possession of a subsisting polar bear tag or seal). In addition, Schedule A is amended by adding thereto, immediately after item 1, item 1A. This provides for a trapping licence to "any person who resided in the Territories for the six months immediately preceding the date of his application" upon payment of a fee of $5.00. It seems obvious that the abridged residency requirement benefits non-native peoples a good deal more than native peoples. The cumulative effect of these provisions, together with the provisions

discussed in detail in this brief, is to substantially qualify the rights of native people to hunt and trap. There is a very limited game supply, which is diminishing because of exploration activities and resulting adverse environmental and ecological effects; and, by the increasing numbers of non-native peoples coming in to the North.

In one sense the amendments represent a further attempt at assimilation of native peoples into Canadian society as a whole. This has been done historically by direct abrogation of native rights (an example being the Migratory Birds Convention Act, which unintentionally abrogated native rights, in respect to which successive Federal Governments and parliaments have refused to redress this unintentional abrogation). Bill 13-47 attempts a comparatively new indirect, approach at abrogating native rights. The indirect approach is employed because of the limitation imposed by parliament through s.14 (3) of the Northwest Territories Act. By extending privileges to others, native peoples suffer a substantial dilution of their rights. This tends to lessen the supply of game and fur-bearing animals to the native peoples who depend most upon it for sustenance and livelihood. Therefore, Bill 13-47 is creating an adverse affect upon the livelihood of native peoples in the Northwest Territories.

(2) Hunting rights represent an important incident of aboriginal rights. In Regina v. Sikyea, (1964), 43 D.L.R. (2d) 150, Mr. Justice Johnson, speaking for a unanimous Northwest Territories Court of Appeal commented that the Federal Government had always respected the aboriginal rights of "all Indians across Canada" (at p. 152) and further stated that:

> "The right of Indians to hunt and fish for food on unoccupied Crown lands has always been recognized in Canada * in the early days as an incident of their 'ownership' of the land and later by the treaties by which the Indians gave up their ownership right in these lands."

Apart from the adverse economic and sustenance consequences which Bill 13-47 has on native hunting and trapping rights by diluting these rights, there is also the important symbolic

significance of these rights as items of basic self-identity to be considered. Such rights are an integral part of the culture and heritage of native peoples. In addition to helping restore the confidence of native peoples in their on-going relations with government and non-native Canadian society attention by government to its historically, but freely assumed, obligations in respect to native hunting and trapping rights constitutes a recognition of the special status of Canada's native peoples. Perhaps the passage by Chief Dan George describes best the nature of this relationship:

> "Let no one forget it...we are a people with special rights guaranteed to us by promises and treaties. We do not beg for these rights, nor do we thank you...we do not thank you for them because we paid for them... and God help us the price we paid was exorbitant. We paid for them without culture, our dignity and self-respect. We paid and paid and paid until we became a beaton race, poverty stricken and conquered."
>
> ("My very good friends" in The Only Good Indian, Waubageshig ed., New Press, Toronto: 1970, at p. 188).

Therefore, it is respectfully submitted that the amendments to the Game Ordinance under Bill 13-47 be disallowed. It is submitted that these amendments do not represent the interests of constituents of the Northwest Territories. Disallowance can be allowed since by virtue of s. 14(3) of the Northwest Territories Act, the amendments are unconstitutional as they are in derogation of native rights. The amendments are also in violation of the provisions of the Canadian Bill of Rights which guarantee rights to the enjoyment of property and prohibit derogation of such rights without due process (and the passage of Bill 13-47 amounts to, in effect, expropriation without compensation).

It is respectfully submitted that for all the reasons mentioned above the Federal Government disallow Bill 13-47. The passage of Bill 13-47 has amounted to another nail in the coffin of native hunting and trapping rights North of 60°. It is respectfully submitted that the Federal Government urge and encourage the Council of the Northwest Territories to address itself to the disgraceful history of legislation in respect to native rights North of 60° and begin to represent its constituents forcefully in redressing the erosion of native rights. The Council of the Northwest Territories should be introducing legislation which redresses the injustices of history. For example, notwithstanding the fact that the Migratory Birds Convention Act was passed by Parliament in contemplation that native hunting rights were guaranteed by Federal legislation in 1917, as discussed at length in the commentary of this brief, the phrase "subject to the Migratory Birds Convention Act" has crept into the amended game ordinance of the Northwest Territories (see

the several references in this regard in Schedule B). In other words, the errors of history which abrogated native hunting rights have been compounded by being solidified in the Northwest Territories game ordinance. The Federal Government is requested to take positive action

(1) to have the Council of the Northwest Territories remove this limitation;
(2) to make the necessary amendments to the Migratory Birds Convention Act through Parliament to redress this injustice; and
(3) to have the Council consider and make all amendments to its legislation, i.e. the game legislation, necessary to advance and give realization to native hunting and trapping rights so as to increase the opportunities for natives to pursue their livelihood and source of sustenance, as well as to restore and make known these basic tenets of self-identity, culture and heritage.

The Inuit look forward to the Government's early reply to the above requests, in particular, in respect to the matter of disallowance of the amendments to the Game Ordinance under Bill 13-47.