# REGINA v. PRITCHARD

(1971), previously unreported

Saskatchewan Magistrate's Court, Policha J., 1 October 1971

(Appealed to Saskatchewan District Court, **infra** p. 397)

POLICHA J.: The accused is charged that on the 18th day of January, 1971, at Baljennie District, Saskatchewan, did unlawfully hunt big game, to wit: dear in closed season, contrary to s. 12(1) of the Game Act, S.S. 1967, c. 78.

Harry Edward Minifie, Conservation Officer of the Department of Natural Resources for the Province of Saskatchewan, the only witness for the Crown, gave evidence that on the day in question he was travelling in the Lizard Lake Community P.F.R.A. pasture about six or seven miles south of Baljennie, Saskatchewan, checking fences and removing Game Preserve signs. In the northwest corner of the pasture he saw fresh snowmobile tracks and what appeared to be blood on the tracks and came upon a stopped snowmobile with the accused sitting on the seat holding a rifle. There was a small deer carcass, field dressed, tied to the rear of the snowmobile. Placing his hand in the body cavity he felt sticky blood and the meat was warm. In his opinion the animal had been killed recently. He stated that the deer season in that zone had closed December 12th, 1970 and there was no open season since that date. On cross-examination the witness stated that the accused had told him that he was an Indian but not a treaty Indian.

One witness was called by the defence, namely George Pritchard, father of the accused who gave evidence that he was a Cree Indian, his wife was a Cree Indian, his parents were Cree Indians, his son, the accused, was born on an Indian reserve and that he and his family had always been known as Indians. George Pritchard owns seven quarters of land and rents four quarters and the accused lives with him. He further gave evidence that the accused was hunting for food. The main argument by the defence was that the accused is an Indians, that he was hunting for food, if not on his father's land then on unoccupied Crown lands and would come under the provisions of s.8(1) of the Game Act which reads as follows:

> 8.(1) Notwithstanding anything in this Act, and in so far only as is necessary in order to implement the agreement between the Government of Canada and the Government of Saskatchewan ratified by chapter 87 of the Statutes of Saskatchewan, 1930, Indians within the Province may hunt for food at all seasons of the year on all unoccupied Crown lands and on any other lands to which the said Indians may have a right of access.

Counsel for the Crown contended that the accused was not an Indian as he did not qualify under the definition of an Indian as defined in the Indian Act, R.S.C. 1970, c. I-6 which reads as follows:

> 2.(1) … "Indian" means a person who pursuant to this Act is registered as an Indian or is entitled to be registered as an Indian.

I find on the evidence that the accused did hunt big game, to wit: deer in a closed season and on unoccupied Crown lands.

The only question for consideration is whether the accused is an Indian as contemplated by s.8(1) of the Game Act.

There are numerous reported cases dealing with Indians charged with hunting infractions under provincial game laws but all concern treaty Indians and Indians as defined in the Indian Act but could find no reported decision relating to a class of people commonly known as "Indian" but are not treaty Indians, do not live on a reserve and are not Indians as defined in the Indian Act.

The Game Act of Saskatchewan does not define "Indian".

Section 8(1) of the Game Act makes reference to the agreement between the Government of Canada and the Government of Saskatchewan as ratified by chapter 87 of the Statutes of Saskatchewan, 1930, para. 12 of which reads as follows:

> 12. In order to secure to the Indians of the Province the continuance of the supply of game and fish for their support and subsistence, Canada agrees that the laws respecting game in force in the Province from time to time shall apply to the Indians within the boundaries thereof, provided, however, that the said Indians shall have the right, which the Province hereby assures to them, of hunting, trapping and fishing game and fish for food at all seasons of the year on all unoccupied Crown lands and on any other lands to which the said Indians may have a right of access.

The said agreement does not define "Indian".

In Daniels v. White and The Queen, [1968] S.C.R. 517, 4 C.R.N.S. 176, 64 W.W.R. 385 [6 C.N.L.C. 199], an appeal from the judgment of the Court of Appeal of Manitoba to the Supreme Court of Canada, Judson J. at p. 390 W.W.R., referring to the agreement between the Government of Canada and the Government of Manitoba, para. 13 of which is identical to para. 12 of the Saskatchewan Agreement, states as follows:

> As indicated by paragraph 11 of the Agreement and paragraph 10 of the Alberta and Saskatchewan Agreements, Canada, in negotiating these agreements was mindful of the fact it had treaty obligations with Indians on the prairies. These treaties, among other things, dealt with hunting by Indians on unoccupied lands. For example Treaties 5 and 6, which cover portions of Manitoba, Saskatchewan and Alberta provides:
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> > 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 as hereinbefore described, subject to such regulations as may from time to time be made by Her Government of Her Dominion of Canada, and saving and excepting such tracts as may from time to time be required or taken up for settlement, mining, lumbering or other purposes by Her said Government of the Dominion of Canada, or by any of the subjects thereof duly authorized therefor by the said Government.

By s.91(24) of the British North America Act, the Parliament of Canada attained exclusive legislative authority over "Indians and lands reserved for the Indians."

In the case "In the Matter of a Reference as to Whether the Term "Indians" in heading 24 of s.91 of the British North America Act, 1867, includes Eskimo Inhabitants of the Province of Quebec" -- [1939] S.C.R. 104, [1939] 2 D.L.R. 417 [sub nom. Re Eskimos, 5 C.N.L.C. 123], the Supreme Court of Canada answered the question in the affirmative. The Court dealt at great length as to the definition of "Indians" and of particular interest is the statement of Kerwin J. at p. 121 S.C.R. as follows:

> There are also a few other publications to which out attention has been called where "Indians" and "Esquimaux" are differentiated but the majority of authoritative publications, and particularly those that one would expect to be common use 1867, adopt the interpretation that the term "Indian" includes all the aborigines of the territory subsequently included in the Dominion.

It is common knowledge that the early inhabitants of this country were a race of people consisting of many tribes known as Indians, so called originally from the idea on the part of Columbus and the early navigators of the identity of America with India and these were the people referred to as Indians in the British North America Act.

The Indian Act, for administrative purposes and to exercise control over a certain group of people, restricts the definition of the term "Indian" for that purpose.

In my opinion this restrictive definition does not apply to all persons and their descendants of the race and class of people known as "Indians" at the time of the British North America Act.

I am led to the conclusion that the accused, being of that race and ancestry of Indians is an Indian as contemplated by the Game Act and is entitled to exception provided in s.8(1) of the said Act, and I find him not guilty of the charge.