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File No. Dossier 45-CDA-I3-I-3-LUBICON LAKE BAND
Volume I From-De 84-11-15 To-À 85-03-31
VOLS ACCESSION NO. 29792

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DEPARTMENT
OF
EXTERNAL AFFAIRS

MINISTÈRE
DES
AFFAIRES ÉTRANGÈRES

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-PLAINTES AUX NATIONS
UNIES AU SUJET DES VIOLATIONS AU CANADA-
LUBICON LAKE BAND

Retention period-Période de retention:

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Government of Canada
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DATED FROM À COMPTER DU	84-11-15	TO JUSQU'AU	85-03-31
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FOR SUBSEQUENT CORRESPONDENCE SEE - POUR CORRESPONDANCE ULTÉRIEURE VOIR	
FILE NO. - DOSSIER N° 45-CDA-13-1-3- Lubicon Lake Band	VOLUME 2



Department of Justice
Canada

Ministère de la Justice
Canada

Ottawa, Canada
K1A 0H8

March 22, 1985

ACC	DOSSIER
45-Cda-13-1-3 - Lubicon Lake Band. 45	

copy to mu/cation
to W.F.
file on

-COA-13-1-3
Lubicon Lake

Mrs. Colleen Swords
Legal Operations Division
JLO
Tower C, 7th Floor
Department of External Affairs
125 Sussex Drive
Ottawa, Ontario
K1A 0G2

Dear Mrs. Swords:

Re: Lubicon Lake Band: Communications 167/1984

I refer to our recent conversation about the status of this matter.

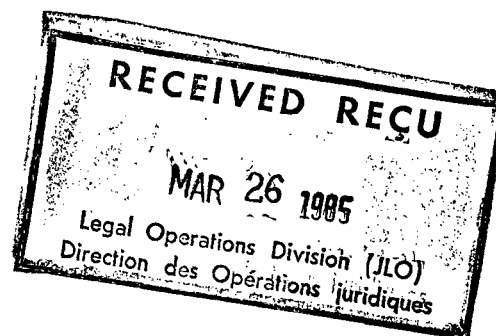
On March 14, 1985, the Supreme Court of Canada denied the Band leave to appeal against the refusal of an interlocutory injunction pending the resolution of its litigation.



s.23

Yours sincerely,

D. Martin Low
General Counsel
Human Rights Law
/be



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

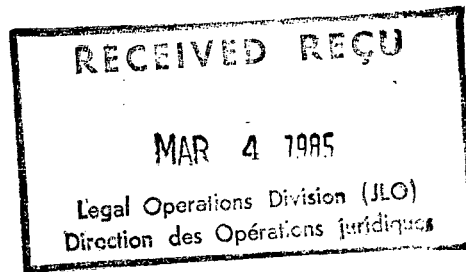
TO
A The Permanent Mission of Canada to the
United Nations, New York (PRMNY)

ATT: J.P. Carrier

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WITHOUT ATTACHMENT(S) / SANS ANNEXE(S)
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NO. JLO-0235 DATE 13 FEB 85

QUANTITY QUANTITÉ	DESCRIPTION - DESCRIPTION	REFERENCE - RÉFÉRENCE
1	envelop containing memorandum to file JLO-1837 of 27 DEC 1984 re: Human Rights Committee: Complaint against Canada by the Lubicon Band and Chief Bernard Ominayak	45-Cda-13-1-3 Lubicon Lake Band



MISSION OF CANADA				
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RECEIPT ACKNOWLEDGED / ACCUSER RÉCEPTION

Feb 21/85

DATE

SIGNATURE

RETURN TO / RETOURNER À

C. Swords
Legal Operations Division (JLO)
OTTAWA

file
06

45-CD-13-1-3-~~1-3-1-3~~

KL DATE

Lubicon

Crombie to brief mediator in Lubicon territory dispute

By BARRY NELSON

Special to The Globe and Mail

CALGARY — Indian Affairs and Northern Development Minister David Crombie is to meet former Conservative cabinet minister E. Davie Fulton in Ottawa today to discuss his appointment as a federal envoy charged with helping resolve an Indian land claim involving thousands of square miles of territory and billions of dollars in oil and gas revenue.

The meeting was announced by a spokesman for Ronald Doering, Mr. Crombie's chief of staff.

Both Milton Pahl, Alberta's Minister of Native Affairs, and Kenneth Staroszik, a Calgary lawyer representing the Lubicon Indian band, said yesterday they are pleased with Mr. Fulton's appointment.

Since September, 1982, members of the Cree Indian community at Lubicon Lake, 120 kilometres northwest of Peace River, have been fighting a legal battle to halt the extensive oil and gas exploration taking place throughout a 2,331-square-kilometre area surrounding the lake.

In a suit naming the Alberta Government and 10 large oil companies as defendants, the Indians

are also asking the courts to rule that the province has no right to allow resource development of any kind throughout a larger 22,000-square-kilometre area they claim as their traditional hunting and trapping territory.

On Jan. 11, the Alberta Court of Appeal upheld an earlier Court of Queen's Bench refusal to grant an injunction halting the resource exploration and development that the Lubicon Indians say is destroying their livelihood by harming hunting, fishing and trapping in the area.

Mr. Staroszik said documents were being filed yesterday that will allow him to speak to the Supreme Court of Canada on Feb. 18, seeking permission to appeal the Alberta Court of Appeal decision.

Because of the massive stakes involved in ownership of the northern Alberta land, which is attracting a significant portion of new resource activity in the province, the parties involved have all assumed that the issue will eventually be argued in the Supreme Court of Canada.

The Lubicon band, with the help of other Indian bands across Canada, is financing its legal battle, which could cost more than \$1-million.

The Globe and Mail - 29 Jan 85



FILE

TO/À • SIS
FROM/DE • JLO

REFERENCE •
RÉFÉRENCE

SUBJECT • Indigenous Populations - Commission on
SUJET • Human Rights (CHR)

Security/Sécurité
RESTRICTED
Accession/Référence 416747
File/Dossier 45-Cda-13-1-3 - Lubicon Lake Band
Date January 23, 1985
Number/Numéro JLO-0122

ENCLOSURES
ANNEXES

DISTRIBUTION

IMU

You requested some information on individual complaints before the Human Rights Committee related to indigenous populations as background material for the CHR

2. Meetings of the Human Rights Committee during which communications under the Optional Protocol are examined are closed to the public. It is the practice of the Government of Canada to respect the confidentiality of this procedure by not commenting publicly on the specifics of individual cases while they are before the Committee.

3. The Committee considers complaints in a two step process. Step one: admissibility; step two: on the merits. At the admissibility stage, questions such as exhaustion of domestic remedies are considered. If the Committee considers at the admissibility stage that criteria for their consideration of a complaint are met, the case moves on to stage two when the substance of the violation is considered. Generally the Human Rights Committee publishes all cases when a ruling is made on the merit. The Committee's decision on some cases, with the name of the complainant deleted are published at the admissibility stage. Until the publication of a decision, the complaint is treated as confidential by the Committee.

4. With this background in mind the following is a brief summary of complaints made to the Committee that relate to indigenous population questions.

1. Lubicon Lake Band

Complaints: Chief Ominayak and the Lubicon Lake Band
Alleged violation: Article 1 of the International Covenant on Civil and Political Rights (ICCPR) on the right to self-determination and the right to dispose of natural wealth and the right not to be deprived of its means of subsistence.

Status: complaint sent to Canada on November 21, 1984.

Government response on admissibility due January 21, 1985 will be late. Department of Justice is drafting in consultation with External Affairs and IANA.

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RESTRICTED

2. Sappier - Nadeau

Complainant: Mrs. Laura Sappier Nadeau
Alleged violation: Article 12(1)(b) of Indian Act violates Articles 2(1), 3, 23(i), 23(4), 26 and 27 of ICCPR.
Status: still at admissibility stage. Canadian government forwarded its response on admissibility on August 23, 1983. Committee asked Nadeau to supply more information which she has not done. Her lawyer (Noel Kinsella) has privately indicated he is awaiting results of amendments to 12(1)(b) Indian Act before pursuing case.

3. Sappier Sisson

Complainant: Mrs. Paula Sappier Sisson
Alleged violation: Same as Nadeau
Status: Canadian government response on admissibility forwarded to Committee in April 1984.
Same pending status as Nadeau.

4. Denny

Complainant: Alexander Denny (of Mikmaq tribe)
Alleged violation: Article 1 self-determination.
Status: original communication submitted September 30, 1980.
Committee declared complaint inadmissible in August 1984 on basis Denny had not sufficiently established his representative status on behalf of Mikmaq tribe.

Denny's legal representative is now asking Committee to reconsider case on admissibility. Committee asked Canadian government to comment on this request before end of January. Canadian government has not made any comment.

5. Lovelace

Complainant: Sandra Lovelace
Alleged violation: Same as Nadeau and Sisson.
Status: Committee ruled in July 1981 that Canada violated Article 27 of the ICCPR by virtue of the fact Article 12(1)(b) of the Indian Act prevented Lovelace from living on the reserve.

Canada submitted information in the summer of 1983 to the Committee on the measures it was taking to remedy the breach.

5. In our opinion, it would not be proper for the Canadian delegation at the CHR to comment, even in exercising a right of reply on the specific substance of complaints (1) through (4) above. Complaint (5) has been made public and could be commented on. If statements are made or questions asked about complaints (1) through (4) the proper approach would be to indicate that it

-3-

RESTRICTED

is not the practise of the Canadian government to comment on cases pending before the Committee. At the same time the delegation can provide whatever comments are relevant on issues related to complaints (e.g. whatever measures the Canadian government is taking to amend Article 12(1)(b) of the Indian Act without specifically relating it to the Nadeau or Sisson cases.



Philippe Kirsch
Director
Legal Operations Division



JLO/C.SWORDS/6-5407/oc

TO/À • FILE (through JCD and P. Kirzsch)
FROM/DE • JLO

REFERENCE •
RÉFÉRENCE

SUBJECT • Human Rights Committee: Complaint against
SUJET • Canada by the Lubicon Band
and Chief Bernard Ominayak

Security/Sécurité CONFIDENTIAL
Accession/Référence 402206
File/Dossier 45-CDA-13-1-3 - Lubicon
Date 27 December 1984
Number/Numéro JLO-1837

ENCLOSURES
ANNEXES

DISTRIBUTION

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SIS
IMU

INTRODUCTION

A meeting of officials of the Department of Justice, Secretary of State, Indian and Northern Affairs and External Affairs (JLO and IMU) was held on December 11, 1984 to discuss possible approaches to the Canadian Government response to the complaint of the Lubicon Lake Band before the Human Rights Committee. The complaint is important domestically and internationally as it submits that the right to self-determination in article 1 of the International Covenant on Civil and Political Rights (ICCPR) extends to Indian land rights and that Canada has violated that right.

After discussion, it was concluded that a draft memorandum to Ministers would be prepared by the Department of Justice outlining options with respect to the Government's response. One option would be recommended.

In addition, it was clear that whatever the content of our response, it would not be possible to complete it before the deadline of January 21, 1985. IMU, as the division responsible for complaints to the Human Rights Committee, undertook to send a telex to Geneva requesting that the Centre for Human Rights be informed that the Canadian response would be delayed.

BACKGROUND

The complaint of Chief Ominayak and the Lubicon Lake Band against Canada was forwarded by the Centre for Human Rights by diplomatic Note of November 21, 1984. The Canadian reply on admissibility is due on January 21, 1985. The complaint, which is well drafted, alleges violations by Canada of paragraph 1-3 of Article 1 of the ICCPR.

Article 1 states:

1. All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

CONFIDENTIAL

- 2 -

2. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.
3. The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.

It is alleged that the Government of Canada is violating article 1(1) more particularly by allowing the Provincial Government of Alberta to expropriate the territory of the Lubicon Lake Band for private corporation enterprise. It is alleged that the Government of Canada is violating article 1(2) by allowing energy exploration in the Lubicon Lake area. Finally, it is alleged that the Government of Canada is violating article 1(3) by damaging the environment and thereby undermining the Band's economic base.

The first stage after receipt by a State party of an individual from the Human Rights Committee is normally the "admissibility" stage.

Pursuant to its Rule of Procedure 90, the Human Rights Committee considers at the admissibility stage the following issues:

1. With a view to reaching a decision on the admissibility of a communication, the Committee shall ascertain:
 - (a) that the communication is not anonymous and that it emanates from an individual, or individuals, subject to the jurisdiction of a State party to the Protocol;
 - (b) that the individual claims to be a victim of a violation by that State party of any of the rights set forth in the Covenant. Normally, the communication should be submitted by the individual himself or by his representative; the Committee may, however, accept to consider a communication submitted on behalf of an alleged victim when it appears that he is unable to submit the communication himself;
 - (c) that the communication is not an abuse of the right to submit a communication under the Protocol;
 - (d) that the communication is not incompatible with the provisions of the Covenant;
 - (e) that the same matter is not being examined under another procedure of international investigation or settlement;

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(f) that the individual has exhausted all available domestic remedies.

2. The Committee shall consider a communication, which is otherwise admissible, whenever the circumstances referred to in article 5 (2) of the Protocol apply.

With respect to the Lubicon Lake Band complaint, the primary heading that the Canadian government would argue at the admissibility stage would be that the complainant has not exhausted domestic remedies. In fact, an action started in April 1980 by the Lubicon Lake Band in the Federal Court of Canada for a declaratory judgement is still pending. However, the complainant has anticipated this argument. Article 5(2) (b) of the Optional Protocol states that domestic remedies need not be exhausted when "the application of the remedies is unreasonably prolonged". The complainant alleges it will be at least 5 years before the case in the Federal Court is decided. This allegation is not entirely unfounded although some of the reason for the delay can be attributed to ongoing negotiations between the federal and provincial governments and the tribe to reach an amicable settlement. The Indian and Northern Affairs Department representative at the meeting indicated that a possible settlement was not based solely on the legal issues involved but also attempted to deal with broader social and cultural questions.

With this factual background, the inadmissibility argument that the complainant has failed to exhaust domestic remedies is not a guaranteed winner. In addition, a complete presentation of this argument might jeopardize the ongoing negotiations between the Lubicon Lake Band and the Governments of Alberta and Canada.

Another domestic dimension of the question is the upcoming First Ministers' Conference on aboriginal rights scheduled for April 1985. The Department of Justice is

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Since the Human Rights Committee meets at the end of March 1985, a Canadian response in January would be sent to the complainant in February and might be released by the complainant at a time close to the First Ministers' Conference. (The Human Rights Committee treats communications as confidential but a complainant could release material related to the complaint).

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CONFIDENTIAL

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OPTION 1

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With these considerations in mind, the preference
of the Department of Justice



One advantage to this proposal is that it deals with a relatively technical aspect of the complaint at a sensitive time domestically and leaves more time for ongoing negotiations to reach a mutually agreeable solution. One disadvantage or advantage depending on the outcome would be that it would force the Committee to rule whether it considers itself competent to hear complaints under the Optional Protocol with respect to article 1 of the ICCPR.

OPTION 2

At the meeting, we raised a concern that presenting the Committee solely with a purely technical (albeit valid and interesting legally) argument might lead them, out of sympathy for the factual situation, to rule against Canada on the technical question in order to hear more of the Canadian government's position on the facts of the case. We therefore suggested that our submission deal with the jurisdiction question, but with an added gloss of some constructive ambiguity. For example, our submission could specifically leave open the possibility of the Committee deferring its ruling on the jurisdiction question until after it had received submissions on the admissibility (exhaustion of domestic remedies) or substantive questions. This might lessen the risk of the Committee ruling against Canada on the technical jurisdiction question out of a desire to hear more of this particular case. A ruling against Canada on the jurisdiction question would have a major impact on possible future claims against Canada by any number of Indian bands.

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CONFIDENTIAL

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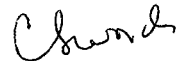
OPTION 3

One final option, of course would be to make a submission based on the jurisdictional argument as well as the admissibility question combined.

Option two appeared to find most favour at the meeting. The Departments of Justice and Indian and Northern Affairs consider that their Minister's need to be informed and presented with the options outlined above together with a recommendation in favour of option 2.

CONCLUSION

1. Option 2 is sound and is the preferred choice.
2. In view of the intense domestic activity on the related issue of Native Self-Government in general and ongoing negotiations on this specific claim, this Department should defer to the decision of the Departments of Justice and Indian and Northern Affairs on the approach at this stage of the complaint.
3. The SSEA's interest in the strategy to be followed in approaching the Canadian Government response is minimal and therefore we intend to recommend to IMU that the SSEA's approval need not be sought to any of the three options above.



Colleen Swords



External Affairs Canada / Affaires extérieures Canada

Accession/Référence 368 797
File/Dossier 45-COA-13-1-3-
Lubicon Lake Band.

MESSAGE

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SECURITY SÉCURITÉ	R E S T R I N T	14 DEC 84 20 51 12 10
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TO/À	A GENEV	
INFO	INFO JUSTOTT/LOW SECSTATEHULL/NOLAN INAOTT	
DISTR		
REF	DISTR JLO SIS	
SUBJ/SUJ	<p>---COMITE DES DROITS DE L HOMME: CAS LUBICON LAKE BAND 167/1984</p> <p>APPRECIERIONS QUE VOUS COMMUNIQUEZ AU SECRETARIAT DES NU (CENTRE DES DROITS DE L HOMME) NOTE SUIVANTE EN REPONSE A SA NOTE G/SO/ 215/51 CANA (38) 167/1984 DU 21 NOVEMBRE 1984.</p> <p>2.HABITUEL DEBUT PUIS:CIT A L HONNEUR DE LUI FAIRE PART QUE LE GOUVERNEMENT DU CDA NE SERA PAS EN MESURE DE LUI FOURNIR POUR LE 21 JANVIER 1985 LES INFORMATIONS ET OBSERVATIONS REQUISES PAR LE SECRETARIAT-GENERAL DES NATIONS-UNIES DANS SA NOTE G/SO 215/51 CANA (38) DU 21 NOVEMBRE 1984 CONCERNANT LA COMMUNICATION NO 167/1984 SOUMISE PAR LES MEMBRES DE LA LUBIKON LAKE BAND, ET CE EN RAISON DU RALENTISSEMENT DES ACTIVITES GOUVERNEMENTALES DURANT LA PERIODE DES FETES DE NOEL ET DU NOUVEL AN.FINCIT SECOND PARA CIT LE GOUVERNEMENT DU CANADA COMMUNIQUERA AU SECRETARIAT DES NATIONS-UNIES SA PREPONSE SUR LA RECEVABILITE DE CETTE COMMUNICATION AUSSITOT QUE POSSIBLE FINCIT FIN HABITUELLE.</p> <p>3.POUR VOTRE INFO SEULEMENT:CETTE COMMUNICATION POSE PLUSIEURS DIFFICULTES SUR LA SCENE DOMESTIQUE Y COMPRIS LE FAIT QUE CELLE-CI COINCIDE AVEC LA TENUE D UNE CONFERENCE CONSTITUTIONNELLE SUR LES</p> <p>...2</p>	

DRAFTER/RÉDACTEUR JACQUELINE CARON/mp	DIVISION/DIRECTION IMU	TELEPHONE 2-80404	APPROVED/APPROUVÉ R.M. MIDDLETON
SIG			SIG <i>[Signature]</i>

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DROITS ABORIGENES AU CDA EN AVRIL 85 SOIT IMMEDIATEMENT APRES
L ENVOI A LA BANDE PAR LE SECRETARIAT DE LA REPONSE CDNE

IMU/Jacqueline Caron/2-8040/mp

FILE/CIRC/DIV/DIARY/WFILE

IMU-2690

Ottawa (Ontario)
K1A 0G2

Le 1 décembre 1984

Madame Collin Swords
Direction des opérations
juridiques
Ministère des Affaires
extérieures

ACC	AL	ALC
369805		
FILE	DOSSIER	

45-00A-13-13 - Lubicon Lake Band.

Chère Madame,

... Vous trouverez ci-joint copie de la note diplomatique adressée à notre Mission permanente à Genève par le Secrétariat des Nations Unies (Centre des Droits de l'homme), se référant à une décision du Comité des droits de l'homme en date du 9 novembre 1984, et concernant la communication numéro 167/1984 soumise par M. Bernard Ominayak chef de la Bande de Lubicon Lake, et ce, en vertu de l'article 2 du Protocole facultatif au Pacte International sur les droits civils et politiques ainsi que copie des documents relatifs à ce cas transmis au Comité par la partie plaignante.

Vous noterez que le Comité demande une réponse du Gouvernement Canadien sur la recevabilité de cette communication pour au plus tard le 21 janvier 1985. Compte tenu du délai très court qui nous est imparti et de la période des fêtes qui ralentira les activités gouvernementales, nous avons suggéré à M. Martin Low de convoquer une rencontre. Nous avons proposé le mardi 11 décembre 1984 comme date possible pour la tenue de ladite rencontre. Le Ministère de la Justice devrait nous contacter au cours des prochains jours pour infirmer ou confirmer la présente suggestion.

Veillez agréer, chère madame, l'expression de nos sentiments distingués.

Original signé par J.D. Puddington

J.D. Puddington
Directeur intérimaire
Direction des Affaires
des Nations Unies

IMU/Jacqueline Caron/2-8040/mp

FILE/CIRC/DIV/DIARY/WFILE

IMU-2689

ACC	369803
FILE	45-00A-13-1-3-Lubicon
DOSSIER	Lake Band.

Ottawa (Ontario)

K1A 0G2

Le 1 décembre 1984

Monsieur W.L. Lord
Direction de la politique
et des programmes sociaux
Ministère des Affaires
extérieures

Cher Monsieur,

... Vous trouverez ci-joint copie de la note diplomatique adressée à notre Mission permanente à Genève par le Secrétariat des Nations Unies (Centre des Droits de l'homme), se référant à une décision du Comité des droits de l'homme en date du 9 novembre 1984, et concernant la communication numéro 167/1984 soumise par M. Bernard Ominayak chef de la Bande de Lubicon Lake, et ce, en vertu de l'article 2 du Protocole facultatif au Pacte International sur les droits civils et politiques ainsi que copie des documents relatifs à ce cas transmis au Comité par la partie plaignante.

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Veuillez agréer, cher monsieur, l'expression de nos sentiments distingués.

Original signé par J.D. Puddington

J.D. Puddington
Directeur intérimaire
Direction des Affaires
des Nations Unies

IMU/Jacqueline Caron/2-8040/mp

FILÉ/CIRC/DIV/DIARY/WFILE

IMU-2691

Ottawa (Ontario)
K1A 0G2

Le 1 décembre 1984

Monsieur Richard Nolan
Directeur
Droits de la personne
Édifice Jules Léger
Terrasses de la Chaudière
15, rue Eddy
Hull (Ontario)
K1A 0M5

369 802
FILE
45-00A-13-1-3-Lubicon Lake
Band.

Cher Monsieur,

... Vous trouverez ci-joint copie de la note diplomatique adressée à notre Mission permanente à Genève par le Secrétariat des Nations Unies (Centre des Droits de l'homme), se référant à une décision du Comité des droits de l'homme en date du 9 novembre 1984, et concernant la communication numéro 167/1984 soumise par M. Bernard Ominayak chef de la Bande de Lubicon Lake, et ce, en vertu de l'article 2 du Protocole facultatif au Pacte International sur les
... droits civils et politiques ainsi que copie des documents relatifs à ce cas transmis au Comité par la partie plaignante.

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.../2

- 2 -

rencontre. Nous avons proposé le mardi 11 décembre 1984 comme date possible pour la tenue de ladite rencontre. Le Ministère de la Justice devrait nous contacter au cours des prochains jours pour infirmer ou confirmer la présente suggestion.

Veillez agréer, cher monsieur, l'expression de nos sentiments distingués.

Original signé par J.D. Puddington

J.D. Puddington
Directeur intérimaire
Direction des Affaires
des Nations Unies

IMU/Jacqueline Caron/2-8040/mp

DISTR: SWORDS/JLO

FILE/CIRC/DIV/DIARY/WFILE

IMU-2679

Ottawa (Ontario)
K1A 0G2

Le 30 novembre 1984

Monsieur D. Martin Low
Avocat général
Droits de la personne
Ministère de la
Justice Canada
Immeuble Justice - pièce 601
Rues Kent et Wellington
Ottawa (Ontario)
K1A 0H8

ACC	369807
FILE	45-CD-13-1-3-Lubicon Lake Band

Cher Monsieur,

Vous trouverez ci-joint copie de la note diplomatique adressée à notre Mission permanente à Genève par le Secrétariat des Nations Unies (Centre des Droits de l'homme), se référant à une décision du Comité des droits de l'homme en date du 9 novembre 1984, et concernant la communication numéro 167/1984 soumise par M. Bernard Ominayak chef de la Bande de Lubicon Lake, et ce, en vertu de l'article 2 du Protocole facultatif au Pacte International sur les droits civils et politiques.

Vous noterez que le Comité demande une réponse du Gouvernement Canadien sur la recevabilité de cette communication pour au plus tard le 21 janvier 1985. Compte tenu du délai très court qui nous est imparti et de la période des fêtes qui ralentira les activités gouvernementales, nous apprécierions que vous prévoyiez une rencontre qui réunirait les principaux fonctionnaires intéressés des ministères de la Justice, du Secrétariat d'État, des Affaires indiennes et du Nord et des Affaires extérieures. Si mardi le 11 décembre 1984, vous convenait, nous aurions eu le temps, alors, de prendre connaissance des documents et d'avoir une première idée du cas. Nous attendons votre confirmation.

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- 2 -

Vous trouverez aussi annexés à la présente, deux exemplaires des documents relatifs à ladite communication: une à l'usage de votre ministère et une que nous vous prions de transmettre à votre contact aux ministère des Affaires indiennes et du Nord. Déjà le Secrétariat d'État et les différentes directions intéressées des Affaires extérieures auront reçu copie desdits documents.

Veuillez agréer, cher monsieur, l'expression de mes sentiments distingués.



H.W. Richardson
Directeur intérimaire
Direction des Affaires
des Nations Unies

with the
compliments of

avec les
compliments de

D. Martin Low

General Counsel
Human Rights Law Section

Avocat général
Droits de la personne



Department of Justice
Canada

Ministère de la Justice
Canada

Ottawa, Canada
K1A 0H8

Ottawa, Canada
K1A 0H8

Canada

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Department of External Affairs



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FOR BICO
Ministère des Affaires extérieures

30 Nov 1984

ACC	REL	DATE
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FILE	DOSSIER	
45-Cda-13-1-3-		
Lubicon Lake Band		

RECEIVED
REC
JUSTICE OF TAWA

Ottawa (Ontario)
K1A 0G2

Le 30 novembre 1984

RECEIVED REÇU

NOV 5 1984

Legal Operations Division (JLO)
Direction des Opérations juridiques

Monsieur D. Martin Low
Avocat général
Droits de la personne
Ministère de la
Justice Canada
Immeuble Justice - pièce 601
Rues Kent et Wellington
Ottawa (Ontario)
K1A 0H8

RECEIVED - REÇU
GENERAL COUNSEL AVOCAT GÉNÉRAL
NOV 30 1984 7797
HUMAN RIGHTS LAW SECTION DROITS DE LA PERSONNE

Cher Monsieur,

... Vous trouverez ci-joint copie de la note diplomatique adressée à notre Mission permanente à Genève par le Secrétariat des Nations Unies (Centre des Droits de l'homme), se référant à une décision du Comité des droits de l'homme en date du 9 novembre 1984, et concernant la communication numéro 167/1984 soumise par M. Bernard Ominayak chef de la Bande de Lubicon Lake, et ce, en vertu de l'article 2 du Protocole facultatif au Pacte International sur les droits civils et politiques.

Vous noterez que le Comité demande une réponse du Gouvernement Canadien sur la recevabilité de cette communication pour au plus tard le 21 janvier 1985. Compte tenu du délai très court qui nous est imparti et de la période des fêtes qui ralentira les activités gouvernementales, nous apprécierions que vous prévoyiez une rencontre qui réunirait les principaux fonctionnaires intéressés des ministères de la Justice, du Secrétariat d'État, des Affaires indiennes et du Nord et des Affaires extérieures. Si mardi le 11 décembre 1984, vous convenait, nous aurions eu le temps, alors, de prendre connaissance des documents et d'avoir une première idée du cas. Nous attendons votre confirmation.

.../2

- 2 -

... Vous trouverez aussi annexés à la présente, deux exemplaires des documents relatifs à ladite communication: une à l'usage de votre ministère et une que nous vous prions de transmettre à votre contact aux ministère des Affaires indiennes et du Nord. Déjà le Secrétariat d'État et les différentes directions intéressées des Affaires extérieures auront reçu copie desdits documents.

Veillez agréer, cher monsieur, l'expression de mes sentiments distingués.



H.W. Richardson
Directeur intérimaire
Direction des Affaires
des Nations Unies

RECEIVED REÇU

MEMORANDUM/NOTE DE SERVICE

DEC 3 1984

Legal Operations Division (JLO)
Direction des Opérations juridiques

CONFIDENTIAL *classé*

File number - numéro de dossier

A-3
45-CDA-13-1-3-LUBICON

45-CDA-13-1-3-DENNY

November 28, 1984

TO/A:

John C. Tait, A.D.M.
Public Law

FROM/DE:

D. Martin Low, General Counsel
Human Rights Law Section

SUBJECT/OBJET:

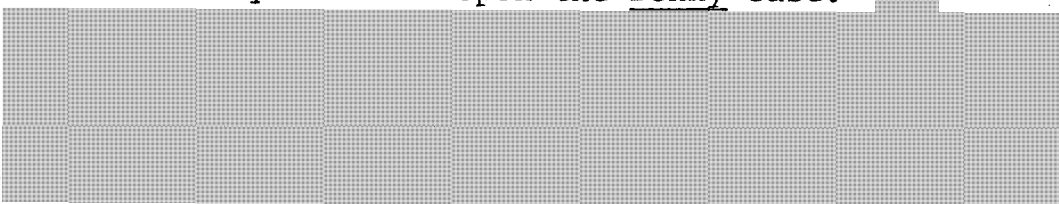
Lubicon Lake Band: Communication to the UNHRC

Comments/Remarques

You will have received a telex on this matter, in which the Lubicon Lake Band is alleging a breach of Article 1 of the International Covenant on Civil and Political Rights, which deals with self-determination. The case was raised with me when I was in Geneva earlier this month by Mr. Moller, the Secretariat official responsible for Communications to the Committee and by Mr. Tomuschat, the expert from the Federal Republic of Germany and Sir Vincent Evans, the expert from the UK.

Denny
The telex also mentions the Denny case and the relationship between the cases by the Committee should be understood. As you know, the Committee declared the Denny case to be inadmissible last August, because it was not convinced that Mr. Denny was the properly authorized representative of the Micmac Band. It did not deal in substance with any of the allegations about self-determination that were raised by Mr. Denny.

The Committee has had the Lubicon Lake Band's Communication for a considerable period of time but had been slow to forward it to us because the Committee felt that there was some prospect that the issues would be resolved by the Denny case. It was indicated to me that the Committee would likely proceed with the Lubicon Lake case because Denny had been resolved without touching the substance and it was thought the Committee would have serious difficulty in accepting the request by Mr. Denny to reopen his case. I see from the telex that this has come to pass and that the Committee is asking for our views about the request to reopen the Denny case.



s.23

- 2 -

Comments/Remarques

In dealing with the Lubicon Lake case, both Mr. Tomuschat and Sir Vincent indicated that

[REDACTED]

[REDACTED]

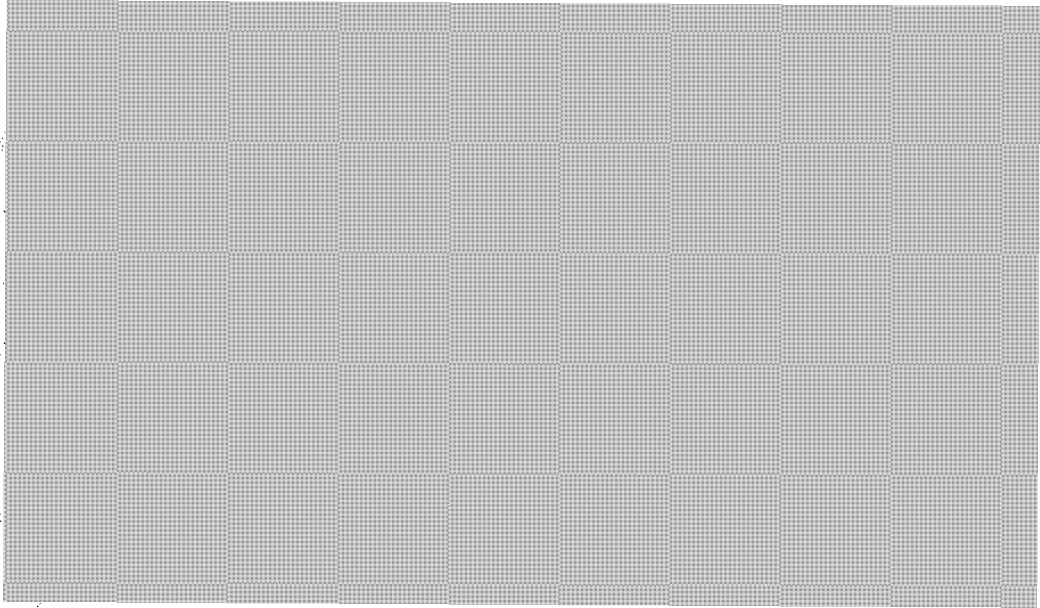
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[REDACTED]

s.23

- 3 -

Comments/Remarques



s.23


D. Martin Low

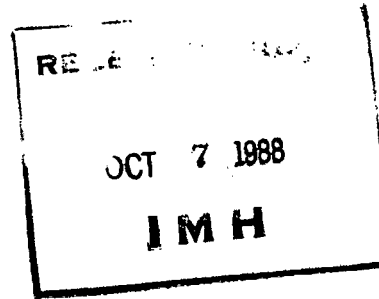
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Copy: Pierre Gravelle
Fred Caron
Clovis Demers
Jim Lahey
Dick Nolan
Colleen Swords
Philippe Kirsch

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**ACTION
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---DECLARATION D INDEPENDANCE DES CRIS DU LUBICON

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Vol:11

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OFFICE DES NATIONS UNIES A GENÈVE



UNITED NATIONS OFFICE AT GENEVA

Télégrammes : UNATIONS, GENÈVE

Télex : 28 96 96

Téléphone : 34 60 11 31 02 11

RÉF. N°: G/SO 215/51 CANA (38)
(à rappeler dans la réponse) 167/1984

Palais des Nations

CH - 1211 GENÈVE 10

The Secretary-General of the United Nations presents his compliments to the Permanent Representative of Canada to the United Nations Office at Geneva and has the honour to transmit herewith the text of a decision adopted by the Working Group of the Human Rights Committee on 9 November 1984, concerning communication No. 167/1984, submitted to the Committee under the Optional Protocol to the International Covenant on Civil and Political Rights by Bernard Ominayak, Chief of the Lubicon Lake Band (assisted by J. Lefevre).

In conformity with paragraph 1 of this decision, the Secretary-General has also the honour to transmit herewith, under rule 91 of the provisional rules of procedure of the Committee, the text of the communication in question (initial letter dated 14 February 1984), requesting from His Excellency's Government information and observations relevant to the question of admissibility of the communication.

This request for information and observations does not imply that any decision has been reached on the question of admissibility of the communication.

The information and observations from His Excellency's Government should reach the Human Rights Committee, in care of the Centre for Human Rights, United Nations Office at Geneva, within two months of the date of this note, that is not later than 21 January 1985.

21 November 1984 

**PACTE
INTERNATIONAL
RELATIF AUX
DROITS CIVILS
ET POLITIQUES**



Distr.
RESTREINTE*

CCPR/C/WG/23/D/167/1984
12 novembre 1984

FRANCAIS
Original : ANGLAIS

COMITE DES DROITS DE L'HOMME
Vingt-troisième session
Groupe de travail

DECISIONS

Communication No 167/1984

Présentée par : Bernard Ominayak, Chef de la Lubicon Lake Band, assisté de M. J. Lefevre

Au nom des : Membres de la Lubicon Lake Band

Etat partie concerné : Canada

Date de la communication : 14 février 1984

Références : Décision antérieure - néant

Le Groupe de travail du Comité des droits de l'homme, réuni le 9 novembre 1984,
décide :

1. Que la communication sera transmise, en vertu de l'article 91 du règlement intérieur provisoire, à l'Etat partie concerné; et que celui-ci sera prié de soumettre des renseignements et observations se rapportant à la question de la recevabilité de la communication;
2. Que l'Etat partie sera informé que ses renseignements et observations devront parvenir au Comité des droits de l'homme, par l'intermédiaire du Centre pour les droits de l'homme, Office des Nations Unies à Genève, dans les deux mois qui suivront la date de la lettre qui lui sera adressée;
3. Que le Secrétaire général transmettra aussitôt que possible à l'auteur de la communication tous les renseignements ou observations reçus, pour lui permettre de soumettre des commentaires à leur sujet, s'il le désire. Les commentaires éventuels de l'auteur devront parvenir au Comité des droits de l'homme, par l'intermédiaire du Centre pour les droits de l'homme de l'Office des Nations Unies à Genève, dans les quatre semaines qui suivront la date de la lettre de transmission;
4. Que le texte de la présente décision sera communiqué à l'Etat partie et à l'auteur de la communication.

* / Chacun est prié de respecter strictement le caractère confidentiel du présent document.



**INTERNATIONAL
COVENANT
ON CIVIL AND
POLITICAL RIGHTS**



Distr.
RESTRICTED */

CCPR/C/WG/23/D/167/1984
12 November 1984

Original: ENGLISH

HUMAN RIGHTS COMMITTEE
Twenty-third session
Working Group

DECISIONS

Communication No. 167/1984

Submitted by: Bernard Ominayak, Chief of the Lubicon Lake Band (assisted by J. Lefevre)

Alleged victims: The Lubicon Lake Band

State party concerned: Canada

Date of communication: 14 February 1984

Documentation references: Prior decision - none

The Working Group of the Human Rights Committee meeting on 9 November 1984, decides:

1. That the communication be transmitted, under rule 91 of the provisional rules of procedure, to the State party concerned, requesting information and observations relevant to the question of admissibility of the communication;
2. That the State party be informed that its information and observations should reach the Human Rights Committee in care of the Centre for Human Rights, United Nations Office at Geneva, within two months of the date of the request;
3. That the Secretary-General transmit any information or observations received to the author of the communication as soon as possible to enable him to comment thereon if he so wishes. Any such comments should reach the Human Rights Committee in care of the Centre for Human Rights, United Nations Office at Geneva, within four weeks of the date of transmittal;
4. That this decision be communicated to the State party and the author.

*/ All persons handling this document are requested to respect and observe its confidential nature.

GE.84-18371

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Document disclosed under the Access to Information Act
Document divulgué en vertu de la Loi sur l'accès à l'information

INTERNATIONAL INDIAN TREATY COUNCIL
UNITED NATIONS OFFICE
777 UNITED NATIONS PLAZA, SUITE 10F
NEW YORK, NEW YORK 10017
TELEPHONE: (212) 986-6000

167/1984

February 14, 1984

Chairman
The Human Rights Committee
c/o The Center for Human Rights
United Nations
New York, NY 10017

Dear Chairman:

The International Indian Treaty Council respectfully submits to you the enclosed Communication of Chief Bernard Ominayak and the Lubicon Lake Band for consideration by the Human Rights Committee under Article 2 of the Optional Protocol to the International Covenant on Civil and Political Rights.

This Communication evidences the violation, by the Government of Canada, of the Lubicon Lake Band's rights to determine its political status, pursue its economic, social and cultural development, dispose of its natural wealth and resources, and fundamentally, its right to the physical means for subsistence and the exercise of self-determination. These violations contravene Canada's obligations under Articles 1(1), 1(2), and 1(3) of the International Covenant on Civil and Political Rights. Canada, a Party to the Optional Protocol, recognizes the competence of the Committee to receive and consider Communications from representatives of individuals and groups within its jurisdiction.

With assurances of our highest respect.

Respectfully yours,

William A. Means
William A. Means
Executive Director

WAM/js1

COMMUNICATION OF

CHIEF BERNARD OMINAYAK AND THE LUBICON LAKE BAND TO THE HUMAN RIGHTS COMMITTEE

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COMMUNICATION OF
CHIEF BERNARD OMINAYAK AND THE LUBICON LAKE BAND TO THE HUMAN RIGHTS COMMITTEE

This communication is submitted pursuant to Article 2 of the Optional Protocol to the International Covenant on Civil and Political Rights. It is authored by the International Indian Treaty Council at the request of Chief Bernard Ominayak and the Cree Band¹ of the Lubicon Lake in Alberta, Canada.

The International Indian Treaty Council is a Non-Governmental Organization in Category II Consultative Status with the Economic and Social Council. The IITC was founded in 1974 at a congress of Indian Nations from throughout the Western Hemisphere. It offers representation to Indigenous Peoples who wish to inform the United Nations of violations of their human rights.

Chief Ominayak is leader and representative of the Lubicon Lake Band, who are Cree Indians living within the borders of Canada, in the Province of Alberta. They are subject to the jurisdiction of the Federal Government of Canada in accordance with a fiduciary relationship assumed by the Canadian government with respect to Indian Peoples and their lands located within Canada's national borders.²

The Lubicon Lake Band is a self-identified, relatively autonomous, socio-cultural and economic group. They have continuously inhabited, hunted, trapped and fished a 25,000 square mile area in Northern Alberta since time immemorial. Their territory is relatively isolated and inaccessible. As a result, they have, until recently, had little contact with non-Indian society. Band members speak Cree as their primary language. Many do not speak, read or write English. The majority of their food and the furs they sell for income are obtained by hunting and trapping. The Band has and continues to maintain its traditional culture, religion, political structure and subsistence economy.

1. Band is the term most commonly used in the Canadian domestic system to refer to a socio-political unit of Indian people.
2. The Indian Act of Canada, Can. Rev. Stat. c.I-6(1970).

LEGAL BASIS FOR THE OMINAYAK-LUBICON LAKE BAND CLAIM

This communication is directed against the Federal Government of the State of Canada.

Articles of the International Covenant on Civil and Political Rights violated are:

Article 1(1)

Canada is violating the Lubicon Lake Band's right to freely determine its political status and to pursue its economic, social and cultural development, as guaranteed by Article 1(1) and affirmed in Canada's domestic laws and Indian Treaties.

The Canadian Government, through the Indian Act of Canada¹ and Treaty 8, entered with Indian Bands in Northern Alberta, pledged responsibility to the original inhabitants of that area and recognized their right to continue their traditional way of life. Despite these laws and agreements, the Federal Government of Canada has allowed the Provincial Government of Alberta to expropriate the territory of the Lubicon Lake Band for the benefit of private corporate interests. In so doing Canada refuses to recognize the Lubicon Lake Band's explicitly stated desire to continue its own social, political, and economic practices within a portion of its aboriginal territory.

Article 1(2)

Canada stands in violation of Article 1(2) in so far as that Article grants all peoples the right to dispose of their natural wealth and resources for their own ends.

1. Can. Rev. Stat. c.I-6 (1970)

The energy exploration currently being allowed in the area of Lubicon Lake is clearly intended to accrue to the benefit of the energy corporations rather than to the People of Lubicon Lake.

Article 1(3)

Canada is denying the People of Lubicon Lake the physical means for exercising the self-determination they have enjoyed since time immemorial, and the continuation of which is guaranteed by Article 1(3).

Physical destruction of the environment and deliberate efforts to undermine the Band's economic base have accompanied energy exploration in the area, thus depriving the Band of any means by which to subsist on its own.

DOMESTIC REMEDIES

Article 5(2)(b) of the Optional Protocol provides that the requirement that domestic remedies be exhausted "...shall not be the rule where the application of the remedies is unreasonably prolonged." This exception should be applied to the Lubicon Lake case.

The Lubicon Lake Band has, for several years, been pursuing its claims through domestic political and legal avenues. However, given the complexity of the issues it is possible for such proceedings to continue indefinitely. And if development continues at its current rate in their territory, the Band will not survive-physically or as a social entity - for more than another year or two.

Furthermore, it is clear from the facts set forth below that the domestic political and legal process is being used by officials and energy corporation representatives to thwart and delay the Band's actions until, ultimately the Band becomes incapable of pursuing them.

A. Caveat Under Provincial Land Titles Act

On October 27, 1975, representatives of the Lubicon Lake Band filed with the Registrar of the Alberta (Provincial) Land Registration District, a request for a caveat which would give notice to all parties dealing with the caveated land of their assertion of aboriginal title. This procedure was provided for in the Provincial Land Titles Act.

On December 15, 1975, the Provincial Registrar referred the request for a caveat to the Supreme Court of Alberta. The Court received arguments on behalf of the Provincial Government, contesting the caveat, and on behalf of the Lubicon Lake Band and other interested Bands in the area, supporting the caveat. The primary issues raised were:

- (1) whether aboriginal title was proven, and
- (2) whether the caveat was appropriate if aboriginal title was proven.

On September 7, 1976, the Provincial Attorney General filed an application with the Supreme Court of Alberta for a postponement in the hearing of the caveat case, pending resolution of a similar case being tried in the Northwest Territories (the Paulette Case). The application was granted.

On March 25, 1977, while the caveat case was still on hold in the Supreme Court, the Attorney General of Alberta introduced an amendment to the Land Title Act into the Provincial Legislature. The amendment precluded the filing of caveats on unpatented Crown land and was made retroactive to January 13, 1975, in Northern Alberta, thus predating the filing of the caveat involving the Lubicon Lake Band.

The amendment passed and the Supreme Court hearings on the caveat were dismissed as moot.

B. Action in the Federal Court of Canada

On April 25, 1980, the Lubicon Lake Band filed an action in the Federal

¹
Court of Canada. They requested a declaratory judgement concerning their rights to their land, its use, and the benefits of its natural resources. The claim is based on relevant provisions of Treaty 8, aboriginal land (or Indian) rights, the Indian Oil and Gas Act, and the British North American Act of 1930.

Joined as defendants were the Federal Government of Canada, the Province of Alberta, and several energy corporations. On jurisdictional grounds, the Court dismissed the claim as against the Provincial Government and all energy corporations except Petro-Canada. The claim was allowed to stand with the Federal Government and Petro-Canada as defendants.

This case is still pending and is expected to continue for at least five years.

C. Action in the Provincial Court of Alberta

On February 16, 1982, representatives of the Lubicon Lake Band filed an action in the Court of Queen's Bench of Alberta. ² Joined as defendants are several energy corporations and the Province of Alberta.

The bases and provisions of the claim are similar to those set forth in the Federal Court. In this second action, however, the Band requested an interim injunction to halt development in the area until a decision on their land and natural resource claims is rendered.

On November 17, 1983, the Court dismissed the application for an interim injunction. ³ Among the effects of the Court's decision are the following:

- 1) the legal rights claimed by the Lubicon Lake Band constitute a serious issue.
- 2) However, the fact that the aboriginal and treaty rights of the aboriginal peoples of Canada is now a constitutionally enshrined

1. Appendix No. 1.
2. Appendix No. 2.
3. Appendix No. 3.

right has no practical significance in the context of protecting such rights from damage or destruction.

- 3) The Lubicon Lake Band's loss of their way of life can be compensated in money damages. However, the loss of oil company profit cannot be so compensated. Thus the Indians will not suffer irreparable harm if no injunction is granted but the oil companies would suffer irreparable harm if an interim injunction is granted.
- 4) The Indians, being poor and thus unable to provide a financial underwriting to the oil companies for damages are not entitled to an injunction.
- 5) Alberta is free to continue its action in disposing of the disputed land, claimed by the Band as an Indian Reserve (or land they are entitled to select as a Reserve), thus making it unavailable as an Indian Reserve for them in the future.

On January 6, 1984, the Court rendered its decision concerning costs in the above proceedings. In essence, the Judge decreed that the Band is liable for all costs associated with the hearing, including fees for the defendant's¹ witnesses and attorneys.

OTHER INTERNATIONAL PROCEDURES

This matter has not been submitted for examination under another procedure of international investigation or settlement.

-
1. Appendix No. 4.

FACTS

Pursuant to its fiduciary relationship with the Indian Peoples of Canada, the Federal Government has set aside tracts of land as Reserves, protected by federal law, for the use of Indian Groups officially recognized by Canada. These Reserves serve two purposes. Initially, the land was set aside and grants of use made, by Treaty, to compensate Indian Peoples for land taken through and as a result of colonial settlement. These rights and obligations are affirmed in Canada's Constitution and elaborated in its statutory and case law. The Reserves also provide, at least in theory, the means for Indian Peoples to continue as semi-autonomous political and socio-economic units.

Canada officially recognized the People of Lubicon Lake as a distinct Band of Cree Indians in 1939, with entitlements arising under Treaty 8 (the Treaty covering the relevant territory of Northern Alberta). Among these entitlements is the right to a Federal Reserve.

The site for a Reserve was identified and approved by both the Federal Department of Indian Affairs and the Band in 1939. Approval from the Province of Alberta came in 1940.¹ The area was set aside as a provisional Reserve, with permanent Reservation status to be conferred upon the conclusion of a geographic survey establishing the precise boundaries.

A register of the Lubicon Lake Band was drawn up in 1939. The register was used to determine the area of the provisional Reserve and to identify individuals with entitlements arising under Treaty 8. However, given the isolation of their territory, the majority of Band members were not located by officials compiling the register. As a result, the membership list was left open, with the understanding that the amount of Reserve land would be

1. These events have been documented through official communications, primarily those of the Federal Department of Indian Affairs. Sources will be provided upon request.

increased as so-called absentees were added.

In 1942, the Federal Department of Indian Affairs revised its policies concerning official recognition of membership in Indian Bands. Band membership lists were closed and names added after January 1, 1912 were stricken, including over half of the members of the Lubicon Lake Band identified in 1939. Unregistered individuals were designated "non-Indian" or "half-breed", thus precluding them from Treaty rights and federal entitlements available to those holding Indian status.

The Federal Reserve, which was to have been set aside at Lubicon Lake has yet to be established. As a direct result of the Federal Government's failure to designate such a Reserve, Band members are excluded from Treaty 8 and federal entitlements and the Band's territory has become vulnerable to development and exploitation by energy corporations.

In 1953, following inquiries made by energy corporations concerning petroleum in the Lubicon Lake area, the Provincial Government of Alberta assumed jurisdiction of the provisional reserve territory. Subsequently, the Provincial Government began granting leases for oil and gas exploration and development. No provision has been made to pay royalties to the people at Lubicon Lake.

In 1973, the Provincial Government undertook construction of an all-weather road through the Lubicon Lake Band's territory. In 1980, dozens of energy corporations began moving into the area, building more roads, cutting seismic lines, drilling wells and laying pipelines.

The energy corporations' construction workers are destroying traps, which the people at Lubicon Lake rely upon for meat and furs. The Provincial Forestry Service has allowed fires in the area to go unchecked, thus destroying traplines and hunting areas. The Provincial Fish and Wildlife Service is ex-

propriating the Band's trapline routes and fencing them off for use as private oil company roads. And Band members have been told by local merchants that the Fish and Wildlife Service is discouraging merchants from trading with Indians in the area.

This activity has virtually destroyed the Lubicon Lake Band's economic base.¹ The development activity has and continues to cause a great deal of damage to the land and has scared away most of the game animals on which the people at Lubicon Lake rely for subsistence. Moose, the primary source of meat, has virtually disappeared from the area. Through 1982, the Band's moose-kill was averaging between 100 and 120 moose per season (July to November). In 1983, the Band was able to kill only three moose. Revenues from trapping, the Band's central income-generating activity, have fallen by more than 50%.

With the loss of its traditional economic base, the Lubicon Lake Band is faced with extinction as a People. The pattern and results of many other essentially similar situations demonstrate that the destruction of the economic base of small-scale societies is followed by irreversible deterioration of the political and social structure.²

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1. Appendix No. 5.
 2. Appendix No. 6.

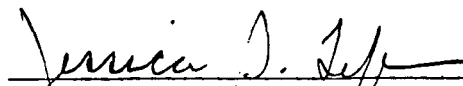
The author of this communication is prepared to provide further information or clarification which may be desired, and reserves the right under Provisional Rule 93(3) to submit additional information and observations after receiving the reply of the government of Canada.

Submitted by:



Bernard Ominayak
Chief of the Lubicon Lake Band
Little Buffalo Lake
Alberta Canada

Prepared with the assistance of:



Jessica S. Lefevre, Esq.
International Indian Treaty Council
777 United Nations Plaza
New York, NY 10017

TRIAL DIVISION

Appendix No. 1

B E T W E E N:

THE LUBICON LAKE BAND, a body of
Indians recognized under the
Indian Act, of Little Buffalo Lake,
Alberta

-and-

CHIEF BERNARD OMINAYAK, chief of
the Lubicon Lake Band, of Little Buffalo
Lake, Alberta

-and-

BILLY JOE LABOUCAN, band councillor of the
Lubicon Lake Band and education worker, of
Little Buffalo Lake, Alberta

-and-

LARRY OMINAYAK, band councillor of the Lubicon
Lake Band and coordinator of community workers,
of Little Buffalo Lake, Alberta

-and-

EDWARD LABOUCAN, trapper, of Little
Buffalo Lake, Alberta

SUING PERSONALLY AND ON BEHALF OF ALL
THE MEMBERS OF THE LUBICON LAKE BAND
AND OF THE CREE COMMUNITY OF LITTLE
BUFFALO LAKE;

PLAINTIFFS

A N D:

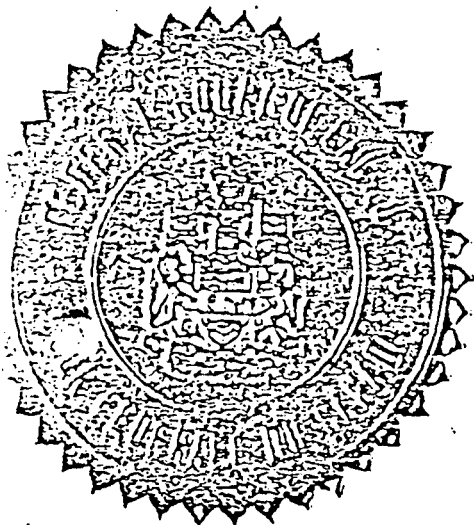
HER MAJESTY THE QUEEN IN RIGHT OF
CANADA, Parliament Buildings, Ottawa,
Ontario

-and-

HER MAJESTY THE QUEEN IN RIGHT OF THE
PROVINCE OF ALBERTA, Legislature Building,
Edmonton, Alberta

-and-

PETRO-CANADA, a corporation duly incorporated
by Act of the Parliament of Canada, having
its head office at 407 - 2nd Street S.W.,
Calgary, Alberta and a place of business
at 350 Sparks Street, Ottawa, Ontario



-and-

PETRO-CANADA EXPLORATION INC., a corporation duly incorporated, having its head office at 407 - 2nd Street S.W., Calgary, Alberta.

-and-

IMPERIAL OIL LIMITED, a corporation duly incorporated, having its head office at 111 St. Clair Avenue West, Toronto, Ontario and a place of business at 500 - 6th Avenue S.W., Calgary, Alberta

-and-

ESSO RESOURCES CANADA LIMITED, a corporation duly incorporated, having a place of business at 500 - 6th Avenue S.W., Calgary, Alberta

-and-

SHELL CANADA LIMITED, a corporation duly incorporated, having its head office at 505 University Avenue, Toronto, Ontario and a place of business at 400 - 4th Avenue S.W., Calgary, Alberta

-and-

SHELL CANADA RESOURCES LIMITED, a corporation duly incorporated, having a place of business at 400 - 4th Avenue S.W., Calgary, Alberta

-and-

UNO-TEX PETROLEUM CORPORATION, a corporation duly incorporated, having its head office at 2101 - 500 - 4th Avenue S.W., Calgary, Alberta

-and-

UNION OIL COMPANY OF CANADA LIMITED, a corporation duly incorporated, having its head office at 355 - 8th Avenue S.W., Calgary, Alberta

-and-

AMOCO CANADA PETROLEUM COMPANY LTD., a corporation duly incorporated, having its head office at 444 - 7th Avenue S.W., Calgary, Alberta and a place of business at 2010 - 65 Queen Street West, Toronto, Ontario

-and-

NUMAC OIL & GAS LTD., a corporation duly incorporated, having its head office at 9915 - 108th Street, Edmonton, Alberta;

DEFENDANTS .

D E C L A R A T I O N

FILED at Ottawa, this 25th day of April, 1980.

PLAINTIFFS DECLARE:

1. Plaintiff the Lubicon Lake Band is a body of Indians under the Indian Act of Canada and it is composed of a distinct group of indigenous Cree Indians who have occupied the area described in paragraph 8 hereof since time immemorial;

2. All of the individual Plaintiffs and the persons they represent have identical and common interests in the present proceedings;

3. That individual Plaintiffs sue personally and as representatives of all members of the Lubicon Lake Band and of all persons of Cree ancestry who form part of the Cree community of Little Buffalo Lake;

4. That individual Plaintiffs have been authorized to so act in a representative capacity by the persons they represent in the present action, and a reference to "individual Plaintiffs" herein shall designate Plaintiffs individually as well as the persons they represent;

5. Individual Plaintiffs are all Indians within the meaning of section 91(24) of the British North America Act and Indians within the meaning of the British North America Act, 1930;

6. Approximately one-half of individual Plaintiffs are "treaty" Indians and registered under the Indian Act and entitled to invoke rights, benefits, and privileges under Treaty No. 8 of June 21, 1899 and adhesions thereto as well as the personal and usufructuary rights and the Indian title mentioned herein;

7. Approximately one-half of individual Plaintiffs are "non-treaty", unregistered, or non-status Indians, half-breeds or Metis of Cree ancestry entitled to invoke the personal and usufructuary rights and the Indian title mentioned herein;

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8. That all individual Plaintiffs are inhabitants of northern Alberta and they have personal and usufructuary rights, including hunting, fishing, and trapping rights and other rights over, in and under at least all of the area of land situated in the Province of Alberta between approximately parallels 55°30' and 58° of latitude north and meridians 114° to 118° west, the said area being indicated by hatched lines on a copy of a map produced herein as Exhibit P-1;

9. That Plaintiff the Lubicon Lake Band and all of the individual Plaintiffs still have Indian title over the said area indicated in Exhibit P-1 as well as land claims and rights within the meaning of, and recognized by, the Indian Oil and Gas Act;

10. That individual Plaintiffs presently inhabit, use, and exercise, and they and their predecessors in title have exercised on a continuous basis their rights in the said area according to the traditional aboriginal way of life which is based primarily upon hunting, fishing, and trapping and many individual Plaintiffs, treaty and non-treaty, still have registered traplines in the area;

11. That the area described in paragraph 8 hereof was included in a wider area which was the object of Treaty No. 8 of June 21, 1899 and adhesions thereto executed between Her Majesty the Queen in Right of Canada and certain Cree, Beaver, and Chipewyan and other Indians;

12. That the said Treaty No. 8 purported to effect a surrender and cession by the bands and Indians who were party thereto to the Government of the Dominion of Canada of all rights, titles and privileges whatsoever to the lands described in the said Treaty, including the area indicated in Exhibit P-1, as well as to all other lands in the Dominion of Canada;

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13. That under the said Treaty No. 8, Her Majesty the Queen agreed that the said Indians who were parties to the Treaty would retain the right to hunt, trap and fish subject to certain conditions;

14. That under the said Treaty No. 8, Her Majesty the Queen also agreed and undertook to lay aside reserves for such bands as desire same on the basis of one square mile for each family of five (5) and to provide land in severalty to the extent of one hundred and sixty acres to each Indian for such families or individual Indians as may prefer to live apart from band reserves, subject to certain conditions respecting the selection of lands, the surrender of lands and the appropriation of lands;

15. That the said Treaty No. 8 also provided for other rights and benefits in favour of the Indians party thereto;

16. That the said Treaty No. 8 also contemplated, with their consent, the surrender of rights by, and the conferring of rights and benefits upon, persons of Indian ancestry known as half-breeds or Metis;

17. That Plaintiff the Lubicon Lake Band existed as a group of Indians at the time of execution of the said Treaty No. 8, although it was only formally recognized as an Indian band under the Indian Act in or about 1940 and it was not a party to said Treaty No. 8 at the time of its execution;

18. That subsequently Defendant Her Majesty the Queen in Right of Canada recognized certain members of Plaintiff the Lubicon Lake Band as parties to said Treaty No. 8 entitled to rights and benefits under said Treaty No. 8 and said Defendant has since paid annuity and other benefits under said Treaty No. 8 to such band members;

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19. That Plaintiff the Lubicon Lake Band and the individual Plaintiffs who have become parties to or covered by said Treaty No. 8 to date are presently entitled to the rights and benefits specified therein and particularly to the setting aside of a reserve of land of at least forty (40) square miles within the areas traditionally used by them, or alternatively, to land in severalty in an area of at least fifty (50) square miles, within the same areas;

20. That consequently the rights of said Plaintiffs to said reserves or Indian lands affect and condition the title to all of the lands indicated in Exhibit P-1 and the natural resources in and on such lands;

21. That in any event at least all of individual Plaintiffs who are not party to the said Treaty No. 8 nor covered by it still have Indian title and personal and usufructuary rights in, over, and on all the lands indicated in Exhibit P-1 and the natural resources thereof, which Indian title and personal and usufructuary rights have not been affected nor extinguished but rather acknowledged and recognized by, inter alia, the Indian Oil and Gas Act;

22. That furthermore the Plaintiffs mentioned in paragraph 19 hereof are also entitled to invoke Indian title and personal and usufructuary rights in respect to said lands and to have said Treaty No. 8 declared inoperative and invalid in respect to the surrender of their rights in land and in respect to alleged extinguishment of their claims, at least until the fulfilment by Defendant Her Majesty the Queen in Right of Canada of her obligations thereunder;

23. That the rights of Plaintiffs are recognized by the British North America Act, 1930 (20-21 George V, c. 26) in virtue of which the Agreement dated December 14, 1929 between the Government of the Dominion of Canada and the Government of the Province of Alberta (known as the Alberta Natural Resources Agreement) was confirmed and given the force of law;

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24. That in Section 1 of the said Agreement respecting Alberta, the interest of the Crown in all Crown lands, mines, minerals (precious and base) and royalties derived therefrom within the province were stipulated to belong to the Province of Alberta, subject to any trusts existing in respect thereof and to any interest other than that of the Crown in same;

25. That the rights and Indian title of Plaintiffs, particularly those Plaintiffs described in paragraph 7 hereof, are a trust and an interest other than that of the Crown in Crown lands within the meaning of said Section 1, and have the effect of making the lands subject to such rights and title "Lands reserved for the Indians" within the meaning of Section 91(24) of the British North America Act until such title and rights are extinguished;

26. That furthermore under Section 2 of the said Agreement respecting Alberta, the Province of Alberta is obliged to carry out in accordance with the terms thereof every contract to purchase or lease any Crown lands, mines or minerals and every other arrangement whereby any person has become entitled to any interest therein as against the Crown;

27. That consequently Defendant Her Majesty the Queen in Right of the Province of Alberta has obliged herself by said Section 2 to fulfil the treaty land obligations of Defendant Her Majesty the Queen in Right of Canada in favor of certain Plaintiffs and to recognize and to give effect to the claims and rights of Plaintiffs which were recognized, inter alia, in the Imperial Order-in-Council of June 23, 1870 respecting the admission of Rupert's Land and the North-Western Territory into the Union and legislation subsequent thereto, including the several Dominion Lands Acts, and by the execution of various treaties;

28. That furthermore under the said Agreement respecting Alberta, the Province of Alberta is obliged, upon the request of the Superintendent General of Indian Affairs, to set aside out of the unoccupied Crown lands transferred to its administration, such further areas

as the said Superintendent General may, in agreement with the appropriate Minister of the Province, select as necessary to enable Canada to fulfil its obligations under the treaties with the Indians of the Province and such areas shall thereafter be administered by Canada in the same way in all respects as if they had never passed to the Province under the provisions of the said Agreement;

29. That the personal and usufructuary rights of Plaintiffs as well as the treaty rights of certain Plaintiffs are rights under the exclusive legislative jurisdiction of the Parliament of Canada which have been acknowledged and recognized by federal executive acts and federal legislation, including the Indian Oil and Gas Act and the several Dominion Lands Acts;

30. That the Province of Alberta and Defendant Her Majesty the Queen in Right of the Province of Alberta cannot affect the Indian title and the personal and usufructuary rights of Plaintiffs and the treaty rights of certain of the Plaintiffs or otherwise deal with them;

31. That the Indian title and the said personal and usufructuary rights of Plaintiffs have never been extinguished nor surrendered by them nor by their predecessors in title and they are still subsisting;

32. That the rights of Plaintiffs include the exclusive use and enjoyment of the land and of the natural resources of the land described in paragraph 8 hereof, including the minerals, oil, gas, petroleum, and other hydrocarbons in, under or upon the lands subject to their Indian title and personal and usufructuary rights;

33. That until the extinguishment or surrender of the said title and rights of Plaintiffs, the lands over and in respect to which they have such title and personal and usufructuary rights, indicated in Exhibit P-1, are "Lands reserved for the Indians" within the meaning of Section 91(24) of the British North America Act and such lands and rights fall under the Department of Indian Affairs and Northern Development Act;

34. That moreover, the entitlement of certain Plaintiffs to a reserve or to land in severalty constitutes an indivisible burden, charge, or encumbrance on all of the lands indicated in Exhibit P-1 and makes them indivisibly subject to federal jurisdiction in this regard;

35. That Defendant Her Majesty the Queen in Right of the Province of Alberta has purported in respect to the lands and natural resources so subject to the Indian title and personal and usufructuary rights of Plaintiffs, to grant and has purportedly granted to Defendants Petro-Canada, Petro-Canada Exploration Inc., Imperial Oil Limited, Esso Resources Canada Limited, Shell Canada Limited, Shell Canada Resources Ltd., Uno-tex Petroleum Corporation, Union Oil Company of Canada Limited, Amoco Canada Petroleum Company Ltd., and Numac Oil & Gas Ltd. individually and jointly various petroleum, oil, gas, natural gas, and oil sands leases, permits and licences;

36. The said Defendant corporations have in virtue of the purported gas and oil leases extracted minerals, oil, gas, hydrocarbons, and other natural resources from the lands and the subsurface of the lands which are subject to the said rights of Plaintiffs;

37. That pursuant to the said leases, permits and licences, works have been carried out, oil and gas wells have been exploited and resources extracted from the said area indicated in Exhibit P-1 and oil and gas and other resource revenues have been obtained and received in virtue of the said exploitation by the said Defendant corporations and royalties paid to said Defendant Her Majesty the Queen in Right of the Province of Alberta in consequence thereof;

38. That the said works and exploitation of natural resources have interfered with and caused prejudice to Plaintiffs and their rights and all future works and exploitations will cause further

prejudice to Plaintiffs and affect and continue to affect adversely their rights and way of life;

39. That the said leases, permits and licences and the granting and exercising of rights thereunder are unconstitutional, illegal, null and of no effect;

40. That the said leases, permits and licences given by said Defendant Her Majesty the Queen in Right of the Province of Alberta to said Defendant corporations constitute an illegal and unconstitutional appropriation and expropriation of the rights of Plaintiffs without any compensation and without any just and equitable indemnity;

41. That Plaintiffs have received no monies, no compensation and no benefits from the said exploitation of the natural resources and no compensation for the interference with their said rights;

42. That Plaintiffs are entitled to a share of all revenues and royalties contemplated by paragraph 37;

43. That Defendants Her Majesty the Queen in Right of the Province of Alberta and Defendant corporations have refused to recognize the said rights of Plaintiffs;

44. That in any event Defendant Her Majesty the Queen in Right of Canada is obliged to set aside reserves or lands in severalty for certain of Plaintiffs immediately to the extent described in said Treaty No. 8 and Defendant Her Majesty the Queen in Right of the Province of Alberta is obliged to set aside immediately the lands required to enable said Defendant Her Majesty the Queen in Right of Canada to fulfil her obligations under the said Treaty No. 8;

45. That subsidiarily any rights of Defendant Her Majesty the Queen in Right of the Province of Alberta and Defendant corporations to the lands, minerals and oil and gas and hydrocarbons and other natural resources in the lands in the said area indicated in Exhibit P-1 are subject to the entitlement and rights of certain Plaintiffs to the said Treaty rights and benefits;

46. That, moreover, said Treaty No. 8 did not effect a surrender or extinguishment of rights in land or of subsurface resources in the said area indicated in Exhibit P-1, which rights condition and take precedence over any rights of all of the Defendants in respect to the land and the said subsurface resources;

47. That even if the said Treaty No. 8 applied to all the Plaintiffs, the said Treaty No. 8 should be declared to be null and void and not binding upon Plaintiffs in view of the breach by Her Majesty the Queen in Right of Canada of her obligations thereunder and in view of the breaches by Defendant Her Majesty the Queen in Right of Canada and Defendant Her Majesty the Queen in Right of the Province of Alberta of the statutory obligations provided for in the said British North America Act, 1930 and in the said Agreement respecting Alberta;

48. That consequently all Plaintiffs should be declared to have subsisting Indian title and personal and usufructuary rights which cannot be affected by, and which take precedence over, provincial legislation and acts, rights, and agreements thereunder until the legal extinguishment or surrender of Plaintiffs' Indian title and rights;

49. That furthermore, the land claims of Plaintiffs in the said area indicated in Exhibit P-1 have not been settled and under the Indian Oil and Gas Act (23 Eliz. II, c. 15), the rights of Plaintiffs in the said area are deemed not to have been abrogated;

50. That Plaintiffs are entitled to be paid royalties in respect to all revenues obtained by Defendants from the exploitation of the area indicated in Exhibit P-1 or, alternatively, a share of such revenues;

51. That it is also appropriate for this Honourable Court to order an accounting of all revenues contemplated by the immediately preceding paragraph;

52. That it is further appropriate that Defendant Her Majesty the Queen in Right of Canada be declared to be in breach of her obligations to those certain Plaintiffs contemplated by Treaty No. 8 and that Defendant Her Majesty the Queen in Right of Canada be declared to be in breach of her obligations as trustee of Plaintiffs;

53. That consequently, said Plaintiffs who are contemplated by such Treaty No. 8 are entitled to a declaration by this Honourable Court that all the lands forming part of the area described in paragraph 8 hereof are subject to the obligations of Defendants Her Majesty the Queen in Right of Canada and Her Majesty the Queen in Right of the Province of Alberta to set aside from the said area for the benefit of Plaintiffs the lands required to satisfy the land entitlements of Plaintiffs under Treaty No. 8 and that, pending such setting aside of reserves, the said lands and the resources are subject to the rights and interests of Plaintiffs as a burden on such lands and the resources thereof;

54. That it is also appropriate that this Honourable Court declare that the Indian title and personal and usufructuary rights of Plaintiffs comprise the right to the exclusive use and enjoyment of the oil sands, -oil, gas, hydrocarbons, and natural resources in, over, and under the lands subject to the Indian title and personal and usufructuary rights of Plaintiffs;

55. That it is further expedient that until the extinguishment of the rights of all Plaintiffs, Defendants be ordered to pay to Plaintiffs the royalties provided for in virtue of the Indian Oil and Gas Act;

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56. That if the Indian title and personal and usufructuary rights of Plaintiffs be declared by this Honourable Court to have been extinguished, that Plaintiffs be declared to be entitled to compensation in respect thereof in the amount of one billion dollars (\$1,000,000,000);

57. That it is further expedient that Defendant Her Majesty the Queen in Right of Canada be ordered to take all measures necessary to prevent further encroachments upon the rights of Plaintiffs by the other Defendants and to take the necessary measures to safeguard the rights of Plaintiffs;

58. That Plaintiffs reserve all other rights and recourses;

59. That Plaintiffs invoke all presumptions of fact and of law in their favour;

60. That Plaintiffs' action is well founded in fact and in law.

THE PLAINTIFFS THEREFORE CLAIM AS FOLLOWS:

THAT their action be maintained and that by judgment to be rendered herein, this Honourable Court declare that the Plaintiffs have subsisting Indian title, including personal and usufructuary rights over, in, and under all lands and natural resources situated in the Province of Alberta between approximately parallels 55°30' and 58° of latitude north and meridians 114° to 118° west;

THAT the said Indian title and rights of Plaintiffs in the said lands and natural resources be declared to be under exclusive federal jurisdiction;

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THAT such Indian title, including personal and usufructuary rights, be declared by judgment herein to comprise the exclusive use and enjoyment of all oil, gas, hydrocarbons, oil sands and other natural resources in, over, and under the lands so subject to their said title and rights;

THAT all oil, gas, petroleum, oil sands, and hydrocarbons leases, permits and licences heretofore granted in the said area by Defendant Her Majesty the Queen in Right of the Province of Alberta to Defendant corporations be declared unconstitutional, illegal, null, void, and of no effect;

THAT said Treaty No. 8 of June 21, 1899, and adhesions, be declared not to have effected a surrender of the said title and rights of any of the Plaintiffs;

THAT Defendants be condemned to pay Plaintiffs royalties in the amount of one eighth (1/8) of the revenues from all oil, gas, hydrocarbons, oil sands, and other natural resources extracted from the said area described above by them from the date of extraction until April 22, 1977 and from said date to the date of the judgment herein, the royalties in favor of Indians provided for in the said Indian Oil and Gas Act;

THAT Defendants be condemned to pay to Plaintiffs all revenues from the lease or other use of the said area described above;

THAT if the Indian title and personal and usufructuary rights of Plaintiffs be declared by this Honourable Court to have been extinguished that Plaintiffs be declared to be entitled to compensation for such extinguishment in the amount of one billion dollars (\$1,000,000,000) and that Defendants be condemned jointly and severally to pay Plaintiffs the said amount of one billion dollars (\$1,000,000,000);

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THAT Defendant Her Majesty the Queen in Right of Canada be declared to be in breach of her obligations to Plaintiffs under the British North America Act, 1930 and in breach of her obligations to certain of the Plaintiffs under Treaty No. 8 and be declared to be in breach of trust as trustee of Plaintiffs;

THAT Defendant Her Majesty the Queen in Right of the Province of Alberta be declared to be in breach of her obligations under the British North America Act, 1930 and in breach of the Indian Oil and Gas Act and of the Department of Indian Affairs and Northern Development Act and be declared to have illegally granted oil, gas, petroleum and oil sands leases, permits and licences in the said area to the Defendant corporations;

THAT Defendants Her Majesty the Queen in Right of Canada and Her Majesty the Queen in Right of the Province of Alberta be ordered to take the measures necessary to set aside immediately as Indian lands for the benefit of certain Plaintiffs the lands and reserves, including the natural resources thereof, necessary to enable Her Majesty the Queen in Right of Canada to fulfil her obligations to certain of the Plaintiffs under Treaty No. 8 in the said area described above;

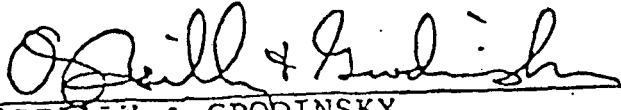
THAT Defendants be condemned jointly to pay costs, including the costs of all surveys, experts, expertise and exhibits, as well as interest, on all the amount to which Plaintiffs are declared to be entitled in virtue of the present judgment from the date of such entitlement.

MONTREAL, this 25th day of April, 1980.

(S) O'REILLY & GRODINSKY

O'REILLY & GRODINSKY
Attorneys for Plaintiffs

CERTIFIED TRUE COPY


O'REILLY & GRODINSKY
Attorneys for Plaintiffs

N O T I C E

TO: HER MAJESTY THE QUEEN IN RIGHT OF CANADA
Parliament Buildings
Ottawa, Ontario

AND: HER MAJESTY THE QUEEN IN RIGHT OF THE
PROVINCE OF ALBERTA
Legislature Building
Edmonton, Alberta

AND: PETRO-CANADA
407, 2nd Street S.W.
Calgary, Alberta

AND: PETRO-CANADA EXPLORATION INC.
407, 2nd Street S.W.
Calgary, Alberta

AND: IMPERIAL OIL LIMITED,
500 - 6th Avenue S.W.
Calgary, Alberta

AND: ESSO RESOURCES CANADA LIMITED
500 - 6th Avenue S.W.
Calgary, Alberta

AND: SHELL CANADA LIMITED
400 - 4th Avenue S.W.
Calgary, Alberta

AND: SHELL CANADA RESOURCES LIMITED
400 - 4th Avenue S.W.
Calgary, Alberta

AND: UNO-TEX PETROLEUM CORPORATION
2101 - 500 - 4th Avenue S.W.
Calgary, Alberta

AND: UNION OIL COMPANY OF CANADA LIMITED
355, 8th Avenue S.W.
Calgary, Alberta

AND: AMOCO CANADA PETROLEUM COMPANY LTD.
444 - 7th Avenue S.W.
Calgary, Alberta

AND: NUMAC OIL & GAS LTD.
9915 - 108th Street
Edmonton, Alberta

You are required to file in the Registry of
the Federal Court of Canada, at the City of Ottawa or at a
local office, your defence to the within statement of

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claim or declaration within 30 days (or such other time as may be fixed by an order for service ex juris or other special order) from the service hereof in accordance with the Rules of Court.

If you fail to file your defence within the time above limited, you will be subject to have such judgment given against you as the Court may think just upon the Plaintiffs' own showing.

Note (1) Copies of the Rules of Court, information concerning the local offices of the Court, and other necessary information may be obtained upon application to the Registry of this Court at Ottawa -- telephone 992-4238 -- or at any local office thereof.

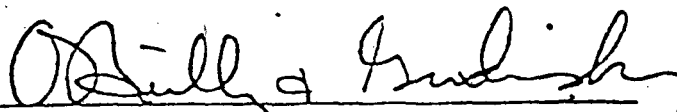
(2) This declaration is filed by O'Reilly & Grodinsky of 245 St-Jacques Street, 4th floor, Montreal, Quebec H2Y 1M6, attorneys for the Plaintiffs.

MONTREAL, this 25th day of April, 1980.

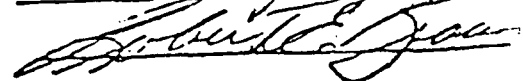
(S) O'REILLY & GRODINSKY

Attorneys for Plaintiffs
O'REILLY & GRODINSKY
245 St-Jacques Street
4th floor
Montreal, Quebec
H2Y 1M6

CERTIFIED TRUE COPY


Attorneys for Plaintiffs
O'REILLY & GRODINSKY

I HEREBY CERTIFY that the above document is a true copy of the original filed of record in the Registry of The Federal Court of Canada the 25th day of April A.D. 19 80
Dated this 25th day of April 19 80



Robert E. Brown
Deputy Clerk of Process 000063

IN THE COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL DISTRICT OF CALGARY

BETWEEN:

CHIEF BERNARD OMINAYAK, chief of the
Lubicon Lake Band, of Little Buffalo
Lake, Alberta

-and-

BILLY JOE LABOUCAN, band councillor of
the Lubicon Lake Band, of Little Buffalo
Lake, Alberta

-and-

LARRY OMINAYAK, band councillor of the
Lubicon Lake Band, of Little Buffalo
Lake, Alberta

-and-

EDWARD LABOUCAN, trapper, of Little
Buffalo Lake, Alberta

SUING PERSONALLY

-and-

CHIEF BERNARD OMINAYAK, suing on behalf
of and for the benefit of all the 150 mem-
bers of the Lubicon Lake Band and 100 other
native members of the Cree community of
Little Buffalo Lake

-and-

THE LUBICON LAKE BAND, a body of Indians
recognized under the Indian Act, of Little
Buffalo Lake, Alberta

PLAINTIFFS

AND:

NORCEN ENERGY RESOURCES LIMITED, a corpora-
tion duly incorporated, having its head
office in Toronto and an office and place
of business at Norcen Tower, 715 - 5th Avenue
S.W., Calgary, Alberta

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-and-

DOMESTIC PETROLEUM LIMITED, a corporation duly incorporated having its head office at 333 - 7th Avenue S.W., Calgary, Alberta

-and-

CHIEFTAN DEVELOPMENT CO. LTD., a corporation duly incorporated, having its head office at 1201 Toronto Dominion Tower, Edmonton Centre, Edmonton, Alberta

-and-

SHELL CANADA LIMITED, a corporation duly incorporated, having its head office at 505 University Avenue, Toronto, Ontario and a place of business at 400 - 4th Avenue S.W., Calgary, Alberta

-and-

SHELL CANADA RESOURCES LIMITED, a corporation duly incorporated, having a place of business at 400 - 4th Avenue S.W., Calgary, Alberta

-and-

UNION OIL COMPANY OF CANADA LIMITED, a corporation duly incorporated, having its head office at 335 - 8th Avenue S.W., Calgary, Alberta

-and-

NUMAC OIL & GAS LTD., a corporation duly incorporated, having its head office at 9915 - 108th Street, Edmonton, Alberta

-and-

PETRO-CANADA EXPLORATION INC., a corporation duly incorporated having its head office at 407 - 2nd Street S.W., Calgary, Alberta

-and-

CHEVRON STANDARD LIMITED, a corporation duly incorporated, having its head office at 400 - 5th Avenue S.W., Calgary, Alberta

-and-

PETROFINA CANADA LIMITED, a corporation duly incorporated having its head office in Montreal, Quebec and a place of business at 736 - 8th Avenue S.W., Calgary, Alberta

-and-

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-and-

AMOCO CANADA PETROLEUM COMPANY LTD., a
corporation duly incorporated having its
head office at 444 - 7th Avenue S.W.,
Calgary, Alberta

-and-

HER MAJESTY THE QUEEN IN RIGHT OF THE
PROVINCE OF ALBERTA, Legislature Building,
Edmonton, Alberta

DEFENDANTS

STATEMENT OF CLAIM

1. Individual Plaintiffs, including those on whose behalf and for whose benefit Chief Bernard Ominayak sues in the present proceedings, are all Native persons of Cree ancestry who are all Indians within the meaning of section 91(24) of the British North America Act, 1867 and Indians within the meaning of the British North America Act, 1930.

2. All individual Plaintiffs (and a reference herein to this term indicates all the named individual Plaintiffs as well as all the persons on whose behalf and for whose benefit Chief Bernard Ominayak sues in the present proceedings) are inhabitants of Northern Alberta and are the direct descendants of Indians who have occupied all of the area of land situated in Alberta described in paragraph 4 hereof since time immemorial or at least since the assumption of British sovereignty over the said area.

3. All individual Plaintiffs and Plaintiff the Lubicon Lake Band are members of an organized society which has occupied the area described in paragraph 4 hereof since time immemorial or at least since prior to the assumption of British sovereignty over the said area.

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4. Plaintiffs have, and their ancestors since time immemorial had and transmitted to them, Indian title, existing aboriginal rights and personal and usufructuary rights, including hunting, fishing and trapping rights as well as other rights, over, in and under all of the area of land situated in the Province of Alberta between approximately parallels 55° 30' and 58° of latitude north and meridians 114° to 118° west, and more particularly in, over and under the land within a radius of 40 miles of Little Buffalo Lake, Alberta.

5. The said Indian title, existing aboriginal rights and personal and usufructuary rights of Plaintiffs over the said areas include the right to the exclusive use and enjoyment of all the oil, oil sands, gas, hydrocarbons, minerals and natural resources of any kind in, on, over and under the said areas of lands described in paragraph 4 hereof as well as the right to the exclusive use and occupation of all the said areas.

6. Plaintiffs presently inhabit and use the said areas and hunt, fish and trap therein, and they and their predecessors in title have exercised, on a continuous basis their Indian title, their existing aboriginal, personal and usufructuary, and hunting, fishing and trapping rights and their other rights in the said areas in accordance with the traditional aboriginal way of life which is based primarily upon hunting, fishing and trapping.

7. In addition to the foregoing title and rights, individual Plaintiffs all have the right of hunting, trapping and fishing game and fish for food at all seasons of the year over all of the said areas in virtue of the British North America Act, 1930.

8. All of Plaintiffs' rights as described herein take precedence over any rights in the said areas of Defendant Her Majesty the Queen in Right of the Province of Alberta and all Defendant corporations and all others who derive or purport to derive any title or rights in the said areas from said Defendant Her Majesty the Queen in Right of the Province of Alberta.

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9. All of individual Plaintiffs, including all Plaintiffs on whose behalf and for whose benefit Chief Bernard Ominayak is suing in the present proceedings have a common interest and a similar interest in the present action.

10. Moreover, Chief Bernard Ominayak has been duly authorized to take the present action on behalf of and for the benefit of those members of the Lubicon Lake Band and of the Cree community of Little Buffalo Lake whom he represents in the present action.

11. Approximately 150 of individual Plaintiffs are Indians registered under the Indian Act and members of Plaintiff the Lubicon Lake Band and all such Plaintiffs are also Native persons who are members of the Cree community of Little Buffalo Lake and aboriginal people of Canada within the meaning of the Constitutional Resolution of December, 1981 adopted by the House of Commons and Senate of Canada in respect to the amendment of the Constitution of Canada.

12. All the other 100 individual Plaintiffs are unregistered or non-status Indians of Cree ancestry or half-breeds or Metis of Cree ancestry who are aboriginal people of Canada within the meaning of the said Constitutional Resolution of December, 1981.

13. All of Plaintiffs have and are entitled to invoke existing aboriginal rights over the said areas mentioned in paragraph 4 hereof, within the meaning of the said Constitutional Resolution of December 1981.

14. Moreover, Plaintiffs also have land claims and rights within the meaning of and recognized by the Indian Oil and Gas Act.

15. The areas described in paragraph 4 hereof were included in a wider area which was the object of Treaty No. 8 of June 21, 1899 and Adhesions thereto executed between Her Majesty the Queen of Great Britain and certain Cree, Beaver and Chipewyan and other Indians.

16. The said Treaty No. 8 purported to effect the surrender and cession by the bands and Indians who were party thereto to the Government of the Dominion of Canada of all rights, titles and privileges whatsoever to the lands described in the said Treaty as well as to all other lands in the Dominion of Canada.

17. Under said Treaty No. 8, Her Majesty the Queen agreed that the said Indians who were parties to the Treaty would retain the right to hunt, trap and fish subject to certain conditions.

18. Furthermore, under the said Treaty No. 8, Her Majesty the Queen also agreed and undertook to lay aside reserves for such bands as desire same on the basis of one square mile for each family of five (5) and to provide land in severalty to the extent of one hundred and sixty acres to each Indian for such families or individual Indians as may prefer to live apart from band reserves, subject to certain conditions respecting the selection of lands, the surrender of lands and the appropriation of lands.

19. The said Treaty No. 8 also provided for other rights and benefits in favour of the Indians party thereto.

20. The said Treaty No. 8 also contemplated, with their consent, the surrender of rights by, and the conferring of rights and benefits upon, persons of Indian ancestry known as half-breeds or Metis.

21. Plaintiff the Lubicon Lake Band, certain Plaintiffs and the ancestors of Plaintiffs existed as a band or group of Indians at the time of execution of the said Treaty No. 8 and Adhesions, although Plaintiff the Lubicon Lake Band was only formally recognized as an Indian Band under the Indian Act in or about 1940.

22. Plaintiff the Lubicon Lake Band was not a party to said Treaty No. 8 at the time of its execution or the execution of any of its Adhesions and said Plaintiff has never become a party to the said Treaty No. 8 and is not affected by it.

23. Likewise, individual Plaintiffs have never become parties to said Treaty No. 8 or its Adhesions and they are not affected by said Treaty No. 8.

24. Subject to the foregoing, Her Majesty the Queen in Right of Canada has nonetheless recognized approximately 150 of individual Plaintiffs as members of the Lubicon Lake Band entitled to rights and benefits under said Treaty No. 8 and has paid the annuities contemplated by Treaty No. 8 to such band members.

25. Notwithstanding the foregoing, Treaty No. 8 did not and could not extinguish the Indian title and aboriginal rights and personal and usufructuary rights of Plaintiffs and their ancestors and is without effect upon such title and rights in the absence of an adhesion to the Treaty by Plaintiff band and the other individual Plaintiffs or their duly authorized representatives.

26. Subsequent to the execution of said Treaty No. 8 and Adhesions, Plaintiffs and their ancestors never adhered to such treaty or became a party thereto and no action or deed of Plaintiffs subsequent to that date, including the receipt of treaty annuities by some of individual Plaintiffs has had or could have the effect of extinguishing or otherwise affecting the Indian title, aboriginal rights and personal and usufructuary rights of Plaintiffs.

27. Subsidiarily, if Treaty No. 8 had the effect of extinguishing said title and rights of Plaintiffs or otherwise affecting them, which is denied, Plaintiffs are as a minimum entitled to all the rights and benefits specified in Treaty No. 8 and more particularly Plaintiffs are entitled to the setting aside of a reserve of land pursuant to said Treaty No. 8, the British North America Act, 1930 and the Indian Act of at least 60 square miles within the areas traditionally used by them, or alternatively, to land in severalty in an area of at least 70 square miles within the same areas.

28. In any event in or about August, 1940, a reserve was selected for Plaintiff Band of approximately 25 square miles on the western shore of Lubicon Lake in Township 85, Range 13, West 5th Meridian (sections 3-8, W $\frac{1}{2}$ 17, 18, 19, W $\frac{1}{2}$ 20, W $\frac{1}{2}$ 29, 30, 31, W $\frac{1}{2}$ 32) and in Township 85, Range 14, West 5th Meridian (sections 1, 2, 11-14, 22, 24, 26, 35 and 36) by representatives of the Minister of Mines and Resources of Canada and of the Minister of Lands and Mines of Alberta and said reserve was provisionally reserved as an Indian Reserve by Defendant Her Majesty the Queen in Right of the Province of Alberta pursuant to the Alberta Natural Resources Transfer Agreement until at least 1954.

29. The said provisional reservation was apparently unilaterally and illegally "cancelled" by Defendant Her Majesty the Queen in Right of the Province of Alberta subsequently because of the alleged lack of interest of Her Majesty the Queen in Right of Canada in the said area as a reserve despite the opposition and consistent demands of Plaintiff the Lubicon Lake Band for a reserve at the site described in paragraph 28.

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30. Alternatively, the said selection and reservation of the site described in paragraph 28 by the Minister of Lands and Mines of Alberta with the concurrence of the Government of Canada constituted a setting aside of such land within the meaning of Section 10, of the British North America Act, 1930 which cannot be revoked by Defendant Her Majesty the Queen in Right of the Province of Alberta and which made the site described in paragraph 28 a reserve under federal jurisdiction.

31. Defendant Her Majesty the Queen in Right of the Province of Alberta as well as Her Majesty the Queen in Right of Canada have also acknowledged and admitted that Plaintiff Band and individual Plaintiffs were not parties to Treaty No. 8, but are entitled to be parties thereto and are entitled to a reserve of at least 25 square miles on the site described in paragraph 28.

32. Alternatively, therefore, Defendant Her Majesty the Queen in Right of the Province of Alberta is estopped from denying Plaintiffs' entitlement to at least a reserve of 25 square miles at the site described in paragraph 28.

33. Consequently, whether Plaintiffs still have Indian title and existing aboriginal rights and personal and usufructuary rights over the said area described in paragraph 4 hereof or whether they are entitled only to all of the rights and benefits specified in Treaty No. 8, the rights of Plaintiffs to at least reserves of Indian lands affect, condition and take precedence over the title to all of the lands described in paragraph 4 hereof and the natural resources in and on such lands and especially on the sites described in paragraph 28 hereof.

34. Subsidiarily, Plaintiff the Lubicon Lake Band and individual Plaintiffs who are registered Indians, should they be determined by this Honourable Court to be subject to Treaty No. 8, are entitled to invoke Indian title, existing aboriginal rights and personal and usufructuary rights in respect to the said lands described in paragraph 4 hereof and to have said Treaty No. 8 declared inoperative and invalid in respect to the surrender of their rights and in respect to the alleged extinguishment of their claims at least until the fulfilment by Her Majesty the Queen in Right of Canada of her obligations thereunder and the fulfilment by Defendant Her Majesty the Queen in Right of the Province of Alberta of her obligations pursuant to the British North America Act, 1930.

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35. Further, and alternatively, at least all of individual Plaintiffs who are not registered Indians still have Indian title, existing aboriginal rights and personal and usufructuary rights in the lands described in paragraph 4 hereof.

36. All the Indian title, aboriginal rights and personal and usufructuary rights of Plaintiffs have never been extinguished and are still subsisting and furthermore have been acknowledged and recognized by, inter alia, the British North America Act, 1930 in virtue of which the agreement dated December 14, 1929 between the Government of the Dominion of Canada and the Government of the Province of Alberta (known as the Alberta Natural Resources Agreement) was confirmed and given the force of law, by the Indian Oil and Gas Act, by the Imperial Order-in-Council of June 23, 1870 respecting the admission of Rupert's Land and the Northwestern Territory into the Union and legislation subsequent thereto, including the several Dominion Lands Acts, by the execution of various treaties and by the case law.

37. The said Indian title and rights of Plaintiffs are a trust and an interest other than that of the Crown in Crown lands in Alberta within the meaning of the Alberta Natural Resources Transfer Agreement, particularly sections 1, 2 and 10 thereof and are a burden, encumbrance and condition upon any title which Defendant Her Majesty the Queen in Right of the Province of Alberta may have over the lands described in paragraph 4 and the natural resources thereof.

38. The Indian title, aboriginal rights and personal and usufructuary rights of Plaintiffs, and subsidiarily any treaty rights of Plaintiffs are, and have been since Confederation, rights under the exclusive legislative jurisdiction of the Parliament of Canada which cannot be affected, extinguished, interfered with, prejudiced, damaged or otherwise dealt with by Defendant Her Majesty the Queen in Right of the Province of Alberta or the other Defendants.

39. The Indian title, aboriginal rights and the said personal and usufructuary rights of Plaintiffs have never been lawfully extinguished nor surrendered by them nor by their predecessors in title and they are still subsisting.

40. In particular, the Indian title, aboriginal rights and personal and usufructuary rights of Plaintiffs have never been extinguished by federal legislation or by acts or otherwise of the Federal Crown since Confederation and were never extinguished by the Imperial Parliament or Crown prior to Confederation.

41. Plaintiffs therefore are entitled to the exclusive use and occupation of the areas described in paragraph 4 and the natural resources thereof.

42. Subsidiarily, the entitlement of Plaintiffs to a reserve or to land in severalty constitutes an indivisible burden, charge or encumbrance on all of the lands described in paragraph 4 and especially those described in paragraph 28 hereof.

43. Defendant Her Majesty the Queen in Right of the Province of Alberta has purported in respect to the lands and natural resources described in paragraph 4, including those described in paragraph 28 hereof, and so subject to the Indian title, existing aboriginal rights and personal and usufructuary rights of Plaintiffs to grant and has purportedly granted to Defendants Norcen Energy Resources Limited, Dome Petroleum Limited, Chieftan Development Co. Ltd., Shell Canada Limited, Shell Canada Resources Limited, Union Oil Company of Canada Limited, Numac Oil & Gas Ltd., Petro-Canada Exploration Inc., Chevron Standard Limited, Petrofina Canada Limited and Amoco Canada Petroleum Company Ltd. individually and jointly various petroleum, oil, gas, natural gas, and oil sands leases, permits and licences.

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44. The said Defendant corporations have in virtue of the purported gas and oil and oil sands leases extracted minerals, oil, gas, hydrocarbons, and other natural resources from the said lands and the subsurface of the lands which are subject to the said rights of Plaintiffs.

45. Moreover, pursuant to the said leases, permits and licences, works have been carried out, oil and gas wells have been exploited and resources extracted by Defendant corporations from the said areas described in paragraph 4 and oil and gas and other resource revenues have been obtained and received in virtue of the said exploitation by the said Defendant corporations and royalties paid to said Defendant Her Majesty the Queen in Right of the Province of Alberta in consequence thereof.

46. Defendant corporations are continuing and intend in the future to carry out the extraction of natural resources and works and activities described in paragraphs 44 and 45 in the said areas.

47. In recent weeks, there has been new and intensive exploitation of that part of the areas described in paragraph 4 which is within a radius of 15 miles of Little Buffalo Lake, including the drilling of oil and gas wells, the extraction of oil and gas, the construction of a pipeline across, and other works on, land set aside as a reserve for Plaintiff the Lubicon Lake Band and described in paragraph 28 hereof as well as the construction of service roads, seismic testing and other works relating to the foregoing.

48. The said works and exploitation of natural resources by Defendant corporations have interfered with and caused prejudice to Plaintiffs and their rights and caused damage to the environment and the natural resources of the area, particularly the game and fish on which Plaintiffs depend and all future works and exploitations will cause further prejudice to Plaintiffs and their rights, affect and continue to affect adversely their rights and way of life and cause further damage to the environment : and to the natural resources on which Plaintiffs depend.

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49. The said leases, permits and licences and the granting and exercising of alleged rights thereunder are unconstitutional, illegal, null and of no effect or subsidiarily are subject to the said rights of Plaintiffs.

50. The said leases, permits and licences given by said Defendant Her Majesty the Queen in Right of the Province of Alberta to said Defendant corporations and works carried out pursuant thereto constitute an illegal and unconstitutional appropriation and expropriation of the rights of Plaintiffs without any compensation and without any just and equitable indemnity and an illegal interference with and encroachment upon the right of hunting, fishing and trapping of Plaintiffs guaranteed to them pursuant to section 12 of the British North America Act, 1930 (Alberta Natural Resources Transfer Agreement).

51. Unless the foregoing illegal acts, exploitation of natural resources and works of Defendant corporations are restrained, Plaintiffs' rights and the way of life of individual Plaintiffs will be seriously and irretrievably jeopardized and damaged and their recourses will become illusory.

52. There is no other remedy equally convenient, beneficial and effectual which can save Plaintiffs from suffering continued, great, serious and irreparable loss, injury and damage and which can protect Plaintiffs' said rights than an injunction.

53. Plaintiffs are therefore entitled to an immediate injunction restraining Defendant corporations from exploiting and extracting oil, gas, hydrocarbons, minerals and natural resources of any kind in, on, over or under the areas of land described in paragraph 4 hereof and from carrying out any works relating thereto including the drilling of oil and gas wells, the extracting of oil and gas, the construction of roads and pipelines and seismic testing and from carrying out other works in connection with resource exploration and exploitation.

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54. It is especially expedient that Defendant corporations be restrained from the activities described in paragraph 53 hereof in, over, upon or under the area described in paragraph 28 hereof.

55. Subsidiarily, it is expedient that Defendant corporations be enjoined from interfering in any way with the exercise of Plaintiffs' hunting, fishing and trapping rights over the said areas.

56. Plaintiffs are also entitled to a declaration that they have Indian title, existing aboriginal rights and personal and usufructuary rights including hunting, fishing and trapping rights as well as other rights over, in and under all of the areas described in paragraph 4 hereof and that the said rights include the right to exclusive use and enjoyment of all oil, oil sands, gas, hydrocarbons, minerals and natural resources of any kind in, on and over the said areas of land, as well as the right to the exclusive use and occupation of the said areas.

57. Subsidiarily, Plaintiffs are entitled to a declaration that they as a minimum have a right to a reserve of at least 60 square miles including the area described in paragraph 28 hereof, as well as the exclusive use and benefit of all the natural resources in, upon or under the said reserve or, alternatively, to land in severalty of an area of at least 70 square miles in or around the Lubicon Lake and Little Buffalo Lake areas, including the land described in paragraph 28 hereof together with the natural resources in, upon or under the said lands.

58. Subsidiarily, Plaintiffs are entitled to a declaration that their hunting, fishing and trapping rights take precedence over any rights of all the Defendants in respect to the areas described in paragraph 4 hereof.

59. In addition, Plaintiffs are entitled to the revenues and royalties contemplated by paragraph 45 hereof in the amount of seven hundred million dollars (\$700,000,000).

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61. Plaintiffs also instituted proceedings in April of 1980 in the Federal Court of Canada in respect to many of the subject-matters of the present proceedings against Her Majesty the Queen in Right of Canada, Defendant Her Majesty the Queen in Right of the Province of Alberta and certain of Defendant corporations, but the Federal Court of Canada has declined jurisdiction in respect to the Defendants herein who were parties to that action.

62. Furthermore, notwithstanding such proceedings the Defendant Her Majesty the Queen in Right of the Province of Alberta illegally purported to establish a hamlet and a land tenure program at Little Buffalo Lake which has interfered with rights of Plaintiffs and has caused considerable prejudice, loss and damages to them.

63. This Honourable Court has jurisdiction to make the declarations and condemnations herein prayed for and to issue the order of injunction sought herein.

64. Plaintiffs invoke all presumptions in their favour as well as judicial notice of the facts of history.

65. Plaintiffs reserve all other rights and recourses belonging to them individually and collectively and particularly the right to request an interlocutory injunction against the Defendant corporations should they continue with their said exploitation, works and activities.

66. 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:

THAT their action be maintained and that by judgment to be rendered herein, this Honourable Court declare that the Plaintiffs have subsisting Indian title and existing aboriginal rights, and personal and usufructuary rights over, in, under and to all lands and natural resources situated in the Province of Alberta between approximately parallels 55°30' and 58° of latitude north and meridians 114° to 118° west as well as hunting, fishing and trapping rights over all of said lands.

THAT the said Indian title and rights of Plaintiffs be declared by judgment to be rendered herein to take precedence over and condition, and to be a burden and encumbrance upon all rights of Defendants over the said lands and the natural resources thereof.

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THAT such Indian title and existing aboriginal rights, and personal and usufructuary rights of Plaintiffs be declared by judgment herein to comprise the exclusive use and enjoyment of all oil, gas, hydrocarbons, oil sands and other natural resources in, over, and under the lands so subject to their said title and rights.

THAT the said Indian title and rights of Plaintiffs in the said lands and natural resources be declared to be under exclusive federal jurisdiction.

THAT all oil, gas, petroleum, oil sands, and hydrocarbons leases, permits and licences heretofore granted by Her Majesty the Queen in Right of the Province of Alberta to Defendant corporations in the said areas described in the first paragraph of these conclusions be declared unconstitutional, illegal, null, void and of no effect.

THAT subsidiarily, the said lease, permits and licences as well as all rights of Defendant Her Majesty the Queen in Right of the Province of Alberta - in the said areas be declared to be inchoate, burdened and encumbered by and subject to the rights of Plaintiffs and incapable of exercise by Defendants until the surrender by Plaintiffs of their said rights, or the lawful extinguishment by Parliament or the Federal Government of Plaintiffs' said rights. ✓

THAT subsidiarily Plaintiffs' hunting, fishing and trapping rights be declared to take precedence and prevail over the rights of Defendants in the said areas.

THAT the alleged establishment of a hamlet and land tenure program at Little Buffalo Lake by Defendant Her Majesty the Queen in Right of the Province of Alberta be declared to be unconstitutional, illegal, null and void and an illegal interference with and encroachment upon the rights of Plaintiffs.

THAT said Treaty No. 8 of June 21, 1899 and Adhesions, be declared not to have effected a surrender of the said title and rights of any of the Plaintiffs.

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THAT subsidiarily Defendant Her Majesty the Queen in Right of the Province of Alberta be declared to be in breach of the British North America Act, 1930, in respect to Plaintiffs.

THAT a permanent order of injunction be issued against all Defendant corporations ordering and restraining them, their officers, directors, employees, agents, servants, contractors and sub-contractors and those acting under their authority or pursuant to their instructions or in concert with them to immediately cease, desist and refrain from

a) exploiting and extracting oil, gas, hydrocarbons, minerals and natural resources of any kind, in, on, over or under the area of land situated in the Province of Alberta between parallels 55°30' and 58° of latitude north and meridians 114° to 118° west and more particularly in, on, over or under the area of land within a radius of 40 miles of Little Buffalo Lake, Alberta;

b) carrying out any works, operations, projects and activities relating to the exploration, drilling, exploitation and extraction of oil, gas, hydrocarbons, minerals and natural resources of any kind in, on, over or under the area of land situated in the Province of Alberta between parallels 55°30' and 58° of latitude north and meridians 114° to 118° west and more particularly in, on, over or under the area of land within a radius of 40 miles of Little Buffalo Lake, Alberta including works connected with the construction of roads and pipelines, seismic testing, line cutting and surveys.

c) interfering with Plaintiffs' Indian title, existing aboriginal rights, and personal and usufructuary rights over the said areas, and individual Plaintiffs' right to

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hunt, trap and fish game for food at all seasons of the year on all unoccupied lands and on any other lands to which Plaintiffs have a right of access;

d) from trespassing in the said areas and from causing damage to the environment and natural resources of the said areas.

THAT Defendants be condemned to pay Plaintiffs the amount of seven hundred million dollars (\$700,000,000) in lieu of royalties and revenues from resource extraction to date in the said areas as described above.

THAT subsidiarily Plaintiffs be declared to be entitled to a reserve of sixty square miles pursuant to Treaty No. 8 comprising all the present site of Little Buffalo Lake and the 25 square miles on the western shore of Lubicon Lake and described in paragraph 28 and further be declared to be entitled to the exclusive use and benefit of all the oil, gas, minerals, hydrocarbons and other natural resources in, on, over and under the said areas to which they are entitled as a reserve together with damages in the amount of two hundred million dollars (\$200,000,000) from Defendants and that Defendants be condemned to pay to Plaintiffs the said amount of two hundred million dollars (\$200,000,000).

THAT Defendants be ordered to pay Plaintiffs interest on all amounts to which they are entitled hereunder from the date of such entitlement.

THAT Plaintiffs obtain such further relief as this Court may deem just and that all their other rights and recourses be reserved.

THAT Defendants be condemned jointly to pay costs of this action, including the costs of all experts, expertises and exhibits.

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DATED at the City of Montreal, in the Province of Quebec, this 16th day of February, A.D. 1982, and DELIVERED BY MESSRS. O'REILLY & GRODINSKY, Solicitors for the Plaintiffs herein whose address for service is in care of MESSRS. WILSON STAROSZIK AND DANIELS, 1414 - 8th Street South West, Suite 200, Calgary, Alberta, T2R 1B8.

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 16th day of February, A.D. 1982.

CLERK OF THE COURT OF QUEEN'S
BENCH OF ALBERTA

YOU ARE HEREBY NOTIFIED:
You are hereby notified that the Plaintiffs may enter judgment in accordance with this Statement of Claim or such judgment as according to the practice of the Court they are entitled to, without any further notice to you, unless within Fifteen (15) days after service hereof you cause to be filed in the office of the Clerk of the Court from which this Statement of Claim has issued either:

1. A Statement of Defence, or
2. A Demand that notice of any application to be made in the action be given to you,

and unless within the same time a copy of your Statement of Defence or Demand of Notice is served upon the Plaintiff or his Solicitor at his stated address for service.

IN THE COURT OF QUEEN'S BENCH
OF ALBERTA
JUDICIAL DISTRICT OF CALGARY

BETWEEN:

CHIEF BERNARD OMINAYAK, BILLY JOE LABOUCAN, LARRY OMINAYAK, EDWARD LABOUCAN et al.

Plaintiffs

AND:

NORCEN ENERGY RESOURCES LIMITED, DOME PETROLEUM LIMITED, CHIEFTAN DEVELOPMENT CO. LTD., SHELL CANADA LIMITED, SHELL CANADA RESOURCES LIMITED, UNION OIL COMPANY OF CANADA LIMITED, NUMAC OIL & GAS LTD., PETRO-CANADA EXPLORATION INC., CHEVRON STANDARD LIMITED, PETROFINA CANADA LIMITED, AMOCO CANADA PETROLEUM COMPANY LTD., HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF ALBERTA

Defendants

STATEMENT OF CLAIM

This Statement of Claim issued by O'REILLY & GRODINSKY, solicitors for the Plaintiffs who reside in Montreal, Quebec and whose address for service is:

O'REILLY & GRODINSKY
c/o Wilson Staroszyk and Daniels
1414 - 8th Street South West
Suite 200
Calgary, Alberta
T2R 1B8

and is addressed to the Defendants whose addresses so far as is known to the Plaintiffs are those mentioned on pages 1, 2 and 3 of the Statement of Claim.

No. 8201-03713

IN THE COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL DISTRICT OF CALGARY

BETWEEN:

CHIEF BERNARD OMINAYAK, BILLY JOE LABOUCAN,
LARRY OMINAYAK, EDWARD LABOUCAN, and CHIEF BERNARD OMINAYAK
suing on behalf of and for the benefit
of all the 150 members of the
Lubicon Lake Band and 100 other native members
and The Lubicon Lake Band, a body of Indians
recognized under the Indian Act, of
Little Buffalo Lake, Alberta

Plaintiffs/
Applicants

-and-

NORCEN ENERGY RESOURCES LIMITED, DOME PETROLEUM
LIMITED, CHIEFTAN DEVELOPMENT CO. LTD., SHELL
CANADA LIMITED, SHELL CANADA RESOURCES LIMITED,
UNION OIL COMPANY OF CANADA LIMITED, NUMAC OIL &
GAS LTD., PETRO-CANADA EXPLORATION INC., CHEVRON
STANDARD LIMITED, PETROFINA CANADA LIMITED, AMOCO
CANADA PETROLEUM COMPANY LTD., and HER MAJESTY THE
QUEEN IN RIGHT OF THE PROVINCE OF ALBERTA

Defendants/
Respondents

REASONS FOR JUDGMENT
OF THE HONOURABLE MR. JUSTICE FORSYTH

This matter involves a continuation of the application
by the Plaintiffs/Applicants, hereinafter referred to as the
Applicants, for an interim injunction or injunctions
restraining the Defendants/Respondents, hereinafter referred to
as the Respondents, from interfering with the Applicants
alleged rights in a substantial area of Northwest Alberta
containing in excess of 8,500 square miles.

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This matter originally came before me for the determination of certain preliminary points based on the assumption, for the purpose of such preliminary application only, that all facts set forth in the affidavits then filed by the Applicants were true. In that regard reference is made to the decisions of this Court as reported in (1983) Ominayak vs. Norcen et al 23 A.L.R. 284 No. 1 and (1983) Ominayak vs. Norcen et al 24 A.L.R. 394 No. 2.

I stress that, as indicated in those decisions, the disposition of the preliminary points was made on the basis that all facts as alleged in the Applicant's affidavits were true. Also for the purposes of that preliminary application only, the Respondents conceded that there was a serious issue to be tried.

That preliminary application then proceeded, inter alia, on the basis of whether or not certain defences were available to the Crown in the right of Alberta by way of Crown immunity and, if so available, whether it extended to the other Respondents. Furthermore assuming all facts set forth in the affidavits filed by the Applicants at that time were true, whether following the principles laid down in American Cyanamid Company vs. Ethicon (1975) A.C. 396, (1975) All E. R. 504 the Applicants in any event would not be entitled to an interim injunction.

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It is important to note the very restrictive approach put before the Court at that time, no doubt for the very desirable motive of possibly shortening these proceedings if this Court should be of the view that on the Applicants own material they would ultimately not succeed in obtaining an interim injunction. Arguments on these preliminary points occupied some six full days with the overall result of such preliminary argument being, in effect, that the Court in an application of this nature was not prepared to summarily dismiss same without hearing the application itself on its merits. Accordingly, as a result of further application to this Court for directions, certain time constraints were laid down for the filing of material by the parties with dates established for the hearing of this matter commencing September 26, 1983.

Prior to the commencement of the hearing itself however, it should be noted that a further application for an interim injunction was made in July, 1983 based on the fact that the Province had put up for sale certain mine and mineral rights by way of licenses and leases on lands forming part of the lands comprising the claim of the Applicants. It was the position of the Applicants that any such public sale should be delayed pending disposition of their application for an interim injunction over all of the lands in question including the lands being offered for sale. That application was dismissed

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for the reasons given at the time. In particular it could not be demonstrated that, notwithstanding the sale of such mineral interests, that any particular activity detrimental to the Applicants interests would take place between the date of sale and the hearing and final disposition of the main application.

The main application for interim injunctive relief commenced on September 26, 1983, and concluded on October 25, 1983, involving a total of 20 full days. The material before the Court on this application included numerous lengthy affidavits filed by both Applicants and Respondents, cross examinations on some of such affidavits, examinations under Rule 244 of the Consolidated Rules, consideration of a mass of historical articles, maps and charts, and genealogical tables concerning the ancestry of the Applicants. It encompassed a variety of topics relating to the alleged effects of the Respondents activities on the Applicants way of life. Indeed it is difficult to envision that the trial of the action itself would encompass much more material than was before the Court in this interim application.

I turn now to the application. The relief claimed by the Applicants varies and is based on alternative foundations. In brief, the Applicants claim aboriginal rights over the large tract of land containing in excess of eighty-five hundred (8,500) square miles, alleging that these lands traditionally since time immemorial, or at least since 1899, have been

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occupied by the Applicants and were never ceded to the Crown in the right of Canada either by or under the provisions of Treaty No. 8, which encompassed those lands among many other lands covered by the Treaty, or indeed have ever been ceded by any subsequent parliamentary action, including The British North America Act 1930 20-21 George V Chapter 26 (U.K.) which agreement is found in the Alberta Natural Resources Act, Statutes of Alberta 1930 Chapter 21. The Applicants also claim rights arising under the provisions of Section 35 of the Charter, The Canada Act (1982). Alternatively the Applicants claim there in fact exists within the lands in question an Indian Reserve of some twenty-five (25) square miles at and around the West end of Lubicon Lake, said Indian Reserve having been, in effect, established during the 1940's, which Reserve carried with it entitlement to all the mines and minerals contained therein. In addition, by virtue of the numbers of the Applicants, they claim an entitlement pursuant to the provisions of Treaty No. 8 to an additional thirty-five (35) square miles of Indian Reserve to be set aside out of an area which they had admittedly arbitrarily set at some nine hundred (900) square miles centered on Lubicon Lake.

The nature of the injunctive relief sought varies. While, as noted, they claim aboriginal rights over some eighty-five hundred (8,500) square miles, the injunctive relief sought within that territory and exclusive of the nine hundred

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(900) square mile area, is injunctive relief sufficient to preclude interference with the hunting and trapping activities of the Applicants in that area. It is alleged that the bulk of the hunting and trapping activity of the Applicants is contained within the nine hundred (900) square mile area, referred to, and within that area the Applicants seek more complete injunctive relief restraining Respondents to a far greater degree. In the alternative claim based on the alleged establishment of an Indian Reserve of some twenty-five (25) square miles and an entitlement to a further Reserve of thirty-five (35) square miles, the Applicants claim a more absolute injunction restraining the Respondents from any activities whatsoever in that area founded on an assumption that the Crown, in the Right of Alberta, has no right to lease or sell mineral rights in such territory nor to authorize the Respondents to carry out exploration and drilling for any oil and gas contained under the lands in question.

In *Ominayak versus Norcen et al No. 2 supra*, I dealt with the principles and factors to be considered in an application of this nature based on the decision in *American Cyanamid vs. Ethicon supra*. I do not propose to repeat the comments I made at that time with respect to this case. This is particularly so in light of the fact that all counsel stressed that notwithstanding the lengthy and full argument and extensive and exhaustive material put before the Court in

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this application, an early decision was required inasmuch as the current drilling season on the lands in question will get underway at winter freeze-up. I also note that this is, as I indicated earlier, an application for an interim injunction and not for a final determinative decision although considering the length of the argument and the extent of the materials put before the Court it was difficult at times to remember that fact.

In any event, I turn now to a consideration of the material before me in this application as well as consideration of the arguments advanced by counsel for both the Applicants and the Respondents. In that regard, before turning to a consideration of the applicable tests as laid down in *American Cyanamid* (supra) counsel for the Respondents raised certain other arguments which certainly bear consideration. It was argued by the Respondents that this application for an interim injunction is a class action. Notwithstanding that fact it cannot be treated as an application by all members of that class but rather as an application by the named Applicants alone. It is those Applicants who have control of the action until judgment and who alone can settle or discontinue same. Accordingly it would be wrong to assess an application for an interim injunction based on the benefits or interests of the class as a whole. In short, considering the various factors the Court must consider in determining whether or not any

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interim injunction should be granted, the factors should be assessed only insofar as they affect the named Applicants rather than the group they purport to represent.

Secondly, the Respondents argue, Crown immunity from injunctive relief is applicable and this immunity extends to the corporate defendants as grantees or agents of the Crown. Accordingly, in any event, the Applicants cannot obtain injunctive relief sought against the Respondents or any of them.

I propose to deal with the second argument on Crown immunity first and would merely refer again to my decision on that aspect in *Ominayak et al vs. Norcen et al No. 1 supra* where I stated that in my view the availability of Crown immunity as a defence in the action again, should await final determination by the Court as to what, if any, rights, and the foundation of such rights, with respect to the lands in question, the Applicants may establish before considering the applicability of Crown Immunity.

The argument of the Respondents with respect to class actions, particularly class actions where an interim injunction is sought is, in my judgment, a compelling one but one which I propose to take into consideration when applying the general principles espoused in *American Cyanamid vs. Ethicon supra*. In that regard I propose to outline, to the extent necessary, the factors laid down by the House of Lords to be considered in determining whether an interim injunction should be granted.

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1. Is there a serious question to be tried?

In *American Cyanamid versus Ethicon Limited supra*
at 407 Lord Diplock states:

"The court no doubt must be satisfied that
the claim is not frivolous or vexatious; in
other words, that there is a serious
question to be tried."

Notwithstanding the strong and well formulated
arguments of the Respondents on this issue, I am
not prepared to find at this stage that the
Applicants claim is frivolous and vexatious.
Accordingly, bearing in mind it is not
appropriate for the Court in this interim
application at this stage to express any opinion
upon the merits of the case, I would simply
observe that for the purpose of this application
I am proceeding on the basis that there is a
serious question to be tried.

2. Adequacy of damages as a remedy for Applicants.

In *Ominayak versus Norcen et al No. 2 supra* on
this point, and assuming as established all facts
disclosed in the affidavits filed on behalf of
the Applicants, I noted that to a significant but
not complete extent, any damages sustained by the
Applicants between the date of the application
and the trial of the action were not irreparable

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but were calculable and could be satisfied by the payment of same by the Respondents. Further, the Respondents had the ability to pay such damages. I have now had the opportunity to deal with this application on its merits and in that regard, on the basis of the material and evidence before me in this application, adduced by both sides, I am satisfied that damages would be an adequate remedy to the Applicants in the event they were ultimately successful in establishing any of their positions advanced. I have considered very carefully the allegations of irreparable injury or damage not compensable by money and I am simply not satisfied that the Applicants have established in this application such irreparable injury. That irreparable injury is founded on an allegation that a continuation of the activities of the Respondents would lead to irreparable harm to the life style of the Applicants. In short, the Applicants allege that their traditional way of life involving hunting and trapping is and would continue to be harmed to the extent where it could never be recovered even if they were successful at trial.

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I am not satisfied on the material before me that that contention is established. The evidence simply does not establish a way of life by the Applicants which is being destroyed by the Respondents.

The Applicants purport to represent a substantial portion but not all of the persons residing in the area in question. However, the evidence of life style being affected is limited to a few individuals who hunt and trap in the area. It is to be noted that many others not involved in these proceedings also hunt and trap in the area. In addition the suggestion of the Respondents activities having a negative effect on the hunting and trapping is to a considerable extent countered by the evidence adduced by the Respondents as to the effect, if any, their activity may have on the wild life.

One thing is clear, however. This is not a case of an isolated community in the remote North where access is only available by air on rare occasions and whose way of life is dependent to a great extent on living off the land itself. The twentieth century, for better or for worse, has been part of the Applicants' lives for a

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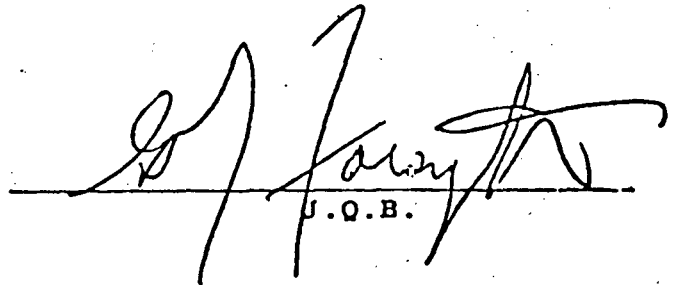
considerable period of time. The influence of the outside world comes from various sources, in many cases not connected with any of the activities of any of the Respondents. On that basis alone I am satisfied an interim injunction in the various forms sought and for the various reasons advanced by the Applicants is not appropriate under the circumstances and the Court's discretion should not be exercised in favor of the Applicants.

Notwithstanding that this in effect disposes of the matter, I wish to comment further. In *Ominayak vs. Norcen et al No. 2 supra*, I held that the various factors outlined by Lord Diplock in *American Cyanamid vs. Ethicon supra* do not constitute water-tight compartments, and failure to meet anyone is not necessarily fatal to the Applicants' position. If I was required in this case to consider the factor of adequacy of damages to compensate the Respondents, then I am more than satisfied that the Respondents would suffer large and significant damages if injunctive relief in any of the forms sought by the Applicants were granted. Furthermore, the Respondents would suffer a loss of competitive positions in the industry vis a vis the position of other companies not parties to this action. That loss coupled with the admitted inability of the Applicants to give a meaningful undertaking to the Court as to damages either as individuals, or if authorized to bind

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the known class, as a class, on which point I have grave doubts, reinforces my decision that injunctive relief in this case is not appropriate.

The application for interim injunctions is accordingly dismissed. Counsel may speak to me as to the question of costs of this application if they so desire.



J.Q.B.

DATED at Calgary, Alberta

This 17th day of November, A.D. 1983

COUNSEL:

J.A. O'Reilly Esq.)
K.E. Staroszik, Esq.)

For the Plaintiffs/Applicants

J.M. Robertson, Esq., Q.C.)
R.A. Coad, Esq.)

For the Defendants/Respondents Dome
Petroleum Limited, Chieftan
Development Co. Ltd., Shell Canada
Limited, Union Oil Company of
Canada Limited, Numac Oil & Gas
Amoco Canada Petroleum Company Ltd.

D.O. Sabey, Esq., Q.C.)
H.M. Kay, Esq.)
L. Taylor, (Miss))

For the Defendants/Respondents
Norcen Energy Resources Limited,
Petro-Canada Exploration Inc.,
Petrofina Canada Limited

H.L. Irving, Esq., Q.C.)
E.L. Bunnell, Esq.)
M.A. Irving, (Miss))

For the Defendant/Respondent Her
Majesty the Queen in Right of
the Province of Alberta

ACTION NO: 8201-03713

IN THE COURT OF QUEEN'S BENCH
OF ALBERTA
JUDICIAL DISTRICT OF CALGARY

BETWEEN:

CHIEF BERNARD OMINAYAK, BILLY JO.
ABOUCAN, LARRY OMINAYAK, EDWARD
LABOUCAN, AND CHIEF BERNARD
OMINAYAK-suing on behalf of and
for the benefit of all the 150
members of the Lubicon Lake Band
and 100 other native members and
the Lubicon Lake Band, a body of
Indians recognized under the
Indian Act, of Little Buffalo
Lake, Alberta

Plaintiff/
Applicants

-and-

NORCEN ENERGY RESOURCES LIMITED,
DOME PETROLEUM LIMITED, CHIEFTAN
DEVELOPMENT CO. LTD., SHELL
CANADA LIMITED, SHELL CANADA
RESOURCES LIMITED, UNION OIL
COMPANY OF CANADA LIMITED, NUMAC
OIL & GAS LTD., PETRO-CANADA
EXPLORATION INC., CHEVRON
STANDARD LIMITED, PETROFINA
CANADA LIMITED, AMOCO CANADA
PETROLEUM COMPANY LTD., AND HER
MAJESTY THE QUEEN IN RIGHT OF THE
PROVINCE OF ALBERTA

Defendants/
Respondents

REASONS FOR JUDGMENT
OF THE HONOURABLE
MR. JUSTICE FORSYTH

No. 8201-03713

IN THE COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL DISTRICT OF CALGARY

BETWEEN:

LUBICON LAKE INDIAN BAND, et al

-and-

NORCEN ENERGY RESOURCES, et al

REASONS FOR JUDGMENT OF THE HONOURABLE MR. JUSTICE FORSYTH

THE COURT: I will observe at the outset that the principles of the administration of justice and the adversary system recognizes that the successful party generally should be entitled to costs, not as has been pointed out, as a punishment but rather as an indemnity for the disbursements and costs incurred in defending a particular position or prosecuting a particular position as the case may be.

I have several options open to me on this application. The easiest would be to refer the matter to a trial judge when the matter is eventually tried, but I think that would be singularly inappropriate in these particular circumstances inasmuch as I have been seized with this matter all through the interim phase. I think it is fair and proper that I should deal with the question of costs rather than leaving them to a trial

1 judge.

2 I also, in exercising my discretion, take into
3 account this was a interlocutory application, not a trial
4 on the merits although it was at times difficult to keep
5 that fact in mind and as has been pointed out by counsel
6 for one of the respondents, the matters I had to deal
7 with will not have to be dealt with by the trial judge
8 when the matter is ultimately determined, including such
9 factors as irreparable damage and matters of that nature.

10 Accordingly, I propose to deal with the
11 question of costs now and see no reason under all the
12 circumstances why the respondents should not be entitled
13 to their costs. They have successfully met an
14 application for an interim injunction. Accordingly,
15 determination on costs in this application is that there
16 will be costs in any event to the respondents.

17 I would welcome some assistance from counsel as
18 I deal with the question of how those costs should be
19 taxed and on what basis they should be taxed -- in that
20 regard I am speaking of, I quite agree that Schedule C
21 dealing with an application for an interim injunction or
22 interim application is not particularly appropriate to
23 this particular matter, bearing in mind the extensive
24 affidavit evidence and preparation that went into the
25 matter. Accordingly, referring to Schedule C --

26 MR. IRVING: Page 724, sir.

27 THE COURT: Thank you. The appropriate

1 column is of course -- I am going to get informal now,
2 this is not a judgment, it's comments now -- Paragraph 11
3 (d), would be the appropriate column, but that certainly
4 does not recognize the situation we had where we had 28
5 days of hearings. Accordingly, in assessing the costs
6 with respect to sitting days in the applications,
7 including the preliminary points, I am firstly allowing
8 second counsel fee where that is applicable. The columns
9 we will rely on will be those dealing with briefs for
10 trial, Paragraphs 20 and 21. Costs will be taxed on the
11 basis of a trial, in other words, appropriately. I will
12 deal with the column and the amount later. With
13 examinations under Rule 266, Paragraph 12 would appear
14 appropriate in that case and is to be applied in taxing
15 in this case.

16 Are there other provisions of the Schedule C
17 which anyone wishes to bring my attention to?

18 MR. COAD: My Lord, I think on behalf of these
19 respondents we would urge some provision in terms of
20 preparation. Rule item 15 --

21 THE COURT: I was just going to do that now,
22 item 15 is applicable and will be utilized in the
23 taxation.

24 The motions and applications provision is also
25 applicable to this extent: There would be preliminary
26 meetings and hearings in my office and that is applicable.
27 And any adjournments that took place or applications of

1 that nature. In other words, taxation, if I can use the
2 general terminology, should follow as if it was taxation
3 following a trial rather than taxation for an application.
4 Taxation is to be on the basis of 4 times Column 5.

5 Now, having said that I come to the question
6 that has been put to me as to whether or not costs should
7 be payable forthwith, or on the termination of this
8 matter. Again these are discretionary matters, and in my
9 judgment while I have indicated how the costs are to be
10 taxed, I am not prepared to order that they be paid
11 forthwith at this time. They are costs in any event,
12 taxable. For convenience or other sake they can be
13 taxable at any time, but I am not ordering they be
14 payable forthwith.

15 I do so not arbitrarily or capriciously, but I
16 look at the overall effect of the action and the nature
17 of the action and the situation that if the applicants
18 are successful ultimately in their trial, there would be
19 accountings to take place and whatnot. But I do add this
20 caveat, and I think I have discretion -- if I haven't the
21 Court of Appeal will tell me I haven't -- I am doing so
22 on the assumption that this matter will be proceeding
23 forthwith, and I leave it open to the respondents if at
24 some period of time the matter is being unduly delayed in
25 their opinion, they are free to return and make a further
26 application whereby costs should be payable forthwith.
27 In other words, if nothing has happened in three years or

1 something of that nature, it just can't sit. I am simply
2 not prepared to order that costs be paid forthwith today
3 on the basis of the taxation I have made.

4 MR. STAROSZIK: In respect of the 6 days on the
5 preliminary points that respondents in effect brought a
6 subapplication that they weren't successful on, I'm
7 wondering how that fits in.

8 THE COURT: I thought about that, Mr.
9 Staroszik, because you are quite right. I believe there
10 is even -- let me put it this way, at the moment that is
11 the judgment in this action, and I am not sure the
12 respondents agree completely with my disposition on all
13 preliminary points. But the preliminary points, when I
14 look on balance, they were designed to attempt to shorten
15 the proceedings. It was argument made that was helpful
16 to the Court and shortened the 20 days we spent in the
17 ultimate application. And I find it hard to make a
18 distinguishment between those preliminary points and the
19 application itself. It all falls in and is melded into
20 the same basic application.

21 MR. STAROSZIK: Even though respondents were
22 unsuccessful they will get the costs --

23 THE COURT: Even though respondents did not
24 succeed in ending the matter then, it was still argument
25 that was applicable -- and I mulled that over long before
26 I came into this hearing. But on balance I find it
27 difficult to see how I can make the distinction. The

1 bottom line is the respondents were successful, at least
2 at this point in time, in their defence of the
3 application for an injunction. This was all part and
4 parcel of that, and accordingly that is included in my
5 disposition of costs.

6 MR. STAROSZIK: Fine, My Lord.

7 THE COURT: Does that leave anything?

8 MR. IRVING: Just a direction in general, sir,
9 about experts' reports.

10 THE COURT: Yes, there will be a direction
11 that all reasonable expert costs are payable and to be
12 included in the taxation, and again the right to counsel
13 to come back to me for further directions if there is a
14 problem with respect to any individual matters. You will
15 be dealing with the taxing officer of course initially,
16 but if there is a problem come back to me.

17 MR. IRVING: Thank you, sir.

18 THE COURT: Very well.

19

20 PROCEEDINGS CONCLUDED

21

22

23

24

25

26

27

1 Delivered orally at the Court House, Calgary, Alberta, on
2 the 6th of January, A.D. 1984.

3

4 Mr. O'Reilly, Esq.
5 K. Staroszik, Esq.
6 For the Applicants

7 R. A. Coad, Esq.
8 For the Respondents
9 Dome Petroleum Limited,
10 Chieftan Development Co. Ltd.,
11 Shell Canada Limited, Shell
12 Canada Resources Limited,
13 Union Oil Company of Canada
14 Limited, Numac Oil & Gas Ltd.,
15 Chevron Standard Limited,
16 Amoco Canada Petroleum
17 Company Ltd.

18 H. L. Irving, Esq.
19 For Her Majesty the Queen

20 H.M. Kay, Esq.
21 For Norcen and PetroCanada

22 L. B. Bratland, RPR, CSR (A)
23 Official Court Reporter

24 Computer-Aided Transcript
25 12 January, 1984

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IN THE COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL DISTRICT OF CALGARY

BETWEEN:

CHIEF BERNARD OMINAYAK, BILLY JOE LABOUCAN,
LARRY OMINAYAK, EDWARD LABOUCAN and CHIEF
BERNARD OMINAYAK suing on behalf of and for
the benefit of all the 150 members of the
Lubicon Lake Band and 100 other native mem-
bers of the Cree community of Little Buffalo
Lake and The Lubicon Lake Band, a body of
Indians recognized under the Indian Act, of
Little Buffalo Lake, Alberta.

Plaintiffs/
Applicants

-and-

NORCEN ENERGY RESOURCES LIMITED, DOME
PETROLEUM LIMITED, CHIEFTAIN DEVELOPMENT CO.
LTD., SHELL CANADA LIMITED, SHELL CANADA
RESOURCES LIMITED, UNION OIL COMPANY OF
CANADA LIMITED, NUMAC OIL & GAS LTD.,
PETRO-CANADA EXPLORATION INC., CHEVRON
STANDARD LIMITED, PETROFINA CANADA LIMITED,
AMOCO CANADA PETROLEUM COMPANY LTD. and HER
MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF
ALBERTA

Defendants/
Respondents

AFFIDAVIT #4 OF CHIEF BERNARD OMINAYAK

I, BERNARD OMINAYAK, Chief of the Lubicon Lake
Band, presently residing at Little Buffalo Lake, Alberta,
MAKE OATH AND SAY AS FOLLOWS:

1. Based on my own observations, activities of
Respondent corporations, and in particular Petro-Canada,

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Exploration Inc., Union Oil Company of Canada Limited, Numac Oil & Gas Ltd. and Norcen Energy Resources Limited, in the Reserve Area form a substantial part of the total activities (referred to herein as works, operations and projects) of all oil and gas companies in the said Reserve Area and a substantial part of the total development in the said Reserve Area over the past two years. In particular I have seen the following Respondent companies active in the following areas of the Reserve Area:

- Union - primarily in the Slave field south of Lubicon Lake.
- Norcen - primarily in the Evi and Golden fields north of Lubicon Lake.
- Petro-Canada - primarily north of Lubicon Lake.
- Numac - primarily north of Lubicon Lake and in the Evi field.

Attached hereto marked Exhibit "A" is a map prepared by Gordon Smart on which I have indicated the wells and drilling sites of Respondents and the areas in which they have been active since January 1, 1980.

2. The activities of Respondent corporations including the cutting of seismic lines, the building of roads and the drilling and extraction of oil and gas have severely depleted the wildlife on those parts of the Reserve Area where said Respondent corporations have carried out said activi-

ties as well as throughout the entire Reserve Area and have made it very difficult to hunt, trap and fish for subsistence in such areas, as well as throughout the said entire Reserve Area, because many of the animals which we hunted there in previous years have been scared away by such activities.

3. The Reserve Area is a very good hunting area and a good trapping area for the members of the Lubicon Lake Band and the Cree Community of Little Buffalo Lake. Prior to the activities of Respondent corporations in the Reserve Area over the last two years, moose were quite plentiful in the Reserve Area especially around Lubicon Lake and Little Buffalo Lake, and the trapping areas in the Reserve Area were productive in terms of the number of fur bearing animals which lived there.

4. However, due to the activities of each of the Respondent corporations over the past two years, there are very few animals left in the areas where Respondent corporations have and are carrying on their activities and this has severely diminished the number of animals caught or harvested in those areas and throughout the entire Reserve Area by members of the Lubicon Lake Band and the Cree Community of Little Buffalo Lake.

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5. The activities of each of the Respondent corporations in the Reserve Area over the past two years, even without the activities of other oil and gas corporations working in the Reserve Area have reduced the number of animals available to be caught in the entire Reserve Area to a critical level.

6. I believe that it is a virtual certainty, based on the Affidavits and Exhibits filed in these proceedings, including the Exhibits mentioned in paragraph 15 of my Affidavit #3 and based on my own experience and observations as well, that Respondent corporations will be increasing their activities in the Reserve Area in the coming months. In fact such increased activities have already begun in the last two months. The activities of Respondent oil corporations will be very substantially increased beginning later this month and continuing through the winter months of 1982-1983.

7. In the Reserve Area this winter, there will very likely be hundreds of workers, hundreds of thousands of tons of equipment and supplies brought in, several hundred miles of seismic lines cut and constant activity and passage of workers and vehicles, all of which will be due to the activities of Respondent corporations. Such intrusions and activities will negatively and severely affect the animal population in the Reserve Area.

8. I am convinced, based on my past experience and personal observations, and on the Affidavits and Exhibits filed in these proceedings, that the combined effect of the activities of each of the Respondent corporations in the Reserve Area which have taken place to date together with their planned activities in the coming months will so deplete the wildlife in the Reserve Area that it will be impossible for the members of the Lubicon Lake Band and the Cree Community of Little Buffalo Lake and particularly the trappers trapping in the trapping areas in the Reserve Area to obtain a livelihood and subsistence from hunting and trapping in the Reserve Area if the said activities of Respondent corporations are not immediately stopped.

9. I am also convinced that if such activities of Respondent corporations working in the Reserve Area are immediately stopped, it will be possible for the members of the Lubicon Lake Band and the Cree Community of Little Buffalo Lake to continue to earn their livelihoods and subsistence from hunting and trapping in the Reserve Area because a sufficient number of the animals which have left the Reserve Area would return to the Reserve Area if the area were left undisturbed.

10. It is especially essential that no activities of any Respondents take place in the coming months in the immediate areas in and around and between Little Buffalo Lake

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and Lubicon Lake and particularly in the approximately 25 square miles of land selected, set aside and established as an Indian Reserve for the Lubicon Lake Band on the western shore of Lubicon Lake, described in paragraph 23 of my Affidavit #3 and in the present proceedings, for otherwise our use of this very important area will be severely jeopardized and such area may in fact become unavailable to us to use as an Indian Reserve.

11. Because of the intensive use of the Reserve Area for hunting by virtually all members of the Lubicon Lake Band and of the Cree Community of Little Buffalo Lake, including the women and the children, the accessibility of this area to such members, as well as the importance of the Reserve Area as a prime hunting, fishing and trapping area of Applicants, the present hunting, fishing and trapping of Applicants will be so negatively affected if activities of Respondents are not stopped that our entire way of life will be jeopardized as well as our society and culture. Furthermore if our hunting, fishing and trapping are also not protected from interference in the entire Hunting/Trapping Territory, our way of life and our society will not survive.

12. In the Hunting/Trapping Territory I have observed activities of each of Respondent corporations over the last two years including the operation of an in situ plant west of Cadotte Lake by Shell Canada Resources Limited and Amoco

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Canada Petroleum Company Limited. I am convinced that Respondent corporations will increase their activities in the remainder of the Hunting/Trapping Territory (ie. exclusive of the Reserve Area) in the coming months. In fact such an increase in activities has already begun in the last two months. In particular, since September 22, 1982 I have noticed such increase in activity in the area immediately north of the Reserve Area above the Evi and Golden fields.

13. The activities of each of Respondent corporations including the cutting of seismic lines, the building of roads, the drilling and extraction of oil and gas, the activities of hundreds of workers and their constant use of various areas have already negatively affected and depleted the wildlife in the remainder of the Hunting/Trapping Territory where such Respondent corporations have carried on such activities. The planned increase by such Respondent corporations of said activities in the remainder of the Hunting/Trapping Territory will jeopardize the subsistence hunting and trapping of the members of the Lubicon Lake Band and of the Cree Community of Little Buffalo Lake in the remainder of the Hunting/Trapping Territory. When combined with the various substantial activities of Respondent corporations in the Reserve Area it will be impossible for Applicants to continue to obtain their livelihood and subsistence from hunting, fishing and trapping unless measures are taken to protect the wildlife and resources in those areas and to

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insure that Applicants continue to have access to the animals throughout the Hunting/Trapping Territory and that their hunting, trapping and fishing therein in not interfered with.

14. The said activities of Respondent corporations in the remainder of the Hunting/Trapping Territory and the planned activities by them in such territory form a substantial part of the total activities (including works, operations and projects) of all oil and gas companies in the remainder of the Hunting/Trapping Territory and a substantial part of the total development in the remainder of the Hunting/Trapping Territory over the past two years and of the total planned development in the remainder of the Hunting/Trapping Territory.

15. I have also observed that a burial site at Fish Lake, where an ancestor of members of the Lubicon Lake Band and the Cree Community of Little Buffalo Lake was buried, (which burial site is shown on Exhibit "C" to the Affidavit of Edward Laboucan filed herein), has been bulldozed and interfered with within the last two years.

16. In February of 1982 I experienced damage to my trapline which I verily believe was a result of the activities of Respondents. My snares were destroyed and a Lynx was stolen. In addition, I have been informed by the

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following Applicants that they too in 1982, experienced damage to their trapping areas and the animals therein as well as to their traps and equipment and we all verily believe that such damages were caused by the Respondent corporations:

George Seeseequon
Joe T. Laboucan
Arthur Laboucan
Mike Laboucan
Edward Laboucan
John Felix Laboucan
Dan Calahasen
Joe A. Laboucan

I have been advised by George Seeseequon that sometime during the week of November 15, 1982 several of his traps in trapping area #1336 were buried by a bulldozer. In addition I am advised by the above Applicants that the hunting and trapping in the Reserve Area and Hunting/Trapping Territory has been further damaged and detrimentally effected since September 22, 1982 by Respondents. Furthermore, since September 22, 1982 wildlife officers of Respondent Her Majesty the Queen in Right of Alberta have been harassing members of our Band and members of the Cree Community of Little Buffalo Lake and have purported to take away two of our registered traplines.

17. The damages and effects described in this my Affidavit #4 and in my Affidavit #3 are so extensive and

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overwhelming that I and other Applicants will not be able to continue our way of life and subsistence if the said activities of Respondent corporations are not halted. These damages and effects cannot be valued in terms of money for us and no amount of money will compensate us for them. We believe we are threatened with extinction as a people and as a society if such activities are not stopped. The oil and the gas in the said areas will not disappear even if they are not extracted right away, but the animals have been disappearing because of these activities of Respondents and will continue to be reduced until soon there will no longer be enough animals for us to hunt or trap for subsistence.

18. Attached hereto, marked Exhibit "B" is a true copy of an extract of the Annual corporate report of Union Oil for 1981 showing their intention to pursue oil and gas activities in the said Hunting/Trapping Territory and Reserve Area.

19. Attached hereto, marked Exhibits "C", "D" and "E" respectively are true copies of letters dated August 11, and August 16, 1982 from our solicitors to the solicitors for Respondents requesting certain information respecting the activities of Respondents in the Hunting/Trapping Territory and the Reserve Area. I am advised by my solicitors and I do verily believe that no information has been provided to them in reply to these requests.

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20. If Respondents are stopped, only money will be an issue for them. Although our Band has no money at present and we are very poor we will provide an undertaking to the Court for damages if so required by this Honourable Court.

21. I make this my Affidavit #4 in support of an application for an injunction. I have personal knowledge of the matters herein deposed to except where otherwise stated to be based upon information and belief and whereso stated I verily believe same to be true.

SWORN BEFORE me at the City)
of Calgary, in the Province)
of Alberta, this 11 day of)
November, A.D. 1982.)

John P. ...
A Commissioner for Oaths in
and for the Province of Alberta.

CHIEF BERNARD OMINAYAK

Appendix No. 6

IN THE COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL DISTRICT OF CALGARY

BETWEEN:

CHIEF BERNARD OMINAYAK, BILLY JOE LABOUCAN,
LARRY OMINAYAK, EDWARD LABOUCAN and CHIEF
BERNARD OMINAYAK suing on behalf of and for
the benefit of all the 150 members of the
Lubicon Lake Band and 100 other native mem-
bers of the Cree community of Little Buffalo
Lake and The Lubicon Lake Band, a body of
Indians recognized under the Indian Act, of
Little Buffalo Lake, Alberta

Plaintiffs/
Applicants

-and-

NORCEN ENERGY RESOURCES LIMITED, DOME
PETROLEUM LIMITED, CHIEFTAIN DEVELOPMENT CO.
LTD., SHELL CANADA LIMITED, SHELL CANADA
RESOURCES LIMITED, UNION OIL COMPANY OF
CANADA LIMITED, NUMAC OIL & GAS LTD.,
PETRO-CANADA EXPLORATION INC., CHEVRON
STANDARD LIMITED, PETROFINA CANADA LIMITED,
AMOCO CANADA PETROLEUM COMPANY LTD. and HER
MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF
ALBERTA

Defendants/
Respondents

AFFIDAVIT OF JOAN RYAN

I, JOAN RYAN, Anthropologist of the City of
Calgary, in the Province of Alberta, MAKE OATH AND SAY AS
FOLLOWS:

1. I have been requested by the Plaintiffs to give my
opinion in regard to the culture, society and way of life of

- 2 -

land-based Indian groups and economies, and the effects of resource development on these.

2. I have made particular studies of hunting and trapping societies and the effect of development on these societies and the way of life of these societies. It is my opinion that there are general principles involved in such questions which are applicable to development as it may affect the Lubicon Lake Band and the Cree Community of Little Buffalo Lake. This is especially so in regard to the predictable patterns of social, cultural and economic change.

3. My professional qualifications include the following:

- a) B.A. - Psychology, Carleton University, 1952.
- b) M.Ed. - Psychology, University of Alaska, 1957.
- c) Ph.D. - Anthropology, University of British Columbia, 1973.

4. In addition to my academic qualifications I have the following related experience:

- a) 1957-1958 - Community Development Teacher - Lac la Martre, NWT, during which time, with my participation, the community with which I was involved built log houses to replace tents. I started the health program and established the elementary school and the adult basic English program. As the only non-native, I learned

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- 3 -

the Dogrib language, lived in a log cabin, fished and hunted for food, travelled by canoe and dogteam to Yellowknife for supplies and participated in the way of life of the Community.

- b) 1958-1959 - Community Development Teacher - George River, Ungava Bay. During this time, I started the basic English program, helped set up the Arctic Char fish Cooperative, started the health program and travelled to fishing and hunting camps. I lived in a tent and hunted and fished for food. I also learned the Inuktitut language.
- c) 1960-1962 - Researcher on native education throughout Alaska and Teacher-at-Large in the Canadian Central Arctic. I explained and established training programs, and set up seasonal camp schools in the Dene and Inuit areas.
- d) 1964-1966 - Senior Research Assistant and Co-editor of the Hawthorn national study on economic, political and educational status of Indians. This study was requested by Federal Order-in-Council. I travelled to 57 reserves across Canada for the purposes of this study and reviewed extensive documentation on Indians throughout Canada. I also conducted many interviews with Indian elders and band councils throughout Canada

- 4 -

for this study.

- e) 1968-1970 - I worked with the Squamish tribe in British Columbia on health care services and education services and for upgrading of urban reserve programs.
- f) From 1974 to date - I have worked part-time with the Stoney tribe (3 bands) at Morley, Alberta on cultural education programs, and on health services. I most recently completed a study of the impact of alcohol abuse on these Stoney communities.
- g) 1974-1976 - I worked with several Alberta Indian groups on social welfare and health services with special attention to research on Constitutional and Treaty rights.
- h) I am currently Head and Professor of the Department of Anthropology of the University of Calgary, Alberta, where I have taught since 1968.

5. As well, I have published two books and 16 articles on contemporary Indian issues in Canada, presented 26 papers at national and international meetings on Indians, chaired 9 symposia on native issues, and consulted with seven Indian groups on various issues. I was one of 3 anthropologists invited to the IICC (International Inuit

- 5 -

Circumpolar Conference) in Nuuk, Greenland as a resource person in the Cultural Heritage workshops, and was the only Canadian anthropologist invited to sit on the U.S. National Academy of Science Committee for developing research directions and policies for the 1980's for circumpolar regions.

6. I have studied considerable literature on the Crees of Alberta. I am also aware of the affidavits filed in support of the proceedings herein. I am of the opinion that the traditional way of life of the Crees of the Lubicon Lake Band and the Cree Community of Little Buffalo Lake (whom I refer to herein as the Crees of Lubicon Lake) has been and is a viable way of life economically, politically and socially, that this way of life has been and is a satisfactory and fulfilling way of life to them and that they have continued to maintain and currently have an independent, satisfactory, viable and traditional way of life as hunters and trappers.

7. Moreover, the Crees of Lubicon Lake perceive their lifestyle to be viable and healthy and to be one they wish to continue. They perceive themselves now on the brink of changes which are threatening the continuation of their lifestyle, society and culture. Based on my knowledge of similar situations in the North West Territories and elsewhere, I consider that the changes that they are experiencing and proposed increased development activities for the

immediate future will have the effect of irreversibly damaging the local economy, the local political structure and local ritual and social structures. In other words, their way of life will be substantially and inalterably changed.

8. Where native communities in Canada (and elsewhere throughout the world) have been subject to development for industry, oil, urbanization, or similar purposes, this consistently brings as a consequence a major reduction of the land base and severe restriction of local economies based on the land. The situation that the Lubicon Lake Crees face with development is not unique and the pattern of change and the resulting erosion of local economies (and therefore total lifestyles) is predictable. For example, in the Lubicon Lake "Reserve Area" and traditional hunting and trapping territory, gradual changes have resulted in the past 20 years from the oil and gas activity, agricultural settlement and the building of roads. This has reduced the game available for the Cree hunters. In the past two years, the acceleration of development has led to a notable decline in the harvest of fur-bearing animals and big game.

9. Based on similar experiences of other native communities, there is no doubt that the Crees of Lubicon Lake are on the brink of major economic and social change which would totally disrupt their lifestyle, society and culture.

10. Where development has disrupted native lifestyles in other areas of Canada, such development has encroached upon the people's relationship with the land in terms of spirituality and their perceived responsibility for stewardship. Stewardship is the responsibility to leave the land and the environment in a better and more productive state, allowing for an equal, if not better, quality of life for future generations. Almost inevitably, in these situations neither the religious system nor that stewardship of the land can be maintained in the face of substantial oil and gas development in an area used by native hunters and trappers.

11. There comes a point in all native hunting and trapping societies when it becomes impractical, economically and physically, to travel long distances to hunt and trap. It is also not feasible to transport meat long distances back to the community. This is compounded by such things as extra gas transportation expenses and/or the need to transport food for horses and dogs. As well, if the land base becomes so restricted that trappers cannot move out of the settlements to winter camps/cabins, then trapping on distant traplines becomes impractical because animals cannot be collected regularly and are damaged or eaten by other animals, stolen by non-native casual trappers or otherwise depleted.

12. In most land based economic systems, and where the restriction of that base results in the shift from the land to the settlement all year round, there are usually housing problems, an increase in disease due to inadequate water supplies and lack of sanitation, and an increase in infant mortality and disease rates brought about by such conditions.

13. In situations where the land based economy is constrained, the resulting effects on native societies are:

- a) a decrease in the quality of diet, eg. high protein fresh meat is replaced with store bought carbohydrates;
- b) an increase in the need for welfare payments;
- c) a decrease in productive activities, and increase in boredom, social pathology, petty crime and alcohol abuse;
- d) a breakdown in traditional systems of socialization, respect, political and kin alignments with the resulting changes in political, social and personal relationships;
- e) in turn, the total lifestyle of the community disintegrates or is altered irreversibly.

14. In my opinion, the situation of the Crees of Lubicon Lake, a land-based society, is similar to that of other land-based societies in Canada and the experience of other native land-based societies confronted with development is applicable to them.

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15. It is my opinion that with the intensive oil and gas exploration, drilling and development in the Hunting/Trapping Territory of the Crees of Lubicon Lake, the socio-economic changes I have described above in paragraphs 10 to 14 are predictable in respect to the Crees of Lubicon Lake and will almost surely happen to them. There will surely also be a further loss of income due to a decrease of hunting and trapping activities and a loss of real food sources due to the decrease in moose habitat and moose populations and other fur-bearing animals and due to the decrease of trapping areas of the Crees of Lubicon Lake.

16. Cumulative persistent change which accelerates does not allow for community adaptation because of the difficulty of sustaining the effort required to offset such impacts. In this particular case, it is my opinion the Crees of Lubicon Lake have had no opportunity to adapt their lifestyles or infrastructures or to build up alternate resources to offset the negative effects of current and impending game depletion, and the pressure on and the restrictions of their land base. At the same time, the population of the Crees of Lubicon Lake is increasing and there is a need for an even larger land base, not a smaller land base. With the increase of development activities and especially those of the oil companies in their Reserve Area and Hunting/Trapping Territory, the Crees of Lubicon Lake will be subjected to

major and probably very adverse social, economic and political changes.

17. In comparable cases involving land-based native societies, cash compensation for loss of lifestyle has seldom if ever, been satisfactory in the sense that money does not allow for an equivalent quality of life nor can money compensate for loss of kinship reciprocities, community sharing, religion and spirituality, values and socialization systems and the other aspects of the particular way of life.

18. In such comparable situations there has been a disintegration of at least two generations of people due to the inability of the impacted communities to build up new infrastructures, lifestyles and to upgrade community housing and services and to train for employment. This could be at least partially prevented still if the land base and animal populations, and therefore the economic base of the Crees of Lubicon Lake were protected.

19. However, in my opinion, if there are no such protective measures put into effect immediately, then the Crees of Lubicon Lake as a community and society will be over the brink and the harm done will be irreversible and irreparable. I am not aware of any recorded instance in Canada, nor in any other part of the world, where there has been

cumulative change which has accelerated and overtaken a small-scale land-based society such as that of the Crees of Lubicon Lake in which the society has survived.

20. In land-based societies, the level of formal education is generally comparatively low and therefore, people are underskilled and generally unemployable at any level in the wage economy, except for casual labour and menial jobs. This is particularly true for the older and middle generations. The time required to train upcoming generations usually results in the economic unproductivity of at least one or two generations before structures are put in place to make training and education adequate and relevant to the opportunities for the employment available.

21. In the cases of the Crees of Lubicon Lake, it is my opinion that those persons over 50 years of age are totally unemployable other than in traditional pursuits, that those between 30 and 50 years of age are virtually unemployable and that for those between 20 and 30 years of age, some are employable. There has been little employment in oil and gas development related jobs for Crees of Lubicon Lake over the past 10 years. In any event, it takes many years to develop a work force in such situations even in the unlikely event that a significant number of the Crees of Lubicon Lake desired such employment.

22. In many situations similar to those of the Crees of Lubicon Lake, there are also other losses which occur if the hunting, fishing and trapping is seriously affected by development. For example, the loss of game causes a major reduction in the protein content of diet. Even if store-bought food is substituted, the tendency of groups shifting from subsistence diets to store-bought diets is to purchase quantities of poor grade food, high in carbohydrates. As well, the loss of foods from gathering activities (such as berries and local roots and plants) results in a net loss of vitamins and minerals. These dietary changes offset the general health of people in the community. The addition of sugar, pop, alcohol, and carbohydrates, not usually found in hunting and trapping cabins increases the incidence of diseases, such as caries, juvenile diabetes, cirrohsis, obesity and other related conditions.

23. Another change often seen in communities where families no longer regularly use trapping areas is a restriction in reciprocity of relationships, such as the ability to share with kin, and to care for the elderly and the very young. This is in no small measure because of the reduction in quantity of food source and lack of purchasable income. Moose can support a small community; alternatively, the income available is not likely adequate to buy sufficient beef to feed the same number of people. The shift then from a land-based economy to a cash-based economy

creates a major change in the structure of social relationships. This in turn often leads to different social structures and changes the very essence of the society itself. Experience in many other countries has shown that attempts to restore balance to political and social relationships, and to compensate for major economic changes in small-scale societies have never been successful. The levelling-off process, as adjustments are made over time and several generations, never returns to the same original point of quality. In my opinion, the Crees of Lubicon Lake will face the same problems if their dependance on the land is compromised by encroaching oil and gas development.

24. Changes in economic structures lead inevitably to similar and irreversible changes in political structures as well. With the shift in the economic base and the elimination of many kin exchanges, the structure of the community shifts from one based on traditional authority and respect, a closed system of social sanctions, and government by consensus, to a variety of political structures which serve the community in its outside relations adequately eventually but which involves the loss of other values. For example, the process of decision-making in small-scale societies is generally by consensus in which the elders play a very significant part, even when the chiefs are young.

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However, when the small-scale society is infringed upon by the larger society and where decisions have to be made more quickly and on the basis of majority vote, where the outside must be dealt with by one or two representatives and in the non-native language, there is usually a drastic alteration in the nature of political process, leadership and alignments. Such changes alter the basic fabric and functioning of the society in question.

25. Development brings roads, increased traffic and construction workers resulting in harmful effects, such as alcohol and drug abuse, prostitution, venereal disease, unwanted pregnancies and temporary and disruptive relationships between non-native men and native women with negative consequences on their children. This often leads to abandonment of the community and to living on welfare in cities. This tears apart the unity of the families and of the communities and severely weakens their heritage and self-identity.

26. Development in a formerly relatively closed area also brings other predictable results: Indian men dispossessed of their roles as providers, heads of families and heads of political units, tend to lose their own self-respect and sense of worth and often turn to liquor with very negative effects on them and their families. Young native people who perceive no future for themselves also often turn to alcohol abuse.

27. At the moment, it is my opinion that the Crees of Lubicon Lake constitute a bounded community with its own institutions which are working well in the present environmental and social context. Religion is a critically binding force in the community which enhances the relationships between political, social and economic activities. Any shift in their infrastructure will adversely affect the community and the consequences are predictable and will likely follow the general patterns described above.

28. It is my opinion that the community of the Crees of Lubicon Lake, like other small and homogenous communities with a fixed land base, can survive as a distinct group if given proper protection. Elsewhere in Alberta and Canada, development has had a very substantial negative impact on native communities and irreversibly disrupted their way of life.

29. There is a very great risk that if development activity, particularly oil and gas exploration, drilling and development, increases in the Reserve Area and in the traditional Hunting/Trapping Territory of the Crees of Lubicon Lake, the result of the continuation of such activities will be the destruction of the society, culture, traditions and way of life of the Crees of Lubicon Lake and the destruction of their economic base.

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If such development activity increases in those areas in the very near future, it is predictable that their society, culture, traditions and way of life will be irreparably and irretrievably destroyed. In such case, no amount of money can restore the quality of life of the Crees of Lubicon Lake or reverse the resulting negative impacts of such development activity. The pattern and results of many other essentially similar situations will be repeated with the already familiar negative consequences upon the valuable society, culture, traditional practices and way of life of the Crees of Lubicon Lake.

30. I make this my Affidavit in support of an application for an injunction. I have personal knowledge of the matters herein deposed to except where otherwise stated to be based upon information and belief and whereso stated I verily believe same to be true.

SWORN BEFORE me at the City)
of Calgary, in the Province)
of Alberta, this 23rd day of)
November, A.D. 1982.)

(Gaye Crooks)
A Commissioner for Oaths in
and for the Province of Alberta

Joan Ryan
JOAN RYAN

No. 8201-03713

A.D. 1982

IN THE

COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL DISTRICT OF CALGARY

BETWEEN:

CHIEF BERNARD OMINAYAK, BILLY JOE LABOUCAN, LARRY OMINAYAK, EDWARD OMINAYAK and CHIEF BERNARD OMINAYAK suing on behalf of and for the benefit of all the 150 members of the Lubicon Lake Band and 100 other native members of the Cree community of Little Buffalo Lake and The Lubicon Lake Band a body of Indians recognized under the Indian Act, of Little Buffalo Lake, Alberta

Plaintiffs

-and-

NORCEN ENERGY RESOURCES LIMITED, DOME PETROLEUM LIMITED, CHIEFTAIN DEVELOPMENT CO. CANADA LIMITED, SHELL CANADA LIMITED, SHELL CANADA RESOURCES LIMITED, UNION OIL COMPANY OF CANADA LIMITED, NUMAC OIL & GAS LTD., PETRO-CANADA EXPLORATION INC., CHEVRON STANDARD LIMITED, PETROFINA CANADA LIMITED, AMOCO CANADA PETROLEUM COMPANY LTD. and HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF ALBERTA

Defendants

AFFIDAVIT OF JOAN RYAN
CLERK OF THE COURT

NOV 24 1982

CALGARY, ALBERTA

WILSON, STAROSZIK & DANIELS
Barristers & Solicitors
200, 1414 - 8 St. S.W.
Calgary, Alberta
T2R 1B8

File No: 82-033 KES

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GENERAL COUNSEL AVOCAT GENERAL
NOV 23 1984 7727
HUMAN RIGHTS LAW SECTION DROITS DE LA PERSONNE

REF	DATE
FILE	DOSSIER
45-Cda-13-1-3-	
Lubicon Lake Band	

---HUMAN RIGHTS CTTEE:OPTIONAL PROTOCOL:COMMUNICATION NUMBER

167/1984(LUBICON LAKE BAND);R19/78(DENNY VS CDA)

WE ARE SENDING BY CLASSIFIED BAG SECRETARIAT NOTE G/SO 215/51 CANA (38),ALONG WITH REQUEST FROM HRC THAT ABOVE COMPLAINT BE SENT TO STATE PARTY FOR COMMENTS ON ADMISSIBILITY,AS WELL AS VOLUMINOUS DOCUMENTATION ON THIS NEW CASE RECD BY CTTEE.

2.COMMUNICATION OF CHIEF BERNARD OMINAYAK AND LUBICON LAKE BAND (ALTA)WAS TRANSMITTED TO HUMAN RIGHTS CENTER ON 4FEB,BY INNATL INDIAN TREATY COUNCIL.

3.COMPLAINANT ARGUES THAT GOVT OF CDA HAS QUOTE VIOLATED BANDS RIGHTS TO DETERMINE ITS POLITICAL STATUS,PURSUE ITS ECONOMIC,SOCIAL AND CULTURAL DEVELOPMENT,DISPOSE OF ITS NATURAL WEALTH AND RESOURCES, AND FUNDAMENTALLY,ITS RIGHT TO THE PHYSICAL MEANS FOR SUBSISTANCE AND THE EXERCISE OF SELF DETERMINATION UNQUOTE.IT IS ALLEGED THAT CDA VIOLATED ART 1 PARAS 1 TO 3 OF ICCPR.

4.REPLY REQUESTED BY 21JAN85.

5.CTTEE DID NOT/NOT HAVE TIME TO DEAL WITH LET RECD BY DENNY/PARSH

...2

ENTERED
ENREGISTRE

PAGE TWO YTGR7540 RESTR

REQUESTING THAT CASE R19/78 (DENNY VS CDA) BE REOPENED. IN LAST FEW MINUTES OF LAST SESSION DEVOTED TO COMMUNICATIONS, CTTEE DECIDED TO SEEK STATE PARTYS VIEWS ON REQUEST BY COMPLAINANT THAT CASE SHOULD BE REOPENED. WE SHOULD RECEIVE NOTE TO THAT EFFECT FROM SECRETARIAT IN NEXT FEW DAYS AND WILL SEND BY FAX. IT APPEARS TO US THAT THIS IS UNPRECEDENTED (POINT CONFIRMED BY SECRETARIAT/MOLLER) AND QUESTIONABLE PROCEDURE. QUESTION AS TO WHETHER CASE DEALT WITH BY CTTEE AT A PREVIOUS SESSION SHOULD BE REOPENED BY IT PUZZLED MEMBERS OF CTTEE (THIS APPEARED CLEARLY IN DISCUSSIONS WE HAD IN CORRIDOR WITH CTTEE MEMBERS). INSTEAD OF DEALING AT THIS PAST SESSION WITH MATTER WHICH COULD CREATE PRECEDENT, CTTEE HAS DECIDED TO PASS THE BUCK TO STATE PARTY. YOU WILL PRESUMABLY WANT TO CONSIDER WHETHER IT IS IN CDAS INTEREST TO GIVE AN OPINION ON THIS MATTER OF PROCEDURE.

CCC/198 221603Z YTGR7540

IN THE COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL DISTRICT OF CALGARY

BETWEEN:

CHIEF BERNARD OMINAYAK, chief of the
Lubicon Lake Band, of Little Buffalo
Lake, Alberta

-and-

BILLY JOE LABOUCAN, band councillor of
the Lubicon Lake Band, of Little Buffalo
Lake, Alberta

-and-

LARRY OMINAYAK, band councillor of the
Lubicon Lake Band, of Little Buffalo
Lake, Alberta

-and-

EDWARD LABOUCAN, trapper, of Little
Buffalo Lake, Alberta

SUING PERSONALLY

-and-

CHIEF BERNARD OMINAYAK, suing on behalf
of and for the benefit of all the 150 mem-
bers of the Lubicon Lake Band and 100 other
native members of the Cree community of
Little Buffalo Lake

-and-

THE LUBICON LAKE BAND, a body of Indians
recognized under the Indian Act, of Little
Buffalo Lake, Alberta

PLAINTIFFS

AND:

NORCEN ENERGY RESOURCES LIMITED, a corpora-
tion duly incorporated, having its head
office in Toronto and an office and place
of business at Norcen Tower, 715 - 5th Avenue
S.W., Calgary, Alberta

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- 2 -

-and-

DOMESTIC PETROLEUM LIMITED, a corporation duly incorporated having its head office at 333 - 7th Avenue S.W., Calgary, Alberta

-and-

CHIEFTAN DEVELOPMENT CO. LTD., a corporation duly incorporated, having its head office at 1201 Toronto Dominion Tower, Edmonton Centre, Edmonton, Alberta

-and-

SHELL CANADA LIMITED, a corporation duly incorporated, having its head office at 505 University Avenue, Toronto, Ontario and a place of business at 400 - 4th Avenue S.W., Calgary, Alberta

-and-

SHELL CANADA RESOURCES LIMITED, a corporation duly incorporated, having a place of business at 400 - 4th Avenue S.W., Calgary, Alberta

-and-

UNION OIL COMPANY OF CANADA LIMITED, a corporation duly incorporated, having its head office at 335 - 8th Avenue S.W., Calgary, Alberta

-and-

NUMAC OIL & GAS LTD., a corporation duly incorporated, having its head office at 9915 - 108th Street, Edmonton, Alberta

-and-

PETRO-CANADA EXPLORATION INC., a corporation duly incorporated having its head office at 407 - 2nd Street S.W., Calgary, Alberta

-and-

CHEVRON STANDARD LIMITED, a corporation duly incorporated, having its head office at 400 - 5th Avenue S.W., Calgary, Alberta

-and-

PETROFINA CANADA LIMITED, a corporation duly incorporated having its head office in Montreal, Quebec and a place of business at 736 - 8th Avenue S.W., Calgary, Alberta

-and-

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- 3 -

-and-

AMOCO CANADA PETROLEUM COMPANY LTD., a
corporation duly incorporated having its
head office at 444 - 7th Avenue S.W.,
Calgary, Alberta

-and-

HER MAJESTY THE QUEEN IN RIGHT OF THE
PROVINCE OF ALBERTA, Legislature Building,
Edmonton, Alberta

DEFENDANTS

STATEMENT OF CLAIM

1. Individual Plaintiffs, including those on whose behalf and for whose benefit Chief Bernard Ominayak sues in the present proceedings, are all Native persons of Cree ancestry who are all Indians within the meaning of section 91(24) of the British North America Act, 1867 and Indians within the meaning of the British North America Act, 1930.

2. All individual Plaintiffs (and a reference herein to this term indicates all the named individual Plaintiffs as well as all the persons on whose behalf and for whose benefit Chief Bernard Ominayak sues in the present proceedings) are inhabitants of Northern Alberta and are the direct descendants of Indians who have occupied all of the area of land situated in Alberta described in paragraph 4 hereof since time immemorial or at least since the assumption of British sovereignty over the said area.

3. All individual Plaintiffs and Plaintiff the Lubicon Lake Band are members of an organized society which has occupied the area described in paragraph 4 hereof since time immemorial or at least since prior to the assumption of British sovereignty over the said area.

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- 4 -

4. Plaintiffs have, and their ancestors since time immemorial had and transmitted to them, Indian title, existing aboriginal rights and personal and usufructuary rights, including hunting, fishing and trapping rights as well as other rights, over, in and under all of the area of land situated in the Province of Alberta between approximately parallels 55° 30' and 58° of latitude north and meridians 114° to 118° west, and more particularly in, over and under the land within a radius of 40 miles of Little Buffalo Lake, Alberta.

5. The said Indian title, existing aboriginal rights and personal and usufructuary rights of Plaintiffs over the said areas include the right to the exclusive use and enjoyment of all the oil, oil sands, gas, hydrocarbons, minerals and natural resources of any kind in, on, over and under the said areas of lands described in paragraph 4 hereof as well as the right to the exclusive use and occupation of all the said areas.

6. Plaintiffs presently inhabit and use the said areas and hunt, fish and trap therein, and they and their predecessors in title have exercised, on a continuous basis their Indian title, their existing aboriginal, personal and usufructuary, and hunting, fishing and trapping rights and their other rights in the said areas in accordance with the traditional aboriginal way of life which is based primarily upon hunting, fishing and trapping.

7. In addition to the foregoing title and rights, individual Plaintiffs all have the right of hunting, trapping and fishing game and fish for food at all seasons of the year over all of the said areas in virtue of the British North America Act, 1930.

8. All of Plaintiffs' rights as described herein take precedence over any rights in the said areas of Defendant Her Majesty the Queen in Right of the Province of Alberta and all Defendant corporations and all others who derive or purport to derive any title or rights in the said areas from said Defendant Her Majesty the Queen in Right of the Province of Alberta.

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9. All of individual Plaintiffs, including all Plaintiffs on whose behalf and for whose benefit Chief Bernard Ominayak is suing in the present proceedings have a common interest and a similar interest in the present action.

10. Moreover, Chief Bernard Ominayak has been duly authorized to take the present action on behalf of and for the benefit of those members of the Lubicon Lake Band and of the Cree community of Little Buffalo Lake whom he represents in the present action.

11. Approximately 150 of individual Plaintiffs are Indians registered under the Indian Act and members of Plaintiff the Lubicon Lake Band and all such Plaintiffs are also Native persons who are members of the Cree community of Little Buffalo Lake and aboriginal people of Canada within the meaning of the Constitutional Resolution of December, 1981 adopted by the House of Commons and Senate of Canada in respect to the amendment of the Constitution of Canada.

12. All the other 100 individual Plaintiffs are unregistered or non-status Indians of Cree ancestry or half-breeds or Metis of Cree ancestry who are aboriginal people of Canada within the meaning of the said Constitutional Resolution of December, 1981.

13. All of Plaintiffs have and are entitled to invoke existing aboriginal rights over the said areas mentioned in paragraph 4 hereof, within the meaning of the said Constitutional Resolution of December 1981.

14. Moreover, Plaintiffs also have land claims and rights within the meaning of and recognized by the Indian Oil and Gas Act.

15. The areas described in paragraph 4 hereof were included in a wider area which was the object of Treaty No. 8 of June 21, 1899 and Adhesions thereto executed between Her Majesty the Queen of Great Britain and certain Cree, Beaver and Chipewyan and other Indians.

16. The said Treaty No. 8 purported to effect the surrender and cession by the bands and Indians who were party thereto to the Government of the Dominion of Canada of all rights, titles and privileges whatsoever to the lands described in the said Treaty as well as to all other lands in the Dominion of Canada.

17. Under said Treaty No. 8, Her Majesty the Queen agreed that the said Indians who were parties to the Treaty would retain the right to hunt, trap and fish subject to certain conditions.

18. Furthermore, under the said Treaty No. 8, Her Majesty the Queen also agreed and undertook to lay aside reserves for such bands as desire same on the basis of one square mile for each family of five (5) and to provide land in severalty to the extent of one hundred and sixty acres to each Indian for such families or individual Indians as may prefer to live apart from band reserves, subject to certain conditions respecting the selection of lands, the surrender of lands and the appropriation of lands.

19. The said Treaty No. 8 also provided for other rights and benefits in favour of the Indians party thereto.

20. The said Treaty No. 8 also contemplated, with their consent, the surrender of rights by, and the conferring of rights and benefits upon, persons of Indian ancestry known as half-breeds or Metis.

21. Plaintiff the Lubicon Lake Band, certain Plaintiffs and the ancestors of Plaintiffs existed as a band or group of Indians at the time of execution of the said Treaty No. 8 and Adhesions, although Plaintiff the Lubicon Lake Band was only formally recognized as an Indian Band under the Indian Act in or about 1940..

22. Plaintiff the Lubicon Lake Band was not a party to said Treaty No. 8 at the time of its execution or the execution of any of its Adhesions and said Plaintiff has never become a party to the said Treaty No. 8 and is not affected by it.

23. Likewise, individual Plaintiffs have never become parties to said Treaty No. 8 or its Adhesions and they are not affected by said Treaty No. 8.

24. Subject to the foregoing, Her Majesty the Queen in Right of Canada has nonetheless recognized approximately 150 of individual Plaintiffs as members of the Lubicon Lake Band entitled to rights and benefits under said Treaty No. 8 and has paid the annuities contemplated by Treaty No. 8 to such band members.

25. Notwithstanding the foregoing, Treaty No. 8 did not and could not extinguish the Indian title and aboriginal rights and personal and usufructuary rights of Plaintiffs and their ancestors and is without effect upon such title and rights in the absence of an adhesion to the Treaty by Plaintiff band and the other individual Plaintiffs or their duly authorized representatives.

26. Subsequent to the execution of said Treaty No. 8 and Adhesions, Plaintiffs and their ancestors never adhered to such treaty or became a party thereto and no action or deed of Plaintiffs subsequent to that date, including the receipt of treaty annuities by some of individual Plaintiffs has had or could have the effect of extinguishing or otherwise affecting the Indian title, aboriginal rights and personal and usufructuary rights of Plaintiffs.

27. Subsidiarily, if Treaty No. 8 had the effect of extinguishing said title and rights of Plaintiffs or otherwise affecting them, which is denied, Plaintiffs are as a minimum entitled to all the rights and benefits specified in Treaty No. 8 and more particularly Plaintiffs are entitled to the setting aside of a reserve of land pursuant to said Treaty No. 8, the British North America Act, 1930 and the Indian Act of at least 60 square miles within the areas traditionally used by them, or alternatively, to land in severalty in an area of at least 70 square miles within the same areas.

28. In any event in or about August, 1940, a reserve was selected for Plaintiff Band of approximately 25 square miles on the western shore of Lubicon Lake in Township 85, Range 13, West 5th Meridian (sections 3-8, W $\frac{1}{2}$ 17, 18, 19, W $\frac{1}{2}$ 20, W $\frac{1}{2}$ 29, 30, 31, W $\frac{1}{2}$ 32) and in Township 85, Range 14, West 5th Meridian (sections 1, 2, 11-14, 22, 24, 26, 35 and 36) by representatives of the Minister of Mines and Resources of Canada and of the Minister of Lands and Mines of Alberta and said reserve was provisionally reserved as an Indian Reserve by Defendant Her Majesty the Queen in Right of the Province of Alberta pursuant to the Alberta Natural Resources Transfer Agreement until at least 1954.

29. The said provisional reservation was apparently unilaterally and illegally "cancelled" by Defendant Her Majesty the Queen in Right of the Province of Alberta subsequently because of the alleged lack of interest of Her Majesty the Queen in Right of Canada in the said area as a reserve despite the opposition and consistent demands of Plaintiff the Lubicon Lake Band for a reserve at the site described in paragraph 28.

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30. Alternatively, the said selection and reservation of the site described in paragraph 28 by the Minister of Lands and Mines of Alberta with the concurrence of the Government of Canada constituted a setting aside of such land within the meaning of Section 10. of the British North America Act, 1930 which cannot be revoked by Defendant Her Majesty the Queen in Right of the Province of Alberta and which made the site described in paragraph 28 a reserve under federal jurisdiction.

31. Defendant Her Majesty the Queen in Right of the Province of Alberta as well as Her Majesty the Queen in Right of Canada have also acknowledged and admitted that Plaintiff Band and individual Plaintiffs were not parties to Treaty No. 8, but are entitled to be parties thereto and are entitled to a reserve of at least 25 square miles on the site described in paragraph 28.

32. Alternatively, therefore, Defendant Her Majesty the Queen in Right of the Province of Alberta is estopped from denying Plaintiffs' entitlement to at least a reserve of 25 square miles at the site described in paragraph 28.

33. Consequently, whether Plaintiffs still have Indian title and existing aboriginal rights and personal and usufructuary rights over the said area described in paragraph 4 hereof or whether they are entitled only to all of the rights and benefits specified in Treaty No. 8, the rights of Plaintiffs to at least reserves of Indian lands affect, condition and take precedence over the title to all of the lands described in paragraph 4 hereof and the natural resources in and on such lands and especially on the sites described in paragraph 28 hereof.

34. Subsidiarily, Plaintiff the Lubicon Lake Band and individual Plaintiffs who are registered Indians, should they be determined by this Honourable Court to be subject to Treaty No. 8, are entitled to invoke Indian title, existing aboriginal rights and personal and usufructuary rights in respect to the said lands described in paragraph 4 hereof and to have said Treaty No. 8 declared inoperative and invalid in respect to the surrender of their rights and in respect to the alleged extinguishment of their claims at least until the fulfilment by Her Majesty the Queen in Right of Canada of her obligations thereunder and the fulfilment by Defendant Her Majesty the Queen in Right of the Province of Alberta of her obligations pursuant to the British North America Act, 1930.

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35. Further, and alternatively, at least all of individual Plaintiffs who are not registered Indians still have Indian title, existing aboriginal rights and personal and usufructuary rights in the lands described in paragraph 4 hereof.

36. All the Indian title, aboriginal rights and personal and usufructuary rights of Plaintiffs have never been extinguished and are still subsisting and furthermore have been acknowledged and recognized by, inter alia, the British North America Act, 1930 in virtue of which the agreement dated December 14, 1929 between the Government of the Dominion of Canada and the Government of the Province of Alberta (known as the Alberta Natural Resources Agreement) was confirmed and given the force of law, by the Indian Oil and Gas Act, by the Imperial Order-in-Council of June 23, 1870 respecting the admission of Rupert's Land and the Northwestern Territory into the Union and legislation subsequent thereto, including the several Dominion Lands Acts, by the execution of various treaties and by the case law.

37. The said Indian title and rights of Plaintiffs are a trust and an interest other than that of the Crown in Crown lands in Alberta within the meaning of the Alberta Natural Resources Transfer Agreement, particularly sections 1, 2 and 10 thereof and are a burden, encumbrance and condition upon any title which Defendant Her Majesty the Queen in Right of the Province of Alberta may have over the lands described in paragraph 4 and the natural resources thereof.

38. The Indian title, aboriginal rights and personal and usufructuary rights of Plaintiffs, and subsidiarily any treaty rights of Plaintiffs are, and have been since Confederation, rights under the exclusive legislative jurisdiction of the Parliament of Canada which cannot be affected, extinguished, interfered with, prejudiced, damaged or otherwise dealt with by Defendant Her Majesty the Queen in Right of the Province of Alberta or the other Defendants.

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Alternatively, at least all of
are not registered Indians still
g aboriginal rights and personal
the lands described in paragraph

title, aboriginal rights and
rights of Plaintiffs have never
still subsisting and furthermore
recognized by, inter alia, the
1930 in virtue of which the
4, 1929 between the Government
and the Government of the
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Province of Alberta may have
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Plaintiffs, and subsidiarily any
s are, and have been since Confe-
exclusive legislative jurisdic-
Canada which cannot be affected,
with, prejudiced, damaged or
efendant Her Majesty the Queen
of Alberta or the other Defendants.

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39. The Indian title, aboriginal rights and the said personal and usufructuary rights of Plaintiffs have never been lawfully extinguished nor surrendered by them nor by their predecessors in title and they are still subsisting.

40. In particular, the Indian title, aboriginal rights and personal and usufructuary rights of Plaintiffs have never been extinguished by federal legislation or by acts or otherwise of the Federal Crown since Confederation and were never extinguished by the Imperial Parliament or Crown prior to Confederation.

41. Plaintiffs therefore are entitled to the exclusive use and occupation of the areas described in paragraph 4 and the natural resources thereof.

42. Subsidiarily, the entitlement of Plaintiffs to a reserve or to land in severalty constitutes an indivisible burden, charge or encumbrance on all of the lands described in paragraph 4 and especially those described in paragraph 28 hereof.

43. Defendant Her Majesty the Queen in Right of the Province of Alberta has purported in respect to the lands and natural resources described in paragraph 4, including those described in paragraph 28 hereof, and so subject to the Indian title, existing aboriginal rights and personal and usufructuary rights of Plaintiffs to grant and has purportedly granted to Defendants Norcen Energy Resources Limited, Dome Petroleum Limited, Chieftan Development Co. Ltd., Shell Canada Limited, Shell Canada Resources Limited, Union Oil Company of Canada Limited, Numac Oil & Gas Ltd., Petro-Canada Exploration Inc., Chevron Standard Limited, Petrofina Canada Limited and Amoco Canada Petroleum Company Ltd. individually and jointly various petroleum, oil, gas, natural gas, and oil sands leases, permits and licences.

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44. The said Defendant corporations have in virtue of the purported gas and oil and oil sands leases extracted minerals, oil, gas, hydrocarbons, and other natural resources from the said lands and the subsurface of the lands which are subject to the said rights of Plaintiffs.

45. Moreover, pursuant to the said leases, permits and licences, works have been carried out, oil and gas wells have been exploited and resources extracted by Defendant corporations from the said areas described in paragraph 4 and oil and gas and other resource revenues have been obtained and received in virtue of the said exploitation by the said Defendant corporations and royalties paid to said Defendant Her Majesty the Queen in Right of the Province of Alberta in consequence thereof.

46. Defendant corporations are continuing and intend in the future to carry out the extraction of natural resources and works and activities described in paragraphs 44 and 45 in the said areas.

47. In recent weeks, there has been new and intensive exploitation of that part of the areas described in paragraph 4 which is within a radius of 15 miles of Little Buffalo Lake, including the drilling of oil and gas wells, the extraction of oil and gas, the construction of a pipeline across, and other works on, land set aside as a reserve for Plaintiff the Lubicon Lake Band and described in paragraph 28 hereof as well as the construction of service roads, seismic testing and other works relating to the foregoing.

48. The said works and exploitation of natural resources by Defendant corporations have interfered with and caused prejudice to Plaintiffs and their rights and caused damage to the environment and the natural resources of the area, particularly the game and fish on which Plaintiffs depend and all future works and exploitations will cause further prejudice to Plaintiffs and their rights, affect and continue to affect adversely their rights and way of life and cause further damage to the environment : and to the natural resources on which Plaintiffs depend.

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49. The said leases, permits and licences and the granting and exercising of alleged rights thereunder are unconstitutional, illegal, null and of no effect or subsidiarily are subject to the said rights of Plaintiffs.

50. The said leases, permits and licences given by said Defendant Her Majesty the Queen in Right of the Province of Alberta to said Defendant corporations and works carried out pursuant thereto constitute an illegal and unconstitutional appropriation and expropriation of the rights of Plaintiffs without any compensation and without any just and equitable indemnity and an illegal interference with and encroachment upon the right of hunting, fishing and trapping of Plaintiffs guaranteed to them pursuant to section 12 of the British North America Act, 1930 (Alberta Natural Resources Transfer Agreement).

51. Unless the foregoing illegal acts, exploitation of natural resources and works of Defendant corporations are restrained, Plaintiffs' rights and the way of life of individual Plaintiffs will be seriously and irretrievably jeopardized and damaged and their recourses will become illusory.

52. There is no other remedy equally convenient, beneficial and effectual which can save Plaintiffs from suffering continued, great, serious and irreparable loss, injury and damage and which can protect Plaintiffs' said rights than an injunction.

53. Plaintiffs are therefore entitled to an immediate injunction restraining Defendant corporations from exploiting and extracting oil, gas, hydrocarbons, minerals and natural resources of any kind in, on, over or under the areas of land described in paragraph 4 hereof and from carrying out any works relating thereto including the drilling of oil and gas wells, the extracting of oil and gas, the construction of roads and pipelines and seismic testing and from carrying out other works in connection with resource exploration and exploitation.

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54. It is especially expedient that Defendant corporations be restrained from the activities described in paragraph 53 hereof in, over, upon or under the area described in paragraph 28 hereof.

55. Subsidiarily, it is expedient that Defendant corporations be enjoined from interfering in any way with the exercise of Plaintiffs' hunting, fishing and trapping rights over the said areas.

56. Plaintiffs are also entitled to a declaration that they have Indian title, existing aboriginal rights and personal and usufructuary rights including hunting, fishing and trapping rights as well as other rights over, in and under all of the areas described in paragraph 4 hereof and that the said rights include the right to exclusive use and enjoyment of all oil, oil sands, gas, hydrocarbons, minerals and natural resources of any kind in, on and over the said areas of land, as well as the right to the exclusive use and occupation of the said areas.

57. Subsidiarily, Plaintiffs are entitled to a declaration that they as a minimum have a right to a reserve of at least 60 square miles including the area described in paragraph 28 hereof, as well as the exclusive use and benefit of all the natural resources in, upon or under the said reserve or, alternatively, to land in severalty of an area of at least 70 square miles in or around the Lubicon Lake and Little Buffalo Lake areas, including the land described in paragraph 28 hereof together with the natural resources in, upon or under the said lands.

58. Subsidiarily, Plaintiffs are entitled to a declaration that their hunting, fishing and trapping rights take precedence over any rights of all the Defendants in respect to the areas described in paragraph 4 hereof.

59. In addition, Plaintiffs are entitled to the revenues and royalties contemplated by paragraph 45 hereof in the amount of seven hundred million dollars (\$700,000,000).

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61. Plaintiffs also instituted proceedings in April of 1980 in the Federal Court of Canada in respect to many of the subject-matters of the present proceedings against Her Majesty the Queen in Right of Canada, Defendant Her Majesty the Queen in Right of the Province of Alberta and certain of Defendant corporations, but the Federal Court of Canada has declined jurisdiction in respect to the Defendants herein who were parties to that action.

62. Furthermore, notwithstanding such proceedings the Defendant Her Majesty the Queen in Right of the Province of Alberta illegally purported to establish a hamlet and a land tenure program at Little Buffalo Lake which has interfered with rights of Plaintiffs and has caused considerable prejudice, loss and damages to them.

63. This Honourable Court has jurisdiction to make the declarations and condemnations herein prayed for and to issue the order of injunction sought herein.

64. Plaintiffs invoke all presumptions in their favour as well as judicial notice of the facts of history.

65. Plaintiffs reserve all other rights and recourses belonging to them individually and collectively and particularly the right to request an interlocutory injunction against the Defendant corporations should they continue with their said exploitation, works and activities.

66. 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:

THAT their action be maintained and that by judgment to be rendered herein, this Honourable Court declare that the Plaintiffs have subsisting Indian title and existing aboriginal rights, and personal and usufructuary rights over, in, under and to all lands and natural resources situated in the Province of Alberta between approximately parallels 55°30' and 58° of latitude north and meridians 114° to 118° west as well as hunting, fishing and trapping rights over all of said lands.

THAT the said Indian title and rights of Plaintiffs be declared by judgment to be rendered herein to take precedence over and condition, and to be a burden and encumbrance upon all rights of Defendants over the said lands and the natural resources thereof.

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THAT such Indian title and existing aboriginal rights, and personal and usufructuary rights of Plaintiffs be declared by judgment herein to comprise the exclusive use and enjoyment of all oil, gas, hydrocarbons, oil sands and other natural resources in, over, and under the lands so subject to their said title and rights.

THAT the said Indian title and rights of Plaintiffs in the said lands and natural resources be declared to be under exclusive federal jurisdiction.

THAT all oil, gas, petroleum, oil sands, and hydrocarbons leases, permits and licences heretofore granted by Her Majesty the Queen in Right of the Province of Alberta to Defendant corporations in the said areas described in the first paragraph of these conclusions be declared unconstitutional, illegal, null, void and of no effect.

THAT subsidiarily, the said lease, permits and licences as well as all rights of Defendant Her Majesty the Queen in Right of the Province of Alberta - in the said areas be declared to be inchoate, burdened and encumbered by and subject to the rights of Plaintiffs and incapable of exercise by Defendants until the surrender by Plaintiffs of their said rights, or the lawful extinguishment by Parliament or the Federal Government of Plaintiffs' said rights. ✓

THAT subsidiarily Plaintiffs' hunting, fishing and trapping rights be declared to take precedence and prevail over the rights of Defendants in the said areas.

THAT the alleged establishment of a hamlet and land tenure program at Little Buffalo Lake by Defendant Her Majesty the Queen in Right of the Province of Alberta be declared to be unconstitutional, illegal, null and void and an illegal interference with and encroachment upon the rights of Plaintiffs.

THAT said Treaty No. 8 of June 21, 1899 and Adhesions, be declared not to have effected a surrender of the said title and rights of any of the Plaintiffs.

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THAT subsidiarily Defendant Her Majesty the Queen in Right of the Province of Alberta be declared to be in breach of the British North America Act, 1930, in respect to Plaintiffs.

THAT a permanent order of injunction be issued against all Defendant corporations ordering and restraining them, their officers, directors, employees, agents, servants, contractors and sub-contractors and those acting under their authority or pursuant to their instructions or in concert with them to immediately cease, desist and refrain from

a) exploiting and extracting oil, gas, hydrocarbons, minerals and natural resources of any kind, in, on, over or under the area of land situated in the Province of Alberta between parallels 55°30' and 58° of latitude north and meridians 114° to 118° west and more particularly in, on, over or under the area of land within a radius of 40 miles of Little Buffalo Lake, Alberta;

b) carrying out any works, operations, projects and activities relating to the exploration, drilling, exploitation and extraction of oil, gas, hydrocarbons, minerals and natural resources of any kind in, on, over or under the area of land situated in the Province of Alberta between parallels 55°30' and 58° of latitude north and meridians 114° to 118° west and more particularly in, on, over or under the area of land within a radius of 40 miles of Little Buffalo Lake, Alberta including works connected with the construction of roads and pipelines, seismic testing, line cutting and surveys.

c) interfering with Plaintiffs' Indian title, existing aboriginal rights, and personal and usufructuary rights over the said areas, and individual Plaintiffs' right to

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hunt, trap and fish game for food at all seasons of the year on all unoccupied lands and on any other lands to which Plaintiffs have a right of access;

d) from trespassing in the said areas and from causing damage to the environment and natural resources of the said areas.

THAT Defendants be condemned to pay Plaintiffs the amount of seven hundred million dollars (\$700,000,000) in lieu of royalties and revenues from resource extraction to date in the said areas as described above.

THAT subsidiarily Plaintiffs be declared to be entitled to a reserve of sixty square miles pursuant to Treaty No. 8 comprising all the present site of Little Buffalo Lake and the 25 square miles on the western shore of Lubicon Lake and described in paragraph 28 and further be declared to be entitled to the exclusive use and benefit of all the oil, gas, minerals, hydrocarbons and other natural resources in, on, over and under the said areas to which they are entitled as a reserve together with damages in the amount of two hundred million dollars (\$200,000,000) from Defendants and that Defendants be condemned to pay to Plaintiffs the said amount of two hundred million dollars (\$200,000,000).

THAT Defendants be ordered to pay Plaintiffs interest on all amounts to which they are entitled hereunder from the date of such entitlement.

THAT Plaintiffs obtain such further relief as this Court may deem just and that all their other rights and recourses be reserved.

THAT Defendants be condemned jointly to pay costs of this action, including the costs of all experts, expertises and exhibits.

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DATED at the City of Montreal, in the Province of Quebec, this 16th day of February, A.D. 1982, and DELIVERED BY MESSRS. O'REILLY & GRODINSKY, Solicitors for the Plaintiffs herein whose address for service is in care of MESSRS. WILSON STAROSZIK AND DANIELS, 1414 - 8th Street South West, Suite 200, Calgary, Alberta, T2R 1B8.

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 16th day of February, A.D. 1982.

CLERK OF THE COURT OF QUEEN'S
BENCH OF ALBERTA

You are hereby notified that the Plaintiffs may enter judgment in accordance with this Statement of Claim or such judgment as according to the practice of the Court they are entitled to, without any further notice to you, unless within Fifteen (15) days after service hereof you cause to be filed in the office of the Clerk of the Court from which this Statement of Claim has issued either:

1. A Statement of Defence, or
2. A Demand that notice of any application to be made in the action be given to you,

and unless within the same time a copy of your Statement of Defence or Demand of Notice is served upon the Plaintiff or his Solicitor at his stated address for service.

IN THE COURT OF QUEEN'S BENCH
OF ALBERTA
JUDICIAL DISTRICT OF CALGARY

BETWEEN:

CHIEF BERNARD OMINAYAK, BILLY JOE LABOUCAN, LARRY OMINAYAK, EDWARD LABOUCAN et al.

Plaintiffs

AND:

NORCEN ENERGY RESOURCES LIMITED, DOME PETROLEUM LIMITED, CHIEFTAN DEVELOPMENT CO. LTD., SHELL CANADA LIMITED, SHELL CANADA RESOURCES LIMITED, UNION OIL COMPANY OF CANADA LIMITED, NUMAC OIL & GAS LTD., PETRO-CANADA EXPLORATION INC., CHEVRON STANDARD LIMITED, PETROFINA CANADA LIMITED, AMOCO CANADA PETROLEUM COMPANY LTD., HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF ALBERTA

Defendants

STATEMENT OF CLAIM

This Statement of Claim issued by O'REILLY & GRODINSKY, solicitors for the Plaintiffs who reside in Montreal, Quebec and whose address for service is:

O'REILLY & GRODINSKY
c/o Wilson Staroszyk and Daniels
1414 - 8th Street South West
Suite 200
Calgary, Alberta
T2R 1B8

and is addressed to the Defendants whose addresses so far as is known to the Plaintiffs are those mentioned on pages 1, 2 and 3 of the Statement of Claim.

No. 8201-03713

IN THE COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL DISTRICT OF CALGARY

BETWEEN:

CHIEF BERNARD OMINAYAK, BILLY JOE LABOUCAN,
LARRY OMINAYAK, EDWARD LABOUCAN, and CHIEF BERNARD OMINAYAK
suing on behalf of and for the benefit
of all the 150 members of the
Lubicon Lake Band and 100 other native members
and The Lubicon Lake Band, a body of Indians
recognized under the Indian Act, of
Little Buffalo Lake, Alberta
Plaintiffs/
Applicants

-and-

NORCEN ENERGY RESOURCES LIMITED, DOME PETROLEUM
LIMITED, CHIEFTAN DEVELOPMENT CO. LTD., SHELL
CANADA LIMITED, SHELL CANADA RESOURCES LIMITED,
UNION OIL COMPANY OF CANADA LIMITED, NUMAC OIL &
GAS LTD., PETRO-CANADA EXPLORATION INC., CHEVRON
STANDARD LIMITED, PETROFINA CANADA LIMITED, AMOCO
CANADA PETROLEUM COMPANY LTD., and HER MAJESTY THE
QUEEN IN RIGHT OF THE PROVINCE OF ALBERTA

Defendants/
Respondents

REASONS FOR JUDGMENT
OF THE HONOURABLE MR. JUSTICE FORSYTH

This matter involves a continuation of the application
by the Plaintiffs/Applicants, hereinafter referred to as the
Applicants, for an interim injunction or injunctions
restraining the Defendants/Respondents, hereinafter referred to
as the Respondents, from interfering with the Applicants
alleged rights in a substantial area of Northwest Alberta
containing in excess of 8,500 square miles.

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This matter originally came before me for the determination of certain preliminary points based on the assumption, for the purpose of such preliminary application only, that all facts set forth in the affidavits then filed by the Applicants were true. In that regard reference is made to the decisions of this Court as reported in (1983) Ominayak vs. Norcen et al 23 A.L.R. 284 No. 1 and (1983) Ominayak vs. Norcen et al 24 A.L.R. 394 No. 2.

I stress that, as indicated in those decisions, the disposition of the preliminary points was made on the basis that all facts as alleged in the Applicant's affidavits were true. Also for the purposes of that preliminary application only, the Respondents conceded that there was a serious issue to be tried.

That preliminary application then proceeded, inter alia, on the basis of whether or not certain defences were available to the Crown in the right of Alberta by way of Crown immunity and, if so available, whether it extended to the other Respondents. Furthermore assuming all facts set forth in the affidavits filed by the Applicants at that time were true, whether following the principles laid down in American Cyanamid Company vs. Ethicon (1975) A.C. 396, (1975) All E. R. 504 the Applicants in any event would not be entitled to an interim injunction.

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It is important to note the very restrictive approach put before the Court at that time, no doubt for the very desirable motive of possibly shortening these proceedings if this Court should be of the view that on the Applicants own material they would ultimately not succeed in obtaining an interim injunction. Arguments on these preliminary points occupied some six full days with the overall result of such preliminary argument being, in effect, that the Court in an application of this nature was not prepared to summarily dismiss same without hearing the application itself on its merits. Accordingly, as a result of further application to this Court for directions, certain time constraints were laid down for the filing of material by the parties with dates established for the hearing of this matter commencing September 26, 1983.

Prior to the commencement of the hearing itself however, it should be noted that a further application for an interim injunction was made in July, 1983 based on the fact that the Province had put up for sale certain mine and mineral rights by way of licenses and leases on lands forming part of the lands comprising the claim of the Applicants. It was the position of the Applicants that any such public sale should be delayed pending disposition of their application for an interim injunction over all of the lands in question including the lands being offered for sale. That application was dismissed

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for the reasons given at the time. In particular it could not be demonstrated that, notwithstanding the sale of such mineral interests, that any particular activity detrimental to the Applicants interests would take place between the date of sale and the hearing and final disposition of the main application.

The main application for interim injunctive relief commenced on September 26, 1983, and concluded on October 25, 1983, involving a total of 20 full days. The material before the Court on this application included numerous lengthy affidavits filed by both Applicants and Respondents, cross examinations on some of such affidavits, examinations under Rule 244 of the Consolidated Rules, consideration of a mass of historical articles, maps and charts, and genealogical tables concerning the ancestry of the Applicants. It encompassed a variety of topics relating to the alleged effects of the Respondents activities on the Applicants way of life. Indeed it is difficult to envision that the trial of the action itself would encompass much more material than was before the Court in this interim application.

I turn now to the application. The relief claimed by the Applicants varies and is based on alternative foundations. In brief, the Applicants claim aboriginal rights over the large tract of land containing in excess of eighty-five hundred (8,500) square miles, alleging that these lands traditionally since time immemorial, or at least since 1899, have been

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occupied by the Applicants and were never ceded to the Crown in the right of Canada either by or under the provisions of Treaty No. 8, which encompassed those lands among many other lands covered by the Treaty, or indeed have ever been ceded by any subsequent parliamentary action, including The British North America Act 1930 20-21 George V Chapter 26 (U.K.) which agreement is found in the Alberta Natural Resources Act, Statutes of Alberta 1930 Chapter 21. The Applicants also claim rights arising under the provisions of Section 35 of the Charter, The Canada Act (1982). Alternatively the Applicants claim there in fact exists within the lands in question an Indian Reserve of some twenty-five (25) square miles at and around the West end of Lubicon Lake, said Indian Reserve having been, in effect, established during the 1940's, which Reserve carried with it entitlement to all the mines and minerals contained therein. In addition, by virtue of the numbers of the Applicants, they claim an entitlement pursuant to the provisions of Treaty No. 8 to an additional thirty-five (35) square miles of Indian Reserve to be set aside out of an area which they had admittedly arbitrarily set at some nine hundred (900) square miles centered on Lubicon Lake.

The nature of the injunctive relief sought varies. While, as noted, they claim aboriginal rights over some eighty-five hundred (8,500) square miles, the injunctive relief sought within that territory and exclusive of the nine hundred

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(900) square mile area, is injunctive relief sufficient to preclude interference with the hunting and trapping activities of the Applicants in that area. It is alleged that the bulk of the hunting and trapping activity of the Applicants is contained within the nine hundred (900) square mile area, referred to, and within that area the Applicants seek more complete injunctive relief restraining Respondents to a far greater degree. In the alternative claim based on the alleged establishment of an Indian Reserve of some twenty-five (25) square miles and an entitlement to a further Reserve of thirty-five (35) square miles, the Applicants claim a more absolute injunction restraining the Respondents from any activities whatsoever in that area founded on an assumption that the Crown, in the Right of Alberta, has no right to lease or sell mineral rights in such territory nor to authorize the Respondents to carry out exploration and drilling for any oil and gas contained under the lands in question.

In *Ominayak versus Norcen et al No. 2 supra*, I dealt with the principles and factors to be considered in an application of this nature based on the decision in *American Cyanamid vs. Ethicon supra*. I do not propose to repeat the comments I made at that time with respect to this case. This is particularly so in light of the fact that all counsel stressed that notwithstanding the lengthy and full argument and extensive and exhaustive material put before the Court in

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this application, an early decision was required inasmuch as the current drilling season on the lands in question will get underway at winter freeze-up. I also note that this is, as I indicated earlier, an application for an interim injunction and not for a final determinative decision although considering the length of the argument and the extent of the materials put before the Court it was difficult at times to remember that fact.

In any event, I turn now to a consideration of the material before me in this application as well as consideration of the arguments advanced by counsel for both the Applicants and the Respondents. In that regard, before turning to a consideration of the applicable tests as laid down in *American Cyanamid* (supra) counsel for the Respondents raised certain other arguments which certainly bear consideration. It was argued by the Respondents that this application for an interim injunction is a class action. Notwithstanding that fact it cannot be treated as an application by all members of that class but rather as an application by the named Applicants alone. It is those Applicants who have control of the action until judgment and who alone can settle or discontinue same. Accordingly it would be wrong to assess an application for an interim injunction based on the benefits or interests of the class as a whole. In short, considering the various factors the Court must consider in determining whether or not any

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interim injunction should be granted, the factors should be assessed only insofar as they affect the named Applicants rather than the group they purport to represent.

Secondly, the Respondents argue, Crown immunity from injunctive relief is applicable and this immunity extends to the corporate defendants as grantees or agents of the Crown. Accordingly, in any event, the Applicants cannot obtain injunctive relief sought against the Respondents or any of them.

I propose to deal with the second argument on Crown immunity first and would merely refer again to my decision on that aspect in *Ominayak et al vs. Norcen et al* No. 1 supra where I stated that in my view the availability of Crown immunity as a defence in the action again, should await final determination by the Court as to what, if any, rights, and the foundation of such rights, with respect to the lands in question, the Applicants may establish before considering the applicability of Crown Immunity.

The argument of the Respondents with respect to class actions, particularly class actions where an interim injunction is sought is, in my judgment, a compelling one but one which I propose to take into consideration when applying the general principles espoused in *American Cyanamid vs. Ethicon* supra. In that regard I propose to outline, to the extent necessary, the factors laid down by the House of Lords to be considered in determining whether an interim injunction should be granted.

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1. Is there a serious question to be tried?

In *American Cyanamid verus Ethicon Limited supra*
at 407 Lord Diplock states:

"The court no doubt must be satisfied that
the claim is not frivolous or vexatious; in
other words, that there is a serious
question to be tried."

Notwithstanding the strong and well formulated
arguments of the Respondents on this issue, I am
not prepared to find at this stage that the
Applicants claim is frivolous and vexatious.
Accordingly, bearing in mind it is not
appropriate for the Court in this interim
application at this stage to express any opinion
upon the merits of the case, I would simply
observe that for the purpose of this application
I am proceeding on the basis that there is a
serious question to be tried.

2. Adequacy of damages as a remedy for Applicants.

In *Ominayak verus Norcen et al No. 2 supra* on
this point, and assuming as established all facts
disclosed in the affidavits filed on behalf of
the Applicants, I noted that to a significant but
not complete extent, any damages sustained by the
Applicants between the date of the application
and the trial of the action were not irreparable

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but were calculable and could be satisfied by the payment of same by the Respondents. Further, the Respondents had the ability to pay such damages. I have now had the opportunity to deal with this application on its merits and in that regard, on the basis of the material and evidence before me in this application, adduced by both sides, I am satisfied that damages would be an adequate remedy to the Applicants in the event they were ultimately successful in establishing any of their positions advanced. I have considered very carefully the allegations of irreparable injury or damage not compensable by money and I am simply not satisfied that the Applicants have established in this application such irreparable injury. That irreparable injury is founded on an allegation that a continuation of the activities of the Respondents would lead to irreparable harm to the life style of the Applicants. In short, the Applicants allege that their traditional way of life involving hunting and trapping is and would continue to be harmed to the extent where it could never be recovered even if they were successful at trial.

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I am not satisfied on the material before me that that contention is established. The evidence simply does not establish a way of life by the Applicants which is being destroyed by the Respondents.

The Applicants purport to represent a substantial portion but not all of the persons residing in the area in question. However, the evidence of life style being affected is limited to a few individuals who hunt and trap in the area. It is to be noted that many others not involved in these proceedings also hunt and trap in the area. In addition the suggestion of the Respondents activities having a negative effect on the hunting and trapping is to a considerable extent countered by the evidence adduced by the Respondents as to the effect, if any, their activity may have on the wild life.

One thing is clear, however. This is not a case of an isolated community in the remote North where access is only available by air on rare occasions and whose way of life is dependent to a great extent on living off the land itself. The twentieth century, for better or for worse, has been part of the Applicants' lives for a

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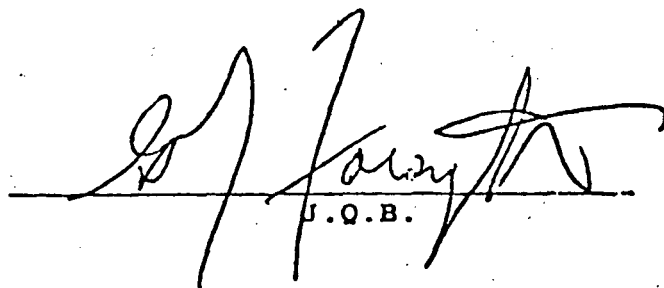
considerable period of time. The influence of the outside world comes from various sources, in many cases not connected with any of the activities of any of the Respondents. On that basis alone I am satisfied an interim injunction in the various forms sought and for the various reasons advanced by the Applicants is not appropriate under the circumstances and the Court's discretion should not be exercised in favor of the Applicants.

Notwithstanding that this in effect disposes of the matter, I wish to comment further. In *Ominayak vs. Norcen et al No. 2 supra*, I held that the various factors outlined by Lord Diplock in *American Cyanamid vs. Ethicon supra* do not constitute water-tight compartments, and failure to meet anyone is not necessarily fatal to the Applicants' position. If I was required in this case to consider the factor of adequacy of damages to compensate the Respondents, then I am more than satisfied that the Respondents would suffer large and significant damages if injunctive relief in any of the forms sought by the Applicants were granted. Furthermore, the Respondents would suffer a loss of competitive positions in the industry vis a vis the position of other companies not parties to this action. That loss coupled with the admitted inability of the Applicants to give a meaningful undertaking to the Court as to damages either as individuals, or if authorized to bind

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the known class, as a class, on which point I have grave doubts, reinforces my decision that injunctive relief in this case is not appropriate.

The application for interim injunctions is accordingly dismissed. Counsel may speak to me as to the question of costs of this application if they so desire.



J.Q.B.

DATED at Calgary, Alberta

This 17th day of November, A.D. 1983

COUNSEL:

J.A. O'Reilly Esq.)
K.E. Staroszik, Esq.)

For the Plaintiffs/Applicants

J.M. Robertson, Esq., Q.C.)
R.A. Coad, Esq.)

For the Defendants/Respondents Dome
Petroleum Limited, Chieftan
Development Co. Ltd., Shell Canada
Limited, Union Oil Company of
Canada Limited, Numac Oil & Gas
Amoco Canada Petroleum Company Ltd.

D.O. Sabey, Esq., Q.C.)
H.M. Kay, Esq.)
L. Taylor, (Miss))

For the Defendants/Respondents
Norcen Energy Resources Limited,
Petro-Canada Exploration Inc.,
Petrofina Canada Limited

H.L. Irving, Esq., Q.C.)
E.L. Bunnell, Esq.)
M.A. Irving, (Miss))

For the Defendant/Respondent Her
Majesty the Queen in Right of
the Province of Alberta

ACTION NO: 8201-03713

IN THE COURT OF QUEEN'S BENCH
OF ALBERTA
JUDICIAL DISTRICT OF CALGARY

BETWEEN:

CHIEF BERNARD OMINAYAK, BILLY JO.
ABOUCAN, LARRY OMINAYAK, EDWARD
LABOUCAN, AND CHIEF BERNARD
OMINAYAK-suing on behalf of and
for the benefit of all the 150
members of the Lubicon Lake Band
and 100 other native members and
the Lubicon Lake Band, a body of
Indians recognized under the
Indian Act, of Little Buffalo
Lake, Alberta

Plaintiff/
Applicants

-and-

NORCEN ENERGY RESOURCES LIMITED.
DOME PETROLEUM LIMITED, CHIEFTAN
DEVELOPMENT CO. LTD., SHELL
CANADA LIMITED, SHELL CANADA
RESOURCES LIMITED, UNION OIL
COMPANY OF CANADA LIMITED, NUMAC
OIL & GAS LTD., PETRO-CANADA
EXPLORATION INC., CHEVRON
STANDARD LIMITED, PETROFINA
CANADA LIMITED, AMOCO CANADA
PETROLEUM COMPANY LTD., AND HER
MAJESTY THE QUEEN IN RIGHT OF THE
PROVINCE OF ALBERTA

Defendants/
Respondents

REASONS FOR JUDGMENT
OF THE HONOURABLE
MR. JUSTICE FORSYTH

No. 8201-03713

IN THE COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL DISTRICT OF CALGARY

BETWEEN:

LUBICON LAKE INDIAN BAND, et al

-and-

NORCEN ENERGY RESOURCES, et al

REASONS FOR JUDGMENT OF THE HONOURABLE MR. JUSTICE FORSYTH

THE COURT: I will observe at the outset
that the principles of the administration of justice and
the adversary system recognizes that the successful party
generally should be entitled to costs, not as has been
pointed out, as a punishment but rather as an indemnity
for the disbursements and costs incurred in defending a
particular position or prosecuting a particular position
as the case may be.

I have several options open to me on this
application. The easiest would be to refer the matter to
a trial judge when the matter is eventually tried, but I
think that would be singularly inappropriate in these
particular circumstances inasmuch as I have been seized
with this matter all through the interim phase. I think
it is fair and proper that I should deal with the
question of costs rather than leaving them to a trial

1 judge.

2 I also, in exercising my discretion, take into
3 account this was a interlocutory application, not a trial
4 on the merits although it was at times difficult to keep
5 that fact in mind and as has been pointed out by counsel
6 for one of the respondents, the matters I had to deal
7 with will not have to be dealt with by the trial judge
8 when the matter is ultimately determined, including such
9 factors as irreparable damage and matters of that nature.

10 Accordingly, I propose to deal with the
11 question of costs now and see no reason under all the
12 circumstances why the respondents should not be entitled
13 to their costs. They have successfully met an
14 application for an interim injunction. Accordingly,
15 determination on costs in this application is that there
16 will be costs in any event to the respondents.

17 I would welcome some assistance from counsel as
18 I deal with the question of how those costs should be
19 taxed and on what basis they should be taxed -- in that
20 regard I am speaking of, I quite agree that Schedule C
21 dealing with an application for an interim injunction or
22 interim application is not particularly appropriate to
23 this particular matter, bearing in mind the extensive
24 affidavit evidence and preparation that went into the
25 matter. Accordingly, referring to Schedule C --

26 MR. IRVING: Page 724, sir.

27 THE COURT: Thank you. The appropriate

1 column is of course -- I am going to get informal now,
2 this is not a judgment, it's comments now -- Paragraph 11
3 (d), would be the appropriate column, but that certainly
4 does not recognize the situation we had where we had 28
5 days of hearings. Accordingly, in assessing the costs
6 with respect to sitting days in the applications,
7 including the preliminary points, I am firstly allowing
8 second counsel fee where that is applicable. The columns
9 we will rely on will be those dealing with briefs for
10 trial, Paragraphs 20 and 21. Costs will be taxed on the
11 basis of a trial, in other words, appropriately. I will
12 deal with the column and the amount later. With
13 examinations under Rule 266, Paragraph 12 would appear
14 appropriate in that case and is to be applied in taxing
15 in this case.

16 Are there other provisions of the Schedule C
17 which anyone wishes to bring my attention to?

18 MR. COAD: My Lord, I think on behalf of these
19 respondents we would urge some provision in terms of
20 preparation. Rule item 15 --

21 THE COURT: I was just going to do that now,
22 item 15 is applicable and will be utilized in the
23 taxation.

24 The motions and applications provision is also
25 applicable to this extent: There would be preliminary
26 meetings and hearings in my office and that is applicable.
27 And any adjournments that took place or applications of

1 that nature. In other words, taxation, if I can use the
2 general terminology, should follow as if it was taxation
3 following a trial rather than taxation for an application.
4 Taxation is to be on the basis of 4 times Column 5.

5 Now, having said that I come to the question
6 that has been put to me as to whether or not costs should
7 be payable forthwith, or on the termination of this
8 matter. Again these are discretionary matters, and in my
9 judgment while I have indicated how the costs are to be
10 taxed, I am not prepared to order that they be paid
11 forthwith at this time. They are costs in any event,
12 taxable. For convenience or other sake they can be
13 taxable at any time, but I am not ordering they be
14 payable forthwith.

15 I do so not arbitrarily or capriciously, but I
16 look at the overall effect of the action and the nature
17 of the action and the situation that if the applicants
18 are successful ultimately in their trial, there would be
19 accountings to take place and whatnot. But I do add this
20 caveat, and I think I have discretion -- if I haven't the
21 Court of Appeal will tell me I haven't -- I am doing so
22 on the assumption that this matter will be proceeding
23 forthwith, and I leave it open to the respondents if at
24 some period of time the matter is being unduly delayed in
25 their opinion, they are free to return and make a further
26 application whereby costs should be payable forthwith.
27 In other words, if nothing has happened in three years or

1 something of that nature, it just can't sit. I am simply
2 not prepared to order that costs be paid forthwith today
3 on the basis of the taxation I have made.

4 MR. STAROSZIK: In respect of the 6 days on the
5 preliminary points that respondents in effect brought a
6 subapplication that they weren't successful on, I'm
7 wondering how that fits in.

8 THE COURT: I thought about that, Mr.
9 Staroszik, because you are quite right. I believe there
10 is even -- let me put it this way, at the moment that is
11 the judgment in this action, and I am not sure the
12 respondents agree completely with my disposition on all
13 preliminary points. But the preliminary points, when I
14 look on balance, they were designed to attempt to shorten
15 the proceedings. It was argument made that was helpful
16 to the Court and shortened the 20 days we spent in the
17 ultimate application. And I find it hard to make a
18 distinguishment between those preliminary points and the
19 application itself. It all falls in and is melded into
20 the same basic application.

21 MR. STAROSZIK: Even though respondents were
22 unsuccessful they will get the costs --

23 THE COURT: Even though respondents did not
24 succeed in ending the matter then, it was still argument
25 that was applicable -- and I mulled that over long before
26 I came into this hearing. But on balance I find it
27 difficult to see how I can make the distinction. The

1 bottom line is the respondents were successful, at least
2 at this point in time, in their defence of the
3 application for an injunction. This was all part and
4 parcel of that, and accordingly that is included in my
5 disposition of costs.

6 MR. STAROSZIK: Fine, My Lord.

7 THE COURT: Does that leave anything?

8 MR. IRVING: Just a direction in general, sir,
9 about experts' reports.

10 THE COURT: Yes, there will be a direction
11 that all reasonable expert costs are payable and to be
12 included in the taxation, and again the right to counsel
13 to come back to me for further directions if there is a
14 problem with respect to any individual matters. You will
15 be dealing with the taxing officer of course initially,
16 but if there is a problem come back to me.

17 MR. IRVING: Thank you, sir.

18 THE COURT: Very well.

19 -----

20 PROCEEDINGS CONCLUDED

21 -----

22

23

24

25

26

27

1 Delivered orally at the Court House, Calgary, Alberta, on
2 the 6th of January, A.D. 1984.

3
4 Mr. O'Reilly, Esq.
5 K. Staroszik, Esq.
6 For the Applicants

7 R. A. Coad, Esq.
8 For the Respondents
9 Dome Petroleum Limited,
10 Chieftan Development Co. Ltd.,
11 Shell Canada Limited, Shell
12 Canada Resources Limited,
13 Union Oil Company of Canada
14 Limited, Numac Oil & Gas Ltd.,
15 Chevron Standard Limited,
16 Amoco Canada Petroleum
17 Company Ltd.

18 H. L. Irving, Esq.
19 For Her Majesty the Queen

20 H.M. Kay, Esq.
21 For Norcen and PetroCanada

22 L. B. Bratland, RPR, CSR (A)
23 Official Court Reporter

24
25 Computer-Aided Transcript
26 12 January, 1984
27

IN THE COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL DISTRICT OF CALGARY

BETWEEN:

CHIEF BERNARD OMINAYAK, BILLY JOE LABOUCAN,
LARRY OMINAYAK, EDWARD LABOUCAN and CHIEF
BERNARD OMINAYAK suing on behalf of and for
the benefit of all the 150 members of the
Lubicon Lake Band and 100 other native mem-
bers of the Cree community of Little Buffalo
Lake and The Lubicon Lake Band, a body of
Indians recognized under the Indian Act, of
Little Buffalo Lake, Alberta.

Plaintiffs/
Applicants

-and-

NORCEN ENERGY RESOURCES LIMITED, DOME
PETROLEUM LIMITED, CHIEFTAIN DEVELOPMENT CO.
LTD., SHELL CANADA LIMITED, SHELL CANADA
RESOURCES LIMITED, UNION OIL COMPANY OF
CANADA LIMITED, NUMAC OIL & GAS LTD.,
PETRO-CANADA EXPLORATION INC., CHEVRON
STANDARD LIMITED, PETROFINA CANADA LIMITED,
AMOCO CANADA PETROLEUM COMPANY LTD. and HER
MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF
ALBERTA

Defendants/
Respondents

AFFIDAVIT #4 OF CHIEF BERNARD OMINAYAK

I, BERNARD OMINAYAK, Chief of the Lubicon Lake
Band, presently residing at Little Buffalo Lake, Alberta,
MAKE OATH AND SAY AS FOLLOWS:

1. Based on my own observations, activities of
Respondent corporations, and in particular Petro-Canada,

- 2 -

Exploration Inc., Union Oil Company of Canada Limited, Numac Oil & Gas Ltd. and Norcen Energy Resources Limited, in the Reserve Area form a substantial part of the total activities (referred to herein as works, operations and projects) of all oil and gas companies in the said Reserve Area and a substantial part of the total development in the said Reserve Area over the past two years. In particular I have seen the following Respondent companies active in the following areas of the Reserve Area:

- Union - primarily in the Slave field south of Lubicon Lake.
- Norcen - primarily in the Evi and Golden fields north of Lubicon Lake.
- Petro-Canada - primarily north of Lubicon Lake.
- Numac - primarily north of Lubicon Lake and in the Evi field.

Attached hereto marked Exhibit "A" is a map prepared by Gordon Smart on which I have indicated the wells and drilling sites of Respondents and the areas in which they have been active since January 1, 1980.

2. The activities of Respondent corporations including the cutting of seismic lines, the building of roads and the drilling and extraction of oil and gas have severely depleted the wildlife on those parts of the Reserve Area where said Respondent corporations have carried out said activi-

ties as well as throughout the entire Reserve Area and have made it very difficult to hunt, trap and fish for subsistence in such areas, as well as throughout the said entire Reserve Area, because many of the animals which we hunted there in previous years have been scared away by such activities.

3. The Reserve Area is a very good hunting area and a good trapping area for the members of the Lubicon Lake Band and the Cree Community of Little Buffalo Lake. Prior to the activities of Respondent corporations in the Reserve Area over the last two years, moose were quite plentiful in the Reserve Area especially around Lubicon Lake and Little Buffalo Lake, and the trapping areas in the Reserve Area were productive in terms of the number of fur bearing animals which lived there.

4. However, due to the activities of each of the Respondent corporations over the past two years, there are very few animals left in the areas where Respondent corporations have and are carrying on their activities and this has severely diminished the number of animals caught or harvested in those areas and throughout the entire Reserve Area by members of the Lubicon Lake Band and the Cree Community of Little Buffalo Lake.

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5. The activities of each of the Respondent corporations in the Reserve Area over the past two years, even without the activities of other oil and gas corporations working in the Reserve Area have reduced the number of animals available to be caught in the entire Reserve Area to a critical level.

6. I believe that it is a virtual certainty, based on the Affidavits and Exhibits filed in these proceedings, including the Exhibits mentioned in paragraph 15 of my Affidavit #3 and based on my own experience and observations as well, that Respondent corporations will be increasing their activities in the Reserve Area in the coming months. In fact such increased activities have already begun in the last two months. The activities of Respondent oil corporations will be very substantially increased beginning later this month and continuing through the winter months of 1982-1983.

7. In the Reserve Area this winter, there will very likely be hundreds of workers, hundreds of thousands of tons of equipment and supplies brought in, several hundred miles of seismic lines cut and constant activity and passage of workers and vehicles, all of which will be due to the activities of Respondent corporations. Such intrusions and activities will negatively and severely affect the animal population in the Reserve Area.

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8. I am convinced, based on my past experience and personal observations, and on the Affidavits and Exhibits filed in these proceedings, that the combined effect of the activities of each of the Respondent corporations in the Reserve Area which have taken place to date together with their planned activities in the coming months will so deplete the wildlife in the Reserve Area that it will be impossible for the members of the Lubicon Lake Band and the Cree Community of Little Buffalo Lake and particularly the trappers trapping in the trapping areas in the Reserve Area to obtain a livelihood and subsistence from hunting and trapping in the Reserve Area if the said activities of Respondent corporations are not immediately stopped.

9. I am also convinced that if such activities of Respondent corporations working in the Reserve Area are immediately stopped, it will be possible for the members of the Lubicon Lake Band and the Cree Community of Little Buffalo Lake to continue to earn their livelihoods and subsistence from hunting and trapping in the Reserve Area because a sufficient number of the animals which have left the Reserve Area would return to the Reserve Area if the area were left undisturbed.

10. It is especially essential that no activities of any Respondents take place in the coming months in the immediate areas in and around and between Little Buffalo Lake

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and Lubicon Lake and particularly in the approximately 25 square miles of land selected, set aside and established as an Indian Reserve for the Lubicon Lake Band on the western shore of Lubicon Lake, described in paragraph 23 of my Affidavit #3 and in the present proceedings, for otherwise our use of this very important area will be severely jeopardized and such area may in fact become unavailable to us to use as an Indian Reserve.

11. Because of the intensive use of the Reserve Area for hunting by virtually all members of the Lubicon Lake Band and of the Cree Community of Little Buffalo Lake, including the women and the children, the accessibility of this area to such members, as well as the importance of the Reserve Area as a prime hunting, fishing and trapping area of Applicants, the present hunting, fishing and trapping of Applicants will be so negatively affected if activities of Respondents are not stopped that our entire way of life will be jeopardized as well as our society and culture. Furthermore if our hunting, fishing and trapping are also not protected from interference in the entire Hunting/Trapping Territory, our way of life and our society will not survive.

12. In the Hunting/Trapping Territory I have observed activities of each of Respondent corporations over the last two years including the operation of an in situ plant west of Cadotte Lake by Shell Canada Resources Limited and Amoco

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Canada Petroleum Company Limited. I am convinced that Respondent corporations will increase their activities in the remainder of the Hunting/Trapping Territory (ie. exclusive of the Reserve Area) in the coming months. In fact such an increase in activities has already begun in the last two months. In particular, since September 22, 1982 I have noticed such increase in activity in the area immediately north of the Reserve Area above the Evi and Golden fields.

13. The activities of each of Respondent corporations including the cutting of seismic lines, the building of roads, the drilling and extraction of oil and gas, the activities of hundreds of workers and their constant use of various areas have already negatively affected and depleted the wildlife in the remainder of the Hunting/Trapping Territory where such Respondent corporations have carried on such activities. The planned increase by such Respondent corporations of said activities in the remainder of the Hunting/Trapping Territory will jeopardize the subsistence hunting and trapping of the members of the Lubicon Lake Band and of the Cree Community of Little Buffalo Lake in the remainder of the Hunting/Trapping Territory. When combined with the various substantial activities of Respondent corporations in the Reserve Area it will be impossible for Applicants to continue to obtain their livelihood and subsistence from hunting, fishing and trapping unless measures are taken to protect the wildlife and resources in those areas and to

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insure that Applicants continue to have access to the animals throughout the Hunting/Trapping Territory and that their hunting, trapping and fishing therein in not interfered with.

14. The said activities of Respondent corporations in the remainder of the Hunting/Trapping Territory and the planned activities by them in such territory form a substantial part of the total activities (including works, operations and projects) of all oil and gas companies in the remainder of the Hunting/Trapping Territory and a substantial part of the total development in the remainder of the Hunting/Trapping Territory over the past two years and of the total planned development in the remainder of the Hunting/Trapping Territory.

15. I have also observed that a burial site at Fish Lake, where an ancestor of members of the Lubicon Lake Band and the Cree Community of Little Buffalo Lake was buried, (which burial site is shown on Exhibit "C" to the Affidavit of Edward Laboucan filed herein), has been bulldozed and interfered with within the last two years.

16. In February of 1982 I experienced damage to my trapline which I verily believe was a result of the activities of Respondents. My snares were destroyed and a Lynx was stolen. In addition, I have been informed by the

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following Applicants that they too in 1982, experienced damage to their trapping areas and the animals therein as well as to their traps and equipment and we all verily believe that such damages were caused by the Respondent corporations:

George Seeseequon
Joe T. Laboucan
Arthur Laboucan
Mike Laboucan
Edward Laboucan
John Felix Laboucan
Dan Calahasen
Joe A. Laboucan

I have been advised by George Seeseequon that sometime during the week of November 15, 1982 several of his traps in trapping area #1336 were buried by a bulldozer. In addition I am advised by the above Applicants that the hunting and trapping in the Reserve Area and Hunting/Trapping Territory has been further damaged and detrimentally effected since September 22, 1982 by Respondents. Furthermore, since September 22, 1982 wildlife officers of Respondent Her Majesty the Queen in Right of Alberta have been harassing members of our Band and members of the Cree Community of Little Buffalo Lake and have purported to take away two of our registered traplines.

17. The damages and effects described in this my Affidavit #4 and in my Affidavit #3 are so extensive and

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overwhelming that I and other Applicants will not be able to continue our way of life and subsistence if the said activities of Respondent corporations are not halted. These damages and effects cannot be valued in terms of money for us and no amount of money will compensate us for them. We believe we are threatened with extinction as a people and as a society if such activities are not stopped. The oil and the gas in the said areas will not disappear even if they are not extracted right away, but the animals have been disappearing because of these activities of Respondents and will continue to be reduced until soon there will no longer be enough animals for us to hunt or trap for subsistence.

18. Attached hereto, marked Exhibit "B" is a true copy of an extract of the Annual corporate report of Union Oil for 1981 showing their intention to pursue oil and gas activities in the said Hunting/Trapping Territory and Reserve Area.

19. Attached hereto, marked Exhibits "C", "D" and "E" respectively are true copies of letters dated August 11, and August 16, 1982 from our solicitors to the solicitors for Respondents requesting certain information respecting the activities of Respondents in the Hunting/Trapping Territory and the Reserve Area. I am advised by my solicitors and I do verily believe that no information has been provided to them in reply to these requests.

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20. If Respondents are stopped, only money will be an issue for them. Although our Band has no money at present and we are very poor we will provide an undertaking to the Court for damages if so required by this Honourable Court.

21. I make this my Affidavit #4 in support of an application for an injunction. I have personal knowledge of the matters herein deposed to except where otherwise stated to be based upon information and belief and whereso stated I verily believe same to be true.

SWORN BEFORE me at the City)
of Calgary, in the Province)
of Alberta, this 11 day of)
November, A.D. 1982.)

John P. ...
A Commissioner for Oaths in
and for the Province of Alberta.

CHIEF BERNARD OMINAYAK

Appendix No. 6

IN THE COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL DISTRICT OF CALGARY

BETWEEN:

CHIEF BERNARD OMINAYAK, BILLY JOE LABOUCAN,
LARRY OMINAYAK, EDWARD LABOUCAN and CHIEF
BERNARD OMINAYAK suing on behalf of and for
the benefit of all the 150 members of the
Lubicon Lake Band and 100 other native mem-
bers of the Cree community of Little Buffalo
Lake and The Lubicon Lake Band, a body of
Indians recognized under the Indian Act, of
Little Buffalo Lake, Alberta

Plaintiffs/
Applicants

-and-

NORCEN ENERGY RESOURCES LIMITED, DOME
PETROLEUM LIMITED, CHIEFTAIN DEVELOPMENT CO.
LTD., SHELL CANADA LIMITED, SHELL CANADA
RESOURCES LIMITED, UNION OIL COMPANY OF
CANADA LIMITED, NUMAC OIL & GAS LTD.,
PETRO-CANADA EXPLORATION INC., CHEVRON
STANDARD LIMITED, PETROFINA CANADA LIMITED,
AMOCO CANADA PETROLEUM COMPANY LTD. and HER
MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF
ALBERTA

Defendants/
Respondents

AFFIDAVIT OF JOAN RYAN

I, JOAN RYAN, Anthropologist of the City of
Calgary, in the Province of Alberta, MAKE OATH AND SAY AS
FOLLOWS:

1. I have been requested by the Plaintiffs to give my
opinion in regard to the culture, society and way of life of

- 2 -

land-based Indian groups and economies, and the effects of resource development on these.

2. I have made particular studies of hunting and trapping societies and the effect of development on these societies and the way of life of these societies. It is my opinion that there are general principles involved in such questions which are applicable to development as it may affect the Lubicon Lake Band and the Cree Community of Little Buffalo Lake. This is especially so in regard to the predictable patterns of social, cultural and economic change.

3. My professional qualifications include the following:

- a) B.A. - Psychology, Carleton University, 1952.
- b) M.Ed. - Psychology, University of Alaska, 1957.
- c) Ph.D. - Anthropology, University of British Columbia, 1973.

4. In addition to my academic qualifications I have the following related experience:

- a) 1957-1958 - Community Development Teacher - Lac la Martre, NWT, during which time, with my participation, the community with which I was involved built log houses to replace tents. I started the health program and established the elementary school and the adult basic English program. As the only non-native, I learned

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- 3 -

the Dogrib language, lived in a log cabin, fished and hunted for food, travelled by canoe and dogteam to Yellowknife for supplies and participated in the way of life of the Community.

- b) 1958-1959 - Community Development Teacher - George River, Ungava Bay. During this time, I started the basic English program, helped set up the Arctic Char fish Cooperative, started the health program and travelled to fishing and hunting camps. I lived in a tent and hunted and fished for food. I also learned the Inuktitut language.
- c) 1960-1962 - Researcher on native education throughout Alaska and Teacher-at-Large in the Canadian Central Arctic. I explained and established training programs, and set up seasonal camp schools in the Dene and Inuit areas.
- d) 1964-1966 - Senior Research Assistant and Co-editor of the Hawthorn national study on economic, political and educational status of Indians. This study was requested by Federal Order-in-Council. I travelled to 57 reserves across Canada for the purposes of this study and reviewed extensive documentation on Indians throughout Canada. I also conducted many interviews with Indian elders and band councils throughout Canada

- 4 -

for this study.

- e) 1968-1970 - I worked with the Squamish tribe in British Columbia on health care services and education services and for upgrading of urban reserve programs.
- f) From 1974 to date - I have worked part-time with the Stoney tribe (3 bands) at Morley, Alberta on cultural education programs, and on health services. I most recently completed a study of the impact of alcohol abuse on these Stoney communities.
- g) 1974-1976 - I worked with several Alberta Indian groups on social welfare and health services with special attention to research on Constitutional and Treaty rights.
- h) I am currently Head and Professor of the Department of Anthropology of the University of Calgary, Alberta, where I have taught since 1968.

5. As well, I have published two books and 16 articles on contemporary Indian issues in Canada, presented 26 papers at national and international meetings on Indians, chaired 9 symposia on native issues, and consulted with seven Indian groups on various issues. I was one of 3 anthropologists invited to the IICC (International Inuit

- 5 -

Circumpolar Conference) in Nuuk, Greenland as a resource person in the Cultural Heritage workshops, and was the only Canadian anthropologist invited to sit on the U.S. National Academy of Science Committee for developing research directions and policies for the 1980's for circumpolar regions.

6. I have studied considerable literature on the Crees of Alberta. I am also aware of the affidavits filed in support of the proceedings herein. I am of the opinion that the traditional way of life of the Crees of the Lubicon Lake Band and the Cree Community of Little Buffalo Lake (whom I refer to herein as the Crees of Lubicon Lake) has been and is a viable way of life economically, politically and socially, that this way of life has been and is a satisfactory and fulfilling way of life to them and that they have continued to maintain and currently have an independent, satisfactory, viable and traditional way of life as hunters and trappers.

7. Moreover, the Crees of Lubicon Lake perceive their lifestyle to be viable and healthy and to be one they wish to continue. They perceive themselves now on the brink of changes which are threatening the continuation of their lifestyle, society and culture. Based on my knowledge of similar situations in the North West Territories and elsewhere, I consider that the changes that they are experiencing and proposed increased development activities for the

immediate future will have the effect of irreversibly damaging the local economy, the local political structure and local ritual and social structures. In other words, their way of life will be substantially and inalterably changed.

8. Where native communities in Canada (and elsewhere throughout the world) have been subject to development for industry, oil, urbanization, or similar purposes, this consistently brings as a consequence a major reduction of the land base and severe restriction of local economies based on the land. The situation that the Lubicon Lake Crees face with development is not unique and the pattern of change and the resulting erosion of local economies (and therefore total lifestyles) is predictable. For example, in the Lubicon Lake "Reserve Area" and traditional hunting and trapping territory, gradual changes have resulted in the past 20 years from the oil and gas activity, agricultural settlement and the building of roads. This has reduced the game available for the Cree hunters. In the past two years, the acceleration of development has led to a notable decline in the harvest of fur-bearing animals and big game.

9. Based on similar experiences of other native communities, there is no doubt that the Crees of Lubicon Lake are on the brink of major economic and social change which would totally disrupt their lifestyle, society and culture.

10. Where development has disrupted native lifestyles in other areas of Canada, such development has encroached upon the people's relationship with the land in terms of spirituality and their perceived responsibility for stewardship. Stewardship is the responsibility to leave the land and the environment in a better and more productive state, allowing for an equal, if not better, quality of life for future generations. Almost inevitably, in these situations neither the religious system nor that stewardship of the land can be maintained in the face of substantial oil and gas development in an area used by native hunters and trappers.

11. There comes a point in all native hunting and trapping societies when it becomes impractical, economically and physically, to travel long distances to hunt and trap. It is also not feasible to transport meat long distances back to the community. This is compounded by such things as extra gas transportation expenses and/or the need to transport food for horses and dogs. As well, if the land base becomes so restricted that trappers cannot move out of the settlements to winter camps/cabins, then trapping on distant traplines becomes impractical because animals cannot be collected regularly and are damaged or eaten by other animals, stolen by non-native casual trappers or otherwise depleted.

12. In most land based economic systems, and where the restriction of that base results in the shift from the land to the settlement all year round, there are usually housing problems, an increase in disease due to inadequate water supplies and lack of sanitation, and an increase in infant mortality and disease rates brought about by such conditions.

13. In situations where the land based economy is constrained, the resulting effects on native societies are:

- a) a decrease in the quality of diet, eg. high protein fresh meat is replaced with store bought carbohydrates;
- b) an increase in the need for welfare payments;
- c) a decrease in productive activities, and increase in boredom, social pathology, petty crime and alcohol abuse;
- d) a breakdown in traditional systems of socialization, respect, political and kin alignments with the resulting changes in political, social and personal relationships;
- e) in turn, the total lifestyle of the community disintegrates or is altered irreversibly.

14. In my opinion, the situation of the Crees of Lubicon Lake, a land-based society, is similar to that of other land-based societies in Canada and the experience of other native land-based societies confronted with development is applicable to them.

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15. It is my opinion that with the intensive oil and gas exploration, drilling and development in the Hunting/Trapping Territory of the Crees of Lubicon Lake, the socio-economic changes I have described above in paragraphs 10 to 14 are predictable in respect to the Crees of Lubicon Lake and will almost surely happen to them. There will surely also be a further loss of income due to a decrease of hunting and trapping activities and a loss of real food sources due to the decrease in moose habitat and moose populations and other fur-bearing animals and due to the decrease of trapping areas of the Crees of Lubicon Lake.

16. Cumulative persistent change which accelerates does not allow for community adaptation because of the difficulty of sustaining the effort required to offset such impacts. In this particular case, it is my opinion the Crees of Lubicon Lake have had no opportunity to adapt their lifestyles or infrastructures or to build up alternate resources to offset the negative effects of current and impending game depletion, and the pressure on and the restrictions of their land base. At the same time, the population of the Crees of Lubicon Lake is increasing and there is a need for an even larger land base, not a smaller land base. With the increase of development activities and especially those of the oil companies in their Reserve Area and Hunting/Trapping Territory, the Crees of Lubicon Lake will be subjected to

major and probably very adverse social, economic and political changes.

17. In comparable cases involving land-based native societies, cash compensation for loss of lifestyle has seldom if ever, been satisfactory in the sense that money does not allow for an equivalent quality of life nor can money compensate for loss of kinship reciprocities, community sharing, religion and spirituality, values and socialization systems and the other aspects of the particular way of life.

18. In such comparable situations there has been a disintegration of at least two generations of people due to the inability of the impacted communities to build up new infrastructures, lifestyles and to upgrade community housing and services and to train for employment. This could be at least partially prevented still if the land base and animal populations, and therefore the economic base of the Crees of Lubicon Lake were protected.

19. However, in my opinion, if there are no such protective measures put into effect immediately, then the Crees of Lubicon Lake as a community and society will be over the brink and the harm done will be irreversible and irreparable. I am not aware of any recorded instance in Canada, nor in any other part of the world, where there has been

cumulative change which has accelerated and overtaken a small-scale land-based society such as that of the Crees of Lubicon Lake in which the society has survived.

20. In land-based societies, the level of formal education is generally comparatively low and therefore, people are underskilled and generally unemployable at any level in the wage economy, except for casual labour and menial jobs. This is particularly true for the older and middle generations. The time required to train upcoming generations usually results in the economic unproductivity of at least one or two generations before structures are put in place to make training and education adequate and relevant to the opportunities for the employment available.

21. In the cases of the Crees of Lubicon Lake, it is my opinion that those persons over 50 years of age are totally unemployable other than in traditional pursuits, that those between 30 and 50 years of age are virtually unemployable and that for those between 20 and 30 years of age, some are employable. There has been little employment in oil and gas development related jobs for Crees of Lubicon Lake over the past 10 years. In any event, it takes many years to develop a work force in such situations even in the unlikely event that a significant number of the Crees of Lubicon Lake desired such employment.

22. In many situations similar to those of the Crees of Lubicon Lake, there are also other losses which occur if the hunting, fishing and trapping is seriously affected by development. For example, the loss of game causes a major reduction in the protein content of diet. Even if store-bought food is substituted, the tendency of groups shifting from subsistence diets to store-bought diets is to purchase quantities of poor grade food, high in carbohydrates. As well, the loss of foods from gathering activities (such as berries and local roots and plants) results in a net loss of vitamins and minerals. These dietary changes offset the general health of people in the community. The addition of sugar, pop, alcohol, and carbohydrates, not usually found in hunting and trapping cabins increases the incidence of diseases, such as caries, juvenile diabetes, cirrohsis, obesity and other related conditions.

23. Another change often seen in communities where families no longer regularly use trapping areas is a restriction in reciprocity of relationships, such as the ability to share with kin, and to care for the elderly and the very young. This is in no small measure because of the reduction in quantity of food source and lack of purchasable income. Moose can support a small community; alternatively, the income available is not likely adequate to buy sufficient beef to feed the same number of people. The shift then from a land-based economy to a cash-based economy

creates a major change in the structure of social relationships. This in turn often leads to different social structures and changes the very essence of the society itself. Experience in many other countries has shown that attempts to restore balance to political and social relationships, and to compensate for major economic changes in small-scale societies have never been successful. The levelling-off process, as adjustments are made over time and several generations, never returns to the same original point of quality. In my opinion, the Crees of Lubicon Lake will face the same problems if their dependance on the land is compromised by encroaching oil and gas development.

24. Changes in economic structures lead inevitably to similar and irreversible changes in political structures as well. With the shift in the economic base and the elimination of many kin exchanges, the structure of the community shifts from one based on traditional authority and respect, a closed system of social sanctions, and government by consensus, to a variety of political structures which serve the community in its outside relations adequately eventually but which involves the loss of other values. For example, the process of decision-making in small-scale societies is generally by consensus in which the elders play a very significant part, even when the chiefs are young.

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However, when the small-scale society is infringed upon by the larger society and where decisions have to be made more quickly and on the basis of majority vote, where the outside must be dealt with by one or two representatives and in the non-native language, there is usually a drastic alteration in the nature of political process, leadership and alignments. Such changes alter the basic fabric and functioning of the society in question.

25. Development brings roads, increased traffic and construction workers resulting in harmful effects, such as alcohol and drug abuse, prostitution, venereal disease, unwanted pregnancies and temporary and disruptive relationships between non-native men and native women with negative consequences on their children. This often leads to abandonment of the community and to living on welfare in cities. This tears apart the unity of the families and of the communities and severely weakens their heritage and self-identity.

26. Development in a formerly relatively closed area also brings other predictable results: Indian men dispossessed of their roles as providers, heads of families and heads of political units, tend to lose their own self-respect and sense of worth and often turn to liquor with very negative effects on them and their families. Young native people who perceive no future for themselves also often turn to alcohol abuse.

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27. At the moment, it is my opinion that the Crees of Lubicon Lake constitute a bounded community with its own institutions which are working well in the present environmental and social context. Religion is a critically binding force in the community which enhances the relationships between political, social and economic activities. Any shift in their infrastructure will adversely affect the community and the consequences are predictable and will likely follow the general patterns described above.

28. It is my opinion that the community of the Crees of Lubicon Lake, like other small and homogenous communities with a fixed land base, can survive as a distinct group if given proper protection. Elsewhere in Alberta and Canada, development has had a very substantial negative impact on native communities and irreversibly disrupted their way of life.

29. There is a very great risk that if development activity, particularly oil and gas exploration, drilling and development, increases in the Reserve Area and in the traditional Hunting/Trapping Territory of the Crees of Lubicon Lake, the result of the continuation of such activities will be the destruction of the society, culture, traditions and way of life of the Crees of Lubicon Lake and the destruction of their economic base.

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If such development activity increases in those areas in the very near future, it is predictable that their society, culture, traditions and way of life will be irreparably and irretrievably destroyed. In such case, no amount of money can restore the quality of life of the Crees of Lubicon Lake or reverse the resulting negative impacts of such development activity. The pattern and results of many other essentially similar situations will be repeated with the already familiar negative consequences upon the valuable society, culture, traditional practices and way of life of the Crees of Lubicon Lake.

30. I make this my Affidavit in support of an application for an injunction. I have personal knowledge of the matters herein deposed to except where otherwise stated to be based upon information and belief and whereso stated I verily believe same to be true.

SWORN BEFORE me at the City)
of Calgary, in the Province)
of Alberta, this 13th day of)
November, A.D. 1982.)

Gaye Crookes)
A Commissioner for Oaths in)
and for the Province of Alberta)

Joan Ryan
JOAN RYAN

No. 8201-03713

A.D. 1982

IN THE

COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL DISTRICT OF CALGARY

BETWEEN:

CHIEF BERNARD OMINAYAK, BILLY JOE LABOUCAN, LARRY OMINAYAK, EDWARD OMINAYAK and CHIEF BERNARD OMINAYAK suing on behalf of and for the benefit of all the 150 members of the Lubicon Lake Band and 100 other native members of the Cree community of Little Buffalo Lake and The Lubicon Lake Band a body of Indians recognized under the Indian Act, of Little Buffalo Lake, Alberta

Plaintiffs

-and-

NORCEN ENERGY RESOURCES LIMITED, DOME PETROLEUM LIMITED, CHIEFTAIN DEVELOPMENT CO. CANADA LIMITED, SHELL CANADA LIMITED, SHELL CANADA RESOURCES LIMITED, UNION OIL COMPANY OF CANADA LIMITED, NUMAC OIL & GAS LTD., PETRO-CANADA EXPLORATION INC., CHEVRON STANDARD LIMITED, PETROFINA CANADA LIMITED, AMOCO CANADA PETROLEUM COMPANY LTD. and HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF ALBERTA

Defendants

AFFIDAVIT OF JOAN RYAN CLERK OF THE COURT
NOV 24 1982
CALGARY, ALBERTA

WILSON, STAROSZIK & DANIELS
Barristers & Solicitors
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File No: 82-033 KES

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(à rappeler dans la réponse)

G/SO 215/51 CANA (38)
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Lubicon Lake Band

The Secretary-General of the United Nations presents his compliments to the Permanent Representative of Canada to the United Nations Office
..... at Geneva and has the honour to transmit herewith the text of a decision adopted by the Working Group of the Human Rights Committee on 9 November 1984, concerning communication No. 167/1984, submitted to the Committee under the Optional Protocol to the International Covenant on Civil and Political Rights by Bernard Ominayak, Chief of the Lubicon Lake Band (assisted by J. Lefevre).

In conformity with paragraph 1 of this decision, the Secretary-General
..... has also the honour to transmit herewith, under rule 91 of the provisional rules of procedure of the Committee, the text of the communication in question (initial letter dated 14 February 1984), requesting from His Excellency's Government information and observations relevant to the question of admissibility of the communication.

This request for information and observations does not imply that any decision has been reached on the question of admissibility of the communication.

The information and observations from His Excellency's Government should reach the Human Rights Committee, in care of the Centre for Human Rights, United Nations Office at Geneva, within two months of the date of this note, that is not later than 21 January 1985.

21 November 1984