

File No. Dossier 45-CDA-13-1-3-LUBICON LAKE BAND
Volume 9 From-De 88-01-16 To-À 88-04-15
VOLS ACCESSION NO. 89379

CLASSIFIED



CLASSIFIÉ



89379

45-CDA-13-1-3-LUBICON LAKE
Vol 9

SEMI ACTIVE

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TITLE—TITRE:

Social Affairs -
Human Rights -
Policy and Plans -
Canada -
Complaints to United Nations about violations in
Canada -
Lubicon Lake Band -

Affaires Sociales -
Droits de l'homme -
Principes et projets -
Canada -
Plaintes aux Nations Unies au sujet des violations
au Canada - Lubicon Lake Band -

Retention period-Période de retention:

20Y(5A-15D)J

DEPARTMENT
OF
EXTERNAL AFFAIRS

MINISTÈRE
DES
AFFAIRES EXTÉRIEURES

N.A.R.C.

FRC: 2008

FRCLOC: BOX: 870



Government
of Canada

Gouvernement
du Canada

CLOSED VOLUME VOLUME COMPLET

DATED FROM
À COMPTER DU

88-01-16

TO
JUSQU'AU

88-04-15

AFFIX TO TOP OF FILE - À METTRE SUR LE DOSSIER

DO NOT ADD ANY MORE PAPERS - NE PAS AJOUTER DE DOCUMENTS

FOR SUBSEQUENT CORRESPONDENCE SEE - POUR CORRESPONDANCE ULTÉRIEURE VOIR

FILE NO. - DOSSIER N°

45-CDA-13-1-3 - Lubicon Lake
Band

VOLUME

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ACTION
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OCI JUSTICE/LAW/WEISER/FREEMEN/HUDSON DE OTT

DISTR MINA IFB IMD IMU JLO

---COMITE DES DROITS DE L HOMME(CDH):COMMUNICATION DE LA BANDE
DU LAC LUBICON

TEL QUE DEMANDE, AVIONS TRANSMIS LES OBSERVATIONS DU GOUV DU CDA
RELATIVEMENT AUX REPOSES COMPLEMENTAIRES DU CHEF OMINAYAK ET DE
LA BANDE DU LAC LUBICON AU COMITE DES DROITS DE L HOMME QUI TIENT
SA 32EME SESSION ACTUELLEMENT A NYORK. MEME SI EXAMEN DE CETTE
QUESTION EST CONFIDENTIEL AVONS APPRIS QUE LE COMITE A DECIDE DE
RETARDER A SA PROCHAINE SESSION(DU 11 AU 29 JUILLET A GENEV)TOUTE
DECISION CONCERNANT CETTE COMMUNICATION PUISQUE LES NEGOCIATIONS
ENTRE LES PARTIES IMPLIQUEES CONTINUENT.

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ACC

COSSIER
FILE
45-Cda-13-1-3-Lubicon
LK Bend

The Rt. Hon. Joe Clark, P. C., M. P.
Secretary of State for External Affairs



Canada

Le très hon. Joe Clark, C. P., député
Secrétaire d'Etat aux Affaires extérieures

OTTAWA, ONTARIO
K1A 0G2

April 5, 1988

ACC	REF	DATE
547165		
FILE	DOSSIER	
45-10A-13-1-3- Lubicon Lk Band		

Dear Mr. Ominayak:

Further to our meeting on 21 January, 1988, I am writing to inform you that my officials are now reviewing the fact sheet on the Lubicon Lake Band situation which had been provided to our posts last year. As I indicated to you, we are prepared to review the text in light of your comments in order to ensure that there are no errors of fact or misrepresentation of view.

My officials have been passed the additional information provided by you. They have also taken note of the additional submission that you recently made to the U.N. Human Rights Committee. Any Canadian documentation or response will be sent to you upon its completion.

Yours sincerely,

Mr. Bernard Ominayak
Chief, Lubicon Lake Band
Little Buffalo Lake Band
Little Buffalo Lake, AB
3536 - 106 Street
Edmonton, Alberta
T6J 1A4



External Affairs
Canada

Affaires extérieures
Canada

MESSAGE

Accession/Référence L
File/Dossier 45-Cda-13-1-5

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SECURITY
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SUBJ/SUJ

---INTL CENTRE FOR HUMAN RIGHTS AND DEMOCRATIC DEVELOPMENT
 ON ARRIVAL OTT COIN SHOULD CONTACT VERONA EDELSTEIN CO-CHAIR OF
 WORKING GROUP FOR NEW CENTRE 996-3906/996-3906 WLD BE PLEASED
 TO MEET WITH HER.

file
[Signature]

DRAFTER/RÉDACTEUR	DIVISION/DIRECTION	TELEPHONE	APPROVED/APPROUVÉ
V. EDELSTEIN SIG	IFBH	6-3906	V. EDELSTEIN SIG

002118



External Affairs
Canada

Affaires extérieures
Canada

Accession/Référence
File/Dossier
45-CDA-73-1-3-
Lubicon Lake Band

MESSAGE

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JUSTICE/~~W~~LOW/WEISER/FREEMAN/HUDSON

DISTR BCB BFD BKD BTD BCP MINA/~~W~~ RWP RBP URR TADF RWDN RWR

PGP LGP

---LUBICON LAKE BAND DISPUTE WITH CDN AND ALBERTA GOVERNMENTS.

WE HAVE RECEIVED INFO THAT MEMBERS OF FRG GREEN PARTY RECENTLY VISITED LUBICON LAKE BAND IN ALBERTA AND THAT THEY MAY BE RAISING THE DISPUTE BETWEEN THE CANADIAN GOVERNMENT, ALBERTA GOVERNMENT AND THE LUBICON LAKE BAND IN THE GERMAN BUNDESTAG.

2. FOR THE PURPOSES OF ANSWERING ANY QUERIES THAT MAY BE PUT TO YOU ON ~~W~~ SUBJECT, THE FOLLOWING PROVIDES AN UPDATE OF THE INFORMATION CONTAINED IN THE FACT SHEET ON THE LUBICON LAKE BAND LAND CLAIM SENT TO YOU IN OCTOBER 1987.

3. ON FEBRUARY 3, 1988 THE CANADIAN GOVT FORMALLY REQUESTED THE GOVT OF ALBERTA TO PROVIDE RESERVE LAND FOR THE LUBICON LAKE BAND AND ADVISED ALBERTA THAT A REJECTION OF THIS REQUEST WOULD

.../2

DRAFTER/RÉDACTEUR	DIVISION/DIRECTION	TELEPHONE	APPROVED/APPROUVÉ
J. TROTTIER SIG	IMH	2-664	FD PILLARELLA SIG



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RESULT IN CANADA COMMENCING A LEGAL ACTION AGAINST ALBERTA REGARDING QUESTION OF LAND TO WHICH LUBICON BAND ENTITLED. CDN GOVT ALSO ASKED ALBERTA GOVT TO CONSIDER AS INTERIM MEASURE ~~WHL~~ IMMEDIATE TRANSFER TO BAND OF 25.4 SQ MILES OF LAND WITHOUT PREJUDICE TO ANY LEGAL ACTION. ALBERTA SUBSEQUENTLY AGREED TO INTERIM TRANSFER OF 25.4 SQUARE MILES AS RESERVE LAND FOR BAND, INCLUDING MINES AND MINERALS. THE CDN GOVT HAS ADVISED THE LUBICON BAND OF ALBERTA'S RESPONSE. TO DATE THE LUBICON BAND HAS NOT/NOT AGREED TO THIS PROPOSAL.

4. IN RESPONDING TO INQUIRIES ON LUBICON COMPLAINTS YOU SHD EMPHASIZE THE FOLLOWING POINTS: THE CDN GOVT HAS NEVER DENIED THAT THE LUBICON LAKE BAND HAS LEGITIMATE AND OUTSTANDING LAND CLAIM AND THE GOVT IS COMMITTED TO SEEKING A FAIR AND JUST RESOLUTION; THE DISPUTE CONCERNS QUANTUM OF LAND AND THAT IN TURN REVOLVES AROUND DISAGREEMENT REGARDING NUMBER OF BAND NUMBERS; THE LUBICON BAND HAVE REFUSED TO NEGOTIATE SINCE 1986 DESPITE THE FEDERAL GOVT URGING THEM TO DO SO; THE LUBICON BAND HAS BEEN PURSUING JUDICIAL REMEDIES IN CANADA AND CDN GOVT HAS ENCOURAGED THEM TO DO SO; THE CANADIAN GOVT IS PROVIDING \$1.13 MILLION A YR FOR COMMUNITY SERVICES, AND HAS PAID AN ^{cumulative} ~~AS CUMULATED~~ TOTAL OF \$1.5 MILLION FOR HOUSING; IN ADDITION \$1.7 MILLION HAS BEEN GIVEN TO BAND TO DEFRAY LEGAL COSTS OF PURSUING LAND CLAIMS.

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5. SHOULD THE MATTER OF THE OUTBREAK OF TUBERCULOSIS IN
SEPT 87 BE RAISED, YOU MIGHT NOTE THAT AS SOON AS T.B. WAS
IDENTIFIED, THE AUTHORITIES TOOK ACTION TO TREAT EVERYONE
INFECTED, THE DISEASE WAS SOON BROUGHT UNDER CONTROL AND NO ONE
IS NOW CONSIDERED TO BE INFECTED.



Indian and Northern
Affairs Canada

Affaires indiennes
et du Nord Canada

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MAR 22 1988
I M H

Your file Votre référence

Our file Notre référence

MAR 15 1988

Dr. Gerd O. Braumueller
Consul General
Federal Republic of Germany
2500 CN Tower
10004 - 104 Avenue
EDMONTON, Alberta
T5J 2J6

REC	NO.	DATE
FILE	DOSSIER	
45-Cdc-13-1-3-		
<i>Lubicon Lk Band</i>		

Dear Dr. Braumueller:

Further to our conversation of March 10, 1988, attached please find an up-to-date briefing on the Lubicon Lake Band Land Claim, an information circular on the land claim which includes facts about the community and an information circular from the Province of Alberta which has photographs of the community.

I hope this information is of assistance to you. Please call me if you have any questions.

Yours truly,

Dennis Wallace
Regional Director General
Indian & Inuit Affairs
Alberta Region
#305, 9942 - 108 Street
EDMONTON, Alberta
T5K 2J5

Attach

bec

SUSAN Norqueau
JAMES Trotter

BRIEFING MEMORANDUM

LUBICON LAKE BAND

LAND CLAIM

*This
is an
internal
memo.
Not for
public
release in this
form*

March 11, 1988

1. Lubicon Lake Band Land Claim

The Lubicon Lake Band Land Claim dates to the 1930s when fourteen Indian families living in the Lubicon Lake area of Northern Alberta petitioned for a new reserve on the basis of Treaty No. 8. This Treaty, signed between the Government of Canada and the Indians of Northern Alberta in 1899, provided for the surrender of traditional hunting grounds in exchange for the rights of aboriginal peoples while providing for orderly settlement. After the signing of Treaty No. 8, some Indian bands chose to remain nomadic and delay their acceptance of reserve land to a later date, as in the case of the indigenous populations in and around Lubicon Lake.

In 1940, the Government of Canada agreed in principle to the request for reserve lands in respect of one hundred and twenty-seven Indians living in the area of Lubicon Lake. At the same time, the Lubicon Lake band was recognized as a separate group entitled to education and medical assistance in accordance with treaty obligations and Federal Government policy. At that time, the Province of Alberta agreed to transfer one hundred and twenty-eight acres for each Indian (or a total of 25.4 square miles of Crown Land) to the Government of Canada. This territory was to become a reserve in accordance with the provisions of Treaty No. 8 and the Constitution Act, 1930. Due to Canada's war effort the survey and transfer of land did not occur and the reserve was not established.

2. Outstanding Litigation and United Nations Grievance

In April of 1980, the band filed an action in the Federal Court of Canada, requesting a declaration concerning their claim for land the use thereof and the benefits of the natural resources flowing therefrom. The claim was dismissed on jurisdictional grounds against the Government of Alberta and all oil and gas companies except Petro Canada. The claim against the Government of Canada and Petro Canada remains pending, but has been inactive since May of 1981.

In February of 1982 the band filed a Statement of Claim in the Court of Queen's Bench of Alberta against the Government of Alberta and certain corporate entities. It alleges aboriginal title to some eighty-five hundred square miles of land in Northern Alberta and seeks \$1 billion in compensation. In 1982 the band applied for a court injunction to stop oil and gas exploration in and around Lubicon Lake on lands claimed by the band. This application was rejected by the Alberta courts and later the Supreme Court of Canada in 1985. Subsequently this case has been pursued only intermittently by the band and is currently in abeyance.

- 2 -

In 1984 the Band also initiated proceedings against Canada before the United Nations Human Rights Committee. Basing its arguments on Article 1 of the International Covenant on Civil and Political Rights, the band's Chief alleged that Canada had violated the Lubicon's right to self-determination. In 1987 this communication was heard by the Human Rights Committee, and the argument based on Article 1 was rejected. However, a procedural decision was reached which allowed the communication to stand in respect of other possible grounds for complaint. Canada has requested reconsideration of this decision on admissibility on the basis that the band must exhaust its remedies in the Canadian courts prior to the United Nations Human Rights Committee examining the complaint.

3. Responsibilities of the Governments of Canada and Alberta

Canada is responsible for Indians and lands reserved for Indians pursuant to s. 91(24) of the Constitution Act, 1867.

In 1930, the Federal Government transferred to the Province of Alberta all Crown lands and minerals except for Indian reserves, national parks, etc. Alberta agreed in cooperation with Canada to set aside out of unoccupied Crown lands additional reserve lands so as to permit the fulfilment of treaty obligations by Canada. Alberta, however, retained the right to fifty percent of all monies gained from the sale, lease or other disposition of minerals on Indian reserves after 1930. (Constitution Act, 1930 - Sections 1, 10, 11).

In 1987/88 the Department of Indian Affairs and Northern Development will provide to the Band by way of direct and indirect contributions at a total of approximately \$1.3 million for programs including housing, community maintenance, social assistance, education, and band administration.

4. Position of the Band and Alberta on Land Issues

A. Band's Position

The Band's position is that its claim is based on unextinguished aboriginal rights to about 7,000 square miles of land. It has indicated, however, that it is willing to resolve its land entitlement on the same basis as other bands within the Treaty 8 provision of one square mile for each family of five. Based on the band's determination of its membership as being 457 persons, the band contends it is entitled to a reserve of 91.4 sq. miles. Moreover, the band maintains in instances where members, or their ancestors, have had their aboriginal rights satisfied by Métis scrip or have been counted in the creation of a reserve for another band, that no deduction should be made from the result of the above formula.

- 3 -

B. Province's Position

The Province of Alberta takes the position that this is a treaty entitlement matter only and does not recognize the band's claim of aboriginal rights. Deductions as referred to above should be applied against all four hundred and fifty-seven band members. These exclusionary rules have been used in past negotiations with other bands and will be used by the Province in all land settlements so that all Indians are treated equally.

5. Past Negotiations with the Band

The Government of Canada recognizes that the Lubicon Lake Band has a legitimate and outstanding land claim. Because of this recognition, the Government is committed to seeking a fair and just resolution of the claim in accordance with its legal obligations to the band, which flow from Treaty Eight. It is the Government's position that the best framework for attaining such a resolution is through negotiations with the band and the Province of Alberta.

In 1985 the Government of Canada appointed the Honourable E. Davie Fulton, a former Minister of Justice and Attorney General, to undertake an inquiry into the Lubicon Lake Band's claim. His interim report was submitted to the Governments of Canada and Alberta and the band in February, 1986. At the recommendation of Mr. Fulton, Canada made a payment of \$1.5 million to the band in January of 1986 to defray legal and other costs associated with the presentation of its claim.

Later in 1986, the Government of Canada requested negotiations to deal with the outstanding claim, and in June of that year the Band agreed to participate in bilateral negotiations with Canada through Canada's negotiator, Mr. Roger Tassé, a former Deputy Minister of Justice and Deputy Attorney General for Canada. At that time, the Band insisted and Mr. Tassé agreed that he would attempt separate negotiations with the Province of Alberta. Mr. Tassé and the band also agreed to use the Fulton Report as the basis for negotiations.

On July 8, 1986, after one meeting, the band withdrew from negotiations with Canada over the question of the amount of land to which the band is entitled under the provisions of Treaty Eight. The Government of Canada contended that the band was entitled to one hundred and twenty-eight acres for each of the two hundred Indians registered under the Indian Act. The band, on the other hand, maintained that, since it had control over its membership as provided for by Bill C-31 passed in 1985, it was entitled to one hundred and twenty-eight acres for each of four hundred and fifty-seven persons on its membership list, irrespective of whether some of these persons were eligible under the provisions of Treaty Eight for land purposes.

- 4 -

Because the Government of Canada has emphasized that negotiations are the best framework for settling the outstanding land claim, Canada made repeated efforts to get the band to the negotiating table. The Minister of Indian Affairs and Northern Development, the Honourable Bill McKnight, publicly urged the band in 1986 to resume negotiations, and in early 1987 wrote to the Chief of the band with a formal request to reopen the disrupted talks.

6. Current Negotiations - Fall 1987

A. Band and Canada

On October 10 and November 2, 1987, a new federal negotiator, J. Brian Malone, Q.C., of Calgary, met with the band's lawyer, James O'Reilly of Montreal, for preliminary discussions as to the form the proposed negotiations might take. The band's preconditions were as follows:

- (i) the Fulton Report would have to be made public by both governments;
- (ii) Mr. Fulton would have to be present at negotiations so as to report publicly to the House of Commons Committee on Aboriginal Affairs should negotiation fail;
- (iii) the Government of Alberta could not be party to direct negotiations with the band despite the fact that several items claimed by the Band were within the sole jurisdiction of Alberta;
- (iv) Canada could not release to Alberta a genealogy study completed by the band in 1984.

Both Alberta and Canada agreed that the written Fulton report could be made public. A legal opinion was sought as to whether a third party conciliator such as Mr. Fulton could have a reporting function to a parliamentary committee without affecting the positions of all parties in the several pending lawsuits. The legal advice received was that where a third party has a reporting function either in camera or publicly then the without prejudice protection afforded litigants who engage in settlement negotiations is lost. Accordingly, the Federal and Provincial Governments rejected the concept of a third party conciliator with a reporting function and no formal negotiations took place.

B) Canada and Alberta

In October of 1987, Alberta appointed Calgary lawyer John T. McCarthy as a negotiator to represent its interests.

In November of 1987 Canada attempted to reach an understanding with Alberta upon which the federal government could make an interim offer to the band. Canada asked Alberta to consider setting aside immediately

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35 square miles of unoccupied Crown land for a reserve; the offer being based on a partial genealogy study completed by Alberta. This offer would be without prejudice to the Lubicon Lake Band demonstrating that it was entitled to a greater land area either through negotiations with Alberta and Canada or by pursuing its rights in the court action which the band commenced in 1982. In other words, if the band could demonstrate by without prejudice negotiations or litigation that it was lawfully entitled to the 90 square mile area claimed, then the interim offer would not preclude that possibility. Included in the offer of a 35 square mile reserve area would be subsurface rights to petroleum and other resources which would be administered for the benefit of the band by the Federal Government as is the case with all other Indian bands. Alberta refused this proposal on January 8, 1988 demanding to review the band's genealogy study which contains the evidence necessary to verify the basis of a request by Canada to Alberta for reserve level.

While Canada has the constitutional responsibility over Indian affairs and reserve lands its policy is, that upon the reasonable request of a province, it will make all relevant records available to ensure complete disclosure of the basis upon which a demand for reserve land is made.

7. Present Action to Resolve this Claim

On December 22nd the Honourable Bill McKnight indicated to the press in Edmonton that he would not impose a final land settlement in this case although it is within the constitutional power of Canada to take such a step. He went on to say that Canada was not prepared to see this matter remain unresolved and if necessary a final settlement would be imposed by the courts. Mr. McKnight also stated that since Mr. Fulton had already given his written opinion on the resolution of this dispute, Mr. Fulton could not properly be considered as an impartial mediator.

On January 18, 1988, Mr. McKnight wrote to the band to report on the failed negotiations with the province. The Minister stated that future negotiations on the land issue must involve Alberta at the negotiating table. In addition the band must be prepared to release to the province all relevant information including a genealogy study completed by the band in 1984. This study deals with the ancestry of band members and identifies their predecessors who have already received land or money in lieu of land in earlier settlements. The band refused the Minister's request on January 21, 1988.

On February 2, 1988, Mr. McKnight delivered a letter to the Province of Alberta requesting land for a reserve noting that the absence of a positive response would lead to a court imposed settlement involving Canada, Alberta and the band.

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On February 10, 1988 the Government of Canada negotiator wrote to the band requesting that they come to the table to negotiate all non land issues.

On February 29, 1988, the Lubicon Lake Band lawyer indicated in a letter to the Government of Canada that the Lubicon Band may be willing to consider an interim reserve. The Band lawyer also indicated that Band were not prepared to negotiate non land issues.

On March 3, 1988, the Government of Canada advised the band that the Government of Canada and Province of Alberta had reached an interim agreement on the Lubicon Lake Band land claim. Alberta is willing to transfer to Canada a 25.4 square-mile area, including mines and minerals. This transfer of land would be 'without prejudice' to the positions of the parties involved, and would not affect the right of the Band to seek additional reserve lands through negotiation or court action.

On March 11, 1988, the Lubicon Lake Band rejected the offer for an interim reserve.

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THROUGH

George Hall
(919) 997-8400



Information

Information Sheet No. 10

February, 1988

LUBICON LAKE BAND LAND CLAIM

Summary

The outstanding land claim of the Lubicon Lake Indian Band has been recognized by the Governments of Canada and Alberta. The claim remains unresolved, however, despite a number of attempts to come to grips with key issues and principles surrounding it.

Negotiations between the band and Canada have been hindered by the band's insistence that the Government of Alberta had no role in the process. In addition, the band has claimed a membership which it refused to support by releasing its own genealogical study to Alberta.

The Government of Canada has made **repeated offers** to the band to return to the negotiating table. Since the band refused, it was necessary to begin negotiations with the Government of Alberta separately in order to come up with an offer.

The band has devoted much of the past four years to a variety of national and international public relations activities designed to call attention to its grievances, and it has launched legal actions which are still pending. The band has called for a boycott of the 1988 Calgary Winter Olympic Games and a related cultural exhibit to be held at the Glenbow Museum.

Lubicon Lake Band land claim

The Lubicon Lake Band land claim dates to the 1930s, when 14 Indian families living in the Lubicon Lake area of northern Alberta petitioned for a new reserve on the basis of Treaty 8 of 1899. This treaty, signed between the Government of Canada and the Indians of northern Alberta, provided for the surrender of traditional hunting grounds in exchange for reserves and other privileges, in the interests of recognizing the rights of aboriginal peoples while providing for orderly settlement.

- 2 -

After the signing of Treaty 8, some Indian bands chose to remain nomadic and delay their acceptance of reserve land to later dates, as in the case of the indigenous populations in and around Lubicon Lake.

In 1940, the Government of Canada agreed in principle to the request for reserve lands for the 127 Indians living at Lubicon Lake and nearby Little Buffalo Lake. At the same time, the Lubicon Lake Band was recognized as a separate group entitled to education and medical assistance in accordance with Treaty obligations and federal government policy.

At that time, the Province of Alberta agreed to transfer 128 acres for each Indian (or a total of 25.4 square miles of Crown land) to the Government of Canada. This territory was to have become a reserve in accordance with the provisions of Treaty 8. Because the transfer of land did not occur, however, the reserve was not established, and in the 1960s the land ceased to be set aside for the purposes of the band.

In April of 1980, the Band filed an action in the Federal Court of Canada, requesting a declaration concerning their land claim, the use thereof and the benefits of the natural resources flowing therefrom. The claim was dismissed on jurisdictional grounds against the Government of Alberta and all oil and gas companies except Petro-Canada. The claim against the Government of Canada and Petro-Canada remains pending, but has been inactive since May of 1981.

In February of 1982 the band filed a Statement of Claim in the Court of Queen's Bench of Alberta against the Government of Alberta and certain corporate entities. It alleges aboriginal title to some 8,500 square miles of land in Northern Alberta and sought \$1 billion in compensation. In 1982 the Band applied for a Court injunction to stop oil and gas exploration in and around Lubicon Lake on lands claimed by the band.

This application was rejected by the Alberta Courts and later the Supreme Court of Canada in 1985. Subsequently this case has been pursued only intermittently by the band and was last amended in March 1987.

The band's public relations activities

After its initial attempts to pursue its claim by way of the Canadian court system, the band turned to national and international public relations activities. It invited groups of Canadian church persons and others sympathetic to the Indian cause to visit lands under dispute, and began to allege genocidal policies by Canadian authorities.

- 3 -

In 1983 and 1984, at the instigation of the band, the World Council of Churches took up the Lubicon Lake Band cause, and wrote to federal and provincial governments with specific complaints. In response to the allegations of the World Council, the Ombudsman of Alberta, Mr. Randall Ivany, was invited to undertake an investigation.

The Ombudsman, an expert totally independent of the provincial government, published his report in August 1984, after direct investigation by his staff. He concluded that the unresolved land claim was "the underlying issue" and hoped that it could be resolved. But, with respect to the specific charges of Canadian groups and the World Council of Churches, he concluded that "there is no evidence to support most of the charges which have been made".

With respect to the serious allegation of cultural genocide, he wrote: "I have not been provided with any evidence, either from the members of the band or from other sources, that could substantiate such a serious accusation."

In 1984 the band also initiated proceedings against Canada in the United Nations Human Rights Committee. Basing its arguments on Article 1 of the International Covenant on Civil and Political Rights, the head of the band, Chief Bernard Ominayak, alleged in a communication that Canada had violated the Lubicons' right to self-determination. In 1987 this communication was heard by the Human Rights Committee, and the argument based on Article 1 was rejected. However, a procedural decision was reached which allowed the communication to stand in respect of other possible grounds for complaint.

The Government of Canada is now requesting reconsideration of the decision on admissibility, and the Committee will not decide on the merits of the substance of the contention for some time.

In 1985 the band also helped to orchestrate the delivery to Lubicon Lake of emergency food aid, following allegations that the Band was in impoverished circumstances and near starvation. The donor group, made up largely of Church persons from Spokane, Washington, in the United States, brought truckloads of food, but did not find the Indian in the condition they expected. Instead, they found substantial dissension between the Lubicon Lake Band members and other natives and non-natives who were embarrassed about the media episode and resentful that the emergency assistance was not destined to the poor and needy.

- 4 -

One year later, in April and May, 1986, the band announced that it would seek a boycott of the 1988 Calgary Winter Olympic Games and the landmark cultural exhibit associated with the Games at the Glenbow Museum. In the Fall of 1986 and the Spring of 1987, band representatives and non-native advisers travelled to Western Europe to meet support organizations and to rally support of its cause.

Early in 1987 the band also threatened legal action to halt the 1988 Winter Olympics, and suggested the possibility of disrupting the Olympic torch relay across Canada, which passed through a number of Indian reserves. Despite the fact that both the Winter Olympics and the Glenbow exhibition are proceeding as scheduled, the band has decided on a reinvigorated boycott campaign, using the three-year-old slogan "The Last Stand of the Lubicon".

Towards a negotiated settlement

The Government of Canada recognizes that the Lubicon Lake Band has a legitimate and outstanding land claim. Because of this recognition, the Government is committed to seeking a fair and just resolution of the claim in accordance with its legal obligations to the band, which flow from Treaty 8. It is the Government's position that the best framework for attaining such a resolution is through negotiations with the band and the Province of Alberta.

In 1985 the Government of Canada appointed the Honourable E. Davie Fulton, a former Minister of Justice and Attorney General, to undertake an inquiry into the Lubicon Lake Band's claim. His final report was submitted to the Governments of Canada and Alberta and the band in February, 1986. At the recommendation of Mr. Fulton, Canada made a payment of \$1.5 million to the band to defray legal and other costs associated with the presentation of its claim.

Later in 1986, the Government of Canada requested negotiations to deal with the outstanding claim, and in June of that year the band agreed to participate in bilateral negotiations with Canada through Canada's negotiator, Mr. Roger Tassé, a former Deputy Minister of Justice.

At that time, the band and Mr. Tassé agreed that he would also undertake parallel negotiations with the Province of Alberta, because, under Canada's constitutional arrangements, Alberta would have to be a party to at least some elements of a final agreement. Mr. Tassé and the band also agreed to use the Fulton Report as a guide to negotiations.

- 5 -

On July 8, 1986, after only one meeting, the band withdrew from the bilateral negotiations over the question of the amount of land to which the band is entitled under the provisions of Treaty 8. The Government of Canada contended that the band was entitled to 128 acres for each of the 200 Indians registered under the Indian Act.

The band, on the other hand, maintained that, since it had control over its membership as provided for by Bill C-31, it was entitled to 128 acres for each of 457 persons on its membership list, irrespective of whether some of these persons were eligible under the provisions of Treaty 8 for land purposes.

Because the Government of Canada has emphasized that negotiations are the best framework for settling the outstanding land claim, Canada has made repeated efforts to get the band to the negotiating table.

The Minister of Indian Affairs and Northern Development, the Honourable Bill McKnight, publicly urged the band in 1986 to resume negotiations, and in 1987 he wrote to the Chief of the band with a formal request to reopen the disrupted talks.

With respect to a negotiated settlement, the position of the Canadian Government has been clear for the past two years. Canada believes that a framework is in place which will permit productive negotiations leading to a solution.

Canada has taken the lead in urging a return to the bargaining table, and the government is prepared to negotiate at any time with the band or its representatives.

Present socio-economic situation of the band

While the band has endeavoured to portray itself as impoverished and near extinction, this is hardly the case. The Government of Canada now provides to, or pays on behalf of the band, about \$1,300,000 annually for the delivery of social services to band members.

Among the services provided are the following:

- social assistance, education, housing, band governance and administration, including community maintenance, economic development, and adult training.

The level of social services delivered to band members is comparable to those provided to other Indians in Canada and is comparable to those available to all Canadians.

- 6 -

For instance, social assistance payments to band members are the same as those available to all residents of the Province of Alberta, both Indian and non-Indian. Also the 48 school age members of the band are offered the same standards of education as non-Indian Albertans.

As Indians, members of the Lubicon Lake Band also have access to other federal social programs not generally available to other Canadians. These include free medical and dental care and free post-secondary education.

It should also be noted that band members also have full access to all social programs universally available to all Canadians.

These in part include:

- family allowance payments, unemployment insurance benefits, old age pensions, the Canada Pension Plan and, where applicable, Veteran's benefits.

Recent developments

In the Fall of 1987, J. Brian Malone, a Calgary lawyer, was appointed as federal negotiator. After repeated efforts to bring band negotiators back to the table, Mr. Malone began negotiations with the Province of Alberta regarding the creation of a reserve for the Lubicon Band.

On December 22, 1987 the Honourable Bill McKnight met with the Honourable J. Horsman, Attorney-General for Alberta with a proposal for an interim settlement of the band's claim for a reserve. This proposal would have been without prejudice to the band's right to further its claim either through negotiations or its existing court actions. In early January 1988, Alberta advised that an interim settlement was not possible because it felt that tripartite negotiations and sharing of geneological information were necessary for its participation in any agreement.

Also on December 22, 1987, Mr. McKnight indicated to the media that since Mr. Fulton has already given his written opinion on the resolution of this dispute, Mr. Fulton could not properly be considered as an impartial mediator.

On January 18, 1988, Mr. McKnight wrote to the band suggesting that the three parties resume negotiations or that the band allow the federal government share all geneological information with Alberta. (The federal government and the band completed a geneological study in 1984. It identified band members or their ancestors who had already received land or money in lieu of land in earlier settlements.) The band refused the Minister's request on January 21, 1988.

- 7 -

On February 3, 1988, Mr. McKnight delivered a letter to the Province of Alberta requesting land for a reserve noting that the absence of a positive response would result in the matter being referred to the courts.

LUBICON LAKE BAND

GOVERNMENT PROGRAMS AND BENEFITS

- As residents of Canada the Lubicon Lake Indians receive family allowance payments, unemployment insurance benefits, old age pension, the Canada Pension Plan and, where applicable, veterans' benefits;
- as status Indians, members of the Lubicon Lake Band have access to other federal programs generally not available to other Canadians. They receive free education, housing, medical and dental care. They also receive major contributions to community infrastructure maintenance, economic development, adult training and band government administration.

HOUSING

- Since 1981 over \$1 million has gone from the Government of Canada to the Lubicon Lake Band to purchase construction materials for homes;
- labour costs have generally been covered by employment and training grants;
- 54 new houses have been constructed by the Government of Canada and the Province of Alberta in the past 10 years in the hamlet of Little Buffalo;
- funds are also provided for housing renovations. The general maintenance of a home is the responsibility of the owner;
- the Government of Canada pays for the permits and taxes of lots occupied by band members.

EDUCATION

- Indian and Northern Affairs Canada (INAC) pays for basic education and early childhood services of Lubicon Lake Band Indian children;
- the schools are under the administration of the Peace River School Division;

- 8 -

- the Government of Alberta has recently built **two new schools** in communities very close to Little Buffalo. In 1985 the Government of Alberta offered to build a new school in Little Buffalo. The Lubicon Lake Band refused to allow a provincial school to be built.

SOCIAL ASSISTANCE

- A family of 6 (2 adults and 4 children) on social assistance have:
 - their actual shelter costs paid for;
 - their full and utilities paid for; and
 - \$813.00 provided a month for food and household expenditures.
- the Lubicon Lake Band members on social assistance receive the equivalent benefits given to any Albertan on social assistance;
- material distributed by the Lubicon Lake Band in Europe indicate over 95 per cent of the Lubicons are on social assistance;
- material distributed by the Lubicon Lake Band in Canada claims the social assistance rate over the last few years increased by 90 per cent;
- INAC statistics show that in May 1981, 53 Lubicon Indians were dependent on social assistance and in August 1987, 71 registered Lubicon Indians were dependent of social assistance. (Approximately 10 families and seven single Indians receive social assistance.)

WATER SERVICES

- Little Buffalo has a water supply. The water comes from a reservoir which collects surface runoff. The water is treated to meet Alberta environmental standards and is stored in a central location;
- Indian and Inuit Affairs program purchased a water-toting vehicle for the Lubicon Lake Band to allow water delivery to individual homes;
- in 1987 the governments of Canada and Alberta (through the Canada/Alberta Northern Development Agreement) approved \$1.5 million for a water treatment plant in Cadotte Lake, a community only 10 km from Little Buffalo. The treatment plant is expected to be built in the spring of 1988;

- Alberta will be hauling water from Cadotte Lake to Little Buffalo once the treatment plant is completed. The hauled water will be stored in a reservoir;
- Alberta has requested that the Chief confirm the location preferred by the band for a treated water reservoir.

POWER

- Power is provided to the community of Little Buffalo by Alberta Power.

TOTAL INAC CONTRIBUTION TO LUBICON LAKE BAND:

According to departmental audit analysis dated January 21, 1988, total (direct and indirect) contributions was :

1984/85	\$1,056,800	approximately \$5,000 per capita
1985/86	\$1,058,700	approximately \$5,000 per capita
1986/87	\$1,059,100	approximately \$5,000 per capita

forecast for 1987/88 total is expected to be:

1987/88	\$1,297,400	approximately \$6,200 per capita
---------------	-------------	----------------------------------

(Population used in calculation is 218 being the total band population recognized by INAC)

HEALTH ISSUES

Tuberculosis Outbreak

- Current status as of January 5, 1988:
 - 358 natives received skin tests;
 - 107 were positive;
 - 37 of the positive were active cases which require treatment of two or more drugs;
 - 105 natives have been receiving treatment of one drug.
- If these people went untreated, they would have a 10 percent chance of developing active tuberculosis; no one is infectious because they all are being treated.

- 10 -

- The Lubicon Lake Band claims that 91 people have been affected by tuberculosis. This is confusing and could imply that 91 people have active tuberculosis as opposed to the 37 cases that are being treated as active cases;
- Medical Services Unit, Health and Welfare Canada, is providing the following services in the community:
 - lay dispenser twice a week;
 - full time community health worker located in Little Buffalo;
 - field training for the Little Buffalo student in community health who is expected to replace the current health worker in June 1988;
 - the funds for a vehicle and driver to establish a health transportation system from Little Buffalo to Peace River
 - two doctors visiting the community once a month;
 - one full time and a second, part time, nurse in the community; and
 - a new trailer to use as the Health Care Centre.

EMPLOYMENT AND TRAINING

- Over one-half million dollars (\$600,000) has been given to the community by the Government of Canada for employment and training programs in the last two years;
- ten apprentice carpenters are receiving training from the combined funds of Indian and Northern Affairs Canada and Canada Employment;
- \$85,000 has been given to the Lubicon Lake Band over the last three years to assist them to investigate opportunities to work with the oil and gas industry;
- the community of Little Buffalo receives funds from the federal government to hire one person whose job is to establish contacts with potential employers and link unemployed workers with employment opportunities.

MEMBERSHIP

- The Lubicon Lake Band has added, at a significant rate, names to its membership in the last eight years:
 - approximately ----- 1980 Statement of
100 Indian Claim to the Federal
100 other members Court of Canada;
 - 250 total ----- Statement of Claim
(150 Indians against the Alberta
100 other members) Government and 11 oil
companies;
 - in excess of 400 ----- 1986/87 Fulton
report;
 - 347 ----- 1984 joint INAC/Band
membership study;
 - 458 ----- 1987 amended
Statement of Claim;
- an essential document for determining land entitlement is the genealogical survey conducted by INAC with the assistance of the Lubicon Lake Band. It contains the evidence to support the claim;
- the Lubicon Lake Band will not permit the Department to share the genealogical study with Alberta as a part of the negotiations for land entitlement;
- Mr. Fulton's report mentions this as a major obstacle when he says "the Band's withholding of consent still represents a substantial obstacle to direct progress, necessitating a considerable detour."

NEGOTIATIONS

- In 1986 the Government of Canada gave the Lubicon Lake Band \$1.5 million to defray legal and other costs associated with presenting its claim;
- in 1986 the Government of Canada offered the Lubicon Lake Band 40 square miles of land for a reserve, with full mineral rights plus additional compensation, to establish a new community;
- the Lubicon Lake Band accepted the \$1.5 million but in 1986 broke off negotiations with the Government;

- 12 -

- on January 18, 1988 the Hon. Bill McKnight wrote to Chief Ominayak requesting:
 1. that tripartite talks with both governments and the band begin in order that a final settlement could be negotiated;
 2. that the band give the government of Canada permission to release the genealogical study to the province.
- On January 21, during a meeting with the Minister of Indian Affairs and Northern Development and the Secretary of State for External Affairs, the band rejected the government's proposal.
- On February 3, 1988, Mr. McKnight delivered a letter to the Province of Alberta requesting land for a reserve noting that the absence of a positive response would result in the matter being referred to the courts.

Information on the Lubicon Lake Band is one of a series of information sheets produced by the Communications Operations Directorate, Indian and Northern Affairs Canada. For more information write:

Public Information Kiosk
Indian and Northern Affairs Canada
Ottawa, Ontario
K1A 0H4
(819) 997-0380

1982 In January, the federal government met with the Band and the province separately to explore the possibility of a negotiated resolution within the framework of the federal land claims process.

In February, the Lubicon Band initiated a second court action against the Alberta government and 11 oil companies. Again, the Band, now claiming to represent approximately 250 individuals, claimed title to 25,000 square miles/64,000 square kilometres of land, but this time sought a permanent injunction against all resource development activity within the area. As well, the Band sought \$700 million in compensation and, subsidiarily, a reserve of 60 square miles/154 square kilometres and \$200 million in compensation.

In September, the Lubicon Band filed an application for an interim injunction against the Government of Alberta and 11 oil companies to prevent any resource exploration or development within an 8,500 square-mile/21,760 square-kilometre area of north-central Alberta.

1983 In November, the Alberta Court of Queen's Bench denied the Lubicon Band's application for the interim injunction on the basis of insufficient evidence that "a way of life" was being destroyed by the defendants. The Band subsequently appealed this decision.

1983 A campaign conducted by the Band resulted in allegations being made against Alberta government officials in regard to the treatment of Lubicon Lake Band members. These charges resulted in an independent investigation in 1984 by the Ombudsman of Alberta, the Reverend Dr. Randall Ivany. In a special report titled "Complaints of the Lubicon Lake Indian Band", Dr. Ivany concluded that there was no evidence, either from members of the Band or from other sources, to support the allegations. He also found the Band's charge of "cultural genocide" to "have no factual basis".

1984 In May, the Alberta government indicated that it would be prepared to include subsurface mineral rights in future Treaty land entitlement settlements, thereby removing one of the major perceived obstacles to resolving the Band's land claim.

Shortly after the 1984 federal election, the federal minister of Indian and Northern Affairs appointed E. Davie Fulton to inquire into the claims of the Lubicon Band and to make recommendations to the federal minister.

1985 The Alberta Court of Appeal, in January, upheld the decision of the Court of Queen's Bench denying the Lubicon Band's application for an interim injunction against the Government of Alberta and 11 oil companies. Again, the court was of the view that there was insufficient evidence supporting the Band's allegations of the destruction of a way of life and livelihood. Subsequently, the Supreme Court of Canada twice denied leave for further appeal by the Band (March and May, 1985).

In October, following discussions with E. Davie Fulton, the Alberta government advised the federal minister that Alberta was prepared to transfer to the federal government the 25.4 square mile/65 square kilometre area which had been discussed in the 1940s, including mines and minerals, to enable the federal government to establish a reserve for the Lubicon Band. Following a reply from the federal minister indicating that the land offer was acceptable to the federal government, Alberta, on December 10, made its offer public. It was rejected immediately by the Band.

1986 In January, the federal government provided the Lubicon Band with \$1.5 million to cover the costs the Band had incurred to that date in pursuing its claims.

In April, the Band sued the Government of Canada for \$1.5 million to cover its costs incurred to date, plus an additional \$750,000 to cover future costs.

The federal minister, in June, appointed Mr. Roger Tasse, the former Deputy Minister of Justice, to negotiate a possible settlement of the Band's claim. At the Band's insistence, the Alberta government was excluded from the negotiations.

In July, after only preliminary discussions, the Band broke off negotiations with the federal government.

In November, the Band amended its April suit against the Government of Canada to \$1.4 million for unpaid liabilities, plus a further \$2 million for anticipated costs related to its claims.

In the same month, the Lubicon Band focussed its attention on initiating a boycott of the XV Olympic Winter Games in 1988, in Calgary. Members and representatives of the Band travelled to Europe to launch a campaign discouraging other countries and their athletes from participating in the Games, and museums from contributing to *The Spirit Sings*, a Native cultural exhibit planned by the Glenbow Museum as part of the Olympic Festival of the Arts.

On December 23, the Cree Band of Fort Chipewyan and the governments of Alberta and Canada announced the successful conclusion of that Band's claim—the largest outstanding treaty land entitlement claim in Canada. The productive tripartite negotiations resulted in the (approximately) 1,000-member Band receiving about 20 square miles/51 square kilometres for the establishment of reserves at nine locations favoured by the Band; plus a cash settlement of \$26.5 million in compensation and in lieu of additional acreage not required by the Band.

1987 In January, media reports indicated that the members of the Lubicon Band—in spite of its lack of legal authority over provincial Crown lands—had voted to evict, with force if necessary, crews engaged in what the Band alleged to be unauthorized oil and gas exploration activity, particularly within a 90 square mile/230 square kilometre area the Band claimed as a reserve.

In a notice of motion filed in Court of Queen's Bench in March, the Band applied to amend its statement of claim to 92 square miles/236 square kilometres as a reserve. This time, the Band claimed to be representing 458 individuals, (including about 250 individuals who are currently not registered as Indians under the federal Indian Act).

In May, members and representatives of the Band again travelled to Europe in a second attempt to discourage countries and their athletes from participating in the Olympics, and museums from contributing to *The Spirit Sings*.

To encourage resolution of the Lubicon claim, the federal and provincial governments each appointed negotiators in October. The Fulton report was released by the federal government in the interest of fostering a positive climate within which negotiations could begin. The Band rejected the suggestion of tripartite negotiations.

Current situation

1988 The Glenbow Museum exhibit, *The Spirit Sings*, opened January 15. The exhibit includes about 650 Native artifacts on display from more than 90 museums and private lenders in 20 countries. *The Spirit Sings* is widely acclaimed as a tribute to the spirit, values, and cultural traditions of Canada's Native peoples.

The federal minister, in January, formally requested that the Chief agree to tripartite land claims negotiations, and to permit Canada to exchange genealogical (family tree) information with Alberta so that this information could accompany a formal request to Alberta by Canada for reserve land. The Chief immediately responded by refusing to have Alberta participate in negotiations and refusing to share the genealogical basis for the Band's land claim. (Recent land claim negotiations with other Alberta Indian Bands have been tripartite.)

On January 23, the Calgary Herald reported that the Lubicon Band Chief had warned that "...Indians and non-natives in Alberta, Saskatchewan and Quebec have agreed to set up a resident army on Lubicon territory...". The Band's adviser indicated "...provincial fish and wildlife officers would be subject to arrest and trial..." for entering a 4,000 square mile/10,240 square kilometre area, the vast majority of which is public Crown land.

On February 4, following the Band's refusal to negotiate and to share its genealogical data, the federal minister made a formal request to Alberta. He asked that provincial Crown lands be transferred to the Government of Canada based on a federal formula to determine the number of Band members entitled to reserve land. If agreement cannot be reached between the two governments on a population count, assistance of the courts may be sought.

February 10, 1988

Alberta

GOVERNMENT OF ALBERTA

Contact: Communications
403/427-4806

Fax: 403/427-1354



**Lubicon Lake and
Little Buffalo Area:
A Pictorial Profile**

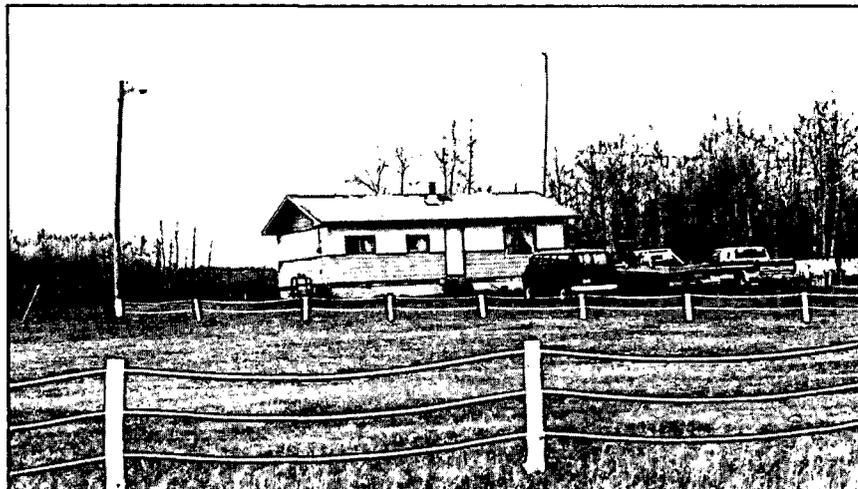
*Some homes are located quite near Little Buffalo Lake.**

Little Buffalo is a typical, small northern Alberta settlement of Indian and Metis residents. The community is one hour's drive east of Peace River — a town of 6,300 people — which offers shopping, other commercial and social services, and is linked to larger centres by paved highways, a modern airport and bus service.

Early inhabitants of the Lubicon Lake area included Indians, and Metis pioneer traders and farmers. Today, residents pursue a variety of activities including farming, livestock and buffalo raising, hunting and trapping.

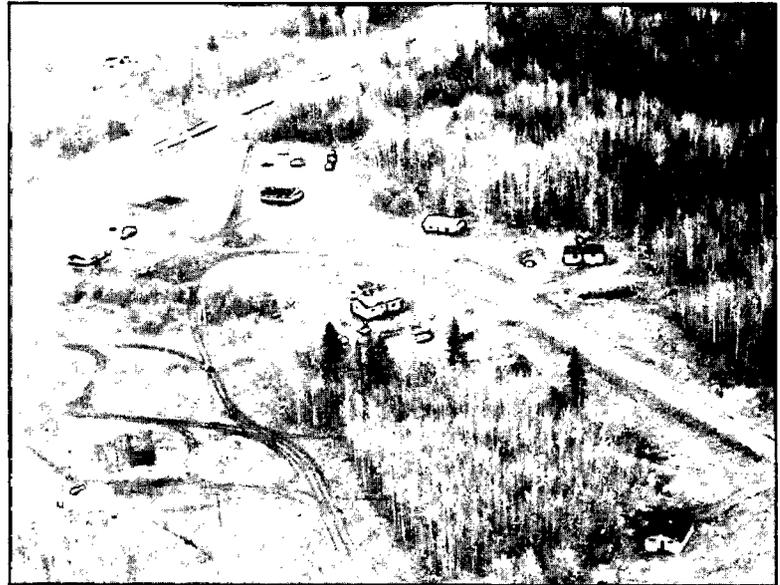
The Lubicon Lake Band has an administration complex in Little Buffalo, and operates the general store and gas pumps.

Below: Most residents in Little Buffalo live in relatively new houses and, like others in small northern communities, benefit from electrical power and telephone service. Right: A buffalo game farm is located on a large tract of land on the outskirts of the community within the 25.4 square mile area which Alberta has offered as a reserve site.*

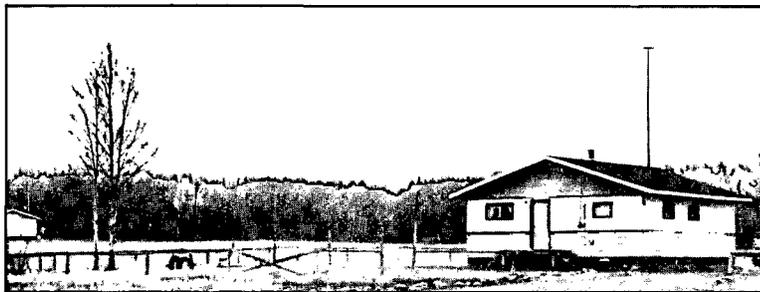




*Community members are in touch with events in Alberta, Canada and the world through radio, and television via antennae, or — like this home — satellite dish-reception.**



*Government grants have been provided for more than 50 houses in Little Buffalo. In October, 1987, four new houses were under construction. Right: from the air, Little Buffalo looks very much like many acreage developments throughout the province. Roads to and within the settlement are well maintained.**



Another typical house in Little Buffalo; some have wood-burning stoves, some use fuel oil.



This abandoned trading post was closed a number of years ago. The original trading post was established by a Metis settler in the early 1900s.



Horses are among the livestock being raised.

*Prints of these photographs are available upon request.

Alberta

GOVERNMENT OF ALBERTA
Contact: Communications
403/427-4806

February, 1988

002147

CANADA'S POSITION ON THE LAND CLAIM OF THE LUBICON LAKE BAND

Negotiations to provide the Lubicon Lake Band with a reserve have been at an impasse because of failure to resolve the basic issue of how many people should be counted in determining the band's entitlement to land.

The present federal government inherited this long-standing dispute and has attempted to bring it to a conclusion. In 1986, the band was granted \$1.5 million for legal and other costs in addition to previous loans of \$240 thousand it had received to research its claim.

There has been little progress in the 1982 court case launched by the band against the Province of Alberta. Repeated attempts by the federal government to bring the parties to the negotiating table have failed.

The three parties involved — the Lubicon Lake Band, the Government of Alberta and the Government of Canada — have been unable to agree on how to settle the claim.

Alberta believes the band's claim can only be resolved by sharing all genealogical

information in three-party negotiations, an approach rejected by the band.

The federal government has therefore decided to end the impasse by making a formal request to Alberta for reserve land. The request is based on the present day population of the band, less any lands which have previously been made available to the band members or their ancestors.

Should there be no agreement on this request, Canada will seek the assistance of the courts.

What is the basis of the Lubicon Lake Band's Claim?

Members of the Lubicon Lake Band are treaty Indians subject to the provisions of Treaty 8. The federal government recognized the band in 1940 and, after World War II, began providing band members with the benefits all Indians of Canada are entitled to.

In the past year, for example, the federal government has provided about



Affaires indiennes
et du Nord Canada

L'honorable Bill McKnight
Ministre des Affaires indiennes
et du Nord Canadien

Indian and Northern
Affairs Canada

The Honourable Bill McKnight
Minister of Indian Affairs
and Northern Development

\$1.3 million worth of housing, education, social welfare, health and other services including band support payments for honoraria to the Chief and band councillors and salaries for administrative staff. The band receives additional services from the provincial government.

The federal government recognizes the band's need for a reserve. Until it can be created, economic development projects and the building of the physical community — roads, water and sewage systems, schools, a health care centre and other facilities — cannot be permanently established through federal programs.

The Responsibility of the Province of Alberta

Treaty 8 was signed in 1899 before the Province of Alberta was created. The federal government alone was responsible for Crown Lands, and it set aside reserves for the exclusive use of Indians. Today, under the Constitution Act of 1930, the management and administration of Crown Lands are the responsibility of the province. Therefore, the federal government alone cannot provide lands for the exclusive use of Indians, as it did before 1930. The provincial government has to account to the people of Alberta for the amount of land transferred from provincial to federal jurisdiction.

How is a land base calculated under Treaty 8?

A band's right to land is based on the number of entitled band members. Under Treaty 8, a band receives 128 acres of land for each entitled member (one square mile of land for a family of five). This formula was used to create reserves for 35 other Treaty 8 bands.

While the Government of Canada accepts that the number of registered band members should be a major factor, it is only fair to other Canadians that Indians should not be paid twice. If, for example, lands were made available previously to current members of the band or their predecessors, the amount of the band's entitlement may have to be reduced. Also, the number of band members should not be artificially inflated for the purpose of Treaty 8 entitlement.

Why won't the governments accept the Lubicon Lake Band's membership list in calculating the land base?

Because the Lubicon Lake Band's list includes members who are not entitled to land.

A band has the authority to include anyone it wishes on its membership list. But before providing a band with a reserve, the family histories of band members are traced to determine who should be counted in the calculation of the band's land entitlement.

Such a genealogy study was completed by the Lubicon Lake Band and the federal government in 1984. It identifies band members or their ancestors who received land (or other benefits instead of land) in earlier settlements. The band will not allow the federal government to share this study with the province.

Where do we go from here?

Canada continues to search for a solution and is therefore making its current request of Alberta. Regrettably, if Alberta cannot agree to this approach, the matter will have to be settled in the courts.

Canada



BICD

Newsbriefs

Office of the Honourable Bill McKnight
Minister of Indian Affairs and Northern Development

February 1988

ACC	NO.	DATE
45-EDF-13-3		OS/ER
45-CDP-13-1-3- Lubicon		

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Lubicon LK Band

Malone Delivers Federal Request to Alberta (February 4, 1988)

On behalf of Bill McKnight, federal negotiator Brian D. Malone delivered to the Attorney General of Alberta a formal request for reserve lands for the Lubicon Lake Band.

This request is based on a contemporary population count, but excludes non-Indians and those Indians on the Lubicon Band list who are members of other bands.

The Minister is prepared to recognize certain modified exclusions for band members whose ancestors have received prior settlements.

Alberta has been advised that a rejection of this request will require Canada to commence legal action to resolve this dispute. In that event, the Minister has requested that Alberta consider, as an interim measure, the immediate transfer of the 25.4 square miles of land promised in 1940, without prejudice to the legal action.

This interim step would permit Canada to begin an immediate program of capital construction for roads, water, housing, educational and health facilities.

Federal Government Commits \$222,000 to Dene Cultural Institute (February 5, 1988)

Bill McKnight announced approval of \$222,000 in funding for the newly established Dene Cultural Institute.

The financing is provided through the **Cultural/Educational Centres Program** of DIAND and is being allotted in two instalments. Funding in the amount of \$30,000 is being forwarded in 1987-88 to help defray start up costs. In fiscal year 1988-89, the Program will provide funding of \$192,000 to support the first year of the project.

Mr. McKnight said he was pleased that this initiative marks the first time the federal government has funded this kind of proposal, coming from the Dene.

Amendments to Canada Mining Regulations Benefit NWT (February 9, 1988)

Significant changes to the Canada Mining Regulations in the Northwest Territories were announced by Bill McKnight on February 9, 1988.

The amendments are the result of extensive consultation with the mining industry, and reflect the federal government's desire to promote both regulatory reform and economic development in the north.

.../2

- 2 -

The amendments encourage foreign investment and the removal of the requirement for physical work, such as drilling and trenching, as a prerequisite for leasing. As well, the export of minerals will no longer require the approval of the Governor in Council and certain discretionary powers of officials have been curtailed.

Minor changes have been made to the staking requirements allowing for the use of common boundary posts for adjoining claims and the use of witness posts to avoid trespass on private lands.

Other changes include providing additional time for companies to record excess work performed on claims and allowing the registration of a transfer of a claim which is subject to an existing lien or encumbrance.

For further information, contact:

Pam Forward
Special Assistant, Media Relations
Office of the Minister
997-0002

For copies of complete texts, contact:

Public Enquiries Kiosk
Department of Indian Affairs and Northern Development
997-0380

ACTION
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---LUBICON LAKE COMMUNICATION

GRATEFUL TO RECEIVE BY BAG COPY OF SUBMISSION DELIVERED TO MOLLER
DURING LIVERMORE VISIT.

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45-007-13-1-3- Lubicon		
LK Band		

---LUBICON LAKE BAND:HUMAN RIGHTS CTTEE COMMUNICATION

WE DEPOSITED CDN REPLY RE LUBICON LAKE BAND AT 11:00AM TODAY WITH MOLLER OF SECRETARIAT,WHO APPRECIATED PAINS WE HAD TAKEN TO ENSURE THAT REPLY WAS UP TO DATE.AFTER EXPLAINING SOME OF BACKGROUND TO HIM,WE ENQUIRED AS TO PROPRIETY OF HAVING JUSTICE DEPT EXPERT ON THIS MATTER ON HAND DURING DELIBERATIONS OF HUMAN RIGHTS CTTEE. HIS PERSONAL RESPONSE WAS POSITIVE,AS HE HAS FOUND THIS CASE DIFFICULT ONE AND AS HE KNOWS THAT CTTEE MEMBERS ARE NOT/NOT SUFFICIENTLY VERSED IN CDN LAW TO UNDERSTAND ITS COMPLEXITIES. BUT HE INDICATED THAT HE WOULD FIRST HAVE TO HAVE SOME KING OF CLEARANCE FROM AT LEAST SOME KEY CTTEE MEMBERS BEFORE PROCEEDING FURTHER.AS TO TIMING,HE INDICATED THAT WORKING GROUP OF CTTEE WILL NOT/NOT BE DISCUSSING MATTER,AND IT MIGHT FALL TO PLENARY DURING WEEK OF 21MAR.WE THERFORE REPLIED THAT JUSTICE EXPERT COULD POSSIBLY STAND BY DURING WEEK OF 21MAR OR THERAFTER,AND EXACT TIMING WILL BE CONFIRMED BY MOLLER IN DIRECT TELEPHONE COMMUNICATION WITH OTT DURING WEEK OF 14MAR.AT THAT TIME HE COULD CONFIRM HOW CDA WOULD

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MAR 8 1988

Legal Operations Division (JLO)
Direction des Opérations juridiques

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PAGE TWO YTGR1387-CONF

TAKE PART IN MTG AND HOW LONG IT MIGHT TAKE. HE CAUTIONED, HOWEVER, THAT LUBICON WAS ONLY ONE OF SOME EIGHTY (80) CASES BEFORE CTTEE AND THERE WAS THEREFORE GREAT POSSIBILITY THAT MATTER WOULD ONCE AGAIN BE DEFERRED.

CCC/131 0715472 YTGR1387

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MAY 8 1988
[...]



Security Classification - Cote de sécurité
File number - numéro de dossier 277269
Date March 3, 1988

MEMORANDUM/NOTE DE SERVICE

TO/À: Distribution

FROM/DE: Counsel,
Human Rights Law Section

SUBJECT/OBJET: Lubicon Lake Communication to the UN Human Rights Committee under the Optional Protocol

ACC	713196
FILE	45-02A-13-1-3 - Lubicon
DOSSIER	Lake Band
ON: C	37

Comments/Remarques

Attached is the final version of Canada's response to the above communication. Significant amendments have been made to Section II entitled "New Developments". The response is being sent to Geneva on Friday, March 4, 1988. If you have any comments on the response, please contact me by noon tomorrow.

Thank you for your assistance in this matter.

Irit Weiser
Irit Weiser

IW/lb

Distribution

- Martin Freeman
- Michael Hudson
- Fred Caron
- John Holmes ✓
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- Marilyn Whitaker
- Bob Batt
- Ivan Whitehall
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- c.c. D. Martin Low

RECEIVED - REÇU
MAR 4 1988
Legal Operations Division (JLO)
Direction des Opérations juridiques

March 3, 1988

COMMENTS OF THE GOVERNMENT OF CANADA
ON THE FURTHER RESPONSES OF CHIEF BERNARD OMINAYAK
AND THE LUBICON LAKE BAND DATED OCTOBER 7, 1987 AND
JANUARY 12, 1988 TO THE HUMAN RIGHTS COMMITTEE

I. **GENERAL**

The Secretary-General of the United Nations, in his note no. G/SO 215/51 CANA (38) 167/1984 dated December 4, 1987, transmitted to the Government of Canada the further comments of the complainant dated October 7, 1987. By note dated, January 22, 1988, the Secretary-General of the United Nations transmitted to Canada a further submission of the complainant dated January 12, 1988. In reply, the Government of Canada submits the following observations.

II. **NEW DEVELOPMENTS**

On February 3, 1988, the Minister of Indian Affairs and Northern Development delivered to the Attorney General of Alberta, a formal request for reserve land for the Lubicon Lake Band. In this request, he advised Alberta that a rejection of the request would require Canada to commence a legal action, pursuant to the Constitution Act, 1930, to resolve the dispute as to the quantum of land to which the Lubicon Lake Band is entitled. In such an

-2-

event, the Minister of Indian Affairs and Northern Development asked Alberta to consider, as an interim measure, the immediate transfer to the Band of the 25.4 square miles of land promised in 1940, without prejudice to any legal actions.

By letter dated February 10, 1988, the federal negotiator advised counsel for the Band, of the above developments, and as well, sought to negotiate all aspects of the claim not dependent on Alberta's response to the formal request. The terms of an offer are contained in that letter, a copy of which is attached as Appendix 1. The communicant by letter dated February 29, 1988, rejected this offer, but indicated that it would be prepared to consider an interim transfer of 25.4 square miles without prejudice to negotiations or any court action.

As a consequence of the above developments, negotiators for the federal and provincial governments met on March 1 & 2, 1988, and concluded an interim agreement for the transfer of 25.4 square miles as reserve land for the Band, including mines and minerals. This agreement is without prejudice to the positions of all parties involved, including the Band (see press release, Appendix 2). It will also permit the Government of Canada to begin a program of capital construction for roads, water, housing, educational and health facilities.

-3-

On March 3, 1988, the Government of Canada wrote to Chief Ominayak advising him of the above interim agreement and requesting his input to determine the location of the reserve land. A copy of this letter is attached as Appendix 3.

The Government of Canada submits that the developments discussed above, as well as those discussed in previous submissions (see, in particular, pages 15-23 of Canada's submission dated October 7, 1987) indicate that genuine and serious efforts have and continue to be made to resolve this matter. Moreover, it is submitted that the current communication, in fact, concerns the terms of an agreement. Both the federal and provincial governments have recognized the right of the Band to a reserve. The issues currently in dispute, and that form the subject matter of the communication, concern the amount of land to be set aside as a reserve and related issues. It is submitted that the terms offered by the federal government are reasonable and do not amount to a violation of the International Covenant on Civil and Political Rights. Moreover, it will still be available to the Band, even after receipt of the 25.4 square miles of reserve land, to continue negotiations, as well as any court actions.

-4-

III. EXHAUSTION OF DOMESTIC REMEDIES

The communicant alleges at page 17 of the most recent communication, that a decision of the Alberta Court of Queen's Bench, handed down on October 22, 1987, precludes the Band from seeking redress against the federal government on the domestic issues and that a trial on the merits is therefore unavailable to them. (A copy of this decision is attached as Appendix 4). It is the position of the Government of Canada that this allegation misrepresents the current legal situation as it relates to the Band and the federal and provincial governments.

Previous submissions have outlined the two outstanding legal actions commenced by the Band, both of which are still outstanding. One action was commenced in the Federal Court of Canada against the federal government; the other in the Alberta Court of Queen's Bench against the province and certain private corporations. (See Canada's communication dated May 31, 1985 at page 2-7 and October 7, 1987 at pages 4-9). To the extent that the communicant's claim for land is based on aboriginal title, as opposed to treaty entitlement, well-established case law states that the court action must be brought against the province (Chief Joe v. R. (1983), 49 N.R. 198; leave to appeal to S.C.C. denied [1986] 2 S.C.R. 145).

-5-

In the motion of October 22, 1987, referred to above, the communicant sought leave to add the federal government as a party to the legal proceedings in the Alberta Court of Queen's Bench. The Court there held that based on existing case law, a provincial court is without jurisdiction to hear a claim for relief against the federal government; rather, this is a matter properly brought before the Federal Court of Canada. The plaintiff has in fact done this and the action is, as already indicated, currently pending. Therefore, recourse against the Government of Canada is still available to the Band, as it always has been, in the Federal Court of Canada. Moreover, the communicant has appealed the decision of the Court of Queen's Bench to the Alberta Court of Appeal.

In addition, the Government of Canada is making all efforts to seek a resolution to this matter through negotiations with the province and the communicant. In this regard, the Government of Canada refers to the developments discussed above under section II of this submission.

IV. ABUSE OF PROCESS

On January 18, 1988 and January 21, 1988, newspaper articles appeared in the Calgary Herald and the Edmonton Journal respectively, quoting from the communicant's most recent

-6-

submission to the Committee. In comparison, the Permanent Mission of Canada in Geneva received the submission in question from the Human Rights Centre in Geneva only on January 25, 1988. As a consequence, the Government of Canada first became aware of the communicant's most recent submission from the newspapers. It is submitted that the actions of the communicant in this regard constitute an abuse of the right of submission under the Optional Protocol.

The Government of Canada also denies the allegations of the communicant (at page 2 of the January 12, 1988 submission) that it has misrepresented any of the facts or issues in the current matter, and specifically re-affirms the accuracy of the statements made in its communications of October 7, 1987, including those relating to the negotiation process and the conditions of the Band. In this regard, the Government of Canada wishes to refer the Committee to Appendix 5 which contains further information on matters relating to the claim of the Lubicon Lake Band, Appendix 6, a letter from the Minister of Indian and Northern Affairs to the editor of the Globe and Mail, and Appendix 7, materials from the province of Alberta.

-7-

The Government of Canada also wishes to indicate that a number of serious, unsubstantiated allegations were made by the communicant in its communications. Examples of such allegations follow:

1. The communicant alleges in its submission of October 7, 1987, that the Band has effectively received no assistance from the federal government in regard to the tuberculosis outbreak. In fact, the provincial medical authorities, in conjunction with federal personnel, took action to treat everyone infected as soon as the tuberculosis outbreak was identified. The disease was brought under control shortly after the outbreak and no one is now considered to be infectious. As a result of meetings with the Band, a variety of services are being provided by the federal government, in addition to those already provided by the province.

These include:

- (a) a person to dispense medication twice a week,
- (b) a full-time community care health worker, located in Little Buffalo,

-8-

- (c) field training for a Little Buffalo student in community health who is expected to replace the current health worker in June 1988,
- (d) the funds for a vehicle and a driver to establish a health transportation system from Little Buffalo to Peace River,
- (e) two doctors visiting the community once a month,
- (f) one full-time nurse and a second part-time nurse in the community, and
- (g) a new trailer to use as the Health Care Centre.

2. Page 7 of the communication dated January 12, 1988 states that "the circumstances deliberately created by Canada through its actions have led, indirectly if not directly, to the deaths of 21 persons and are threatening the lives of virtually every other member of the Lubicon community." This allegation is totally unfounded and the suggestion of intent by the Government of Canada to harm any member of the Band is, categorically, wrong.

-9-

3. At pages 9 and 10 of the communication dated January 12, 1988, the communicant suggests that the federal and provincial governments are deliberately and intentionally seeking means to destroy or hurt the Band. This suggestion is completely untrue. The government has in good faith sought to negotiate and resolve all outstanding issues with the Band. As a related matter, there is absolutely no basis for the communicant's allegation that genocide is occurring within Canada, confirmation of which is set out in the "Special Report of the Ombudsman" (see Canada's communication dated October 7, 1987 at page 25.)

4. Similarly, at page 11 of the same submission, the communicant alleges that "the biases of the Canadian courts have presented a major obstacle to the Band's attempt to protect its land, community and livelihood", and as well, that "several of the judges rendering the decisions of these courts have had clear economic and personal ties to the parties opposing the Band in the actions". It is the position of the Government of Canada that its judiciary is demonstrably impartial and independent, and that proper evidence to demonstrate otherwise has not been submitted by the Band.

-10-

5. The Band has continually insisted that Mr. E. David Fulton be appointed as an impartial mediator in any negotiation process. The Government of Canada notes that it is available to the Band to retain Mr. Fulton as their own representative to any negotiations.

The Government of Canada submits that the above misrepresentations and unsubstantiated allegations constitute an abuse of process and the communication should therefore be dismissed pursuant to Article 3 of the Optional Protocol.

V. CONCLUSION

The Government of Canada does not intend to address at this time the allegations contained under various article headings of the Covenant contained in the communicant's submission of January 12, 1988. It is submitted that these involve serious issues of admissibility and would require more time to address. However, the Government of Canada reserves the right to make submissions on these matters at a later date, if necessary.

On the basis of information set out in its previous submissions and for the reasons set out above, the Government of Canada submits that Chief Ominayak's communication under the Optional Protocol, should be declared inadmissible by the Committee.

J. Trottier
Human Rights and Social
Affairs Division
992-6664

ACC	547166	REF	DATE
FILE	45-007-13-1-3- Lubicon		
	LIC Band		

CONFIDENTIAL

March 1st, 1988

IMH-0136

Memorandum for:

The Secretary of State for External Affairs

c.c. The Minister for External Relations
c.c. The Minister for International Trade

SUBJECT: Lubicon Lake Indian Band

SUMMARY:

This memorandum is to inform you of recent developments in the dispute between the Lubicon Lake Indian Band and the Canadian Government and to provide a letter to Mr. Bernard Ominayak concerning your 21 January meeting with him.

BACKGROUND:

Lubicon Lake Band supporters have criticized a 13-page fact sheet on the Lubicon Lake Band prepared by the Department, in conjunction with Indian Affairs and Justice. The fact sheet summarized the Lubicon situation and defended the Government's position. In light of these criticisms and your comments to Chief Ominayak, the fact sheet was reviewed by officials of Indian Affairs, Justice and External Affairs. It was found to be accurate, although it needs updating in light of recent events. Now that the Olympic Games are over, the fact sheet will be thoroughly revised.

The Lubicon Lake Band case is to be considered by the U.N. Human Rights Committee at its next session which runs from March 21 to April 8, 1988. The Lubicon Lake Band has made an additional submission containing a number of new allegations,

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- 2 -

CONFIDENTIAL

including the statements that, in its response of October 7, 1987, Canada had committed "virtual perjury" and that Canada had "intentionally misrepresented facts and mischaracterized relevant domestic law". A further allegation is that Canada has violated the "inherent right to life" contained in Article 6(1) of the Covenant on Political and Civil Rights. The submission alleges:

While the Government of Canada has not sought, directly, the death of any member of the Lubicon Lake Band, the circumstances deliberately created by Canada through its actions have led, indirectly if not directly, to the deaths of 21 persons and are threatening the lives of virtually every other member of the Lubicon community.

An interdepartmental group of officials has tentatively recommended a Canadian reply to these allegations, and is now preparing a draft response, with Justice acting as the lead Department. The response will also include a description of developments arising from the Federal Government's recent formal notice to Alberta that litigation would be undertaken if the province failed to accept the Federal Government's request to Alberta for reserve land to be based upon the present-day population of the land, less any lands which have previously been made available to band members or their ancestors.

Recent developments which may have an impact on the consideration of the case by the Human Rights Committee include the announcement of a planned \$500-million pulp mill project in the area. The Canadian Government will be contributing \$9.5 million from the Western Diversification Fund to this development. At the time of the announcement, Alberta initially suggested that this project might involve cutting rights on some of the land claimed by the Lubicon, although this possibility had never been raised in discussions with federal officials. The province later stated that cutting rights would not be granted in the disputed area pending settlement of the claim; however, the initial public disclosure by Alberta without prior warning to this Department was unfortunate, as it affected our ability to explain the Canadian Government's position regarding the land dispute. In the short term, the announcement of this project is likely to result in new allegations by the Band to the Human Rights Committee.

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- 3 -

CONFIDENTIAL

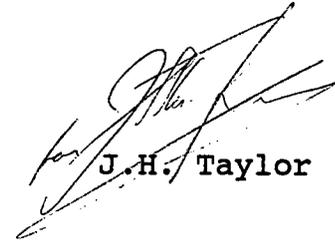
Attached is a letter to Mr. Bernard Ominayak, Chief of the Lubicon Lake Band, referring to your recent meeting with him. The letter is not necessary, but might be viewed as a desirable courtesy to help keep dialogue open.

RECOMMENDATION:

We recommend that you sign the attached letter to Mr. Ominayak.



Fred Bild
Assistant Deputy Minister
Political and International
Security Affairs



J.H. Taylor



External Affairs Affaires extérieures
Canada Canada

TRANSMITTAL SLIP - NOTE D'ENVOI

TO/À *[Handwritten initials]* USS (through *[Handwritten initials]* IMD and IFB) **MAR 3**

FROM/DE IMH

SUBJECT/SUJET Lubicon Lake Band

Security Sécurité	1472'88 CONFIDENTIAL
File Dossier	
Date	March 1, 1988

ATTACHMENT Memorandum for the Secretary of State for External
PIÈCE JOINTE Affairs and a letter for his signature (IMH-0136)

DISTRIBUTION	RECORD OF CONSULTATION (Names/Divisions) RAPPORT DE CONSULTATION (Noms des individus/Directions)	ACTION/SUITE À DONNER
MINA MINT MINE USS IFB CMGR(2) FILE	Justice Indian and Northern Development	The attached memorandum is for your signature, if you agree.
		REQUIRED BY/DEMANDÉ POUR <i>[Handwritten Signature]</i> D. Livermore Acting Director Human Rights and Social Affairs Division
	R-0611	

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002169

TO BE RETAINED WITH FILE COPY - A CONSERVER AVEC L'EXEMPLAIRE DESTINÉ AU DOSSIER



Office of the
Secretary of State
for External Affairs

Cabinet du
Secrétaire d'État
aux Affaires extérieures

TO/À: IMH

Date April 5/88

FROM/DE: MINA 

REFERENCE/RÉFÉRENCE:

Your memorandum IMH-0136 of March 1, 1988

SUBJECT/SUJET: Minister's decision/Décision du Ministre
Lubicon Lake Indian Band

Seen and signed in MINA.

RECEIVED - REÇU

APR 7 1988

I M H

CAN.HIGH.COMM.LDN.

No.01 491 3968

29.02.88 16:22 P.01



External Affairs
Canada

Affaires extérieures
Canada

MTC/DIARY/CIRC/FILE
MGT/JOURNAL/CIIC/DOSSIER

Accession/Référence

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MESSAGE

UNCLASSIFIED/NONCLASSIFIE

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Alignez le premier caractère de la Sécurité sous cette flèche

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**ACTION
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TO/A

TO EXTOTT BFE/BARBAN

INFO

DISTR

---CORRESPONDENCE RE LUBICON LAKE INDIANS

REF

COMCENTRE PLS FAX ATTACHED DOX

SUBJ/SUJ

HAVE FAXED LETTER FM DULWICH CONSTITUENCY LABOUR PARTY AND OUR
RESPONSE RE LUBICON LAKE INDIANS FOR YOUR REVIEW AND RESPONSE
DIRECT.

ACC
FILE
45-CDN-13-1-3-
Lubicon Lk Band
LDN 014/29
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DIAPYTER/RI DACTEUR

DIVISION/DIRECTION

TELEPHONE

APPROVED/PROUVE

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JOHN ROWSOME

DIPIRTIC AFFATRS

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John Rowsome
JOHN ROWSOME

CAN.HIGH.COMM.LDN.

No.01 491 3968

29.02.88 16:23 P.02

UNCLASSIFIED/NONCLASSIFIE

XNFC 1504

**HAUT-COMMISSARIAT DU CANADA,
CANADA HOUSE,
TRAFALGAR SQUARE,
LONDON, SW1Y 5BJ.**



**CANADIAN HIGH COMMISSION,
CANADA HOUSE,
TRAFALGAR SQUARE,
LONDON, SW1Y 5BJ.**

Telephone: 01-829 9492 Ext.

2 of 3
XNFC 1504

29 February 1988

Mr Martin Chapman
Secretary
Dulwich Constituency Labour Party
95 Grove Vale
London SE22

Dear Mr Chapman,

I appreciated receiving a copy of the Motion recently passed by the Dulwich Constituency Labour Party concerning the Lubicon Lake Indians.

Please be assured that the concerns expressed by your constituency association have been forwarded to the appropriate officials in Ottawa.

Yours very truly,
Original signed by
a signe l'original
JOHN G. ROWSOME
Counsellor, Public Affairs
Conseiller, affaires publiques

John Rowsome
Counsellor, Public Affairs

UNCLASSIFIED/NONCLASSIFIÉ

DULWICH CONSTITUENCY LABOUR PAR Y

95 GROVE VALE, LONDON SE.22 Tel.01 693 1826

High Commissioner of Canada,
Macdonald House,
1 Grosvenor Square,
London, W1

3 of 3
XNFC 1504

Date: 21/02/1988

Dear Sir/Madam,

Counsellor, Public Affairs
Conseiller, Affaires Publiques
RECEIVED/RECU
25 FEB 1988

Lake Lubicon Indians

I wish to draw to your attention the enclosed motion passed at the last ordinary meeting of Dulwich Constituency General Committee.

Our Party believes that the failure of the Canadian Authorities to reach an agreement with the Lubicon Lake people is deplorable and which does little credit to a nation which otherwise has such a fine record in Human Rights.

"This GC expresses its support for the Lubicon Lake Band in their just demand for a land base of their own.

We resolve:

1. *To write to the High Commission of Canada and the Agent General for Alberta expressing our views and requesting a speedy resolution to this problem.*
2. *To write to the International Department of the Labour Party to contact the Alberta NDP expressing our deep concern for the Lubicon Lake Community and to convey this concern to the Alberta and Canadian Federal Governments.*
3. *To request our MEP to take up this issue through the organs of the European Community."*

Yours Sincerely



Martin Chapman
Secretary

[W][0622][r]
[Rights-CreeIndians
GENEVA

BICO

MH/TROTTER
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CP

PM-[Rights-Cree Indians
With Calgary PM-Olympics; sport interest
GENEVA (AP) - Representatives of Canadian Indians said today

the money spent on the Winter Olympic Games in Calgary may have been enough to provide sufficient housing for Canada's entire indigenous population.

In a paper submitted to the United Nations Human Rights

Commission, the Grand Council of the Crees said there has been a outbreak of tuberculosis among Cree Indians of Lubicon Lake, Alta., and that medical authorities linked the TB outbreak to inadequate housing. It did not identify the medical authorities.

''Poor ventilation, overcrowding, cold and malnutrition plague

these people a few hundred miles north of the Winter Games,'' the document said.

''It has been estimated that Canada's entire indigenous

housing backlog could have been eliminated if the money spent for the 15 days of the Calgary Olympics had been invested instead in the construction of indigenous housing.''

The paper said this showed that Canadian Indians are subject

to ''strange and distorted priorities.''

It said that ''500 years under the protection of a Crown

trustee has ensured our exclusion from the economy of one of the richest countries in the world.''

''As long as indigenous peoples are systematically separated

from their lands we will continue to be the underdeveloped pockets in developed countries.''

LAND DISPUTE

The Cree Indians of Lubicon Lake have been in the centre of a decades-long land-claim dispute involving the federal and Alberta governments.

The dispute centres on the size of the Lubicon band, which

lives around Little Buffalo, 300 kilometres north of Edmonton. A historical formula provides 50 hectares of reserve land for each eligible band member. The Lubicons claim to have about 450 members; Alberta, which controls the land but is obligated to turn it over to Ottawa to establish a reserve, says the figure is inflated.

Ottawa proposed a new formula earlier this year to settle the dispute, but Lubicon Chief Bernard Ominayak rejected the offer. Alberta also was likely to reject the proposal.

Under the federal formula, Ottawa would determine the band's population based on people living in Little Buffalo but excluding non-Indians and Indians on the Lubicon band list who also belong to other bands.

Ottawa has advised Alberta that failure to accept the formula would require the federal government to begin legal action to resolve the dispute.

The Lubicons hoped to use the Olympics to draw international attention to their land claim. The band staged protests along the route of the Olympic torch relay.

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FEB 18 1988
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TO EXTOTT IMH DELIVER BY 180900

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BH JUSTOTT/FREEMAN/LOW DE OTT INAHULL/PUTTER/WHITAKER DE OCI

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REF YOURTEL 0277 09FEB

---HUMAN RIGHTS CTTEE:LUBICON

FILE
45-cda-13-1-3- Lubicon Lk Band
45-cda-13-1-3-Denny, A

INTERLOCUTOR AT CENTRE ADVISES THAT SUBMISSION AND COPIES SHOULD BE SENT DIRECTLY TO NEW YORK AND TO GENEV. FILES WILL BE SENT TO NEW YORK ON 26FEB. HOWEVER, INTERLOCUTOR WILL NOT/NOT BE LEAVING UNTIL 12MARCH. RECEIPT OF SUBMISSION IN GENEV WOULD ALLOW THEM TIME TO PREPARE FACT SHEET AND OTHER DOCUMENTATION STEMMING FROM OUR SUBMISSION. CENTRE REQUIRES ONE COPY OF ENG AND FRENCH TEXTS ATTACHED TO SUBMISSION SENT TO PRMNY AND GENEV.

2. WITH REGARD TO PARA 2 OF REFTL, INTERLOCUTOR DOES NOT/NOT BELIEVE THAT LATENESS OF SUBMISSION WILL AFFECT CTTEE CONSIDERATION OF LUBICON CLAIM. IN THIS RESPECT, HE STATED THAT CTTEE IS, SO FAR, UNPERSUADED THAT REMEDIES OPEN TO LUBICON BAND ARE EFFECTIVE AND HE WOULD BE SURPRISED IF THIS VIEW WERE REVISED. HE REITERATED THAT HE DISAGREED WITH THIS VIEW. OUR INTERLOCUTOR ANTICIPATES THAT CTTEE WILL DELIVER INTERIM DECISION ONLY, IE ON WHETHER TO PROCEED OR NOT/NOT. ANY SUBSTANTIVE DETERMINATION WILL REQUIRE PRIOR REVIEW OF OUR FURTHER SUBSTANTIVE COMMENTS.

...2

AGE TWO YTGR0945 PROTECTED

3. AS AN ASIDE, OUR INTERLOCUTOR RAISED ISSUE OF MICMAC CASE WHICH IS STILL IN FRONT OF THE CTTEE. HE THOUGHT IT POSSIBLE FOR CTTEE TO RENDER DECISION IN THEIR FAVOUR. CTTEES THINKING IS THAT WHILE 1987 CONSTITUTIONAL TALKS ARE NOW PART OF HISTORY, ISSUE RAISED BY MICMAC REQUEST FOR A SEAT AT THOSE TALKS MIGHT ARISE AT FUTURE CONSTITUTIONAL MTGS. THEREFORE, SOME CTTEE MEMBERS MAY WISH TO PURSUE THIS CASE.

CCC/032 181146Z YTGR0945

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Priority / Priorité: High / Élevée Medium / Moyenne Low / Faible

COMMUNICATION FORM / FORMULAIRE DE COMMUNICATION

To - À: TELECOMMUNICATIONS UNIT

000 054/11

From - De: Ron BOVIN

Branch - Direction COMMUNICATIONS	Division OPERATIONS	Program Code - Code de programme 2Y0701
Director General - Directeur général Don McGregor	Director - Directeur T.R.W. FARR L. HONG	Return to room no. - Retourner à la pièce 1913

Please fax to:

James Trotter (IMH)
External Affairs

FAX #. 996-9103

Please advise J. Trotter upon arrival
992-6664.

45-000-13-1-3-Lubicon LF Band

RECEIVED - REÇU
FEB 12 1988
IMH

If further space is required please use a second page - Si cet espace est insuffisant veuillez utiliser une deuxième feuille

Message prepared by - Message rédigé par R. BOVIN	Telephone no. - N° de téléphone 997-0061
Signature of person authorizing message <i>R. Bovin</i>	Date FEB 11 11:22 AM INDIAN & NORTH

2/2



Affaires indiennes et du Nord Canada Indian and Northern Affairs Canada

Direction générale des communications
Unité de surveillance des media

Communications Branch
Media Monitoring Unit

Publication TORONTO GLOBE & MAIL

P.A.1 Date Feb 11/88

McKnight condemns Alberta move on land claimed by Lubicons

BY GRAHAM FRASER
The Globe and Mail

OTTAWA

Indian and Northern Affairs Minister William McKnight yesterday called an announcement by the Alberta Government of a land transfer to a Japanese pulp company "unnecessary and unhelpful."

Mr. McKnight said he had not been consulted on what he called "solely a provincial initiative."

On Monday, Alberta announced that a major pulp mill will be supplied with timber from lands claimed by the Lubicon Lake Cree band in its 48-year dispute with the federal and provincial Governments.

"The way the announcement was made . . . on the transfer of forestry management to assist in the development of a large-scale pulp plant in northern Alberta was indeed unnecessary and unhelpful," Mr. McKnight told the House of Commons.

"Some of the lands that were prescribed are indeed lands which may be transferred to Lubicon when we have reached a settlement."

However, he said, the Government was pleased to participate in the financing of the \$500-million pulp mill project, because 600 direct jobs are to be created by what he called this "major, major foreign investment."

On Monday, Mr. McKnight announced a \$9.5-million federal grant to the Daishowa Paper Manufacturing Co. Ltd., which will start construction this spring on the hardwood kraft pulp mill near the town of Peace River, 400 kilometres northwest of Edmonton.

Yesterday, B.C. New Democratic Party MP James Fulton urged Mr. McKnight to respond to a recommendation by the Commons aboriginal and northern affairs committee that former Conservative justice minister E. Davie Fulton be appointed to help deal with the land claim.

Archbishop E. W. Scott, president of the Canadian Council of Churches, also sent a message to Prime Minister Brian Mulroney urging him to implement the committee's resolution.

Commenting on Alberta's announcement about the land, Mr. McKnight said that when he asked for a clarification, the provincial Government made it clear that the forest management area will exclude any land transferred to the

Lubicon band.

Mr. McKnight said Ottawa has proposed a formula to Alberta that is designed to break an impasse concerning the number of members of the Lubicon band. That number is to be used to calculate the amount of land that the band receives.

While the minister would not indicate what population figure the federal formula would recognize, and how much land this would mean, he said that the formula would mean ensuring that Lubicon Indians would not be counted twice if they had already been calculated for another Indian band's settlement.

Outside the Commons, the NDP's Mr. Fulton called Mr. McKnight's position illogical.

"This situation is being mishandled, it's being bungled," he said. "The federal Government can't have it both ways."

"What is the federal Government doing funding a Japanese-owned pulp company to get permanent untendered cutting rights to those 11,000 square miles before the rights of Canada's first citizens are resolved? Do corporations headquartered in Tokyo now have more rights than the first citizens of Canada?"

Alberta Forestry Minister LeRoy Fjordbotten said on Tuesday that the Lubicons' proposed reserve will be off-limits to logging until the band's claim is settled.

The provincial Government has granted timber rights to Daishowa on a huge tract of land east of Peace River. It encircles 65 square kilometres that the province recognizes as a future Lubicon reserve.

But Mr. Fjordbotten said there will be no logging on a larger disputed area of about 155 square kilometres, including the 65-square-kilometre parcel.

Daishowa will be given an alternative cutting area until the claim is settled, he said.

The Lubicons were not informed of the forestry management area, which is expected to provide feedstock for the pulp mill. The mill is scheduled to be operating by 1990.

**ACTION
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BICO [signature]

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TO/A EXTOTT/IMH

INFO

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[Signature] SECSTATEHULL/LAPIERRE *DE OTT*

BE/FM PCOTT/CARON INAHULL/G.HOLLO/COULTER/WHITAKER JUSTOTT/LOW/FREEMEN

DISTR IMD IMU JLO

REF

---(SUBJECT/SUJET): BANDE DU LAC LUBICON

PIECE JOINTE: ARTICLE ^{PARU} ~~PARU~~ DANS LE MONDE DU 10 FEVRIER.

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45-007-13-1-3- Lubicon		CK Bord

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UNCLASSIFIED
NON CLASSIFIÉ**SPORTS****La préparation des Jeux olympiques de Calgary****Les Cris d'Ominayak****MONTREAL**
de notre correspondante

On aurait pu dire d'eux, dans les années 60, qu'ils formaient l'une des dernières bandes d'irréductibles de l'Ouest canadien. Ignorés des Blancs, les Indiens Cris, du lac Lubicon, vivaient bien tranquilles dans un vaste territoire situé à plus de 800 kilomètres au nord de Calgary. Comme leurs ancêtres, ils pratiquaient la chasse, la cueillette et la pêche dans leurs forêts sauvages qui n'intéressaient personne. Jusqu'à ce qu'on y trouve du pétrole. Avec leurs armées de bulldozers et de camions, les grandes compagnies ont saccagé leurs terres et bouleversé leur mode de vie. Les Indiens du Lubicon luttent sans succès depuis quinze ans pour faire valoir leurs droits ancestraux. Les Jeux olympiques de Calgary leur fourniront l'occasion rêvée pour attirer l'attention sur ce que le Conseil mondial des Eglises considère comme un « ethnocide ».

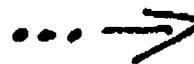
L'histoire des Indiens Cris du lac Lubicon est celle d'un rendez-vous manqué. En 1888, des agents du gouvernement fédéral canadien parcourent l'Alberta pour recenser toutes les bandes d'Indiens qui s'y trouvent. Il s'agit alors de délimiter précisément les réserves de chacune d'entre elles suivant la règle retenue : 80 hectares par individu identifié. Or, les enquêteurs, qui se contentent de remonter les grandes voies d'eau pour prospecter, « ratent » les Indiens du Lubicon, occupés à chasser par petits groupes entre la rivière Athabaska et celle dite « de la Paix », sur un territoire d'environ 16 000 kilomètres carrés.

Quarante ans plus tard, les Indiens du Lubicon, convertis au

catholicisme par quelques missionnaires aventureux, entrent en contact pour la toute première fois avec le gouvernement des Blancs. Pressant les dangers qu'ils courent à rester « omis », ils veulent signaler officiellement leur existence et réclament la reconnaissance des droits territoriaux que les autres Cris ont obtenus. On leur promet une réserve. En 1940, ils obtiennent même la visite d'un agent recenseur qui ne compte toutefois que les présents : cent vingt-sept individus ; les autres encore partis à la chasse, ne sont pas inscrits. L'agent remet son rapport au moment où la seconde guerre mondiale bat son plein. On oublie les Indiens du Lubicon qui pensent que l'affaire a suivi son cours.

Il s'écoule encore près de trente années avant qu'ils ne mesurent l'étendue de leur méprise. La province de l'Alberta, qui a récupéré entre-temps la juridiction sur toutes les terres non classées comme « réserves », a commencé à distribuer des permis de prospection. Au milieu des années 70, des hommes arrivent avec leur équipement pour creuser des trous autour du lac Lubicon.

Entre 1979 et 1984, plus de quatre cents puits sont forés à coup de dynamite dans un rayon de 80 kilomètres autour de leur village, littéralement cerné par les routes et les chantiers. Devant un tel remue-ménage, le gibier a pris la poudre d'escampette. En 1980, les deux cents orignaux (élan du Canada) que les hommes tuaient à l'automne, permettaient à la bande de survivre tout l'hiver. Quatre ans plus tard, ils doivent parcourir des centaines de kilomètres de plus pour ne ramener qu'une vingtaine d'animaux.



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Les bulldozers défoncent les sentiers de chasse

Considérées comme des squatters gênants sur leurs propres terres, les Indiens du Lubicon, fiers et indépendants, se sont soudain pris dans un terrible piège. Un père de famille, revenu bradouille d'une saison de chasse, préfère se suicider plutôt que d'accepter les maigres subsides qu'offrent les services sociaux des Blancs. Les trois quarts des quelque quatre cents Indiens du groupe vivent aujourd'hui de l'aide publique. Ils habitent dans des maisons préfabriquées, (sans eau courante ni tout-à-l'égout) que le gouvernement canadien leur a récemment construites. En quelques années, les maladies ont fait chez eux des ravages, en partie dus au changement brutal de leurs habitudes alimentaires. Cent trente cas de tuberculose ont été diagnostiqués au sein du groupe au cours des derniers mois.

Guidés par leur jeune chef Bernard Ominayak (trente-huit ans), les Indiens du Lubicon ont, bien sûr, tenté d'apprendre le langage juridique des Blancs pour obtenir, à tout le moins, un moratoire sur

l'exploitation pétrolière dans tout ou partie de leurs zones de chasse. Peine perdue. En 1983, un tribunal de Calgary les a déboutés. Les grosses compagnies ont pu continuer leurs activités et le gouvernement de l'Alberta a maintenu son refus de reverser aux Indiens, considérés comme « sans statut officiel », une quelconque partie des taxes qu'il perçoit sur le pétrole extrait.

L'opinion publique canadienne n'a véritablement été alertée que l'année suivante, lorsque un comité du Conseil mondial des Églises, envoyé en mission sur place, a porté de lourdes accusations. « Des fonctionnaires du gouvernement provincial allument délibérément des feux et laissent brûler des centaines d'hectares de forêt boréale sur lesquels les Indiens avaient coutume de chasser, tandis que les ouvriers des compagnies pétrolières défoncent tout aussi délibérément leurs sentiers de chasse à coup de bulldozer », affirme alors le comité, conduit par l'archevêque Edward Scott, chef de l'Église anglicane du Canada.

Déterrer la hache de guerre

Appuyés par leurs « frères » Indiens du Canada et par un nombre croissant d'organismes « blancs », les Cris du Lubicon ont remporté quelques minces victoires. Ils ont appris, en juillet 1987, que le Comité des Nations unies pour les droits de l'homme, basé à Genève, acceptait d'examiner la plainte qu'ils ont déposée à l'encontre des autorités canadiennes. Ils ont forcé aussi les gouvernements du Canada et de l'Alberta à accepter pour la première fois la tenue de négociations. Mais les pourparlers ont échoué à la mi-janvier sur la question du nombre d'Indiens au sein de la bande.

Le chef Bernard Ominayak revendique quatre cent cinquante-sept personnes et, s'appuyant sur le rège qui prévalait au début du siècle (80 hectares par individu), réclame en conséquence 230 kilomètres carrés, sur les 18 000 qui constituaient le territoire traditionnel

de chasse. Ottawa estime que le groupe compte actuellement deux cents membres tout au plus tandis que l'Alberta, s'en tenant au recensement de 1940, réduit ce nombre à cent vingt-sept personnes, qui devraient donc se contenter de 64 kilomètres carrés. La province exige des études généalogiques avant de revoir ses chiffres à la hausse.

« Le temps passe et notre peuple est en train de mourir, nous n'avons plus d'autres choix que de nous battre », répète le chef Ominayak. Pour la première fois, les Indiens du Lubicon, jusqu'alors pacifiques dans leur lutte, ont menacé ces jours derniers de prendre les armes pour défendre leur honneur. On peut y voir une simple bravade. On peut aussi reconnaître la tentation d'un coup d'éclat, au moment où les feux de l'actualité seront braqués sur Calgary.

MARTINE JACOT.

LE MONDE . 10 fév. 88



External Affairs
Canada

Affaires extérieures
Canada

MESSAGE

Accession/Référence
File/Dossier
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SECURITY
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INFO

DISTR

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SUBJ/SUJ

P R O T E C T E D

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TO GENEV **DELBY 100900**

INFO JUSTOTT/FREEMAN/LOW INAHULL/POTTER/WHITAKER

DISTR PCOOTT/CARON/DORE/RATCLIFF

REF **DISTR JLO**

SUBJ/SUJ REF YOURTEL YTGR0670 04FEB AND OURTEL IMH0208 29JAN

---HUMAN RIGHTS CTTEE: LUBICON

THANK YOU FOR YOUR REFTEL IN RESPONSE TO QUERY IN OUR REFTEL 0208 29JAN. GIVE^N_A THAT OUR RESPONSE WOULD NOT ARRIVE IN GENEVA PRIOR TO FEB 26 DATE WHEN ALL CTTEE FILES WILL BE SENT TO NEW YORK, WD YOU ASK YR CENTRE INTERLOCUTOR 1) WHETHER A SUBMISSION MADE AFTER THAT DATE COULD BE SENT DIRECTLY TO NEW YORK AND IF SO, 2) SHOULD COPIES BE FORWARDED IN ENGLISH AND FRENCH TO BOTH GENEV AND NY? 3) HOW MANY COPIES SHD BE FORWARDED TO GENEV AND NY?

2.WOULD YOU ALSO ADVISE WHETHER THERE WAS RISK OF CTTEE DISREGARDING LATE CDN SUBMISSION AND PROCEEDING TO CONSIDER LUBICON CLAIM AT MARCH SESSION?

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FROM/DE
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REFERENCE •
RÉFÉRENCE • IMH-0067 23Jan88

SUBJECT •
SUJET • Lubicon Lake Band -- Glenbow Exhibit

Security/Sécurité
Unclassified
Accession/Référence
File/Dossier
45-0A-13-1-3 - Lubicon Lk Band
Date
February 8, 1988
Number/Numéro
IMH-0257

ENCLOSURES
ANNEXES

~~-X-~~
DISTRIBUTION

1. The attached package contains newspaper reviews of the Glenbow Museum Exhibit for information and distribution purposes.

2. Since last situation update, there have been no new developments meriting a report to you.

Dan Livermore
Acting Director
Human Rights and
Social Affairs Division

DISTRIBUTION

THE CANADIAN EMBASSY,

BRUSSELS
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PARIS
BONN
HAGUE
VIENNA
COPENHAGEN
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WASHINGTON
BUDAPEST
PRAGUE
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CANADIAN HIGH COMMISSION,

LONDON
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WELLINGTON

PERMANENT MISSION OF CANADA,

GENEVA
NEW YORK

CONSULATE GENERAL, NEW YORK

THE VATICAN

DIST MINA BKC BKA RWR RWDN BFE JLO LGP IMD

INFO INAHULL/COULTER/WHITAKER PCOTT/CARON JUSTICEOTT/FREEMAN VCSCE

\$1.3 million worth of housing, education, social welfare, health and other services including band support payments for honoraria to the Chief and band councillors and salaries for administrative staff. The band receives additional services from the provincial government.

The federal government recognizes the band's need for a reserve. Until it can be created, economic development projects and the building of the physical community -- roads, water and sewage systems, schools, a health care centre and other facilities -- cannot be permanently established through federal programs.

The Responsibility of the Province of Alberta

Treaty 8 was signed in 1899 before the Province of Alberta was created. The federal government alone was responsible for Crown Lands, and it set aside reserves for the exclusive use of Indians. Today, under the Constitution Act of 1930, the management and administration of Crown Lands are the responsibility of the province. Therefore, the federal government alone cannot provide lands for the exclusive use of Indians, as it did before 1930. The provincial government has to account to the people of Alberta for the amount of land transferred from provincial to federal jurisdiction.

How is a land base calculated under Treaty 8?

A band's right to land is based on the number of entitled band members. Under Treaty 8, a band receives 128 acres of land for each entitled member (one square mile of land for a family of five). This formula was used to create reserves for 35 other Treaty 8 bands.

While the Government of Canada accepts that the number of registered band members should be a major factor, it is only fair to other Canadians that Indians should not be paid twice. If, for example, lands were made available previously to current members of the band or their predecessors, the amount of the band's entitlement may have to be reduced. Also, the number of band members should not be artificially inflated for the purpose of Treaty 8 entitlement.

Why won't the governments accept the Lubicon Lake Band's membership list in calculating the land base?

Because the Lubicon Lake Band's list includes members who are not entitled to land.

A band has the authority to include anyone it wishes on its membership list. But before providing a band with a reserve, the family histories of band members are traced to determine who should be counted in the calculation of the band's land entitlement.

Such a genealogy study was completed by the Lubicon Lake Band and the federal government in 1984. It identifies band members or their ancestors who received land (or other benefits instead of land) in earlier settlements. The band will not allow the federal government to share this study with the province.

Where do we go from here?

Canada continues to search for a solution and is therefore making its current request of Alberta. Regrettably, if Alberta cannot agree to this approach, the matter will have to be settled in the courts.

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DOSSIER #
LUBICON LAKE BAND

IMH

FEB 5 1988

RECEIVED - REGU

Canada

MEMBERS OF PARLIAMENT AND SENATORS

Lubicon Lake Land Claim

Please find attached a package of information on the Lubicon Lake Band's land claim.

It contains the text of an advertisement placed in several Alberta newspapers today outlining the federal government's position on the claim.

Also included are copies of information sheets which provide additional background on this issue and on the history of the claim. A copy of the press release issued by the federal negotiator on February 4 is enclosed for your reference as well.

For further information, do not hesitate to call Pam Forward or Rick Moorcroft of my staff at 997-0002.

Bill McKnight

CANADA'S POSITION ON
THE LAND CLAIM OF THE LUBICON LAKE BAND

Negotiations to provide the Lubicon Lake Band with a reserve have been at an impasse because of failure to resolve the basic issue of how many people should be counted in determining the band's entitlement to land.

The present federal government inherited the longstanding dispute and has attempted to bring it to a conclusion. In 1986, the band was granted \$1.5 million for legal and other costs in addition to previous loans of \$240 thousand it had received to research its claim.

There has been little progress in the 1982 court case launched by the band against the Province of Alberta. Repeated attempts by the federal government to bring the parties to the negotiating table have failed.

The three parties involved -- the Lubicon Lake Band, the Government of Alberta and the Government of Canada -- have been unable to agree on how to settle the claim.

Alberta believes the band's claim can only be resolved by sharing all genealogical information in three-party negotiations, an approach rejected by the band.

The federal government has therefore decided to end the impasse by making a formal request to Alberta for reserve land. The request is based on the present day population of the band, less any lands which have previously been made available to band members or their ancestors.

Should there be no agreement on this request, Canada will seek the assistance of the courts.

What is the basis of the Lubicon Lake Band's Claim?

Members of the Lubicon Lake Band are treaty Indians subject to the provisions of Treaty 8. The federal government recognized the band in 1940 and, after World War II, began providing band members with the benefits all Indians of Canada are entitled to.

- 2 -

In the past year, for example, the federal government has provided about \$1.3 million worth of housing, education, social welfare, health and other services including band support payments for honoraria to the Chief and band councillors and salaries for administrative staff. The band receives additional services from the provincial government.

The federal government recognizes the band's need for a reserve. Until it can be created, economic development projects and the building of the physical community -- roads, water and sewage systems, schools, a health care centre and other facilities -- cannot be permanently established through federal programs.

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Where do we go from here?

Canada continues to search for a solution and is therefore making its current request of Alberta. Regrettably, if Alberta cannot agree to this approach, the matter will have to be settled in the courts.

The Honourable Bill McKnight
Minister of Indian Affairs and Northern Development

LUBICON LAKE BAND LAND CLAIM

Summary

The outstanding land claim of the Lubicon Lake Indian Band has been recognized by the Governments of Canada and Alberta. The claim remains unresolved, however, despite a number of attempts to come to grips with key issues and principles surrounding it.

Negotiations between the band and Canada have been hindered by the band's insistence that the Government of Alberta had no role in the process. In addition, the band has claimed a membership which it refused to support by releasing its own genealogical study to Alberta.

The Government of Canada has made repeated offers to the band to return to the negotiating table. Since the band refused, it was necessary to begin negotiations with the Government of Alberta separately in order to come up with an offer.

The band has devoted much of the past four years to a variety of national and international public relations activities designed to call attention to its grievances, and it has launched legal actions which are still pending. The band has called for a boycott of the 1988 Calgary Winter Olympic Games and a related cultural exhibit to be held at the Glenbow Museum.

Lubicon Lake Band land claim

The Lubicon Lake Band land claim dates to the 1930s, when 14 Indian families living in the Lubicon Lake area of northern Alberta petitioned for a new reserve on the basis of Treaty 8 of 1899. This treaty, signed between the Government of Canada and the Indians of northern Alberta, provided for the surrender of traditional hunting grounds in exchange for reserves and other privileges, in the interests of recognizing the rights of aboriginal peoples while providing for orderly settlement.

- 2 -

After the signing of Treaty 8, some Indian bands chose to remain nomadic and delay their acceptance of reserve land to later dates, as in the case of the indigenous populations in and around Lubicon Lake.

In 1940, the Government of Canada agreed in principle to the request for reserve lands for the 127 Indians living at Lubicon Lake and nearby Little Buffalo Lake. At the same time, the Lubicon Lake Band was recognized as a separate group entitled to education and medical assistance in accordance with Treaty obligations and federal government policy.

At that time, the Province of Alberta agreed to transfer 128 acres for each Indian (or a total of 25.4 square miles of Crown land) to the Government of Canada. This territory was to have become a reserve in accordance with the provisions of Treaty 8. Because the transfer of land did not occur, however, the reserve was not established, and in the 1960s the land ceased to be set aside for the purposes of the band.

In April of 1980, the Band filed an action in the Federal Court of Canada, requesting a declaration concerning their land claim, the use thereof and the benefits of the natural resources flowing therefrom. The claim was dismissed on jurisdictional grounds against the Government of Alberta and all oil and gas companies except Petro-Canada. The claim against the Government of Canada and Petro-Canada remains pending, but has been inactive since May of 1981.

In February of 1982 the band filed a Statement of Claim in the Court of Queen's Bench of Alberta against the Government of Alberta and certain corporate entities. It alleges aboriginal title to some 8,500 square miles of land in Northern Alberta and sought \$1 billion in compensation. In 1982 the Band applied for a Court injunction to stop oil and gas exploration in and around Lubicon Lake on lands claimed by the band.

This application was rejected by the Alberta Courts and later the Supreme Court of Canada in 1985. Subsequently this case has been pursued only intermittently by the band and was last amended in March 1987.

The band's public relations activities

After its initial attempts to pursue its claim by way of the Canadian court system, the band turned to national and international public relations activities. It invited groups of Canadian church persons and others sympathetic to the Indian cause to visit lands under dispute, and began to allege genocidal policies by Canadian authorities.

- 3 -

In 1983 and 1984, at the instigation of the band, the World Council of Churches took up the Lubicon Lake Band cause, and wrote to federal and provincial governments with specific complaints. In response to the allegations of the World Council, the Ombudsman of Alberta, Mr. Randall Ivany, was invited to undertake an investigation.

The Ombudsman, an expert totally independent of the provincial government, published his report in August 1984, after direct investigation by his staff. He concluded that the unresolved land claim was "the underlying issue" and hoped that it could be resolved. But, with respect to the specific charges of Canadian groups and the World Council of Churches, he concluded that "there is no evidence to support most of the charges which have been made".

With respect to the serious allegation of cultural genocide, he wrote: "I have not been provided with any evidence, either from the members of the band or from other sources, that could substantiate such a serious accusation."

In 1984 the band also initiated proceedings against Canada in the United Nations Human Rights Committee. Basing its arguments on Article 1 of the International Covenant on Civil and Political Rights, the head of the band, Chief Bernard Ominayak, alleged in a communication that Canada had violated the Lubicons' right to self-determination. In 1987 this communication was heard by the Human Rights Committee, and the argument based on Article 1 was rejected. However, a procedural decision was reached which allowed the communication to stand in respect of other possible grounds for complaint.

The Government of Canada is now requesting reconsideration of the decision on admissibility, and the Committee will not decide on the merits of the substance of the contention for some time.

In 1985 the band also helped to orchestrate the delivery to Lubicon Lake of emergency food aid, following allegations that the Band was in impoverished circumstances and near starvation. The donor group, made up largely of Church persons from Spokane, Washington, in the United States, brought truckloads of food, but did not find the Indian in the condition they expected. Instead, they found substantial dissension between the Lubicon Lake Band members and other natives and non-natives who were embarrassed about the media episode and resentful that the emergency assistance was not destined to the poor and needy.

- 4 -

One year later, in April and May, 1986, the band announced that it would seek a boycott of the 1988 Calgary Winter Olympic Games and the landmark cultural exhibit associated with the Games at the Glenbow Museum. In the Fall of 1986 and the Spring of 1987, band representatives and non-native advisers travelled to Western Europe to meet support organizations and to rally support of its cause.

Early in 1987 the band also threatened legal action to halt the 1988 Winter Olympics, and suggested the possibility of disrupting the Olympic torch relay across Canada, which passed through a number of Indian reserves. Despite the fact that both the Winter Olympics and the Glenbow exhibition are proceeding as scheduled, the band has decided on a reinvigorated boycott campaign, using the three-year-old slogan "The Last Stand of the Lubicon".

Towards a negotiated settlement

The Government of Canada recognizes that the Lubicon Lake Band has a legitimate and outstanding land claim. Because of this recognition, the Government is committed to seeking a fair and just resolution of the claim in accordance with its legal obligations to the band, which flow from Treaty 8. It is the Government's position that the best framework for attaining such a resolution is through negotiations with the band and the Province of Alberta.

In 1985 the Government of Canada appointed the Honourable E. Davie Fulton, a former Minister of Justice and Attorney General, to undertake an inquiry into the Lubicon Lake Band's claim. His final report was submitted to the Governments of Canada and Alberta and the band in February, 1986. At the recommendation of Mr. Fulton, Canada made a payment of \$1.5 million to the band to defray legal and other costs associated with the presentation of its claim.

Later in 1986, the Government of Canada requested negotiations to deal with the outstanding claim, and in June of that year the band agreed to participate in bilateral negotiations with Canada through Canada's negotiator, Mr. Roger Tassé, a former Deputy Minister of Justice.

At that time, the band and Mr. Tassé agreed that he would also undertake parallel negotiations with the Province of Alberta, because, under Canada's constitutional arrangements, Alberta would have to be a party to at least some elements of a final agreement. Mr. Tassé and the band also agreed to use the Fulton Report as a guide to negotiations.

- 5 -

On July 8, 1986, after only one meeting, the band withdrew from the bilateral negotiations over the question of the amount of land to which the band is entitled under the provisions of Treaty 8. The Government of Canada contended that the band was entitled to 128 acres for each of the 200 Indians registered under the Indian Act.

The band, on the other hand, maintained that, since it had control over its membership as provided for by Bill C-31, it was entitled to 128 acres for each of 457 persons on its membership list, irrespective of whether some of these persons were eligible under the provisions of Treaty 8 for land purposes.

Because the Government of Canada has emphasized that negotiations are the best framework for settling the outstanding land claim, Canada has made repeated efforts to get the band to the negotiating table.

The Minister of Indian Affairs and Northern Development, the Honourable Bill McKnight, publicly urged the band in 1986 to resume negotiations, and in 1987 he wrote to the Chief of the band with a formal request to reopen the disrupted talks.

With respect to a negotiated settlement, the position of the Canadian Government has been clear for the past two years. Canada believes that a framework is in place which will permit productive negotiations leading to a solution.

Canada has taken the lead in urging a return to the bargaining table, and the government is prepared to negotiate at any time with the band or its representatives.

Present socio-economic situation of the band

While the band has endeavoured to portray itself as impoverished and near extinction, this is hardly the case. The Government of Canada now provides to, or pays on behalf of the band, about \$1,300,000 annually for the delivery of social services to band members.

Among the services provided are the following:

- social assistance, education, housing, band governance and administration, including community maintenance, economic development, and adult training.

The level of social services delivered to band members is comparable to those provided to other Indians in Canada and is comparable to those available to all Canadians.

- 6 -

For instance, social assistance payments to band members are the same as those available to all residents of the Province of Alberta, both Indian and non-Indian. Also the 48 school age members of the band are offered the same standards of education as non-Indian Albertans.

As Indians, members of the Lubicon Lake Band also have access to other federal social programs not generally available to other Canadians. These include free medical and dental care and free post-secondary education.

It should also be noted that band members also have full access to all social programs universally available to all Canadians.

These in part include:

- family allowance payments, unemployment insurance benefits, old age pensions, the Canada Pension Plan and, where applicable, Veteran's benefits.

Recent developments

In the Fall of 1987, J. Brian Malone, a Calgary lawyer, was appointed as federal negotiator. After repeated efforts to bring band negotiators back to the table, Mr. Malone began negotiations with the Province of Alberta regarding the creation of a reserve for the Lubicon Band.

On December 22, 1987 the Honourable Bill McKnight met with the Honourable J. Horsman, Attorney-General for Alberta with a proposal for an interim settlement of the band's claim for a reserve. This proposal would have been without prejudice to the band's right to further its claim either through negotiations or its existing court actions. In early January 1988, Alberta advised that an interim settlement was not possible because it felt that tripartite negotiations and sharing of geneological information were necessary for its participation in any agreement.

Also on December 22, 1987, Mr. McKnight indicated to the media that since Mr. Fulton has already given his written opinion on the resolution of this dispute, Mr. Fulton could not properly be considered as an impartial mediator.

- 7 -

On January 18, 1988, Mr. McKnight wrote to the band suggesting that the three parties resume negotiations or that the band allow the federal government share all genealogical information with Alberta. (The federal government and the band completed a genealogical study in 1984. It identified band members or their ancestors who had already received land or money in lieu of land in earlier settlements.) The band refused the Minister's request on January 21, 1988.

On February 3, 1988, Mr. McKnight delivered a letter to the Province of Alberta requesting land for a reserve noting that the absence of a positive response would result in the matter being referred to the courts.

LUBICON LAKE BAND

GOVERNMENT PROGRAMS AND BENEFITS

- as residents of Canada the Lubicon Lake Indians receive family allowance payments, unemployment insurance benefits, old age pension, the Canada Pension Plan and, where applicable, veterans' benefits;
- as status Indians, members of the Lubicon Lake Band have access to other federal programs generally not available to other Canadians. They receive free education, housing, medical and dental care. They also receive major contributions to community infrastructure maintenance, economic development, adult training and band government administration.

HOUSING

- since 1981 over \$1 million has gone from the Government of Canada to the Lubicon Lake Band to purchase construction materials for homes;
- labour costs have generally been covered by employment and training grants;
- 54 new houses have been constructed by the Government of Canada and the Province of Alberta in the past 10 years in the hamlet of Little Buffalo;
- funds are also provided for housing renovations. The general maintenance of a home is the responsibility of the owner;
- the Government of Canada pays for the permits and taxes of lots occupied by band members.

- 2 -

EDUCATION

- Indian and Northern Affairs Canada (INAC) pays for basic education and early childhood services of Lubicon Lake Band Indian children;
- the schools are under the administration of the Peace River School Division;
- the Government of Alberta has recently built **two new schools** in communities very close to Little Buffalo. In 1985 the Government of Alberta offered to build a new school in Little Buffalo. The Lubicon Lake Band refused to allow a provincial school to be built.

SOCIAL ASSISTANCE

- a family of 6 (2 adults and 4 children) on social assistance have:
 - their actual shelter costs paid for;
 - their full and utilities paid for; and
 - \$813.00 provided a month for food and household expenditures.
- the Lubicon Lake Band members on social assistance receive the equivalent benefits given to any Albertan on social assistance;
- material distributed by the Lubicon Lake Band in Europe indicate over 95 per cent of the Lubicons are on social assistance;
- material distributed by the Lubicon Lake Band in Canada claims the social assistance rate over the last few years increased by 90 per cent;
- **INAC statistics indicate neither is true.** In May 1981, 53 Lubicon Indians were dependent on social assistance and in August 1987, 71 Indians were dependent of social assistance. (Approximately 10 families and seven single Indians receive social assistance.)

- 3 -

WATER SERVICES

- Little Buffalo has a water supply. The water comes from a reservoir which collects surface runoff. The water is treated to meet Alberta environmental standards and is stored in a central location;
- Indian and Inuit Affairs program purchased a water-toting vehicle for the Lubicon Lake Band to allow water delivery to individual homes;
- in 1987 the governments of Canada and Alberta (through the Canada/Alberta Northern Development Agreement) approved \$1.5 million for a water treatment plant in Cadotte Lake, a community only 10 km from Little Buffalo. The treatment plant is expected to be built in the spring of 1988;
- initially, a direct waterline to Little Buffalo was planned for 1988. This waterline has been put on hold after the surveying stakes were pulled up in the community of Little Buffalo;
- as an alternative to the direct waterline, Alberta will be hauling water from Cadotte Lake to Little Buffalo once the treatment plant is completed. The hauled water will be stored in a reservoir;
- Alberta Municipal Affairs sent a letter to Chief Ominayak December 15, 1987 requesting that the Chief get back to them as soon as possible to confirm the location preferred by the band for a treated water reservoir. To date, the Chief has not replied. A delay in the Chief's response may mean a delay in the community receiving the water from Cadotte Lake;
- Alberta officials indicate that in meetings with the Lubicon Lake Band, the band did not support the building of a water line to Little Buffalo.

POWER

- Power is provided to the community of Little Buffalo by Alberta Power.

- 4 -

TOTAL INAC CONTRIBUTION TO LUBICON LAKE BAND:

According to departmental audit analysis dated January 21, 1988, total (direct and indirect) contributions was :

1984/85	\$1,056,800	approximately \$5,000 per capita
1985/86	\$1,058,700	approximately \$5,000 per capita
1986/87	\$1,059,100	approximately \$5,000 per capita

forecast for 1987/88 total is expected to be:

1987/88	\$1,297,400	approximately \$6,200 per capita
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(Population used in calculation is 218 being the total band population recognized by INAC)

HEALTH ISSUES

Tuberculosis Outbreak

- Current status as of January 5, 1988:

358 natives received skin tests;

107 were positive;

37 of the positive were active cases which require treatment of two or more drugs;

105 natives have been receiving treatment of one drug.

If these people went untreated, they would have a 10 percent chance of developing active tuberculosis; **no one is infectious because they all are being treated.**

- the Lubicon Lake Band claims that 91 people have been affected by tuberculosis. This is a misleading comment and implies that 91 people have active tuberculosis as opposed to the 37 cases that are being treated as active cases;

- Medical Services Unit, Health and Welfare Canada, is providing the following services in the community:

- lay dispenser twice a week;

- full time community health worker located in Little Buffalo;

- 5 -

- field training for the Little Buffalo student in community health who is expected to replace the current health worker in June 1988;
- the funds for a vehicle and driver to establish a health transportation system from Little Buffalo to Peace River
- two doctors visiting the community once a month;
- one full time and a second, part time, nurse in the community; and
- a new trailer to use as the Health Care Centre.

RESOURCE MANAGEMENT

Moose population

- Moose feed on low bush and have a difficult time surviving in heavily forested areas;
- in the early 1980's a moose winter tick infestation spread throughout north central Alberta, reducing the moose population;
- the moose population around Little Buffalo is expected to increase because of:
 - forest fires from 1980-83 creating bush clearings;
 - oil and gas cutlines and clearings; and
 - the control of winter tick infestation.

EMPLOYMENT AND TRAINING

- Over one-half million dollars (\$600,000) has been given to the community by the Government of Canada for employment and training programs in the last two years;
- ten apprentice carpenters are receiving training from the combined funds of Indian and Northern Affairs Canada and Canada Employment;
- \$85,000 has been given to the Lubicon Lake Band over the last three years to assist them to investigate opportunities to work with the oil and gas industry;
- the community of Little Buffalo receives funds from the federal government to hire one person whose job is to establish contacts with potential employers and link unemployed workers with employment opportunities.

- 6 -

MEMBERSHIP

- The Lubicon Lake Band membership has grown substantially in the last eight years:
 - approximately ----- 1980 Statement of
200 Indian Claim to the Federal
100 other members Court of Canada;
 - 250 total ----- Statement of Claim
(150 Indians against the Alberta
100 other members) Government and 11 oil
companies;
 - in excess of 400 ----- 1986/87 Fulton
report;
 - 347 ----- 1984 joint INAC/Band
membership study;
 - 458 ----- 1987 amended
Statement of Claim;
- an essential document for determining land entitlement is the genealogical survey conducted by INAC with the assistance of the Lubicon Lake Band. It contains the evidence to support the claim;
- the Lubicon Lake Band will not permit the Department to share the genealogical study with Alberta as a part of the negotiations for land entitlement;
- Mr. Fulton's report mentions this as a major obstacle when he says "the Band's withholding of consent still represents a substantial obstacle to direct progress, necessitating a considerable detour."

NEGOTIATIONS

- In 1986 the Government of Canada gave the Lubicon Lake Band \$1.5 million to defray legal and other costs associated with presenting its claim;
- in 1986 the Government of Canada offered the Lubicon Lake Band 40 square miles of land for a reserve, with full mineral rights plus additional compensation, to establish a new community;
- the Lubicon Lake Band accepted the \$1.5 million but in 1986 broke off negotiations with the Government;
- on January 18, 1988 the Hon. Bill McKnight wrote to Chief Ominayak requesting:

- 7 -

1. that tripartite talks with both governments and the band begin in order that a final settlement could be negotiated;

2. that the band give the government of Canada permission to release the genealogical study to the province.

- on January 21, during a meeting with the Minister of Indian Affairs and Northern Development and the Secretary of State for External Affairs, the band rejected the government's proposal.
- on February 3, 1988, Mr. McKnight delivered a letter to the Province of Alberta requesting land for a reserve noting that the absence of a positive response would result in the matter being referred to the courts.

MALONE DELIVERS FEDERAL REQUEST TO ALBERTA

CALGARY (February 4, 1988) -- Yesterday, I delivered to the Attorney General of Alberta a formal request for reserve lands for the Lubicon Lake Band on behalf of the Honourable Bill McKnight, Minister of Indian Affairs and Northern Development.

This written request is based on a contemporary population count, but excludes non-Indians and those Indians on the Lubicon Band list who are members of other bands.

In the circumstances of this claim, the Minister is prepared to recognize certain modified exclusions for band members whose ancestors have received prior settlements.

Alberta has been advised that a rejection of this request will require Canada to commence legal action to resolve this dispute. In that event, the Minister has requested that Alberta consider, as an interim measure, the immediate transfer of the 25.4 square miles of land promised in 1940, without prejudice to the legal action.

.../2

- 2 -

This interim step would permit Canada to begin an immediate program of capital construction for roads, water, housing, educational and health facilities.

- 30 -

Information: Brian D. Malone
(403) 234-7200

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ACTION
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---HUMAN RIGHTS CTTEE:LUBICON

ACC	
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45-CA-13-1-3-Lubicon
C7-2 Lake Road

HAVE CONVEYED MESSAGE CONTAINED IN YOUR REFTEL TO MOLLER, HEAD OF

COMMUNICATIONS SECTOR AT CENTRE. LATE FEBRUARY SUBMISSION WILL

PRESENT DIFFICULTIES AS REGARDS PROCESSING OF SUBMISSION

(TRANSLATION, PRINTING) AND TRANSMISSION TO NEW YORK (ALL CTTEE FILES)

WILL BE SENT TO NEW YORK ON 26 FEB.) THIS DOES NOT/NOT NECESSARILY

PRESENT FORMAL OBSTACLE TO CONSIDERATION OF MATTER AT MARCH

SESSION, AS THERE IS NO/NO OBLIGATION ON OUR PART TO SUBMIT ANY

FURTHER COMMENTS. HOWEVER, YOU SHOULD BE AWARE THAT EXISTENCE OF A

NEW QUOTE UNPROCESSED UNQUOTE DOCUMENT COULD BE SEIZED ON BY SOME

CTTEE MEMBERS AS EXCUSE FOR DELAYING CONSIDERATION OF THIS CASE

YET AGAIN.

2. MOLLER HAS NOTED THAT CTTEES TENDENCY TO PROCRASTINATE ON THIS

CASE REFLECTS (A) FACT THAT THIS IS FIRST INSTANCE IN WHICH CTTEE HAS

RECEIVED A QUOTE SERIOUS REQUEST FROM A SERIOUS STATE PARTY UNQUOTE

TO REVIEW AN ADMISSIBILITY DECISION, AND (B) CTTEES REALIZATION OF

POLITICAL SENSITIVITY OF THE LUBICON ISSUE. CONSEQUENTLY, WHILE CENTRE

WILL BE GIVING LUBICON CASE PROMINENT ATTENTION IN DRAFT PROGRAMME

OF WORK PLACED BEFORE CTTEE, IT CAN OFFER NO/NO GUARANTEES THAT

CTTEE WILL ACT.

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① We need someone sending copies to N.Y. in English + to Geneva.

② How should we N.Y. / mult.

③ How ...?

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3. ANOTHER PROBLEM IS FACT THAT WESTERN MEMBER OF CTTEES WORKING GROUP ON COMMUNICATIONS, WENNERGREN OF SWEDEN, WAS ONE OF MAIN PROPONENTS OF ORIGINAL ADMISSIBILITY DECISION (AGAINST ADVICE OF CENTRE STAFF.) WE UNDERSTAND THAT WENNERGEN HAS ALSO BEEN COMPLICATING LIVES OF OTHER WESTERN STATES PARTIES. NORWEGIAN COLLEAGUES HAVE VOICED PRIVATE ANNOYANCE ABOUT WENNERGENS TENDENCY TO GIVE UNDUE WEIGHT TO FRIVOLOUS COMPLAINTS. THERE IS, OF COURSE, VERY LITTLE WE CAN DO ABOUT THIS. WENNERGENS TERM ON CTTEE RUNS UNTIL END OF 1990.

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---HUMAN RIGHTS CTTEE:LUBICON

HAVE CONVEYED MESSAGE CONTAINED IN YOUR REFTEL TO MOLLER, HEAD OF COMMUNICATIONS SECTOR AT CENTRE. LATE FEBRUARY SUBMISSION WILL PRESENT DIFFICULTIES AS REGARDS PROCESSING OF SUBMISSION (TRANSLATION, PRINTING) AND TRANSMISSION TO NEW YORK (ALL CTTEE FILES WILL BE SENT TO NEW YORK ON 26 FEB.) THIS DOES NOT/NOT NECESSARILY PRESENT FORMAL OBSTACLE TO CONSIDERATION OF MATTER AT MARCH SESSION, AS THERE IS NO/NO OBLIGATION ON OUR PART TO SUBMIT ANY FURTHER COMMENTS. HOWEVER, YOU SHOULD BE AWARE THAT EXISTENCE OF A NEW QUOTE UNPROCESSED UNQUOTE DOCUMENT COULD BE SEIZED ON BY SOME CTTEE MEMBERS AS EXCUSE FOR DELAYING CONSIDERATION OF THIS CASE YET AGAIN.

2. MOLLER HAS NOTED THAT CTTEES TENDENCY TO PROCRASTINATE ON THIS CASE REFLECTS (A) FACT THAT THIS IS FIRST INSTANCE IN WHICH CTTEE HAS RECEIVED A QUOTE SERIOUS REQUEST FROM A SERIOUS STATE PARTY UNQUOTE TO REVIEW AN ADMISSIBILITY DECISION, AND (B) CTTEES REALIZATION OF POLITICAL SENSITIVITY OF THE LUBICON ISSUE. CONSEQUENTLY, WHILE CENTRE WILL BE GIVING LUBICON CASE PROMINENT ATTENTION IN DRAFT PROGRAMME OF WORK PLACED BEFORE CTTEE, IT CAN OFFER NO/NO GUARANTEES THAT CTTEE WILL ACT.

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---LUBICON LAKE BAND, ARTICLE IN OBSERVER 31JAN88

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APPROVED/APProuvé

JOHN ROWSOME
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PUBLIC AFFAIRS

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JOHN ROWSOME
SIG

KATHERINE GOVIER joins the stampede to Calgary for the Winter Olympics

Cowtown's uphill race

AS the city Canadians love to hate, Calgary has more to prove to the rest of Canada than to visitors at its Winter Olympics, which start on Saturday week.

'Cowtown', established in 1873, was the Royal Canadian Mounted Police's stand against American whisky traders with footholds north of the border at Fort Whoop-Up and Fort Slide-Off.

A log palisade and mud huts were built over Indian graves at the forks of the Bow and the Elbow rivers, where buffalo grazed in view of the towering Rocky Mountains. Dubbed 'the land of the second son', the western plains took settlers whose hopes were dashed repeatedly.

The arrival of the first Canadian Pacific Railroad train on 10 August 1883 found Oblate priest Father Lacombe drinking champagne with the CPR president, George Stephens. Grateful to Father Lacombe for quelling Indian resistance to the surveyors, Stephens made him CPR president for an hour. Father Lacombe then offered Stephens the rectorship of his Calgary parish for an hour. Stephens is said to have remarked, 'Poor souls of Calgary, I pity you.'

The three-way tug of war has



defined the city ever since. Business (commonly known as 'progress') struggles with the natives and a growing conservationist constituency. Native Canadians, the Indian tribes, were nearly decimated in the next century and are now fighting back with land claims. The boom-and-bust cycle plagues this 'next-year country' where ranching and oil and gas form the basic economy.

'Brash' and 'redneck' to eastern Canadians, Calgary does not suffer the uncertain identity of cities with pretensions to greater sophistication. When oil prices are high it is Mecca for international technocrats, geologists, and anyone in search of work. Most Calgaryans prefer the bust, when all but the locally born depart and they can get on with their riding, skiing, and hot air ballooning. Their reputation for eating beef is fading as the city gains Vietnamese and Chinese restaurants run by boat people. The city also is home to the Glenbow Museum, a stunning collection relating to the old west.

It is a sprawling suburban city but you won't get lost: developers kindly gave all streets in a given area names beginning with the same letter. If a street starts with B, it's in Brentwood.

This is the town that loves technology, and anything new. Prime time on the local radio and television is six to eight a.m. Calgaryans say they get up early to deal with head office in Toronto ('Hogtown'), but the truth is they like to start the day fresh under that relentless blue sky. Lunch is noon sharp at the Petroleum Club (no ladies until nightfall). Things are more leisurely at the exclusive

Ranchman's Club (ladies enter by the side door).

The only people who aren't celebrating the Olympics may be the 400 members of the Lubicon Indian band. Seeking international support for their 40-year-long effort to settle a land claim with the Government, the Lubicon are boycotting the Glenbow's massive exhibition, 'The Spirit Sings'. The show brings back priceless artefacts carried as far away as Moscow by explorers and ethnographers dating back to Captain James Cook in the 1770s. The show offends native Canadians because it is sponsored by Shell Oil, which is drilling on Lubicon land. In support of the band, a Mohawk Council in Quebec has sued for the return of a sacred mask not supposed to be seen by whites. And so the story continues.

Staffed entirely by volunteers, the Games suffered a ticket scandal which left locals out in the cold. Then the overzealous committee sought to protect Olympic sponsors by suing pizza shops and the purveyors of dentures who had been using the Olympic name for decades. The Canadian media had fun with the 'Olympic language police' but eventually succumbed to a brilliant public relations move. The Olympic torch was lit in Greece and flown by private plane to Newfoundland, where it travelled in a miner's lamp to Signal Hill. In this country where people love to go coast to coast on two feet, one foot, or wheelchair, six million amateurs applied for a chance to carry the Olympic torch one kilometre along the route. In each town it enters, thousands of emotional Canadians gather to see the torch pass by in the hands of a pregnant woman, a disabled child, by dog-sled or boat.

The international committee declares that the sports facilities are the best ever. The skating oval is a technical marvel, through predictions are that records will fall because Calgary's high altitude (4,000 feet above sea level) means the air is thin. At Mount Allan, the alpine site, warm chinook winds can raise temperatures 50 degrees in a few hours, so that even the state-of-the-art snow machines bog down. But Albertans won't leave it to nature; they've been churning out artificial flakes since before Christmas.

Too many times, the people of next-year country have lost out. Now Calgary wants its due, to be left with first-rate sports facilities to serve the city for years to come. Along the way it also looks it will be the first Olympic Games holder to end up some \$40 million in the black. Now, if only they could bring back Father Lacombe to settle Indian disputes .. or better yet get the snow god on side.

■ Katherine Govier's latest novel, 'Between Men', is published by Viking on 31 March at £9.95.

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JOHN ROWSOME

PUBLIC AFFAIRS

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Indians to disrupt Olympics

INDEPENDENT: 29 JAN 1988

By Melinda Ham

Canadian Indians are planning to protest against the Calgary Winter Olympics in an attempt to win international publicity for their fight with the Canadian government and oil companies over land and mineral rights.

The games are sponsored by Shell and Petro-Canada, two of the oil companies that some Indian groups blame for depriving them of land with mineral rights worth millions of pounds.

"Although the Olympics push Canadian patriotism to a peak, many forget they are neglecting their own native people," said Brian Macleod, a senior member of the Canadian Alliance and Solidarity with Native People. Demonstrations began in December

when the Olympic torch was carried across Canada. Several hundred Indians turned out in Ottawa, Toronto and Winnipeg to protest. The government of the North West Territories refused to take part in the torch ceremonies at all.

Protests were also held last week outside the opening of "The Spirit Sings" — an exhibition of North American Indian artifacts in Calgary, sponsored by Shell. More than 20 museums in other countries refused to donate artifacts in a demonstration of solidarity with the Indians.

The leader of the demonstra-

tions is Chief Bernard Ominayak of the Lubicon Indians in northern Alberta; his cause is the main focus of the protest.

The Lubicons are one of the few bands in Canada that do not have their own reservation. Their demand for land has led to a 48-year dispute with the Alberta and Canadian governments. Chief Ominayak believes the protest is the best bargaining tool he has.

"The genealogy issue is the key to the dispute," said Don McGregor, Director General of Communications for Indian and Northern Affairs. "Their land claim will never be solved until the number of Lubicon band members entitled to land is determined."



External Affairs
Canada

Affaires extérieures
Canada

MESSAGE

Accession/Référence

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45-10A-13-1-3-2 Lubicon
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PCOOTT/CARON/DORE/RATCLIFFE
---HUMAN RIGHTS CTTEE: LUBICON

WE HAVE REVIEWED LATEST LUBICON SUBMISSION AND HAVE DECIDED TO MAKE RESPONSE WHICH JUSTICE IS CURRENTLY DRAFTING. WE ANTICIPATE SUBMISSION AROUND THE END OF FEBRUARY (FYI: AFTER THE END OF THE OLYMPICS) AND DO NOT INTEND TO ASK FOR ADJOURNMENT OF CONSIDERATION OF MATTER BY HRC IN MARCH. HOWEVER JUSTICE WAS ADVISED IN ANOTHER CASE (REGALADO) THAT SUBMISSIONS FOR MARCH SITTING SHOULD BE FORWARDED BY FEB 3. IN LIGHT OF THIS, PLEASE INFORM APPROPRIATE COMMITTEE STAFF OF ANTICIPATED DATE OF CANADIAN RESPONSE AND OUR DESIRE THAT MATTER SHOULD GO ON AS SCHEDULED IN MARCH. PLEASE CONFIRM COMMITTEES INTENTION TO FORWARD ALL REQUIRED DOCS TO NEW YORK FOR MARCH SITTING.

DRAFTER/RÉDACTEUR

DIVISION/DIRECTION

TELEPHONE

APPROVED/APPROUVÉ

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THE SPIRIT SINGS • LE SOUFFLE DE L'ESPRIT

Artistic Traditions of Canada's First Peoples • Traditions artistiques des premiers habitants du Canada

GLENBOW MUSEUM
PUBLIC RELATIONS OFFICE
130-9th Avenue S.E.
Calgary, Alberta T2G 0P3
(403)264-8300
Telex 03-825571



Alison

January 29, 1988

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IMH

Ms. Allison LeClaire
IMH, Tower C, 7th Floor
Lester B. Pearson Building
125 Sussex Drive
Ottawa, Ontario
K1A 0G2

ACC	NO.	DATE
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45-COA-13-1-3 - LeClaire on CK Bend		

Dear Ms. LeClaire:

Further to your telephone conversation with Julia Harrison, enclosed are press reviews of The Spirit Sings: Artistic Traditions of Canada's First Peoples.

If you should need further information, please do not hesitate to contact us.

Sincerely,

GLENBOW MUSEUM

Sherry J. Steinhubl

Sherry J. Steinhubl
Public Relations & Marketing

sjs

enclosures

GLENBOW MUSEUM • CALGARY 1988

Calgary — January 15 janvier — May 1 mai • Ottawa — July 1 juillet — November 6 novembre

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(Left) a Tanaina figurine, western subarctic; (right) a north-west coast comb, early 19th century;



After five years and a boycott, the Glenbow's huge exhibit is a splendid achievement

BY STEPHEN GODFREY
 The Globe and Mail
 CALGARY

DUE TO a boycott organized by Alberta's Lubicon band, The Spirit Sings: Artistic Traditions of Canada's First Peoples became the most highly publicized and controversial exhibition of the past year before a single person had seen it. Now that the flagship event of the Olympic Arts Festival has opened at the Glenbow Museum, one can report that it is worth a different kind of hype: this is a great achievement, a superb-

years before many others in the country. For that reason, they represent the spectrum of survival. The Beothuk simply disappeared under the onslaught of white settlers in the nineteenth century, and the objects representing them are pitifully few.

But the work of the Micmac is affecting in another way. The manner in which they took to beadwork and decoration (under the influence of teachers such as the Ursuline nuns of Quebec) resulted in amazingly intricate and beautiful objects: moccasins, coats and belts of vivid colors, and book covers and chair seats of birchbark decorated with powerful geometric designs. They were virtually all made as souvenirs to sell, and they provide an image of the determination to adapt and survive.

This forced cross-fertilization even has moments of humor. The only authentic surviving Micmac canoe, on display, was made for the Paris World's Fair in 1878 and probably never touched water. And a European museum solemnly gave the label "Micmac chief's hat" to an object which was made as a tea cosy for a Victorian household.

The exhibition includes descriptions of the creation myths and belief systems of each group to show how they were reflected in the art. For example, the carved clubs and spoons of the Indians of the Northern Woodlands area are full of the images of the thunderbird, considered a particularly important spiritual being. The most striking symbol in the Northern Plains section is the circle imagery inspired by the sun, and as brightly colored as a bull's eye.

THE SPIRIT SINGS

Buffalo effigy made of green quartzite, found on the northern Plains.



Boycott didn't hurt, curators insist

CALGARY
UNTIL YESTERDAY, an empty display case in The Spirit Sings was the most visible reminder of the political storm surrounding the Glenbow Museum, which has been denied loan requests because of a well-organized boycott.

An artifact had been removed by court order, following protests by a Quebec Mohawk council that the object, a nineteenth-century false face mask, had been a private religious item and that its public display was offensive. To the relief of the gallery, the same judge decided on Thursday that the Glenbow could put it back on show.

That skirmish, from some of the people the exhibition is intended to celebrate, follows a campaign by the Lubicon band of Alberta against The Spirit Sings, to protest federal treatment of their land claims. The band has claimed that nearly 30 museums around the world refused to lend items to the Glenbow because of the boycott, thereby damaging the show's credibility. However, Glenbow officials say that only 12 have refused because of the boycott — as opposed to normal, museological reasons — all of them outside Canada. Duncan Cameron, director of the Glenbow, says the museum obtained all it needed for the

exhibition, which took five years of planning.

Still, the Glenbow has counted 140 objects which museums refused to lend because of the boycott. How could that not hurt? "There isn't a Mona Lisa in this show," Cameron says. "There are no objects so unique that nothing else would do. We had an archival inventory of about 5,000 objects from which we made a shopping list of about 1,000. That gave us plenty of room to obtain 650, which was more than we originally intended to show."

Julia Harrison, curator of ethnology at the Glenbow and curatorial co-ordinator for the exhibition, says curators were asked to give two choices for each type of object they wanted, "so that if we were turned down for whatever reason, we had an alternative." She said if there had been a gap, "I know I would have heard from the curators." The exhibit's six curators, one for each regional group, were: Ruth Whitehead, Judy Thompson, Ruth Phillips, Ted Brasser, Bernadette Driscoll and Martine Reid.

Without foreign museums, the exhibition would have been impossible; nearly three-quarters of the objects on show are from outside Canada. About 85 foreign lenders in 20 countries have taken part. The biggest foreign lender, with 56

objects, is the Royal Scottish Museum; the largest Canadian lender, with 45 objects, is the Canadian Museum of Civilization.

Trying to find out what the Glenbow obtained is confused by the catalogue, which has descriptions and photographs of 36 objects which are listed as not in the exhibition. Harrison says that the publication of the catalogue was completed before the museum knew whether all its loan requests had been accepted, and that of the denials, only a small portion were because of the boycott. Most were because it was felt that the artifacts were too delicate to be moved. —S.G.

ly researched exhibition which moves and astonishes the viewer by the range of its offerings.

The Spirit Sings, which is on view at the Glenbow until May 1 before moving to Ottawa's Canadian Museum of Civilization on July 1 for four months, has a budget of \$2.6-million, \$1.1-million of it paid by Shell Canada. What made it so ambitious an undertaking is that the museum sought outside Canada for hundreds of objects (collected long before Canadian museums existed) which have been brought home for the first time in generations. Many of these older artifacts show the purest native art traditions before the influence of European settlers had taken root, allowing for a remarkably clear comparison of native art before and after white settlement.

This is not an easy show. It is very dense, with 650 objects spread over six galleries. For conservation purposes, light levels have been kept very low — "Why don't they call it Spirit of the Dark?" grouched one recent visitor — and to make proper viewing even more difficult, the descriptive labels have been mounted absurdly low, some of them less than two feet off the ground. The Glenbow has promised to correct some of the worst offenders, but even so, bring your reading glasses. There is much, almost too much, descriptive text.

What the exhibition shows, through words and objects, is six roughly defined areas of native habitation across the country with broad differences in art practice due to environment, mobility, means of survival and materials at hand. At the same time, all share the making of art as a response to the spirits of the natural world, be they in animals, birds, the water or the sun.

Pitted against this was the need to adapt to the demands of the white traders and settlers, and the exhibition doesn't soft-pedal their part in wiping out many of the tribes through disease, alcohol and genocide. The first gallery tells the story as well as any.

It is devoted to the Beothuk, Maliseet and Micmac tribes of the east coast, who endured the arrival of traders and explorers hundreds of



Drum, Ojibwa type, 1823, probably used by a shaman; (above) ball-headed club, Iroquois type, beautifully carved.

Each section demonstrates that, if the natives had had more glamorous materials (gold or precious stones) to work with, their artistry would be more widely recognized as equal to the ancient treasures of Egypt, China or Peru. As it is, the "recipe" for some of the simplest objects shows the care taken with what was available; a simple baby bag from the subarctic region is made from nine materials, including tin, sinew and porcupine quills.

To modern eyes, the richest art is preserved for the last. The natives of the Northwest Coast had the most highly developed visual language of any peoples on display, partly because of the wider range of materials and the more tightly knit social structure. Whether in sheep horn, cedar, abalone shell or feathers, the painting and carving in the West Coast objects are particularly powerful and rich in design. That may also be a function of availability: while there are only 2,500 East Coast objects in international collections, there are as many as 300,000 Northwest Coast objects.

The last object in the exhibition is one of the most striking, a bowl carved in argillite and ivory by Haida artist Charles Edenshaw (one of the very few named artists in the show). It was intended as a curio item, but, like so many of these objects, it still evokes spirits and forces (in this case, legends involving the killer-whale, beaver and raven) in a visible world.

The bowl underlines one of the exhibition's themes, which (appropriately, given the past year) has artistic and political implications. What the European settlers appear to have brought to North America was an ability to divorce form from function and art from daily life. What they found were people for whom so-called "decoration" was usually a means of paying homage to the symbols of nature which ruled their world. The Spirit Sings provides a superb glimpse of that gap in understanding, highlighting a history in which life was culture, and myth more important than fact.



(Right) a commercial 'penny-wooden' Micmac doll, 1872-77; (left) a northwest coast rattle, Bella Bella type, 19th century.



OLYMPICS '88/Arts Festival

THE
Artistic Traditions of
SPIRIT
Canada's First Peoples
SINGS



Glenbow
displays
precious
artifacts

Native legacy comes to life

By Mark Lowey
(Herald staff writer)

A Listen, Indian canoes paddle softly through your imagination.

Carved cedar masks look down from tall totem poles. A shaman's drum beats in your heart.

Listen, this is The Spirit Sings: Artistic Traditions of Canada's First Peoples.

For the first time, about 650 precious Indian and Inuit artifacts from around the world have been brought together at Calgary's Glenbow Museum for a \$2.6-million exhibition.

Hailed as the flagship of the Olympic Arts Festival, The Spirit Sings is the largest, most expen-

sive show in the Glenbow's history. More than 90 museums and private lenders in 20 countries have loaned material, two-thirds of which has never been displayed before in Canada.

"This is an exhibition of great international importance and artistic significance," said Glenbow director Duncan Cameron.

"The project has been in the works for five years, and we are eager to share our excitement with Calgarians, Canadians and visitors from around the world," he said.

Glenbow officials describe the exhibition, which opened Jan. 15 and continues to May 1, as a celebration of the richness and diversity of Canada's native cultural traditions.

The resilience of these native cultures as they confronted Euro-

pean explorers, fur-traders, missionaries and settlers is portrayed through a carefully chosen collection of Indian and Inuit artifacts.

Complementing the show is a festival of contemporary native art, crafts, dance and literature. From Feb. 8 to May 1 at the Glenbow, native groups will present a variety of performances and demonstrations reflecting the creative expressions of native people today.

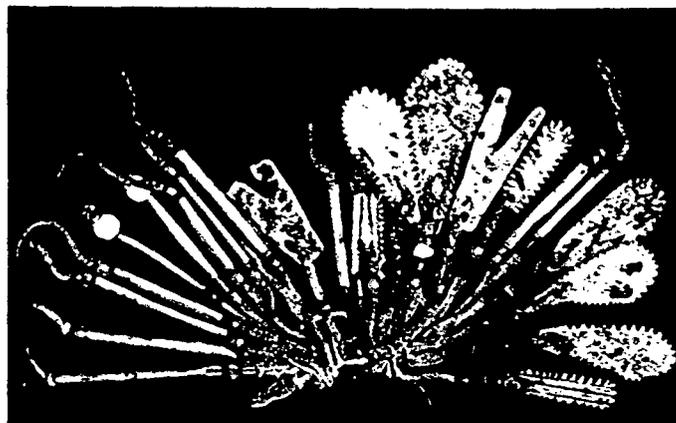
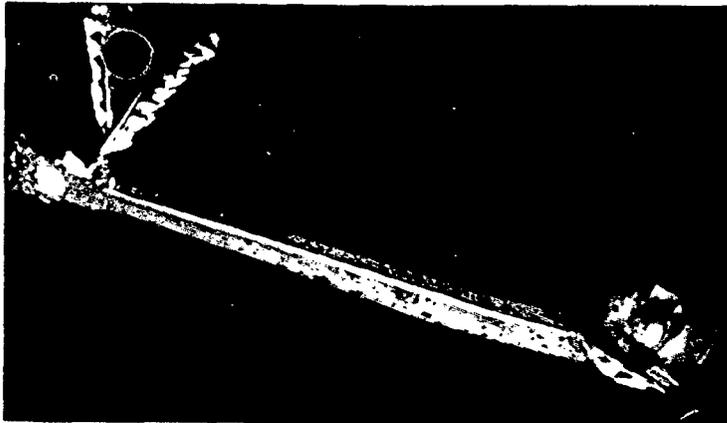
Visitors will be treated to dance, songs, fashion design, games and story-telling. Demonstrations include traditional native food preparation, moccasin making, beadwork, quillwork, teepee design, soapstone carving, spruce root weaving and basketry, mask making, contemporary art, music and films.

Performances and demonstrations are scheduled on certain days and require regular museum admission or that day's ticket to The Spirit Sings.

The exhibition is precedent-setting, but it has not been without controversy.

The Lubicon Lake Indian band, to call attention to its unresolved 47-year claim to a reserve near Peace River in northern Alberta, urged international museums to boycott the Glenbow and not send artifacts.

The Lubicons say Shell Canada, the exhibition's exclusive corporate sponsor which has contributed \$1.1 million, is one of dozens of companies drilling for oil and gas in the Cree band's traditional hunting and trapping grounds.



The band says 30 museums refused to loan artifacts, including 20 that sent letters identifying the boycott as the reason.

Glenbow officials say about 12 museums refused to loan. Cameron said the quality of the exhibition hasn't suffered, because alternative artifacts were always available.

The show features objects of use, play and ritual, including two full-size canoes (from the Micmac and Haida), rare book covers (decorated with porcupine quills and moose hair tufts) loaned by the Vatican, intricately carved cedar chests, costumed dolls, masks and rattles, baskets and spoons, a beaded parka and much more.

Glenbow's entire second floor, some 28,000 square feet, was rebuilt and is devoted solely to The Spirit Sings. There's a visitor orientation theatre, a stage for native events, a VIP lounge for distinguished guests and a gift show with quality native art.

The orientation theatre features a 9½-minute film about native people's closeness to nature.

On the exhibition floor, a distinctive space was designed for each of the six cultural regions represented: East Coast, Northern Woodlands, Northern Plains,

Western Subarctic, Arctic and Northwest Coast.

Julia Harrison, Glenbow's coordinating curator, and six consultant experts selected artifacts from Canada, the United States and Europe.

Harrison said she hopes visitors will gain greater insight into the native view of the world "and come to appreciate that difference."

Shell president Jack MacLeod said his company is proud to be a corporate sponsor. "We believe that this historic exhibition will lead to greater public understand-

ing of Canada's contemporary native community."

The Glenbow is in downtown Calgary, at 130 9th Ave. S.E. Phone 237-8988 for exhibition information. Exhibition hours are 10 a.m. to 6 p.m., seven days a week. Admission is \$6 for adults, \$5 for students, Friends of Glenbow, children and seniors. Children under six are admitted free.

Tickets are available from all Alberta BASS outlets and the Glenbow. Mail orders can be placed through BASS at P.O. Box 1060, Station M, Calgary, Alta., T2P 2K8. ☆

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Spirit Sings captures close link to nature

Herald
Jan 18/88

THE SPIRIT SINGS, at the Glenbow Museum through May 1.

By John Clark
(Special to the Herald)

The many ethical, political and legal controversies surrounding The Spirit Sings make it difficult for it to be seen simply as an art exhibition. It has become a political and cultural event in its own right.

Residing within the controversies, if not untouched by them, is an exhibition of stunning visual beauty and intensely thorough scholarship. Some may find the moral issues so urgent that they don't wish to compromise them by visiting the Glenbow. They'll be missing a rich and moving experience.

The exhibition takes the form of a cross-country journey, travelling through six distinct cultural areas: the East Coast, Northern Woodlands, Northern Plains, Arctic, Western Subarctic and the Northwest Coast. The visitor traverses these areas via a series of color-coded rooms. There is a great deal of written and audio information to assimilate, so the clear and conveniently placed maps in the rooms are useful both geographically and culturally to remind visitors of where they are. Music, sound and special lighting add to the mood in each area.

Upon entering the East Coast room, one of the first images seen is a Micmac birchbark canoe incised with stylized images of moose and trees. This canoe is echoed by one of the final images in the exhibition in the Northwest Coast room, a Haida canoe carved from a single piece of red cedar. The Haida canoe has abstracted representations of a raven and a whale painted on the stern.

These two powerful objects "bracket" the show. Between them lie more than 600 historical items including clothing, tools, musical instruments, balls, masks and jewelry.

As the objects displayed here are ritualistic and utilitarian artifacts, not conventional paintings and sculptures, it presents the exhibition organizer with a particular problem. Objects cannot simply be put in a picture frame or placed on a sculpture stand, so the question becomes how to let the objects speak of their own deep meaning with-

out the exhibition becoming dry and academic.

The Spirit Sings deals with this problem in several ingenious ways. Many objects are hung in free-standing display cases that the viewer can walk around; some objects are laid out in cases that can be viewed from above; a platform has been built so the viewer can look into the Haida canoe; and so on. Some cases are even triangular in shape so small objects can be viewed in close up from both sides.

This inventive presentation means that the viewer can have a direct and intimate relationship with objects, the more to appreciate their delicately crafted construction.

The research that has gone into The Spirit Sings is painstaking and impressive. Each cultural area had its own expert curator, who worked for five years collecting and researching materials. A lavish book and complete catalogue also accompany the exhibition.

If The Spirit Sings succeeds as an important research project, it is also successful in showing the variety of work from the cultural areas and stressing the consistency and continuity of belief of Canada's native people.

There are great differences of production from area to area: the Micmac make exquisite decorative quillwork, for example; while the Arctic people make shining shaman's parkas and the Northern Plains Indians decorate courting mirrors. On the West Coast, the Haida wonderfully crafted wooden bowls in the shape of animals. Each area also has its own variation on the creation myth.

The twin themes of symbolic decoration and spiritual harmony with nature run through the exhibition and make it such a touching experience. They are literally and metaphorically woven into the fabric of the objects displayed. The recognition of this continuity inevitably is tinged with sadness since it is a harmony with nature that has been lost by our European-based society.

The symbolic decoration used in these artifacts often is a simply repeated craft activity: beadwork or weaving, for example; and consists of geometric and rhythmic forms. Decoration in this exhibition is not the superficially obsessive or neurotic mark-making characteristic of so much contemporary painting and sculpture. It is calm and controlled, a reflection of the natural rhythm of life.

The theme of spiritual unity with nature is reflected in a respect for the Earth. To native people, all things of the Earth — whether a tree, stone or star — have a spirit which has to be respected. It is this feeling of harmony with nature that pervades the whole exhibition and it is this feeling that gives the exhibition its special poignancy.

To viewers familiar with contemporary art and especially with the work of neoprimitivists like A.R. Penck and Julian Schnabel, the similarity of items in this exhibition with their work will be striking. The Cree tepee cover, with its painted red and blue thunderbird, or the Ojibwa drum with flat central image, are particularly relevant.

Not only could the clear and powerful tepee imagery knock Penck or Schnabel right off the wall, but the most telling contrast is that it was made by artists who weren't alienated from their world and who were still in touch with the forces of the Earth. It is this realization that makes the experience of The Spirit Sings not only a sad one from our perspective, but in its own way surprisingly shocking.

(Clark is an artist and associate professor at the University of Lethbridge.)

Public rates show a stunning success

By Wendy Dudley

(Herald staff writer)

Despite opening in the midst of a chorus of protest, The Spirit Sings exhibition is receiving rave reviews from the paying public.

The Olympic showpiece opened its doors to the general public Friday, and by 4 p.m. more than 300 people had viewed the collection of rare Canadian native artifacts.

Those who commented termed the show an outstanding success, and many said they would return several times before the show's May closure.

"This show is 99.99 per cent a success," said Al McClelland, a collector of North American Indi-

Tour guide, F1

an art living in B.C.

"You see that turtle bag," he said, pointing to an Iroquois bag made from the skin of turtle, "I'd give an arm and leg to have that. To see that come here from Leningrad shows just how great this show is. I hate to sound corny but this stuff just blows me away.

"However," he added, "I just wish they had put mirrors behind some of the costumes to add a bit of life."

Most were stunned by the complexity of clothing design

See FEELINGS, Page A2

Calgary Herald
Jan 16/88

Feelings mixed on artifacts

(Continued)

and the detailed embroidery and porcupine quillwork.

"To see the quality of work that went on back then — I didn't know they were so advanced," said Harry Field, visiting here from Montreal.

While all praised the show for its wealth of information on ancient cultures, many people were sympathetic toward the Lubicon

Lake Indian band's protest against The Glenbow Museum. But feelings were mixed as to whether artifacts should be returned to their original owners.

Referring to Thursday's protest, Carl Feldstein said he came down to see what all the fuss was about before returning home to Los Angeles.

"I find this show very sad, very emotional, because I know what I'm looking at is no longer. To listen to the music in the background and to see all these beautiful things, it's just very sad."

Leagh Tanner didn't agree with the idea of natives reclaiming their work, but said she came to the show early "in case they come and take them all away. I don't want to miss out on seeing any of this," she said.

McClelland said he was confused as to why the Mohawks wanted the False Face Mask, a mask considered by the band to be sacred. "I've seen these kinds of masks offered back to the Six Nations and they didn't want them. They said the medicine was all gone."

Others felt it was too late to turn the clock back. "You don't give something away as a gift to an explorer and then ask for it back 200 years later," said Terry Roth.

Several people felt the show's \$65 catalogue was too pricey and the printing on the labels too small.

And more than one person winced at the frequency of the triggered alarm system.

10 The Calgary Sun, Friday, January 15, 1988



Calgary's Other Voice

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Glenbow triumphs

Rarely do we write editorials in praise of an event.

Today is an exception because the event itself — *The Spirit Sings*, at the Glenbow Museum — is exceptional.

Nothing, including protests by the Lubicons and their supporters, or lawsuits, can detract from the exhibit. It is undoubtedly the best the Glenbow has mounted and may indeed be the best Canada has seen.

It is also the first major Olympic-related event to take place in this Olympic city and it measures up to the high standards of the Games themselves.

It is unfortunate that the Lubicon Indians and their supporters have chosen this artistic event — in fact, the Olympics generally — to vent their spleen over unresolved land claims.

They may indeed have a case. Certainly, a lot of people, including some in the provincial government, clearly think they do.

But their decision to do everything they can to thwart the success of *The Spirit Sings* and the Olympics reflects badly on them.

The show itself is an outstanding argument for the support and nourishment of the native peoples of Canada. It reveals, as has never before been done, the soul of the native community to anyone who is willing to see.

It should be a massive triumph for all native people. Instead, it is being soured somewhat by the protests, court actions and general displeasure being evidenced by a small segment of the native community.

Ironically, however, the fuss the Lubicons and their supporters have raised will guarantee, as nothing else could have, the success of the exhibit.

The Lubicons have ensured that news of the exhibit has spread throughout Europe. The court actions announced yesterday will further draw *The Spirit Sings* to the attention of people the Glenbow could not reach in other ways.

For at least a short time, Calgary's Glenbow Museum will be not only the best known in Canada, but familiar throughout most of the Free World.

The Lubicons would have been wise to share in the triumph that the show most assuredly is.

TIVY

ON FRIDAY

A successful boycott it was not.

Despite the pleas of the Lubicon Lake Band for everyone to stay away, there was such a horde wanting to get into the Glenbow Museum to see the opening of The Spirit Sings that a fire marshal locked the outside doors to prevent over-crowding.

Among those left out in the cold was His Tardiness, Ralph Klein, and his faithful companion Rod Love. As Love tells the tale, the marshal must have been new on the job, because he didn't recognize Klein. "We had to get a guy



Patrick Tivy

in the crowd to say 'yeah, he's the mayor, let him in.'"

★ ★ ★

No display case in The Spirit Sings is empty, so it's hard to see how much better the show would have been if the Glenbow had been able to borrow everything on its wish-list.

Exhibition catalogues, however, do include photos of several artifacts that were not loaned by European museums. The most dramatic missing piece is a West Coast stone mask in the Musee de l'Homme in Paris.

Eons ago, the Paris mask was one of a pair that fitted together, one inside the other. The mate to it, which is in The Spirit Sings, is owned by the National Museum of Canada and has eyes closed in sleep. The Paris mask has eyes open.

Exactly how they were used is not known, but it seems likely that in some sort of ritual, the wearer would sur-

prise spectators by removing the sleeping mask to reveal the face awake.

★ ★ ★

Ironically, while the Lubicons have mustered support from coast to coast, there has been strong interest in The Spirit Sings among local Indians.

In fact, Glenbow chief curator Hugh Dempsey tells me, three local groups dealing with troubled natives — including an AA group, and two organizations working with natives who have run afoul of the law — have asked for special tours and lectures because of the way the show explains spiritual aspects of their culture.

★ ★ ★

Almost every facet of life is represented in the 660-odd objects in The Spirit Sings. One trait of character not included, though, is the wry sense of humor that continues to help Indians and Inuit survive hardship.

One band of Micmacs in Newfoundland has even made the very name of their reserve an in-joke. According to the band's chief, Michael Joe, in town to lend support to the Lubicons, it took them 36 years to get a reserve. "It's two square miles of rock and clay for 600 people," says Joe — not much, but it's a start.

In English, they are the Conne River Micmacs. In Micmac, the reserve is Simajij Miawpukek, the name used on all documents from Ottawa.

"Simajij Miawpukek," Joe tells me, "means 'Too-Small Reserve.' When we go back for more land, we can tell them they already agree it's too small."

★ ★ ★

The Spirit Sings is so large that the tape-recorded tour guide advises visitors on two separate occasions to sit down and rest. The advice is worth it — the malady known as "museum fatigue" sets in quickly otherwise.

Also valuable are two books published by the Glenbow in association with McClelland and Stewart. *The Spirit Sings: Artistic Traditions of Canada's First Peoples*, is available in hard-cover and paperback, while *The Spirit Sings: A Catalogue of the Exhibition* is in paper only. Both are pricey — as much as \$65 — but lobby shop manager Carol Smith is certain both will sell out before the show closes in May.

★ ★ ★

Today's bouquets: to Glenbow director Duncan Cameron and curator Julia Harrison for assembling The Spirit Sings, absolutely the finest exhibition of native arts and crafts in Canadian history.

Brickbats: to everyone, past and present, who has stood in the way of a fair and just settlement of all native land claims.

Handwritten note: Herald Jan 15/88

The Calgary Sun, Friday, January 15, 1988 11

STEPHANI KEER



Glenbow show superlative

IT SEEMS very strange that, when one most wants to speak in superlatives, when one most wants to share feelings, that the words just don't come.

Silence, in itself, can be a tribute but, to a professional wordsmith, it is indubitably a source of frustration.

And that, my friends, is where I stand today — wanting to share with you just how great the impact of *The Spirit Sings* was on me, and almost unable to do so.

Oh, yes, one can call up words — stupendous, outstanding, galvanizing, even wonderful — but somehow, they are weak.

They don't tell of the impact on one's spirit, the feeling of rightness, the knowledge that you have stood in the presence not only of history, but of the deepest expression of man's soul.

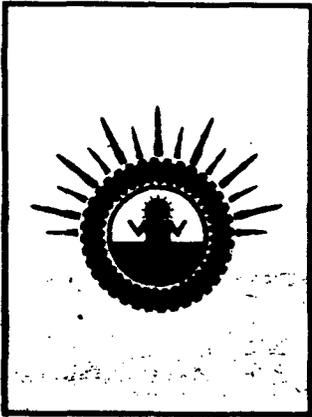
I didn't intend today to write a column about the exhibit that opened yesterday at the Glenbow Museum. There are so many things going on that just cry out for comment.

But, for today at least, they somehow have been reduced to irrelevance, perhaps because *The Spirit Sings* gives a perspective that can only come when one is afforded a glimpse of continuity that is beyond one's own experience.

I could, I suppose, tell you about the people who made this \$6 million exhibit possible — Shell Canada, the Alberta government, OCO'88, the city of Calgary. They deserve credit, as do Duncan Cameron and his staff at the Glenbow.

Yet, I suspect that everyone involved feels that they have been hon-

ored, that they have been recipients much more than donors.



I could make wisecracks about Mayor Ralph Klein's foray into a native language, but I think maybe I'll save those for a more appropriate occasion.

I could talk about the Lubicon protests that have accompanied the setting up of this exhibit, and the very mild demonstration, but it's difficult to get angry with a group that has so clearly blown a major opportunity to share the spotlight of this major exhibit.

I will tell you about some of External Affairs Minister Joe Clark's comments, however, because they are relevant and appropriate.

He was so right when he said that never before have Canadians had such a chance to see and understand the message of the aboriginal people — actually, he called them Canada's oldest citizens.

And he was right when he spoke of the beauty of design and the integrity of execution.

But what most caught my attention was his comment about the role of nature, both in material and subject.

The exhibit, he suggested, shows that human beings are a part of nature and are "morally obligated to live in harmony with other life forms."

And maybe that is part of the continuance I felt — man and nature, blending together and working together, in the past, today, and in the future.

All of this, of course, makes the protests against the exhibit insignificant, a drop in the ocean of time.

All of it renders comments that the "white man" is patronizing the Indians ridiculous.

And all of this is also highly subjective, impressions gained in less-than-ideal circumstances. So let me promise you something.

One day soon, when things are more normal at the Glenbow than on the day of a major opening, and when there is time to absorb more than is possible in a quick walk through, I'll return, hopefully with friends with whom I can share the exhibit.

I'll spend an afternoon there and then take some time to digest what I've seen.

If my feelings are different then, I'll tell you. (Warning: If they're the same, I'll probably tell you that, too.)

But in the meantime, I think the exhibit is appropriately named, and I think that it will be considered a landmark in museum displays for years and years to come.

(Tickets are available at BASS outlets and at the Glenbow for \$6 for adults, \$5 for students, senior citizens and Friends of Glenbow. VIP tickets are \$20 per person and group rates are offered for schools and community associations.)

EXTERNAL AFFAIRS



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BERLIN

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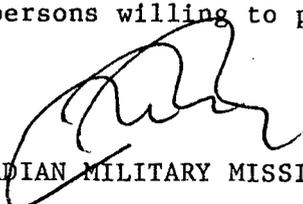
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Annexes

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Att'n:

Mr. John Shreve, representing the union for the support of North American Indians asked to call on us 26 January 88 in order to submit petitions on behalf of the Lubicon Lake Indian Band respecting their land claim and their call for a boycott of the 1988 Winter Olympics. Mr. Shreve has collected signatures from people in West Berlin and the Federal Republic on a petition addressed to the Canadian government and has asked us to send these signatures to the Prime Minister. A letter addressed to Mr. Mulroney by Mr. Shreve is attached to this numbered letter together with the petitions for onward transmission, if you deem it appropriate.

2. There are some 122 signatures on the petition sheets. Mr. Shreve informed us that these were collected from people not only in this city, but in the Federal Republic as well. He indicated that there may have been other petition signatures collected, but that his probably constituted the bulk of persons willing to protest formally in this way.

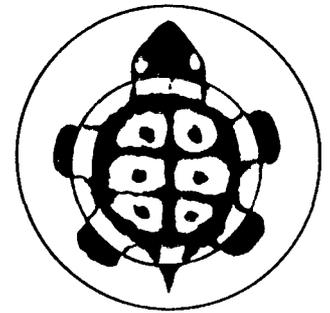

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ASSOCIATION FOR THE SUPPORT OF THE NORTH AMERICAN INDIANS



Berlin
January 19, 1988

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Prime Minister Mulroney,

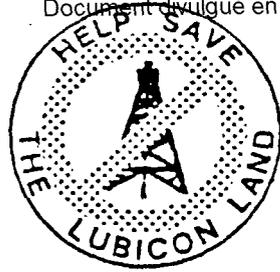
Again we must raise our voice against the policies of the government of Canada with regard to the people of Lubicon Lake. Despite the appointment of a new federal negotiator no progress has been made toward a recognition of the inherent rights of the Lubicon Lake people. Federal Negotiator Brian Malone has even claimed he can negotiate a settlement of the question without consulting the Lubicon Lake people. Not only would that violate Canadian law but also the most basic precepts of human decency. This attitude is typical of the condescending manner in which Euro-Canadians have always dealt the native peoples of Canada. The government of Canada is in the process of discrediting itself fully in the field of human rights.

Here are lists of people who support the struggle of the people of Lubicon Lake and their call for a boycott of the Calgary games. While Alberta celebrates a festival of sports and commercialism one of Canada's native peoples is dying. We call upon your government to fulfill its obligations to the Lubicon Lake people and bring about a settlement of their claims.

Sincerely,

John Shreve
Falckensteinstraße 4
1000 Berlin 36
West Germany

cc. Chief Bernard Ominayak
Bill McKnight
Premier Don Getty



AUFRUF ZUM BOYKOTT DER OLYMPISCHEN WINTERSPIELE 1988 IN CALGARY/CANADA

1982 boykottierte Canada die Olympischen Spiele in Moskau mit der Begründung, daß in einem Land, in dem Menschenrechtsverletzungen begangen werden, keine regulären Spiele stattfinden können. Mit dem gleichen Recht rufen die Lubicon Cree Indianer im Norden der Provinz Alberta, die Indian Association of Alberta und wir gemeinsam mit ihnen alle Politiker, Sportorganisationen und Sportler zum BOYKOTT DER OLYMPISCHEN SPIELE 1988 in Calgary auf, da von der Provinzregierung Alberta's und der Bundesregierung Canada's nicht einmal die grundlegendsten Rechte der Ureinwohner geachtet werden.

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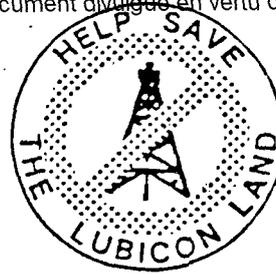
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Raitzsch Jürgen	Im Unterdorf 2 ^{742 Münsingen} ^{Reichheim}	Jürgen Raitzsch
Alexander Schmitt	Trayobstr. 21, 7420 Münsingen 5	B. G. G. G. G.
Schwarz Silke	Bosyweg 11/19, 7410 Raitzsch	S. Schwarz
Alexander Reine	Trayobstr. 21, 7421 Traifingen	Vereine G. G. G.
Monika Behler	^{Hin} ^{Rückenberg 9} ^{7416 Traifingen}	Monika Behler
Hans Meiner	Bühl 16 Münsingen	Hans Meiner
Heinz Schmidt	Braunestr. 16 7423 Gernshagen	G. G. G. G.
Hilke Hart	⁸¹ ^{Reichheim} ^{7423 Gernshagen}	Hilke Hart
Greschner Anja	Reichheim ^{7420 Münsingen}	Anja Greschner

NAME

ADRESSE

UNTERSCHRIFT



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Christa Lehr	Kreuzlinger Weg 9, 7474 Tü. S	Studentin Christa Lehr
Esther Lang	Lange Gasse 2, 7474 Tübing	Lang Esther
D. Olivos-Blomberg	7710 PT Wehlergärtenweg ³⁷	D. Olivos-Blomberg
G. Nuscheler	Nördlinger Str. 37, 7474 RT	Geschule Nuscheler
H. Kurz	Böblingen, Ebnahaus 11	Michael Kurz
Elwein Ingrid	Juden Str. 14, 7037 Sigm	Ingrid Elwein
Roswitha Ferraiz	Steinbühlstr. 5, 7706 Eggenstein	R. Ferraiz
NAME	ADRESSE	UNTERSCHRIFT



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Ulrike Schmidt	Wolfschulweg 1, 7143 Vaihingen/Enz	Dipl.-Ing.(FH) Ulrike Schmidt
G. Mattmüller	Vaihingstr. 42, 7143 Vaihingen/Enz	Dipl.-Ing.(FH) G. Mattmüller
Andreas Sundermaier	Hirschbaumstr. 22, 858 Bayreuth	Stud. rer. nat. A. Sundermaier
Friedrich Grieb	Kantstr. 23, 8580 Bayreuth	stud. rer. nat. F. Grieb
Michael Rudner	Hirschbaumstr. 22, 858 Bayreuth	stud. rer. nat. M. Rudner
Rebecca Hartmann	Danzigerstr. 7, 6804 Pöhlheim	Rebecca Hartmann
Trene Hilt	Kegelsb. 87, 7143 Vaihingen	Freiberufl. Sprachlehrerin
H. Gröss	Bahnhofstr. 21, 7400 Tübingen	H. Gröss
J. Börs	Bahnhofstr. 21, 7400 Tübingen	J. Börs
SERWANDO MUÑOZ	Wilmannsstr. 30/1, 7400 Tübingen	S. Muñoz
Thorsten Hildebrandt	Feldbergstr. 108, 74032 Sindelfingen	Thorsten Hildebrandt
NAME	ADRESSE	UNITED STUDENT



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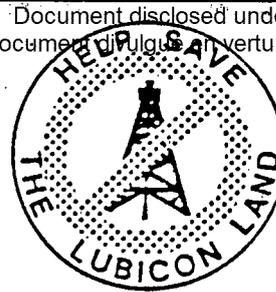
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Erik Fey	Haus am Östberg 7408. Tü	Erik Fey
Paul Hermann	74 Tü, Wertschaffstraße	Paul Hermann
Adolf Zimmer	Obereisenweg 2, 7408 Wangen	Adolf Zimmer
Uwe Painke	Hausstr. 44, 74 Tubingen	Uwe Painke
Christof Theu	Schulstr. 7, 74 Tubingen	Christof Theu
Volker Nick	Marktgasse 5, 7405 Mucklaka, Tubingen	Volker Nick
Milreas Ritter	Schulstr. 20 7407 Ro. 1	Milreas Ritter
Dieter Herrmann	Gödelersweg 5 Ro. 1	Dieter Herrmann
Uwe Schumann	Eisenweg 30, 7417 Pullingen	Uwe Schumann
Inge Grodman	Obmenhäuser Str. 7 741 Rf	Inge Grodman
Barbara Haamer	Reuladest. 5 7425 Weidelskellen	Barbara Haamer
NAME	ADRESSE	UNTERSCHRIFT

listen an : Frank Krossing
Schwalbenweg 40
Tübingen
(68233)



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Scrowy	7408 Kusterdingen, Gasterstr. 49	<i>[Signature]</i>
Mader, Annette	7414 Lichtenstein / Willhelmsstr. 28	<i>[Signature]</i>
Glied H.-a.	F. Hubstr. 15 7425 Wiedelstraße	<i>[Signature]</i>
Paul Sehl	7423 Gomadingen Brunnerstr. 6	<i>[Signature]</i>
Heinz Schwabe	7423 Gomadingen Brunnerstr. 16	<i>[Signature]</i>
Margit Feusel	7423 Gomadingen (Mühlackerstr. 3)	<i>[Signature]</i>
Ganzoff, Friedrich	7432 Bad Urach, Schulstr. 5	<i>[Signature]</i>
Ulrike Langst	7487 Gammertingen 2 Burgkaldenstr. 10	<i>[Signature]</i>
Olivier Eberhardt	7487 " " " " 21 C. E. Langst	<i>[Signature]</i>
Greiner, Sabine	7425 Oberstetten, Albst. 11	<i>[Signature]</i>
Dejen, Trümbold	8600 Bamberg, Naumburgerstr. 1131	<i>[Signature]</i>

NAME

ADRESSE

UNTERSCHRIFT

Right Honorable B. Mulroney
 Prime Minister of Canada
 Ottawa, ON
 K1A 0A2 Canada

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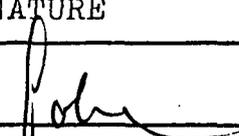
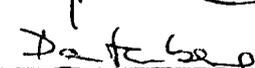
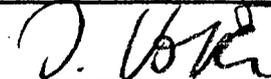
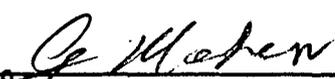
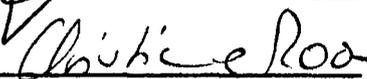
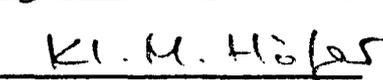
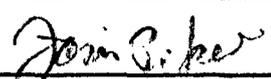
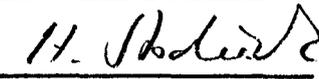
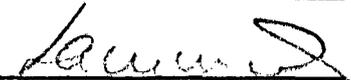
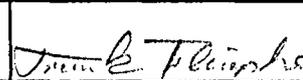
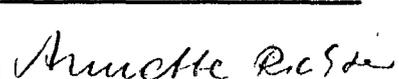
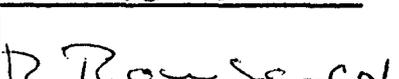
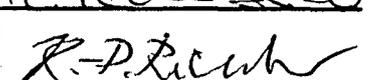
NAME	ADDRESS	SIGNATURE
JENSEN, JÖRN	Ringstr. 83, 1000 BERLIN 45	Jensen
JÄENISCH, G.	Hasenheide 69, 1-61	Jäenisch
Amling, Jugo	M.v. Richtlofer 217, 1-42	Amling
Boemer, Ulline	Leibnizstr. 45, 1/12	Ulline Boemer
Ullmann, Gerd	1-27, Osianndamm 14	Ullmann
Meyses, Gabriele	1-12 Goethestr. 47	G. Meyes
Holzkamp, Christine	1145 Ringstr. 83	Holzkamp
Lieven-Meckemann, Tina	1-45, Merinstr. 2	Lieven-Meckemann
Lödow, Sabine	1-62, Erdmannstr. 8	Sabine Lödow
Ziethen, Franz	1/61 Ketzbachstr. 16	Franz Ziethen
Rehausen, Manfred	7/37 Markgraf-Albrecht-Str. 13	M. Rehausen
Diedrich, Ulrike	1/41 Bundesallee 125	Ulrike Diedrich
Münch, Norbert	1/44 Heidelbergstr. 17	N. Münch
Z. Ales Grätz	1/42 Peshstr. 9	G. Zeiler

Unterschriftslisten an: Verein zur Unterstützung nordamerikan. Indianer
 c/o John Shreve
 Falckensteinstraße 4
 1000 Berlin 36

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NAME	ADDRESS	SIGNATURE
Peter Robl	Bülowsk. 72, 1000 Berlin	
Barbara Dautzenberg	Bruno-Bauer-Str. 1 1000 ⁴⁴ Berlin	
Inna Volk	Am Heindorf 56/1 Berlin	
Gerrit Mahren	Weinstr. 65 1000 B.H.H.	
Christiane Roos	Grellenstr. 5 1362	
Klaus Martin Höfer	Blauenbergstr. 5 1-41	
John Pickert	Courbusenstr. 11 1030	
Henriette Stodiek	Zosener Str. 52, 1000 Berlin 61	
H. Lammers	Welfenallee 52 1/78	
Friedemann von Engel	Friedenringsstr. 5 7175	
Frank Tschirpke	Seeling Str. 28 1000 Berlin 79	
Annette Richter	Beyschlagstr. 11a 1-27	
Reschke Renner	Baerwaldstr. 15/1-6	
H.-P. Richter	Beyschlagstr. 11a 1-27	

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 c/o John Shreve
 Falckensteinstraße 4
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Wendy Dudley
Jan 14/88

Organizers term exhibit overwhelming, amazing

By Wendy Dudley

(Herald staff writer)

The Spirit Sings exhibition, which officially opens at noon today, has been declared a success by five of its six curators.

The five, who toured the display of native artifacts Wednesday, lavished the historic spectacle with such words as "incredible, overwhelming" and "amazing".

Only Bernadette Driscoll, curator for the Arctic section, has yet to see the results of five years of research and documentation. She's expected to be at today's opening.

The show, which is open seven days a week from 10 a.m. to 6 p.m., takes about 90 minutes to tour. Tickets (\$6 for adults; \$5 for senior citizens, students and children 6-12; toddlers free) are available from the Glenbow and all Bass outlets.

"It's like having gone through a very long labor," said Ruth Phillips, the Northern Woodlands specialist. "I have such a tremendous feeling. To see all

the pieces brought together and reunited, I'm almost in tears."

"My imagination is not good enough to conjure up words to describe how I feel," added Ruth Whitehead, the Atlantic Coast scholar.

The curators not only feel that the exhibit, through its artifacts, special lighting and soundtracks, has captured the essence of yesterday's artistic expressions, but that it strongly suggests such spirit still sings today.

"The energy still flows through these people despite changes in their lifestyle. I predict that we'll be seeing great and wonderful things coming from them in the future," said Whitehead.

Ted Brassler, curator for the Northern Plains section, said that many of the ideas held by the elders still exist, only they appear in different forms. "I think a native viewing this exhibit would still be able to recognize the ideas. It's just the form that has changed so much."

The curators said they hope natives viewing the exhibit will gain a sense of pride in knowing they're the descendants of those who created the objects.

And they hope non-natives will gain an awareness of the diversity of Canada's native cultures and that they'll show an interest in native issues such as the Lubicon land-claim issue that arose during the mounting of The Spirit Sings exhibition.

"This has been one of our goals from the very beginning," said the show's co-ordinating curator, Julia Harrison. "We want to make people aware of how important our native cultures are."

A panel encouraging "hope for an expeditious and just resolution of all Canadian native land claims, and the related issues of compensation, self-determination and self-government" is mounted at the show's exit, a location that Glenbow director Duncan Cameron described as "prominent."

The panel carries the names

of those lending institutions and corporations which wished to have their name appear on the panel.

The six specialists also hope that a very strong voice extends from the show, a voice that speaks of how our survival is connected with the environment. "The pieces should be a reminder that we're part of the natural world and hopefully they will teach us to respect the environment and that the feelings natives had toward nature are still relevant today," said Phillips.

Cameron also dismissed the idea that the culture represented in the exhibition is dead. "It's very much still alive. We almost lost it, it almost slipped away, but there's a definite revival now. You can see that in the gift shop."

Phillips agreed. "These are not dead objects. We've wiped the dust off. I think they sing better now than when we first saw them, hidden away in the dark," she said.

Both Cameron and Harrison

feel that the native performances and demonstrations of weaving, jewelry-making and story-telling held in conjunction with The Spirit Sings prove that ancient traditions are still alive.

Though Harrison said that both political and cultural native associations were contacted about the exhibit and its objectives, their involvement was limited. "If we were doing this exhibit five years from now, we'd definitely have more native people involved," she said.

Harrison said a resolution within the International Council of Museums stating that cultural material of aboriginal peoples should not be exhibited without the agreement of natives involved doesn't apply to The Spirit Sings. She said the new code of ethics was concerned with the exhibition of sacrificial items, none of which appear in the exhibit. "There are no human skulls here. We don't have any items like this in the exhibit."

In selecting pieces for the exhibit, the curators scoured muse-

ums and private collections throughout North America and Europe. About 4,000 pieces were documented through photography. Of those, about 1,000 pieces were selected as possibilities. That number was reduced to the 659 artifacts exhibited.

"We were looking for pieces that were visually exciting and beautifully made, but also for ones that were rare. Some of the items may not look great but are very important in their relevancy to a point we wanted to make," said Judy Thompson, curator of the Western Subarctic section.

Another point considered was the condition of an item. If an object was too fragile for travel, it was photographed for documentation purposes and then left behind.

All of the curators present Wednesday agreed that the show itself is just the tip of the iceberg.

Much of the data collected still needs to be analysed, a task that those involved say will keep them busy for a lifetime.

Herald Jan 13/88

Glenbow set to open controversial exhibit

By LOUIS B. HOBSON
Calgary Sun

The Glenbow Museum has done itself proud.

Its exhibit *The Spirit Sings* which opens to the public on Friday has weathered violent storms of controversy to emerge a breathtaking tribute to Canada's native peoples.

The 650-artifact exhibit will officially be opened tomorrow at noon by the Right Honorable Joe Clark.

As many as 1,000 people are expected to attend the ceremonies whose guest list includes Greg Stevens, Alberta's minister of culture and multiculturalism, Mayor Ralph Klein, Frank King, chairman of OCO '88 and Jack MacLeod, president of Shell Canada, the sole corporate sponsor.

"There has never been an exhibit of Canadian native artifacts this comprehensive or featuring this kind of depth," explains the museum's director, Duncan Cameron.

Alberta's Lubicon Lake Indian band attempted to sabotage the exhibition by pressuring museums around the world not to contribute their artifacts.

Though as many as a dozen museums complied with the boycott, Cameron says this has not seriously affected the quality of *The Spirit Sings*.

"From the beginning five years ago, it was our intention to create a display which was socially responsible," he says. "We wanted to heighten the world's awareness of the native culture in our country and what better way than to present it when the world was coming to Calgary.

"Unfortunately, three years later, we became the enemy."

Whether it is controversy or curiosity, *The Spirit Sings* has caught the attention of Calgarians. The Glenbow boasts presales of more than 24,000 tickets.

"Word of mouth alone will probably push attendance over the 100,000 mark within the first month, but numbers are not important," stresses Cameron.

AMONG THE priceless artifacts on display during *The Spirit Sings* is this beaded parka from the Arctic Padlimiut tribe. Donated by Toronto's Royal Ontario Museum, the colorful garment incorporates the typical geometric designs and motifs of the Padlimiut.

"Our hope is that thousands of native peoples will make wonderful discoveries about their heritage and that non-native people will see and appreciate the richness of our native culture.

"Finally, we hope that young scholars seeing the wealth of information available will choose to study Canadian Native cultures, discovering and recording even more," he said.

Seven scholars have been travelling the world for the past five years collecting information and previewing artifacts.

Their findings are available to anyone simply for the cost of photostating.

The artifacts which appear in *The Spirit Sings* come from Canadian museums, the U.S., Australia, Russia, Europe, the Vatican and England.

"Often early settlers came to Canada, decided they didn't like their new home and moved on taking with them gifts or articles they had purchased," explains Cameron.

"Their grandchildren or great grandchildren subsequently discovered these treasures in a trunk in the attic and turned them over to their local museum. We have brought them back to Canada so that we now have some kind of perspective."

The Spirit Sings was created at a cost of \$2.6 million. Tens of thousands of these dollars have been invested to insure the safety of the precious articles.

"We have created an air conditioning system which feeds the individual display cases and it is not a return air system so we maintain a constant level for each display," explains Cameron.

Though the museum has created a 45-minute audio tape (\$3 rental) to guide people around the exhibit, Cameron says visitors should allow a minimum of 90 minutes to properly explore *The Spirit Sings*.

"Realistically you could spend an entire day and we know there will be many repeat visits."

General admission to *The Spirit Sings* is \$6 for adults and \$5 for seniors, students and Glenbow members. There is a VIP tour available for \$20 per person and numerous group rates for schools and community organizations.

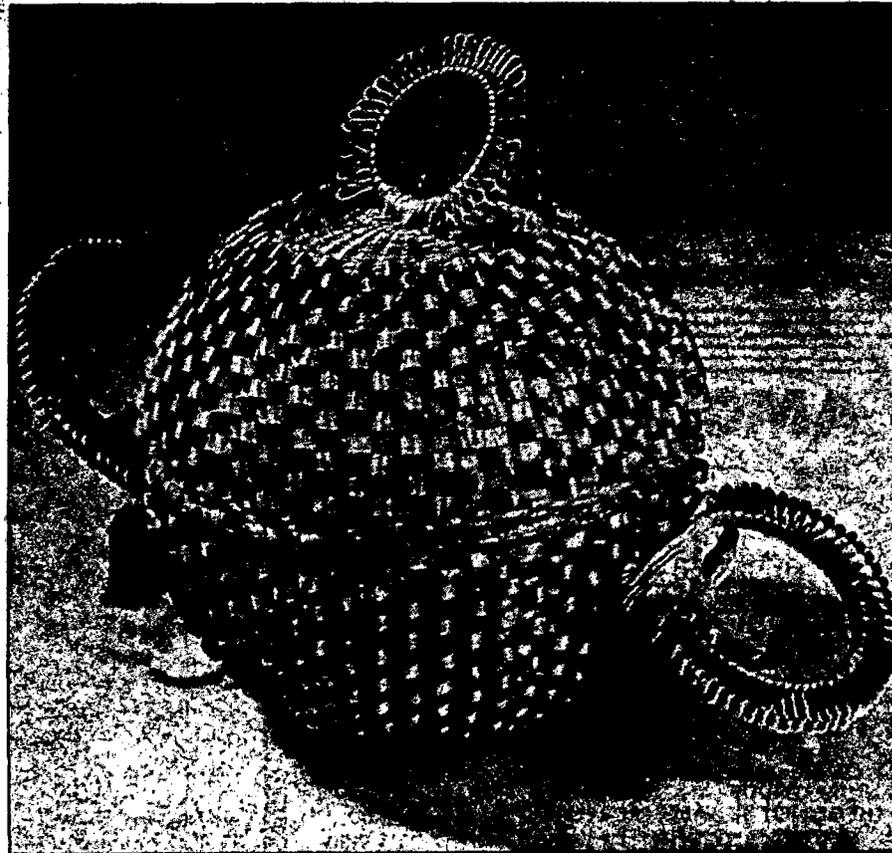
The tour begins with a stirring video presentation which invites visitors to join in "the pride in a people who have always been here."

Beyond this viewing room are six rooms representing the East Coast, Northern Woodland, Northern Plains, Western Subarctic, Arctic and Northwest Coast each with its own color scheme, photographs, lighting and sound.

In the lobby is a stage which will feature demonstrations in native food preparation, moccasin making, beadwork, teepee design, dancing and mask making.

A special shop offers native jewellery, pins, native art, posters and books and, even more importantly, a look at contemporary native handicraft.

"A visit to *The Spirit Sings* should quickly dispell any Hollywood myths about our native peoples which may still exist," says Cameron. "People will be awed by the great diversity of cultures and the resilience which has perserved them all these years."



WOOD-SPLINT basketry, such as this whimsy basket was one of the most popular tourist arts developed by the Micmac and Maliseet in the 19th century.

BICO

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**ACTION
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---HUMAN RIGHTS CTTEE:LUBICOM LAKE(COMMUNICATION 167/1984)

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Legal Operations Division (JLO)
Direction des Opérations juridiques

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TO
A
The Under-Secretary of State
for External Affairs, Ottawa, IMH
FROM
De
Canadian Military Mission and Consulate,
BERLIN
REFERENCE
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Our letter 1044 - 26Oct87, Berlin
SUBJECT
Sujet
BERLIN SUPPORT FOR THE LUBICON INDIAN BAND CLAIMS

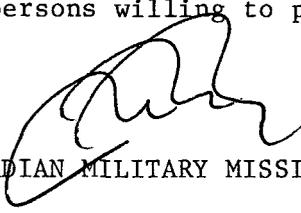
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MISSION	20-20 Lk Band

ENCLOSURES
Annexes
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Mr. John Shreve, representing the union for the support of North American Indians asked to call on us 26 January 88 in order to submit petitions on behalf of the Lubicon Lake Indian Band respecting their land claim and their call for a boycott of the 1988 Winter Olympics. Mr. Shreve has collected signatures from people in West Berlin and the Federal Republic on a petition addressed to the Canadian government and has asked us to send these signatures to the Prime Minister. A letter addressed to Mr. Mulroney by Mr. Shreve is attached to this numbered letter together with the petitions for onward transmission, if you deem it appropriate.

2. There are some 122 signatures on the petition sheets. Mr. Shreve informed us that these were collected from people not only in this city, but in the Federal Republic as well. He indicated that there may have been other petition signatures collected, but that his probably constituted the bulk of persons willing to protest formally in this way.


CANADIAN MILITARY MISSION

TRANSMITTAL AND RECEIPT NOTE — NOTE D'ENVOI ET DE RÉCEPTION

TO / À Ex-078/IMH
Queen's Museum, Calgary *JB*

Jans
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55-24
WITHOUT ATTACHMENT(S) / SANS ANNEXE(S)

NO. _____ DATE 25 Jan 88

QUANTITY / QUANTITÉ DESCRIPTION - DESCRIPTION REFERENCE - RÉFÉRENCE

BICO

Expect more press on exhibit as opening of games draws near.

Daniel
for Corben
Seattle

DATE

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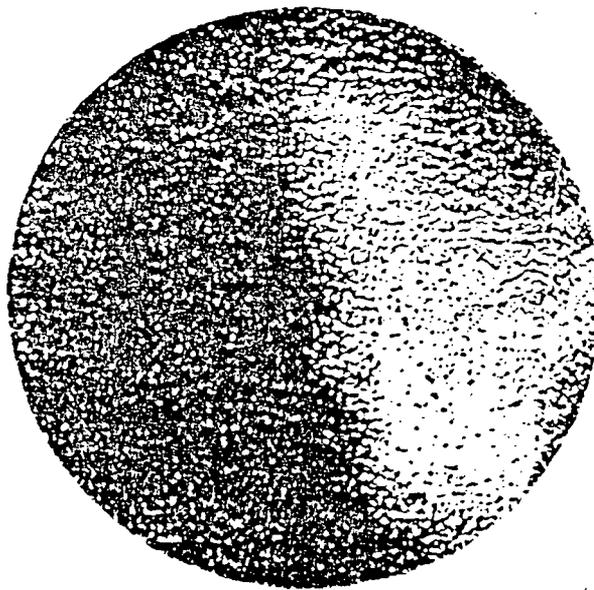
107 SOUTH MAIN SEATTLE WASHINGTON 98104 (206) 624-0432

NEWSLETTER

JANUARY 1988

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The Olympic Arts Festival, which opens January 23 in Calgary, Alberta, is a 5 week, \$10 million companion piece to the Olympic Winter Games. Some 2,200 artists from 18 "seperate arts disciplines" will be presented in over 600 performances and exhibitions.



Seattle Art Museum rel. to *FOR NOTE*
January, 1988

Ethnic Arts Council News

SPECIAL EVENTS, CURRENT AND FORTHCOMING

Seattle

Now through 1/15: "Robes with Buttons: Ceremonial Button Blankets of the NW Coast." Traditional NW Coast art forms of button blanket production, with graphic and narrative description. Burke Museum.

Now through 1/88: "Tapa Cloth of Papua New Guinea." The making of this cloth is an activity of great cultural and economic importance. This exhibit includes tapa cloths in various stages of preparation, instruments used in their manufacture, and traditional costumes worn during tattooing. Interpretive photos. Burke Museum.

1/7-1/30: Cult figures from the Washuk Hills and Blackwater regions of Papua New Guinea. Lewis-Wara Gallery.

2/4-2/28: Traditional and contemporary aboriginal art from Australia, including burial posts and bark paintings. Lewis-Wara and Mia Galleries cooperative show.

Calgary

1/15-5/1: "The Spirit Sings: Artistic Traditions of Canada's First Peoples." This "flagship" of the Olympic Arts Festival will include 665 rare Indian and Inuit art objects from more than 90 museums and private collectors. Glenbow Museum.



Accession/Référence

File/Dossier

45-CDA-13-1-3-Lubicon

13 JAN 88 ?? 42- CR Band

MESSAGE

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SECURITY
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U N C L A S S I F I E D

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CNGNY VATICAN INAHULL/COULTER/WHITAKER PCOOTT/CARON JUSTOTT/FREEMAN

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---LUBICON LAKE BAND UPDATE

SSEA WILL OPEN GLENBOW MUSEUM EXHIBITION QUOTE THE SPIRIT SINGS UNQUOTE ON 14 JANUARY. LUBICON LAKE BAND HAS PLANNED PROTESTS IN CALGARY TIMED TO COINCIDE ROUGHLY WITH OPENING CEREMONIES, AND SSEA HAS AGREED TO MEET WITH BAND LEADERS SOMETIME DURING 14 JANUARY. OPENING, PROTESTS AND SSEA/BAND MEETING ARE LIKELY TO PRODUCE MEDIA STORIES IN CDA, AND THESE MAY IN TURN BE REPORTED ABROAD:

2. ON STATUS OF NEGOTIATIONS THEMSELVES, THERE IS NOTHING NEW TO REPORT. PRIVATE DISCUSSIONS CONTINUE AMONG BAND, GOVT OF ALBERTA AND GOVT OF CDA, LATTER UNDER CDN GOVT NEGOTIATOR, MR. BRIAN MALONE OF CALGARY. BUT THERE IS NO/NO PUBLIC OFFER OF A SETTLEMENT NOW ON THE TABLE. THERE IS DIMINISHING PROSPECT THAT SETTLEMENT COULD BE REACHED BEFORE START OF OLYMPIC GAMES IN ONE MONTH.

3. MEDIA REPORTING IN CDA ON LUBICON LAKE BAND ISSUE HAS ESCALATED IN PAST MONTHS, AND HAVE INCLUDED MAJOR ARTICLE IN QUOTE SATURDAY NIGHT UNQUOTE AND FEATURE STORIES IN MOST

..2

DRAFTER/RÉDACTEUR

DAN LIVERMORE/jrc
SIG

DIVISION/DIRECTION

IMH

TELEPHONE

992 2022

APPROVED/APPROUVÉ

F.D. PILLARELLA
SIG



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▼ PAGE TWO IMH0067 UNCLASS

12

10

NEWSPAPERS. THERE HAVE BEEN OTHER RECENT ARTICLES IN WHICH
NATIVE GROUPS HAVE PROTESTED GLENBOW MUSEUM EXHIBITION IN ONE WAY
OR ANOTHER, INCLUDING DEMAND THAT NATIVE ARTIFACTS ON LOAN TO
GLENBOW FROM VARIOUS FOREIGN MUSEUMS BE RETURNED TO NATIVES OF
CDA. APPEARANCE OF ARTICLES IS CLEARLY PRODUCT OF WELL-CONCEIVED
MEDIA PLAN DESIGNED TO FOCUS ATTENTION ON GLENBOW AT TIME OF
ITS OPENING CEREMONIES.

4. WE CONTINUE TO TAKE RESPONSIVE APPROACH TO THIS ISSUE.
MEDIA LINE CONTINUES TO BE THAT GOVT OF CDA RECOGNIZES
LEGITIMATE GRIEVANCES OF BAND, AND HOPES THAT RETURN TO
NEGOTIATING TABLE WILL PRODUCE EQUITABLE SETTLEMENT. WITH
RESPECT TO GLENBOW AND OLYMPICS, WE DO NOT/NOT ACCEPT LINKAGE
BETWEEN BANDS GRIEVANCES AND THESE TWO EXTRANEIOUS EVENTS. IT
APPEARS INCREASINGLY THAT BOYCOTT CAMPAIGN HAS FAILED, BOTH WITH
RESPECT TO SECURING NON-PARTICIPATION OF OLYMPICS ATHLETICS AND
WITH RESPECT TO DAMAGING THE ARTISTIC INTEGRITY OF THE GLENBOW
EXHIBITION."

TRANSMITTAL AND RECEIPT NOTE - NOTE D'ENVOI ET DE RÉCEPTION

P R O T E C T E D

WITHOUT ATTACHMENT(S) / SANS ANNEXE(S)

TO
À

EXTOTT / IMH JLO

NO. 0388

DATE 22 JAN 88

QUANTITY QUANTITÉ	DESCRIPTION - DESCRIPTION	REFERENCE - RÉFÉRENCE
	<p style="text-align: right;">Our FAX YTGR-0368 21JAN</p> <p>Subject : Human Rights Committee : Lubicon Lake</p> <p>As requested we enclose a clean copy of most recent submission from Lubicon Band.</p>	<div data-bbox="1153 440 1523 723" style="border: 2px solid black; padding: 10px; width: fit-content; margin: auto;"> <p>RECEIVED - REÇU</p> <p>FEB 1 1988</p> <p>IMH</p> </div>
<p>RECEIPT ACKNOWLEDGED / ACCUSER RÉCEPTION</p> <p>DATE _____</p>	<p>RETURN TO / RETOURNER À</p> <p>The Permanent Mission of Canada Geneva</p> <p>SIGNATURE _____</p>	

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					LK Band

SUPPLEMENT NO. 8 TO COMMUNICATION NO. 167/1984

SUBMITTED BY CHIEF BERNARD OMINAYAK

AND THE LUBICON LAKE BAND OF ALBERTA, CANADA

12 January 1988

COMMENTS ON RESPONSE OF THE

GOVERNMENT OF CANADA

DATED 7 OCTOBER 1987

VAN NESS, FELDMAN, SUTCLIFFE & CURTIS

A PROFESSIONAL CORPORATION
1050 THOMAS JEFFERSON STREET, N. W.

S. LYNN SUTCLIFFE
HOWARD J. FELDMAN
WILLIAM J. VAN NESS, JR.
BEN YAMAGATA
ROBERT G. SZABO
GRENVILLE GARSIDE
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ADAM WENNER
PETER O. DICKSON
D. ERIC HULTMAN
GARY D. BACHMAN
SUSAN TOMASKY

SEVENTH FLOOR
WASHINGTON, D. C. 20007

(202) 298-1800

WRITER'S DIRECT DIAL NUMBER

January 12, 1988

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CYNTHIA INGERSOLL
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DONALD F. SANTA, JR.
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ANTHONY WILSON*
STEPHEN C. FOTIS*
NOREEN M. TAMA*

OF COUNSEL

HOWARD ELIOT SHAPIRO
ARTHUR JOHN ARMSTRONG
JACOB J. LEW

*NOT ADMITTED IN DISTRICT OF COLUMBIA

Mr. Jakob Th. Moller
Chief Communications Unit
Center for Human Rights
United Nations Office
CH-1211 Geneve 10
SWITZERLAND

RE: Communication No. 167/1984

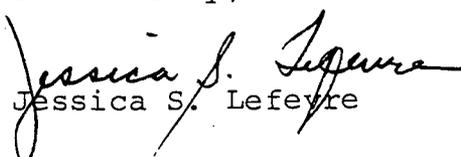
Dear Mr. Moller:

Thank you for transmitting the 24 August and 13 October 1987 notes from the Permanent Mission of Canada to the United Nations, and the Government of Canada's 7 October 1987 Response to the Committee's 22 July 1987 decision.

On behalf of Chief Bernard Ominayak and the Lubicon Lake Band, I have the honor of submitting to the Human Rights Committee the enclosed Supplement No. 8 to Communication No. 167/1984.

On behalf of Chief Ominayak and the Band, I also wish to take this opportunity to express our highest regard to the Secretary-General of the United Nations and to express our gratitude for the kind consideration of the United Nations Committee on Human Rights and of the staff of the Centre for Human Rights.

Yours truly,


Jessica S. Lefevre

Enclosure

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In its decision of 22 July 1987 (CCPR/C/30/D/167/1984), the United Nations Committee on Human Rights found the Complaint of the Lubicon Lake Band ("Band"), submitted to the Committee in Communication No. 167/1984 ("Communication") to be admissible in so far as it raises issues under article 27 or other articles of the International Covenant on Civil and Political Rights ("Covenant"). The Committee also requested, pursuant to rule 86 of its provisional rules of procedure, that Canada take interim measures to avoid irreparable damage to Chief Ominayak and other members of the Lubicon Lake Band. The Committee further requested that in accordance with article 4(2) of the Optional Protocol, Canada submit to the Committee written explanations or statements clarifying the matter and the remedy, if any, that may have been taken by it.

By letter dated 4 December 1987, the Chief of the Communications Section of the Centre for Human Rights transmitted to Chief Ominayak and the Band two notes from the Permanent Mission of Canada to the United Nations Office at Geneva, dated 24 August 1987 and 13 October 1987, and a Response from the Government of Canada, dated 7 October 1987.

A. Introduction

The 7 October 1987 Response by Canada fails to provide any explanation or clarification of the issues relating to the situation of the Lubicon Lake Band. Of even greater concern to the Band, Canada continues to make no attempt to provide a remedy or to comply with the Committee's request pursuant to rule 86.

The stated purpose of Canada's Response is to appeal the Committee's decision on the admissibility of Communication No. 167/1984. In effect, however, Canada's Response is an attack on the competency of the Committee and/or the wisdom of its decision. In its submission of 26 June 1987, Canada itself recognized that the Human Rights Committee had sufficient information before it to make a decision on the issue

-2-

of admissibility (decision of the Committee of 22 July 1987, page 9). Despite this previous position and despite the fact that the Committee fully considered and fairly set out the essential elements of the positions of both parties in its decision of 22 July 1987, Canada now bases its appeal on a restatement of the facts already before the Committee. It seeks, under the guise of elaboration of its previous submissions, to have the Committee reverse its decision without any real new grounds.

Furthermore, in its 7 October 1987 Response, as in its past submissions to the Committee, Canada has once again intentionally misrepresented facts and mischaracterized relevant domestic law in what can only be construed as a continuing attempt to mislead the Human Rights Committee with regard to this matter. In continuing this posture, Canada insists upon committing what amounts to virtual perjury, rather than resolving a very simple issue, which turns upon what is in comparative terms an extremely small area of land.

The only discernible reason for Canada's position is that the Federal and Provincial Governments have become embroiled in a jurisdictional and power struggle over unsurrendered traditional Native lands that are rich in oil. The Lubicon Lake Band has become a pawn in this battle. Through its actions in both the domestic and international arenas, Canada is clearly demonstrating its willingness, the Lubicon Lake Band and public opinion permitting, to abdicate its trust responsibility to the Native people of Canada, and to sacrifice their human rights if necessary, rather than to confront Alberta on these issues.

In its present submission, the Lubicon Lake Band respectfully requests that the Committee consider the merits of the Band's claim based on the facts before the Committee and pursuant to the articles of the Covenant cited in this submission, and that the Committee find Canada in contempt of the Committee's request pursuant to

-3-

rule 86 of the Committee's provisional rules, as set forth in its decision of 22 July 1987, CCPR/C/30/D/167/1984.

B. The Admissibility of Communication No. 167/1984

1. In its 22 July 1987 decision, the Committee determined that Communication No. 167/1984 is admissible based upon the facts and events which the Band, through its submissions, has described to the Committee.

Canada's first basis for appeal of the Committee's decision is its assertion that the decision is too vague, since the Committee chose to admit the Communication under article 27 or other articles of the Covenant, rather than under article 1, and "did not identify the facts or evidence submitted by the Band that might substantiate a violation of articles of the Covenant other than Article 1." Response of the Government of Canada, 7 October 1987, at page 2. In fact, the Committee clearly indicated that its decision is based upon "the facts as submitted" and the "events which the author has described." CCPR/C/30/D/167/1984, at paragraph 14.4, emphasis added. It is clear from the Committee's decision that Canada is expected to address the matter based upon all of the facts and events as provided to and developed before the Committee to date.

However, given its respect for the Committee and its decisions, as well as its continuing desire to expedite the Committee's consideration of this matter, the Band provides below a discussion of the articles of the Covenant which it believes Canada has violated in this context. The facts supporting reliance upon these articles are already before the Committee in the Band's previous submissions, including Communication No. 167/1984, Supplements to that Communication, the Band's comments on submissions by the Government of Canada, and letters written to the Committee by or on behalf of the Band. All of the information contained in the Band's

-4-

previous submissions is herein incorporated by reference. The following submissions are specifically referred to in the discussion: Communication No. 167/1984; Supplement 1, transmitted 27 March 1985 (herein referred to as "Supplement 1"); Comments on the 31 May 1985 Response of the Federal Government of Canada, originally transmitted 8 July 1985, revised version transmitted 31 July 1985 (herein referred to as "31 July 1985 Comments"); Supplement 2, transmitted 9 April 1986 (herein referred to as "Supplement 2"); Supplement 3, dated 30 June 1986 (herein referred to as "Supplement 3"); Supplement 5, dated 23 February 1987 (herein referred to as "Supplement 5"); Supplement 6, dated 25 February 1987 (herein referred to as "Supplement 6"); Supplement 7, dated 7 October 1987 (herein referred to as "Supplement 7").

2. Canada has committed specific violations of article 27 and other articles of the Covenant against the Lubicon Lake Band.

The Lubicon Lake Band maintains that article 1 of the Covenant provides the most accurate and comprehensive statement of the internationally recognized rights and liberties of which the Band, as a people and a community, has been deprived. Nonetheless, and even though the Band falls within the definition of "aboriginal peoples" recognized specifically by section 35 of Canada's Constitution Act, 1982, the Band respects the decision of the Committee with regard to the availability of article 1 under the Optional Protocol. Therefore, the Band hereby requests that the Committee consider the merits of its claim in light of the provisions of the articles set forth below.

As individuals living within the territory of Canada, the people of the Lubicon Lake Band have had several of their rights under the Covenant violated. In particular, they have been and are being denied: their right to have Canada ensure to them the guarantees of the present Covenant and their right to an effective remedy (article 2(1),

(2), (3)(a) of the Covenant); their inherent right to life (article 6(1) of the Covenant); their right not to be subjected to cruel, inhuman or degrading treatment (article 7 of the Covenant); the right to equality before the courts and tribunals and the right to a fair and public hearing in a suit at law by a competent, independent and impartial tribunal established by law (article 14(1) of the Covenant); the right not to be subject to arbitrary or unlawful interference with privacy, family or home and the right to the protection of the law against such interference or attacks (article 17 of the Covenant); the right to freedom of conscience and religion and to manifest religion in practice (article 18(1) of the Covenant); the protection of the family (article 23(1) of the Covenant); the right to equality before the law and the right without any discrimination to the equal protection of the law (article 26 of the Covenant); and the right as an ethnic, religious or linguistic minority, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion and to use their own language (article 27 of the Covenant). The Committee specifically noted this final article in its decision of 22 July 1987 (CCPR/C/30/D/167/1984, at paragraphs 11.1, 14.4, 14.5).

a. Article 2(1), (2), (3)(a)

Article 2(1) of the Covenant requires that Canada ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the Covenant, "without distinction of any kind, such as race . . . language, religion, political or other opinion, national or social origin, property . . . or other status." As demonstrated in the Band's submissions to the Committee, the people of the Lubicon Lake Band have been deprived of their traditional aboriginal territory, the resources of that territory, and their means of livelihood as a direct result of their racial, social, economic and property status as Native, indigenous or aboriginal people. The Band set

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forth in Communication No. 167/1984, its 31 July 1985 Comments, Supplement 2 and in other submissions the history of events which evidence Canada's disregard for any interests which the Lubicon people have in their homeland and their traditional way of life.

The racial differences here are clear. The social, economic and property distinctions underlying Canada's treatment of the Lubicon people arise from the Band's indigenous community structure, its subsistence economy and its aboriginal interest in its traditional territory -- an interest entailing the right to occupy, possess and use the land and resources of the territory to support its subsistence economy, to carry on a traditional way of life, and to practice a particular Native culture and religion. Canada, through the actions of its Province, executive agencies and judiciary, is proceeding as though these distinctions justify its theft of the homeland, and resulting ruin of the families, community, economy, way of life and spiritual and cultural heritage of these people.

Article 2(2) of the Covenant requires Canada to take necessary steps, in accordance with its Constitution and the provisions of the Covenant, to "give effect to the rights recognized in the present Covenant.". Canada stands in violation of this article in that its initial failure, in 1940, to set aside a reserve of land for the Lubicon Lake Band, its continuing refusal to assist these people in obtaining a defined reserve, its unwillingness to protect the Band's aboriginal interest from appropriation by Alberta, and its failure to protect the way of life and livelihood of the Band give rise to violations of a number of provisions of the Covenant, as discussed in this submission. At this point, certain of the human rights violations suffered by the Band can never be remedied. To the extent Canada refuses to resolve those which are still remediable, Canada remains in continuing violation of the requirements of article 2(2).

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Article 2(3)(a) requires that Canada provide an "effective remedy" for violations of rights protected by the Covenant. Canada has failed and continues to fail to provide the Lubicon Lake Band an effective remedy with regard to the Band's rights under the Covenant, as demonstrated in the Band's previous submissions, as recognized by the Committee in its decision, and as discussed again in this submission.

b. Article 6(1)

Article 6(1) of the Covenant guarantees every human being the "inherent right to life." While the Government of Canada has not sought, directly, the death of any member of the Lubicon Lake Band, the circumstances deliberately created by Canada through its actions have led, indirectly if not directly, to the deaths of 21 persons and are threatening the lives of virtually every other member of the Lubicon community. Moreover, the ability of the community to replace itself is in serious doubt as the number of miscarriages and stillbirths has skyrocketed and the number of abnormal births generally has gone from near zero to near 100 percent.

It is a fact well documented in both anthropological and sociological literature that the destruction of the economic base of small-scale societies and communities leads inevitably to the deterioration of a community's political and social structure. With the collapse of political and social institutions, including the breakdown of the family, communities experience dramatic increases in suicides, fatal accidents, homicides, alcohol and drug abuse, abnormal births and the illnesses associated with poverty and alcohol and drug abuse.

The Band has documented for the Committee several of the tragedies experienced in the Lubicon community in recent years; tragedies which are the human reality of the fear, despair and pain underlying such a sociological profile; tragedies which were previously unprecedented in the Band's history. Please see, in particular, Appendix No. 6 to Communication 167/1984 and Supplement 2, pages 4-5.

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The Band's loss of its economic base and the breakdown of its social institutions, including the forced transition from the physically demanding hunting and trapping way of life to a sedentary welfare existence, has also led to a deterioration in the health of the Band members. In addition, the diet of the people has undergone dramatic change with the loss of their game, their forced reliance on less nutritious processed foods, and the spectre of alcoholism -- the final refuge of the hopeless -- previously unheard of in this community and which is now overwhelming it. Furthermore, the systems by which the community organized and managed some of its most basic needs, including its health and sanitary needs, has collapsed. A few years ago, the Lubicon Lake Band was a robust and thriving community that relied upon traditional medicines and that had never had running water or modern sanitary facilities and had no need of them. At this point, however, the community's traditional systems of water and sanitary management have all but disappeared.

As a result of these drastic changes in the community's physical existence, the basic health and resistance to infection of community members has deteriorated dramatically. The lack of running water and sanitary facilities in the community, needed to replace the traditional systems of water and sanitary management, combined with the declining health of community members, is leading to the development of diseases associated with poverty and poor sanitary and health conditions. This situation is evidenced by the astonishing increase in the number of abnormal births and by the recent outbreak of tuberculosis, which now affects approximately one-third of the community. The Band notified the Committee of the tuberculosis outbreak in its Supplement 7.

Initially, Canada's handling of this matter might not have constituted a violation of article 6(1). However, at this point, the Government of Canada is fully aware of the

increasing rate of illness and death in the community. Therefore, Canada's refusal to offer a resolution of this situation, that would permit a reversal of the precipitous decline of this community, must be found to constitute a knowing and even deliberate deprivation of the inherent right to life of members of the Lubicon Lake Band.

c. Article 7

Article 7 of the Covenant prohibits the infliction of "cruel, inhuman or degrading treatment." The appropriation of the Band's traditional lands without its consent, the destruction of its way of life and livelihood and the devastation wrought to the community, described in the Band's submissions, constitute cruel, inhuman and degrading treatment for which Canada is responsible.

Moreover, as is pointed out in the preceding section, the intentional destruction of a community, as in the case of the Lubicon Lake Band, can devastate the physical health of individual members of the community. The intentional subjection of a people to conditions of life resulting in such a rapid loss of physical health and increase in the rate of disease and death certainly constitutes cruel, inhuman and degrading treatment.

Furthermore, such destruction of a community involves wrenching social dislocation and loss of individual identity, as the social roles which gave identity and meaning to the lives of community members disappear. The anguish and suffering of the people who must sit helplessly by and watch their families and community disintegrate is overwhelming.

An analogy in modern western culture is the devastation wrought by a crippling depression, such as that of the 1930's. The differences here are crucial, though. The Lubicon Lake Band has experienced not only crushing economic disaster, but is facing its own death as individuals and as a community. Furthermore, the causes here are not blind market forces, but deliberate and calculated actions by specific individuals in the

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Provincial and Federal Governments. Therefore, the suffering of the Band is not only degrading, it is cruel and inhuman to the extent that it is deliberate, it was avoidable and as pointed out in the Band's submissions to the Committee, it was predictable.

As the Band has noted in its past submissions, in recognition of the overwhelming cruelty and inhumanity of the suffering wrought by the deliberate destruction of communities, the United Nations, in its Convention on the Prevention and Punishment of the Crime of Genocide, included such destruction within its definition of genocide. Please see Supplement 1, page 8; the Band's 31 July 1985 Comments, pages 16-18, 27-32; Supplement 2 pages 6-7; Supplement 3, pages 3-4; Supplement 5, page 17.

d. Articles 14(1) and 26

Article 14(1) of the Covenant guarantees that in the determination of a party's "rights and obligations in a suit at law" everyone shall be entitled to a "fair and public hearing by a competent, independent and impartial tribunal established by law." Article 26 expands upon the guarantees of article 14(1) by guaranteeing that "all persons are equal before the law" and requiring states to provide "effective protection" against discrimination on any basis, including "race . . . religion, political or other opinion, national or social origin, property . . . or other status."

It is a fundamental principle of jurisprudence that the assurance of an impartial forum is essential in proceedings where the political and/or economic power of one party greatly outweighs that of the other party -- as in an action involving a state government and an aboriginal people. In such an action, a biased tribunal may cost an entire people its very existence by depriving its members of their homeland and means of livelihood.

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The domestic court proceedings instituted by the Band are founded on aboriginal rights and title in land and challenge certain of the state's asserted powers and jurisdiction. They are thus inherently susceptible to precisely the types of abuses articles 14(1) and 26 are intended to guard against.

In fact, the biases of the Canadian courts have presented a major obstacle to the Band's attempt to protect its land, community and livelihood; the fundamental biases of the tribunals arising from distinctions based on race, political, social and economic status. Moreover, the economic and social biases confronting the Band within the Canadian courts, especially within the Provincial court system in Alberta, have been greatly magnified by the fact that several of the judges rendering the decisions of these courts have had clear economic and personal ties to the parties opposing the Band in the actions. Please see Communication 167/1984, pages 4-6; Supplement 1; the Band's 31 July 1985 Comments, pages 23-27; Supplement 6, pages 5-7.

In addition to the problems the Band has encountered in the Canadian courts, Canada continues to refuse the Band an impartial forum for purposes of negotiation. The Band has provided the Committee a history of the attempts at negotiation in: Supplement 2, pages 7-9; Supplement 3, pages 2-3; Supplement 5, pages 2-15; Supplement 6, pages 7-10; Supplement 7, pages 3-4.

As is discussed in greater detail below at page 21, the Band has requested that Mr. E. Davie Fulton be reinvolved in the negotiation process as an independent mediator, and that the proceedings be subject to Parliamentary oversight by the Standing Committee on Aboriginal Affairs and Northern Development. In this way, the negotiation process would gain the benefit of a mediator who has already demonstrated his impartiality with regard to the issues, and who would thus be in a position to break deadlocks between the parties.

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In addition, it is hoped that the oversight of the Standing Committee would provide the public scrutiny necessary to permit citizens of Canada and the U.N. Committee on Human Rights to monitor the conduct of these negotiations, especially in light of both Federal and Provincial negotiators' tactic of publically misrepresenting their true position when closed door negotiations have been held. Since meaningful negotiations cannot occur without such safeguards against bias and abuse of the forum, Canada's refusal to agree to them places it in continuing violation of the requirements of articles 14(1) and 26 with regard to the negotiation process.

e. Articles 17 and 23(1)

Articles 17 and 23(1) provide for protection of the family and home. In contravention of the proscriptions of these articles, Canada is knowingly permitting the Lubicon Lake Band to be subjected to conditions which are resulting directly in the destruction of the families and homes of its members. In an indigenous community, the entire family system is predicated upon the spiritual and cultural ties to the land and the exercise of traditional activities. When these are destroyed, as in the case of the Lubicons, the essential family component of the society is irremediably damaged.

Members of the Band have been personally threatened that their homes would be destroyed by bulldozer if they did not accept Provincial jurisdiction over their land and effectively relinquish their aboriginal land rights. Furthermore, Canada's terms for negotiation rest upon retroactive application of the Canadian Indian Act prior to its amendment by Bill C-31, in violation of article 27 (Sandra Lovelace v. Canada, case No. 24/1977). Application of this law literally would result in a situation where some members of a family would be entitled to federal recognition as "Indians" and other members of the same family would not. Please see Supplement 5, pages 3-6.

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It is also vital to take account of the fact that the traditional territory that has been taken from these people is their "home." It is where they have lived as a community for countless generations. In their social practices and spiritual belief system, as with most indigenous peoples, the territory in which the family and community reside is no less sacred, no less their home, no less a part of them than is the enclosed dwelling to which they retire at night. In fact, in many respects, the territory of the community is infinitely more important and more sacred than a mere dwelling.

f. Article 18(1)

Article 18(1) guarantees the right of religious freedom. With the taking and destruction of their land, the people of the Lubicon Lake Band have been robbed of the physical realm to which their religion -- their spiritual belief system -- attaches. Again, as with other indigenous peoples, the traditional territory of the community encompasses the physical aspect of the community's spiritual life. With the loss or destruction of the territory, the only temple in which worship has meaning for these people is lost.

g. Article 27

Article 27 guarantees protections for ethnic, religious and linguistic minorities. The Lubicon Lake Band, as an indigenous or aboriginal people who have never entered a treaty with or ceded territory to Canada, is a social and political entity distinct and separate from the social and political system of Canada, rather than a minority group of Canadian society.

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Nonetheless, in terms of size, the Band is clearly a minority within the territory controlled by Canada; its minority status resting on several factors, including ethnic, religious and linguistic differences. The Committee has already upheld Canada's obligation to provide protections for the indigenous peoples of Canada. Sandra Lovelace v. Canada. Canada has completely failed in any way to fulfill this obligation with respect to the Lubicon Lake Band. Further, as is pointed out above, it has even attempted to subject Band members, retroactively, to the pre-C-31 Indian Act, the very law which the Committee held to be in violation of article 27 in the Lovelace case. Also, please see Supplement 5, pages 3-6, where it is pointed out that based upon the retroactive application of this statute, Canada has taken the position that no land or resources are to be provided to or for the benefit of more than one-half of the Lubicon people.

C. Exhaustion of Domestic Remedies

The question of the Band's exhaustion of its available and effective domestic remedies has been argued at length before the Committee by both parties. The arguments offered by Canada in its 7 October 1987 Response do not cover new ground, except to the extent Canada asserts that the parties are pursuing negotiation within a negotiation process established by law. This assertion rests upon a less than accurate portrayal of relevant law and a blatantly false statement of relevant facts.

For the sake of clarification, the Band will address each of the points raised by Canada in turn, once again referring to materials already before the Committee.

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1. **The failure of the Canadian courts to grant the Lubicon Lake Band an interim injunction has resulted in the complete destruction of the Band's economic base and way of life, as corroborated by E. Davie Fulton in his investigation on behalf of the Federal Government of Canada.**

Canada attempts to argue that its courts provided the Lubicon Lake Band a full and fair hearing of the Band's application for an interim injunction to halt oil development in the area until the land title question could be settled. In previous submissions, the Band has addressed the interim injunction decisions, as well as the ties of judges making these decisions to the defendants in the action. Please see, in particular, Supplements 1 and 6, and the Band's 31 July 1985 Comments, pages 10-11, 23-27.

As is demonstrated by the court decisions, provided to the Committee by Canada, and by Canada's own discussion of the decisions, in attempting to protect its economy and livelihood through the Canadian court system, the Band found itself in a "catch 22." The Court of Queens Bench, despite substantial, uncontested evidence presented on behalf of the Band, determined that it was not clear that the Band's lifestyle was in fact threatened. Therefore, injunctive relief was denied. Fourteen months later, on appeal, the Court of Appeal found that to the extent the Band had lost its hunting and trapping way of life, there was nothing left to protect through injunction, and that the threat of any additional loss was once again too speculative.

The Court of Appeal also tried to construct an argument that there was no clear correlation between the development activities in the area and a decline in the Band's livelihood. In his nearly year-long personal investigation of the situation at Lubicon Lake, Mr. E. Davie Fulton concluded that "the weight of evidence is that the decline in harvesting from hunting and trapping is . . . due to the impact of development which is an established fact which coincided with the onset and continuance of the decline" Fulton Discussion Paper, sec. 5(b)(i), at page 54. As the Band has already

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informed the Committee, the decision of the Court of Appeal was appealed to the Supreme Court of Canada twice, and review was twice refused.

Canada and the Band clearly disagree as to whether the courts, in deciding upon the Band's application for an injunction, gave careful consideration to all of the evidence presented and to the probable outcome of the matter. As the facts now stand, however, the Lubicon Lake Band's "highly speculative" claim that its economy and livelihood were in mortal danger in 1983, has given way to the concrete reality that its economy and livelihood are dead. Canada recognizes this reality in the figures set forth at pages 24-25 of its 7 October 1987 Response. A self sufficient community has no need of the massive welfare support the Lubicon Lake Band now requires.

2. A trial on the merits offers the Lubicon Lake Band no recourse against the Federal Government of Canada and no redress for the loss of its economy and way of life.

The Band continues to try to pursue an action on the merits of its aboriginal land title claim. In Canada's view, this action affords the Band adequate opportunity for protection of its interests and compensation for its losses. In adopting such a position, Canada would have the Committee decide that human rights violations may be rectified through the payment of money — i.e., that human dignity, security, happiness and even life may be bought for whatever purpose the state desires. The reality of the present situation is that a trial on the merits can no longer present an avenue for protection of the Band's economy and way of life. Even if compensation were available through the Canadian courts, it could never replace what has been lost. Please see Supplement 6, pages 1-7, 13-14.

The Band's economy and way of life are gone. Their destruction has been documented by well known and highly respected individuals within Canada and the international community. The physical evidence is there for any observer who wishes

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to make the journey. Please see, for example, 31 July 1985 Comments, pages 28-32; Supplement 3, pages 3-4; Discussion Paper prepared by Mr. E. Davie Fulton. In spite of this undeniable fact, Canada continues to argue to the Committee that "the Band's way of life, livelihood and means of subsistence have not been irreparably damaged, nor are they imminently threatened." 7 October 1987 Response of the Government of Canada, at pages 10-11. A trial on the merits will not undo what has been done.

Furthermore, a trial on the merits is no longer available against the Federal Government of Canada. In October 1986, the Supreme Court of Canada held that aboriginal land rights within Provincial boundaries involve Provincial land rights and must therefore be adjudicated before the Provincial courts. Therefore, on 30 March 1987, the Band applied to the Alberta Court of Queens Bench for leave to amend its Statement of Claim before that court to add the Federal Government of Canada as a defendant.

The decision of the Court of Queens Bench, handed down on 22 October 1987, was to deny the Band's application. Thus, despite the fact that the Canadian Constitution vests exclusive jurisdiction for all matters concerning Indians and Indian lands in Canada with the Federal Government, as matters now stand the Lubicon Lake Band has no recourse against the Federal Government on issues pertaining to these very questions in any court in Canada.

3. The negotiation process discussed by Canada in its 7 October 1987 Response has not been applied to the Lubicon Lake controversy.

At page 12 of its Response, Canada describes its processes for negotiating aboriginal claims. Three points are in order with regard to this discussion. First, the policy statement quoted at page 12 pertains only to the Comprehensive Claims process, which Canada refuses to make available to the Lubicon Lake Band.

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Secondly, in all settlements of aboriginal and other Native claims to date, including the Fort Chipewyan settlement cited by Canada, the membership lists used for calculating reserve land have been those existing at the time of the first survey of reserve land. Nonetheless, the Federal Government of Canada has informed the Lubicon Lake Band that its recognized membership would be revised according to the formula set forth in Supplement 5 at pages 4-5, a formula never used in Canadian history. Canada's position concerning the Lubicon Lake Band membership would not only have the effect of denying the aboriginal rights of more than half of the Lubicon people, it would have the effect of treating the Lubicon people in a way that is different, unequal and discriminatory when compared with the treatment of all other Native people throughout Canada's history.

Finally, at page 14 of its Response, Canada describes the Lubicon Lake negotiations as proceeding pursuant to the Specific Claims process. This is completely untrue. The Band did not seek negotiation under the Specific Claims process. Rather, given that its claims are based on traditional use and occupancy and are unextinguished by treaty — i.e., are aboriginal in nature — the Band filed a Comprehensive Claim. This is consistent with the approach the Band has taken in its court actions. To date, Canada has refused to permit the Band to proceed under the Comprehensive Claims process. As a result, no process for negotiation has been agreed to by the parties.

The negotiation proceedings that have taken place thus far between the Band and Canada resulted from the parties' agreement to proceed, without prejudice, to attempt to establish the elements that a settlement might entail. These proceedings have broken down at several points, described for the Committee in previous submissions. Please see Supplement 2, pages 7-9; Supplement 3, pages 2-3; Supplement 5, pages 3-6, 10-15.

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4. **Canada has made no settlement offer to the Band and refuses to consider the Band's settlement proposal or to engage in negotiations based on the Fulton Discussion Paper, with Mr. Fulton as an impartial mediator and with provision for public scrutiny.**

A number of comments are in order with regard to Canada's enumeration, at pages 14-20 of its Response, of alleged reasons for the breakdown of negotiations.^{1/} First, at page 14 of its Response, Canada misstates the judgment sought by the Band in its aboriginal rights action, filed in 1980. Through this action, the Band seeks: (1) a declaration of aboriginal title to its traditional territory and royalties in the amount of one-eighth of the revenues gained from resource development in the territory; or (2) a declaration of the Band's treaty rights and damages in the amount of \$1 billion.

Secondly, any issues pertaining to the interests of other Native people in the area were addressed and clarified by Mr. Fulton in his Discussion Paper. As indicated there, such issues do not present an obstacle to settlement of the Lubicon Lake Band's claims.

Thirdly, Canada continues to raise the issue of Alberta's involvement in the negotiations as though it were a major point hindering settlement. The Band has never refused to have Alberta involved in the negotiations. Rather it has refused to deal directly with the Province, for two reasons. First, in their past involvement during attempts at tripartite negotiations, officials of the Provincial government demonstrated such bad faith, including abuses of the media, that it became clear to the Band that direct negotiations with the Province were futile and even counter-productive. Please see Supplement 5, pages 13-15. Following his year-long investigation, Mr. E. Davie Fulton also recommended bilateral negotiations between the Lubicon people and the Federal Government.

^{1/} The question of Band membership, raised by Canada here, is discussed above, at page 18.

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The second reason the Band wishes to deal directly with Canada is that, as has been pointed out, the Federal Government of Canada is the party responsible, under the Canadian Constitution, for matters involving Indian people and Indian land in Canada. The Canadian courts have also held that the Federal Government is the only body empowered to deal with the surrender of aboriginal land rights.

At page 16 of its Response, Canada refers to the 25.4 square mile settlement offered by Alberta. Among the many difficulties with this proposal are: its complete disregard of the claims put forth by the Band; its complete disregard of the recommendations of Mr. Fulton, made four days prior to release of this proposal; and Alberta's stipulation that the settlement be in resolution of all of the Band's claims.

Canada next provides a factually incorrect discussion of its own "settlement" proposal. Among the facts misstated here is Canada's assertion, at page 16 of its Response, that the Band demanded that a final offer be put forward at the Little Buffalo Lake meeting. No such demand was made and no final offer was put forward. The Band in fact requested that the parties attempt to reach agreement as to the principles of negotiation. This meeting and its failure are discussed in the correspondences contained in Appendix E of Canada's Response, and Attachment 1 of this submission.

The proposal which Canada describes as its settlement offer, and from which it quotes at pages 17-19, was discussed by the Band in Supplement 5, at pages 2-6. Not only do the terms of this proposal represent a major retraction from the recommendations made by Mr. Fulton and rest upon a unique and highly discriminatory procedure for determining Band membership, in fact there is no concrete offer of settlement here. In discussions with representatives of the Band, Canada has offered nothing more than its willingness to support and take to Alberta the proposal for a transfer of 40 square miles.

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Furthermore, despite the fact that virtually all of the terms of the proposal actually are left for later resolution, Canada is demanding that the Band agree to this proposal and provide Canada a release with respect to all of the Band's claims against Canada and Alberta, including its action before this Committee. Please see Supplement 5 at page 6.

At page 19 of its Response, Canada goes on to assert that various Federal officials have written to the Band, urging it to return to negotiations. The correspondence provided by Canada as Appendix E to its Response speaks for itself. Included as Attachment 1 to this submission is a 15 September 1987 letter from Chief Bernard Ominayak to Mr. B. McKnight, the final piece of correspondence in this series, which Canada neglected to include in its Appendix E. As is clear from this exchange, the Band continues to ask that negotiations be resumed under fair conditions, employing Mr. E. Davie Fulton's Discussion Paper, with Mr. Fulton as an impartial mediator, and with provision for public scrutiny through the Parliamentary Standing Committee on Aboriginal Affairs and Northern Development.^{2/} Canada's behavior during the course of this correspondence alone underscores the need for such safeguards if the Band is to have any hope of fair treatment by this government.

Included with this submission, as Attachment 2, is a brief statement of the Band's proposal for settlement terms, which are consistent with the provisions of Treaty 8. The total land area over which the parties disagree amounts to no more than

^{2/} In fact, the Standing Committee, in a unanimous decision handed down on 17 December 1987, requested that Mr. Fulton report to that body concerning the Lubicon issue by February 1988. Unfortunately, the executive agencies of the Federal Government, who are the Government's representatives in the negotiations, maintain that Mr. Fulton will not be reinvolved and have thus far refused to cooperate with the Standing Committee. Thus it is clear that despite its propaganda efforts and assurances to the Human Rights Committee, Canada has no intentions of carrying out meaningful negotiations with the Band. It has deliberately misled the Committee in this respect.

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66 square miles. None of the land claimed by the Band for its Reserve contains productive oil wells. In the much larger area where the Band seeks to retain only hunting and trapping rights, it is asking for damages for destruction to and loss of this land and has indicated clearly that all compensation is negotiable.

Despite the fact that the Band's requests concerning both the structure and content of negotiations are extremely reasonable; despite the fact that settlement of these issues would in truth be quite simple if Canada truly desired it; Canada nonetheless continues to refuse to deal with the Band in an open, honest and reasonable manner. In fact, Canada's current approach is to negotiate a settlement with the Province, ignoring the Band altogether. Please see Attachment 3.

D. Conditions of the Band

The "Special Report of the Ombudsman," prepared by Mr. Ivany, was addressed by the Band in Attachment 6 of Supplement 5, "Press Statement, by Bernard Ominayak, Chief, Lubicon Lake Band, Regarding the Ivany Report, September 10, 1984." It should also be noted that in the third paragraph of Mr. Ivany's Introduction to his report he states that he cannot investigate the Band's aboriginal land claim because it is beyond his jurisdiction.

Canada's discussion, beginning at page 23 of its Response, of the physical and economic conditions under which the Band is existing, contradicts Canada's assertions with regard to the lack of destruction of the Band's economy and way of life. It is also frightening.

Canada first refers to "measures undertaken by agencies in Alberta," in an apparent attempt to indicate compliance with the Committee's request under rule 86. These "measures," which were in place prior to the Committee's 22 July 1987 decision, are nothing more than an attempt to placate public opinion with regard to the

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disasterous consequences of development in the Lubicon Lake Band's traditional territory. As is readily apparent, two of the three measures provide for nothing more than notice. The third, the Trappers Compensation Program, in practice merely establishes an elaborate process by which compensation for damaged trapping equipment may be sought. No means for protection of people or wildlife are given. As a consequence, the measures offer nothing which might alleviate the continuing destruction in the area.

As is pointed out above, Canada argues at one point that the Band's way of life, livelihood and means of subsistence "have not been irreparably damaged, nor are they imminently threatened." 7 October 1987 Response of the Government of Canada, at pages 10-11. Yet, at pages 24 and 25 of its Response, Canada sets forth a detailed, though factually incorrect and misleading, account of the welfare and social services which the Federal Government recently began providing to the Lubicon people.

As the Band has already stated, no such welfare or social services would be required if the Band's way of life, livelihood and means of subsistence had not been irreparably damaged. In fact, what has occurred is that the Band's self sufficient traditional economy was systematically and deliberately destroyed as part of a legal and political strategy to avoid recognition of the Band's land and resource entitlements. The traditional economy was then replaced with a welfare economy and certain minimal "social services," put in place to maintain the population at a bare subsistence level. This so as to enable Canada to claim that the Band has no traditional economy to protect and that in fact the people are being cared for, while Alberta retains control of all of the Band's land and resources.

With regard to the factual inaccuracy of Canada's account: the Lubicon Lake Band does not receive programs, services and funding available to other Indian Bands in

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Canada, due largely to the fact that several of such programs, services and funds apply only to Bands with officially recognized reserves. In its July 1986 negotiation proposal to the Band, Canada in effect acknowledged that such benefits are not available to the Band by stating that "Canada is prepared to pay appropriate compensation to the Band for loss of programs and services and to provide for a 'catch-up' capital program."

Of the \$1.3 million Canada claims to have provided to the Band, the Lubicon people have actually received \$737,586, half of this in the form of welfare payments to individuals. The remainder of the \$737,586 has gone to support the construction of four housing units and to provide for a small community store, a small Band staff and a community truck (for picking up garbage, hauling water, fighting house fires, etc.).

Canada claims that the Federal and Provincial Governments have spent \$1.5 million to build 55 houses for 300 Lubicon people. The Band has no idea where these numbers come from. For example there are approximately 460 Lubicon people; the Federal Government has been subsidizing housing construction in the area since 1981, at the rate of four houses per year, for a total of 28 houses and approximately \$800,000. The Provincial Government has subsidized the building of approximately 16 houses.

The educational services referred to by Canada are not available in any realistic way to the people of the Lubicon community. A child of this community who wishes to pursue education beyond grade 9, must first leave the community and acquire a foreign language. These obstacles alone have ensured that no one in the community has completed education beyond grade 12.

Prior to the recent outbreak of tuberculosis, medical services in the community consisted of a once-a-month visit by a Provincial Government nurse. Currently, there is a Federal Government nurse in Little Buffalo four days a week dispensing

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tuberculosis medication. The reasons for this attention are obvious. Not only could the occurrence of the disease give rise to politically sensitive questions, the disease could spread.

The bottom line here is that a self sufficient traditional society has been systematically reduced to penury, with almost one-third of the population infected with tuberculosis, and 95 percent of the people surviving on welfare. For Canada to suggest that such circumstances are in any way comparable to other Canadian communities, and especially to non-Native communities, is patently absurd. For Canada to suggest that this is a situation that in any way conforms to the guarantees of the International Covenant on Civil and Political rights presents a very frightening view of what that Covenant means.

E. Conclusion

The Lubicon Lake Band respectfully requests that the Committee on Human Rights consider the merits of the Band's claim based on the facts before the Committee and pursuant to the articles of the Covenant cited in this submission.

The Lubicon Lake Band respectfully requests that the Committee on Human Rights find the Government of Canada in contempt of the Committee's request pursuant to rule 86 of the Committee's provisional rules, as set forth in its decision of 22 July 1987, CCPR/C/30/D/167/1984.

The author of this communication is prepared to provide further information or clarification which may be desired, and reserves the right under Provisional Rule 93(3) to submit additional information and observations after receiving the reply of the government of Canada.

Submitted by:



Bernard Ominayak
Chief of the Lubicon Lake Band
Little Buffalo Lake
Alberta Canada

Prepared with the assistance of:



Jessica S. Lefevre
Van Ness, Feldman, Sutcliffe & Curtis
1050 Thomas Jefferson St., N.W.
7th Floor
Washington, D.C. 20007

ATTACHMENT 1

Lubicon Lake Band
Little Buffalo Lake, AB
Mailing address:
3536 - 106 Street
Edmonton, AB T6J 1A4

September 15, 1987

The Hon. B. McKnight
Minister
Indian Affairs & Northern Development
Government of Canada
Ottawa, ONT

Dear Mr. McKnight:

Thank you for your letter of August 27, 1987, responding to my letter of August 06, 1987. Since you've never before responded in less than 2 1/2 months, and always before waited until immediately prior to some potentially embarrassing event related to our situation, we cannot but wonder if your relatively prompt reply isn't related to the fact that Provincial Government officials publicly announced the outbreak of a major tuberculosis epidemic in our community on August 26th -- the day before you wrote your letter. The recent tuberculosis outbreak is of course only the latest consequence of the genocide being committed against the Lubicon people by both levels of Canadian Government.

We agree that settlement of Lubicon land rights is an issue which must be addressed, in the first instance, in bilateral negotiations between the Federal Government and the Lubicon people. However we do not agree that reinvolvement of Mr. Fulton as an independent mediator responsible to the Parliamentary Standing Committee on Aboriginal Affairs in any way changes the bilateral nature of the proposed negotiations. Rather Mr. Fulton's involvement would only provide a clearly necessary mechanism for public scrutiny of those bilateral negotiations, which we consider absolutely necessary in order to avoid a recurrence of previous Federal Government efforts to use the pretense of negotiations merely to buy time and defuse growing public outrage. As I indicated to you in my letter of August 6th, the Lubicon people simply can't afford any more non-productive Federal Government game-playing, and we must therefore now insist on some means for insuring that negotiations are real and sincere. Your continuing refusal to consider a mechanism for public scrutiny only serves to raise additional questions about your already questionable motives and sincerity.

MCKnight, 09/15/87, page 2

Regarding your claim that the Government of Alberta refuses to allow release of the Fulton Discussion Paper, I would again point out that this isn't what representatives of the Alberta Government say. Representatives of the Alberta Government say that release of the Fulton Discussion Paper is a matter for the Federal Government to decide, since Mr. Fulton's paper was commissioned by the Federal Government. Obviously somebody's lying. Experience unfortunately makes very clear that it could easily be either or both levels of Canadian Government.

You say that you're "not prepared to unilaterally breach the confidentiality and privilege the Province of Alberta attaches to Mr. Fulton's Paper". Refusal to breach agreements is an admirable trait, Mr. McKnight, if consistently done. However keeping of agreements is not something consistently done by either level of Canadian Government. In this case the Government of Alberta began selectively releasing sections of Mr. Fulton's Discussion Paper one week after receiving it; the Federal Government has selectively released the Fulton Discussion Paper under the Access to Information Act; and the Government of Canada has also released a copy of the Fulton Discussion Paper to the U.N. Committee on Human Rights. All of this convenient, selective releasing of the Fulton Discussion Paper just doesn't fit with your high minded talk about refusal to breach agreements. In addition we'd really like to hear you explain to the Parliament of Canada why Canadians can't have copies of a Canadian document on a Canadian issue prepared by a prominent Canadian using funds provided by Canadian taxpayers which the Government of Canada has already released to the representatives of 18 other countries.

You say that you're not prepared to release the Fulton Discussion Paper because of your "firm belief that (the issue of Lubicon land rights) must be resolved solely on its merits which would not be added to or detracted from by the release of this paper to the general public". That's patently ridiculous. Mr. Fulton's Discussion Paper in fact delineates the positions of the respective parties and speaks directly to the question of merit. Moreover, by making false statements about the content of the Fulton Discussion Paper, and by falsely claiming that the Federal Government is honouring the agreement to use Mr. Fulton's Discussion Paper as the starting point for negotiations, you and your officials have created circumstances which now effectively demand public release of the Fulton Discussion Paper. Interested Canadians should be allowed to read the Fulton Discussion Paper and judge for themselves what it does and doesn't say.

McKnight, 09/15/87, page 3

Our position that we're prepared at any time to enter into real and serious negotiations of course still stands. And we're of course still prepared to do so without conditions which could in any way impede progress toward settlement of our land rights. However we don't agree that public release of the Fulton Discussion Paper would in any way impede progress toward settlement of our land rights. Under the circumstances we're rather convinced that public release of the Fulton Discussion Paper and reinvolvement of Mr. Fulton are essential to productive negotiations. Also we have no understanding why anybody truly interested in real and sincere negotiations would be so afraid of public scrutiny.

As for the aim of negotiations, we seek recognition and respect for our legitimate aboriginal rights, including recognition and respect of our aboriginal land rights. We ask for nothing new nor different than our aboriginal brothers and sisters, nothing without legal and historic precedent in Canada. However we're very leery about your comment about settlement of our rights "within the bounds of Canada's legal obligation", since that phrase has always meant unilateral definition of our rights by Federal Government lawyers. We certainly don't agree that our aboriginal land rights should be unilaterally determined by lawyers working for the other side. If such agreement is a precondition of negotiations between us, then there'll be no negotiations, and we'll rather continue seeking recognition and respect for our legitimate aboriginal rights by other means.

We'll be interested in hearing who you choose as your new negotiator, as well as what kind of mandate that person is given. We hope that the new negotiator is prepared to negotiate a fair and just settlement of our aboriginal land rights based on legal and historic precedent in Canada, because any other approach would be clearly inequitable and therefore unacceptable. We also hope that you reconsider your position on public release of the Fulton Discussion Paper and reinvolvement of Mr. Fulton as an independent mediator responsible to the Parliamentary Standing Committee on Aboriginal Affairs, since at this point, and as a direct result of circumstances created by you and your officials, productive negotiations are otherwise inconceivable.

Mc ght, 09/15/87, page 4

We look forward to hearing from you in the near future regarding all of these matters.

Sincerely,



Bernard Ominayak
Chief, Lubicon Lake Band

cc: The Hon. E. Davie Fulton
Mr. James O'Reilly
Mr. Andre Harvey, M.P.
Mr. Keith Penner, M.P.
Mr. Jim Fulton, M.P.
The Right Honourable Brian Mulroney, P.C., M.P.
Mr. Georges Erasmus
Mr. Gregg Smith
Mr. Lawrence Courtoreille
Grand Chief Matthew Cooncome
Mr. Smokey Bruyere
Mr. Sam Sinclair

ATTACHMENT 2LUBICON PROPOSAL FOR SETTLEMENT OF LUBICON LAND RIGHTS

The Lubicon position on elements of an acceptable settlement of Lubicon land rights has been public for over three years. These elements were presented to then federal Indian Affairs Minister David Crombie in November of 1984, and they are also described in the Lubicon discussion paper prepared by E. Davie Fulton. Former Lubicon negotiator Roger Tassé knew of our position, as does current federal Indian Affairs Minister Bill McKnight and current federal Lubicon negotiator Brian Malone.

There is nothing basically new or different in the Lubicon position on an acceptable settlement. All of the elements of the Lubicon position are included in other aboriginal land rights settlements in Canada. All we are asking is to be treated the same as other aboriginal peoples. However, neither level of Canadian government has so far been prepared to treat us equally, but has rather sought to subvert our aboriginal land rights by systematically destroying our traditional economy and way of life.

Recently, Mr. Malone announced that the federal and provincial governments are negotiating a settlement of Lubicon land rights without even talking to us. He claimed the right to do this by virtue of a treaty which we did not sign, and which clearly stipulates that reserve lands are to be set aside only "after consulting with the Indians concerned...". He claimed that he has to do this because of our insistence on a mechanism for public scrutiny of any negotiations between us.

Ultimately Mr. Malone knows that he really cannot do what he says he is doing -- either in law or in fact -- unless of course we let him get away with it. While Canadian law may not give us the option of refusing to negotiate a settlement of our aboriginal land rights, it does spell out procedures which the Canadian government must follow in order to deal with our aboriginal land rights -- including negotiation of a treaty with us. Until those procedures are followed, neither level of Canadian government has any lawful claim to our aboriginal land ~~even~~ under their own laws. Moreover, and as a matter of fact, we have no intention of simply letting Mr. Malone and his federal and provincial government cronies steal our aboriginal land -- no matter what they try to do to us on the ground, or what deceitful tactics they use against us legally and politically.

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Mr. Malone's latest tactic is obviously designed to deceive the uninitiated into believing that the Canadian and the Alberta Governments are making a valiant effort to settle our aboriginal land rights, even without our cooperation. The announcement which Mr. Malone is expected to make shortly will be described as a good faith effort on the part of Canadian Government to move towards a settlement, and it will then be cited, both in the context of the Olympic boycott and in the context of our U.N. complaint, as evidence that they're not guilty of committing genocide against us. In fact, it is very clear already that this announcement will not be a serious settlement proposal at all, but rather just be another effort on the part of both levels of Canadian Government to deflect growing public criticism while they continue their campaign to wipe us out so that they can steal our valuable aboriginal land.

In this context, we decided to make a settlement announcement of our own. If Mr. Malone can announce a settlement of our aboriginal land rights without talking to us, we figure that we can announce a settlement of our aboriginal land rights without talking to him. People can then read and draw their own conclusions about Mr. Malone's so-called settlement of Lubicon land rights.

1. Reserve Lands

It is our position that we should be able to retain at least as much reserve lands as was retained by the aboriginal people who signed Treaty in the area surrounding ours, as determined by the same criteria. The aboriginal people who signed Treaty in the area surrounding ours determined their own membership and were allowed to retain 128 acres per person. We count 457 people as members, all of whom are people of aboriginal ancestry with family ties and ties to our traditional area. 457 people times 128 acres each is 58,496 acres or about 92 square miles of reserve lands.

2. Sub-surface Rights

It is our position that we should be able to retain full sub-surface rights, as is the case with all other Indian reserves in Alberta.

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3. Wildlife Management Rights

It is our position that we should be able to retain wildlife management rights over that part of our traditional area which we still continue to use and occupy for hunting and trapping. The area involved covers about 4,000 square miles. Our position on this matter is very similar to that of the aboriginal people who signed treaty in the area surrounding ours, who refused to sign treaty until they were guaranteed that they would be able to hunt and trap as before. It is also very similar to the modern treaty signed by the James Bay Crees, who retained exclusive hunting, trapping and fishing rights over an area extending well beyond that retained for reserve purposes.

4. Environmental Protection Rights

It is our position that we should be allowed to retain environmental protection rights over that part of our traditional area which we still continue to use and occupy for hunting and trapping. We consider environmental protection of our traditional area to be a sacred trust, passed on from one generation to the next. If we care for the land and animals, we believe the land and animals will support and sustain us. We have cared for the land and animals for countless generations, and the land and the animals have supported and sustained us. In a few short years, the Alberta Government and the oil companies have done great damage to the environment in our traditional area, chasing away the animals and destroying our traditional economy. While we know that we will never be able to fully restore and repair the environmental damage done to our traditional area by the Alberta Government and the oil companies, we intend to at least require the Alberta Government and the oil companies to respect the kind of very minimal environmental safeguards normally in place to protect the environment and domestic animals in agricultural areas.

5. Establishment of a Trappers' Support Program

For those of our people who wish to continue trapping as a way of life, but who can no longer make a living from trapping because of the effect of gas and oil development on the animal population in our area, we propose the establishment of a trappers' support program. The trappers' support program would compensate a trapper for the difference between what he was able to earn before the onset of gas and oil development activity, and the amount that the trapper is able to earn now, related to the

.../ 4

- 4 -

number of days actually spent on the trapline. We view this program as a more dignified way to make a living than welfare, especially for older people who cannot realistically be expected to adjust to another way of life. A successful program very similar to this one is part of the James Bay Agreement.

6. The Right of First Refusal regarding jobs and contracts resulting from development of traditional Lubicon lands

It is our position that we should have the right of first refusal regarding jobs and contracts resulting from development of our traditional area. If we are unable for whatever reason to perform such jobs or contracts on a competitive basis, the employer would be free to engage outsiders. However, we believe that we should at least be given the chance to participate in the economy which has effectively supplanted our traditional economy. This provision is intended to help facilitate the development of alternatives to the traditional hunting and trapping economy, especially for our younger people.

7. Development of Reserve Land

We propose a comprehensive socio-economic development package including:

- a) Housing and community facilities, community infrastructure and community services comparable to other Northern communities;
- b) the cost of developing reserve land for agricultural purposes, including the cost of clearing, breaking, fencing, equipment, facilities and livestock;
- c) the cost of helping us develop a capability to pursue alternatives to the traditional hunting and trapping economy, including vocational training and related capital costs.

8. Right of Self-Government

It is our position that we should be able to retain the right to govern ourselves, including the right to make and enforce our own laws. How this power to govern ourselves would be exercised in a manner compatible with the rights and interests of other Canadians would be negotiable, as is now the case with other governments in Canada.

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- 5 -

9. Ongoing programs and services comparable to those received by other Indians in Canada

10. Compensation in a negotiated amount for the extensive destruction and exploitation of traditional Lubicon lands, as well as for future loss of use

11. Reimbursement of costs incurred by the Lubicon people in achieving settlement of Lubicon land rights, including the costs of both litigation and negotiations

CHIEF BERNARD UMINAYAK

DECEMBER 21, 1987

Talks may bypass Lubicons

By Mark Lowey

(Herald staff writer)

Ottawa and the provincial government are close to settling the Lubicon Lake Indian land claim by setting aside a reserve without involving the Lubicons in negotiations.

Federal negotiator Brian Malone said Wednesday his negotiations with Alberta are going well and have reached an advanced state.

The Calgary lawyer said he's optimistic he can get at least a partial or interim settlement to the 47-year-old dispute by the end of the year.

If Ottawa and Alberta can agree on a suitable amount of land for the reserve, "we'll announce what the agreement is before Christmas and then they (the Lubicons) will have to decide" what to do, Malone said.

He has had to proceed this way because the Lubicons have built a wall against resuming negotiations. "I talked to the people involved who were prepared to talk to me."

The Lubicons and their supporters are angry that Malone would try putting together a deal without consulting the band.

"They're busy trying to discredit the band rather than trying to deal with the issue," Lubicon Chief Bernard Ominayak said from Little Buffalo.

"They cannot really be serious about making a meaningful effort," said band lawyer James O'Reilly. "It's obviously a hidden agenda. He (Malone) is talking to everybody except the band."

Malone said that Treaty 8, which Ottawa maintains applies to the band, gives federal Indian Affairs Minister Bill McKnight the power to appoint someone to determine where the reserve should be and then establish it.

Malone said McKnight could appoint him to perform this task.

McKnight and Alberta Attor-

ney General Jim Horsman will discuss terms of a proposed settlement during next week's first ministers' conference in Ottawa. Malone added.

He said if an agreement is reached and the Lubicons want more land than what is set aside for the reserve, or are unhappy with the way things were done, they could participate in negotiations or mount a court challenge.

"The band has realized that I can make a deal with the province and they (the Lubicons) are going to be left holding the bag."

The Lubicons, however say that even if they had signed Treaty 8 — which they haven't — the treaty's relevant section says McKnight can appoint someone to create the reserve, but only "after consulting with the Indians concerned as to the locality which may be found suitable and open for selection."

But Malone said O'Reilly has refused to provide a map of the area the Lubicons claim.

Malone noted the band has indicated it wants the original 66-square-kilometre parcel agreed to in 1940 plus adjoining land that the band described for former federal justice minister E. Davie Fulton, who investigated the claim for Ottawa.

"That selection by the band will be taken into account in my negotiations with the Province of Alberta for a land transfer and any demand that might be made by the Government of Canada," Malone wrote O'Reilly on Nov. 30.

But an angry O'Reilly said the only reason there haven't been negotiations is that Ottawa refuses to reinvolve Fulton, as a mediator reporting to the parliamentary standing committee on aboriginal affairs.

"No one can say that we have not, in good faith, made very seri-

ous and extensive efforts to get these bloody negotiations off the ground," O'Reilly said.

But Malone said according to a legal opinion prepared by his office, giving Fulton the power to report publicly would prejudice negotiations because his report could be used in the ongoing court actions.

O'Reilly said Ottawa has nothing to fear from Fulton reporting if the federal government is sincere about honest negotiations.

If Ottawa would only agree to Fulton reporting publicly, "negotiations could begin immediately and I mean immediately," O'Reilly said.



Indian and Northern
Affairs Canada

Affaires indiennes
et du Nord Canada

James Trotter

BY COURIER

January 22, 1988

ACC	Your file	Voire référence
FILE	DOSSIER	Notre référence
45-CDA-13-1-3	Lubicon Lake Band	
LOC	37-C	

Mr. Dan Livermore
 Human Rights and Social Affairs Section
 Department of External Affairs
 Third Floor, Tower "A"
 Lester B. Pearson Building
 125 Sussex Drive
 OTTAWA, Ontario
 K1A 0G2

Dear Mr. Livermore:

Further to our discussion, enclosed please find some factual material on the Lubicon Lake Band which has been prepared by our Regional Office.

Yours sincerely,

R.A. Coulter
 A/Director
 Policy Development
 Lands, Revenues and Trusts

Attach.



Indian and Northern
Affairs Canada

Affaires indiennes
et du Nord Canada

305, 9942 - 108 Street
Edmonton, Alberta T5K 2J5

TELECOPIER COVER PAGE

Your file - Votre référence

Our file - Notre référence

1/910

TO:

Rick Moorcroft
Special Assistant to
The Hon. W. McKnight
Minister of Indian Affairs
and Northern Development
Ottawa

The following Dex Message consists
of short long
pages.

SUBJECT:

Lubicon Lake Band

ORIGINAL TO BE Mailed to Addressee

FROM:

Dennis Wallace
Regional Director General
Indian and Inuit Affairs
Alberta Region

Returned to
M. Carcy, 4th Flr
 PA'd to our file
reference

Please send this message to (613) 993.6587
and (819) 953.4941

Rick, please copy this message to Bob Coulter

[Handwritten signature]

REçu PAR - RECD BY
1988 JAN 21 13
COMCEN

*1:55 P.M. (Min's office)
2:25*

Canada

LOBICOM LAKE BAND
AUDIT ANALYSIS

4203-453
4200-453

Document disclosed under the Access to Information Act / Document divulgué en vertu de la Loi sur l'accès à l'information

JANUARY 21, 1988

Population used in calculations: 210 (being total band population recognized by INAC)

	1984/85	1985/86	1986/87	1987/88 (Based on INAC C/A Report)
Direct INAC Contributions (Net of Capital Housing)	\$591.5	\$587.1	\$597.5	\$570.5
Per Capita Equivalent	\$2.8	\$2.8	\$2.9	\$2.7
Total Direct INAC Contributions	\$736.8	\$727.2	\$737.6	\$710.6
Per Capita Equivalent	\$3.5	\$3.3	\$3.5	\$3.4
Total Federal Contributions	\$968.6	\$855.6	\$989.7	Not available
Per Capita Equivalent	\$4.6	\$4.1	\$4.3	
Provincial Contributions	\$0.0	\$0.0	\$19.7 (STEP Program)	Not available
Per Capita Equivalent	N/A	N/A	\$0.1	
Total Direct Funding	\$1330.0	\$1198.1	\$1024.2	Not available
Per Capita Equivalent	\$6.3	\$5.7	\$4.9	
Education (Payments to 3rd parties on behalf of band)	\$320.0	\$331.5	\$321.5	\$586.8 (Students have doubled)
Per Capita Equivalent	\$1.5	\$1.6	\$1.5	\$2.8
Total INAC Contributions (Direct & Indirect)	\$1056.8	\$1058.7	\$1059.1	\$1297.4
Per Capital Equivalent	\$5.0	\$5.0	\$5.0	\$6.2

Notes:

- 1) Federal Contributions stated above do not include special funding related to Land Claims.
- 2) INAC records (HQ Finance) indicate that at March 31, 1987 the band had Land Claims loans outstanding of \$242.2.
- 3) In addition, the band received \$1,500.0 as an ex-gratia payment in 1986 (per B. Berger - Claims Analyst - letter dated July 24/87).

18/2

LUBICON LAKE BAND
GOVERNMENT SERVICES

3/108

GOVERNMENT BENEFITS AND PROGRAMS

as residents of Canada the Lubicon Lake Indians receive family allowance payments, unemployment insurance benefits, old age pension, the Canada Pension Plan and, where applicable, veterans' benefits.

- . as status Indians, members of the Lubicon Lake Band have access to other federal programs generally not available to other Canadians. They receive free education, housing and medical and dental care. They also receive major contributions to community infrastructure maintenance, economic development, adult training and band government administration.

HOUSING

- . since 1981 over \$1 million has gone from the Government of Canada to the Lubicon Lake Band to purchase construction materials for homes.
- . labour costs have generally been covered by employment and training grants.
- . 54 new houses have been constructed by the Government of Canada and the Province of Alberta in the last 10 years in the Hamlet of Little Buffalo.
- . funds are also provided for housing renovations. The general maintenance of a home is the responsibility of the owner.
- . the Government of Canada pays for the permits and taxes of lots occupied by Band members.

EDUCATION

- . INAC pays for basic education and early childhood services of Lubicon Lake Band Indian children.
- . the schools are under the administration of the Peace River School Division.
- . the Government of Alberta has recently built two new schools in communities very close to Little Buffalo. In 1985 the Government of Alberta offered to build a new school in Little Buffalo. The Lubicon Lake Band refused to allow a provincial school to be built.

- 2 -

SOCIAL ASSISTANCE

4/18

- . a family of six, 2 adults and 4 children, on social assistance have:
 - . their actual shelter costs paid for;
 - . their fuel and utilities paid for; and
 - . \$813 provided a month for food and household expenditures
- . the Lubicon Lake Band members on social assistance receive the equivalent benefits given to any Albertan on social assistance
- . European material distributed by the Lubicon indicate over 95% of the Lubicons are on social assistance
- . Canadian material distributed by the Lubicon indicate the social assistance rate over the last few years has gone up 90 percent
- . INAC statistics indicate neither is true. In 1981 (May) 53 Lubicon Indians were dependent on social assistance and in 1987 (August) 71 Indians were dependent on social assistance. (Approximately ten families and seven single Indians receive social assistance).

WATER SERVICES

- . Little Buffalo has a water supply. The water comes from a reservoir which collects surface runoff. The water is treated to meet Alberta Environment standards and is stored in a central location
- . Indian and Inuit Affairs purchased a water-toting vehicle for the Lubicon Lake Band to enable the band to deliver water to individual homes
- . in 1987 the Government of Canada and the Government of Alberta through the Canada/Alberta Northern Development Agreement have approved \$1.5 million for a water treatment plant in Cadotte Lake, a community only 10 km from Little Buffalo. The treatment plant will be built in the spring of 1988.

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WATER SERVICES cont'd

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- . initially, a direct waterline to Little Buffalo was planned for 1988. This waterline has been put on hold after the surveying stakes were pulled up in the community of Little Buffalo
- . as an alternative to the direct waterline, the Province of Alberta will be hauling water from Cadotte Lake to Little Buffalo once the Cadotte Lake treatment plant is complete. The hauled water will be stored in a reservoir.
- . Alberta Municipal Affairs sent a letter to Chief Ominayak (attached) December 15, 1988 requesting that the Chief get back to them as soon as possible to confirm the location preferred by the Lubicon Lake Band for a treated water reservoir. To date, the Chief has not answered the letter. A delay in the Chief's response may mean a delay in the community receiving the water from Cadotte Lake.
- . Alberta officials indicate that in meetings with the Lubicon Lake Band, the band did not support the building of a water line to Little Buffalo.

POWER

- . power is provided to the community of Little Buffalo by Alberta Power.

JAN 20 '88 14:43 AB NORTH DEV PERCE RJ

PAGE 02

Alberta

MUNICIPAL AFFAIRS
Improvement Districts
and Native Services

Improvement District Administration



6/10

308 Provincial Building, Bag 900, Box 30, Peace River, Alberta, Canada T0H 2X0 403/624-6121

3/10

December 15, 1987

Bernard Ominiyak
Chief, Lubicon Lake Band
Box 2864
Peace River, Alberta
T0H 2X0

Dear Bernard:

Further to your discussions with Chuck Curr concerning the location of a treated water reservoir and truck fill in Little Buffalo, I have attached a plan outlining three proposed locations.

Would you kindly review and provide comments as to the suitability of these areas for the above described purpose.

We would like to proceed with soil investigation so your early reply will be very much appreciated.

Yours truly,

Kelly Bunn
Assistant Manager
Improvement District No. 17(W)

KB/kh

cc: G. Curr

LUBICON LAKE BAND

HEALTH ISSUES

TUBERCULOSIS OUTBREAK

- . Current status of January 5, 1988:
 - 358 natives received skin tests
 - 107 were positive
 - 37 of the positive were active cases which require the treatment of two or more drugs
 - 105 natives have been receiving treatment of one drug. If these people went untreated, they would have a 10 percent chance of developing active tuberculosis
 - No one is infectious because they are all being treated.

- . The Lubicon Lake Band claim that 91 people have been affected by tuberculosis. This is a misleading comment and implies that 91 people have active tuberculosis as opposed to the 37 people who are being treated as active cases.

- . Medical Services Unit, National Health & Welfare, is providing the following services in the community:
 - . lay dispenser twice a week;
 - . full time Community Health Worker located in Little Buffalo;
 - . field training for the Little Buffalo student in Community Health, who started training in September and will be completed in June. This person will replace the current Community Health Worker in June;
 - . the funds for a vehicle and a driver to establish a health transportation system from Little Buffalo to Peace River;
 - . two doctors visiting the community once a month;
 - . one full time nurse and a second part time nurse in the community; and
 - . a new trailer to use as the Health Care Centre.

7/10

LUBICON LAKE BAND
RESOURCE MANAGEMENT ISSUES

8/10

MOOSE POPULATION

- . moose feed on low bush and have a difficult time surviving in heavily forested areas
- . in the early 1980's a moose winter tick infestation spread throughout north central Alberta reducing the moose population
- . the moose population in Little Buffalo is expected to increase because of:
 - . forest fires from 1980-83 creating bush clearings;
 - . oil and gas cutlines and clearings; and
 - . the control of the winter tick infestation.

LUBICON LAKE BAND
LAND CLAIM ISSUES

9/10

MEMBERSHIP

- . The Lubicon Lake Band membership has grown substantially in the last eight years.
- . approx. 200 total ——— 1980 Statement of Claim to the Federal Court of Canada (100 Indian and 100 other members)
- . 250 total ————— 1982 Statement of Claim against the Alberta Government and 11 oil companies (150 Indians and 100 other members)
- . in excess of 400 ——— 1986/87 Fulton Report
- . 347 1984 joint INAC/Band membership study
- . 458 ————— 1987 amended Statement of Claim
- . an essential document for determining land entitlement is the genealogical survey conducted by Indian Affairs with the assistance of the Lubicon Lake Band
- . the Lubicon Lake Band will not permit Indian Affairs to share the genealogical study with Alberta as a part of the negotiations for land entitlement
- . Mr. Fulton's report mentions this as a major obstacle when he says "the Band's withholding of consent still represents a substantial obstacle to direct progress, necessitating a considerable detour"
- . the genealogical study is necessary to confirm that there are:
 - . not persons who are members of other bands;
 - . not persons whose ancestors were counted in determining land entitlements for other bands; and
 - . not person whose ancestors took Metis script.

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NEGOTIATIONS

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- . 1986 the Government of Canada gave the Lubicon Lake Band \$1.5 million to defray legal and other costs associated with presenting its claim
- . 1986 the Government of Canada offered the Lubicon Lake Band 40 square miles of land for a reserve with full mineral rights plus additional compensation to establish a new community
- . the Lubicon Lake Band accepted the \$1.5 million but in 1986 broke off negotiations with the Government.

BICO

**ACTION
SUITE A DONNER**

P R O T E G E

DE PRMNY WKGR0164 22JAN88

A EXTOTT (IMH)

INFC BRU GENEV PCCOTT/CARON

PM JUSTOTT/LOW/FREEMAN DE OTT SECSTATEHULL/LAPIERRE

INAHULL/COULTER/WHITAKER DE OCI

DISTR IMD IMU JLO RWR BFE BFC BCM

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ATTACHED IS DOCU REFERRED TO IN HYNES/LIVERMORE CONVERSATION.

Next session of Human Rights Committee begins March 14. No deadline will be set for government reply to attached submission as there is no obligation to respond to supplementary submissions.

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<p>DRAFTER/REDACTEUR</p> <p>R HYNES</p>	<p>TELEPHONE NBR</p>	<p>APPROVED/APPROUVE</p> <p><i>C. Hammond</i></p> <p>C HAMMOND</p> <p>002300</p>
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SUPPLEMENT NO. 8 TO COMMUNICATION NO. 167/1984

SUBMITTED BY CHIEF BERNARD OMINAYAK

AND THE LUBICON LAKE BAND OF ALBERTA, CANADA

12 January 1988

COMMENTS ON RESPONSE OF THE

GOVERNMENT OF CANADA

DATED 7 OCTOBER 1987

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January 12, 1988

Mr. Jakob Th. Moller
Chief Communications Unit
Center for Human Rights
United Nations Office
CH-1211 Geneve 10
SWITZERLAND

RE: Communication No. 167/1984

Dear Mr. Moller:

Thank you for transmitting the 24 August and 13 October 1987 notes from the Permanent Mission of Canada to the United Nations, and the Government of Canada's 7 October 1987 Response to the Committee's 22 July 1987 decision.

On behalf of Chief Bernard Ominayak and the Lubicon Lake Band, I have the honor of submitting to the Human Rights Committee the enclosed Supplement No. 8 to Communication No. 167/1984.

On behalf of Chief Ominayak and the Band, I also wish to take this opportunity to express our highest regard to the Secretary-General of the United Nations and to express our gratitude for the kind consideration of the United Nations Committee on Human Rights and of the staff of the Centre for Human Rights.

Yours truly,

Jessica S. Lefevre
Jessica S. Lefevre

Enclosure

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In its decision of 22 July 1987 (CCPR/C/30/D/167/1984), the United Nations Committee on Human Rights found the Complaint of the Lubicon Lake Band ("Band"), submitted to the Committee in Communication No. 167/1984 ("Communication") to be admissible in so far as it raises issues under article 27 or other articles of the International Covenant on Civil and Political Rights ("Covenant"). The Committee also requested, pursuant to rule 86 of its provisional rules of procedure, that Canada take interim measures to avoid irreparable damage to Chief Ominayak and other members of the Lubicon Lake Band. The Committee further requested that in accordance with article 4(2) of the Optional Protocol, Canada submit to the Committee written explanations or statements clarifying the matter and the remedy, if any, that may have been taken by it.

By letter dated 4 December 1987, the Chief of the Communications Section of the Centre for Human Rights transmitted to Chief Ominayak and the Band two notes from the Permanent Mission of Canada to the United Nations Office at Geneva, dated 24 August 1987 and 13 October 1987, and a Response from the Government of Canada, dated 7 October 1987.

A. Introduction

The 7 October 1987 Response by Canada fails to provide any explanation or clarification of the issues relating to the situation of the Lubicon Lake Band. Of even greater concern to the Band, Canada continues to make no attempt to provide a remedy or to comply with the Committee's request pursuant to rule 86.

The stated purpose of Canada's Response is to appeal the Committee's decision on the admissibility of Communication No. 167/1984. In effect, however, Canada's Response is an attack on the competency of the Committee and/or the wisdom of its decision. In its submission of 26 June 1987, Canada itself recognized that the Human Rights Committee had sufficient information before it to make a decision on the issue

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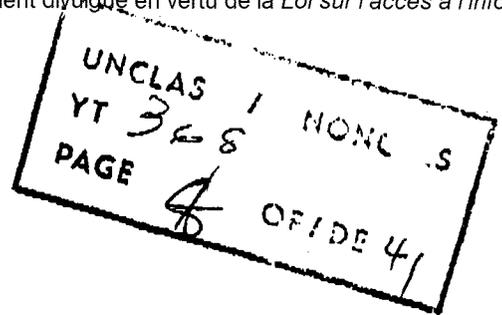
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of admissibility (decision of the Committee of 22 July 1987, page 9). Despite this previous position and despite the fact that the Committee fully considered and fairly set out the essential elements of the positions of both parties in its decision of 22 July 1987, Canada now bases its appeal on a restatement of the facts already before the Committee. It seeks, under the guise of elaboration of its previous submissions, to have the Committee reverse its decision without any real new grounds.

Furthermore, in its 7 October 1987 Response, as in its past submissions to the Committee, Canada has once again intentionally misrepresented facts and mischaracterized relevant domestic law in what can only be construed as a continuing attempt to mislead the Human Rights Committee with regard to this matter. In continuing this posture, Canada insists upon committing what amounts to virtual perjury, rather than resolving a very simple issue, which turns upon what is in comparative terms an extremely small area of land.

The only discernible reason for Canada's position is that the Federal and Provincial Governments have become embroiled in a jurisdictional and power struggle over unsurrendered traditional Native lands that are rich in oil. The Lubicon Lake Band has become a pawn in this battle. Through its actions in both the domestic and international arenas, Canada is clearly demonstrating its willingness, the Lubicon Lake Band and public opinion permitting, to abdicate its trust responsibility to the Native people of Canada, and to sacrifice their human rights if necessary, rather than to confront Alberta on these issues.

In its present submission, the Lubicon Lake Band respectfully requests that the Committee consider the merits of the Band's claim based on the facts before the Committee and pursuant to the articles of the Covenant cited in this submission, and that the Committee find Canada in contempt of the Committee's request pursuant to



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rule 86 of the Committee's provisional rules, as set forth in its decision of 22 July 1987, CCPR/C/30/D/167/1984.

B. The Admissibility of Communication No. 167/1984

1. In its 22 July 1987 decision, the Committee determined that Communication No. 167/1984 is admissible based upon the facts and events which the Band, through its submissions, has described to the Committee.

Canada's first basis for appeal of the Committee's decision is its assertion that the decision is too vague, since the Committee chose to admit the Communication under article 27 or other articles of the Covenant, rather than under article 1, and "did not identify the facts or evidence submitted by the Band that might substantiate a violation of articles of the Covenant other than Article 1." Response of the Government of Canada, 7 October 1987, at page 2. In fact, the Committee clearly indicated that its decision is based upon "the facts as submitted" and the "events which the author has described." CCPR/C/30/D/167/1984, at paragraph 14.4, emphasis added. It is clear from the Committee's decision that Canada is expected to address the matter based upon all of the facts and events as provided to and developed before the Committee to date.

However, given its respect for the Committee and its decisions, as well as its continuing desire to expedite the Committee's consideration of this matter, the Band provides below a discussion of the articles of the Covenant which it believes Canada has violated in this context. The facts supporting reliance upon these articles are already before the Committee in the Band's previous submissions, including Communication No. 167/1984, Supplements to that Communication, the Band's comments on submissions by the Government of Canada, and letters written to the Committee by or on behalf of the Band. All of the information contained in the Band's

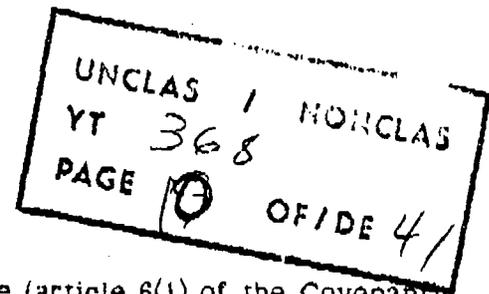
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previous submissions is herein incorporated by reference. The following submissions are specifically referred to in the discussion: Communication No. 167/1984; Supplement 1, transmitted 27 March 1985 (herein referred to as "Supplement 1"); Comments on the 31 May 1985 Response of the Federal Government of Canada, originally transmitted 8 July 1985, revised version transmitted 31 July 1985 (herein referred to as "31 July 1985 Comments"); Supplement 2, transmitted 9 April 1986 (herein referred to as "Supplement 2"); Supplement 3, dated 30 June 1986 (herein referred to as "Supplement 3"); Supplement 5, dated 23 February 1987 (herein referred to as "Supplement 5"); Supplement 6, dated 25 February 1987 (herein referred to as "Supplement 6"); Supplement 7, dated 7 October 1987 (herein referred to as "Supplement 7").

2. Canada has committed specific violations of article 27 and other articles of the Covenant against the Lubicon Lake Band.

The Lubicon Lake Band maintains that article 1 of the Covenant provides the most accurate and comprehensive statement of the internationally recognized rights and liberties of which the Band, as a people and a community, has been deprived. Nonetheless, and even though the Band falls within the definition of "aboriginal peoples" recognized specifically by section 35 of Canada's Constitution Act, 1982, the Band respects the decision of the Committee with regard to the availability of article 1 under the Optional Protocol. Therefore, the Band hereby requests that the Committee consider the merits of its claim in light of the provisions of the articles set forth below.

As individuals living within the territory of Canada, the people of the Lubicon Lake Band have had several of their rights under the Covenant violated. In particular, they have been and are being denied: their right to have Canada ensure to them the guarantees of the present Covenant and their right to an effective remedy (article 2(1),



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(2), (3)(a) of the Covenant); their inherent right to life (article 6(1) of the Covenant); their right not to be subjected to cruel, inhuman or degrading treatment (article 7 of the Covenant); the right to equality before the courts and tribunals and the right to a fair and public hearing in a suit at law by a competent, independent and impartial tribunal established by law (article 14(1) of the Covenant); the right not to be subject to arbitrary or unlawful interference with privacy, family or home and the right to the protection of the law against such interference or attacks (article 17 of the Covenant); the right to freedom of conscience and religion and to manifest religion in practice (article 18(1) of the Covenant); the protection of the family (article 23(1) of the Covenant); the right to equality before the law and the right without any discrimination to the equal protection of the law (article 26 of the Covenant); and the right as an ethnic, religious or linguistic minority, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion and to use their own language (article 27 of the Covenant). The Committee specifically noted this final article in its decision of 22 July 1987 (CCPR/C/30/D/167/1984, at paragraphs 11.1, 14.4, 14.5).

a. Article 2(1), (2), (3)(a)

Article 2(1) of the Covenant requires that Canada ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the Covenant, "without distinction of any kind, such as race . . . language, religion, political or other opinion, national or social origin, property . . . or other status." As demonstrated in the Band's submissions to the Committee, the people of the Lubicon Lake Band have been deprived of their traditional aboriginal territory, the resources of that territory, and their means of livelihood as a direct result of their racial, social, economic and property status as Native, indigenous or aboriginal people. The Band set

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forth in Communication No. 167/1984, its 31 July 1985 Comments, Supplement 2 and in other submissions the history of events which evidence Canada's disregard for any interests which the Lubicon people have in their homeland and their traditional way of life.

The racial differences here are clear. The social, economic and property distinctions underlying Canada's treatment of the Lubicon people arise from the Band's indigenous community structure, its subsistence economy and its aboriginal interest in its traditional territory -- an interest entailing the right to occupy, possess and use the land and resources of the territory to support its subsistence economy, to carry on a traditional way of life, and to practice a particular Native culture and religion. Canada, through the actions of its Province, executive agencies and judiciary, is proceeding as though these distinctions justify its theft of the homeland, and resulting ruin of the families, community, economy, way of life and spiritual and cultural heritage of these people.

Article 2(2) of the Covenant requires Canada to take necessary steps, in accordance with its Constitution and the provisions of the Covenant, to "give effect to the rights recognized in the present Covenant." Canada stands in violation of this article in that its initial failure, in 1940, to set aside a reserve of land for the Lubicon Lake Band, its continuing refusal to assist these people in obtaining a defined reserve, its unwillingness to protect the Band's aboriginal interest from appropriation by Alberta, and its failure to protect the way of life and livelihood of the Band give rise to violations of a number of provisions of the Covenant, as discussed in this submission. At this point, certain of the human rights violations suffered by the Band can never be remedied. To the extent Canada refuses to resolve those which are still remediable, Canada remains in continuing violation of the requirements of article 2(2).

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Article 2(3)(a) requires that Canada provide an "effective remedy" for violations of rights protected by the Covenant. Canada has failed and continues to fail to provide the Lubicon Lake Band an effective remedy with regard to the Band's rights under the Covenant, as demonstrated in the Band's previous submissions, as recognized by the Committee in its decision, and as discussed again in this submission.

b. Article 6(1)

Article 6(1) of the Covenant guarantees every human being the "inherent right to life." While the Government of Canada has not sought, directly, the death of any member of the Lubicon Lake Band, the circumstances deliberately created by Canada through its actions have led, indirectly if not directly, to the deaths of 21 persons and are threatening the lives of virtually every other member of the Lubicon community. Moreover, the ability of the community to replace itself is in serious doubt as the number of miscarriages and stillbirths has skyrocketed and the number of abnormal births generally has gone from near zero to near 100 percent.

It is a fact well documented in both anthropological and sociological literature that the destruction of the economic base of small-scale societies and communities leads inevitably to the deterioration of a community's political and social structure. With the collapse of political and social institutions, including the breakdown of the family, communities experience dramatic increases in suicides, fatal accidents, homicides, alcohol and drug abuse, abnormal births and the illnesses associated with poverty and alcohol and drug abuse.

The Band has documented for the Committee several of the tragedies experienced in the Lubicon community in recent years; tragedies which are the human reality of the fear, despair and pain underlying such a sociological profile; tragedies which were previously unprecedented in the Band's history. Please see, in particular, Appendix No. 6 to Communication 167/1984 and Supplement 2, pages 4-5.

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The Band's loss of its economic base and the breakdown of its social institutions, including the forced transition from the physically demanding hunting and trapping way of life to a sedentary welfare existence, has also led to a deterioration in the health of the Band members. In addition, the diet of the people has undergone dramatic change with the loss of their game, their forced reliance on less nutritious processed foods, and the spectre of alcoholism -- the final refuge of the hopeless -- previously unheard of in this community and which is now overwhelming it. Furthermore, the systems by which the community organized and managed some of its most basic needs, including its health and sanitary needs, has collapsed. A few years ago, the Lubicon Lake Band was a robust and thriving community that relied upon traditional medicines and that had never had running water or modern sanitary facilities and had no need of them. At this point, however, the community's traditional systems of water and sanitary management have all but disappeared.

As a result of these drastic changes in the community's physical existence, the basic health and resistance to infection of community members has deteriorated dramatically. The lack of running water and sanitary facilities in the community, needed to replace the traditional systems of water and sanitary management, combined with the declining health of community members, is leading to the development of diseases associated with poverty and poor sanitary and health conditions. This situation is evidenced by the astonishing increase in the number of abnormal births and by the recent outbreak of tuberculosis, which now affects approximately one-third of the community. The Band notified the Committee of the tuberculosis outbreak in its Supplement 7.

Initially, Canada's handling of this matter might not have constituted a violation of article 6(1). However, at this point, the Government of Canada is fully aware of the

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increasing rate of illness and death in the community. Therefore, Canada's refusal to offer a resolution of this situation, that would permit a reversal of the precipitous decline of this community, must be found to constitute a knowing and even deliberate deprivation of the inherent right to life of members of the Lubicon Lake Band.

c. Article 7

Article 7 of the Covenant prohibits the infliction of "cruel, inhuman or degrading treatment." The appropriation of the Band's traditional lands without its consent, the destruction of its way of life and livelihood and the devastation wrought to the community, described in the Band's submissions, constitute cruel, inhuman and degrading treatment for which Canada is responsible.

Moreover, as is pointed out in the preceding section, the intentional destruction of a community, as in the case of the Lubicon Lake Band, can devastate the physical health of individual members of the community. The intentional subjection of a people to conditions of life resulting in such a rapid loss of physical health and increase in the rate of disease and death certainly constitutes cruel, inhuman and degrading treatment.

Furthermore, such destruction of a community involves wrenching social dislocation and loss of individual identity, as the social roles which gave identity and meaning to the lives of community members disappear. The anguish and suffering of the people who must sit helplessly by and watch their families and community disintegrate is overwhelming.

An analogy in modern western culture is the devastation wrought by a crippling depression, such as that of the 1930's. The differences here are crucial, though. The Lubicon Lake Band has experienced not only crushing economic disaster, but is facing its own death as individuals and as a community. Furthermore, the causes here are not blind market forces, but deliberate and calculated actions by specific individuals in the

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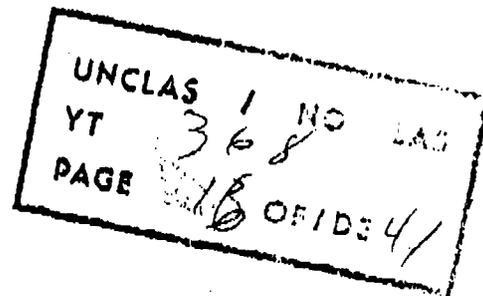
Provincial and Federal Governments. Therefore, the suffering of the Band is not only degrading, it is cruel and inhuman to the extent that it is deliberate, it was avoidable and as pointed out in the Band's submissions to the Committee, it was predictable.

As the Band has noted in its past submissions, in recognition of the overwhelming cruelty and inhumanity of the suffering wrought by the deliberate destruction of communities, the United Nations, in its Convention on the Prevention and Punishment of the Crime of Genocide, included such destruction within its definition of genocide. Please see Supplement 1, page 8; the Band's 31 July 1985 Comments, pages 16-18, 27-32; Supplement 2 pages 6-7; Supplement 3, pages 3-4; Supplement 5, page 17.

d. Articles 14(1) and 26

Article 14(1) of the Covenant guarantees that in the determination of a party's "rights and obligations in a suit at law" everyone shall be entitled to a "fair and public hearing by a competent, independent and impartial tribunal established by law." Article 26 expands upon the guarantees of article 14(1) by guaranteeing that "all persons are equal before the law" and requiring states to provide "effective protection" against discrimination on any basis, including "race . . . religion, political or other opinion, national or social origin, property . . . or other status."

It is a fundamental principle of jurisprudence that the assurance of an impartial forum is essential in proceedings where the political and/or economic power of one party greatly outweighs that of the other party -- as in an action involving a state government and an aboriginal people. In such an action, a biased tribunal may cost an entire people its very existence by depriving its members of their homeland and means of livelihood.



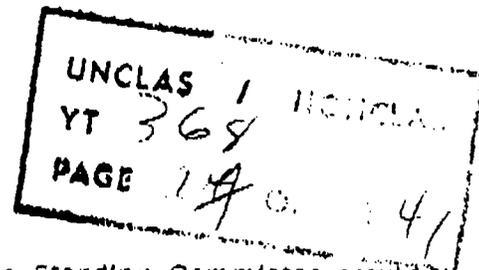
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The domestic court proceedings instituted by the Band are founded on aboriginal rights and title in land and challenge certain of the state's asserted powers and jurisdiction. They are thus inherently susceptible to precisely the types of abuses articles 14(1) and 26 are intended to guard against.

In fact, the biases of the Canadian courts have presented a major obstacle to the Band's attempt to protect its land, community and livelihood; the fundamental biases of the tribunals arising from distinctions based on race, political, social and economic status. Moreover, the economic and social biases confronting the Band within the Canadian courts, especially within the Provincial court system in Alberta, have been greatly magnified by the fact that several of the judges rendering the decisions of these courts have had clear economic and personal ties to the parties opposing the Band in the actions. Please see Communication 167/1984, pages 4-6; Supplement 1; the Band's 31 July 1985 Comments, pages 23-27; Supplement 6, pages 5-7.

In addition to the problems the Band has encountered in the Canadian courts, Canada continues to refuse the Band an impartial forum for purposes of negotiation. The Band has provided the Committee a history of the attempts at negotiation in: Supplement 2, pages 7-9; Supplement 3, pages 2-3; Supplement 5, pages 2-15; Supplement 6, pages 7-10; Supplement 7, pages 3-4.

As is discussed in greater detail below at page 21, the Band has requested that Mr. E. Davie Fulton be reinvolved in the negotiation process as an independent mediator, and that the proceedings be subject to Parliamentary oversight by the Standing Committee on Aboriginal Affairs and Northern Development. In this way, the negotiation process would gain the benefit of a mediator who has already demonstrated his impartiality with regard to the issues, and who would thus be in a position to break deadlocks between the parties.



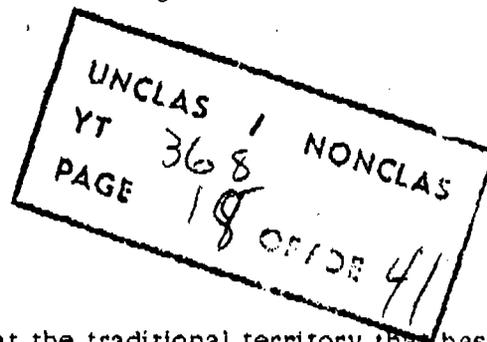
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In addition, it is hoped that the oversight of the Standing Committee would provide the public scrutiny necessary to permit citizens of Canada and the U.N. Committee on Human Rights to monitor the conduct of these negotiations, especially in light of both Federal and Provincial negotiators' tactic of publically misrepresenting their true position when closed door negotiations have been held. Since meaningful negotiations cannot occur without such safeguards against bias and abuse of the forum, Canada's refusal to agree to them places it in continuing violation of the requirements of articles 14(1) and 26 with regard to the negotiation process.

e. **Articles 17 and 23(1)**

Articles 17 and 23(1) provide for protection of the family and home. In contravention of the proscriptions of these articles, Canada is knowingly permitting the Lubicon Lake Band to be subjected to conditions which are resulting directly in the destruction of the families and homes of its members. In an indigenous community, the entire family system is predicated upon the spiritual and cultural ties to the land and the exercise of traditional activities. When these are destroyed, as in the case of the Lubicons, the essential family component of the society is irremediably damaged.

Members of the Band have been personally threatened that their homes would be destroyed by bulldozer if they did not accept Provincial jurisdiction over their land and effectively relinquish their aboriginal land rights. Furthermore, Canada's terms for negotiation rest upon retroactive application of the Canadian Indian Act prior to its amendment by Bill C-31, in violation of article 27 (Sandra Lovelace v. Canada, case No. 24/1977). Application of this law literally would result in a situation where some members of a family would be entitled to federal recognition as "Indians" and other members of the same family would not. Please see Supplement 5, pages 3-6.



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It is also vital to take account of the fact that the traditional territory that has been taken from these people is their "home." It is where they have lived as a community for countless generations. In their social practices and spiritual belief system, as with most indigenous peoples, the territory in which the family and community reside is no less sacred, no less their home, no less a part of them than is the enclosed dwelling to which they retire at night. In fact, in many respects, the territory of the community is infinitely more important and more sacred than a mere dwelling.

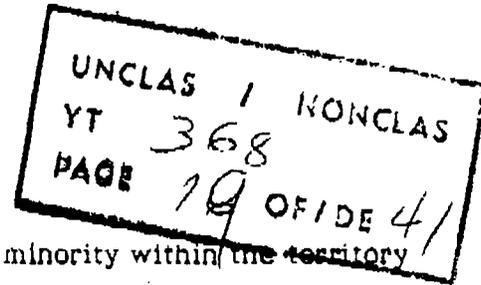
f. Article 18(1)

Article 18(1) guarantees the right of religious freedom. With the taking and destruction of their land, the people of the Lubicon Lake Band have been robbed of the physical realm to which their religion -- their spiritual belief system -- attaches. Again, as with other indigenous peoples, the traditional territory of the community encompasses the physical aspect of the community's spiritual life. With the loss or destruction of the territory, the only temple in which worship has meaning for these people is lost.

g. Article 27

Article 27 guarantees protections for ethnic, religious and linguistic minorities. The Lubicon Lake Band, as an indigenous or aboriginal people who have never entered a treaty with or ceded territory to Canada, is a social and political entity distinct and separate from the social and political system of Canada, rather than a minority group of Canadian society.

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Nonetheless, in terms of size, the Band is clearly a minority within the territory controlled by Canada; its minority status resting on several factors, including ethnic, religious and linguistic differences. The Committee has already upheld Canada's obligation to provide protections for the indigenous peoples of Canada. Sandra Lovelace v. Canada. Canada has completely failed in any way to fulfill this obligation with respect to the Lubicon Lake Band. Further, as is pointed out above, it has even attempted to subject Band members, retroactively, to the pre-C-31 Indian Act, the very law which the Committee held to be in violation of article 27 in the Lovelace case. Also, please see Supplement 5, pages 3-6, where it is pointed out that based upon the retroactive application of this statute, Canada has taken the position that no land or resources are to be provided to or for the benefit of more than one-half of the Lubicon people.

C. Exhaustion of Domestic Remedies

The question of the Band's exhaustion of its available and effective domestic remedies has been argued at length before the Committee by both parties. The arguments offered by Canada in its 7 October 1987 Response do not cover new ground, except to the extent Canada asserts that the parties are pursuing negotiation within a negotiation process established by law. This assertion rests upon a less than accurate portrayal of relevant law and a blatantly false statement of relevant facts.

For the sake of clarification, the Band will address each of the points raised by Canada in turn, once again referring to materials already before the Committee.

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1. The failure of the Canadian courts to grant the Lubicon Lake Band an interim injunction has resulted in the complete destruction of the Band's economic base and way of life, as corroborated by E. Davie Fulton in his investigation on behalf of the Federal Government of Canada.

Canada attempts to argue that its courts provided the Lubicon Lake Band a full and fair hearing of the Band's application for an interim injunction to halt oil development in the area until the land title question could be settled. In previous submissions, the Band has addressed the interim injunction decisions, as well as the ties of judges making these decisions to the defendants in the action. Please see, in particular, Supplements 1 and 6, and the Band's 31 July 1985 Comments, pages 10-11, 23-27.

As is demonstrated by the court decisions, provided to the Committee by Canada, and by Canada's own discussion of the decisions, in attempting to protect its economy and livelihood through the Canadian court system, the Band found itself in a "catch 22." The Court of Queens Bench, despite substantial, uncontested evidence presented on behalf of the Band, determined that it was not clear that the Band's lifestyle was in fact threatened. Therefore, injunctive relief was denied. Fourteen months later, on appeal, the Court of Appeal found that to the extent the Band had lost its hunting and trapping way of life, there was nothing left to protect through injunction, and that the threat of any additional loss was once again too speculative.

The Court of Appeal also tried to construct an argument that there was no clear correlation between the development activities in the area and a decline in the Band's livelihood. In his nearly year-long personal investigation of the situation at Lubicon Lake, Mr. E. Davie Fulton concluded that "the weight of evidence is that the decline in harvesting from hunting and trapping is . . . due to the impact of development which is an established fact which coincided with the onset and continuance of the decline" Fulton Discussion Paper, sec. 5(b)(i), at page 54. As the Band has already

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informed the Committee, the decision of the Court of Appeal was appealed to the Supreme Court of Canada twice, and review was twice refused.

Canada and the Band clearly disagree as to whether the courts, in deciding upon the Band's application for an injunction, gave careful consideration to all of the evidence presented and to the probable outcome of the matter. As the facts now stand, however, the Lubicon Lake Band's "highly speculative" claim that its economy and livelihood were in mortal danger in 1983, has given way to the concrete reality that its economy and livelihood are dead. Canada recognizes this reality in the figures set forth at pages 24-25 of its 7 October 1987 Response. A self sufficient community has no need of the massive welfare support the Lubicon Lake Band now requires.

2. **A trial on the merits offers the Lubicon Lake Band no recourse against the Federal Government of Canada and no redress for the loss of its economy and way of life.**

The Band continues to try to pursue an action on the merits of its aboriginal land title claim. In Canada's view, this action affords the Band adequate opportunity for protection of its interests and compensation for its losses. In adopting such a position, Canada would have the Committee decide that human rights violations may be rectified through the payment of money — i.e., that human dignity, security, happiness and even life may be bought for whatever purpose the state desires. The reality of the present situation is that a trial on the merits can no longer present an avenue for protection of the Band's economy and way of life. Even if compensation were available through the Canadian courts, it could never replace what has been lost. Please see Supplement 6, pages 1-7, 13-14.

The Band's economy and way of life are gone. Their destruction has been documented by well known and highly respected individuals within Canada and the international community. The physical evidence is there for any observer who wishes

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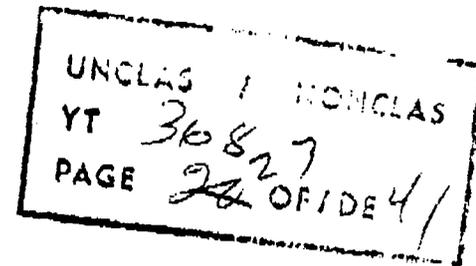
to make the journey. Please see, for example, 31 July 1985 Comments, pages 28-32; Supplement 3, pages 3-4; Discussion Paper prepared by Mr. E. Davie Fulton. In spite of this undeniable fact, Canada continues to argue to the Committee that "the Band's way of life, livelihood and means of subsistence have not been irreparably damaged, nor are they imminently threatened." 7 October 1987 Response of the Government of Canada, at pages 10-11. A trial on the merits will not undo what has been done.

Furthermore, a trial on the merits is no longer available against the Federal Government of Canada. In October 1986, the Supreme Court of Canada held that aboriginal land rights within Provincial boundaries involve Provincial land rights and must therefore be adjudicated before the Provincial courts. Therefore, on 30 March 1987, the Band applied to the Alberta Court of Queens Bench for leave to amend its Statement of Claim before that court to add the Federal Government of Canada as a defendant.

The decision of the Court of Queens Bench, handed down on 22 October 1987, was to deny the Band's application. Thus, despite the fact that the Canadian Constitution vests exclusive jurisdiction for all matters concerning Indians and Indian lands in Canada with the Federal Government, as matters now stand the Lubicon Lake Band has no recourse against the Federal Government on issues pertaining to those very questions in any court in Canada.

- 3. The negotiation process discussed by Canada in its 7 October 1987 Response has not been applied to the Lubicon Lake controversy.**

At page 12 of its Response, Canada describes its processes for negotiating aboriginal claims. Three points are in order with regard to this discussion. First, the policy statement quoted at page 12 pertains only to the Comprehensive Claims process, which Canada refuses to make available to the Lubicon Lake Band.



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Secondly, in all settlements of aboriginal and other Native claims to date, including the Fort Chipewyan settlement cited by Canada, the membership lists used for calculating reserve land have been those existing at the time of the first survey of reserve land. Nonetheless, the Federal Government of Canada has informed the Lubicon Lake Band that its recognized membership would be revised according to the formula set forth in Supplement 5 at pages 4-5, a formula never used in Canadian history. Canada's position concerning the Lubicon Lake Band membership would not only have the effect of denying the aboriginal rights of more than half of the Lubicon people, it would have the effect of treating the Lubicon people in a way that is different, unequal and discriminatory when compared with the treatment of all other Native people throughout Canada's history.

Finally, at page 14 of its Response, Canada describes the Lubicon Lake negotiations as proceeding pursuant to the Specific Claims process. This is completely untrue. The Band did not seek negotiation under the Specific Claims process. Rather, given that its claims are based on traditional use and occupancy and are unextinguished by treaty -- i.e., are aboriginal in nature -- the Band filed a Comprehensive Claim. This is consistent with the approach the Band has taken in its court actions. To date, Canada has refused to permit the Band to proceed under the Comprehensive Claims process. As a result, no process for negotiation has been agreed to by the parties.

The negotiation proceedings that have taken place thus far between the Band and Canada resulted from the parties' agreement to proceed, without prejudice, to attempt to establish the elements that a settlement might entail. These proceedings have broken down at several points, described for the Committee in previous submissions. Please see Supplement 2, pages 7-9; Supplement 3, pages 2-3; Supplement 5, pages 3-6, 10-15.

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4. Canada has made no settlement offer to the Band and refuses to consider the Band's settlement proposal or to engage in negotiations based on the Fulton Discussion Paper, with Mr. Fulton as an impartial mediator and with provision for public scrutiny.

A number of comments are in order with regard to Canada's enumeration, at pages 14-20 of its Response, of alleged reasons for the breakdown of negotiations.^{1/} First, at page 14 of its Response, Canada misstates the judgment sought by the Band in its aboriginal rights action, filed in 1980. Through this action, the Band seeks: (1) a declaration of aboriginal title to its traditional territory and royalties in the amount of one-eighth of the revenues gained from resource development in the territory; or (2) a declaration of the Band's treaty rights and damages in the amount of \$1 billion.

Secondly, any issues pertaining to the interests of other Native people in the area were addressed and clarified by Mr. Fulton in his Discussion Paper. As indicated there, such issues do not present an obstacle to settlement of the Lubicon Lake Band's claims.

Thirdly, Canada continues to raise the issue of Alberta's involvement in the negotiations as though it were a major point hindering settlement. The Band has never refused to have Alberta involved in the negotiations. Rather it has refused to deal directly with the Province, for two reasons. First, in their past involvement during attempts at tripartite negotiations, officials of the Provincial government demonstrated such bad faith, including abuses of the media, that it became clear to the Band that direct negotiations with the Province were futile and even counter-productive. Please see Supplement 5, pages 13-15. Following his year-long investigation, Mr. E. Davie Fulton also recommended bilateral negotiations between the Lubicon people and the Federal Government.

^{1/} The question of Band membership, raised by Canada here, is discussed above, at page 18.

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The second reason the Band wishes to deal directly with Canada is that, as has been pointed out, the Federal Government of Canada is the party responsible, under the Canadian Constitution, for matters involving Indian people and Indian land in Canada. The Canadian courts have also held that the Federal Government is the only body empowered to deal with the surrender of aboriginal land rights.

At page 16 of its Response, Canada refers to the 25.4 square mile settlement offered by Alberta. Among the many difficulties with this proposal are: its complete disregard of the claims put forth by the Band; its complete disregard of the recommendations of Mr. Fulton, made four days prior to release of this proposal; and Alberta's stipulation that the settlement be in resolution of all of the Band's claims.

Canada next provides a factually incorrect discussion of its own "settlement" proposal. Among the facts misstated here is Canada's assertion, at page 16 of its Response, that the Band demanded that a final offer be put forward at the Little Buffalo Lake meeting. No such demand was made and no final offer was put forward. The Band in fact requested that the parties attempt to reach agreement as to the principles of negotiation. This meeting and its failure are discussed in the correspondences contained in Appendix E of Canada's Response, and Attachment 1 of this submission.

The proposal which Canada describes as its settlement offer, and from which it quotes at pages 17-19, was discussed by the Band in Supplement 5, at pages 2-6. Not only do the terms of this proposal represent a major retraction from the recommendations made by Mr. Fulton and rest upon a unique and highly discriminatory procedure for determining Band membership, in fact there is no concrete offer of settlement here. In discussions with representatives of the Band, Canada has offered nothing more than its willingness to support and take to Alberta the proposal for a transfer of 40 square miles.

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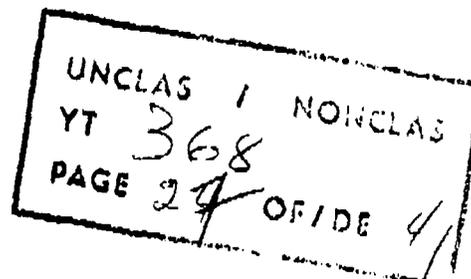
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Furthermore, despite the fact that virtually all of the terms of the proposal actually are left for later resolution, Canada is demanding that the Band agree to this proposal and provide Canada a release with respect to all of the Band's claims against Canada and Alberta, including its action before this Committee. Please see Supplement 5 at page 6.

At page 19 of its Response, Canada goes on to assert that various Federal officials have written to the Band, urging it to return to negotiations. The correspondence provided by Canada as Appendix E to its Response speaks for itself. Included as Attachment 1 to this submission is a 15 September 1987 letter from Chief Bernard Ominayak to Mr. B. McKnight, the final piece of correspondence in this series, which Canada neglected to include in its Appendix E. As is clear from this exchange, the Band continues to ask that negotiations be resumed under fair conditions, employing Mr. E. Davie Fulton's Discussion Paper, with Mr. Fulton as an impartial mediator, and with provision for public scrutiny through the Parliamentary Standing Committee on Aboriginal Affairs and Northern Development.^{2/} Canada's behavior during the course of this correspondence alone underscores the need for such safeguards if the Band is to have any hope of fair treatment by this government.

Included with this submission, as Attachment 2, is a brief statement of the Band's proposal for settlement terms, which are consistent with the provisions of Treaty 8. The total land area over which the parties disagree amounts to no more than

^{2/} In fact, the Standing Committee, in a unanimous decision handed down on 17 December 1987, requested that Mr. Fulton report to that body concerning the Lubicon issue by February 1988. Unfortunately, the executive agencies of the Federal Government, who are the Government's representatives in the negotiations, maintain that Mr. Fulton will not be reinvolved and have thus far refused to cooperate with the Standing Committee. Thus it is clear that despite its propaganda efforts and assurances to the Human Rights Committee, Canada has no intentions of carrying out meaningful negotiations with the Band. It has deliberately misled the Committee in this respect.



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66 square miles. None of the land claimed by the Band for its Reserve contains productive oil wells. In the much larger area where the Band seeks to retain only hunting and trapping rights, it is asking for damages for destruction to and loss of this land and has indicated clearly that all compensation is negotiable.

Despite the fact that the Band's requests concerning both the structure and content of negotiations are extremely reasonable; despite the fact that settlement of these issues would in truth be quite simple if Canada truly desired it; Canada nonetheless continues to refuse to deal with the Band in an open, honest and reasonable manner. In fact, Canada's current approach is to negotiate a settlement with the Province, ignoring the Band altogether. Please see Attachment 3.

D. Conditions of the Band

The "Special Report of the Ombudsman," prepared by Mr. Ivany, was addressed by the Band in Attachment 6 of Supplement 5, "Press Statement, by Bernard Ominayak, Chief, Lubicon Lake Band, Regarding the Ivany Report, September 10, 1984." It should also be noted that in the third paragraph of Mr. Ivany's Introduction to his report he states that he cannot investigate the Band's aboriginal land claim because it is beyond his jurisdiction.

Canada's discussion, beginning at page 23 of its Response, of the physical and economic conditions under which the Band is existing, contradicts Canada's assertions with regard to the lack of destruction of the Band's economy and way of life. It is also frightening.

Canada first refers to "measures undertaken by agencies in Alberta," in an apparent attempt to indicate compliance with the Committee's request under rule 86. These "measures," which were in place prior to the Committee's 22 July 1987 decision, are nothing more than an attempt to placate public opinion with regard to the

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disasterous consequences of development in the Lubicon Lake Band's traditional territory. As is readily apparent, two of the three measures provide for nothing more than notice. The third, the Trappers Compensation Program, in practice merely establishes an elaborate process by which compensation for damaged trapping equipment may be sought. No means for protection of people or wildlife are given. As a consequence, the measures offer nothing which might alleviate the continuing destruction in the area.

As is pointed out above, Canada argues at one point that the Band's way of life, livelihood and means of subsistence "have not been irreparably damaged, nor are they imminently threatened." 7 October 1987 Response of the Government of Canada, at pages 10-11. Yet, at pages 24 and 25 of its Response, Canada sets forth a detailed, though factually incorrect and misleading, account of the welfare and social services which the Federal Government recently began providing to the Lubicon people.

As the Band has already stated, no such welfare or social services would be required if the Band's way of life, livelihood and means of subsistence had not been irreparably damaged. In fact, what has occurred is that the Band's self sufficient traditional economy was systematically and deliberately destroyed as part of a legal and political strategy to avoid recognition of the Band's land and resource entitlements. The traditional economy was then replaced with a welfare economy and certain minimal "social services," put in place to maintain the population at a bare subsistence level. This so as to enable Canada to claim that the Band has no traditional economy to protect and that in fact the people are being cared for, while Alberta retains control of all of the Band's land and resources.

With regard to the factual inaccuracy of Canada's account: the Lubicon Lake Band does not receive programs, services and funding available to other Indian Bands in

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Canada, due largely to the fact that several of such programs, services and funds apply only to Bands with officially recognized reserves. In its July 1986 negotiation proposal to the Band, Canada in effect acknowledged that such benefits are not available to the Band by stating that "Canada is prepared to pay appropriate compensation to the Band for loss of programs and services and to provide for a 'catch-up' capital program."

Of the \$1.3 million Canada claims to have provided to the Band, the Lubicon people have actually received \$737,586, half of this in the form of welfare payments to individuals. The remainder of the \$737,586 has gone to support the construction of four housing units and to provide for a small community store, a small Band staff and a community truck (for picking up garbage, hauling water, fighting house fires, etc.).

Canada claims that the Federal and Provincial Governments have spent \$1.5 million to build 55 houses for 300 Lubicon people. The Band has no idea where these numbers come from. For example there are approximately 460 Lubicon people; the Federal Government has been subsidizing housing construction in the area since 1981, at the rate of four houses per year, for a total of 28 houses and approximately \$800,000. The Provincial Government has subsidized the building of approximately 16 houses.

The educational services referred to by Canada are not available in any realistic way to the people of the Lubicon community. A child of this community who wishes to pursue education beyond grade 9, must first leave the community and acquire a foreign language. These obstacles alone have ensured that no one in the community has completed education beyond grade 12.

Prior to the recent outbreak of tuberculosis, medical services in the community consisted of a once-a-month visit by a Provincial Government nurse. Currently, there is a Federal Government nurse in Little Buffalo four days a week dispensing

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tuberculosis medication. The reasons for this attention are obvious. Not only could the occurrence of the disease give rise to politically sensitive questions, the disease could spread.

The bottom line here is that a self sufficient traditional society has been systematically reduced to penury, with almost one-third of the population infected with tuberculosis, and 95 percent of the people surviving on welfare. For Canada to suggest that such circumstances are in any way comparable to other Canadian communities, and especially to non-Native communities, is patently absurd. For Canada to suggest that this is a situation that in any way conforms to the guarantees of the International Covenant on Civil and Political rights presents a very frightening view of what that Covenant means.

E. Conclusion

The Lubicon Lake Band respectfully requests that the Committee on Human Rights consider the merits of the Band's claim based on the facts before the Committee and pursuant to the articles of the Covenant cited in this submission.

The Lubicon Lake Band respectfully requests that the Committee on Human Rights find the Government of Canada in contempt of the Committee's request pursuant to rule 86 of the Committee's provisional rules, as set forth in its decision of 22 July 1987, CCPR/C/30/D/167/1984.

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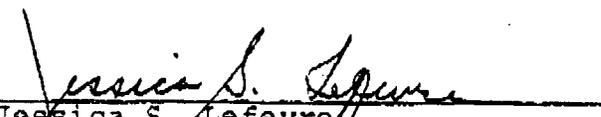
The author of this communication is prepared to provide further information or clarification which may be desired, and reserves the right under Provisional Rule 93(3) to submit additional information and observations after receiving the reply of the government of Canada.

Submitted by:



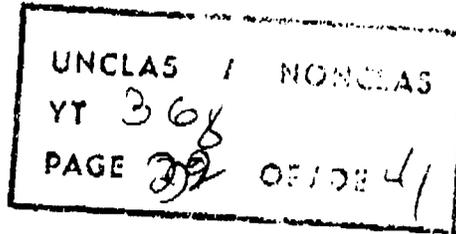
Bernard Ominayak
Chief of the Lubicon Lake Band
Little Buffalo Lake
Alberta Canada

Prepared with the assistance of:



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Washington, D.C. 20007

ATTACHMENT 1



Lubicon Lake Band
Little Buffalo Lake, AB
Mailing address:
3536 - 106 Street
Edmonton, AB T6J 1A4

September 15, 1987

The Hon. B. McKnight
Minister
Indian Affairs & Northern Development
Government of Canada
Ottawa, ONT

Dear Mr. McKnight:

Thank you for your letter of August 27, 1987, responding to my letter of August 06, 1987. Since you've never before responded in less than 2 1/2 months, and always before waited until immediately prior to some potentially embarrassing event related to our situation, we cannot but wonder if your relatively prompt reply isn't related to the fact that Provincial Government officials publicly announced the outbreak of a major tuberculosis epidemic in our community on August 26th -- the day before you wrote your letter. The recent tuberculosis outbreak is of course only the latest consequence of the genocide being committed against the Lubicon people by both levels of Canadian Government.

We agree that settlement of Lubicon land rights is an issue which must be addressed, in the first instance, in bilateral negotiations between the Federal Government and the Lubicon people. However we do not agree that reinvolvement of Mr. Fulton as an independent mediator responsible to the Parliamentary Standing Committee on Aboriginal Affairs in any way changes the bilateral nature of the proposed negotiations. Rather Mr. Fulton's involvement would only provide a clearly necessary mechanism for public scrutiny of those bilateral negotiations, which we consider absolutely necessary in order to avoid a recurrence of previous Federal Government efforts to use the pretense of negotiations merely to buy time and defuse growing public outrage. As I indicated to you in my letter of August 6th, the Lubicon people simply can't afford any more non-productive Federal Government game-playing, and we must therefore now insist on some means for insuring that negotiations are real and sincere. Your continuing refusal to consider a mechanism for public scrutiny only serves to raise additional questions about your already questionable motives and sincerity.

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Regarding your claim that the Government of Alberta refuses to allow release of the Fulton Discussion Paper, I would again point out that this isn't what representatives of the Alberta Government say. Representatives of the Alberta Government say that release of the Fulton Discussion Paper is a matter for the Federal Government to decide, since Mr. Fulton's paper was commissioned by the Federal Government. Obviously somebody's lying. Experience unfortunately makes very clear that it could easily be either or both levels of Canadian Government.

You say that you're "not prepared to unilaterally breach the confidentiality and privilege the Province of Alberta attaches to Mr. Fulton's Paper". Refusal to breach agreements is an admirable trait, Mr. McKnight, if consistently done. However keeping of agreements is not something consistently done by either level of Canadian Government. In this case the Government of Alberta began selectively releasing sections of Mr. Fulton's Discussion Paper one week after receiving it; the Federal Government has selectively released the Fulton Discussion Paper under the Access to Information Act; and the Government of Canada has also released a copy of the Fulton Discussion Paper to the U.N. Committee on Human Rights. All of this convenient, selective releasing of the Fulton Discussion Paper just doesn't fit with your high minded talk about refusal to breach agreements. In addition we'd really like to hear you explain to the Parliament of Canada why Canadians can't have copies of a Canadian document on a Canadian issue prepared by a prominent Canadian using funds provided by Canadian taxpayers which the Government of Canada has already released to the representatives of 18 other countries.

You say that you're not prepared to release the Fulton Discussion Paper because of your "firm belief that (the issue of Lubicon land rights) must be resolved solely on its merits which would not be added to or detracted from by the release of this paper to the general public". That's patently ridiculous. Mr. Fulton's Discussion Paper in fact delineates the positions of the respective parties and speaks directly to the question of merit. Moreover, by making false statements about the content of the Fulton Discussion Paper, and by falsely claiming that the Federal Government is honouring the agreement to use Mr. Fulton's Discussion Paper as the starting point for negotiations, you and your officials have created circumstances which now effectively demand public release of the Fulton Discussion Paper. Interested Canadians should be allowed to read the Fulton Discussion Paper and judge for themselves what it does and doesn't say.

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Our position that we're prepared at any time to enter into real and serious negotiations of course still stands. And we're of course still prepared to do so without conditions which could in any way impede progress toward settlement of our land rights. However we don't agree that public release of the Fulton Discussion Paper would in any way impede progress toward settlement of our land rights. Under the circumstances we're rather convinced that public release of the Fulton Discussion Paper and reinvolvement of Mr. Fulton are essential to productive negotiations. Also we have no understanding why anybody truly interested in real and sincere negotiations would be so afraid of public scrutiny.

As for the aim of negotiations, we seek recognition and respect for our legitimate aboriginal rights, including recognition and respect of our aboriginal land rights. We ask for nothing new nor different than our aboriginal brothers and sisters, nothing without legal and historic precedent in Canada. However we're very leery about your comment about settlement of our rights "within the bounds of Canada's legal obligation", since that phrase has always meant unilateral definition of our rights by Federal Government lawyers. We certainly don't agree that our aboriginal land rights should be unilaterally determined by lawyers working for the other side. If such agreement is a precondition of negotiations between us, then there'll be no negotiations, and we'll rather continue seeking recognition and respect for our legitimate aboriginal rights by other means.

We'll be interested in hearing who you choose as your new negotiator, as well as what kind of mandate that person is given. We hope that the new negotiator is prepared to negotiate a fair and just settlement of our aboriginal land rights based on legal and historic precedent in Canada, because any other approach would be clearly inequitable and therefore unacceptable. We also hope that you reconsider your position on public release of the Fulton Discussion Paper and reinvolvement of Mr. Fulton as an independent mediator responsible to the Parliamentary Standing Committee on Aboriginal Affairs, since at this point, and as a direct result of circumstances created by you and your officials, productive negotiations are otherwise inconceivable.

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We look forward to hearing from you in the near future regarding all of these matters.

Sincerely,



Bernard Ominayak
Chief, Lubicon Lake Band

cc: The Hon. E. David Fulton
Mr. James O'Reilly
Mr. Andre Harvey, M.P.
Mr. Keith Penner, M.P.
Mr. Jim Fulton, M.P.
The Right Honourable Brian Mulroney, P.C., M.P.
Mr. Georges Erasmus
Mr. Gregg Smith
Mr. Lawrence Courtoreille
Grand Chief Matthew Cooncome
Mr. Smokey Bruyere
Mr. Sam Sinclair

LUBICON PROPOSAL FOR SETTLEMENT OF LUBICON LAND RIGHTS

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The Lubicon position on elements of an acceptable settlement of Lubicon land rights has been public for over three years. These elements were presented to then federal Indian Affairs Minister David Crombie in November of 1984, and they are also described in the Lubicon discussion paper prepared by E. Davie Fulton. Former Lubicon negotiator Roger Tassé knew of our position, as does current federal Indian Affairs Minister Bill McKnight and current federal Lubicon negotiator Brian Malone.

There is nothing basically new or different in the Lubicon position on an acceptable settlement. All of the elements of the Lubicon position are included in other aboriginal land rights settlements in Canada. All we are asking is to be treated the same as other aboriginal peoples. However, neither level of Canadian government has so far been prepared to treat us equally, but has rather sought to subvert our aboriginal land rights by systematically destroying our traditional economy and way of life.

Recently, Mr. Malone announced that the federal and provincial governments are negotiating a settlement of Lubicon land rights without even talking to us. He claimed the right to do this by virtue of a treaty which we did not sign, and which clearly stipulates that reserve lands are to be set aside only "after consulting with the Indians concerned...". He claimed that he has to do this because of our insistence on a mechanism for public scrutiny of any negotiations between us.

Ultimately Mr. Malone knows that he really cannot do what he says he is doing -- either in law or in fact -- unless of course we let him get away with it. While Canadian law may not give us the option of refusing to negotiate a settlement of our aboriginal land rights, it does spell out procedures which the Canadian government must follow in order to deal with our aboriginal land rights -- including negotiation of a treaty with us. Until those procedures are followed, neither level of Canadian government has any lawful claim to our aboriginal land even under their own laws. Moreover, and as a matter of fact, we have no intention of simply letting Mr. Malone and his federal and provincial government cronies steal our aboriginal land -- no matter what they try to do to us on the ground, or what deceitful tactics they use against us legally and politically.

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Mr. Malone's latest tactic is obviously designed to deceive the uninitiated into believing that the Canadian and the Alberta Governments are making a valiant effort to settle our aboriginal land rights, even without our cooperation. The announcement which Mr. Malone is expected to make shortly will be described as a good faith effort on the part of Canadian Government to move towards a settlement, and it will then be cited, both in the context of the Olympic boycott and in the context of our U.N. complaint, as evidence that they're not guilty of committing genocide against us. In fact, it is very clear already that this announcement will not be a serious settlement proposal at all, but rather just be another effort on the part of both levels of Canadian Government to deflect growing public criticism while they continue their campaign to wipe us out so that they can steal our valuable aboriginal land.

In this context, we decided to make a settlement announcement of our own. If Mr. Malone can announce a settlement of our aboriginal land rights without talking to us, we figure that we can announce a settlement of our aboriginal land rights without talking to him. People can then read and draw their own conclusions about Mr. Malone's so-called settlement of Lubicon land rights.

1. Reserve Lands

It is our position that we should be able to retain at least as much reserve lands as was retained by the aboriginal people who signed Treaty in the area surrounding ours, as determined by the same criteria. The aboriginal people who signed Treaty in the area surrounding ours determined their own membership and were allowed to retain 128 acres per person. We count 457 people as members, all of whom are people of aboriginal ancestry with family ties and ties to our traditional area. 457 people times 128 acres each is 58,496 acres or about 1/2 square miles of reserve lands.

2. Sub-surface Rights

It is our position that we should be able to retain full sub-surface rights, as is the case with all other Indian reserves in Alberta.

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3. Wildlife Management Rights

It is our position that we should be able to retain wildlife management rights over that part of our traditional area which we still continue to use and occupy for hunting and trapping. The area involved covers about 4,000 square miles. Our position on this matter is very similar to that of the aboriginal people who signed treaty in the area surrounding ours, who refused to sign treaty until they were guaranteed that they would be able to hunt and trap as before. It is also very similar to the modern treaty signed by the James Bay Crees, who retained exclusive hunting, trapping and fishing rights over an area extending well beyond that retained for reserve purposes.

4. Environmental Protection Rights

It is our position that we should be allowed to retain environmental protection rights over that part of our traditional area which we still continue to use and occupy for hunting and trapping. We consider environmental protection of our traditional area to be a sacred trust, passed on from one generation to the next. If we care for the land and animals, we believe the land and animals will support and sustain us. We have cared for the land and animals for countless generations, and the land and the animals have supported and sustained us. In a few short years, the Alberta Government and the oil companies have done great damage to the environment in our traditional area, chasing away the animals and destroying our traditional economy. While we know that we will never be able to fully restore and repair the environmental damage done to our traditional area by the Alberta Government and the oil companies, we intend to at least require the Alberta Government and the oil companies to respect the kind of very minimal environmental safeguards normally in place to protect the environment and domestic animals in agricultural areas.

5. Establishment of a Trappers' Support Program

For those of our people who wish to continue trapping as a way of life, but who can no longer make a living from trapping because of the effect of gas and oil development on the animal population in our area, we propose the establishment of a trappers' support program. The trappers' support program would compensate a trapper for the difference between what he was able to earn before the onset of gas and oil development activity, and the amount that the trapper is able to earn now, related to the

number of days actually spent on the trapline. We view this program as a more dignified way to make a living than welfare, especially for older people who cannot realistically be expected to adjust to another way of life. A successful program very similar to this one is part of the James Bay Agreement.

6. The Right of First Refusal regarding jobs and contracts resulting from development of traditional Lubicon lands

It is our position that we should have the right of first refusal regarding jobs and contracts resulting from development of our traditional area. If we are unable for whatever reason to perform such jobs or contracts on a competitive basis, the employer would be free to engage outsiders. However, we believe that we should at least be given the chance to participate in the economy which has effectively supplanted our traditional economy. This provision is intended to help facilitate the development of alternatives to the traditional hunting and trapping economy, especially for our younger people.

7. Development of Reserve Land

We propose a comprehensive socio-economic development package including:

- a) Housing and community facilities, community infrastructure and community services comparable to other Northern communities;
- b) the cost of developing reserve land for agricultural purposes, including the cost of clearing, breaking, fencing, equipment, facilities and livestock;
- c) the cost of helping us develop a capability to pursue alternatives to the traditional hunting and trapping economy, including vocational training and related capital costs.

8. Right of Self-Government

It is our position that we should be able to retain the right to govern ourselves, including the right to make and enforce our own laws. Now this power to govern ourselves would be exercised in a manner compatible with the rights and interests of other Canadians would be negotiable, as is now the case with other governments in Canada.

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9. Ongoing programs and services comparable to those received by other Indians in Canada

10. Compensation in a negotiated amount for the extensive destruction and exploitation of traditional Lubicon lands, as well as for future loss of use

11. Reimbursement of costs incurred by the Lubicon people in achieving settlement of Lubicon land rights, including the costs of both litigation and negotiations

CHIEF BERNARD UMINAYAK

DECEMBER 21, 1987

Talks may bypass Lubicons

By Mark Lowey

(Herald staff writer)

Ottawa and the provincial government are close to settling the Lubicon Lake Indian land claim by setting aside a reserve without involving the Lubicons in negotiations.

Federal negotiator Brian Malone said Wednesday his negotiations with Alberta are going well and have reached an advanced state.

The Calgary lawyer said he's optimistic he can get at least a partial or interim settlement to the 47-year-old dispute by the end of the year.

If Ottawa and Alberta can agree on a suitable amount of land for the reserve, "we'll announce what the agreement is before Christmas and then they (the Lubicons) will have to decide" what to do, Malone said.

He has had to proceed this way because the Lubicons have built a wall against resuming negotiations. "I talked to the people involved who were prepared to talk to me."

The Lubicons and their supporters are angry that Malone would try putting together a deal without consulting the band.

"They're busy trying to discredit the band rather than trying to deal with the issue," Lubicon Chief Bernard Ominayah said from Little Buffalo.

"They cannot really be serious about making a meaningful effort," said band lawyer James O'Reilly. "It's obviously a hidden agenda. He (Malone) is talking

to everybody except the band."

Malone said that Treaty 8, which Ottawa maintains applies to the band, gives federal Indian Affairs Minister Bill McKnight the power to appoint someone to determine where the reserve should be and then establish it.

Malone said McKnight could appoint him to perform this task.

McKnight and Alberta Attor-

ney General Jim Horsman will discuss terms of a proposed settlement during next week's first ministers' conference in Ottawa, Malone added.

He said if an agreement is reached and the Lubicons want more land than what is set aside for the reserve, or are unhappy with the way things were done, they could participate in negotiations or mount a court challenge.

"The band has realized that I can make a deal with the province and they (the Lubicons) are going to be left holding the bag."

The Lubicons, however say that even if they had signed Treaty 8 — which they haven't — the treaty's relevant section says McKnight can appoint someone to create the reserve, but only "after consulting with the Indians concerned as to the locality which may be found suitable and open for selection."

But Malone said O'Reilly has refused to provide a map of the area the Lubicons claim.

Malone noted the band has indicated it wants the original 66-square-kilometre parcel agreed to in 1940 plus adjoining land that the band described for former federal justice minister E. Davie Fulton, who investigated the claim for Ottawa.

"That selection by the band will be taken into account in my negotiations with the Province of Alberta for a land transfer and any demand that might be made by the Government of Canada," Malone wrote O'Reilly on Nov. 30.

But an angry O'Reilly said the only reason there haven't been negotiations is that Ottawa refuses to reinvolve Fulton, as a mediator reporting to the parliamentary standing committee on aboriginal affairs.

"No one can say that we have not, in good faith, made very seri-

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YT 368
PAGE 4 OF 10
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ous and extensive efforts to get these bloody negotiations off the ground," O'Reilly said.

But Malone said according to a legal opinion prepared by his office, giving Fulton the power to report publicly would prejudice negotiations because his report could be used in the ongoing court actions.

O'Reilly said Ottawa has nothing to fear from Fulton reporting if the federal government is sincere about honest negotiations.

If Ottawa would only agree to Fulton reporting publicly, "negotiations could begin immediately and I mean immediately," O'Reilly said.



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HOUSE OF COMMONS BOOK — BRIEFING NOTE
LIVRE DE LA CHAMBRE DES COMMUNES — NOTES D'INFORMATION

Classification
CONFIDENTIAL
Section
IMH - 0126

Subject/Highlights / Sujet/Points saillants

Lubicon Lake Indian Band -- Publications by the Department of External Affairs, and the socio-economic conditions of the Band.

Source

Statement of Keith Penner, MP, in the House of Commons, 20 Jan 1988.

Assessment / Évaluation

Facts about the socio-economic status of the Lubicon Lake Band formed part of the fact sheet prepared in Sept/Oct 1987 by the Department. This 13 page document was issued to posts as part of an 'information kit' on the Band. The fact sheet reiterates comments made in the Canadian Response to the UN decision on admissability of the Band's 1984 complaint, which was quoted on the CBC Sunday night news. The fact sheet details an annual payment to the Band for social services delivery of \$1.13 million and the sum of \$1.7 mil. paid to the Band to help pay their legal costs.

The fact sheet summarizes the Lubicon situation, and defends the Government's position. The tone of the response is deliberately tough, but it is not unreasonably harsh. It covers the history of the land claim, and the Band's public relations activities, correcting distorting statements made by support groups. There is an account of governmental efforts towards a negotiated settlement of the claim, including a proposal tabled by the Gov't negotiator. Finally, it discusses the boycott campaign. Factual errors are corrected, and defence is made against allegations, none of which are attributable or attributed to the Band.

Suggested Reply / Réponse suggérée

Information about the Lubicon Lake Band has been issued to posts in countries where there exists public interest in the situation. This information has been made available in response to that interest, and in an effort to sensitize the international community to the complexities of indigenous issues in Canada. As such, no apology is warranted. Given the responsive nature of the material, it answers a number of inaccurate statements made by groups sympathetic to the Lubicon Band. (One example of such inaccuracy is the perception of some individuals or groups that the Olympic site was on Lubicon land, or on Indian burial grounds. The fact sheet makes clear the distance between Little Buffalo and the Olympic site).

Again, the Government can only reiterate its firm intention to achieve a domestic settlement of the Lubicon land claim, and urge the Band to return to negotiations.

ACC KE. DATE
45-CON-13-1-3-Lubicon
Le Band
cc 1-11-1 MO-2

Prepared by / Préparé par A. LeClaire <i>A. LeClaire</i>	Division / Direction IMH	Date Jan 21/88	Tel. no. / N° de tél. 996-9332 002341
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HOUSE OF COMMONS BOOK — BRIEFING NOTE
LIVRE DE LA CHAMBRE DES COMMUNES — NOTES D'INFORMATION

Classification CONFIDENTIAL
Section IMH-0125

Subject/Highlights Sujet/Points saillants

Lubicon Lake Indian Band - Allegation contained in the Band's most recent submission to the UN Human Rights Committee that the Canadian Government contributed to the deaths of 21 people.

Source

Newspaper article "Lubicons complain to UN on deaths" by Mark Lowey of the Calgary Herald, 18 Jan 1988, and an article by Karen Booth.

Assessment Évaluation

The Lubicon Lake Band began action with the UN Human Rights Committee in 1984 under the Optional Protocol to the International Covenant on Civil and Political Rights, following up with supplemental submissions. Although Canada contested the admissibility of the complaint on a variety of grounds, the Committee admitted the communication in a preliminary procedural ruling. The substantive issue and our appeal of the procedural decision to admit the communication are currently on hold, but might come before the spring session of the Human Rights Committee in late March.

The press articles refer to an eighth supplement, dated January 12, which is now on the way from Geneva to the Department. It appears to be an escalation of allegations, to the effect that, while Canada did not directly kill Lubicon Lake Band members, the Governments concerned contributed directly and indirectly to the creation of circumstances which led to deaths (suicide, infant mortality, premature death). We will be replying, and have asked the Department of Justice to coordinate a reply in conjunction with us and DIAND. Although, under normal rules of procedure, both the supplement and our response could be considered confidential, we see no reason to withhold our response from the public and press if the Band has already chosen to go public.

Suggested Reply Réponse suggérée

- The Government is now in the process of securing a copy of the Band's most recent submission to the Human Rights Committee.
- We cannot comment on these allegations until we have had an opportunity to read the submission in its entirety.
- We intend to make a formal reply as soon as possible, so that the Human Rights Committee has full information before it.
- These communications are normally confidential, to protect the interests of the complainant; but as the Band has decided to go public with its communication, we see no reason why we should refrain from making the Canadian reply public as well.
- This reply will be forthcoming shortly, and will deal fully with the allegations put forth.

Ker. 10022

45-LDN-13-1-3 - Lubicon
UC Band

cc-11-1MO-2

Prepared by / Préparé par D. Livermore	Division / Direction IMH	Date Jan. 21, 1988	Tel. no. / N° de tél. 995-6960
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HOUSE OF COMMONS BOOK — BRIEFING NOTE
LIVRE DE LA CHAMBRE DES COMMUNES — NOTES D'INFORMATION

Classification
CONFIDENTIAL
Section
IMH-0104

Subject/Highlights Sujet/Points saillants

Lubicon Lake Indian Band - International Activities.

ACC	ker	DATE
FILE	45-00A-13-1-3-Lubicon	DOSSIER 414 RBR
cc 1-11, MD-2		

Source

Assessment Évaluation

The Lubicon Lake Indian Band mounted an international media campaign to gather support for their unresolved land claim, concentrating in Germany, the Netherlands, Austria, Switzerland and Scandinavia, where there exist many groups involved in aboriginal rights issues. Activities include the distribution of written material by European representatives of the Band, tours by Chief Ominayak and demonstrations at Canadian posts, where petitions, in some cases, have been presented. The issue achieved some public prominence in Germany, Austria, and the Hague. There was also an unsuccessful effort to attract attention to the Lubicon issue at the Vancouver CHOGM, where Mr. Georges Erasmus, head of the Assembly of First Nations, distributed a letter to the heads of Government. In the period between the Columbus Day (12 Oct) demonstrations held with varying success at several European posts and the opening of the Glenbow Exhibit, there was a lull in international attention given to the Lubicon issue. However, it should be noted that a French television station is apparently planning a trip to Little Buffalo. In response to this campaign, which sought a boycott of both the Olympics and the Glenbow exhibition, the Department prepared and issued materials to concerned posts that have given a balanced history of the issue and refuted the most irresponsible allegations.

Suggested Reply Réponse suggérée

While Mr. McKnight is the lead minister on this issue, the following remarks are argued inter-departmentally.

- The position of the Federal Government on this issue has remained consistent.
- The land claim of the Lubicon Lake Band is a legitimate one, and must be negotiated on its merits.
- In order that this may be done, the Federal Government has kept a negotiating framework in place, and remains willing to sit down with the Band.
- The Band has been urged continuously to concentrate its efforts on a domestic resolution based on negotiations with all the relevant parties, including the Government of Alberta. The Government of Canada views this position as more conducive to the eventual achievement of a settlement than the international media activities of the Band, which have tended to increase the perception of polarized negotiating positions as between the relevant parties.

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HOUSE OF COMMONS BOOK — BRIEFING NOTE
LIVRE DE LA CHAMBRE DES COMMUNES — NOTES D'INFORMATION

Classification	CONFIDENTIAL
Section	IMH-0105

Subject/Highlights / Sujet/Points saillants

Lubicon Lake Indian Band -- Implications of remarks quoted from the Canadian Response to the U.N. Human Rights Committee.

ACC	REF	DATE
FILE	45-109-13-1-3	DOSSIER
		Lk Band
	11-1-10-2	

Source
 CBC National News, 17 Jan 1988

Assessment / Évaluation

A discussion of the socio-economic status of the Lubicon Lake Band was part of the Canadian response to the decision on admissibility of the Lubicon complaint to the Human Rights Committee. The quote was "The level of services delivered to Band members is of the same standard as those provided to other Indians in Canada, as well as to all Canadians". Film clips of dilapidated conditions were shown as the quote was read. The Canadian Response details an annual payment to the Band for social services delivery of \$1.13 million, a cumulative sum of \$1.5 mil. for housing in Little Buffalo and a planned expenditure of \$1.75 mil. on the upgrading of water supplies in the area. The Federal Government has given the Band \$1.5 million to defray the legal costs of their land claim. Provisions have been made to protect the residents of the Little Buffalo area from resource development.

Efforts have been therefore made to assist the Band. But, the only assistance the Band has permitted the Province of Alberta to provide was health care after T.B. was discovered. As the Province is often the delivery arm of social services financed by the Federal Government, the refusal to accept provincial assistance has contributed to the Band's living conditions.

Suggested Reply / Réponse suggérée

The Canadian Response to the U.N. Human Rights Committee made a number of comments with respect to the Band's socio-economic condition. All of those remarks are valid. The Federal Government has made available substantial sums to the Band in order that their standard of living might improve. With the exception of the health care provided to the Band when a number of members were found to be suffering from tuberculosis, the Band has refused considerable assistance where the Province of Alberta forms the delivery arm of federal social programs.

It is regrettable that the Lubicon Lake Band considers it necessary to resort to such extreme and self-destructive measures. The Canadian Government can only continue to offer assistance, to reiterate its recognition of the legitimacy of the Band's claim and to express its ongoing desire to reach a negotiated settlement of the claim.

Prepared by / Préparé par A. LeClaire	Division / Direction IMH	Date Jan. 19, 1988	Tel. no. / N° de tél. 996-9332	002344
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HOUSE OF COMMONS BOOK — BRIEFING NOTE
LIVRE DE LA CHAMBRE DES COMMUNES — NOTES D'INFORMATION

Classification
CONFIDENTIAL
Section
IMH-0102

Subject/Highlights Sujet/Points saillants

Lubicon Lake Indian Band - United Nations Human Rights Committee Action

Source

Assessment Évaluation

The Lubicon Lake Band, after undertaking various judicial proceedings in domestic courts starting in 1976, launched international action in 1984. In February, 1984, the Chief of the Band, Bernard Ominayak, entered a complaint to the U.N. Human Rights Committee under the Optional Protocol to the International Covenant on Civil and Political Rights, arguing that Canada had violated the Band's right to self-determination (Article 1).

Although Canada contested the admissibility of the complaint on a variety of grounds (including non-exhaustion of domestic remedies), the Human Rights Committee admitted the Band's complaint under the article dealing with the rights of minorities (not the rights of "peoples"). The matter is currently on hold, at the procedural stage, pending consideration of our reply, possibly at the 1988 session of the Committee.

ACC Ref DATE

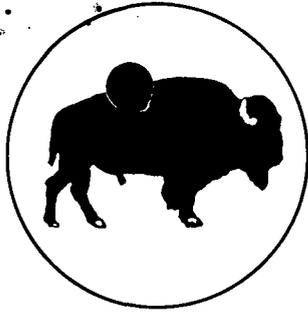
FILE 45-CDN-13-1-3- Lubicon
 L.K. Band

CC-11-1MD-2

Suggested Reply Réponse suggérée

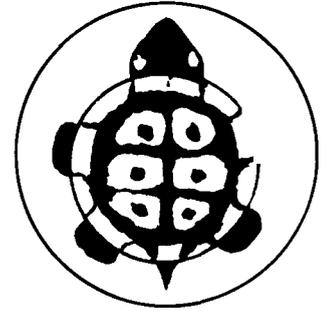
As a signatory to the Optional Protocol to the International Covenant on Civil and Political Rights, the Government of Canada supports the right of the Lubicon Lake Band to seek this avenue for a resolution of its claim. At the same time, the domestic settlement of this unresolved land claim remains a priority of the Federal Government; a negotiating framework is in place, and the Government urges the band not only to return to the negotiations, but to assist them by submitting to the Federal Government the documentation prepared on band membership. The complaint to the Human Rights Committee has not succeeded, as it has not been admitted as a potential violation of the right to self-determination. The Government's position is, therefore, that a renewal of the band's efforts to seek a domestic resolution, within the existing negotiating framework, remains the most productive avenue open to the Band.

Prepared by / Préparé par A. LeClaire	Division / Direction IMH	Date Jan. 19, 1988	Tel. no. / N° de tél. 996-9332	002345
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VEREIN ZUR UNTERSTÜTZUNG NORDAMERIKANISCHER INDIANER

ASSOCIATION FOR THE SUPPORT OF THE NORTH AMERICAN INDIANS



Berlin
January 19, 1988

Right Honorable Brian Mulroney
Prime Minister of Canada
Ottawa, ON
K1A 0A2 Canada

Prime Minister Mulroney,

Again we must raise our voice against the policies of the government of Canada with regard to the people of Lubicon Lake. Despite the appointment of a new federal negotiator no progress has been made toward a recognition of the inherent rights of the Lubicon Lake people. Federal Negotiator Brian Malone has even claimed he can negotiate a settlement of the question without consulting the Lubicon Lake people. Not only would that violate Canadian law but also the most basic precepts of human decency. This attitude is typical of the condescending manner in which Euro-Canadians have always dealt the native peoples of Canada. The government of Canada is in the process of discrediting itself fully in the field of human rights.

Here are lists of people who support the struggle of the people of Lubicon Lake and their call for a boycott of the Calgary games. While Alberta celebrates a festival of sports and commercialism one of Canada's native peoples is dying. We call upon your government to fulfill its obligations to the Lubicon Lake people and bring about a settlement of their claims.

Sincerely,

John Shreve
Falckensteinstraße 4
1000 Berlin 36
West Germany

cc. Chief Bernard Ominayak
Bill McKnight
Premier Don Getty

ACC	REF	DATE
FILE	DOSSIER	
45-000-13-13-		
Lubicon Lk Band		



AUFRUF ZUM BOYKOTT DER OLYMPISCHEN WINTERSPIELE 1988 IN CALGARY/CANADA

1982 boykottierte Canada die Olympischen Spiele in Moskau mit der Begründung, daß in einem Land, in dem Menschenrechtsverletzungen begangen werden, keine regulären Spiele stattfinden können. Mit dem gleichen Recht rufen die Lubicon Cree Indianer im Norden der Provinz Alberta, die Indian Association of Alberta und wir gemeinsam mit ihnen alle Politiker, Sportorganisationen und Sportler zum BOYKOTT DER OLYMPISCHEN SPIELE 1988 in Calgary auf, da von der Provinzregierung Alberta's und der Bundesregierung Canada's nicht einmal die grundlegendsten Rechte der Ureinwohner geachtet werden.

Die Lubicon Cree Indianer waren seit Jahrtausenden wirtschaftlich völlig unabhängig - bis vor einigen Jahren. Nun sind 90% der Stammesmitglieder Sozialhilfeempfänger. Die Gründe: Rücksichtslose Ausbeutung der Ölvorkommen im Gebiet des Stammes durch mehr als 70 Ölkonzerne, womit die eigentliche wirtschaftliche Grundlage des Stammes, der Wildbestand, zerstört wurde; absichtliche Verschleppung der Rechtsansprüche des Stammes und rassistische Politik beider Regierungsebenen, wobei letzteres im Standpunkt der Alberta-Provinzregierung gipfelt, die Lubicon Cree Indianer wären als Landstreicher anzusehen; auf jenem Land, das sie schon seit undenklichen Zeiten bewohnen. Somit wird an diesem Fall deutlich, daß Völkermord an den Indianern Nordamerikas keineswegs nur ein historisches, sondern auch ein zeitgenössisches Phänomen darstellt.

Während noch vor einem Jahrzehnt praktisch unbekannt, sind heute Alkohol- und Drogenprobleme sowie hohe Selbstmordraten zu Bestandteilen des Alltagslebens geworden.

In einer Presseaussendung des Häuptlings der Lubicon Cree, Bernard Ominayak, vom April 1986 heißt es hierzu:

"UNSERE BOTSCHAFT IST DIE, DASS ALLE DIEJENIGEN, DIE DIE SPIELE UNTERSTÜTZEN, AUCH DIE VÖLKERMORDPOLITIK DER ALBERTA PROVINZREGIERUNG UND IHRER VERBÜNDETEN ÖLGESELLSCHAFTEN UNTERSTÜTZEN .."

Falls es nicht innerhalb der allernächsten Zeit durch Druck auf die verantwortlichen Politiker zu einer einvernehmlichen Lösung kommt, hat es die Menschheit wieder einmal geschafft, ein Volk auszulöschen.

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Autenrieth Regine	Tragoldstr 21 7421 Rietheim	Regine Autenrieth
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NAME	ADRESSE	UNTERSCHRIFT



**AUFRUF ZUM BOYKOTT DER OLYMPISCHEN WINTERSPIELE
 1988 IN CALGARY/CANADA**

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G. Neuscheler	Nördlinger Str. 37 7400 RT	G. Neuscheler
H. Kurz	Böblingen, Ebnatstr. 11	Michael Kurz
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Elwien, Ingrid	Jugendstr. 14, 7037 Sg	Ingrid Elwien
Roswitha Ferraiz	Steinbühlstr. 5, 7706 Eggenstein	R. Ferraiz
NAME	ADRESSE	UNTERSCHRIFT



AUF RUF ZUM BOYKOTT DER OLYMPISCHEN WINTERSPIELE
 1988 IN CALGARY/CANADA

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NAME	ADRESSE	UNITED STUDENT



**AUFBRUF ZUM BOYKOTT DER OLYMPISCHEN WINTERSPIELE
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NAME	ADRESSE	UNTERSCHRIFT



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Dietmar Herrmann	Gödelstr. 5 Ro. 1	Dietmar Herrmann
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(68233)



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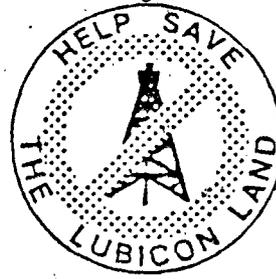
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NAME

ADRESSE

UNTERSCHRIFT

Right Honorable B. Mulroney
 Prime Minister of Canada
 Ottawa, ON
 K1A 0A2 Canada

The undersigned support the struggle of the Lubicon Lake Band. We urge the Canadian government to enter into serious negotiations with the Lubicon based on the aboriginal rights guaranteed in the constitution, and equal partnership. The Lubicon Lake Band has had to wait too long for the most elemental justice.

Die Unterzeichner unterstützen den Kampf der Lubicon Lake Band. Sie fordern die kanadische Regierung auf ernsthaft und entsprechend der in der Verfassung garantierten Rechte der Eingeborenen Kanadas mit den Lubicon als gleichberechtigte Partner zu verhandeln. Zu lange haben die Lubicon auf die elementarste Gerechtigkeit warten müssen.

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Meyer, Gabriele	1-12 Goethestr. 47	G. Meyer
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Unterschriftslisten an: Verein zur Unterstützung nordamerikan. Indianer
 c/o John Shreve
 Falckensteinstraße 4
 1000 Berlin 36

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External Affairs / Affaires extérieures
Canada / Canada

14
MESSAGE

Accession/Référence	880121
53572 1/3	
File/Dossier	45-CDA-13-1-37
Labicon Lake Band	

Align first character of Security Classification under this arrow
Alignez le premier caractère de la Sécurité sous cette flèche

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~~DISTR MINA IMH BWP RSB RSEA RWD BCM~~

--- VISITE DU GOUV GEN ET ABORIGENES DU LAC LUBICON

A MOINS D UN MOIS DE TENUE DES J.O. D HIVER DE CALGARY,
PLUSIEURS REPRESENTANTS DE MEDIA D EUROPE DE L OUEST SONT
ACTUELLEMENT AU CDA POUR PRE-REPORTAGES SUR LES JEUX ET CE QUI
LES ENTOURE. DANS CE CONTEXTE, IL VA SANS DIRE QUE PUBLICITE
ENTOURANT LA BANDE DES ABORIGENES DU LAC LUBICON N EST PAS SANS
ATTIRER ATTENTION DE PRESSE INTERNATIONALE.

2. COMPTE TENU VOYAGE PROCHAIN DU GOUV GEN EN FRANCE ET DES
POSSIBILITES QU ARTICLES SUR GRIEFS DES GROUPES ABORIGENES CDNS
SOIENT RENDUS PUBLICS EN FRANCE A L OCCASION VISITE DE MME
SAUVE, VS TROUVEREZ CI-JOINT UN COURT BREF EXPLICATIF A JOUR DE
DEUX PAGES QUE VIENT DE NS TRANSMETTRE DIR DES DROITS DE LA
PERSONNE ET DES AFFAIRES SOCIALES (IMH). VS POURRIEZ VS
INSPIRER DE CE BREF POUR ~~TOUTE~~ REFERENCE OU QUESTION RELATIVE A
LA SITUATION DES MINORITES AUTOCHTONES VIVANT AU CDA, ADVENANT
LE CAS OU CETTE QUESTION SOIT PRESENTTEE DE MANIERE BIAISEE OU
NON-OBJECTIVE PAR MEDIA FRANCAIS PENDANT VISITE EN RUBRIQUE.

(COMCENTRE SVP TRANSMETTRE PAR FAXSIMILE LES 2 PAGES
CI-JOINTES. MERCI.)

19 JAN 88 20 35Z

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J. Therriault/mt	RWR	996-4547	INGRID M. HALL
SIG			SIG Ingrid 002361

Lubicon Lake Band and Grievances of Canadian Indigenous Groups

Issue:

There is a remote possibility that the Western European media will enquire about the grievances of Canada's native people in general, or about the particular concerns of the Lubicon Lake Band of northern Alberta, which has been receiving considerable publicity in recent weeks.

Background:

Canadian aboriginal groups (Indians, Metis and Inuit) are actively involved in a variety of negotiations with the Government of Canada (and other jurisdictions). Following the failure of the recent First Ministers' Conference, the main Indian group, the Assembly of First Nations, determined that the best means of exerting pressure on the Government for domestic purposes was to increase their international profile, in effect hoping that international embarrassment for Canada would improve negotiating prospects for native groups. Many native groups are therefore now involved in trying to build European networks of support organizations for pressure purposes.

A model which some native groups want to emulate has been the campaign of the Lubicon Lake Band of northern Alberta. This band had been in unsuccessful negotiations and court actions in an effort to receive reserve lands first promised in 1940. But when these strategies were clearly not working, they turned to international action: first, a complaint before the United Nations Human Rights Committee (still pending); and second, a boycott campaign against the Calgary Olympic Games and the Glenbow Museum Exhibit "The Spirit Sings". Now that the Olympics is close at hand, and the Glenbow exhibition has opened, public relations activities are at a peak.

Canadian position:

Our strong view is that all domestic grievances involving Canadian aboriginal groups must be resolved in Canada according to Canadian laws, practices and policies. We cannot cave in to international pressure, because acquiescence simply encourages additional campaigns for different purposes and magnifies the problem. Domestic forums exist and negotiations have been encouraged, both with respect to the larger issues such as constitutional amendment and also with respect to particular grievances, such as the Lubicon Lake Band.

With respect to the Band, the Government of Canada has been endeavouring for more than a year to get the Band back to the negotiating table. Because the quantum of land is the key stumbling block to a settlement, this issue must be confronted squarely. And because the key to a land entitlement is the issue

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of how many persons belong to the Lubicon Lake Band, the Band should share with the federal and provincial sides the genealogical records already compiled, which would set a framework for concrete decisions. These steps--sitting down to negotiations and turning over family records--can only be taken by the Lubicon Lake Band side.

Other positions:

The Western European view of Canadian aboriginal peoples is generally highly Romantic. We expect no objective reporting, although we have gone out to posts with information materials to be used on a responsive basis (attached). The lure of a story about allegedly primitive peoples, attached to the moose hunt and resisting the incursions of modern technology (especially oil companies) is simply too good to resist. To the extent that these questions are alive in Europe, they are the domain of the media and some non-governmental organizations with special interest in native peoples.

Western European governments have taken no interest in aboriginal matters, or their implications, such as the boycott campaigns or letter-writing efforts. They are satisfied that Canadian indigenous issues are domestic concerns well in hand in Canada, even if there are some outstanding issues with international spin-offs. We would be surprised if this issue were raised at an official level.

Messages to convey:

Although the Canadian side should not raise any of the above, we should be prepared to provide responsive answers of a general nature.

1. there are many avenues of domestic redress in Canada, and Canadian aboriginal groups who sense that they have grievances are best advised to use these mechanisms.
2. we do not acknowledge that boycott campaigns or letter-writing campaigns, especially those based beyond Canada, are valid responses to solving domestic grievances. In the case of the Lubicon Lake Band, we especially regret the linkage of their grievances to the Olympics. The boycott campaign is clearly a failure, as there has been no harm done to the Olympics or to the Glenbow Museum.
3. with respect to the Lubicon Lake Band, we can only urge what other Canadian authorities have urged, namely, that the Band return to the negotiating table where we can endeavour to settle as quickly as possible the key outstanding issues. We fail to see why the Band cannot take this fundamental step.

Glenbow Museum

F A C S I M I L E T R A N S M I S S I O N 04161

TELEX CENTRE
CENTRE DE TÉLÉX

TO: (NAME) David Walden FACSIMILE NO. 005
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 (LOCATION) Ottawa, Ontario TO / À DHP Phuel

FROM: Annik DeZwirek DATE 1/16/88 TIME 8:50 A
 TOTAL NUMBER OF PAGES SENT (INCLUDING COVER SHEET): INITIALS
DATE SENT: 16 January 1988 INITIALES DeZwirek

FILE NO. DATE

45-13-1-3- Lubicon Lik Band

Dear David:
MESSAGE:

This is to inform you that the Glenbow Alberta Institute has a statement of claim from the Grand Chief of the Mohawk Indians in respect of potentially 10 objects in The Spirit Sings made before the Queen's Bench of Alberta on January 14th, 1988. (Copy Attached)

In addition we have a Notice of Motion for Interim Injunction in respect to the false face mask on loan from the Royal Ontario Museum (copy Attached).

The Court of Queen's Bench of Calgary granted an Interim Injunction to the Plaintiffs on January 15th, 1988.

We have received an affidavit from the Mohawk Chief in respect to the above (copy attached).

Me. Phillip Palmer, legal council for the National Museums is fully informed Please contact Duncan F. Cameron for further info. The legal council for the Glenbow Alberta Institute is Mr. Denniss A. McDermott.

Thank you.

Annik

GLENBOW MUSEUM FAX NUMBER: (403) 265-9769

130-9th Avenue S.E., Calgary, Alberta, Canada T2C 0P3 Telephone (403)264-8300 • Telex 03-825571

IN THE COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL DISTRICT OF CALGARY

BETWEEN:

THE MOHAWK BANDS OF KAHNAWAKE, AKWESASNE and KANESATAKE

-and-

GRAND CHIEF JOE NORTON

-and-

GRAND CHIEF MIKE MITCHELL

-and-

GRAND CHIEF ALEX MONTOUR

which Grand Chiefs sue on behalf of and for
the benefit of the members of their respective
bands of Kahnawake, Akwesasne and Kanesatake

PLAINTIFFS

AND:

THE GLENBOW-ALBERTA INSTITUTE

DEFENDANT

STATEMENT OF CLAIM

1. The Mohawk Nation is a sovereign nation under international law with its own people, territory, government and laws.

.../ 2

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2. Plaintiff Bands and the members thereof are components of the Mohawk Nation which is in turn part of the Iroquois Confederacy.

3. The Mohawk Nation exercises its rights, inter alia, in and over part of what is now Québec, Ontario and the United States.

4. Grand Chiefs Joe Norton, Mike Mitchell and Alex Montour are respectively the Grand Chiefs of the Plaintiff Mohawk Bands of Kahnawake, Akwesasne and Kanasatake.

5. Said Plaintiff Grand Chiefs respectively sue on behalf of and for the benefit of the members of their respective Bands, all of whom have a common and undivided interest in the subject-matters of these proceedings.

6. Defendant has the ownership, control and operation of the Glenbow Museum and maintains the said museum which has organized and is presenting an exhibition entitled "The Spirit Sings" at the museum in Calgary in the context of the 1988 Winter Olympic Games from January 15, 1988 until May 1, 1988.

7. Individual Plaintiffs, who are Mohawks and members of the Mohawk Nation, are all native persons within the meaning of section 91(24) of the Constitution Act, 1867, Indians within the meaning of the Constitution Act, 1982 and Aboriginal Peoples within the meaning of the Constitution Act, 1982.

.../ 3

- 3 -

8. Individual plaintiffs all have existing aboriginal rights within the meaning of sections 35 and 25 of the Constitution Act, 1982.

9. Said aboriginal rights include the right of Plaintiffs to their own customs, cultures and traditions, spiritual and other values, beliefs and the practice of same.

10. The Mohawk Nation has never been conquered, has maintained its sovereignty and has entered into various treaties and alliances with the Crown and other sovereign nations.

11. The Mohawk Nation has and has always had its own laws, cultural, spiritual and political traditions, beliefs, practices and values.

12. There were original agreements between the first European settlers and the Nations of the Iroquois Confederacy, of which the Mohawk Nation is part.

13. These agreements established the fundamental principles of co-existence with the Europeans by means of the Two-Row Wampum.

14. The Two-Row Wampum is a manifestation of the sacred pact between the Europeans and the Mohawks that both cultures were to co-exist within the territory as distinct entities, politically, spiritually and culturally.

.../ 4

- 4 -

15. According to Mohawk law, any interference with Mohawk culture represents a violation of the sacred pact expressed by the Two-Row Wampum. This Mohawk law applies to the objects described in paragraphs 28 and 36 hereof.

16. An essential part of the spiritual and cultural heritage and practices of the Mohawk Nation involves certain objects, particularly in respect of their relations with the Creator and other sovereign powers.

17. Certain objects, such as the False Face Mask or Medicine Mask described in paragraph 28 and being exhibited by Defendant as part of the exhibition The Spirit Sings, are sacred objects and have been and always will be an inherent part of the spiritual practices of the Mohawk Nation and the Mohawks.

18. Other objects such as those described in paragraph 36 and which are being exhibited by Defendant form part of the cultural patrimony, traditions and heritage of the Mohawk Nation and are as well part of the visible record of the unique history of the Aboriginal Peoples of Canada.

19. All of the objects described in paragraphs 28 and 36 were produced by the Mohawk Nation or the members thereof or their ancestors.

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- 5 -

20. The Mohawk Nation owns all artifacts of Mohawk origin of spiritual, traditional, cultural or historical significance, in accordance with its laws, by virtue of its status as a nation and by virtue of treaties with the Crown; all the objects described in paragraphs 28 and 36 fall into this category.

21. All such artifacts are an integral and necessary part of the right of Plaintiffs to the practice of their spiritual beliefs and their culture, self-determination, self-government, traditions and heritage which are included in their aboriginal rights and their fundamental rights and freedoms as the First Peoples of North America.

22. The Mohawk Nation has the exclusive right, title and interest in and to all artifacts mentioned in paragraph 20 produced by or in any way originating from Mohawks and to control any use of these.

23. The said objects described in paragraphs 28 and 36 were illegally appropriated, converted, taken or obtained from the Mohawk Nation or their predecessors in title.

24. The objects described in paragraphs 28 and 36 are being exhibited by Defendant The Glenbow-Alberta Institute in the context of the exhibition The Spirit Sings as part of the arts festival relating to the 1988 Winter Olympic Games.

25. The said objects or artifacts were obtained for the said exhibition by Defendant illegally, unjustifiably and without the consent of the Mohawk Nation, Plaintiffs or other Mohawk people or their predecessors and are being unlawfully detained by Defendant.

.../ 6

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26. The acquisition of the said objects by any museum, institution, non-native group or person which may have loaned or otherwise provided the said objects, and the possession of said objects by such museums, institutions and non-native persons is unjustifiable, illegal, unconstitutional and a breach of the spiritual or religious, aboriginal and other rights of Mohawk Plaintiffs and the Mohawk Nation.

27. The Mohawk Nation and Plaintiffs have moreover requested the return of important Mohawk objects or artifacts from museums in other parts of the world.

28. Defendant intends to exhibit a False Face Mask or Medicine Mask emanating from and belonging to the Mohawk Nation. The said False Face Mask is described as item W42 on page 46 of the Catalogue of the said Exhibition.

29. The said False Face Mask is a sacred object which to the Six Nations Iroquois Confederacy, of which the Mohawk Nation forms part, represents the shared power of the original medicine beings.

30. All the False Face masks have spiritual power and an intended purpose, i.e. solely for the members of the respective medicine societies of the Six Nations Iroquois Confederacy (the Hodenosaunee).

... / 7

- 7 -

31. Any exhibition of the False Face masks by museums, including Defendant, violates the intended purpose of the mask and its sacred functions, constitutes a desecration, and ridicules and misrepresents the spiritual beliefs and practices of the Iroquois, including the Mohawk Nation and its members.

32. Because of the special spiritual significance of the False Face masks and the spiritual practices of the Mohawks, it is not possible for non-Iroquois even to interpret the False Face masks.

33. Defendant is aware of the spirituality of the False Face masks, as appears from its Catalogue, but has chosen by design to exhibit the said False Face Mask in defiance of and with reckless disregard for the traditions, beliefs, practices and spiritual values of the Mohawk People and other Iroquois.

34. The exhibiting by Defendant of the said False Face Mask is a deliberate insult to Plaintiffs, a distortion and repudiation of their spirituality and beliefs, an interference with their sacred practices, an affront to the right of Plaintiffs to profess and practise their own religion and an unwarranted and unlawful intrusion of the sovereignty of the Mohawk Nation.

35. Defendant by its exhibition of the said False Face Mask is also preventing members of the Mohawk Nation from carrying out a part of their spiritual practices.

.../ 8

Musk - Seoguis

36. Defendant also intends to exhibit the following Mohawk artifacts as part of its said exhibition "The Spirit Sings":

a) *Mohawk type*
1776-78 a shoulder bag, described as item W50 on page 48 of the Catalogue of the said Exhibition; *Braunschweigisches Landesmuseum FRG*

Coughnaboga
1746 b) a prisoner halter allegedly taken from an Indian killed in battle, described as item W55 on page 49 of the said Catalogue; *National Hall Museum*
Deepfield Mass

* *(c)* *NOT IN EXHIBITION*
Seoguis type
late 18th C. a pouch, described as item W56 on page 49 of the said Catalogue; *Bristol City Museum + Art Gallery*
England

d) *Seoguis Type*
18th C a bag, described as item W57 on page 49 of the said Catalogue; *Mus. of Art + Ethnol. Leningrad*
Medicine bag

e) *Seoguis Type*
possibly Mohawk
1776-8 another pouch, described as item W60 on page 50 of the said Catalogue; *FRG*

f) *Mohawk type*
late 18th C a knife and sheath, described as item W62 on page 50 of the said Catalogue; *Natural History Club. of Town*
of Winterthur Switz.

g) *Seoguis type*
late 18th C moccasins, described as item W63 on page 50 of the said Catalogue; *Beane Historical Museum*

h) *Seoguis type*
early 19th C a gostoweh (headdress) described as item W61 on page 50 of the said Catalogue. *Mc Cook Museum, Mc Mill*

37. The said exhibition is contrary to the Olympic principles, in breach of the Olympic rules binding on Defendant and provides a misleading presentation of the cultures, traditions and spiritual values of the Native Peoples of Canada, particularly by failing to consider the appalling economic and social conditions of the Native People of Canada today.

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38. Moreover, the said exhibition *The Spirit Sings* is sponsored partially by Shell Canada Limited and supported by the Government of Alberta which have participated in the destruction of the way of life and values of the Lubicon Lake Cree Nation and its members, a nation recognized and supported by Plaintiffs.

39. The said exhibition and especially the exhibiting of the objects (artifacts) described in paragraphs 28 and 36 hereof, constitutes a violation by Defendant of the constitutionally protected aboriginal rights of Plaintiffs and the sovereignty of the Mohawk Nation and will cause Plaintiffs irreparable damage and prejudice.

40. Plaintiffs have the right to the cancellation of the exhibit of said objects, the right to the recovery of the property of the Mohawk Nation and the right to the return to them of the said Mohawk artifacts, the value of which cannot be estimated in dollars.

41. Furthermore, as a minimum, in the absence of any agreement with the interested native parties, any native artifacts held by a museum are held in virtue of a *sui generis* trust or equitable obligation in favour of the Native People who produced such artifacts and can only be used or exhibited with the consent of such Native People. However, sacred objects such as the said False Face Mask and the Gostowah, according to Iroquoian and Mohawk law can never under any circumstances be in the possession of non-Native People, museums or other institutions.

42. Consequently, as a minimum, Defendant cannot exhibit the said artifacts described in paragraphs 28 and 36 hereof without the consent of Plaintiffs, which consent has not been obtained by Defendant.

- 10 -

43. Plaintiffs specifically reserve their rights in respect to other exhibits in the said Exhibition.

44. The Foreign Cultural Property Immunity Act of Alberta, particularly in respect to the objects described in paragraphs 28 and 36, is ultra vires, unconstitutional, a denial of the rule of law, equality before the law and equal protection of the law, a violation of the Canadian Charter of Rights and Freedoms, section 35 of the Constitution Act, 1982 and section 91(24) of the Constitution Act, 1867 and in any event inoperative.

45. Plaintiffs propose that the trial of this action be held at the Court House, in the City of Calgary, in the Province of Alberta.

THE PLAINTIFFS THEREFORE CLAIM AS FOLLOWS:

- a) a declaration that the Mohawk Nation has the right of ownership of the objects described in paragraphs 28 and 36 above;
- b) a declaration that the Mohawk Nation has the right to the return of these objects and to the immediate possession of them;

.../ 11

- 11 -

- c) THAT a permanent order of injunction be issued against Defendant, enjoining it not to exhibit in any manner and under any circumstances the objects or artifacts described in paragraphs 28 and 36 above, and particularly not to exhibit the said objects in the context of the exhibition The Spirit Sings in connection with the arts festival relating to the 1988 Winter Olympic Games;
- d) THAT a permanent order of injunction be issued against Defendant ordering it to return immediately to the Mohawk Nation the said objects or artifacts.
- e) Costs.

DATED, at the City of Calgary, in the Province of Alberta, this 14th day of January, A.D. 1988 AND DELIVERED BY MESSRS O'REILLY & GRODINSKY, Solicitors for the Plaintiffs herein whose address for service is in care of their agent, Kenneth E. Staroszik, 400, 1010 - 8th Avenue S.W., Calgary, Alberta, T2P 1J2.

ISSUED out of the office of the Clerk of the Court of Queen's Bench of Alberta, Judicial District of Calgary, at the City of Calgary, in the Province of Alberta, this 14 day of January, A.D. 1988.

JIM McLAUGHLIN

CLERK OF THE COURT OF QUEEN'S BENCH OF ALBERTA

COURT
SEAL

IN THE COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL DISTRICT OF CALGARY

B E T W E E N:

THE MOHAWK BANDS OF KAHNAWAKE, AKWESASNE AND KANESATAKE

- and -

GRAND CHIEF JOE NORTON

- and -

GRAND CHIEF MIKE MITCHELL

- and -

GRAND CHIEF ALEX MONTOUR

which Grand Chiefs sue on behalf of and for
the benefit of the members of their respective
bands of Kahnawake, Akwesasne and Kanesatake

Plaintiffs

- and -

THE GLENBOW-ALBERTA INSTITUTE

Defendant

NOTICE OF MOTION FOR INTERIM INJUNCTION

TAKE NOTICE that the Plaintiffs herein will make application before the presiding Justice in Chambers at the Court, House, in the City of Calgary, in the Province of Alberta, on Friday, the 15th day of January, A.D. 1988 at 10:00 o'clock in the forenoon or so soon thereafter as counsel may be heard, for an Order pursuant to section 13(2) of the Judicature Act by way of Interim Injunction against Defendant, restraining them, whether by themselves or by their servants or agents, or otherwise howsoever from exhibiting as part of Defendant's exhibition "The Spirit Sings" or in anyway whatsoever a False Face Mask or Medicine Mask of the Mohawk National which is described in the proceedings herein.

AND TAKE NOTICE that in support of this application will be read the affidavit of the Plaintiffs sworn January 14, 1988 and filed herein.

AND FURTHER TAKE NOTICE that this Application is based on the Statement of Claim filed herein and more particularly on the following grounds:

1. The said False Face Mask is sacred to Plaintiffs and of great spiritual significance to them.
2. The False Face Mask is basic to the spiritual beliefs, values and practices of the Mohawks as well as to their culture.
3. The False Face Mask has considerable spiritual power and an exclusive purpose i.e. solely for the use of the members of the respective medicine societies of the Six Nations Iroquois Confederacy.
4. The False Face Mask is a live spiritual medium for Plaintiffs and the Mohawk Nation.
5. The detention by Defendant of the said False Face Mask is contrary to Mohawk law and the custom, traditions and spiritual values of the Mohawks; Non-Iroquois cannot even have access to the False Face Mask.
6. The possession of the False Face Mask by non-Iroquois removes spiritual protection from the Iroquois and causes considerable grief, suffering and irreparable harm to Plaintiffs and all Mohawks.
7. The exhibition by Defendant of the False Face Mask constitutes a desecration of and an insult to Plaintiffs and

ridicules and recklessly disregards the traditions, beliefs, practices and spritual values of the Mohawk people and other Iroquois.

8. The exhibition by Defendant of the False Face Mask violates the constitutional, aboriginal, religious and human rights of Plaintiffs and the Mohawk Nation.

9. The said exhibition of the False Face Mask also violates the religious rights and freedoms of Plaintiffs.

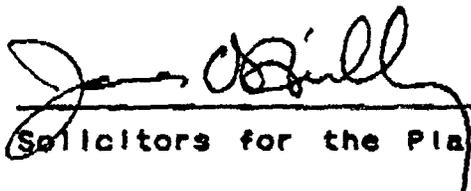
10. The False Face Mask can only be the property of or be used by the Mohawk Nation particularly because of its inherently sacred nature and its significant role in the intrinsic relationship between the Creator and the Mohawk Nation.

11. The balance of convenience clearly favours Plaintiffs.

AND FURTHER TAKE NOTICE that the Plaintiff's will also seek an Order pursuant to Rule 548 shortening the return of this motion.

DATED at the City of Calgary, in the Province of Alberta, this 15th day of January, A.D. 1988.

O'REILLY & GRODINSKY

Per: 
Solicitors for the Plaintiffs

TO: Clerk of the Court
AND TO: The Glenbow Alberta Institute

No. 8801-00657

A.D. 1988

IN THE COURT OF QUEEN'S BENCH
OF ALBERTA
JUDICIAL DISTRICT OF CALGARY

BETWEEN:

THE MOHAWK BANDS OF KAHNAWAKE,
AKWESASNE AND KANESATAKE

- and -

GRAND CHIEF JOE NORTON

- and -

GRAND CHIEF MIKE MITCHELL

- and -

GRAND CHIEF ALEX MONTOUR

which Grand Chiefs sue on behalf of
and for the benefit of the members
of their respective bands of
Kahnawake, Akwesasne and Kanesatake

Plaintiffs

- and -

THE GLENBOW-ALBERTA INSTITUTE

Defendant

NOTICE OF MOTION FOR INTERIM
INJUNCTION

JAN 15 1988

CALGARY

O'REILLY & GRODINSKY
Barristers & Solicitors
c/o #400, 1010 8th Avenue S.W.
Calgary, Alberta

IN THE COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL DISTRICT OF CALGARY

B E T W E E N:

THE MOHAWK BANDS OF KAHNAWAKE, AKWESASNE AND KANESATAKE

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GRAND CHIEF JOE NORTON

- and -

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which Grand Chiefs sue on behalf of and for
the benefit of the members of their respective
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Plaintiffs

- and -

THE GLENBOW-ALBERTA INSTITUTE

Defendant

A F F I D A V I T

WE, CHIEF BILLY TWO-RIVERS, CHIEF JOHN BUD MORRIS,
GRAND CHIEF JOSEPH TEHOKHERON NORTON and CHIEF EUGENE MONTOUR of
Kahnawake, Quebec, MAKE OATH AND SAY AS FOLLOWS:

1. We are the Grand Chief and three of the Chiefs of the
Mohawk Council of Kahnawake, Quebec. Many of our ancestors were
also Chiefs and Grand Chiefs of the Mohawk Council of
Kahnawake.

2. The Mohawk Nation is a sovereign nation under
international law with its own people, territory, government and
laws.

3. The Mohawk Nation exercises its rights, inter alia, in and over part of what is now Quebec, Ontario and the United States of America.

4. The Mohawk Nation has its own laws, culture, spiritual beliefs and practices and political system and traditions.

5. An essential part of the spiritual and traditional heritage and practices of the Mohawk Nation involves certain physical objects, particularly in respect of the relations of the Mohawk Nation with the Creator and other sovereign powers.

6. Certain objects, such as the False Face Mask are sacred objects and have always been an inherent part of the spiritual practices of the Mohawk Nation. The False Face Mask is described as Item W42 on page 46 of the catalogue of the Defendant published in relation to an exhibition known as "The Spirit Sings". A true copy of Item W42 from page 46 of the said catalogue is attached hereto marked Exhibit "A".

7. The False Face Mask was produced by the Mohawk Nation or the members thereof or their ancestors.

8. All artifacts of Mohawk origin of spiritual, traditional, cultural or historical significance are the property of the Mohawk Nation in accordance with its laws, by virtue of its status as a nation and by virtue of treaties with the Crown. The False Face Mask is an integral and necessary part of the right of Plaintiffs to the practice of their spiritual beliefs and of their culture, self-determination, self-government, traditions and heritage.

9. The Mohawk Nation has the exclusive right, title and interest in and to all artifacts produced by or in any way

originating from Mohawks and the right to control any use of these artifacts. Objects as significant as the False Face Mask would not, according to the laws of the Mohawk Nation, ever have been sold, gifted or transferred to any person not a member of the Mohawk Nation or to any other sovereign power.

10. According to Defendant's catalogue referred to above, the False Face Mask is being exhibited at the premises of the Defendant situated in Calgary, Alberta. We attended at these premises on the afternoon of January 14, 1988 to inspect the False Face Mask. However, we were denied admission due to the fact that we did not have an invitation.

11. The Defendant has never sought or obtained our consent to the exhibition of the False Face Mask.

12. The False Face Mask is a sacred object which to the Six Nations Iroquois Confederacy, of which the Mohawk Nation forms part, represents the shared power of the original medicine beings. The False Face Mask has spiritual power and an intended purpose, that is, solely for the members of the respective medicine societies of the Six Nations Iroquois Confederacy.

13. Any exhibition of the False Face Mask by museums, including the Defendant, violates the intended purpose of the mask and its sacred functions. It also constitutes a desecration, ridicule and misrepresentation of the spiritual beliefs and practices of the Iroquois, including the Mohawk Nation and its members.

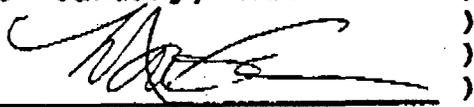
14. The exhibiting by the Defendant of the False Face Mask is a deliberate insult to the Plaintiffs, a distortion and repudiation of their spirituality and beliefs, and interference with their sacred practices, and an affront to the right of the Plaintiffs to profess and practice their own religion and an

unwarranted and unlawful intrusion of the sovereignty of the Mohawk Nation. The exhibition of the False Face Mask by the Defendant prevents members of the Mohawk Nation from carrying out a part of their spiritual practices. According to the laws of the Mohawk Nation, the False Face Mask can never under any circumstances be in the possession of non-native persons, museums or other similar institutions. According to the laws of the Mohawk Nation, the False Face Mask cannot be shown to persons who are not members of the Confederacy.

15. We have read the Notice of Motion filed herewith and adopt and incorporate herein the grounds listed on page 2 and 3.

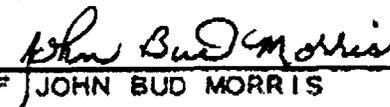
16. We make this affidavit in support of application for an interim injunction restraining the Defendant from exhibiting the False Face Mask in its present exhibition in Calgary, Alberta and ordering the Defendant to remove the False Face Mask from public display and securing it in a safe place away from public view.

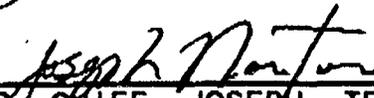
AFFIRMED BEFORE ME at)
Calgary, Alberta, this 14th)
day of January, A.D. 1988.)



MURRAY N. MARSHALL
STUDENT AT LAW.


CHIEF BILLY TWO-RIVERS.


CHIEF JOHN BUD MORRIS


GRAND CHIEF JOSEPH TEHOKHERON
NORTON


CHIEF EUGENE MONTOUR

THE SPIRIT SINGS

Artistic Traditions of Canada's First Peoples

A Catalogue of the Exhibition

THIS IS EXHIBIT "A"
referred to in the Affidavit of
CHIEF BILLY TWO-RIVERS, CHIEF JOHN BUD MORRIS,
GRAND CHIEF JOSEPH TEHOKWERON and CHIEF EUGENE MONTOUR

Affirmed ^{by} ~~Sworn~~ before me this 14th

day of January A.D. 19 88

Murray N. Marshall
A Commissioner in and for the Province of Alberta
MURRAY N. MARSHALL
STUDENT AT LAW

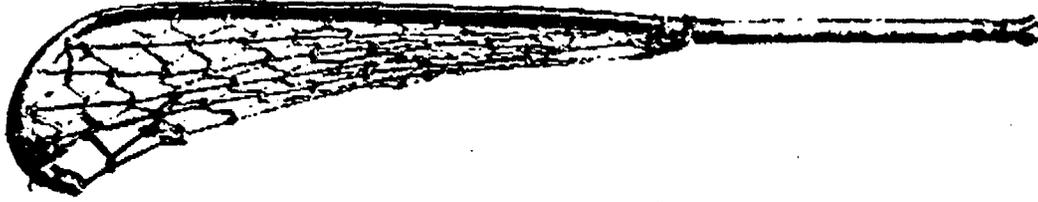


▲ **W 40 Bowl**

Iroquois, possibly Oneida, early 19th century
Wood

L: 19.8; W: 14.4; H: 8.7
Cleveland Museum of Art. Purchase from the J.H. Wade Fund. 84.12

Bowls and spoons with naturalistically carved spirit effigies were used by Great Lakes Indians at feasts. Attached to the Cleveland bowl was an old and faded label that read: "This bowl was made by Oneida Indians more than 100 years ago."



▲ **W 41 Lacrosse stick**

Iroquois (Six Nations), before 1845
Wood, rawhide netting, repaired with commercially tanned leather
L: 134

Collected in the early 20th century by Frank Speck from Alex T. General, grandson of original owner. On loan from the University Museum, University of Pennsylvania, Philadelphia. 55-1-17.

The game of lacrosse was played by inter- and intra-village teams and was sponsored by an individual in honour of a guardian spirit. The complex sculptural imagery on this racquet appears to depict a clan or guardian spirit image at the top. A mood of friendly competition is also symbolized by the 2 shaking hands carved along the shaft. A hand holding a ball aimed directly into the net, carved on the end of the handle, is an example of the wit and visual punning that frequently appear in Woodlands art. The decorative chip carving and naturalistic rendering are characteristic of Iroquois carving style. (Not in exhibition)



▲ **W 43 Ball-headed club**

Iroquois type, early 17th century, probably before 1637

Wood, shell wampum inlay, traces of paint
L: 48; W: 15

Ex: Cabinet of Curiosities of the Library of the Abbaye de Ste-Genevieve, Paris, before 1688.
Bibliothèque Ste-Genevieve, Paris. 1943.128

This club was illustrated in an engraving of Pere Claude de Molinet's *Cabinet of Curiosities* prepared in 1688 and published in 1692. It was probably in the collection of Nicolas Claude Fabri de Peiresc, who died in 1637. (Christian Feest: personal communication) making it one of the earliest clubs collected from north-eastern North America. The chip carving, inlaid wampum, and cross motif on the face of the ball are characteristic of historic-period Iroquoian art.

datable to the 17th century. Most are richly inlaid with shell and wampum beads, and the balls on several are carved as anthropomorphic heads with long-tailed animals on the top; the handles are carved as human ears. Although it has been suggested that this club probably was collected among the Delaware by Swedish immigrants to New Jersey, the wampum inlay, together with iconographic and stylistic similarities to Iroquois effigy pipes and



▲ **W 42 False Face mask**

Iroquois (Six Nations), late 19th century
Wood, paint, brass sheet metal, animal teeth, wire, nail, cheesecloth, tobacco (?), hide thongs, string
L: 32 (mask)

Ex: Chiefswood. Donated by Miss E.H.C. Johnson, 1922.
Courtesy of the Royal Ontario Museum, Toronto. HD 12635

The stylistic versatility of the Iroquois carver is seen in the masks used by the False Face Society: These masks represent spirits of the forest that were commanded by the Creator to lend their healing power to human beings. They are portrayed in a plastic and expressionistic style quite unlike the restrained naturalism that marks effigy clubs and utensils. Sharp contrasts are set up between concave and convex forms, smooth surface and deeply grooved wrinkles, and the shiny metal insets against the darkened wood.

