

*Government Orders*

claims are included. The wording is essentially the same as that in section 98 of the Yukon Placer Mining Act.

In essence, this bill closes a loophole that the government did not know existed. It will protect aboriginal lands from encroachment while negotiations proceed towards a final settlement. It will also provide clarification and certainty for the mining industry.

For these reasons, we, in the Official Opposition, support the bill with some reservations. We recognize the need to deal with this legislation expeditiously since we are, in effect, retroactively approving prohibitions, back to February 13, made under the acts Bill C-68 is amending. We have consulted with interested parties on this legislation.

I do want to add our profound regret that the Kluane Tribal Council was the victim of this loophole and that there was not enough foresight on the part of the government to prevent this unfortunate situation.

In 1973, the Council for Yukon Indians presented the federal government with a document entitled, *Together Today for our Children Tomorrow*. This document expressed the aboriginal rights of the Yukon Indians to the territory of the Yukon.

Accepted for negotiations in 1973 by the federal government, settlement negotiations have been ongoing since. An umbrella final agreement was ratified on April 1, 1990. Individual agreements are being negotiated with the 14 Yukon Indian bands.

At the present time, 17.9 per cent of the total area of the Yukon is, for various reasons, withdrawn from the staking of mineral claims. The land claim settlement represents 8.6 per cent of that 17.9 per cent.

The information kit on this bill provided to us by the minister's office contains an information sheet on the Council for Yukon Indians Comprehensive Land Claim. I want to challenge an underlying premise of that background paper which outlines the government's claims negotiation policy.

The document states, and I quote: "Comprehensive claims negotiations are conducted with aboriginal groups that continue to use and occupy traditional lands and whose aboriginal title has not been dealt with by treaty or

superseded by law." Aboriginal people have long contested the government's presumption that it could extinguish or wipe out aboriginal rights by passing legislation that effectively prevented the exercise of those aboriginal rights.

The recognition and affirmation in 1982 in the Canadian Constitution of existing aboriginal and treaty rights has lent some weight to our position. The Supreme Court of Canada has recently confirmed that the rights recognized in Section 35 of the Constitution do have significant and contemporary meaning.

I am not a lawyer, but even a layman can see that the Supreme Court decision in the Sparrow case a couple of weeks ago is a significant victory for aboriginal peoples. The Supreme Court judgment also contained some serious warnings for the federal government.

The Supreme Court stated that Section 35 demands a generous, liberal interpretation. It said that legislation that affects the exercise of aboriginal rights will only be valid if it meets the test for justifying that interference.

That calls into question, in my mind, every piece of legislation that could affect aboriginal rights, including the acts that we are amending today by this Bill C-68.

The government has a responsibility to act in a fiduciary capacity with respect to aboriginal peoples. There is a restraint on the exercise of federal power. Federal power must be reconciled with federal duty. These are the words of the Supreme Court of Canada.

The Supreme Court went on to say that the best way to achieve the reconciliation of federal power with federal duty is to demand the justification of any government regulation that infringes upon or denies aboriginal rights.

According to the Supreme Court, the test for justification requires that a legislative objective must be attained in such a way as to uphold the honour of the Crown and be in keeping with the unique contemporary relationship between the Crown and the aboriginal peoples of Canada.

I want to quote the next couple of sentences directly from the Supreme Court judgment: