John Howard Sissons and the Development of Law in Northern Canada

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It should be noted that in the present case the learned trial judge had a distinct advantage over the members of the Court for with his wide experience in the far-flung areas of the extensive jurisdiction of the trial division of this court, he has knowledge of local conditions, ways of life, habits, customs and characteristics of the race of people of which the accused is a member.\(^1\)

In 1955, after a distinguished career as a lawyer and a judge in Alberta,\(^2\) John Howard Sissons became the first judge of the Territorial Court of the Northwest Territories. Prior to 1955, law in the Territories had been administered by territorial Police Magistrates and Justices of the Peace with serious cases being tried in the courts of Alberta, Saskatchewan and Manitoba. It was not until 1960 that a Court of Appeal for the Northwest Territories was established.\(^3\) While bound by the common law traditions of this new court, Mr. Justice Sissons creatively adapted its procedure and precedents to the peculiarities of northern life. Though he is one of Canada's best known jurists in legal and non-legal circles, his published cases or writings are neither numerous nor broad in scope and hardly suggest the impact of his work.\(^4\)

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\(\text{\textsuperscript{2}}\) Regina v. Ayalik, (1960) 33 W.W.R. 377, at 378, per Macdonald J.


These reports do, however, help to sketch the portrait of John Howard Sissons; “the angry old man in a hurry”, an unusual figure facing the unique challenges of our last frontier.

The Territorial Court of the Northwest Territories has jurisdiction over the largest and least densely populated area in Canada. This is also one of the most barren, harsh and primitive parts of the nation. Indians and Eskimos comprise sixty percent of the population. Under these circumstances, Sissons made it his duty not only to do justice but also to show justice being done. He conducted his courts with as much official ceremony as possible, hoping in this way to enhance the educational function of the occasion. To fulfill both the judicial and educational obligations of the court, Sissons revitalized ancient legal precepts by emphasizing them in his court. Some examples of the rules he applied are: Justice shall be taken to every man's door; The Court shall go on circuit to every part of the realm at least once a year; The proper place for a trial is the place where the offence was committed or the cause of action arose; Every person accused of a serious offence is entitled to be tried by a jury drawn from the area in which the offence was committed; No man shall be condemned except by the judgment of his peers and the law of the land.

The application of these standards of judicial administration to the conditions of Northern Canada required a great deal of travelling.


5 (1967) 8(1) MACLEANS 12. Macleans recently chose Sissons as one of the outstanding Canadians of 1966.

6 “There are approximately 25,000 people living in the Northwest Territories. There are more people living in cities like Lethbridge, Alberta, New Westminster, British Columbia, Brandon, Manitoba, Moncton, New Brunswick, Sydney, Nova Scotia, Corner Brook, Newfoundland, Timmins, Ontario, Drummondville, Quebec or Moose Jaw, Saskatchewan, than there are in one-third of the land mass of Canada lying north of 60 degrees and east of the Mackenzie Mountains — a land mass nearly 14 times the size of the United Kingdom and over 6 times the size of France.”

7 Id. at 63.

8 W. G. Morrow, Q.C., Sissons’ successor as judge of the Territorial Court, tells of the trial for murder of Jimmy Ayalik (whom he defended): “Justice Sissons insisted, as was usual with him, that the trial be carried out with as much ceremony as one could have, bearing in mind the location and the circumstances. The whole idea is to educate the people and impress them with civic duties. One of the first things that was done, was for the Sheriff to erect the flag on a portable flag pole which he stuck into the snow bank just outside the school building. The Clerk of the Court, the Judge and the lawyers were then required to be fully gowned and the police to attend in their red tunics. As a further introduction into the administration of justice in this remote community the judge insisted that Eskimos be given an opportunity to serve on the jury.”

See Arctic Circuit, (1966 Winter) THE BEAVER 36, at 41 (Hudson's Bay Co., Winnipeg.)

9 The Territorial Court of the Northwest Territories, (1962) IX(5) NORTH 3. Evidently, Sissons drew up this version of the rules.
It has been estimated that on his retirement Sissons had travelled 275,000 miles by plane and dogsled\textsuperscript{10} and on at least one occasion the Bench of the Northwest Territories, complete with clerk, reporter and counsel, travelled 4,000 miles to decide a single case.\textsuperscript{11} Consequently, the court is expensive to maintain: the 1964-65 expenditures of the federal Department of Justice in the Northwest Territories were $183,000, with revenue amounting to $24,000.\textsuperscript{12}

Family Law: The Clash of Two Cultures

While performing his judicial role in this remote region, Sissons applied ancient legal traditions, creating in the process new guideposts of judicial action that will influence the Territorial Court for many years to come. Sissons must have been aware that every decision he made would greatly influence the development of law in this new jurisdiction and there is evidence that he was ready to make use of the liberty that this unique situation gave him. An example is 

\begin{footnotesize}
\begin{enumerate}
\item\textsuperscript{10} (1967) 8(1) MACLEAN S 12.
\item\textsuperscript{11} Morrow, W. G., Justice in The Canadian Arctic (1965) 72(1) QUEEN'S QUARTERLY 146. The case was Re Noah Estate. For an account of the rigours of the court's annual travels, see Morrow, Arctic Circuit, supra, note 8.
\item\textsuperscript{12} THE CARROTHER'S COMMISSION, supra, note 6 at 39.
\item\textsuperscript{13} (1959-60) 30 W.W.R. 289.
\item\textsuperscript{14} Id., at 309.
\item\textsuperscript{15} (1960-61) 33 W.W.R. 673.
\item\textsuperscript{16} (1961-62) 36 W.W.R. 577.
\item\textsuperscript{17} Id., at 595. See The Marriage Ordinance, R.O.N.W.T. 1956 c. 14.
\end{enumerate}
\end{footnotesize}
nation of the parties involved, Sissons discovered that the marriage was considered binding in the village where Noah lived and that it conformed generally to the Western and Christian concept of marriage (i.e., the marriage was permanent and monogamous). Sissons, in effect, tested the marriage legally, socially and ethically and concluded that further formalities, though perhaps desirable, were unnecessary.

The judge took a similar attitude towards the question of native adoptions. Children are very highly valued by the Eskimos but are particularly susceptible to the harsh northern environment. Adoption, by an informal native custom, has for centuries protected children from the hardships and emergencies of Arctic life. In 1961, a new Child Welfare Ordinance of the Northwest Territories\textsuperscript{18} required that adoptions be made only when certain certificates were supplied by the Superintendent of Child Welfare\textsuperscript{19} who resided in Ottawa. Placements of children were to be registered or a fine would be imposed.\textsuperscript{20} In discussing this Ordinance in \textit{Re Katie's Adoption Petition}, Sissons pointed out that many of the provisions pertaining to registration are unworkable under northern conditions. In \textit{Katie}, the Superintendent of Child Welfare had delayed forwarding the certificates necessary for an adoption order. The adoption had commenced before the new Ordinance had been promulgated and Sissons thus found the customary adoption valid.\textsuperscript{21} No direct confrontation between the new Ordinance and the old custom has yet been reported, though a later judgment by Sissons indicates how such a conflict might be resolved. In \textit{Squirrel},\textsuperscript{22} the adoption of an Indian baby by white parents was delayed by their inability to get the requisite certificate from the Superintendent of Child Welfare. Sissons ruled the certificate unnecessary and gave the adoption order without it.\textsuperscript{23}

\textit{Crime and Summary Offences: The Two-Fold Trial}

It is evident that a criminal prosecution is in the eyes of Sissons a rigorous and demanding procedure. Indeed, the reported liquor offences judgments indicate that Sissons tried both the statute law involved and the accused. There are three reported Sissons decisions

\textsuperscript{18} Child Welfare Ordinance, N.W.T.O. 1961 (2d sess.) c. 3. Part IV of the ordinance contains provisions for adoption.

\textsuperscript{19} \textit{Re Katie's Adoption Petition} (1962) 38 W.W.R. 100 at 103.

\textsuperscript{20} \textit{Id.}, at 104.

\textsuperscript{21} \textit{Id.}, at 105.

\textsuperscript{22} \textit{Id.}, at 105.

\textsuperscript{23} In the matter of a Petition for the Adoption of Gordon Hugh Squirrel. (unreported). I am indebted to M. M. De Weerdt, Esq. of Yellowknife for a copy of the decision.

\textsuperscript{24} Sissons found absurdity and repugnance in the Act and ruled: "It is one of the cardinal rules of interpretation that where the language of a statute is general, doubtful, or obscure, it may, if susceptible of it, be modified or varied by interpretation in order to avoid manifest absurdity, repugnance, mischief or injustice. "I am interpreting section 91 to mean that the Superintendent of Child Welfare shall be given notice of the application and that there shall be acknowledgement of, or proof of service of such notice." Prima facie, section 91 required the Superintendent to certify that he had received notice. See \textit{Re Katie's Adoption Petition}, \textit{supra}, note 19 at 103.
on prosecutions under the Liquor Ordinances of the Northwest Territories.

In *Regina v. Kyd*, a white cab driver was charged with “bootlegging”. The evidence against the accused, although persuasive, was merely circumstantial. Sissons pointed out that the Northwest Territories Ordinance, unlike most provincial liquor laws, does not allow the Crown to set up a *prima facie* case. In the Territories the Crown must prove the entire offence conclusively and if the court is to convict on the basis of an inference drawn from the circumstances, the inference must be the only possible conclusion that could be drawn. In *Kyd*, various logical explanations for the accused’s conduct were possible and so Sissons refused to convict.

In *Regina v. Otokiak*, an Eskimo was charged under section 24(b) of the Liquor Ordinances which provided that “no Eskimo shall possess or consume liquor except [under certain circumstances]”. Sissons dismissed the case because, in his view, the provision was special legislation pertaining to Eskimos and therefore, ultra vires the Council of the Northwest Territories.

Sissons set down rigid standards in the case of *Regina v. Modeste* where the accused was charged as an Indian being intoxicated outside of a reservation under section 94 of the Federal Indian Act. He held that three elements constituted the offence. Counsel had agreed prior to trial that the defence would admit that the accused was an Indian. The learned judge, however, decided that this admission was improper in criminal proceedings and that the accused’s racial origin had to be established. The offence of being intoxicated was also held not to have been proven in that the offence lies in being actually intoxicated and not in merely having drunk intoxicants or appearing intoxicated. The actual intoxication must be strictly proven and may be indicated by objective evidence. Finally, there was the matter of being drunk “off a reservation”. Sissons pointed out that, because Indians in the Territories had never been given reservations, “there may be some doubt as to whether section 94 has any application to Indians of the Mackenzie District of the Northwest Territories”. However, in a later case, Sissons used the lack of reservations

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26 *Id.*, at 646-647.
27 *Id.*, at 648.
29 *Id.*, at 515.
30 The British North America Act, s. 91(24). Indians and lands reserved for Indians are within the exclusive legislative competence of the Federal Government. In *Re Eskimos* (1939) 2 D.L.R. 417, the Supreme Court decided that Eskimos were included in the term “Indians”.
31 (1960) 31 W.W.R. 84.
32 *Id.*, at 85: The Indian Act, R.S.C. 1952 c. 149.
33 I am indebted to M. M. De Weerdt, Esq. (who acted for the Crown in the case) for this information.
35 *Supra*, note 31 at 88.
for the Indians as the basis for dismissing a charge under section 94 without hesitation.36

If the Liquor Ordinances (like the previously discussed adoption regulations) have at times been found inadequate when applied to the environment and needs of the Eskimo, the criminal law has received an even more severe testing. Few cases have been reported, although two murder trials involving Eskimos have received recent publicity.

During the starvation winter of 1958-59, an Eskimo woman called Kikik was living in a remote part of the east Arctic barrens with her husband, her children and one other family. When the head of the other family went mad and killed Kikik's husband, Kikik stabbed him to death and set out with her children to walk to the trading post 50 miles away to get food. After travelling for a week with virtually nothing to eat, Kikik was forced to abandon her infant daughters. She was picked up with her elder son, starved and half-crazed, by an R.C.M.P. airplane and subsequently charged with the murder of her husband's killer and the abandonment of the two children.37

A similar situation arose in 1965 among a tiny and decimated band of Cape Dorset Eskimos who had been moved to Fort Ross in the Arctic Barrens by the Hudson's Bay Company in order to trap furs. Years of privation drove one of the strongest members of the tribe, the woman Soosee, mad. When Soosee's actions threatened to destroy the camp and all the band's food-gathering tools, the band agreed to send Shooyook (her nephew) and Aiyaoot (her son) to either drive her away or kill her (whichever might be necessary) so that the rest of the band might live. Soosee was shot to death on July 15, and, when an R.C.M.P. plane arrived on an annual visit in September, the head man of the band was waiting with a long and painfully detailed written account of the events leading up to Soosee's death. Shooyook and Aiyaoot were both charged with capital murder.38

In each of these cases, a full-scale murder trial was held before Sissons. The murder charges, although validly laid, in no way com-

36 W. G. Morrow, Q.C. In commenting on Regina v. Modeste said: "Again in another case (unreported) heard at Inuvik he dismissed a similar charge when it was established that the Government of Canada had not yet (1960) set aside the Reserves for Indians although Treaty 11 (1925) had promised it." (See Justice in The Canadian Arctic, supra, note 11, at 148.) M. M. De Weerdt, Esq., has suggested in correspondence with the author that this is the case of R. v. Gully. Mr. De Weerdt commented further...

"These cases are interesting, because they provide a departure from prosecutions under the Indian Act. Indians have been prosecuted subsequently in the Northwest Territories under the Liquor Ordinance when found intoxicated in a public place. The Ordinance is applicable to all persons in the Northwest Territories according to the Modeste and Gully decisions, avoiding discrimination in the application of the law in this respect, and besides it is much simpler to prove from the Crown's standpoint."

37 The children were found, although only one survived. See Mowat, F., The Two Ordeals of Kikik, (1959) 72(3) MACLEANS.

38 See Mowat, F., Executioners, (1966) 79(13) MACLEANS.
prehended the moral realities of the events. In fact, the laws of civilized Canada were simply incapable of dealing with these acts of primitive necessity. Sissons seems to have tempered the law to the circumstances. In Kikik's trial, the judge virtually instructed the jury to acquit the accused. In the second trial, Aiyaoot was acquitted while Shooyook was found guilty of manslaughter. Reacting to the jury's plea for mercy, Sissons sentenced Shooyook to a two-year suspended sentence.

Guarding Native Rights: The Game Laws

Implicit in Sisson's decisions involving native peoples have been two assumptions: firstly, that Indians and Eskimos are not legally inferior to other Canadians; and, secondly, that because they are indigenous and primitive people, they have unique rights in certain areas. Although, as we have seen, special native rights were recognized by Sissons in the field of marriage and adoption, his most comprehensive assertion of native privilege has been in the area of game laws. Hunting in the Northwest Territories is regulated by various statutes including the Migratory Birds Convention Act and the Game Ordinances of the Northwest Territories. The question of whether Indians and Eskimos could claim the inalienable right to take game contrary to these regulations has been considered in five cases: Kogolak v. The Queen, Regina v. Sikyea, Regina v. Koonungnak, Kallooar v. Regina and Regina v. Sigeareak.

Sissons took virtually the same position in all of these cases. He argued that native peoples have always had an absolute right to hunt and fish. This right had been recognized by the Royal Proclamation of 1763, had not been given up by the natives either by treaty or

39 Mowat, F. The Two Ordeals of Kikik, supra, note 37 at 46.
40 See Executioners, supra, note 38. Similar considerations arise with regard to infanticide. W. G. Morrow, Q.C., tells of the following incident which he encountered while travelling as defence counsel on the spring Arctic circuit of 1959.

"The infanticide case was that of a young unmarried Eskimo woman who was charged with killing her infant child immediately it was born. She had admitted the death quite freely to the police for she was following a custom that had been accepted among the Eskimos for generations when children were born that could not be looked after. She was found guilty, of course, but the Judge [Sissons] gave her a suspended sentence of fifteen months, so she could go home and look after her remaining two children." See Arctic Circuit, supra, note 11, at 42-43.

44 Sikyea was an Indian; all the others accused were Eskimos. Sikyea was under treaty. There are no Eskimo treaties.
otherwise, and was now shielded by the Canadian Bill of Rights. Sissons held that under these circumstances, native hunting rights could only be removed by specific enactments of the Federal Parliament and not by the Ordinances of the Northwest Territories. It should be noted that although it was suggested in each case that the Game Ordinances did not as a matter of law apply to the accused, the actual decision to dismiss the charge often rested on a finding of fact. Thus Koonungnak was held not guilty of shooting a musk ox contrary to the Ordinance when Sissons found that the shooting was done in self-defence; the conviction of Sikyea for shooting a wild duck contrary to the Migratory Birds Convention Act was quashed on the finding that the duck was not proven to be wild. By using this device of discussing the law while deciding on the facts, Sissons made difficult an appeal on his ruling. As is made clear in the Supreme Court's decision in Sikyea, his zeal to "cover the exits" may at times have led him into tenuous reasoning.

This entire line of game law cases was recently reversed by the Territorial Court of Appeal and the Supreme Court of Canada in the Sikyea and Sigeareak appeals. It now appears that the Ordinances of the Northwest Territories are competent to bind Indians and Eskimos regardless of the "inalienable" rights they claim or the treaties on which they rely.

Although Sissons did not successfully establish special native hunting rights, his attempts to protect the legal rights of natives may prove more durable. His working rules set down previously show clearly that in the unusual circumstances in which the Territorial Court operates, it takes a great deal of effort to give substance to those legal rights which are taken for granted in southern Canada. Protecting these rights where natives are concerned, and instilling them in the unsophisticated native mind, requires even more diligence.

The case of Regina v. Koonungnak provides an interesting illustration of the unintentional but very real infringement of legal rights that may result from an unthinking use of the forms of judicial process. Koonungnak's original trial for game offences was carried on before a Justice of the Peace who was also an area administrator of the Department of Northern Affairs and a game warden. An

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45 "The Canadian Bill of Rights, S.C. 1960, c. 44, also stands in the way: "Every Law of Canada shall, unless it is expressly declared by an Act of Parliament of Canada that it shall operate notwithstanding the Canadian Bill of Rights, be so construed and applied as not to abrogate, abridge or infringe or to authorize the abrogation, abridgement or infringement of any of the rights or freedoms herein recognized and declared." See Regina v. Sikyea, (1962-63) 40 W.W.R. 494 at 503, and Re Noah Estate, (1961-62) 36 W.W.R. 577, at 600.
46 The most forceful presentation of this argument is found in Regina v. Kogogolak, (1959) 28 W.W.R. 376 at 383-384.
47 The Supreme Court concerned itself mainly with the question of whether, as a matter of law, the duck was wild. See (1965) 50 D.L.R. (2d) 80 at 83-84.
49 Supra text at note 9.
50 (1963-64) 45 W.W.R. 283.
R.C.M.P. constable (also an ex officio game warden) served as both prosecutor and chief informant.\textsuperscript{51} Koonungnak had neither counsel nor independent interpreter. A plea of guilty was taken even though it is obvious from the transcript of the hearing that the concept of guilt (in the legal and moral sense) was at best uncertain in Koonungnak's mind.\textsuperscript{52} Koonungnak was convicted but at the instigation of Sissons, the Crown appealed to quash the conviction.\textsuperscript{53} The appeal was heard as a trial de novo.\textsuperscript{54} In quashing the conviction, Sissons made it quite clear that with respect to the legal rights of the accused, the manner of the hearing left much to be desired. He suggested \textit{inter alia} that there should be a public defender for Eskimos, that an accused Eskimo should have an independent interpreter, and that as a general rule, a plea of guilty should not be taken from an Eskimo who may not understand the term.

\textit{A Sissons Anthology}

The Sissons judgments, apart from their legal and social impact, are unfailingly readable. They offer illuminating glimpses of the learned judge, his attitudes and sympathies. The following is but a sampling of his judicial writing.

From \textit{Re Noah Estate}:

Sissons, along with a court clerk and two lawyers had flown over 2,000 miles to hold a hearing in the village where the deceased man's widow lived.

"The judicial party was held up for three days at Broughton Island by storms over the mountains. The time was not wasted. Indeed the enforced stay at Broughton Island proved helpful. Several canoes arrived from Padloping Island with relatives and friends of Noah [the deceased] and Igah [the widow]. Peterloosee, the father of Igah, returned from a seal hunt. The court and counsel visited and talked with these people and met most of the people of the settlement and secured a better understanding and appreciation of Eskimo life and customs on Broughton Island, and of the present matter and the people involved. This was in accordance with the general practice of the bar of the Northwest Territories. They learn first hand."\textsuperscript{55}

\begin{itemize}
\item \textsuperscript{51} Id., at 297.
\item \textsuperscript{52} Id., at 290 and 297.
\item \textsuperscript{53} Id., at 284-86.
\item \textsuperscript{54} Appeals from rulings by Justices of the Peace are very often heard as trials de novo. The problem is that Justices of the Peace almost invariably have no formal training in the law and may not appreciate the judicial responsibilities they are called upon to assume. In a recent (and unreported) case, an Eskimo was convicted of uttering obscenities to a white woman while he was drunk. A Justice of the Peace sentenced the accused to three months in gaol and defended the sentence as being "given in the name of Decency — Morality —Womanhood and Motherhood". Sissons heard an appeal on the sentence and reduced it to a fine of twenty dollars.
\item \textsuperscript{55} (1961-62) 36 W.W.R. 577, at 589-590.
\end{itemize}
From *Re Katie's Adoption Petition*:

"The Eskimos, and particularly those in outlying settlements and distant camps, are clinging to their culture and way of life which they have found to be good. These people are in process of cultural change and have a right to retain whatever they like of their culture until they are prepared of their own free will to accept a new culture. In particular, although there may be some strange features in Eskimo adoption custom which the experts cannot understand or appreciate, it is good and has stood the test of many centuries and these people should not be forced to abandon it and it should be recognized by the court."\(^{56}\)

From *In the Matter of the Petition for the Adoption of Gordon Hugh Squirrel*:

The following complaint is present, implicitly or explicitly, in many Sissons judgments. After discussing the way affairs are regulated in the Northwest Territories, Sissons commented:

"One of the results of this colonial autocratic government and administration from Ottawa is that legislation is enacted, like this Child Welfare Ordinance, that meets a situation and problems which exist at Ottawa or in Ontario but do not meet the situation and particular problems in the Northwest Territories, of which Northern Affairs has little grass roots knowledge."\(^{57}\)

From *Kallooar v. Regina*:

Later the actions of the administration angered the learned judge and he allowed himself the following statement:

"[This case] involves the question whether, in the administration of justice in the Northwest Territories, the rule of law shall prevail or the will and interest of the colonial civil service bureaucracy which governs and administers the Northwest Territories."\(^{58}\)

From *Regina v. Kogogolak*:

This was the first of the Sissons “hunting rights” cases and gives perhaps the most forthright statement of the judge’s views.

"I think the Royal Proclamation of 1763 is still in full force and effect as to the lands of the Eskimos. The Queen has sovereignty and the Queen’s writ runs in these Arctic lands and territories. This is the Queen’s court and it needs must be observant of the Royal will and pleasure expressed 200 years ago and of the rights royally proclaimed. The Queen’s justice is a loving subject and would not wish to incur the pain of the Queen’s displeasure.

The lands of the Eskimos are reserved to them as their hunting grounds. It is the royal will that the Eskimos should not be molested"

\(^{56}\) (1962) 38 W.W.R. 100, at 101-102.

\(^{57}\) Unreported.

\(^{58}\) (1965) 50 W.W.R. 602, at 603.
or disturbed in the possession of these lands. Others should tread softly, for this is dedicated ground.

This may be obiter dictum, but I question whether other persons have or should have, the right to hunt or fish on the lands reserved to the Eskimos as their hunting grounds, except by special leave or licence of the government of Canada.

There has been no treaty with the Eskimos and the Eskimo title does not appear to have been surrendered or extinguished by treaty or by legislation of the parliament of Canada.

The Eskimos have the right of hunting, trapping, and fishing game and fish of all kinds, and at all times, on all unoccupied Crown lands in the Arctic.

This right could be extinguished or abridged and the Eskimos could be prohibited from shooting musk ox or polar bear or caribou but this would have to be by legislation of the Parliament of Canada.

The Game Ordinance of the Northwest Territories cannot and does not apply to the Eskimos.”

From Regina v. Koonungnak:

In 1960 the federal government amended the Northwest Territories Act (apparently in response to the Kogogolak decision) in an attempt to make the Game Ordinances binding on the natives. Sissons held that the amendment was inadequate to do so.

“It may seem amazing that such a weird measure should be passed through Parliament, but it is notorious that at Ottawa at the end of a long session and in the hot days of summer almost anything can be slipped over a dozing parliament with probably only a jaded quorum present, uninformed and indifferent as to the North and Eskimos.

The ordinances of the Northwest Territories in relation to the preservation of game in the Territories are not applicable to and in respect of Indians and Eskimos and cannot be made so without the concurrence of the Indians and Eskimos.”

This case involved an appeal, by means of a trial de novo, from a conviction by a Justice of the Peace. The Justice of the Peace had been less than scrupulous in his protection of the accused Eskimo’s legal rights. In previous cases where similar abrogations of rights had occurred, Sissons had requested that the convictions be set aside. However, “the Department of Justice with considerable Ottawa arrogance and contempt refused to move to quash the convictions”.

61 Sissons was a Member of Parliament at one time.
63 Id., at 285.
Sissons made the following complaints against the hearing held by the Justice of the Peace and in doing so he shows his requirements for a fair trial for various peoples:

"The accused, contrary to the Canadian Bill of Rights, was deprived of the right to retain and instruct counsel. He was not asked if he wished counsel or anyone to help him in his defence. There are no lawyers in the area. There is no public defender as there should be for Eskimos.

He was compelled to give evidence when he was denied counsel, protection against self incrimination or other constitutional safeguards.

He was deprived of the right to a fair hearing in accordance with principles of fundamental justice.

He was deprived of the right to be presumed innocent until proved guilty according to law in a fair and public hearing by an independent and impartial tribunal.

Contrary to the Canadian Bill of Rights, he was deprived of the right to the assistance of an independent interpreter. An interpreter for the court is not sufficient.

The accused was not informed as to what rights he had or whether he had any rights. The proceedings were not explained to him. He was not told that he had the right to make full answer and defence, and had the right to call evidence and witnesses and to examine and cross-examine witnesses. He was not told that he had the right to appeal or what an appeal was or how he could go about appealing.

It is clear that the accused did not know and was not informed and possibly could not be clearly informed as to what was meant by 'guilty'. Eskimos seem to have no corresponding word in their language for 'guilty'. I have often noted that there always seems to be difficulty in getting the idea across to the Eskimo. When I have asked interpreters what they said to the accused in this connection, the answer has invariably been as in this case: 'I asked him if he did this and he said "yes".' That, of course, is not sufficient and I do not ordinarily accept it as a 'guilty' plea, and I direct that a 'not guilty' plea be recorded. Also, I am always afraid that 'guilty' is said because the accused Eskimo thinks that this is what you wish him to say and he is anxious to please. I have repeatedly urged that pleas of 'guilty' should not ordinarily be accepted from Eskimos."64

From Regina v. Kyd:

In this case a white accused of a liquor offence received the benefit of the learned judge's rigorous attitude toward the law:

"One must be careful in drawing an inference in a criminal case. It must not be a mere guess or suspicion. A man is not to be convicted on a guess, however shrewd that guess may be. It must be an infer-

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64 Id., at 297-298.
ence which the mind naturally and logically draws from other proven facts.

There can be no inference unless there are objective facts from which to infer the other facts which it is sought to establish. If there are no other positive facts from which the inference can be made, the method of inference fails and what is left is mere speculation.

The rule by which courts in Canada are governed and which they are bound to apply, referred to as the rule in *Hodge’s Case*, is that where the evidence is wholly or mainly circumstantial, before finding the accused guilty, the court must be satisfied not only that the circumstances are consistent with a conclusion that the accused committed the act, but also that the circumstances are such as to be inconsistent with any other logical conclusion than that the accused is guilty of the offence charged.\(^\text{65}\)

**Conclusion**

It is difficult to assess the impact of John Howard Sissons' work on the basis of his reported decisions. At this point, his interpretation of the game laws has been rejected. His effort to create a new approach to divorce law was overruled.\(^\text{66}\) The true merit of Sissons' work lies not in *what* he did but in *how* he did it; less in his interpretations of the law than in his attitude towards it. In his judicial role, Sissons merged a profound reverence for ancient legal tradition with a unique ability to adapt those traditions to the challenges of new situations. In his eyes, the law did not exist above society, but within society: it must be tested and retested against the demands that society made upon it. The Eskimos gave Mr. Justice Sissons the name “Ekoltoogee” meaning “the one who listens and to whom the people tell things.”\(^\text{67}\) Doubtless, this name gives some idea of the man who was the first Justice of the Territorial Court of the Northwest Territories.

