R v Irngaut: Scope of Territorial Government's Jurisdiction to Appeal Wildlife Convictions, and Officially Induced Error in the Co-Management Context

By John Donihee, Of Counsel, Raeya Jackiw, Associate, with the assistance of Amanda Spitzig, Student-at-Law.

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The Nunavut Court of Appeal ("NUCA") released its decision in *R v Irngaut*[1] on April 21, 2020. This summary conviction appeal arises from charges brought under Nunavut's *Wildlife Act*[2] against a young Inuk hunter, Mr. Irngaut, for violating an interim prohibition on harvesting caribou on Baffin Island in 2015. The NUCA was asked to determine whether Mr. Irngaut was entitled to a stay of the charges for unlawfully harvesting a caribou as a result of "officially induced error," and whether the Government of Nunavut had standing to bring the appeal.

This decision has important implications for

1 a territorial government's jurisdiction to appeal a conviction under its wildlife legislation where that government takes issue with the legal conclusions of the trial judge, and

2 how the defence of officially induced error applies in the North, and in particular to Elders and individuals with positions of authority in co-management regimes.

FACTUAL BACKGROUND

The defendant, Michael Irngaut, was a 22-year-old hunter from Igloolik, Nunavut and a private in the Canadian Rangers. In February 2015, Mr. Irngaut left for a week-long patrol with the Rangers from Igloolik to the Mary River mine site.[3] Mr. Irngaut testified at trial that he was aware before leaving Igloolik that there was a prohibition in place against harvesting caribou.[4] The prohibition in effect was the *Baffin Island Caribou Interim Management Order*,[5] which prohibited the harvesting of caribou on Baffin Island beginning on January 1, 2015 (the "Order").[6]

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1 2020 NUCA 4 [*Irngaut*, NUCA].
2 SNu 2003, c 26.
3 *R v Irngaut*, 2019 NUCJ 4 at paras 26 and 28 [*Irngaut*, NUCJ].
4 *Irngaut*, NUCJ at para 30.
5 Nunavut Gazette, Vol 16 No 12.
6 *Irngaut*, NUCJ at para 18.

The patrol was led by Ranger Sergeant George Qattalik. On the first night of the patrol, after setting up camp, George Qattalik made a radio call to the Igloolik Hunters Trappers Association ("HTO") to let the community know where they were.[7]

After George made the call, George told the members of the patrol that he had spoken to his father, Daniel Qattalik, an Inuit Elder and an HTO board member. Daniel had told George that the ban on caribou was no longer in effect. Mr. Irngaut testified that he was surprised that the ban had been lifted,[8] but that he trusted the word of Daniel Qattalik, as an HTO board member and as an Elder.[9]

Mr. Irngaut shot a caribou the following day at Neergaard Lake, which was within the area covered by the moratorium.[10] Mr. Irngaut kept the hide from the caribou, and gave the hide to the Conservation Officer in Igloolik upon request once Mr. Irngaut returned from the Ranger patrol.[11]

Mr. Irngaut was charged by a Conservation Officer from the Nunavut Department of Environment with one count under the *Wildlife Act*, s. 69 for harvesting a caribou contrary to the Order.[12] Mr. Irngaut was also charged with a second count under the *Wildlife Act*, s. 85(1)(a) for being in possession of a wild animal hide that had been unlawfully harvested.[13] Counsel from the Public Prosecution Service of Canada ("PPSC") conducted the prosecution.[14]

NUNAVUT COURT OF JUSTICE DECISION

Mr. Irngaut pleaded not guilty to the charges.[15] The Crown and the defence agreed that Mr. Irngaut harvested the caribou within the area covered by the prohibition, and was in possession of the caribou hide while the prohibition was in effect.[16]

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7 *Irngaut*, NUCJ at para 33.
8 *Irngaut*, NUCJ at paras 34-35.
9 *Irngaut*, NUCJ at para 37.
10 *Irngaut*, NUCJ at paras 39-40.
11 *Irngaut*, NUCJ at para 43.
12 *Irngaut*, NUCJ at para 15.
13 *Irngaut*, NUCJ at para 16.
14 *Irngaut*, NUCA at para 5. The PPSC is the national authority responsible for initiating and conducting prosecutions of all federal offences. In the territories, the PPSC is responsible for the prosecution of all *Criminal Code* offences as well as offences under all other federal legislation. In Nunavut, the PPSC also prosecutes all offences under territorial legislation, such as wildlife offences under an agreement between the PPSC and the Government of Nunavut. In the Northwest Territories, the PPSC prosecutes most territorial offences. The PPSC does not prosecute territorial offences in Yukon.
15 *Irngaut*, NUCJ at para 19.
16 *Irngaut*, NUCJ at para 20.

The primary issue at trial was whether Mr. Irngaut had a defence to the charges. The Nunavut Court of Justice ("NUCJ") held that Mr. Irngaut established the defence of officially induced error, and entered a stay of the proceedings.[17] The NUCJ held that Mr. Irngaut had relied on erroneous advice about the ban from an "appropriate official" (Daniel Qattalik).

NUNAVUT COURT OF APPEAL DECISION

The Department of Justice of the Government of Nunavut appealed the NUCJ's decision.[18] The PPSC did not participate in the appeal.[19] The two primary issues on appeal to the NUCA were:

1 whether the Government of Nunavut had standing to appeal the trial decision when it had not conducted the prosecution, and

2 whether Mr. Irngaut was entitled to a stay of the charge of unlawfully harvesting a caribou as a result of "officially induced error."[20]

Counsel for Mr. Irngaut brought an application to have the appeal struck out. Mr. Irngaut argued that the Government of Nunavut did not have standing to bring the appeal.

The NUCA granted Mr. Irngaut's application to strike the Government of Nunavut's appeal.[21] Despite striking out the application, the NUCA reviewed the NUCJ's decision, and concluded that Mr. Irngaut failed to prove the defence of officially induced error. The NUCA's comments regarding officially induced error are *obiter dicta* but we review them in detail because they raise interesting questions about the application of this defence in the land claims co-management context.

DISCUSSION

Government of Nunavut's Standing to Appeal Convictions under Territorial Laws

Under the *Nunavut Act*,[22] Nunavut has the authority to make laws regarding the preservation of game in the territory, as well as the authority to impose fines, penalties, imprisonment, or other punishment for the contravention of any law passed by the Legislature.[23] Nunavut also has the power to administer justice throughout the territory,

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17 *Irngaut*, NUCJ at para 22.
18 *Irngaut*, NUCA at para 5.
19 *Irngaut*, NUCA at para 6.
20 *Irngaut*, NUCA at para 1.
21 *Irngaut*, NUCA at para 42.
22 SC 1993, c 28, s. 23(1).
23 SC 1993, c 28, s. 23(1).

which includes the ability of Nunavut to enact its own legislation setting out the procedure for the appeal of territorial offences.[24] However, Nunavut has not enacted such legislation.

The prosecution of summary conviction offences in Nunavut is governed by the *Summary Convictions Procedures Act* ("*SCPA*").[25] The *SCPA* adopts by reference the procedures set out in the *Criminal Code*.[26] As there are no specific provisions in the *SCPA* addressing appeals of summary conviction offences, these appeals are governed by the procedure set out in Part XXVII of the *Criminal Code*.[27]

The *Criminal Code* permits "the informant, the Attorney General or his agent in proceedings under this Part" to appeal from specified orders, sentences, or verdicts, except where otherwise provided by law.[28] The NUCA reviewed the definition of "Attorney General" and "prosecutor" in the *Criminal Code*, and held that for the purposes of territorial offences, the "Attorney General" in Nunavut is the Attorney General of Canada.[29] Based on this interpretation, the NUCA agreed with Mr. Irngaut that the Department of Justice of the Government of Nunavut was not "the informant, the Attorney General or his agent," and therefore had no standing to appeal the trial decision.[30]

The NUCA pointed out that the territories may appoint their own Attorneys General, and may establish their own procedures for the appeal of territorial offences. Yukon has done so through its *Summary Convictions Act*,[31] which identifies the Attorney General of Yukon as the prosecutor for territorial offences. The *Criminal Procedure Rules of the Supreme Court of the Northwest Territories* ("Criminal Procedure Rules") enacted under the *Criminal Code* define "Attorney General" as "the Attorney General, either of Canada or the Northwest Territories, at whose instance criminal proceedings are initiated or conducted."[32] Nunavut has also adopted the same Criminal Procedure Rules.[33] However, Nunavut has no equivalent provision in the *SCPA* or the Criminal Procedure Rules identifying an "Attorney General of Nunavut."[34]

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24 *Irngaut*, NUCA at para 10.
25 RSNWT (Nu) 1988, c S-15.
26 RSC 1985, c C-46 [*Criminal Code*].
27 *Irngaut*, NUCA at para 14.
28 *Irngaut*, NUCA at para 16, citing the *Criminal Code* at s.813(b).
29 *Irngaut*, NUCA at para 18.
30 *Irngaut*, NUCA at para 16.
31 RSY 2002, c 210.
32 Criminal Procedure Rules of the Supreme Court of the Northwest Territories, IS/98-78, at s. 1.
33 Nunavut Courts, "Rules of Court: Criminal Rules" (2020), retrieved from: https://www.nunavutcourts.ca/court-policies/rules.
34 *Irngaut*, NUCA at para 11.

The NUCA's decision in *Irngaut* raises concerns about the ability of Nunavut to appeal convictions for offences committed under territorial laws. It is unlikely that Nunavut will appeal this decision to the Supreme Court of Canada. The question remains: what can Nunavut do to take ensure the territory has a role in the carriage of appeals from offences under territorial legislation?

The NUCA suggested that Nunavut may need to amend its territorial legislation if the Attorney General of Nunavut wishes to have a role in the prosecution of territorial offences.[35] While the Government of Nunavut may not wish to take on the responsibility of prosecuting all territorial offences itself, it is an anomaly that the Government of Nunavut lacks the standing to appeal decisions made pursuant to prosecutions under its own laws. The Government of Nunavut should review the approach taken to this issue in Yukon and the Northwest Territories and consider making appropriate changes to ensure that the Government of Nunavut can appeal decisions on prosecutions of territorial offences if necessary and if it wants to. Nunavut's ability to bring a territorial perspective to the appeals of offences under its own legislation, including the *Wildlife Act*, is important given the unique nature of Nunavut especially in relation to wildlife and environmental offences.

Defence of Officially Induced Error

Officially induced error is available as a defence where the accused has made a mistake of law by relying on advice given by an "official who is responsible for the administration or enforcement of that particular law."[36] The defence operates as an "excuse" resulting in a stay of proceedings rather than an acquittal.[37] In *R v Jorgensen*[38] the Supreme Court of Canada set out a six part test that must be met to establish the defence:

3 the error is one of law or mixed fact and law

4 the defendant considered the legal consequences of the action

5 the advice was obtained from an appropriate official, who a reasonable individual in the position of the accused would normally consider responsible for advice about the law in question

6 the advice was objectively reasonable in the circumstances

7 the advice was erroneous, and

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35 *Irngaut*, NUCA at para 22.
36 *Irngaut*, NUCJ at paras 86-87.
37 *Irngaut*, NUCJ at para 90.
38 [1995] 4 SCR 55, 129 DLR (4th) 510 [*Jorgensen*].

8 the defendant relied on the official advice, and that reliance was objectively reasonable.

NUCJ and NUCA disagreed on whether Daniel Qattalik is an "appropriate official" for the purpose of the *Jorgensen* test, and whether Mr. Irngaut's reliance on Daniel Qattalik's advice was reasonable.

Whether an HTO Member is an "Appropriate Official"

The NUCJ held that Danial Qattalik, as an HTO board member, is an "appropriate official." Mr. Irngaut would normally consider HTO members responsible for advice about the *Wildlife Act*.[39]

The NUCJ reviewed the role of HTOs in Nunavut, and described HTOs as "the practical arm" of the *Wildlife Act* management scheme. The NUCJ explained that HTOs are established by the *Nunavut Agreement* and HTOs' powers and functions are given legislative effect by the *Wildlife Act.* HTOs "regulate and allocate the harvest at the community level in those instances where regulation is required [and] negotiate quotas and prohibitions where necessary…"[40]

The NUCJ noted that while HTOs have certain enforcement powers under the *Wildlife Act*, HTOs do not have the power to lay charges for violations of the Act (this power belongs to conservation officers under the Act). However, the NUCJ reasoned that *Jorgensen* does not require an "appropriate official" to have the power to enforce the law.[41] The accused may rely on the opinion or advice of an official who is responsible for the administration *or* enforcement of a law.[42]

Contrastingly, the NUCA would have held that the advice was not given by an "appropriate official."[43] The NUCA stated that Daniel Qattalik's status as an Elder gives his advice social credibility, but that Daniel Qattalik did not have any position with or authority from the Nunavut Department of Environment or the Nunavut Wildlife Management Board ("NWMB") which would make his advice binding on government.[44]

The NUCA stated that the *Nunavut Agreement* gives the NWMB primary responsibility for wildlife management in Nunavut. By contrast, HTOs have a limited role related to local quotas and hunting practices.[45] The NUCA stated that HTOs "do not grant permission to hunt" and have "no role in issuing moratoriums on hunting or

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39 *Irngaut*, NUCJ at para 119.
40 *Irngaut*, NUCJ at para 104.
41 *Irngaut*, NUCJ at paras 113-117.
42 *Irngaut*, NUCJ at para 116.
43 *Irngaut*, NUCA at para 28.
44 *Irngaut*, NUCA at para 30.
45 *Irngaut*, NUCA at para 32.

enforcement."[46] Based on the NUCA's interpretation of the *Jorgensen* framework, the "erroneous advice must usually come from the government agency directly involved in the relevant area of regulation."[47] In "narrow circumstances, advice from other official sources might suffice," including boards that have a mandate over the particular topic.[48]

The NUCA concluded that Daniel Qattalik did not constitute an "appropriate official" because there was no evidence:

- establishing that the Igloolik HTO has a mandate over the moratorium area[49]
- that the Igloolik HTO had taken on the role of advising hunters about hunting bans
- that an individual directors of the HTO were authorized to speak on behalf of the HTO,[50] or
- that Daniel Qattalik's opinion about the moratorium was an official statement as opposed to a private opinion.[51]

The NUCA concluded that "if officially induced error was recognized on the facts disclosed by this record, it would have a serious detrimental effect on the ability of the [NWMB] to manage wildlife in Nunavut."[52]

The NUCA and NUCJ disagreed on whether the Igloolik HTO was sufficiently involved in administering or enforcing the hunting ban to render an HTO member an "appropriate official" with respect to the ban.

We agree with NUCA that HTOs have a limited role under the *Nunavut Agreement*, particularly in relation to enforcement of harvesting prohibitions. HTOs' powers are set out in s. 5.3.7 of the *Nunavut Agreement*. These powers are given legal effect by the Nunavut Agreement implementation legislation (not by the *Wildlife Act*, as indicated by NUCJ). HTOs' powers under s. 5.3.7 relate to Inuit harvesting only. HTOs have the power to allocate Inuit harvest at the community level, but neither HTOs nor the NWMB have the power to enforce prohibitions or lay charges. Enforcement is based on decisions made by the Government of Nunavut (conservation officers) laying charges and

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46 *Irngaut*, NUCA at para 32.
47 *Irngaut*, NUCA at para 33.
48 *Irngaut*, NUCA at para 33.
49 *Irngaut*, NUCA at para 35.
50 *Irngaut*, NUCA at para 36.
51 *Irngaut*, NUCA at para 37.
52 *Irngaut*, NUCA at para 41.

prosecution by the PPSC. Given that the NWMB has no enforcement role under the *Wildlife Act* and *Nunavut Agreement* either, it is unclear how a finding that an HTO member is an "appropriate official" in the context of officially induced error would "have a serious detrimental effect on the ability of the NWMB to manage wildlife," as asserted by NUCA.

While both the NUCA and NUCJ reviewed the legislative framework and provisions of the *Nunavut Agreement* in their decisions, the NUCJ did not consider (and therefore NUCA did not review) the context in which the ban was made.

The hunting ban was made in response to a significant decrease in the Baffin Island caribou population.[53] Throughout 2013 and 2014, the Government of Nunavut worked with Baffin Island HTOs, including the Igloolik HTO, and other co-management partners to implement community-based harvesting restrictions and management actions for caribou on Baffin Island.[54]

On December 1, 2014, the Government of Nunavut made submissions to the NWMB and proposed an interim hunting ban on Baffin Island, among other management options. Other management options included the imposition of a Total Allowable Harvest, and HTOs enacting by-laws to prohibit or restrict hunting of members. In its submissions, the Government of Nunavut noted that "to date, no community-based management actions or harvest restrictions have been implemented, and there is some concern that not all Baffin HTOs have the capacity to implement restrictions on their members."[55]

On December 10, 2014, the NWMB resolved that a public hearing be held to consider the Government of Nunavut's proposed management actions. The NWMB also resolved that "considering the urgent and unusual circumstances, as well as the necessary time required to conduct an NWMB in-person public hearing, the NWMB invite the … Nunavut Minister of Environment to consider making and implementing a reasonable interim decision regarding caribou harvest management, as authorized by Section 5.3.24 of the *Nunavut Agreement*."[56] Section 5.3.24 provides that

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53 Government of Nunavut, "News Release: Minister initiates interim moratorium on Baffin Island caribou harvest" (19 December 2014), retrieved from: https://gov.nu.ca/sites/default/files/2014-12_nr26_interim_moratorium_on_baffin_island_caribou_-_eng.pdf.

54 Government of Nunavut, Department of Environment "Proposal for Decision Re Baffin Island Caribou" (December 2014), retrieved from: https://www.nwmb.com/en/public-hearings-a-meetings/public-hearings-1/2015-2/public-hearing-concerning-baffin-island-caribou-harvest-management/proposal-for-decision-and-supporting-documentation [Proposal for Decision].

55 Proposal for Decision at p 2.

56 NWMB, "Letter to Minister of Environment re Department of Environment Proposal for Decision Regarding Baffin Caribou Harvest Management" (10 December 2014), retrieved from: https://www.nwmb.com/en/public-hearings-a-meetings/public-hearings-1/2015-2/public-hearing-concerning-baffin-island-caribou-harvest-management/nwmb-relevant-documents-16 [NWMB Resolutions].

> When urgent and unusual circumstances require an immediate modification in harvesting activities, the Minister or the Minister's delegated agent may make and implement any reasonable interim decision. The NWMB shall conduct a full review as soon as practicable thereafter.[57]

The Government of Nunavut's Minister of Environment made the Order pursuant to section 5.3.24 of the *Nunavut Agreement*, consistent with NWMB's resolution.[58]

The NUCA's decision fails to consider the co-management context in which the interim ban was made. As noted by NUCA, *Jorgensen* provides that "government officials who are involved in the administration of the law in question will be considered appropriate officials."[59] Wildlife management decisions in Nunavut involve significant consultation with HTOs and other co-management partners. Co-management is not limited to the Government of Nunavut and NWMB. HTOs play an important role in co-management at the community level.

The Order was made to protect caribou until the NWMB could hold a full hearing, with input from HTOs, and make a management decision. However, Baffin Island HTOs including the Igloolik HTO were involved in years of discussions leading up to the Order. The *Nunavut Agreement* requires the NWMB to hold a public hearing before making a recommendation limiting Inuit harvesting (e.g. harvesting prohibitions). Given the urgency of the state of decline of caribou populations, and the time it would take to get a hearing together, the NWMB recommended that the Minister take management action (i.e., the Order).

The Government of Nunavut indicated in its press release for the interim ban that "Conservation Officers in Nunavut are working closely with community HTOs to monitor the situation" and enforce the interim ban while a long-term caribou management plan is developed.[60] HTOs therefore were involved in discussions leading up to the hunting ban, and played a role in administering the hunting ban.

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57 Nunavut Agreement, retrieved from: https://www.gov.nu.ca/sites/default/files/Nunavut_Land_Claims_Agreement.pdf.

58 Government of Nunavut, "News Release: Minister initiates interim moratorium on Baffin Island caribou harvest" (19 December 2014), retrieved from: https://gov.nu.ca/eia/news/minister-initiates-interim-moratorium-baffin-island-caribou-harvest.

59 Jorgensen at para 19 and 30; *Irngaut*, NUCA at para 33; See also *Irngaut*, NUCJ at para 116.

60 Government of Nunavut, "Backgrounder on Interim Ban" (19 December 2014), retrieved from: https://gov.nu.ca/sites/default/files/2014-12_nr26_interim_moratorium_on_baffin_island_caribou_-_eng.pdf; Government of Nunavut, "Questions and Answers: interim moratorium on Baffin Island caribou harvest" (19 December 2014), retrieved from: https://gov.nu.ca/sites/default/files/2014-12_qa_interim_moratorium_on_baffin_island_caribou_-_eng.pdf.

In *Jorgensen* the Supreme Court noted that the policy rationale for the defence of officially induced error is that "the state has done something which disentitles it to a conviction."[61] NUCA concluded that Mr. Irngaut's case was not "a case of the state approving conduct with one hand and seeking to bring criminal sanction for that conduct with the other."[62]

The concept of the "state" in Mr. Irngaut's case must be considered in light of the unique governance regime in Nunavut. Nunavut operates in a distinctive regulatory context developed through years of negotiation and implemented through the *Nunavut Agreement*. As noted by the NUCJ, "one of the central themes in the creation of Nunavut was that Inuit would have control over the harvesting of animals."[63]

The *Nunavut Agreement* provides for the creation of HTOs. HTOs represent Inuit communities within the co-management regime. Section 5.7.1 of the *Nunavut Agreement* provides that "in addition to the functions given to the NWMB, the exercise of harvesting shall be overseen by HTOs…" While NWMB has responsibilities in relation to harvesting across the Nunavut Settlement Area, HTOs oversee harvesting at the community level.

In our view, the NUCA's comments fail to reflect the role of HTOs in the co-management regime. Concluding that HTOs do not play a role in administering wildlife decisions in Nunavut, and that the Igloolik HTO did not play a role in administering the interim ban in particular, ignores the context of the co-management regime and the context in which the decision to impose the ban was made.

Whether it is Reasonable to Rely on the Advice of an Elder

The Supreme Court in *Lévis (City) v Tétreault; Lévis (City) v 2629-4470 Québec Inc.* held that: "It is not sufficient to conduct a purely subjective analysis of the reasonableness of the information. This aspect of the question must be considered from the perspective of a reasonable person in a situation similar to that of the accused."[64] The reasonableness of advice depends on several factors including the position of the official who gave the advice.[65] In *Jorgensen*, the Supreme Court further elaborated that "the official must be one whom a reasonable individual in the position of the accused would normally consider responsible for advice about the particular law in question…"[66]

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61 *Irngaut*, NUCJ at para 89, citing *Jorgensen* at para 37.
62 *Irngaut*, NUCA at para 37.
63 *Irngaut*, NUCJ at para 99.
64 2006 SCC 12 at para 27 [*Lévis*].
65 *R v Cancoil Thermal Corporation*, [1986] OJ No 290, 14 OAC 225.
66 *Jorgensen* at para 30.

The NUCJ held that it was reasonable for Mr. Irngaut to rely on the information about the ban in the circumstances. Among other things, the NUCJ held that it was "important that the provenance of the information was Daniel Qattalik – who, in addition to being a member of the Igloolik HTO, is an Elder."[67] The NUCJ clarified that it did "not suggest that a person is excused from breaking the law simply because an elder told them a certain activity is not illegal, when in fact it is illegal. I am simply saying the fact that Daniel was an elder is a factor to take into account when assessing whether Michael's belief in the information he received was reasonable."[68]

In contrast, the NUCA would have held that it was not reasonable for Mr. Irngaut to rely on the advice[69] because the advice was directly contrary to Mr. Irngaut's belief when he left Igloolik on the Ranger patrol. Further, George Qattalik was not seeking advice about the caribou hunting ban when he made the call back to the community, and it was not clear whether George Qattalik asked Daniel Qattalik for "official advice." Finally, it was unreasonable for Mr. Irngaut to rely on "second hand, unverified and information from someone with no obvious authority."[70]

The NUCA and NUCJ disagree on whether it was reasonable for Mr. Irngaut to rely on information provided by an Elder. The NUCA's comments suggest that Elders have "social credibility" but "no obvious authority."

With respect, we disagree. While Elders are not necessarily regulatory "officials" in the defence of officially induced error, within the cultural context in Nunavut, Elders hold significant authority and can be authoritative sources of information within the community. A reasonable individual in the position of the young Inuk hunter would normally consider Elders to be authorities on many aspects of community life, especially hunting. The NUCJ's decision attempts to reflect this cultural context in applying the law to a young Inuk hunter in Igloolik.

The defence of officially induced error, when applied strictly, does not function well in the co-management context. Formal co-management frameworks afford significant roles to the NWMB, to HTOs, and to Inuit. In Nunavut, it is reasonable for Inuit to rely on the advice of Elders, and particularly Elders with roles in land claims organizations involved in the regulation of harvesting at the community level. We suggest that in a co-management context the concepts of an "appropriate official" and "reasonable reliance" on information must be applied with flexibility and sensitivity to the legal and cultural context. Providing some latitude within the test for officially induced error is consistent with the special role afforded to co-management in the territories.

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67 *Irngaut*, NUCJ at para 134.
68 *Irngaut*, NUCJ at para 136.
69 *Irngaut*, NUCA at para 28.
70 *Irngaut*, NUCA at para 38.

In our view, the NUCJ's approach to applying the law should be encouraged. The NUCJ's approach helps to bridge the gap between the defence of officially induced error, a legal doctrine developed primarily in the provinces, and the cultural realities in Inuit communities.

John Donihee is Of Counsel with Willms & Shier Environmental Lawyers LLP. John may be reached at 613-217-8521 or by e-mail at jdonihee@willmsshier.com.

Raeya Jackiw is an Associate with Willms & Shier Environmental Lawyers LLP in Toronto. Raeya may be reached at 416-862-4827 or by e-mail at rjackiw@willmsshier.com.

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