

John Howard Sissons (1892-1969)

Dubbed a "living legend" in his own lifetime, the late Honourable John Howard Sissons is still remembered as a staunchly independent, even idiosyncratic, pioneer judge during the critical years 1955-66 in the Northwest Territories of Canada. And by the time of his retirement in July 1966, he was probably by far the most widely known Canadian judge in the world, having been the subject of articles not only in such popular publications as *Time*, *Life*, *Look*, and *Maclean's*, but also, in 28 different languages, *Reader's Digest*.

As recently as January 1990, *Natural History*, the magazine of the American Museum of Natural History, New York, published an article entitled "Images of Justice," which features some of the Inuit carvings donated by "Judge Sissons" (as he was generally known) to the Sissons-Morrow Collection on display in the Court House at Yellowknife. These carvings and the article based on them illustrate the extraordinary period during which Sissons held office as the only resident judge of what was then the Territorial Court of the Northwest Territories in the eleven-year period following his appointment to that office in 1955.

Each of the carvings depicts, with a good deal of artistic licence, a scene that calls up the facts of a case that came before the Territorial Court (renamed the Supreme Court of the Northwest Territories in 1972) either in Sissons's time or that of his successor the (now late) Mr. Justice William George Morrow. All but three of the carvings are from the period when Sissons presided over the court. The collection is believed to be unique and draws many visitors to the Court House who would otherwise not go there. Part of the collection is shown in the accompanying photograph of Judge Sissons, taken in his judicial chambers at Yellowknife shortly before his retirement.

Born on 14 July 1892 at Orillia, Ontario, Sissons was struck by polio at the age of four, being left with a damaged leg and a limp for the rest of his life. As he reflected in his memoirs, *Judge of the Far North*: "Children are cruel. They taunted me and mimicked my limping." Consequently, he would get into fights, in which he remembered: "I often hit too hard, but I was never to get away from fighting." As a judge, Sissons displayed a quick sympathy for the underdog and the handicapped; but at the same time he would tell those who appeared before him that the existence of a handicap was no excuse for wrongdoing; his message to them was that they should be better people for having to overcome their disadvantages.

He came from a Presbyterian background; and part of his heritage derived from the fact that the famous missionary explorer David Livingstone, of Darkest Africa renown, was a cousin of his mother's. From this relationship he drew in later life his anger at the abuse of colonial power and his feeling of affection and respect for the native people whom he served. His father, for many years the chief attendant at the Orillia Mental Asylum, influenced the young Sissons more by example than by precept. However, he did give one piece of advice to the young lad (which was not completely followed): to never become a civil servant but rather to be



Judge Sissons examining the unique Inuit carvings depicting facts about cases heard in the N.W.T. Territorial Court, 1955-66.

his own man. The sturdy sense of independence that he later demonstrated as a judge was implanted in those formative years. Even as a teenager, he was already engaged in politics as a "Scotch Presbyterian Grit" battling the Tories. As he says in his memoirs, "I was taught to believe in law and order but not necessarily in constituted authority, and this subtle division was to be a very useful guide in later life when I had to tangle with the bureaucracy."

Queen's University, Kingston, saw Sissons enroll as an undergraduate in 1913 after about two years of school teaching in Ontario and Alberta and a stint in the Alberta civil service in a secretarial capacity. Graduating in 1917, he returned to Alberta shortly thereafter to take up law, articling to George Steer, himself a Queen's alumnus, and passing the bar exam in Edmonton in 1920, being called to the bar on completion of the required period in articles in 1921. Little time was lost before he began his move north to Grande Prairie, where he entered the practice of law.

Elected to the House of Commons at Ottawa in 1940, following almost twenty years in law practice in the Peace River country, Sissons found himself involved in moves to build a highway north into the Northwest Territories from Grimshaw, Alberta, and in the building of the Canol pipeline between the Northwest Territories and Yukon. He also found himself championing the cause of a number of Indians in the Lesser Slave Lake area in a conflict with the federal Department of Indian Affairs. In 1945, when he was defeated in the federal election of that year, Sissons was appointed as a judge of the Alberta District Court at Lethbridge, becoming the chief judge of that court for southern Alberta in 1950.

When in August 1955 Sissons was appointed as the first judge of the (then) Territorial Court of the Northwest Territories, at the age of 63, he also became the first superior

court judge resident in the Northwest Territories since the disestablishment of the old Supreme Court of the Northwest Territories in 1905, on the coming into being of Alberta and Saskatchewan. He and his wife, Frances (they had married at Grande Prairie in 1929), moved from Lethbridge to Yellowknife in mid-October 1955, where they made their home and Sissons his centre of judicial operations throughout an area the size of one-third of Canada, or six times the size of France.

Once established at Yellowknife, Sissons determined that he would "bring justice to every man's door" in the tradition of the Royal Courts of Justice under the common law of England, which had been imported into the Northwest Territories in 1870, when they became part of Canada. In this he found opposition from the Department of Northern Affairs at Ottawa; but he was determined to go out on circuit, carrying with him the court staff and counsel, and in this he prevailed. The people of the many small communities were thus able to come to court, to see and hear the proceedings for themselves, and they could learn how the courts operate and gain at least some passing awareness of the law. Interpreters, hired locally, played a very important part in the proceedings.

In the years that followed, numerous cases came before the circuit court presided over by Sissons. The entire Northwest Territories, both east and west, were served by regular court circuits. These presented a very real challenge to the pilots who flew the many long miles, at times over open water and in all weathers, in single-engined (latterly twin-engined) propeller-driven aircraft. The facilities, including air navigation aids, were minimal. At times, court was held in the aircraft for lack of any other suitable place. The judge and others on circuit would sleep on floors and make do with whatever accommodation could be obtained. In many instances, aviation gas was in restricted supply. Travelling on floats in the summer and on skis in winter, the circuit court somehow made its way and returned safely no matter how arduous the voyage.

Tempering the rigours of the Criminal Code and of the rules of evidence and criminal procedure to meet the exigencies of the situation before him, Sissons frequently decided the case (or directed the jury to do so) with a view to ensuring that justice was done with due regard for the cultural factors present. He saw himself, and no doubt acted, as the champion of the underdog, usually the accused person in a criminal case. He would, nevertheless, convict an accused where the accused was clearly shown to be guilty and the victim of the offence had clearly been wronged by the accused, as in the case of *Regina v Peter Pitseolak* at Cape Dorset in or about 1960.

Native customs in relation to marriage and child adoption were recognized by Sissons in a series of cases in the 1960s.

The precedents that he set in respect of child adoptions by native custom were later upheld by the Court of Appeal of the Northwest Territories and are still frequently applied by the Supreme Court of the Northwest Territories. An important element of the native heritage has in this way been preserved by the courts following his early lead.

Perhaps the case for which he is best remembered in the Northwest Territories is *Regina v Sikyea*, in which a Dene Indian was prosecuted for shooting a mallard duck out of season, contrary to the Migratory Birds Convention Act, a federal statute implementing a 1916 international treaty binding Canada, the United States, and Mexico. Sissons acquitted the accused, holding that his right to hunt the duck was preserved by an Indian treaty made between the federal Crown and the Indians of the region around Yellowknife in 1921. But the Court of Appeal reversed Sissons's judgement and the Supreme Court of Canada affirmed the decision of the Court of Appeal. In the end, however, that case raised the public consciousness, and for the first time questions were asked as to what the Indian treaty rights were worth if they could be taken away unilaterally by Parliament. It was plain that there was a need for recognition of what are now enshrined in the Constitution Act, 1982, as aboriginal rights. The settlement of native land claims based on that recognition will be a most important outcome of this and other such cases in the 1990s, as it has been in the 1980s.

Today, Sissons is commemorated in a modern school named after him at Yellowknife and in a number of other memorials, including a cairn at Sissons Lake in the Keewatin, where he and his court party were forced down in an arctic "white out" while travelling from Fort Reliance (on the East Arm of Great Slave Lake) to Baker Lake. But his most enduring memorial, perhaps, in the years ahead will be the carvings that he commissioned to commemorate his many fascinating court cases, not to mention the adherence of our courts in the Northwest Territories to the traditions of "bringing justice to every man's due" and, in doing so, of respecting native custom and culture to the extent that the Canadian constitution allows.

FURTHER READING

SISSONS, J.H. 1973. *Judge of the Far North*. Toronto: McClelland and Stewart. (Originally published in 1968.)

*The Hon. M.M. de Weerd
Senior Judge, Supreme Court of
the Northwest Territories
Yellowknife, Northwest Territories
Canada*