MASINAIGAN SUPPLEMENT

MASINAIGAN (MUZ IN I AY GIN) A publication of the Great Lakes Indian Fish & Wildlife Commission — Spring 1998

In pursuit of a treaty right

The story of Numae and the people of Kabapikotawangag

This special supplement of the ***Masinaigan*** is dedicated to the Water Beings and to Numae, the great sturgeon who so long lived in harmony with the Ojibwe people at Kabapikotawangag (Lake of the Woods) and supplied them with their needs.

This is the story of their struggle, the struggle of the sturgeon and the people. Similar stories can be recounted by Ojibwe people throughout Canada and the United States. The story is not over, however, for the people of Kabapikotawangag have not forsaken their traditional homeland, the lake, the fish, or their lifeway, and their struggle continues today in federal courts.

Once Numae (sturgeon) was bountiful in Kabapikotawangag. The people were thankful for Numae and all that Numae provided for them. Their existence closely paralleled that of the great fish, who had been given to the people by the Creator. Numae was a primary source of food and materials needed for living. The people respected Numae and took from the fish only as it was needed for life.

A time came, however, when the lives of Numae and the people of Kabapikotawangag became jeopardized. Settlers, who understood nothing of the traditional ways of the people, arrived at Kabapikotawangag. They were disrespectful of the sturgeon and the native people. Numae was fished and fished until the great fish was no more in the waters of the lake.

The people, who had been promised a continuing right to their fishery and survival by the Canadian government, were pushed aside as their livelihood and lifeways were decimated along with Numae and the lake's once bountiful fishery.

The accounts that follow relate what has happened to the people and the fishery of Kabapikotawangag and why they must pursue their treaty rights today.

Copies of Treaty #3 between Her Majesty the Queen and the Saulteaux Tribe of the Ojibbeway Indians at the Northwest Angle on the Lake of the Woods with Adhesions can be obtained from: Anishinaabeg of Kabapikotawangag Resource Council, Pawitik, Ontario P0X 1L0.

Chief Powassin, a principal negotiator of Treaty #3 and protector of Anishinaabe fisheries and future generations, peacefully mends a canoe. (Photos by C.G. Linde)

The historical significance of numae

Numae is a sacred Water Being to be taken and used only with appropriate spiritual ceremony. And when taken, every single part of the fish must be used.

In the sacred stories of the Ojibway, Numae, swallowed the kind son-in-law of the wicked Mishos to protect him and return him to his loved ones. Numae is revered as the protector and patron of the Sturgeon Clan, a prominent family. The sturgeon must be given offerings and acknowledged in sacred ceremonies.

No other freshwater fish in Canada is as large as the lake sturgeon or, *acipenser fulvescens* to the scientist. It is a fish of great antiquity, dating back to the Devonian Period.

It has retained the anatomical features characteristic of that period, including body plates rather than scales, a large swim bladder, a cartilaginous skeleton and a shark like caudal fin.

Lake sturgeon feed on bottom-dwelling flora and fauna in shoals of lakes and rivers, and their once zoogeographical distribution in North America included the Lake of the Woods.

Sturgeon were so abundant in this lake that the early white travelers referred to this area as "sturgeon country" and to the Anishinaabeg as "sturgeon Indians." Lake of the Woods has also been described as "the greatest sturgeon pond in the world."

To the Anishinaabeg of Kabapikotawangag, the sturgeon had a predictable pattern of migration which they followed. Migration commenced at the mouth of the Rainy River and proceeded westward along Minnesota's coastal shoals, then northward and eastward generally along the international boundary line back to the mouth of the river for spawning.

They spawned upstream at the Manitou and Long Sault Rapids and other locations along this river system for three to four weeks during May and June.

The campsites along these spawning sites were filled by the Ojibway from ancient times. And in the view of the Anishinaabeg, these sites have been retained by them for their exclusive use as traditional fishing grounds.

It was because of the bounty of the fish that the Ojibways insisted on and received a guarantee in Treaty #3 of October 3, 1873 that they would "forever have the use of their fisheries."

Kabapikotawangag Resources Council

Kabapikotawangag means "the lake of sand dunes and sand bars." It is the traditional Anishinaabe designation for Lake of the Woods. To give effect to their Protocol of January 8, 1996, the Chiefs of the seven First Nations who have principal reservations on the lake founded the Kabapikotawangag Resources Council. The member First Nations are:

Gii'zaagitowiagamang	Northwest Angle #33
Gaa'zhiibaashkosiiwigang	Northwest Angle #37
Mishkosiimiiniiziibing	Big Grassy River
Ne'yawangashing	Big Island
Onigaming	Raven's Nest Portage
Wauzhushk Onigum	Muskrat Portage

Mission Statement

"Chi shawandamang O'we Manito Saagai'gan"

To love and respect this Sacred Lake of the Creator

Objectives

1. The provide specific knowledge, expertise and assistance to member First Nations in:
   a. First Nation government
   b. Financial management
   c. Community planning
   d. Technical services
   e. Economic development
   f. Education services
   g. Strategic planning and management of human, financial and natural Resources
2. To develop and implement strategic initiatives that enhance the individual Anishinaabe to complete the life-cycle from infancy to elderhood in a socially, economically, politically and spiritual self-sufficient community.
3. To promote and protect the integrity of Anishinaabe language, culture, history, spirituality and sacred relationship to the land.
4. To promote and protect the special treaty and fiduciary relationships to the Crown.
5. To enhance, protect, conserve through sustainable management the land, air, water, environment and all resources including rock, soil, minerals, fish, flora, fauna and all other life on and in the traditional territory of the Anishinaabeg of Kabapikotawangag.

Top photo: Family in canoe, Kenora, Ontario. Above: Traditional Ojibway bark covered lodge. (Photos by C.G. Linde)

Historic Indian Treaties

Acknowledgments

Kabapikotawangag Resources Council wishes to gratefully acknowledge:

- Our ancestors, past traditional leaders and fishermen who were harassed, charged, convicted and imprisoned for exercising their prior right to the fisheries in all of Anishinaabe territory including what is now known as the United States and Canada, and especially at Kabapikotawangag.
- The founding Chiefs of the Resources Council and the current Chiefs for their unswerving belief in the inherent aboriginal and treaty rights of the Anishinaabeg of Kabapikotawangag.
- The tribes and staff of the Great Lakes Indian Fish & Wildlife Commission who by common origin and territory; clan and blood; history and tradition; language and custom, are brothers and sisters, leaders and warriors of the sovereign Anishinaabe nation. They have been most supportive and helpful.
- Scholars for their invaluable contributions through source documents, namely:
  Leo G. Waisberg for his valuable assistance through research and publications in Ethnohistory and First Nation Land Claims;
  Treaty and Aboriginal Rights Research Department and Archives of Grand Council Treaty #3, for use of photos and research materials, especially Andy and Diane;
  John J. Van West through his article in the Native Studies Review 6 no. 1 (1990) entitled: *"Ojibwa Fisheries, Commercial Fisheries Development and Fisheries Administration, 1873 - 1915: An Examination of Conflicting Interest and the Collapse of the Sturgeon Fisheries of Lake of the Woods;"*
  Victor P. Lytwyn, Ph.D. through a work entitled: *"Historical Research Report on Lake of the Woods Ojibway Fisheries,"* dated February 28, 1995.

Kabapikotawangag Chiefs launch treaty rights enforcement action

The Chiefs of Kabapikotawangag, representing several Ojibway first nations, recently announced their intention to pursue their aboriginal treaty rights through legal action in order to regain, not only their treaty reserved rights but also control over an important traditional fishery which has been nearly decimated by mismanagement. Their statement follows:

The Creator placed us upon the lands and waters of Kabapikotawangag, now known as Lake of the Woods. We are the original occupants. We are the original owners and keepers of the fisheries within the territory now in Ontario and centred on Lake of the Woods in the Districts of Kenora and Rainy River.

We exercised jurisdiction over fisheries, including control of catch, species, season, equipment and other limits required for management and conservation.

When the Europeans first came to our territory, we were a thriving, prosperous and expanding people in large part because of the fisheries. Up to 50% of our people's food supply came from the fish in the lake, and a large part of our income came directly from the fisheries. Fish of many species were plentiful, especially sturgeon, used by our people for food consumption and trade. The fur trade soon began with the Europeans and their companies, and we took part but we did not depend on it because of the fisheries.

Between 1823 and 1885, trade records show a sustained yield of 150 tons of sturgeon per year. Aside from its use as food, sturgeon bladder produced isinglass—*numaykwan*—used by the white man in glue, cleaning detergent and export to Europe.

When Canada wanted passage between Lake Superior and the Red River, a treaty-making process was begun. They were told that our people would resist any interference in the fisheries.

So, an Order in Council passed on April 25, 1871, authorizing a treaty specifically provided that our people would be *"retaining what they desire in reserves at certain localities where they fish for sturgeon."*

A treaty known as Treaty #3 was made on October 3rd, 1873. The English version says:

"Her Majesty further agrees with Her said Indians that they, the said Indians, shall have the right to pursue their avocations of hunting and fishing throughout the tract surrendered. . ."

Under the Treaty, more than 60 reserves were established over a period of time. Most were located on or near bodies of water according to the wishes of our people. On Lake of the Woods, Ontario, 33 reserves were established close to traditional fishing grounds and stations.

Starting in the 1880's unlicenced and unrestricted commercial fishing using poundnets began taking large quantities of fish, mostly sturgeon, out of the lake.

Our people protested that this activity breached our treaty rights and asked Canada to act. Simon J. Dawson, the local Member of Parliament, who was also one of the Commissioners in the Treaty said that:

"as an enticement to the Indians to sign the treaty, the commissioners pointed out to them that, along with the reserves and money payments, they would forever have the use of their fisheries. This point was strongly insisted on and it had great weight with the Indians, who for some years had persistently refused to enter into any treaty. Now, if on breach of this, the white man is about. . .sweep the waters of every living thing down to a minnow, what becomes of the stipulation in the treaty?"

Canada responded by passing an Order in Council on August 20, 1890 which reserved the fishing rights in Lake of the Woods to our people and banned poundnets. But they allowed *"fishing by hand with hook and line"* to be open to all residents. Indian Agents were appointed fishery overseers to protect the Indian rights and fisheries.

During the summer of 1890 Powassin, our ancestral chief of Kabapikotawangag, cut the nets of a commercial fishery operation on the United States side of Lake of the Woods. He delivered a speech and said:

CREDITS

Written by: Fred Kelly, Elder & Technical Advisor, Kabapikotawangag Resources Council

Edited by: Sue Erickson, GLIFWC

Lay-out by: Lynn Plucinski, GLIFWC

Legal action against Canada's aboriginal fishing strategy

To further protect the treaty fisheries on Lake of the Woods, Kabapikotawangag Resources Council launched another lawsuit against Canada in the summer of 1997.

The suit is asking the court to award cash compensation in the amount that would have been available if the federal government had not chosen to discriminate against Anishinaabe fisheries on Lake of the Woods. Through its Aboriginal Fishing Strategy, the federal government provided millions of dollars to support aboriginal fishing rights only on the west and east coasts.

Canada recently tried to have the case thrown out, but failed; and the court awarded legal costs to Kabapikotawangag Resources Council. The case is still proceeding.

(Photo by C.G. Linde)

"We wish our children and our children's children to live, but (the commercial fishery) is destroying their food, and they will die of hunger. When we gave up our lands to the Queen we did not surrender our fish to her, as the Great Spirt made them for our special use."

Local governments and business interests from the Town of Rat Portage lobbied Canada to reinstate commercial fishing. Canada then began issuing commercial licences on *'an experimental basis'* and by 1895, 100 commercial licences had been issued. These were for sturgeon poundnet fisheries in the southern part of the lake; and for whitefish, pickerel and jack fish gill net fisheries in the northern part of the lake.

Lake of the Woods was quickly over-fished. The total catch was at 3 million pounds in 1894 then dropped off as the fish were depleted. By 1900 the total catch had gone down to 1/2 million pounds. The last sturgeon were caught in the first years of the 1900's. And the sturgeon-based economy disappeared. Our families, our clans, our communities, our religion, societies, economies, cultural practices, were devastated—our social structure and our traditional life destroyed.

Canada had ignored its own Order in Council. And it had turned the fisheries over to Ontario in violation of the Treaty. The Canada Fisheries Act is a federal law administered by the Federal Department of Fisheries and Oceans.

Under this arrangement, Ontario writes the Ontario Fishing Regulations, and Canada merely rubber stamps them. In this way Ontario and Canada can bypass the principle that a province cannot pass laws over Indians or abrogate Indian treaty rights.

As Ontario has enforced the regulations over the years, the names of **(SeeKabapikotawangag, page 15)**

Recent Canadian Supreme Court decisions relating to treaty rights

The Sparrow Decision, May 31, 1990

The Supreme Court of Canada ruled that Canada has the responsibility to act in a fiduciary capacity with respect to Aboriginal peoples. The relationship between Canada and Aboriginals is 'trust-like,' rather than adversarial and contemporary recognition and affirmation of aboriginal rights must be defined in light of this historical relationship. It further ruled that aboriginal rights cannot be over-ridden except by means of the most stringent rules including consultations with the Aboriginal people.

The Delgamuukw Decision, December 11, 1997

The Supreme Court's ruling on this case has the following effects:

Delgamuukw himself said that ***"This case was conceived in 1983 because of the weakness of the land claims policy."*** Canada will have to revamp its policy.

Effect on off-reserve rights: Off-reserve rights (1) are constitutionally protected by s. 35; (2) they are land rights in the English law sense, not mere "personal" rights; and (3) they have "an inescapable economic component."

Anshinaabe history: There is no longer any doubt about the legal value of community evidence, especially from the Elders. The concept of territorial land use is enhanced.

Compensation: Crown refusals to discuss compensation for past losses can no longer be sustained. The treaty making process in British Columbia stopped in the 1850's because neither the British colonial authorities nor the provincial government wanted to pay.

Their successors today cannot profit from breaking the law for almost 150 years. Who pays for past damages? It would appear that Canada would have to pay because the likely basis for provincial infringement has been Section 88 of the federal Indian Act.

Consultation: The notion that merely sending a few letters constitutes consultation is wrong. Where important land rights are concerned, full consent from the First Nations is required.

Negotiations: Crown bureaucracies up to now have decided when and if and on what terms negotiations would be held. This is no longer valid. The Crown has a duty to negotiate in good faith.

Long term objectives: Sharing of resources rather than the old idea of small reserves for Indians, with Crown bureaucracies running everything else, will be the more appropriate strategic approach for First Nations.

Role of the provinces: The powers of the provinces have been pushed back considerably. Some earlier legal principles may have been overruled. For instance,the 1958 Dick case, which allowed the application of provincial laws as opposed to aboriginal rights,may well have been overruled by Section 88 of the Indian Act .

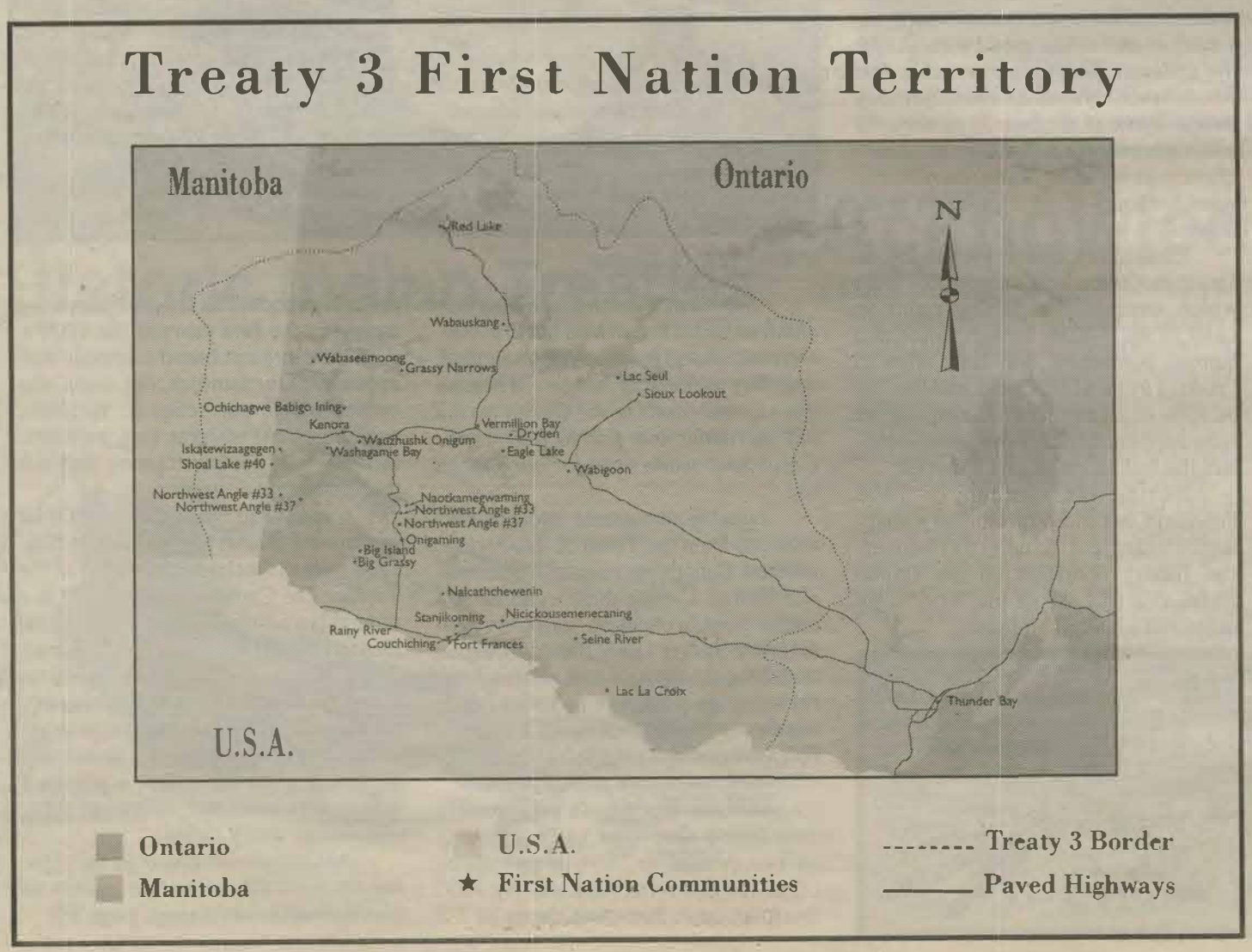
Self-Government: Even though the federal government agreed with the First Nations before the Court that there was an inherent right of self-government under Section 35 of the Constitution, the Court did not adopt this view. It is still a political position, and the courts are resisting it.

It may be that Canada will have to be told to legislate on the point. Courts usually consider that in Canada's constitution there are two levels of government. Between them, supposedly, they have complete jurisdiction.

However *Delgamuukw* has substantially pushed back provincial powers. First Nations could take the position that their powers would fill any gaps which provinces have to vacate.

Duties of Canada: Canada is obligated to protect off-reserve rights. On-reserve, the onus would appear to have switched back to Canada to prove that it has any authority over land use except to follow the orders of the First Nation governments. The old notion that "the Crown owns everything" is wrong.

The case will not immediately end the toxic relationship between First Nations and the Crown, but it will help. Finally, the decision is based purely on Euro-Canadian law. Anishinaabe Law holds that inherent jurisdiction exists by virtue of the Creator; and there are no gaps in authority over lands, resources and territories.



"Now when the treaty was made, there were solemn promises that this allowance would last as long as an Indian live—

At that time, the Governor was at the Angle and pointing towards the East, taking the name of the Queen to witness, he said theat all the promises would be kept. Taking hold of a pan he said that would eat of the same pan as brothers—How is it now that the Department is going back on these promises and upset the pan?

What is it that has turned up again and be brothers and receive what we were promised.

Having kept faith with the Department it is only but fair that we shoud expect that they would keep it towards us. We have kept our part of the Treaty, it is not hard that the government should not keep theirs?

—Petition of Lake of the Woods Chiefs, July 18, 1892

The history of Treaty #3

Northwest Angle Treaty of October 3, 1873

Following the conquest of New France by the British, King Charles of England issued the Royal Proclamation of 1763. The proclamation recognized the original nations in Canada and sought to protect them so that the *"original nations are not be molested in their hunting grounds."*

It also authorized a treaty-making process as the means to secure peaceful relations with the aboriginal peoples and to allow for settlement by Euro-Canadians.

Numerous treaties including trade, friendship treaties and alliances existed among the various original nations on Turtle Island. Various foreign nations at different times also made treaties with different indigenous nations.

Treaties signed before Upper Canada (Ontario) and Lower Canada (Quebec) were joined into one country in 1867 are referred to as pre-confederation treaties. Those entered into after that year are known as post-confederation treaties.

In addition there are what are known as modern treaties. The most commonly referred to are the numbered treaties of which Treaty #3 is one (see treaty map, page 2).

Mending a net in Lake of the Woods. (Photo by C.G. Linde)

Anishinaabeg at Kabapikotawangag rebuff exploration/land concessions

As early as 1857, the British colonial government began plans to negotiate a treaty with the Ojibway around Lake of the Woods and sent one Simon J. Dawson to explore the country for Canada. The lake, was the center of spiritual activity among the original occupants, the Anishinaabeg, was known as 'Kabapikotawangag.' It means "lake of the sand dunes and sand bars."

The Anishinaabe refused to allow any exploration of their territory and permitted only minor activity along the main canoe route used by earlier Euro-Canadian travelers and traders. Dawson offered gifts to the leaders to change their minds but was rebuffed. He reported that the Chiefs had told him that "they would sooner lose their lives than relinquish (their country)."

This strong position forced Dawson to recommend that the government make a treaty for the use of land ten miles wide as a transportation corridor.

Seine River Ojibway consider allowing right-of-way

In 1859, the Seine River Ojibway appeared willing to permit the use of a strip of land as a corridor. Dawson met with them separately and translated their speech. In part they said:

"This country you see here and this river, the Riv. La Seine and its tributaries belong to us, our Fathers and Grand Fathers owned it and gave it to us, we wish to give it to our children. We have learned that the Canadian Government wish to make a road through our country; we are willing to grant this privilege upon receiving a reasonable compensation. . ."

Canada recognized the prior ownership. Dawson then returned in 1869, this time as the chief engineer in charge of the construction of a proposed road from Lake Superior to Red River. After meeting with the Anishinaabeg of the territory, he recommended that a treaty should be negotiated before construction of a road.

Accordingly in 1870 and with the urgency created by the Red River Rebellion, Robert Pither, a former Hudson Bay Company employee, was appointed Indian Agent to facilitate negotiations. Wemyss Simpson was appointed commissioner to negotiate a temporary right-of-way to allow passage for soldiers to Fort Garry (now Winnipeg). But the Chiefs remained steadfast in their refusal to give up any land until a satisfactory arrangement could be made.

In 1871, an Order-in-Council was passed by the Canadian government authorizing the establishment of a treaty commission to negotiate a land surrender with the Ojibway from Lake of the Woods and surrounding territory.

Canada was well aware of the importance of the fisheries to the Ojibway, and the treaty was worded as to set apart "reserves where they may fish for sturgeon." Wemyss Simpson was appointed treaty commissioner, and Pither and Dawson assistant commissioners.

Negotiations fail

The commissioners met with the Chiefs and their people at Fort Frances in June 1871 but were unable to reach an agreement. The Anishinaabeg were not satisfied with Canada's proposals.

The Commissioners returned in 1872, but the Ojibway demands had increased and the recent mineral discoveries with the territory gave height to their terms.

George Grant, who was present at the failed negotiations observed: *"A thousand or twelve hundred Ojibbeways had assembled to confer with Mr. Simpson, the Dominion Indian Commissioner, as to the terms on which they would allow free passage through, and settlement in, the country. No agreement had been come to, as their terms were considered extravagant."*

The proposed articles of the treaty included a provision that "The Indians would keep all their rights of trading, hunting, fishing in all the country so relinquished by them, as long as it does not interfere with the settlements."

But the Chiefs had the benefit of experience and counsel from their brothers and sisters in the United States especially in Minnesota, Wisconsin and Michigan. And they knew their duty to protect the bounty of their ancestral lands and considered the offers inadequate for themselves and future generations.

In fact, one of the main stumbling points was the concern of the Anisinaabeg about the potential loss of their fisheries and other resources. Robert Pither noted that the Anishinaabe *"imagine steamers going through the (Rainy) River will injure their Sturgeon."*

New treaty commission formed

The government of Canada ordered another treaty commission in 1873 this time led by Alexander Morris, Lieutenant Governor of Manitoba and the Northwest Territories. Simon J. Dawson and Colonel J.A.N. Provencher were the assistant commissioners.

They were assisted by Robert Pither, James McKay and Molyneux St. John and were escorted by a detachment of soldiers from Fort Garry. The Ojibway were represented by 24 Chiefs and about 1,400 of their people. Charles, Augustin and Joseph Nolin, brothers and prominent Metis from Ste. Anne des Chenes in Manitoba served as interpreters and facilitators.

(See Lake of the Woods, page 6)

Lake of the Woods people reluctant to sign treaty

(Continued from page 5)

The parties assembled in late September of 1873 at Northwest Angle (so called because of its location at the juncture boundaries of Manitoba and Ontario of Canada and Minnesota of the United States).

Negotiations began on October 1st and ended on October 3rd. Lieutenant Governor Morris' official report did not contain any specific reference regarding fisheries but his notes do.

Dawson's notes are specific in which he quotes Morris as saying: *"It may be a long time before the other lands are wanted and you will have the right to hunt and fish over them until the white man wants them."*

Different understandings of the treaty

For their part the Ojibway recorded the terms in their oral tradition. Lt. Governor Morris noted that they had selected *"an Indian reporter whose duty was to commit to memory all that was said."* It has also been reported that *"Some of the most important Indians attending the meetings were those especially trained to memorize all that was said."*

The Ojibways also employed Joseph Nolin to take careful notes of the proceedings and to record the terms of the treaty in writing. His notes are referred to as **"The Paypom Document."** (See **Paypom Document**, page 7)

This document is endorsed by Joseph and Augustin Nolin and its wording is almost identical to Joseph Nolin's handwritten notes which differ in many respects from the official report and the language of the written text.

Without a clear understanding of its terms, the Chiefs would not have signed the treaty with their marks and accompanied by sacred imprimaturs of their clans.

Victor P. Lytwyn, Ph.D in his "Historical Research Report on Lake of the Woods Ojibway Fisheries" written on February 28, 1995 states: "It is apparent the words in the text of Treaty #3 were either formulated before or after the treaty negotiations by government officials."

Words and concepts such as *"extinguish"* and *"surrender of territory"* were alien to the Anishinaabe. Such words would have defied translation and their conceptual formulation would not have been understood by a people who considered themselves to be integral to our Sacred Grandmother Earth.

To sell land or extinguish an interest would have been tantamount to disowning and selling oneself.

Chief in Treaty #3 suit with medals. (Photo by C.G. Linde)

Photo of C.G. Linde with wolf skins 1950.

As far for the fisheries, the Lake of the Woods Ojibway's understanding about the protection of fishing rights in Treaty #3 was quite different from that of Lt. Governor Morris who understood that the Ojibway would be free to fish throughout the territory for a long time until these areas were taken up for settlement.

Joseph Nolin's notes do not record an end to this freedom, but simply stated the Ojibway would be *"free as by the past."*

Grand Council Treaty #3, an organization mandated by the Anishinaabeg of the territory to protect treaty rights, reports on fishing: *Considering the importance of fishing to the Indian way of life there is surprisingly little mention in the record of the treaty negotiations concerning discussions between the chiefs and the commissioners about the fishing right, and no record whatsoever of the discussions about the phrase 'subject to such regulation as may from time to time be made by Her Government of Her Dominion of Canada'...It appears that both the chiefs and the commissioners thought, largely correctly, that the country would continue to be populated mainly by Indians for the indefinite future, and therefore it was not necessary to discuss in any detail what the fishing right entailed.*

It was here at Northwest Angle that the Anishinaabe declared that the treaty was for *"as long as the sun shines, the rivers flow and the grass grows."*

From Canada's planning in 1857, 16 years of failure to influence the Ojibway into a treaty had passed. It had been 14 years from the first attempts to negotiate a ten mile right-of-way from Lake Superior to Red River.

And it had taken three years of arduous negotiations from 1871 to finally get the Ojibways to sign the Northwest Angle Treaty of October 3, 1873.

"It is apparent the words in the text of Treaty #3 were either formulated before or after the treaty negotiations by government officials."

—Victor P. Lytwyn, Ph.D., *"Historical Research Report on Lake of the Woods Ojibway Fisheries,"* February 28, 1995

The Paypom Document

The following are the terms of the Treaty held at North West Angle the Third day of October, Eighteen Hundred and seventy three, viz:

1. The Government will give when Indians will be settled, Two hoes, one plough for every ten families Five harrows for every twenty families, one yoke of oxen, one bull and four cows for every band, one scythe and one axe for every family and enough of wheat, barley and oats for the land broken up' this is to encourage them at the beginning of their labour, once for all.
2. Fifteen hundred dollars every year in twine and munitions.
3. Twelve dollars for the first payment to every head of Indians and every subsequent year, Five Dollars. Twenty five Dollars to every chief every year. Councillor, first soldier and messenger Fifteen Dollars.
   The farming implements will be provided for during this winter to be given next year to those that are farming and to those who are anxious to imitate the farmers, a set of carpenter tools will also be given.
7. Coats will be given to the Chiefs and their head men every three years. With regard to the other Indians there is goods here to be given to them.
8. If their children that are scattered come inside of two years and settle with you, they will have the same privilege as you have.
9. I will recommend to the authorities at Ottawa, assisted by the Indian Commissioner, the half breeds that are living with you to have the same privilege as you have.
10. The English Government never calls the Indians to assist them in their battles but he expects you to live in peace with red and white people.
11. Mr. Dawson said he would act as by the past about the Indians passage in his road. The Indians will be free as by the past for their hunting and rice harvest.
12. If some gold or silver mines be found in their reserves, it will be to the benefit of the Indians but if the Indians find any gold or silver mines out of their reserves they will surely be paid the finding of the mines.
13. The Commissioner and an agent will come to an understanding with the Indians about the reserve, and shall be surveyed by the Government. The Commissioners don't wish that the Indians leave their harvest immediately to step into their reserve.
14. About the Indian Commissioner, the Commission is pending upon the authorities at Ottawa. I will write to Ottawa and refer Mr. Charles Nolin.
15. There will be no sale of liquor in this part of Canadian Territory. It is the greatest pleasure for me to hear you and when we shake hands it must be for ever. It will be the duty of the English Government to deal with the Commissioners if they act wrong towards the Indians. I will give you a copy of the Agreement now and when I reach my residence I will send you a copy in parchment.
16. You will get rations during the time of the payment every year.
17. The Queen will have her policemen to preserve order and whenever there is crime and murder the guilty must be punished.
18. This Treaty will last as long as the sun will shine and water runs, that is to say forever.

August Nolin *Joseph Nolin*

Elder Paypom explains how he obtained the document as follows:

"Linde was a photographer and a friend to the Indian people. One day, about forty or fifty years ago, he told me he had a paper and the Government wanted to buy it from him. He said they would give him $5,000.00 for it. But he wanted me to have it, 'for your children' he said.

That winter I saved all the money from my trapline. My family had a very hard winter that year because I saved that money, but my wife never complained. She was a great woman, and she understood that the paper had on it the promises made to the people by the Government, and they were breaking those promises.

I saved my money and in the spring I gave it to Linde. He moved south, but he sent me a parcel in the mail. He sent it like a parcel of clothes so nobody would suspect it was the treaty."

The "Paypom Document" is an original set of notes made for Chief Powasson at the signing of the 1873 treaty between the Ojibway Indians and the government of Canada at North West Angle on Lake of the Woods.

The notes differ in many respects from the printed version of the treaty which was delivered to the signatories by government officials sometime later.

Recent treaty research indicates that the printed version may have been written a year before the 1873 North West Angle negotiations.

The notation below appears in pencil on the back of the original.

This copy was given to me in 1906 by Chief Powasson at Bukety—the Northwest Angle—Lake of the Woods.

(signed)
C. G. Linde

Order in Council notes depletion of fishery

Certified Copy of a Report of a Committee of the Honorable the Privy Council, approved by His Excellency the Governor General in Council, on August 20, 1890

On a joint Report from the Ministers of Marine and Fisheries and the Superintendent General of Indian Affairs stating that excessive fishing is no[w] being carried on in Lake of the Woods, threatening the entire depletion of fish therein, and that in order to conserve such fisheries as a means of livelihood to the Indians, it is necessary to afford protection thereto, by prohibiting the use of poundnets in the above mentioned waters.

The Ministers are impressed with the importance of the matter, and the advantage to the Government in connection with the support of the Indian population in the Lake of the Woods and Rainy River Region lying within the Provinces of Ontario and Manitoba, as well as in the neighbouring State of Minnesota, of whom there are on both sides of the line about 3,000 souls.

Game is fast disappearing, while Indians are not sufficiently advanced in the art of agriculture to support themselves by tilling the soil, and unless some strict measures are taken to protect the fish supply, their sustenance will devolve upon the Indian funds of the respective Governments.

The principal fish frequenting these waters is the Sturgeon, a large fish, which forms the main article of food for the Indians, while interfering with no legitimate industry, will assure to them a means of support, which by careful fostering and proper protection can be made enduring, and thus obviate the necessity for large outlay on the part of the Government in sustaining these Indians in the future.

The Ministers further remark that a reservation of this nature would in the

view of the geographical position of the waters in question be equally advantageous to the Government of the United States, as to that of the Dominion of Canada, and they are of the opinion that, as by Canada alone would be of little value it is desirable to seek the cooperation of the United States Government with a view to effecting some International arrangement by which the above mentioned waters would be reserved for the exclusive benefit of the Indians of the two countries and that fishing by means of poundnets and similar engines, be prohibited, reserving however, the right in common of fishing by hand with hook and line.

The committee recommends that Your Excellency be moved to transmit a copy of this minute to the Right Honourable the Secretary of State for the Colonies for submission to Her Majesty's Government with a request that it be brought to the notice of the Government of the United States of America with the expression of a hope that the above mentioned arrangement may be effected.

All which is respectfully submitted for Your Excellency's approval.

Clerk, Privy Council

Approved August 20, 1890

Conflicts over fisheries on Lake of the Woods: 1873-1909

Collapse of the fisheries

Indiscriminate, unrestricted and unregulated non-Indian fishing and government mismanagement caused the collapse of fisheries on Lake of the Woods.

Wrongful expropriation of the traditional fisheries also destroyed families, clans, communities, religion, societies, economies, cultural practices, and social structure of the Anishinaabeg.

The Anishinaabeg are the original occupants and proprietors of the lake from time immemorial. Prior to the arrival of the Europeans, they were a thriving, prosperous and expanding people owing in large part to the fisheries.

They exercised complete jurisdiction in the territory. And having maintained sustainable fisheries, the lake provided up to 50% of the their food supply of which sturgeon was the principal source.

The arrival of vast numbers of Europeans led Canada to attempt to negotiate a treaty with the original inhabitants. From the planning of the treaty in 1857, sixteen years of Governmental persuasion would pass before the Anishinaabeg agreed to serious talks.

Long and arduous negotiations took place in 1871, 1872, and again in 1873 before a breakthrough was achieved by Canada's commissioners. The Anishinaabe's caution was centred in large part on the protection of their fishery.

Finally on October 3, 1873 a treaty was signed at the Northwest Angle — the Angle, so called because of its location where the boundaries of Ontario, Minnesota and Manitoba meet.

The Treaty guaranteed Anishinaabe fisheries to the whole territory in perpetuity. The English version of the document says: "Her Majesty further agrees with Her said Indians that they, the said Indians, shall have the right to pursue their avocations of hunting and fishing over the tract surrendered. . ."

The Treaty also provided for reserves to be *"at certain localities where they fish for sturgeon."* On Lake of the Woods, 33 reserves were established in Ontario.

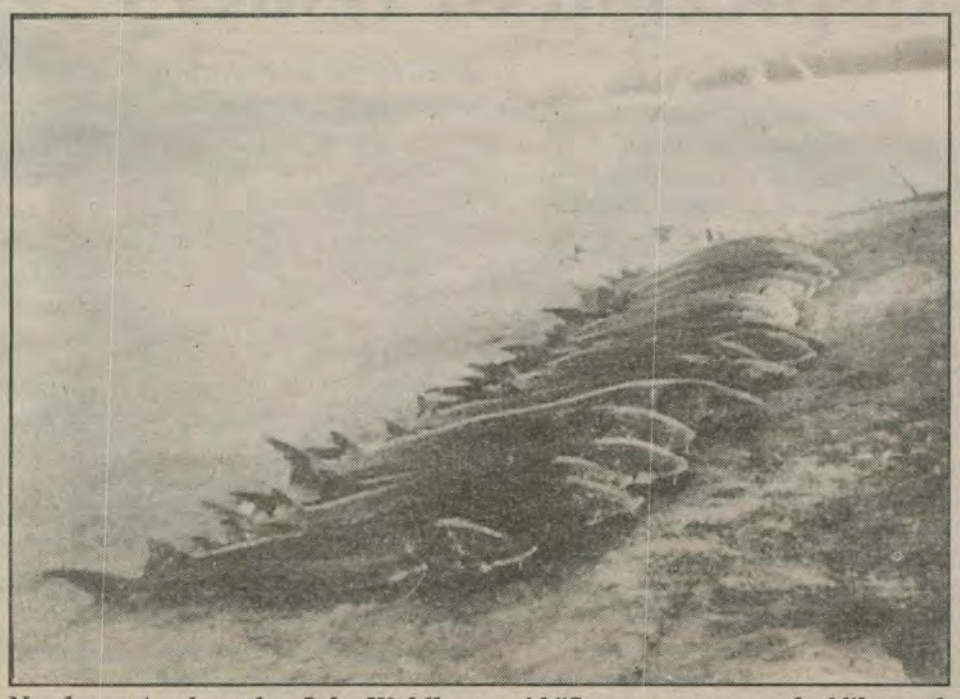
In fact, some reserves were specifically identified as fishing stations. In addition, the Treaty provided for $1,500 per year to be expended for *"twine and nets for the use of the said Indians."* Following the Treaty, the Anishinaabeg participated in the fur trade but did not depend on it. And Canada's attempts to convert the Indians to farmers and gardeners failed. Fishing remained strong as ever.

In fact the Indians had been known as very proud and independent because of their resources, especially the fish.

The bounty of fisheries

When Jacques de Noyon, the first European arrived on the Lake of the Woods region with a small party of French fur traders in 1668, he was astounded by the bounty of the fish.

So plentiful were the fisheries that Joe Risser, an early American settler at the Northwest Angle reported that *"wall-eyes were so plentiful in the Angle Inlet that the boys could float along in logs, and haul them out by hand and throw them on the bank."*



Northwest Angle settler, John Wahlberg, said "Sturgeon were stacked like cord wood and burned for disposal, so many were their numbers." (Photo courtesy of Lake of the Woods Museum)

Another pioneer settler, John Wahlberg, said that before there was a market for sturgeon they were "stacked like cord wood and burned for disposal, so many were their numbers." Throughout all of these developments, the Ojibways remained willing to share the bounty of the waters.

Introduction of poundnets

Poundnets introduced by non-Indian commercial fishing operations in 1881 began sweeping huge quantifies of fish, mostly sturgeon, out of Lake of the Woods.

These operations were unlicenced and unrestricted. Neither Canada nor Ontario had appointed fisheries enforcement personnel for the Lake of the Woods. Many of the poundnet fisheries were established near or within fishing grounds which had been used by the Kabapikotawangag people.

With Lake Erie over-fished, The Sandusky Fish Company began looking for new lakes to supply their connections in the caviar industry in Hamburg, Germany. The Company found Lake of the Woods and set up its operations here in 1881.

Soon the fisheries also attracted others. A family moving from Selkirk, Manitoba described the *"fine fishing business"* in Lake of the Woods as the reason for moving his family to Rat Portage.

The devastating impact of over harvesting was quickly evident on the fish stocks. And Anishinaabe fisheries became a cause of great concern. In July 21, 1881, John A. MacDonald, Superintendent of Indian Affairs ordered an investigation to ascertain what lakes and rivers should be *"reserved for exclusive fishing rights of Indians."*

He went on to explain that: *"The Country advances in settlement and the risk therefore of the Indian rights to Fisheries being interfered with increases."*

He urged the Department of Indian Affairs to work closely with the Department of Fisheries to *"have the Indians protected in their fishery rights to which they are entitled."*

When a railroad from Winnipeg to Rat Portage was completed in 1882, and extended to Lake Superior by 1885, it made transportation of fish products easier. Accordingly, non-aboriginal commercial fishing increased.

Alexander McQueen, Inspector of Fisheries for Manitoba, reported that commercial fish were shipped from Rat Portage through Port Arthur to Detroit, Buffalo and other cities in the United States. With concern, he also recommended exclusive lake areas for Anishinaabe fisheries.

Up to 1885 the sustained yield of 150 tons of sturgeon per year is recorded. In addition to the caviar, sturgeon produced isinglass which was used for glue, detergent and other manufacturing uses in Europe.

In an attempt to protect the fish, the Ojibways began herding sturgeon away from non-aboriginal nets. But greater mismanagement was to come from Crown governments.

Supreme Court ruling, 1882

In 1882, The Supreme Court dealt with the question of jurisdiction in the case known as The **Queen v. Robertson**. But it did not resolve it conclusively. The Court ruled (1) that

(See Traditional sturgeon, page 9)

Demand for Lake of the Woods' caviar in 1895

By 1895, demand for caviar increased dramatically. The price of caviar rose from $12.00 to $36.00 per keg. Over 4 million pounds of fish had been taken.

American fishermen had received 221 licences covering an area of about 30 miles radius, and over 200 boats and tugs were operational. It was reported that Lake of the Woods supplied about 3/4 of the world supply. As much as 17 railway car loads of fish were shipped out of Rat Portage in one week.

As reported by the Department of Marine and Fisheries: "The fisheries of the Lake of the Woods have developed so rapidly as to deserve classification with other great inland seas. In fact its aggregate value equals that of Lake Ontario, and is more than half the product of Lake Superior and over a third of the value of Lake Erie.

The staple fish of Lake of the Woods is sturgeon, which yielded in 1895, 716,000 lbs., in addition to producing 65,800 lbs. of caviare and bladders."

Traditional sturgeon fishery threatened

(Continued from page 8)

Canada had the power to regulate and protect inland fisheries, but it could not licence and lease fish which belonged exclusively to the province; and (2) that the federal government could not legislate on management and disposition of provincial property including the fish.

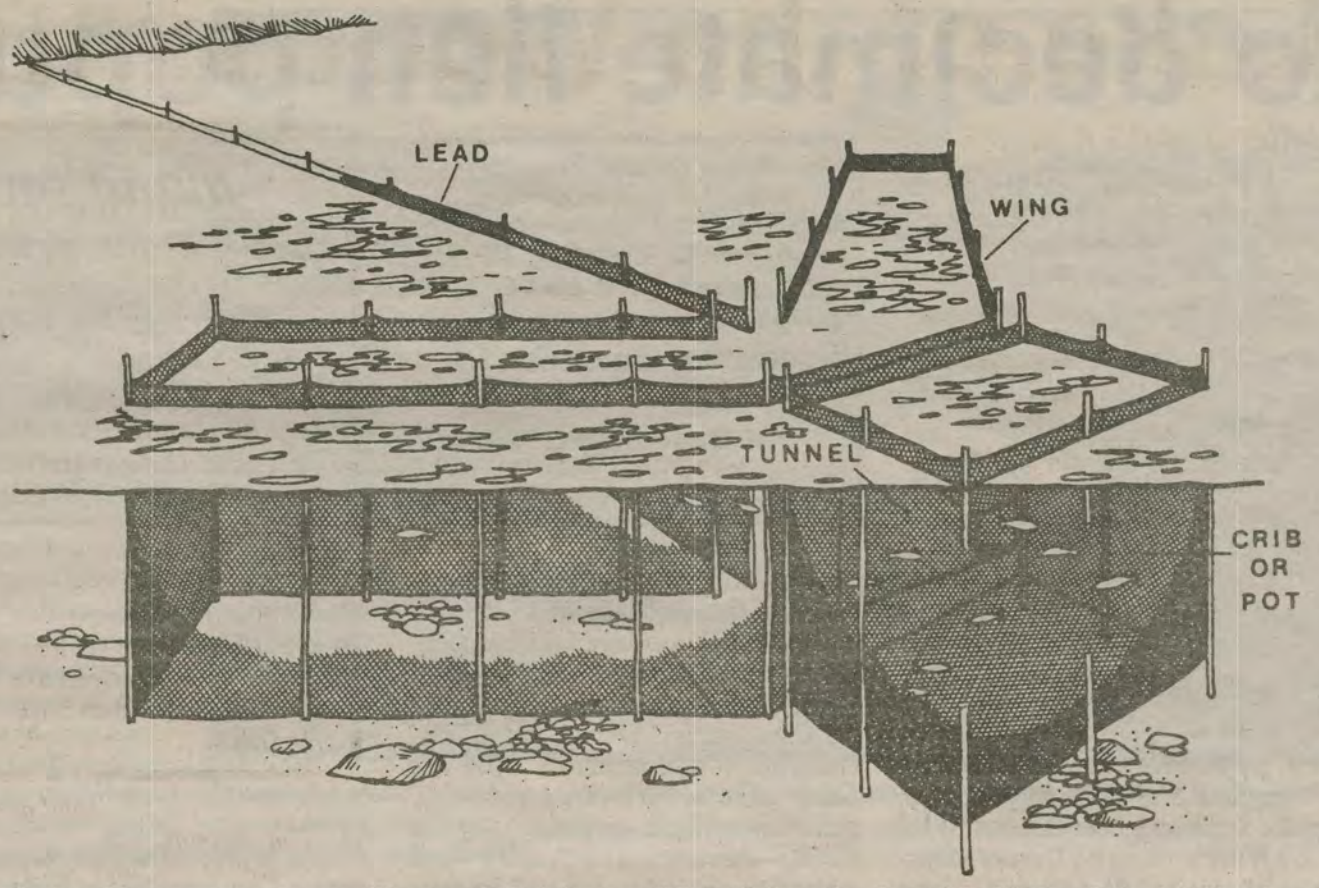
Following the Supreme Court ruling, Ontario passed the Confederation Fisheries Act covering inland lake, river and stream fisheries while trying not to infringe upon federal powers. They did infringe.

But instead of disallowing the acts, Canada continued to issue its own commercial fishing licences in Ontario. Indeed, both governments appointed overseers to enforce their respective laws with mutually exclusive and overlapping powers.

On May 19, 1888, Simon J. Dawson, a Commissioner at the Treaty #3 negotiations and now a Member of Parliament, reported to the House of Commons that *"People have gone to the Lake of the Woods with all sorts of apparatus for fishing, they have nets of all kinds, machinery of all sorts, with which they scoop out the fish."* His concern was for the Indians. *"These people depend very largely on fish for subsistence,"* he said.

John A. MacDonald who was by now Prime Minister agreed with Dawson and also disputed Ontario's right to licence fisheries. The provincial position was smug. They replied that Ontario *"will not grant licences to fish if you can show that the fish can be reserved to the Indians."*

On May 18, 1888, Simon Dawson wrote that: *"I am in a position to say that, as an inducement to the Indians to sign the treaty, the commissioners pointed out to them that, along with the reserves and money payments, they would forever have the use of their fisheries. This point was strongly insisted on and it had great weight with the Indians, who for some years had persistently refused to enter into any treaty. Now if in breach of this, the whiteman is about to. . .sweep the waters of every living thing down to a minnow, what becomes of the stipulation in the treaty?"*



A poundnet and its component parts. (Source: G.F. Adams and D.P. Kolenosky, Out of the Water: Ontario's Freshwater Fish Industry, ([Toronto]: Commercial Fish and Fur Branch, Ministry of Natural Resources, 1974), P. 7.)

Powassin takes direct action

In August 1890, and by now frustrated by government inaction, Powassin, a principal leader from the Northwest Angle, led a group of thirty warriors and seized U. S. fishing operations at Garden Island. He seized fishing equipment and destroyed the poundnets.

In doing so he declared: *"We wish our children and our children's children to live, but (the commercial fishery) is destroying their food, and they will die of hunger. When we gave up our lands to the Queen we did not surrender our fish to her, as the Great Spirit made them for our special use."*

This caused great alarm to both countries and an amicable arrangement was sought. The Ojibway having made their direct statement now resumed more diplomatic means to press their cause.

Order in Council P. C. 2002

In response, Canada passed Order in Council P. C. 2002 on August 20, 1890 *"in order to conserve such fisheries as a means of livelihood to the Indians."* Lake of the Woods was to be *"reserved for the exclusive benefit of the Indians of the two countries [anticipating a similar order closing the United States side]."*

The Order also banned poundnets, but permitted *"fishing by hand with hook and line"* for all residents. By this action, Indian Agents were appointed overseers to protect the Indian rights in the fisheries.

Federal Marine and Fisheries also signed an agreement to coordinate Canadian negotiations with the United States to protect the interests of the Indians on both sides of the international boundary and to refuse licences to all parties. United States did not follow through.

The closure of the Canadian waters favoured the American fishermen and excluded Canadians. The local government and business interests from the Town of Rat Portage reacted immediately with an intense lobby against exclusive Indian fisheries and petitioned Ottawa to re-open the lake.

In 1891, Simon Dawson was defeated in the federal election and Lawrence Vankoughnet, a Deputy Minister who had favoured Indian fishing rights was retired. The removal of these advocates eased the pendulum swing to away from the Ojibway fisheries.

Lake of the Woods was re-opened to commercial fishing in 1892. Canada issued licenses specifying resident fishermen and recipients for gill net licences.

No licences were issued to Ojibways. The Anishinaabe Chiefs campaigned to protect the fisheries against American and Canadian fishermen. Instead, the Department of Marine and Fisheries increased the existing three to one hundred non-Indian licences.

By 1893, American fishermen had completely dominated the fisheries. Great quantities of fish were shipped via New York to Russia and Germany , where it had a very high reputation and was said to have been re-packed and sold as the best Russian product.

Federal fishery overseer of the day, C. W. Chadwick reported *"about twenty (railway) cars of fishery outfits at the station here en route to the American portion of Lake of the Woods."*

Overwhelmed by the American fishery operations and their excessive

(See American fisheries, page 10)

Use of sturgeon products in 1905

Edward E. Prince worked for the Canada Department of Marine and Fisheries. In 1905, he wrote about sturgeon products. The following is in his own words:

"(1) caviare, (2) isinglass, the product of the swim bladder, (3) the flesh salted, smoke, or otherwise prepared, (4) oil which is of great value in the leather industry, (5) fertilizer, made from the entrails and scrap, (6) the soft gristly backbone with its sheath which prepared is called wesiga and all over Russia is an esteemed article of diet, (7) the brain and nerve cord removed from the gristle when smoked and dried is considered a great delicacy in China, (8) the back portion of the sturgeon or dorsal region is made into balyki a preparation in which women are extensively employed (it is stated) in Astrakan, (9) the ventral part or belly of the fish is made also into a food product called pupki, (10) a valuable fish glue, differing from isinglass of the swim-bladder, is made from the nose, fins, tail, etc., and lastly (11) leather has been made from the tongue and dense skin of the sturgeon. Mill belts and boot laces are made of sturgeon leather."

American fisheries threatened to decimate fish populations

(Continued from page 8)
catches, Chadwick requested a patrol tug and a map showing the international boundary line. He concluded: *"If legislation from Minnesota is not resorted to, those waters will soon be entirely depleted."*

Chadwick, however, was less than diligent in his duties. He confirmed illegal fishing activities by numerous non-Anishinaabe but did not charge anyone or confiscate any equipment. Instead he recommended that they should get licences.

In one case, his Deputy Minister disagreed and ordered Chadwick to prosecute them. He did so reluctantly and obtained licences for the others he was to have prosecuted.

"We wish our children and our children's children to live, but (the commercial fishery) is destroying their food, and they will die of hunger. When we gave up our lands to the Queen we did not surrender our fish to Her, as the Great Spirit made them for our special use."

—Chief Powassin, August 1890, a principal negotiator of Treaty #3, leading an armed war party and seizing pound nets and the equipment of American fishermen at Garden Island.

Fish populations threatened

In the fall of 1893, Hayter Reed, Deputy Superintendent General of Indian Affairs wrote to the Deputy Minister of Marine and Fisheries: *". . .at a General Council of Indians held at Assabaska they complained that fishing companies on the American side of the Lake of the Woods are depleting the waters of fish, and said that in a short time there will be none at all."*

Commander Wakeman, the British Commissioner on the International Fisheries Commission confirmed that Americans looked into the matter. He concluded that without some agreement between Canada and the United States he was powerless.

He also said that there would always be enough fish for the Indians and added: *"They are too lazy to do any fishing themselves. They camp alongside the fishing rooms, and they live during the fishing season on the entrails of the Sturgeon, which would otherwise have to be carted away and thrown up on the rocks. Many complaints were made to me that these Indians were also in the habit of robbing the poundnets."*

American operations had been known to be fishing on Canadian licences with impunity. Chadwick finally seized some equipment and laid charges only to have the Stipendiary Magistrate at Rat Portage dismiss the case and the Department of Marine and Fisheries was ordered to pay the court costs. Subsequently, other charges were either not pursued or were simply dropped.

The total catch of fish peaked at over 4 million pounds in 1894, then rapidly dropped off as various fish populations were decimated. In the spring of 1895, Chief Powassin again petitioned the Canadian and United States Governments to take action. *". . .fish are being taken in such large quantities, that if something is not done to stop the fishing—the sturgeon particularly—and white fish and other fish will be done away with,"* he said.

The jurisdictional mess

Canada and the United States continued a dispute over the location of the international boundary. And the federal-provincial jurisdictional struggle continued. William Margach was appointed the first Ontario fishery overseer for Lake of the Woods in 1895. He was critical of the federal regulatory regime. He divided the lake into two sectors.

In the southern part, licences were for fixed sturgeon poundnet fisheries; and in the northern sector, licences were for whitefish, pickerel and jackfish to be fished with movable gill nets. As for Indians, Margach claimed that they were better off working for non-Aboriginal companies.

In 1896, Minnesota issued 211 licences: 50 for the Baltimore Packing Company; 50 for the Sandusky Fish Company; 50 for the Minnesota Fish Company; 25 for the Coffee Brothers; 14 for the Lake of the Woods Fish Company; and smaller numbers to other individuals. More than 300 poundnets were being used.

Meanwhile the Canadian Department of Indian Affairs was again pressing for a joint commission which the Department of Marine and Fisheries ignored. By now the fisheries were in critical decline. Morrison Kyle who had been appointed in 1897 as Ontario fishery overseer for Lake of the Woods received a report that non-Indian fishermen were using dynamite in the Winnipeg River to kill sturgeon for caviar.

He did not investigate. But in 1898, he reported that some Winnipeg River Ojibway were selling sturgeon and sought instructions. The Acting Dominion Commissioner of Fisheries replied that *"Indians have no right to take fish for sale without a licence."*

Supreme Court ruling of 1882 appealed

Finally in 1898, the jurisdictional dispute between the federal and provincial governments was settled. It awarded control of fisheries to Ontario. The provincial Fisheries Branch was established and S. T. Bastedo was appointed as the first Deputy Commissioner of Fisheries.

At the same time, a simmering inter-departmental conflict in the federal government was coming to a boiling point. The Department of Marine and Fisheries who had all along denied the existence of any Aboriginal and treaty fishing rights now accused the Department of Indian Affairs of deluding the Anishinaabeg to believe that they had rights to the fisheries.

On the U.S. side, the state of Minnesota cut by half the number of licences whereupon four of the largest fish companies combined to form a single operation and overwhelmed the smaller ones.

In 1900, nearly the whole catch was being exported to American markets by the Canadian Pacific Railway.

The Ontario Deputy Commissioner of Fisheries, Bastedo said that " *The Lake of the Woods was a few years ago the most famous sturgeon fishery in Canada; and caviar made from the roe taken there is said to be fully equal to the renowned Russian caviar."*

The completion of Canadian Northern Railways from Port Arthur to Winnipeg through Warroad, Minnesota now gave railroad transportation access to points in the United States on Lake of the Woods in 1901 and hastened destruction of the fisheries. Whitefish replaced sturgeon as the top commercial species.

Blame the Indians

With the collapse of the sturgeon fishery, attention did come to the Ojibway in 1902. After being prohibited to fish, they were blamed for poaching and the destruction of the fishery. Hugh Armstrong, Manager of the Dominion Fish Company's operations on Lake of the Woods complained about illegal sturgeon fishing in the Rainy River to the Provincial Inspector John Nash of Rat Portage. He urged strong action against the *"pirates"* on the river. While launching his complaints, he was buying the caviar. Ontario and Minnesota established joint patrols.

In 1903, Bastedo announced the *"complete annihilation"* of the sturgeon: *"The passing of this fish is an exemplification of what may be expected as the result of unrestricted capture and destruction. It was so plentiful a few years ago as to be practically of no market value, but it decreased so rapidly as to be the highest priced of our commercial fisheries."*

The Federal Government passed a regulation that no sturgeon be taken during May and June. Ontario and Minnesota then issued joint patrols.

While writing a report for the federal Marine and Fisheries in 1905, Edward. E. Prince said that he had been advised that sturgeon should be set aside for exclusive use of the Anishinaabeg to accord with their *"just claims of the Indians."*

He wrote that *"the establishment of any commercial fishery on a business basis, where reliance is to be placed upon Indians, is a hazardous project."* But he did say elsewhere: *"Should not the extermination of the Lake of the Woods sturgeon have been prevented, as no white settlement existed in the vicinity of the fishery? It was purely an Indian population."* The attack on the Indians intensified in 1907. Game and Fishery Warden N. C. Sterling of Kenora insisted that *"The Indians are the cause of the most trouble."* And he added that he had established a *"protective association"* aimed at ending the problem. He announced that *"(t)he lumber camps on the Lake of the Woods will not buy any game from the Indians, as the contractors have told them that if any game is brought from the Indians, and they are found out, the fine will be taken out of their wages."*

The sturgeon were gone.

Conflicts continue: 1910-1960

Ontario had been awarded control of fisheries in 1898 after a long jurisdictional dispute with Canada. As early as 1895, the Rat Portage Board of Trade had lobbied the federal government to support sport fishing in Lake of the Woods. This included introduction of exotic species such as bass and speckled trout into the lake. And in 1896, sport fishing lobbyists had begun pressuring the Ontario government for their support.

In 1910, the conflict between commercial and sports fishermen came to a head. An official Ontario Provincial delegation came to conduct hearings at Kenora. The local Board of Trade wanted a ban on commercial fishing within a 50 miles radius from the town. Hugh Armstrong, Manager of the Armstrong Trading Company, and now Member of Parliament from Winnipeg said only sturgeon had been depleted and commercial fishing was beneficial in that it culled unwanted species from the lake.

Kelly Evans issued the *Final Report of the Ontario Game and Fish Commission* in 1911. He said that aboriginal and treaty rights were outside of his purview but clearly objected to any commercial sale or barter of fish and game outside provincial regulations by the Indians. He also recommended that Anishinaabeg be exempt from licence fees; and that on reserves near to Provincial Forest Reserves, he urged the government *"to make fresh treaties with the Indians in these localities and transfer them to other reservations at a distance from the (Provincial Forest) reserves."*

Evans also recommended strict measures to protect the fisheries and stiff penalties against any Ojibway commercial activity. *"Under this system, the sturgeon would become for all practical purposes a prerequisite of the Crown,"* he said, *"but it would be necessary to make allowance for the necessities of the Indians who in certain localities are largely dependent on the flesh of the fish for their supply of food,"* he continued. *"In doing so, however, it should be made a specific and punishable offence for an Indian to trade or barter with this fish outside the limits of an Indian reservation,"* he concluded.

Treaty #3 Chiefs met at Fort Frances and petitioned the federal Minister of Indian Affairs: *"We also want to fish for ourselves all the year and no reserve season for us, it's our daily food. We don't want to be stopped and game inspectors cutting our lines and taking our nets, it is our Treaty papers and you are not right to take our privileges away. We do not molest your interests, only want to live."*

By 1915, yellow pickerel had replaced whitefish, which in turn had replaced sturgeon as the top commercial fish species. Unlike sturgeon and whitefish, yellow pickerel was a highly regarded sport fish. Full sport fishing was underway.

In 1918, Chief Robert Roy of Whitefish Bay First Nation protested the Department of Indian Affairs: *"We want to tell you that we are in a bad condition. We are stopped from selling anything off all the land that belonged to our fathers, we have only a little piece. The white people have come around us and driven away the fur bearing animals. We are not allowed to sell the meat of the moose, nor the fish of the lake."*

Non-Indian commercial fisherman used poundnets to take huge quantities sturgeon out of Lake of the Woods. (Photo by C.G. Linde)

Sturgeon roe and sieve. Sturgeon was the staple fish of Lake of the Woods. In 1895, 65,800 pounds of caviar and bladders were processed. (Photo courtesy of National Archives Canada, National Photographic collection.)

On August 29, 1919, R. S. McKenzie, Indian Agent at Kenora wrote to Duncan C. Scott, Deputy Superintendent General of Indian Affairs regarding Nah-pah-co-mick (William Oshie) of Northwest Angle #37 First Nation. He wanted to visit Scott at Ottawa because: *"he cannot support his family the way he is situated, owing to the fish companies having nets all round his place under licence, and there is little or no trapping to be done in that district."* McKenzie denied the request.

A Commercial Fishermen's Association was formed in the Kenora District in 1926. Indians were not invited as members and no mention of their fisheries was made.

Frank Edwards, the Kenora Indian Agent in 1927, who had been lobbying the local game wardens without any success reported: *"Indians can not fish even for food in any waters leased to a commercial fishermen or in protected waters. This causes much hardship, as many of the leased waters adjoin Indian reserves, and the Indians are not legally entitled to fish there for food."* Licences could be secured if the province would concur.

As the Ontario Special Game Committee met at Toronto in 1931, Mr. T. R. L. MacInnes of the Department of Indian Affairs requested commercial fishing licences for the Indians where commercial fishing was apparently available. Ontario turned him down. The counter arguments were based on economics. D. J. Taylor, a Member of the Provincial Legislature (MPL), said bluntly: *"I think if the rights were taken from the Indians they would become more progressive."* And another MPL, William Newman asked: *"Why are you so lenient with the Indian?"*

On September 3, 1931, The Special Committee at Port Arthur dealt with Treaty #3 and heard from several speakers who accused the Indians of destroying the fish and game. Frank Edwards replied with references to lake of the Woods Ojibway: *"Our Indians do not take fish indiscriminately. What other way is he to get food? There is no place in the north where they could deplete the fish—there is more water there than land."*

By 1937, Frank Edwards reported that Ontario Game Overseer was prohibiting even the tiniest amount of fishing near reserve boundaries where white licences had been granted. Ojibway fishermen were being charged and convicted of breaking the law. Equipment was confiscated, fines imposed and jail terms served. He wrote to his superior: *"I discussed this matter with the local Police Magistrate and he informed me that if a charge was laid against an Indian under the above section of the Ontario Game Laws, he would be compelled to register a conviction and then it would be up to us to appeal the case should we think it necessary."* Convictions were clearly predetermined.

In response to a request from Indian Affairs to change the regulations, the Deputy Minister of Game and Fisheries countered that *"tourism is the best cash business we have"* and that he had received complaints about the Indians from Kenora-based tourist operators.

(See Treaty #3, page 12)

Treaty #3 promises disregarded

(Continued from page 11)

In view of Ontario's position, Frank Edwards again wrote to the Secretary of Indian Affairs: *"If the Deputy Minister's contention is correct that the Indians have no legal right to trap, hunt and fish except on their own reserves, it means that the signing of Treaty #3 was a farce, and it is being treated as a scrap of paper, and has no force and effect, and I cannot see what was the use of making the treaty."*

The Anishinaabeg were said to be responsible for the depletion of resources. Edwards spoke as President of the Kenora Anglers Club and remarked that the Ojibway had *"fished the lakes here for hundreds of years and I have never heard a complaint that they have depleted any lake."*

Edwards then met with Ontario Deputy Minister Taylor in Kenora to seek changes. Taylor stated: *"the Indians have no rights whatever as regards Hunting, Trapping and Fishing."*

Taylor also said that the Ojibways were *"destroyers of game,"* and strict regulations were needed against them. Finally, he suggested that Indian Affairs should provide for them or *"throw them on their own responsibility."*

Edwards took the position that the Department had a responsibility to protect the Ojibways against provincial regulations.

He wrote again to the Secretary of Indian Affairs pointing out that Ontario fishery regulations were subject to federal approval, and pressed his Department to use this power to effect change.

Kenora resident C. G. Linde wrote to Member of Parliament, H. B. McKinnon, asking for information about an agreement between Canada and Ontario. He asked for a detailed reasoning on why Anishinaabeg were prohibited from fishing within reserve boundaries, especially in headland waters.

This prompted Edwards to write to his superiors to the headland issue: *"If my interpretation of this section is correct we have several cases where only Indians would have the right to fish commercially, although white men are fishing with the approval, and a licence from the Ontario Department of Game and Fisheries."*

In the meantime, the conflicts over fishing motivated the Treaty #3 Chiefs to form an organization initially called the Union Council of the Old North West Angle Treaty Number 3. It is now known as Grand Council Treaty #3. Grand Chief McGinnnis led the organization, and he petitioned the King of England to uphold the Treaty.

"The fish of the inland waters are to the Indians of the forest what buffalo were to the Indians of the plains—the staff of life."

—Simon J. Dawson, February 13, 1889 in The House of Commons

The Ontario Game and Fisheries responded by not renewing the fishing licences held by the Assabaska Band. Frank Edwards appealed. Ontario absolutely refused to renew the licences.

In 1938, Norman and Alex Kelly of Assabaska and Nick Skead were tried at Kenora for fishing with nets and without a licence. The magistrate delayed sentencing to allow action from the Department of Indian Affairs.

No supportive action was taken and the men did their time. The Whitefish Bay licence was also now threatened. Frank Edwards was summoned to a meeting at Whitefish Bay. Chief Bob Roy stated: *"...the Dominion Government took over Canada. Now the Ontario Government has taken over, but it was the Dominion Government we made the Treaty with. One point was the fish in the Lake; the Indians should have the fishing in the Lake and also the game. They understood that was their own."*

The Lake of the Woods Chiefs decided to go to Ottawa. Before they left, Chief Bob Roy was asked by Edwards if they considered the fishing right included commercial fishing. Chief Roy answered: *"It seems they understood that they could do anything with the fish, or trap or shoot."*

Edwards dispatched a brief to T. R. L McInnes, Secretary of Indian Affairs advising of the coming delegation and stated: *"you know I feel very strongly the Indian is not getting what consideration it was intended he should have when the Treaty was signed, and I believe if the matter was taken to the last Court, it would be shown the Game and Fisheries Act as applied to Indians would be Ultra Vires."*

Secretary McInnes simply answered that the matter was being considered by the Department of Justice.

While the Department of Indian Affairs and Justice delayed giving an opinion, Treaty #3 Anishinaabeg were routinely tried and convicted. On July 26, Sam Green was tried and was defended by J.C. McKinney who in a written argument said that the case should be dismissed on the grounds that the charge was against his treaty rights. Again the Magistrate Wolfe delayed sentencing to await the position from Department. And again, no action was taken

Sam Green was charged on July 11, 1938 and brought to trial. He was defended by J.A. Kinney who, in a written argument, sought to have the charge dismissed on the grounds that it was contrary to his treaty rights.

Magistrate Wolfe delayed the decision to give time for the Department of Indian Affairs to act. Frank Edwards immediately sent the written argument to his superiors in Ottawa and urged supportive action. No support came forward. Sam Green was convicted on July 26.

Frank Edwards claims that Wolfe told him that: *"he has no discretion in the matter, although he thinks the Act should be changed he sympathizes with the Indians."*

A frustrated Edwards wrote: *"the Dominion gives them powder and shot to hunt and twine for fishing, and they are prohibited from using it by the Ontario Department of Game and Fisheries Act... I shall be glad to hear as soon as the Department of Justice has decided what should be done so the Indians can obtain a living by their own efforts."*

On August 3, 1938 Edwards appealed on behalf of Don Green who had been jailed because he could not afford the imposed fine. Edwards noted: *"It does not seem right that he should go to jail for obtaining food in the way that they have always done."* In a subsequent letter, he wrote: *"These cases seem a terrible injustice to the Treaty Indians, and something should be done as soon as possible to straighten the matter out."*

A long awaited opinion was given by D. Cory, a solicitor in the Legal Division of the Department of Mines and Resources on August 24, 1938. In essence he advised: *"...consideration should be given to the question of bringing this whole difficulty before the Dominion Department of Fisheries as the present procedure of adopting Provincial regulations with regard to fishing places the Indians in a most unsatisfactory position."*

(See First Nations, page 13)

First Nations push for recognition of treaty right

(Continued from page 12)

On September 24, 1938 Chief Jim Horton informed the Department of Indian Affairs of the organization that the Chiefs had formed.

He set out a number of grievances and pressed the Department of Indian Affairs to *"urgently request the Government to allow exemption for hunting and fishing, without being arrested and fined. And that the Indian Agent shall be given instructions strictly to protect the Indians, so that no Indian should be prosecuted by the Game Wardens."*

He declared that *"The Treaty speaks for itself."* Canada was told that the Anishinaabeg would now go to jail for their rights rather than stop fishing.

On October 27, 1938 the Treaty #3 delegation consisting of Chief Joe Seymour of Assabaska; Chief Bob Roy of Whitefish Bay; Chief Carlin Windigo of Rainy Lake; and Councillor Joseph Mainville of Couchiching travelled to Ottawa and met with McGill, T.R L. MacInnes and H.J. Bury.

Chief Joe Seymour spoke on behalf of the people. He reminded the officials that Her Majesty Queen Victoria had promised continued *"liberty to have in possession of their firearms, fish nets and game for food at any time on water or land. This privilege [had now] been taken away from them."*

MacInnes explained: "under the treaty, the right to fish was covered by regulations of the province which were approved by the Dominion Government, but the Dominion could make any exception if they wished to protect the Indian interest."

McGill directed Bury to do a further investigation. In the meantime, Frank Edwards unaware of the pending investigation continued to press for action.

On October 29, 1938 he advised the Secretary of Indian Affairs: *"There is continuing prosecution of the Indians of this Agency by the local Game Warden, and he informs me that he is instructed to prosecute them for any breach of the Ontario Game and Fishery Regulations."*

He recommended a moratorium: *"such persecutions should cease until the whole question has been decided by the appeals which I understand are going forward."*

Edwards was busy with another case in which nets had been seized. *"I contend the Game Overseer could not legally seize anything purchased from monies paid them by the Dominion Government, and some of these nets were paid out of Treaty money. . ."*

He concluded: *"it seems the Game Warden, is concentrating on getting all the convictions he can, whilst the appeals are on, and the Indian is a criminal, when he tries to get food and fish to feed himself and his family."*

An unsigned Department of Indian Affairs memorandum dated October, 1938 noted that Joe White and Julius Bird were charged and two nets were confiscated from Lobstick Bay—clearly inside the Reserve line. The same memorandum named others who were charged and the number of nets confiscated:

Alex Bird	2 nets
Joe Bird	3 nets
Tom Halfe	1 net
Jimmy Robinson	1 net
Dominic Paycaabe	2 nets
William Gauthier	1 net
Cas. Gauthier	1 net
Pete White	3 nets
Bob Roy	1 net

On November 11, 1938 the Acting Deputy Minister of Justice provided an answer to questions about Treaty #3. He said some of the Ontario Game and Fish regulations *"infringe upon the rights of the Indians as set out in the agreement between the Province of Ontario and the Dominion"*

As to whether Ontario had the authority to grant commercial licences for waters within Reserve headlands, and whether the Province could restrict Indian fishing within these waters, he said that the proper authority can licence anyone to fish in any waters of the province, *"but such action would be plainly a violation of the agreement between the Province and the Dominion. I would doubt very much whether the Province would issue such licences if the attention of the proper authorities was called to the said government."*

On November 21, T.R.L. MacInness of Indian Affairs wrote to C.F. Plaxton, Deputy Minister of Justice and asked whether nets paid for by Indian monies provided by Canada and seized by the Province was a contravention of Section 108 of the Indian Act.

Plaxton replied quickly and agreed that the Ontario game warden had indeed contravened the Indian Act but added that the Indians, of course, must prove that the property was purchased with Treaty money appropriated by Parliament.

"It may be difficult to prove this, but if a court can be satisfied that the nets were purchased in the manner set out in the section, then I think that the property would not be liable to seizure," Plaxton advised

Exasperated, Edwards wrote: *"I don't know what should be done now, but it certainly seems to me we should take some action, as every Indian has to break the regulations to enable him to get food to eat. A Chief had been asked for relief as there was very little fur, and the whitemen trapping in their territory, and legally they could not get fish or meat for food for themselves or their families, they wished me to apply to you for relief in some way, I hesitate to ask for authority to give groceries, as if I do all the Indians will apply from different parts of the Agency, previously I used to tell them to grow potatoes, put up fish and meat, now if I tell them to do this I am conniving in the break of the regulations, and presumably might be held liable myself."*

During 1939, Edwards maintained pressure about charges, seizure of equipment, convictions and the starvation state of the Indians.

He recaled that Mr. Taylor, Deputy Minister of Ontario Game and Fisheries, told him that *"it had nothing to do with him"* when asked Taylor said *"It was 'our Department's baby' not his, and the Indians were not going to live on the Province's moose, deer, fish, etc, and some other way of making their living should be devised by us."*

Edwards went on to say that *"I think you will find very few charges against settlers, the Indians are easier to catch and convict, I am [not] holding this as an excuse for the Indians but to show they are prosecuted harder and easier to convict."*

H. W. McGill writing to his Deputy Minister reviewed the history of initiatives which his Department had taken over the years.

He reminded that: *"The regulations under which the Province operates are made pursuant to the Dominion Fisheries Act and are passed by the Governor in Council on the recommendations of the Minister of Fisheries, although actually prepared by the authorities of the Province."*

He also stated that: *"The Department of Justice has given an opinion that these regulations are regulations of the Dominion Government for the purposes of the Treaty above quoted."* He went on to say: *"It is our contention that the Indians' rights under the Treaty should be recognized. . ."*

Bury now began his investigation on Lake of the Woods stating that his trip was necessary because: *"The Department (Indian Affairs) has recognized the fact that under Treaty stipulations the Indians of the Lake of the Woods have certain prior rights to the fishing resources of the Lake."* Among his observations, he noted:

(See Tribal lifestyle, page 14)

Ojibway camp with drying corn on racks. Before the white man, the Indian's staple bread was made of corn. Today flour takes its place. (Photo by C.G. Linde)

Tribal lifestyle severely impacted by non-Indian fishing

(Continued from page 13)

Fishing licences held by non-aboriginals

- 44 gill net licences covering 172,000 yards
- 12 hoop net licences covering 29 hoop nets
- 5 poundnet licences covering 29 poundnets

Fishing licences held by Indians

- 8 licences covering 26,000 yards of gill netting
- Non-Aboriginal population dependent on commercial fishing: 120
- Aboriginal population dependent on fishing: 1070
- The average earnings from fishing for each Aboriginal family on Lake of the Woods was $1.91 per month

His report included reference to the inconsistency of Canada providing twine for nets under its treaty obligations and Ontario charging licences. He stated that there were three major problems:

1. That the Indians are barred from their proper share of the fishing grounds.
2. That they are unable to earn a livelihood from commercial fishing.
3. That they are prohibited by present marketing methods.

He recommended:

- that the Department of Indian Affairs help the Aboriginal fishermen to develop central depots and transportation facilities to get their catch to market—they had to sell to buyers who paid half the actual prices.
- an increase of gill nets from 126,000 to 174,000 yards; and hoop nets from zero to 38 to gain some parity with non-Aboriginal fishermen
- that licences be granted to Treaty #3 fishermen

He also noted 33 areas which "*rightly belong to the Indians;*" and traditional resources, including wild rice, had been depleted in Lake of the Woods due to flooding.

He also defended his scheme against claims of recreational fishing that commercial fishing ruined the sport: *"The arguments that commercial fishing tends to affect adversely the rod and line fishing by tourists is not tenable as the sporting fish such as bass and muskellunge are rarely caught in gill nets. Even if such argument was partially conceded, the fact remains that the Province of Ontario has issued 52 twine (gill) net licences of which the Indians only hold eight."*

Bury also reminded that: *"pursuant to the signing of Treaty No. 3 in 1873, the various chiefs selected their reserves at points on the lake where the fishing was known to be good. . .Discussing this particular phase of the question with the elder generation of Indians. I found them all unanimous in claiming that their predecessors had no other thought than to secure good fishing in perpetuity."*

He concluded: *"The Indians of the Lake of the Woods are now facing the worst conditions of living that they have ever experienced. Hunting, trapping and fishing rights which were solemnly confirmed to them under the Treaty have been ruthlessly curtailed. They are being continuously harassed and persecuted by game wardens and fishery overseers even when merely trying to secure food for their subsistence and they assuredly need all the help and assistance that is possible to give to them."*

H.W. McGill, Director of Indian Affairs, fully endorsed Bury's report and sent it to the Deputy Minister: *"I agree with Mr. Bury in that such harsh discrimination against the Indians is unfair and unjust and should not be allowed to continue, and I consider (as explained in my previous memorandum) that the Indians have prior rights to fishing privileges under the terms and conditions of Treaty No. 3."* He recommended that the federal Department of Fisheries be enlisted to *"greatly strengthen our position prior to opening fishing negotiations with the Province."*

Conical bark covered lodge. (Photo by C.G. Linde)

No action was taken

The Treaty #3 Chiefs drafted another petition at a special assembly in 1941 stating: *"Queen Victoria promised to love the Indians just as she loved the white people; but we do not see this affection which was promised to us. The promise made grows less every year."*

The Chiefs further stated to the Department of Indian Affairs that: *"The Government sells licences daily and we do not receive anything. Our old people and children look as if they would starve; and we wish the Indian Department would respond to the Act made by Queen Victoria to give us back what we are gradually losing."*

Norman Patterson, Kenora District Indian Agent in 1943, reported that an application for a commercial gill net licence for Rat Portage had been refused. He also said that an application on behalf of the *"Crow Portage Indians of the Assabaska Band has been turned down cold"* by the Province.

In 1944, no change had taken place to the fishery licences in Lake of the Woods. The Anishinaabeg were still being charged and convicted for fishing. On July 10, Joe Sinclair of Rat Portage First Nation was fined $14.50 for having 96 pounds of pickerel; on October 16, Alex and William Bird of Whitefish Bay were fined $10.00 each for fishing at Regina Bay. Alex Bird testified to no avail that he was fishing one quarter of a mile from his home and within his reserve. In William Bird's defence, it was stated that: *"Indians claim they were fishing in Reserve waters."* The game warden testified: *"that is impossible."*

Chief John McGinnis petitioned again in 1946 that the Treaty protected the *"right to hunt, fish and trap, this (is) in peaceful pursuit of the Indian happiness."* In the same year, the Chief and Councillors of Lac Seul wrote a letter to the Special Committee of the Senate and House of Commons:

"We are satisfied with our conception of the original agreement (Treaty #3) and want it to continue; the terms to be carried out as promised and as it was first explained to our representatives who signed the Treaty for the Indians. . .Our understanding of the original Treaty was that we could hunt and fish without hindrance in the territory ceded by us.

The Indians who signed the Treaty could not possibly anticipate any future Government regulations which would change this, as the Game and Fish laws were unknown to our forefathers. It seems reasonable to suppose that the white man who arranged the treaty must have known something about Game and Fishery regulations even in those days of long ago.

We believe if this had been fully explained to the Indians the Treaty would not have been signed or would have contained a positive statement giving Indians full right to hunt and fish without restrictions."

Today, under continuing contravention of the Treaty, fishery management is largely imposed by the Province. The Ontario Fisheries Regulations are made under the federal Fisheries Act. Ontario writes the regulations and Canada rubber stamps them. The Anishinaabeg continue to be persecuted and prosecuted under this oppressive system.

Recent bad faith: 1986 to present

The Canada Act became the Constitution of Canada on March 29, 1982. Recognizing aboriginal and treaty rights, it recites in Section 35: (1) *"The existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed."*

On April 16, 1986 Canada and Ontario agreed to negotiate a fishing agreement for the Treaty #3 area. And on June 26 of the same year, Kabapikotawangag and other First Nations approved the basic positions for negotiations in a document entitled **"The Fishing Rights of Treaty #3."**

Canada responded with its own position on October 6, 1986. Ontario bowed to a public outcry against recognition of Anishinaabe rights and did not respond.

After many delays and the breach of numerous undertakings, Ontario still failed to deliver its position and finally refused to participate.

The Supreme Court of Canada handed down its decision on the **Sparrow Case** on May 31, 1990. In its decision, it ruled, on among other matters that: *"the Government has the responsibility to act as a fiduciary capacity with respect to aboriginal peoples. The relationship between Canada and aboriginals is 'trust-like,' rather than adversarial and contemporary recognition and affirmation of aboriginal rights must be defined in light of this historical relationship."*

The Court also stated that section 35 (1) of the Constitution Act *"provided a solid constitutional base upon which subsequent negotiations can take place."*

As a result of the **Sparrow** decision, Canada began a "national consultative process." In a letter to the Ontario Minister of Natural Resources dated October 7, 1990 the Minister of Fisheries and Oceans wrote:

"This process will include consultations with aboriginal groups on both a national and regional basis, consultations with other fishery user groups, consultations with Provincial and Territorial Governments, and liaison with federal departments."

The letter also said that where the Department of Fisheries and Oceans (DFO) had direct management responsibility, the Department would undertake the consultations themselves.

The letter further advised that: *"In all other provinces, DFO will be providing the Legal Services review only to the Provincial Governments as information to assist those provinces as they undertake any necessary review and consultation. DFO officials are prepared to assist these Provincial Governments in their review if we are so requested."*

In the same letter Canada said: *"Federal fishery officers have been instructed that they cannot enforce any fishery regulations which have been identified by Justice as being ultra vires; and, in addition, the aboriginal food fishery is being administered by the DFO under these interim policies."*

Ontario did not carry out any significant *"review and consultation"* as required by Sparrow. They adopted a strategy of denial and deferment. Canada silently and cynically acquiesced and denied funding to Ontario Indians and Kabapikotawangag while making it available to other provinces.

On August 24, 1992, the Regional Director General, Ontario Region, Department of Indian Affairs wrote: *"Fisheries and Oceans does not believe it has a role to play in the actual negotiation of agreements as Ontario is the manager and owner of the resource and has jurisdiction to negotiate the issues."*

Then on November 30, 1992, the evening preceding a hearing before the Ontario Court of Appeal in the case of **R. v. Bombay**, a fisheries prosecution involving fishing rights under Treaty #3, Ontario officials offered to negotiate the general issue of fishing rights under Treaty #3 during a proposed several month adjournment of the case. **(See Recent, page 16)**

Building a canoe. (Photo by C.G. Linde)

> "The Government has the responsibility to act as a fiduciary capacity with respect to aboriginal peoples. The relationship between Canada and aboriginals is 'trust-like,' rather than adversarial and contemporary recognition and affirmation of aboriginal rights must be defined in light of this historical relationship."
>
> —**Sparrow Case**, May 31, 1990

Treaty rights enforcement action

(Continued from page 3)

those whose equipment has been confiscated; who have been harassed, persecuted, charged and imprisoned constitutes an endless list.

The Canadian Constitution recognizes our aboriginal and treaty rights, yet the federal and provincial governments continue to act as though we have no aboriginal and treaty rights over fisheries. We have been deprived of our livelihood and our culture.

And even though we have offered on numerous occasions to negotiate an arrangement with Canada and Ontario, they have refused to negotiate in good faith.

They have continued to undermine our rights and want to do away with our aboriginal rights for all time. They wish to destroy the Treaty forever, the one signed for *'as long as the sun shines, the rivers flow and grass grows.'*

To defend our fishing rights, we, the Chiefs of Kabapikotawangag Resources Council have launched a class action suit against Canada and Ontario on behalf of all our people. We want:

1. Damages for breach of fiduciary duty and wrongful expropriation arising from the loss of, access to and from injury to our fisheries, and for mental distress and suffering caused by the destruction of our families, clans, communities, societies, economies, cultural practices, and social structure. For this we are seeking $200,000,000.00 collectively, and $100,000.00 individually, or such amounts as may be ordered under the Class Proceedings Act, 1992.
2. Special damages in amounts to be set before trial.
3. Aggravated, exemplary and punitive damages.
4. A declaration that we possess an unextinguished right in the fisheries on Lake of the Woods.
5. A declaration that the Crown has no interest in our fisheries, and that no legislation of Canada or Ontario applies on our fisheries, unless we give our consent.
6. A declaration that our right in the fisheries is a right prior to all other claims to the fisheries, including claims pursuant to licences granted by either Canada or Ontario.
7. A declaration that as the possessors of the right, we are entitled to determine all catch, species, season, equipment, and other requirements for management of the fisheries, and for conservation.
8. The costs of the action on a solicitor and client basis.
9. Interest before and after judgement.
10. An order that all relief granted shall be binding jointly and severally upon Canada and Ontario.

Recent bad faith

(Continued from page 15)

The offer was accepted but was not completed. The case proceeded.

The Treaty #3 Anishinaabeg had fished with '*prohibited*' net and had sold the fish. The Anishinaabeg won.

This confirmed that the Anishinaabeg have aboriginal and treaty rights to fish at any time and by any means, and to sell the fish, subject only to their own laws, and that such rights could be abrogated by the Crown only if it satisfied certain onerous requirements of law.

Following the **Bombay** decision, Ontario was asked in 1993 to return to the negotiation table on the basis that if they were prepared to negotiate in November 1992, they should be equally prepared to negotiate now. Ontario refused.

On September 15, 1994, the Anishinaabeg requested Canada to begin bilateral negotiations in view of Ontario's refusal to participate. Canada declined. In doing so, Canada dishonoured the Crown by failing to protect its legal obligations; and by abandoning its constitutional jurisdiction to a province.

Canada had completed a legal review of the **Sparrow** decision in which they noted that fishing licences are issued under the Ontario Game and Fish Act and that no priorities were provided for recognition of Indian fishing rights.

Canada also concluded that Ontario regulations enacted under the Federal Fisheries Act "*appear not to meet the requirements of Sparrow.*"

Ontario announced in 1996 that it was going to impose a certain type of food fishing licence on First Nations whether they liked it or not.

In 1997, Ontario approached some First Nations to advise of the depleted state of the fisheries in the south part of Lake of the Woods. They also announced a major review of its commercial fishery policy.

In the meantime, they turned over management of the commercial fishery to private parties within the industry, who have no constitutional duties or obligations to aboriginal and treaty rights.

In 1997 the members of the Kabapikotawangag Resources Council also launched their court action, seeking a conclusion to the injustices wreaked on both fishery of the lake and the people of who have always lived there.

Ojibway family in birchbark canoe. (Photo by C.G. Linde)

"Her Majesty further agrees with Her said Indians that they, the said Indians, shall have right to pursue their avocations of hunting and fishing throughout the tract surrendered. . ."

—Treaty #3

MASINAIGAN STAFF:
(Pronounced MUZ IN I AY GIN)

Susan Erickson ..... Editor
Lynn Plucinski ..... Assistant Editor
Charlie Otto Rasmussen ..... Writer/Photographer

MASINAIGAN (Talking Paper) is a quarterly publication of the Great Lakes Indian Fish & Wildlife Commission, which represents eleven Chippewa tribes in Michigan, Minnesota and Wisconsin. GLIFWC's member tribes are listed to the right.

Subscriptions to the paper are free. Write: **MASINAIGAN**, P.O. Box 9, Odanah, WI 54861, phone (715) 682-6619, e-mail: pio@win.bright.net. Please be sure and keep us informed if you are planning to move or have recently moved so we can keep our mailing list up to date.

MASINAIGAN reserves the right to edit any letters or materials contributed for publication as well as the right to refuse to print submissions at the discretion of the editor.

Letters to the editor and guest editorials are welcomed by **MASINAIGAN**. We like to hear from our readership. The right to edit or refuse to print, however, is maintained. All letters to the editor should be within a 300 word limit.

Letters to the editor or submitted editorials do not necessarily reflect the opinion of GLIFWC.

GLIFWC MEMBER TRIBES

Minnesota

Robert Peacock, Chairman
Fond du Lac Chippewa Band
1720 Big Lake Road
Cloquet, MN 55720
(218) 879-4593

Marge Anderson, Chief Exec.
Mille Lacs Chippewa Tribe
HCR 67, Box 194
Onamia, MN 56359
(320) 532-4181

Michigan

Jeff Parker, Chairman
Bay Mills Indian Community
Route 1, Box 313
Brimley, MI 49715
(906) 248-3241

Wayne Swartz, Chairman
Keweenaw Bay Indian Comm.
Route 1, Box 45
Baraga, MI 49908
(906) 353-6623

John McGeshick, Chairman
Lac Vieux Desert Band
P.O. Box 249
Watersmeet, MI 49969
(906) 358-4722

Wisconsin

Donald Moore, Chairman
Bad River Chippewa Band
P.O. Box 39
Odanah, WI 54861
(715) 682-7111

gaiashkibos, Chairman
Lac Courte Oreilles Band
Route 2, Box 2700
Hayward, WI 54843
(715) 634-8934

Tom Maulson, Chairman
Lac du Flambeau Band
P.O. Box 67
Lac du Flambeau, WI 54538
(715) 588-3303

Charlie Fox, Acting Chairman
Sokaogon Chippewa Tribe
Route 1, Box 625
Crandon, WI 54520
(715) 478-2604

George Newago, Chairman
Red Cliff Chippewa Band
P.O. Box 529
Bayfield, WI 54814
(715) 779-3700

Lewis Taylor, Chairman
St. Croix Chippewa Band
P.O. Box 287
Hertel, WI 54845
(715) 349-2195