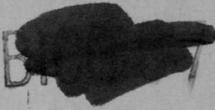


CLASSIFIED



File No. Dossier 45-CDA-13-1-3-LUBICON LAKE BAND

Volume 10 From-De 88-04-16 To-À 88-08-31

VOLS ACCESSION NO. 94518

CLASSIFIÉ



94518

45-CDA-13-1-3-LUBICON LAKE
Vol 10

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TITLE—TITRE:

SOCIAL AFFAIRS
 HUMAN RIGHTS
 POLICY AND PLANS --- CANADA
 COMPLAINTS TO UNITED NATIONS ABOUT VIOLATION
 IN CANADA
 LUBICON LAKE BAND

AFFAIRES SOCIALES
 DROITS DE L'HOMME
 PRINCIPES ET PROJETS --- CANADA
 PLAINTES AU NATION UNIES AU SUJETS DES VIOLATIONS
 AU CANADA
 LIBICON LAKE BAND

Retention period-Période de retention:

20Y (5A-15D)

DEPARTMENT
OF
EXTERNAL AFFAIRS

MINISTÈRE
DES
AFFAIRES EXTÉRIEURES

N.A.R.C.

FRC: 2002

FRCLOC:

BOX: 870



Government
of Canada

Gouvernement
du Canada

CLOSED VOLUME VOLUME COMPLET

DATED FROM 88-04-16 TO 88-08-31
À COMPTER DU JUSQU'AU

AFFIX TO TOP OF FILE - À METTRE SUR LE DOSSIER
DO NOT ADD ANY MORE PAPERS - NE PAS AJOUTER DE DOCUMENTS

FOR SUBSEQUENT CORRESPONDENCE SEE - POUR CORRESPONDANCE ULTÉRIEURE VOIR	
FILE NO. - DOSSIER N° 45-CDA-13-1-3-LUBICON LAKE BAND	VOLUME 11

OFFICE DES NATIONS UNIES A GENÈVE

CENTRE POUR LES DROITS DE L'HOMME

Télégrammes: UNATIONS, GENÈVE

Télex: 28 96 96

Téléphone: 34 60 11 31 02 11

RÉF. N°: G/SO 215/51 CANA (43)
(à rappeler dans la réponse)

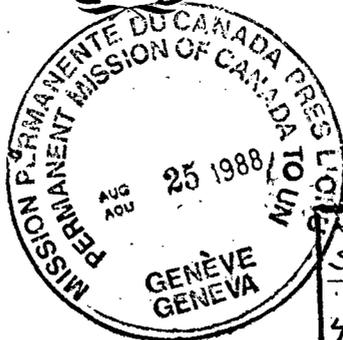
206/1986



UNITED NATIONS OFFICE AT GENEVA

CENTRE FOR HUMAN RIGHTS

Palais des Nations
CH-1211 GENÈVE 10



ACC	RE:	DATE
574929		880823
DOSSIER		
45-Lda-13-1-3 - Lubicon Lake Band		

The Secretariat of the United Nations (Centre for Human Rights) presents its compliments to the Permanent Mission of Canada to the United Nations Office at Geneva and, with reference to communication No. 206/1986 (Chief Robert Satiacum v. Canada) submitted to the Human Rights Committee under the Optional Protocol to the International Covenant on Civil and Political Rights, has the honour to inform the Permanent Mission that the Human Rights Committee decided at the end of its recently concluded thirty-third session to discontinue consideration of the case.

..... The Secretariat has also the honour to enclose herewith, for information, copies of two telegrams from Chief Satiacum's counsel, Ms. Lyn Crompton, dated 6 July and 17 August 1988, respectively, as well as a copy of the Secretariat's letter to her, dated 23 August 1988, concerning the Committee's decision to discontinue consideration of the case.

Notwithstanding the Committee's decision, the Secretariat intends to bring the contents of Ms. Crompton's telegram of 17 August 1988 to the Committee's attention at its next session.

23 August 1988

RECEIVED - REÇU

OCT 7 1988

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RECEIVED - REÇU

OCT 11 1988

Legal Operations Division (JLO)
Direction des Opérations juridiques



PTT TELEGRAMMA

* ZCZC CBA405 FCA788 VZ521
* VR VANCOUVER BC 026/026/05 1711

* J000332
* UNATIONS
* JAKOB TH MOELLER
* (1200)GENEVA

Palqis des Nations

* REF-NO G/80 215/51 CANA(43) 206/1986 URGENT PLEASE ADJOURN CHIEF
* SAHACUM'S CASE-TO END-OF HEARINGS. SUBMISSION BY-LETTER TO-FOLLOW
* SINCERELY
* LYN CROMPTON BARRISTER SOLICITOR
* COL FIGS CKD

* NNNN 06/07/88 0209

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* VANCOUVER BC 029/026 16 1537

* JCC1504
* UNATIONS organisation des nations unies
* ATTN JAKOB-TH MOELLER palais des nations
* (1200)GENEVA 1211 Geneve 10

* REF-G/80-215/51-CANA(43)206/86 URGENT-CDN GOVERNMENT APPEALS
* S~~ATIACUMS~~ CONVENTION REFUGEE STATUS S~~ATIACUM~~ UNABLE TO-RETAIN COUNSEL
* DO-NOT CLOSE FILE FURTHER SUBMISSIONS FOLLOWS
* LYN CROMPTON BARRISTER
* COL FIGS CKD

* NNNN 17/08/88 0037

TELEGRAMME

45-13-2 - SAT/AC UN7

OFFICE DES NATIONS UNIES A GENÈVE



JTHM/SW
UNITED NATIONS OFFICE AT GENEVA

CENTRE POUR LES DROITS DE L'HOMME

CENTRE FOR HUMAN RIGHTS



Téléfax: (022) 33 98 79
Télégrammes: UNATIONS, GENÈVE
Télex: 28 96 96
Téléphone: 34 60 11 31 02 11

Palais des Nations
CH-1211 GENÈVE 10

RÉF. N°: G/SO 215/51 CANA (43)
(à rappeler dans la réponse) 206/1986

REGISTERED

COPY

23 August 1988

Dear Ms. Crompton,

At the end of its recently concluded thirty-third session (29 July 1988), the Human Rights Committee decided to discontinue consideration of communication No. 206/1986, in respect of which you have acted as counsel for Chief Robert Satiacum.

When taking its decision, in conformity with its intent earlier communicated to you on 6 May 1988, the Committee was aware of your telegram of 6 July 1988 requesting it to adjourn the case to the end of the session and informing it that a submission by letter would follow. No such submission was received.

We have subsequently received your telegram of 17 August 1988, indicating that the Canadian Government has appealed against the decision of the Immigration Appeal Board granting Chief Satiacum convention refugee status, that he is unable to retain counsel and that further submissions will follow. You ask in this connection that his file should not be closed.

You will understand, that the Secretariat cannot, at its own discretion, reopen a file that has been closed by the Committee. Your request will, however, be brought to the attention of the Committee at its next session.

Yours sincerely,

Jakob Th. Möller
Chief, Communications Section
Centre for Human Rights

Ms. Lyn Crompton
Barrister & Solicitor
587 West 19th Avenue
Vancouver, B.C. V5Z 1W8
Canada



Minister of Indian Affairs
and Northern Development



Ministre des Affaires
indiennes et du Nord canadien

AUG 17 1988
AOUT

Chief Bernard Ominayak
Lubicon Lake Band
3536-106 Street
EDMONTON, Alberta
T6J 1A4

ACC	REF	DATE
572	988	
FILE	DOSSIER	
45-COA-13-1-3-		
Lubicon Lk Band		

Dear Chief Ominayak:

I have followed your recent statements with reference to blockades and possible violence with considerable sadness. I have expended much personal effort over the past year in a concerted, sincere attempt to negotiate a fair and reasonable settlement to the Lubicon Band land claim. Every initiative has become entangled in negotiations about negotiations.

I have made my position as clear as I can. I want the Band to have a reserve! I want the Band to have modern facilities! I want the Band to have self-government and economic prosperity!

I have always wanted to negotiate a solution. I have taken every reasonable step I could to achieve these objectives. I referred the dispute to the court not to stall the issue, as you have put it, because I have no reason to stall it, but because there seemed no other way to settle the matter.

I am also very concerned about the time it may now take a court to decide. The alternative is to build bridges, not blockades. Continued confrontation is useless unless confrontation is the real objective.

In the interests of the welfare of the members of your Band and to avoid an unfortunate and unnecessary confrontation, I propose we make one more effort at resolving this dispute.

.../2



- 2 -

As I see it, there are two immediate issues:

- 1) The need to establish a modern reserve as soon as possible; and,
- 2) the need to settle upon the ultimate size of the reserve.

You will recall that on March 2, 1988, Alberta agreed to transfer to Canada 25.4 square miles, including mines and minerals, on a "without prejudice" basis. This would have enabled Canada to set aside this land as an interim reserve for the Lubicon Lake Band, and move the funds necessary to commence a capital construction program on your proposed new site to provide housing and other community infrastructure, including water, sewers, roads, electricity, health and educational facilities.

In reaching this agreement, both Canada and Alberta recognized that the parties to the dispute cannot agree at present whether the Band has an aboriginal claim or a Treaty No. 8 claim, and indeed whether the Band is entitled to receive more than 25.4 square miles of land as asserted by the Band.

As I understand it, the lands in question have not been transferred to Canada by reason of the Band's insistence that before Alberta transfers the lands, a forum must be established which would address the Band's grievances.

If it is the lack of such a forum that is frustrating a settlement, then let us establish one.

While I continue to have reservations regarding mediation without prior negotiation, I am prepared to put those concerns aside and explore with you whether an out of court settlement of the Band's land entitlement is possible. To this end I suggest the following broad principles should guide us:

- a) That the question of the Band's land entitlement, and Alberta's corresponding obligation to provide lands be negotiated jointly by Canada, Alberta, and the Band;

.../3

- 3 -

- b) That to aid the negotiations, the three parties agree on a person who would act as a mediator in the process. Clearly the mediator should have no previous involvement with this question;
- c) That the negotiations be without prejudice, and to the extent possible should not hinder the proceedings which are before the courts. I propose that the court proceedings be set aside for an initial period of three weeks, unless all three parties agree to extend the period;
- d) That Alberta transfer to Canada 25.4 square miles as provided in the Province's negotiator's letter of March 2, 1988;
- e) That Alberta and Canada pay 50% each of the cost of the mediator.

As you will appreciate, the proceedings outlined above will not address all of the Band's claim. If we can agree to this process I see no reason why we could not agree to further negotiations between Canada and the Band respecting reserve planning and community infrastructure, and between Alberta and the Band on wildlife management. The Band's other claims could then be dealt with or left for the courts if necessary.

I hope we can succeed. What we agree on seems to me greater than what we disagree on.

Even if you cannot accept my proposal I am prepared to establish the interim reserve as proposed earlier this year. In either event, the physical and social conditions of the Band will be improved.

Could you advise me at your earliest convenience whether the Band is prepared to participate in this attempt to bring all interested parties to the negotiating table. I am sending a similar letter to Premier Getty seeking Alberta's approval of the principles set out above, and inviting the Province to join us.

If the three parties agree, I suggest we each instruct our counsel to work out the details and schedule an early meeting.

.../4

- 4 -

I am convinced that the elements of a settlement can be arrived at quickly and it is as frustrating for me as for you that we seem unable to take the final steps to an agreement. The Government of Canada gains nothing from delay, and I cannot see how your people are served by unnecessary confrontation and violence.

Because of the interest of Canadians in this issue, and to show that I am committed to arriving at a settlement, I will be making this letter available to the public.

Yours sincerely,

A handwritten signature in cursive script that reads "Bill McKnight". The signature is written in dark ink and is positioned above the typed name.

Bill McKnight

Communiqué

DOSSIER
FILE
45-Cda-13.1-3-Lubicon LK Sant

1-8838

MCKNIGHT RECOMMENDS MEDIATION TO BREAK LUBICON IMPASSE

OTTAWA (August 22, 1988) - Expressing "considerable sadness" over recent statements by the Lubicon Band threatening violence, and concern for the length of time it might take for the court to decide the Lubicon issue, Indian Affairs and Northern Development Minister Bill McKnight today recommended the appointment of a mediator.

In letters to Lubicon Chief Bernard Ominayak and Alberta Premier Don Getty, Mr. McKnight has recommended mediation as a means of achieving an out of court settlement and a quick and satisfactory resolution of the Lubicon issue. "The alternative is to build bridges, not blockades," said Mr. McKnight. "Continued confrontation is useless unless confrontation is the real objective."

Mr. McKnight has recommended that court proceedings be set aside for an initial period of three weeks so that a mediator, agreed to by all parties, can be appointed and undertake negotiations with the Lubicon, the Government of Alberta and the Government of Canada.

Mr. McKnight indicated that a new perspective would be of significant benefit to all parties involved. This can best be provided by a mediator with no previous involvement with this question.

.../2

- 2 -

"I have made my position as clear as I can. I want the Band to have a reserve! I want the band to have modern facilities! I want the Band to have self-government and economic prosperity!" Mr. McKnight wrote to Chief Ominayak.

Minister McKnight conveyed his optimism for a successful resumption of negotiations and pledged that regardless of the acceptance of his proposal by the Premier and the Chief he was still prepared to establish an interim reserve as proposed earlier this year.

- 30 -

Ref.

Pam Forward

Minister's Office

(819) 997-0002

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TELENOGRAMME

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REF YOUR TEL IMH0992 21JUN

---HUMAN RIGHTS CTTEE : LUBICON

PLEASE FIND ATTACHED P.4 OF LUBICON SUBMISSION

ENTITLED QUOTE SUPPLEMENT NO.9 TO COMMUNICATION

NO 167/1984 UNQUOTE.

- GVA 07/24 OTT
- GVA NYK
- GVA WDC
- GVA PAR
- GVA LDN
- GVA BRU
- GVA BOH
- GVA TKO
- GVA SKM
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 COMMUNICATIONS SECTION
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R HYNES

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PAGE 2 OF IDE 2

4

3. Canada makes full use of the press.

While Canada complains of media coverage, it attaches the following to its Response:

- copies of Federal news releases;
- a full page newspaper ad taken out by the Federal Government in newspapers across Alberta;
- a letter to the editor of Canada's only national newspaper from the Federal Minister of Indian Affairs;
- selected letters from the Federal negotiator (released to the media before being received by the Band);
- two different Government propaganda sheets easily dismissed by anyone knowledgeable about the issue but specifically prepared for distribution to the less well informed international media during the recent Calgary Winter Olympics.

To thus prime the media with a huge propaganda campaign and then criticize the Lubicon people for responding to resulting media inquiries about the latest developments is disingenuous to say the least.

4. Canada's supporting documents contain a misleading characterization of the Lubicon membership issue.

With respect to Appendix 5 of Canada's Response, the Band respectfully points out that the Membership figures and subsequent statements set forth on page 12 of that Appendix are highly misleading. The joint genealogical survey conducted by the Federal Government of Canada identified approximately 450 members of the Lubicon Lake Band. The inaccurate figures contained in the Band's early court documents resulted from the fact that at that time the Band's attorneys did not have complete information on the Band's membership. With respect to the Band's refusal to release the genealogical survey results to Alberta, the reason for this position is simply that the Province has no jurisdiction over Native Band membership issues. However, Alberta does in fact have the survey results, provided to it by the Federal Government.

5. Other abuse of process charges

a. Federal response to the tuberculosis outbreak

The disease was identified in July 1987. The first meeting with Federal representatives did not occur until 18 September, and Federal medical personnel did not arrive on the scene until 6 November. The personnel and other services listed in Canada's Response have been put in place since 6 November, as part of a continuing effort by the Lubicon people themselves to bring the disease under control.



External Affairs
Canada

Affaires extérieures
Canada

MESSAGE

Align first character of Security Classification under this arrow
Alignez le premier caractère de la Sécurité sous cette flèche

Accession/Référence
File/Dossier
45-Cda-13-1-3- Lubicon Lk Band
22 JUN 88 13 17z 10

SECURITY
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INFO

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PCO^{OTT}FPROOTT/CARON/LAFRENIERE/RATCLIFFE

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SUBJ/SUJ

DISTR IMD JLO JCD

REF OURFAX IMH0971 17JUN;YRFAX YTGR3890 21JUN,3828 16JUN

---HUMAN RIGHTS CTTEE:LUBICON

THANK YOU FOR YR REFFAX3890.UNFORTUNATELY IT APPEARS GREMLINS
WERE INVOLVED WITH TRANSMISSION AS INSTEAD OF DOC REQUESTED IN
OUR REFFAX,WE RECD DOC ENTITLED QUOTE US-JAPAN AGMT ON BEEF,
CITRUS UNQUOTE.LOOK FORWARD TO NEXT FAX.

DRAFTER/RÉDACTEUR

DIVISION/DIRECTION

TELEPHONE

APPROVED/APPROUVÉ

SIG

JAMES TROTTIER/tLn

IMH

992-6664

SIG

F.D. PILLARELLA

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FILE/DOSSIER 45-13-2-L.LAKE

JUN 21 1988

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REF OUR FAX YTGR3828 16JUN AND YOUR FAX IMH0971 17JUN

REF

---HUMAN RIGHTS COMMITTEE : LUBICON

GVA 05/21 OTT

AS REQUESTED YOUR REFFAX, ATTACHED IS P.4 OF LUBICON

GVA / / NYK

SUBMISSION ENTITLED QUOTE SUPPLEMENT NO.9 TO COMMUNICATION

GVA / / WDC

NO 167/1984 UNQUOTE. ORIGINAL BEING SENT UNDER TS.

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TELEPHONE NBR

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R HYNES

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UNCLASSIFIED

Best copy

U.S.-Japan agreement on beef, citrus

The following is a summary of provisions of the Japan-U.S. agreement on beef and citrus trade reached Monday. The summary text was provided by the U.S. Embassy.

Beef

During Japan's fiscal years 1988-89 (April 1, 1988 - March 31, 1989), Japan's market for imported beef will increase 60,000 metric tons per year, reaching 394,000 mt in fiscal year 1990. By 1991, Japan's beef imports should nearly double from current levels. Once Japan's market is completely liberalized, we expect the value of U.S. beef exports to double at least to more than \$1 billion per year.

Japan's Livestock Industry Promotion Corporation (LIPC) currently controls most beef imports. LIPC will phase out its involvement in beef imports by March 31, 1991.

LIPC surcharges, on top of the current 25 percent ad valorem tariff, now are equivalent to an ad valorem tariff rate of 90 percent. During the FY88-90 period, LIPC surcharges are expected to decrease and the tariff will remain at the current level. Once LIPC involvement with imported beef ends, Japan will set a temporary tariff of 70 percent in FY91, declining to 60 percent in FY92, and 50 percent in FY93 and thereafter. Japan will negotiate from this level in Uruguay round tariff negotiations.

During the FY91-93 period, if imports appear likely to exceed a level calculated at 120 percent of the previous year's imports or import allocation (whichever is higher), Japan may consult with beef-exporting countries about actions to discourage disruptive import levels. If imports exceed the 120 percent level, Japan may unilaterally impose an additional 25 percent ad valorem tariff for the remainder of that fiscal year. As of April 1, 1994, safeguard measures will be limited to only those permitted under the GATT.

During the FY88-90 transition period, the proportion of imported beef that will be transacted under the Simultaneous Buy-Sell (SBS) program will increase from 10 percent of the total general quantity handled by LIPC in FY87, to 30 percent in FY88, 45 percent in FY89, and 60 percent in FY90. Reforms of the SBS to increase the transparency of its operations, eliminate any

discrimination between the treatment of grain and grass-fed beef, and facilitate the participation of new market entrants will be undertaken immediately. The SBS system allows buyers and sellers to negotiate contracts directly.

Market access for hotels will be expanded to 10,000 mt in FY88, 13,000 mt in FY89, and 16,000 in FY90 (4,000 mt in FY87).

Japan's import restrictions on prepared and preserved beef products will be eliminated within two years. This settles one of the "GATT-12" product categories.

Fresh oranges

During the FY88-90 period, market access will be expanded by 22,000 mt annually, reaching 192,000 mt in FY90 (FY87 level: 120,000 mt; the increase the previous four years was 11,000 mt per year).

As of April 1, 1991, imports of fresh oranges will be permitted in unlimited quantities and the only restriction will be the current tariff (now bound at 40 percent in season and 20 percent off season). U.S. annual exports of fresh oranges are expected to increase by more than 30 percent in volume and \$25 million in value.

Orange juice

Market access for orange juice concentrate will be increased from 8,500 mt in FY87 to 15,000 mt in FY88, 19,000 mt in FY89, 23,000 mt in FY90, and 40,000 mt in FY91.

As of April 1, 1992, imports of orange juice will be permitted in unlimited quantities and the only restriction will be the current tariff (now set between approximately 25 percent and 35 percent depending on sugar content). U.S. exporters will compete in an estimated \$50 million import market.

Special access, not subject to the blending requirement, will be provided for imports of single-strength orange juice and orange juice mixtures as follows: 15,000 kl in FY88, 21,000 kl in FY89, and 27,000 kl in FY90. Imports of these products are now essentially banned. As of April 1, 1991, imports will be permitted in unlimited quantities.

Imports of single-strength orange juice in small containers for use in hotels will be permitted in unlimited quantities this year.

The requirement that imported orange juice be blended with mikan juice produced in Japan will be lifted for 40 percent of the concentrated

orange juice imported in FY88, 60 percent in FY89, and completely eliminated as of FY90.

Other products

The government of Japan has agreed to the following tariff reductions to be effective April 1, 1990:

- Grapefruit - From 25 percent in season and 12 percent off season to 15 percent in season and 10 percent season.

- Lemons - From 5 percent to 0 percent.

- Frozen peaches/pears - From 20 percent to 10 percent.

- Pistachos - From 9 percent to 0 percent.

- Mandarins - From 0 percent to 0 percent.

- Pecans - From 0 percent to 5 percent.

- Walnuts - From 16 percent to 10 percent.

- Bulk pet food - From 15 percent to 0 percent.

- Pet food in retail packs - From 12 percent to 0 percent.

- Beef jerky - From 25 percent to 10 percent.

- Sausage - From 25 percent to 10 percent.

- Pork and beans - From 25 percent to 14 percent.

Effective April, 1990, the government of Japan will reduce the tariff on grapefruit in season to 10 percent.

BEST COPY

Department of External Affairs



Ministère des Affaires extérieures

Ottawa, Ontario
K1A 0G2

June 20, 1988

Mr. Martin Low
Senior General Counsel
Human Rights Law
Department of Justice
Kent & Wellington Streets
Ottawa, Ontario
K1A 0H8

ACC	AC	DATE
FILE	DOSSIER	
45-COA-13-1-3-		
Lubicon Lake Band		

W. Martin
Dear Mr. Low:

I am writing regarding the July session of the United Nations Human Rights Committee. As you know, the complaint made by the Lubicon Lake Band against Canada may be on the agenda.

As we discussed, it may be useful if a Canadian expert could be made available to provide further background information to Committee members should any of them be interested in receiving explanations concerning the Canadian position. I believe that Ms. Irit Weiser from your section may be the most appropriate choice as the Canadian expert. Unfortunately we are unable to provide any funding to assist her participation in the work in Geneva.

I understand that the schedule for the July meeting is as follows. There is a pre-session working group meeting from July 4 to 8. The session itself runs from July 11 to 29. I believe it would be appropriate for the Canadian expert to be on hand for one or two weeks of this period.

I look forward to hearing of your decision concerning this matter.

Yours sincerely,

F.D. Pillarella
Director
Human Rights and
Social Affairs Division



External Affairs
Canada

Affaires extérieures
Canada

UNCLASSIFIED
NON CLASSIFIÉ

Align first character of Security Classification under this arrow
Alignez le premier caractère de la Sécurité sous cette flèche

Accession/Référence
File/Dossier 45-009-13-1-3- Lubicon LK Bank

SECURITY
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SUBJ/SUJ

DISTR ~~IMD JLO JGD~~

REF YR FAX YTGR3828 16JUN

UN HUMAN RIGHTS COMMITTEE: NEW CANADIAN COMMUNICATION ON LUBICON ATTACHED PLEASE FIND NEW CANADIAN COMMUNICATION ENCLOSING STATEMENT OF CLAIM AGAINST ALBERTA TO THE UN HUMAN RIGHTS COMMITTEE ON THE LUBICON CASE. AS WE UNDERSTAND COMMITTEE HAS SET 20 JUNE AS FINAL DEADLINE FOR RECEIPT OF MATERIAL FOR JULY SESSION, WOULD YOU PLS DELIVER CANADIAN COMMUNICATION IMMEDIATELY UPON RECEIPT.

2. WE THANK YOU FOR LATEST LUBICON SUBMISSION IN YR REF FAX. UNFORTUNATELY P.4 OF LUBICON SUBMISSION ENTITLED QUOTE SUPPLEMENT NO.9 TO COMMUNICATION NO.167/1984 UNQUOTE IS ILLEGIBLE. WOULD YOU PLS SEND CLEAN COPY OF THIS PAGE. NO DECISION HAS YET BEEN MADE ON WHETHER WE WILL BE MAKING NEW SUBMISSION AS RESULT OF RECEIPT OF THIS LAST LUBICON COMMUNICATION.

(Comcentre pls FAX attached 22 pages)

DRAFTER/RÉDACTEUR	DIVISION/DIRECTION	TELEPHONE	APPROVED/APPROUVÉ
J TROTTIER SIG <i>[Signature]</i>	IMH	2-6664	<i>[Signature]</i> FD PILLABELLA SIG



MEMORANDUM/NOTE DE SERVICE

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NON CLASSIFIE**

DISTRIBUTION

TO/À:

FROM/DE:

Counsel,
Human Rights Law Section

SUBJECT/OBJET:

LUBICON LAKE COMMUNICATION TO THE UN HUMAN RIGHTS
COMMITTEE

Security Classification - Cote de sécurité
File number - numéro de dossier 277269
Date June 17, 1988

2

Comments/Remarques

Attached please find Canada's most recent communication to the UN Human Rights Committee in the above-noted matter. As June 20, 1988 is the Committee's deadline for further submissions, we will be delivering the communication to Geneva today.

Thank you for your assistance in this matter.

Irit Weiser

IW/jp

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June 17, 1988

FURTHER SUBMISSION OF THE GOVERNMENT OF CANADA
IN RESPECT OF THE COMMUNICATION OF CHIEF BERNARD OMINAYAK
AND THE LUBICON LAKE BAND TO THE HUMAN RIGHTS COMMITTEE

I. GENERAL

The Government of Canada transmitted to the Secretary-General of the United Nations a response dated March 3, 1988, to the submissions of the communicant dated October 7, 1987 and January 12, 1988 (G/SO 215/51 CANA (38) 167/1984).

In its response, the Government of Canada outlined recent developments concerning the current communication. Briefly, these developments concerned a demand letter delivered by the Minister of Indian Affairs and Northern Development on February 3, 1988, to the Attorney General of Alberta formally requesting reserve land for the Lubicon Lake Band. Subsequently, on March 2, 1988, the federal and provincial governments concluded an agreement in principle for the interim transfer of 25.4 square miles of reserve land for the Band, including mines and minerals. This agreement was without prejudice to the position of all parties involved; thus, it would have still been available to the Band, even after receipt of the 25.4 square miles of reserve land to continue negotiations, as well as any other court actions. It was intended that a more formal agreement would be signed once final wording was agreed upon.

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II. RECENT DEVELOPMENTS

By letter dated March 3, 1988, the Government of Canada advised Chief Ominayak of the agreement in principle referred to above, and requested the Band's input to determine the location of the reserve land. By letter dated March 11, 1988, the Band refused this interim offer.

Since that date, discussions seeking a resolution of the matter have taken place between the federal government, the province of Alberta and the communicant. However, virtually no progress was made towards settlement. As a consequence, on May 17, 1988, the federal government initiated legal proceedings against the province of Alberta and the Lubicon Lake Band in order to enable Canada to meet its lawful obligations to the Band under Treaty 8. The Statement of Claim, commencing the legal action, asks the Court of Queen's Bench of Alberta for a declaration that the Lubicon Lake Band is entitled to a reserve and a determination of the size of that reserve. (See Appendix 1).

On June 9, 1988 the Lubicon Lake Band filed a Statement of Defence and Counterclaim. On June 10, 1988, all parties to the dispute appeared before Chief Justice Moore of the Alberta Court of Queen's Bench and agreed that best efforts

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should be made to expedite this case with a preliminary trial date to be set on January 16, 1989. (See Appendix 2, Notice of Motion. The formal order, which will not vary significantly from the terms contained in the Notice of Motion, will be sent to the Committee as soon as it becomes available).

The Government of Canada wishes to re-emphasize that it acknowledges its obligation to provide a reserve for the Lubicon Lake Band pursuant to Treaty 8. It is submitted that the issue that forms the basis of the domestic dispute and the current communication, concerns the amount of land to be set aside as a reserve and related issues. As such, the Government of Canada submits that the communication does not properly fall within any of the provisions of the Covenant and cannot therefore form the basis of a violation. Moreover, the Government of Canada re-asserts that effective domestic remedies are available in Canada and that the communicant has not exhausted these remedies. (See Appendix 3)

III. CONCLUSION

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

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APPENDIX 1

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IN THE COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL DISTRICT OF CALGARY

B E T W E E N:

THE ATTORNEY GENERAL OF CANADA

Plaintiff

- and -

HER MAJESTY THE QUEEN IN RIGHT OF ALBERTA

and

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,
FLEURY MICHEL (MICHAEL) LABOUCAN, band
councillor and LARRY OMINAYAK, band coun-
cillor, on their own behalf and on behalf of
the Lubicon Lake Band

Defendants

STATEMENT OF CLAIM

1. The Attorney General of Canada represents Canada and the Minister of Indian and Northern Affairs whose office is the successor of the Superintendent General of Indian Affairs, referred to in Section 10 of the Memorandum of Agreement with Alberta and exhibited as Schedule 2 to The Constitution Act, 1930.

2. Her Majesty the Queen in right of Alberta has the administration and control of public lands in Alberta within

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the meaning of section 10 of Schedule 2 of the Constitution Act, 1930.

3. The Lubicon Lake Band (hereafter the "Band") is a Band of Indians within the meaning of the Indian Act, R.S.C. 1970, Chapter I-6, and within the meaning of Treaty No. 8.

4. Chief Bernard Ominayak, Fleury Michel (Michael) Laboucan and Larry Ominayak, are the Chief and councillors of the Lubicon Lake Band, and are sued on their own behalf and on behalf of all other members of the Band.

5. Treaty No. 8 was entered into in the year 1899 between David Laird, J.H. Ross and J.A.J. McKenna, Treaty Commissioners, on behalf of Her Majesty the Queen in right of Canada, and the Indians who lived within the following limits, generally known as the Athabasca district:

"Commencing at the source of the main branch of the Red Deer River in Alberta, thence due west to the central range of the Rocky Mountains, thence northwesterly along the said range to the point where it intersects the 60th parallel of north latitude, thence east along said parallel to the point where it intersects Hay River, thence northeasterly down said river to the south shore of Great Slave Lake, thence along the said shore northeasterly (and including such rights to the islands in said lakes as the Indians mentioned in the treaty may possess), and thence easterly and northeasterly along the south shores of Christie's Bay and McLeod's Bay to old Fort Reliance near the mouth of Lockhart's River, thence southeasterly in a straight line to and including Black Lake, thence southwesterly up the stream from Cree Lake, thence including said lake southwesterly along the height of land between the Athabasca and Churchill

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Rivers to where it intersects the northern boundary of Treaty Six, and along the said boundary easterly, northerly and southwesterly, to the place of commencement."

6. Treaty No. 8 provided, inter alia:

"And Her Majesty the Queen hereby agrees and undertakes to lay aside reserves for such bands as desire reserves, the same not to exceed in all one square mile for each family of five for such number of families as may elect to reside on reserves, or in that proportion for larger or smaller families; and for such families or individual Indians as may prefer to live apart from band reserves, Her Majesty undertakes to provide land in severalty to the extent of 160 acres to each Indian, the land to be conveyed with a proviso as to non-alienation without the consent of the Governor General in Council of Canada, the selection of such reserves, and lands in severalty, to be made in the manner following, namely, the Superintendent General of Indian Affairs shall depute and send a suitable person to determine and set apart such reserves and lands, after consulting with the Indians concerned as to the locality which may be found suitable and open for selection."

7. Treaty No. 8 was approved by the Governor General in Council on February 20, 1900, and thereupon the lands therein referred to became disencumbered of all native or aboriginal title and in lieu thereof Canada has assumed an obligation to make lands available to the bands who lived within the area covered by the Treaty as provided in the Treaty.

8. In 42 Victoria, Chapter 31, Parliament provided

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that:

"125. The following powers are hereby delegated to the Governor in Council:-

...

e. To satisfy any claims existing in connection with the extinguishment of the Indian title, preferred by half-breeds resident in the North-West Territories outside of the limits of Manitoba, on the fifteenth day of July, one thousand eight hundred and seventy, by granting land to such persons, to such extent and on such terms and conditions, as may be deemed expedient;"

9. On or about May 6, 1899, a commission known as the "Half Breed Commission", was established by the Governor in Council in order to extinguish the "Indian title" preferred by the half breed residents of the Northwest Territories outside of the limits of Manitoba, and the Attorney General of Canada pleads and relies upon the Dominion Lands Act 42 Vict. Ch. 31, and amendments thereto, including 46 Vict., Ch. 17, ss. 80, 81; R.S.C. 1886 Ch. 54, ss. 62, 90(f); R.S.C. 1906 Ch. 55, ss. 6(f), 216; S.C. 1908 Ch. 20, ss. 76(f) and Orders in Council passed pursuant to the said Dominion Lands Acts in respect of the settlement of the "Half-Breed" claims, including P.C. 688 (March 30, 1885); P.C. 918 (May 6, 1899); P.C. 438 (March 2, 1900); P.C. 596 (March 13, 1900) and P.C. 273 (February 25, 1903).

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10. In the year 1899 the "Half Breed Commission" issued 1,195 money scrip certificates worth \$286,000, and 48 land scrip certificates totalling 11,500 acres in extinguishment of those persons' native title. Many of the ancestors of the members of the Lubicon Lake Band received money or land scrip.

11. On or about December 14, 1929, the Dominion of Canada and the Province of Alberta agreed as follows:

"1. In order that the Province may be in the same position as the original Provinces of Confederation are in virtue of section one hundred and nine of the British North America Act, 1867, the interest of the Crown in all Crown lands, mines, minerals (precious and base) and royalties derived therefrom within the Province, and all sums due or payable for such lands, mines, minerals or royalties, shall, from and after the coming into force of this agreement and subject as therein otherwise provided, belong to the Province, subject to any trusts existing in respect thereof, and to any interest other than that of the Crown in the same, and the said lands, mines, minerals and royalties shall be administered by the Province for the purposes thereof, subject, until the Legislature of the Province otherwise provides, to the provisions of any Act of the Parliament of Canada relating to such administration;..."

and

"10. All lands included in Indian reserves within the Province, including those selected and surveyed but not yet confirmed, as well as those confirmed, shall continue to be vested in the Crown and administered by the Government of Canada for the purposes of Canada, and the Province will from time to time, upon the request of the Superintendent General of Indian Affairs, set

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aside, out of the unoccupied Crown lands hereby 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 fulfill 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 hereof."

12. The agreement referred to in paragraph 8 herein has the force of law by reason of the Constitution Act, 1930.

13. The Band was formally constituted as a band for the purposes of the Indian Act, supra, in 1940, and since that time Her Majesty the Queen in right of Canada has paid such members of the Band as were entitled to be members of the Band, annuity and other benefits pursuant to Treaty No. 8, and the members of the Band have accepted the said annuities and benefits.

14. From time to time Canada, or subsequent to 1930, Alberta, has made lands available to members or ancestors of members of the Band, pursuant to Canada's and Alberta's obligations under the agreement of 1929 or the Constitution Act, 1930.

15. The Band made a number of requests for a reserve within the meaning of Treaty No. 8 commencing in the year 1939, and subsequently the Band, and members of the Band,

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have commenced an action in the Federal Court of Canada, action number T-2048-80 against Her Majesty the Queen in right of Canada and others, claiming inter alia that Her Majesty 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...."

16. As a result of the facts set out herein, Canada has an obligation to the Band under Treaty No. 8, and it is now necessary that the Province provide sufficient lands out of the unoccupied Crown lands transferred in 1930 to enable Canada to fulfill its obligations under the said Treaty No. 8.

17. On the 3rd day of February, 1988, the Honourable Bill McKnight, Minister of Indian Affairs and Northern Development, delivered a written request to the Honourable James D. Horsman, Q.C., Attorney General and Minister of Federal and Intergovernmental Affairs, and as such the "appropriate Minister of the Province" within the meaning of s. 10 of schedule 2 of the Constitution Act, 1930, for lands necessary to enable Canada to fulfil its obligation to the

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Band under Treaty No. 8 as follows:

"A. Land is to be provided up to the total quantum that results from the application of the following criteria which are to be applied against the Band's list of members as of March 16, 1987:

- i) That all persons registered or entitled to be registered as Indians on the Indian Registry as members of the Band be counted plus any subsequent births and less any subsequent deaths up to the date when lands for a reserve are surveyed for the first time;
- ii) From the quantum of land that results from the application of i) above, there shall be deducted such quantum of land, or scrip which Alberta can establish to my satisfaction as having been set aside and reserved or issued, as the case may be, in respect of any of the persons or ancestors of persons listed in paragraph i);
- iii) That all persons who were members of other bands on March 16, 1987 and also claimed by the Lubicon Lake Band as members not be counted;
- iv) In recognition of the right of Indians described in paragraph i) to choose land in severalty rather than reside with the band as provided for by Treaty No. 8, that, in the event such elections are made, 128 acres shall be deducted for each such election from the quantum of land to be transferred to Canada for the Band. It will be ascertained by Canada who, if anyone, will choose land in severalty. In the event that such elections are made, 160 acres will be made available by Alberta to each of those who might choose land in severalty. It is understood that those Indians or

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those whose ancestors have already received land or scrip may not elect land in severalty;

- v) Land will not be requested for persons who cannot be registered as Indians by the Indian Registrar; and
- vi) Validation of actual entitlement for registration as an Indian will be carried out by the Indian Registrar pursuant to the Indian Act.

B. The 25.4 square mile parcel of land identified for the Band as a reserve in 1940 ("the Original Reserve Lands") should be transferred plus such other additional lands as may be necessary to meet Canada's obligation as described in paragraph 'A'.

C. Full subsurface rights are to be included in the transfer of lands."

18. At March 16, 1987, the number of persons who were purportedly listed on the membership list maintained by the Band numbered 450.

19. The Band has asserted that it is entitled to receive land calculated by multiplying 128 acres by the number of persons registered on the membership list maintained by the Band, resulting in approximately 92 square miles of land to be situated around the Lubicon Lake area, but Alberta has refused and continues to refuse to make lands available as demanded by the Band.

20. Canada, Alberta and the Lubicon Lake Band have been unable to agree on the amount of land the Band, or

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those members of the Band who chose to take land in severalty are now entitled to receive.

21. The Plaintiff proposes that the trial of this action take place at the City of Calgary in the Province of Alberta.

Wherefor the Attorney General of Canada, on behalf of Canada, claims as follows:

- (a) a declaration that the Lubicon Band is entitled to a reserve in the province of Alberta;
- (b) a declaration that the Lubicon Lake Band is entitled to a reserve in accordance with the following formula:

A. Land is to be provided up to the total quantum that results from the application of the following criteria which are to be applied against the Band's list of members as of March 16, 1987:

- i) That all persons registered or entitled to be registered as Indians on the Indian Registry as members of the Band be counted plus any subsequent births and less any subsequent deaths up to the date when lands for a reserve are surveyed for the first time;
- ii) From the quantum of land that results from the application of i)

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above, there shall be deducted such quantum of land, or scrip which Alberta can establish to the satisfaction of the Minister of Indian Affairs and Northern Development, as having been set aside and reserved or issued, as the case may be, in respect of any of the persons or ancestors of persons listed in paragraph i);

iii) That all persons who were members of other bands on March 16, 1987, and also claimed by the Lubicon Lake Band as members not be counted;

iv) In recognition of the right of Indians described in paragraph i) to choose land in severalty rather than reside with the band as provided for by Treaty No. 8, that, in the event such elections are made, 128 acres shall be deducted for each such election from the quantum of land to be transferred to Canada for the Band. It will be ascertained by Canada who, if anyone, will choose land in severalty. In the event that such elections are made, 160 acres will be made available by Alberta to each of those who might choose land in severalty. It is understood that those Indians or those whose ancestors have already received land or scrip may not elect land in severalty;

v) Land will not be requested for persons who cannot be registered as Indians by the Indian Registrar.

(c) a declaration as to the size of the reserve the Lubicon Lake Band is entitled to;

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- (d) subject to any elections by individual Band members as to land in severalty, a declaration that the Province of Alberta is in breach of the Constitution Act, 1930;
- (e) costs.

DATED at the City of OTTAWA in the Province of Ontario this 17 day of May, A.D. 1988, and delivered by Ivan G. Whitehall, Q.C., on behalf of the Deputy Attorney General of Canada, solicitor for the plaintiff herein, whose address is Department of Justice, 239 Wellington Street, Ottawa, Ontario, K1A 0H8, and whose address for service in Alberta is in care of J. Brian Malone, Q.C., Black & Company, Barristers and Solicitors, 1600, 530 - 8th Avenue S.W., Calgary, Alberta, T2P 3S8.

ISSUED out of the Office of the Clerk of the Court of Queen's Bench of Alberta, Judicial District of Calgary this 17 day of may, A.D. 1988.

Clerk of the Court of Queen's
Bench of Alberta

COURT
17 MAY

18

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NOTICE

No. 4401-07564
A.D. 1988

To the Defendants:

HER MAJESTY THE QUEEN IN RIGHT OF ALBERTA

and

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

and

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

FLEURY MICHEL (MICHAEL) LABOUCAN, band councillor

LARRY OMINAYAK, band councillor

You are hereby notified that the Plaintiff may enter judgment in accordance with this Statement of Claim or such judgment as, according to the practice of the Court, he is entitled to, without any further notice to you unless within fifteen (15) days after service hereof upon you, excluding the day of service, you cause to be filed in the office of the Clerk of the Court from which the 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 be served upon the Plaintiff or his Solicitor at his stated address for service.

Clerk of the Court
MAY 17 10 13 AM
1988

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

BETWEEN:

THE ATTORNEY GENERAL OF CANADA
Plaintiff

- and -

HER MAJESTY THE QUEEN IN RIGHT OF ALBERTA

and

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, FLEURY MICHEL (MICHAEL) LABOUCAN, band councillor and LARRY OMINAYAK, band councillor, on their own behalf and on behalf of the Lubicon Lake Band

Defendants

STATEMENT OF CLAIM

This Statement of Claim is issued by BLACK & COMPANY, Solicitors for the Plaintiff whose address for service is in care of the said solicitors at:
1600, 530 - 8th Avenue S.W.
Calgary, Alberta, T2P 3S8

and is addressed to the Defendants.

File #22462-71001-7 JBM

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APPENDIX 2

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

19

BETWEEN:

THE ATTORNEY GENERAL OF CANADA

Plaintiff

-and-

HER MAJESTY THE QUEEN IN RIGHT OF ALBERTA

and

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,
FLEURY MICHAEL (MICHAEL) LABOUCAN, band
councillor and LARRY OMINAYAK, band
councillor, on their own behalf and on behalf
of the Lubicon Lake Band

Defendants

NOTICE OF MOTION

SPECIAL APPLICATION

TAKE NOTICE that an application will be made on behalf
of the Plaintiff before Chief Justice W. K. Moore, in Chambers,
at the Court House, in the City of Calgary, in the province of
Alberta, on Friday, the 10th day of June, 1988, at the hour of
10:00 o'clock in the forenoon, or so soon thereafter as counsel
may be heard for an order:

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1. Directing that all parties file and deliver their pleadings before a date certain;
2. Directing that all parties file and serve their Affidavits of Documents in this action on or before September 15, 1988;
3. Directing that all preliminary motions be completed before November 15, 1988;
4. Directing that all parties commence their discovery of documents and Examinations for Discovery of parties adverse in interest pursuant to Part 13 of the Alberta Rules of Court before December 1, 1988;
5. Directing that the provisions of Rule 236 be waived and that January 16, 1989 be fixed as the date upon which the parties shall apply for a trial date certain;
6. Directing that further pre-trial conferences may be held on the informal motion of any of the parties or of this Honourable Court.

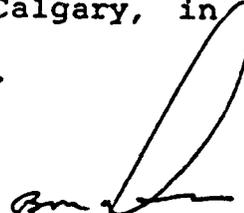
AND FURTHER TAKE NOTICE that in support of this application reference will be made to:

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1. Rule 219 of the Alberta Rules of Court;
2. The pleadings and exhibits filed in Alberta action 8201-03713;
3. The decision of Mr. Justice Moore in Alberta action 8201-03713;
4. The pleadings in Federal Court action T.2048-80;
5. The pleadings herein;
6. The Affidavit of Frederick R. Drummie.
7. Such further material as counsel may advise.

DATED at the City of Calgary, in the Province of Alberta, this 30th day of May, 1988.


IVAN G. WHITEHALL, Q.C. and
J. BRIAN MALONE, Q.C.; of
Counsel for the Attorney
General of Canada

TO: THE CLERK OF THE COURT
AND TO: Ghitler & Company
AND TO: Parlee McLaws

Estimated Time: 1/2 day - 1 day

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No. 8801-07584

A.D. 1988

Service of a copy hereof admitted
this 31st day of May 1988

Theresa McTavris
Solicitor for the Queen in right of
Alberta

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

22

BETWEEN:

THE ATTORNEY GENERAL OF CANADA

Plaintiff

-and-

HER MAJESTY THE QUEEN IN RIGHT OF
ALBERTA

and

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, FLEURY MICHEL (MICHAEL)
LABOUCAN, band councillor and LARRY
OMINAYAK, band councillor, on their own
behalf and on behalf of the Lubicon Lake
Band

Defendants

Service of a copy hereof admitted
this 31st day of May 1988

G. J. Harvey 1988
Solicitor for the other defendants

NOTICE OF MOTION

COURT OF QUEEN'S BENCH
MAY 31 1988
CALGARY, ALBERTA

BLACK & COMPANY
Barristers & Solicitors
1600, 530 - 8th Avenue S.W.
Calgary, Alberta, T2P 3S8

File #22462-71001-7 JBM

UNCLASSIFIED APPENDIX 3
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A16 THE OTTAWA CITIZEN • SATURDAY, JUNE 11, 1988

Canada

23/23

Lubicons glad to get day in court

CALGARY (CP) — The federal government launched a new court action Friday in an attempt to resolve the lingering and contentious dispute over the Lubicon Lake Indians' land claim.

And despite the fact the suit is only one of five relating to the Lubicons currently before the courts, spokesmen for the Northern Alberta band were optimistic it might be the one that leads to a settlement.

"I think if this is an indication that Canada and Alberta want to have it out in court, then that is very welcome news for us," said Jim O'Reilly, lawyer for the Lubicons.

"We've been ready to have it

out in court with them since 1980."

Though native rights fall under federal jurisdiction, Alberta is involved in the suit because it owns the land the Lubicons claim is rightfully theirs.

The source of the band's optimism was the fact the court will have to rule on one of the major hurdles to a resolution of the issue. The federal government says the band's entitlement comes under a turn-of-the-century treaty, while the Lubicons argue it's based on their aboriginal rights.

Chief Justice Kenneth Moore of the Court of Queen's Bench agreed Friday that the treaty-versus-aboriginal-rights issue is the

first that must be resolved when the case comes to court, in January or later.

An advisor to the band said more progress was made in Friday's brief court hearing than had been made in a variety of cases over the last eight years.

"For the first time, the Lubicon Indians have a court in which they can actually argue the substance of their case," Fred Lennox said.

The band may finally have the forum it's been seeking, but prospects for a quick solution are slim. Preliminary matters for this case are scheduled to stretch through the end of the year.

UNION DES NATIONS UNIES A GENÈVE



CENTRE POUR LES DROITS DE L'HOMME

UNITED NATIONS OFFICE AT GENEVA

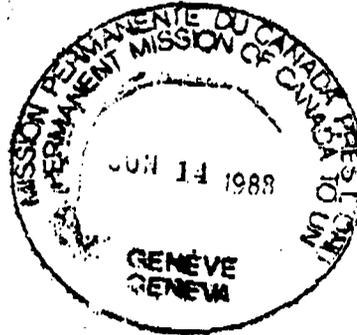
CENTRE FOR HUMAN RIGHTS



Télégrammes: UNATIONS, GENEVE
Télex: 28 98 98
Téléphone: 34 80 11 3102 11
REF. N°: G/SO 215/51 CANA (38)
(à rappeler dans la réponse)
167/1984

Palais des Nations
CH-1211 GENEVE 10

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The Secretariat of the United Nations (Centre for Human Rights) presents its compliments to the Permanent Mission of Canada to the United Nations Office at Geneva and has the honour to transmit herewith, for information and in order to complete the files of the State party, the text of two further letters, dated 16 February and 28 March 1988, and enclosures, concerning communication No. 167/1984 (B. Ominayak and the Lubicon Lake Band v. Canada), which is before the Human Rights Committee under the Optional Protocol to the International Covenant on Civil and Political Rights.

HLG 13 June 1988

*2 copies
111 copies*

VAN NESS, FELDMAN, SUTCLIFFE & CURTIS

A PROFESSIONAL CORPORATION
1050 THOMAS JEFFERSON STREET, N. W.
SEVENTH FLOOR
WASHINGTON, D. C. 20007

(202) 298-1800
WRITER'S DIRECT DIAL NUMBER

S. LYNN SUTCLIFFE
HOWARD J. FELDMAN
WILLIAM J. VAN NESS, JR.
BEN YAMAGATA
ROBERT G. SZABO
GRENVILLE GARSIDE
ROSS D. AIN
ALAN L. MINTZ
ROBERT R. NORDHAUS
CHARLES B. COFFEY
ADAM WENNER
PETER D. DICKSON
GARY D. BACHMAN
SUSAN TOMASKY

LISA A. SHAPIRO
CYNTHIA INGERSOLL
JESSICA S. LEFEVRE
LYNN MINNA
MARGARET A. MOORE
DONALD F. SANTA, JR.
MICHAEL A. SWIGER
KYLE J. ZIMMER
SAM KALEN
BRUCE S. DEMING
ANTHONY A. TARGAN
JOANNE P. DUDLEY
BENJAMIN L. ISRAEL*
ANTHONY WILSON*
STEPHEN C. POTIS*
NOREEN M. TAMA*

OF COUNSEL
HOWARD ELIOT SHAPIRO
ARTHUR JOHN ARMSTRONG
JACOB J. LEW
*NOT ADMITTED IN DISTRICT OF COLUMBIA

February 16, 1988

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PAGE 3 OF 1 DE 27

Mr. Jakob Th. Moller
Chief, Communications Unit
Center for Human Rights
Palais des Nations
CH-1211
Geneve 10, SWITZERLAND

Dear Mr. Moller:

Thank you for your recent transmittal. Enclosed please find copies of several news articles pertaining to Canada's recent announcement of its agreement to lease a large tract of land in Alberta, including land claimed by the Lubicon Lake Band, for logging and timber development.

Sincerely,

Jessica S. Lefevre

Enclosures

FEB 29 1988 12:55 CALGARY HERALD 4032357113

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PAGE 4 OF IDE 27

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Canada Alberta

News Release/Communiqué

N.R. 088

FOR RELEASE: Monday, February 8, 1988

MAJOR DIVERSIFICATION INITIATIVE WITH NEW \$800 MILLION PULP MILL APPROVED FOR PEACE RIVER AREA

EDMONTON -- Premier Don Getty and Forestry, Lands and Wildlife Minister LeRoy Fjordbotten today announced provincial government approval for Dalshowa Canada Co. Ltd. to construct a major greenfield bleached kraft pulp mill 16 km north of the Town of Peace River. The mill will cost more than \$800 million, and will create almost 2,000 new jobs.

The new plant will be the largest single user of aspen. It will create 630 mill and woodland jobs, and 1,260 indirect jobs. Design engineering and detailed planning for the plant will begin in the spring of this year and the mill is expected to start operating in September, 1990. Pulp mill construction will require 1600 man years with a peak manpower requirement of approximately 1300 early in 1990.

Premier Don Getty said, "This major investment by Dalshowa, its largest overseas investment ever, will provide vital development and employment opportunities for Northern Alberta and is indicative of our government's commitment to the forest industry sector of our economy and to our overall economic diversification strategy."

Mr. Fjordbotten said, "The Alberta government will be building rail and road access and other infrastructure to cost \$88.2 million over the next five years, a necessary requirement to proceed in this relatively remote location. Lack of such access has long been an impediment to development of the forest industry in Northern Alberta."

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MAJOR DIVERSIFICATION INITIATIVE ...

PAGE TWO

The Federal Western Diversification Office at the same time announced a \$9.5 million contribution to facilitate Daishowa's infrastructure leading to the mill gate.

"The Western Diversification Office is pleased to assist in facilitating Daishowa's infrastructure development for this major forestry project," stated Stan Schellenberger, Parliamentary Secretary to the Hon. Bill McKnight, Federal Western Diversification Minister. "This project demonstrates how two governments can work together with the private sector to make a significant contribution towards the development and diversification of the Alberta economy."

The Vice President and General Manager of Daishowa Canada Co. Ltd., Mr. Koichi Kitagawa said, "The majority of the pulp produced will be shipped to Japan for consumption at Daishowa's paper mills, however, some volumes will be available for sale in the domestic and international markets. One of the strong features of this location is the excellent opportunities for a major expansion of bleached kraft pulp based on the abundant supply of available timber resources."

"Environmentally, the mill will be the cleanest bleached kraft pulp mill in Canada, and it will be one of the most pollution-free in North America," said Mr. Fjordbotten.

Both Premier Getty and Mr. Fjordbotten congratulated Daishowa for demonstrating its confidence in the province of Alberta, its economy and its people. The Premier concluded, "This is a very exciting project and we look forward to many others. The Alberta government is committed to encouraging utilization of the province's timber resource and fully recognizes the contribution to Alberta's economy that forestry makes."

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MAJOR DIVERSIFICATION INITIATIVE ...

PAGE THREE

For reference:

Geoff Davey
Office of the Premier
Edmonton, Alberta

(403) 427-2881

Koichi Kitagawa
Vice President and General Manager
Daishowa Canada Co. Ltd.
650 West Georgia Street
Vancouver, B.C. V6B 4N5

(604) 689-1919

Hugh Calder
Public Affairs Officer
Public Communications
Forestry, Lands and Wildlife

(403) 427-8836

Anne Mauch
Western Diversification Office
Edmonton, Alberta

(403) 420-4164

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Lubicon area now off-limits

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By Kathy Kerr
 and Mark Loway
 (Times staff writers)

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EDMONTON — The Lubicon Lake Indian band's proposed reserve will be off-limits to logging until the band's 48-year claim is settled, Forestry Minister Laloy Pfordtotten said Tuesday.

The provincial government has granted timber rights to Japanese forestry firm Daishowa on a huge tract of land east of Peace River. It encircles 66 square kilometres that the province recognizes as a future Lubicon reserve.

But Pfordtotten said there will be no logging on a larger disputed area of about 186 square kilometres, including the 66-square-kilometre parcel. Daishowa will be given an alternate cutting area until the claim is settled, he said.

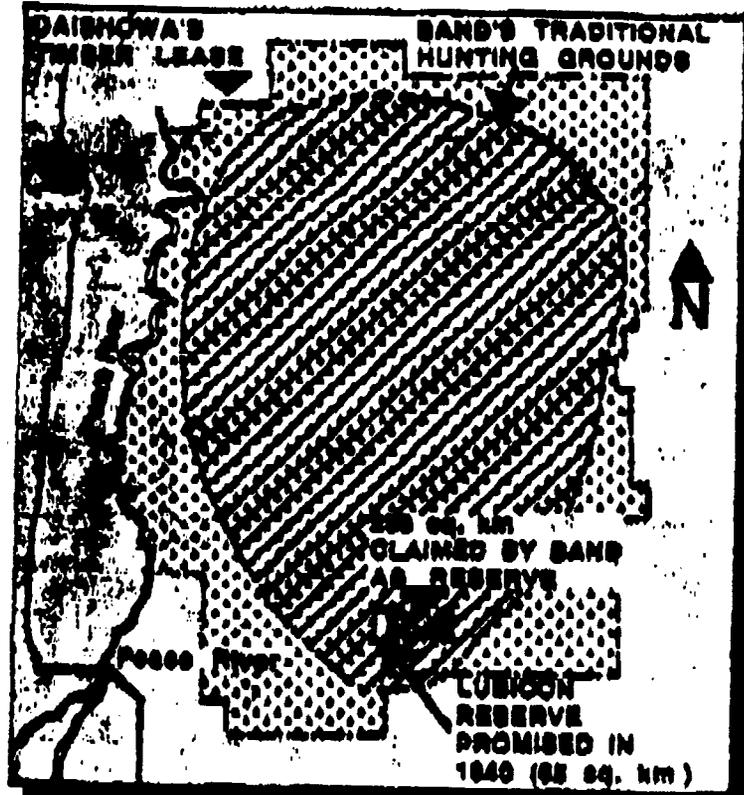
The Lubicons claim a reserve of about 223 square kilometres.

But Pfordtotten said the province is operating on Ottawa's recommendation that 156 square kilometres would be the maximum for the reserve.

"There could be all kinds of claims on all kinds of land. It was our best judgment to move forward with that," he said. "There wouldn't be any cutting of timber in that particular area that's been recommended by the federal government."

The Lubicons were not informed of the forestry management area, expected to provide feedback for Daishowa's \$600-million pulp mill near Peace River — scheduled to be operating by 1993.

Lubicon chief Bernard Omi-nayak accused the province of



Herwin Dennis, Calgary Herald

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rying to finish off his Cree band, which is on welfare and afflicted by tuberculosis.

"I think the province's intention is to come in for the kill," he said, adding the traditional trapping and hunting economy has already been destroyed by intensive oil and gas development.

"They know what they're doing to our people, and yet they go ahead and do something like this. It just brings us closer to confronting these guys on the ground."

Ominayak said if the province permits logging, it will mean any chance of the band accepting the 8-square-kilometre parcel as an interim settlement with no strings attached.

"There's no way that we're going to allow anybody to come

in there and knock our trees down," he said.

But Fjordbotten said he sees so bad faith in awarding the timber rights while the Lubicon claim is still in dispute.

"Once the land claim is settled there's an economic opportunity for the Lubicons, in that they can approach Daishowa to sell some of that timber resource to the plant."

There will also be job opportunities during the construction and operational phases of the pulp plant, Fjordbotten said.

Lubicon adviser Fred Lennarson blasted the province's tactic, which he said is consistent with previous actions to undermine the band.

The Alberta government first passed retroactive legislation so the Lubicons couldn't file a claim against the land, then tried

to establish a provincial hamlet in the area, Lennarson said.

He noted that Indian Affairs Minister Bill McKnight is also minister for the Western Diversification Fund, which will contribute \$9.5 million to the Daishowa project. The province will spend \$60.2 million on roads and railway lines.

"I do not think either level of government is interested in negotiating a settlement. I think the name of the game is crush the Lubicon," Lennarson said.

Ed Gillespie, assistant director of timber management for the province, refused to say why timber rights were approved when the land is being contested. But he said Ominayak's allegation it was done deliberately to wipe out the band is ridiculous.

Daishowa spokesman Tom Rasmussen said the province told

the company the Lubicon claim was being negotiated. He said he didn't know the claim was 48 years old.

Daishowa would respect any reserve boundaries once the claim is settled, and could find sapwood trees in other areas if it isn't settled, he said.

New Democrat native affairs critic Leo Piquette blasted the province for resorting to the job creation argument in infringing on the band's claim. The disputed land is not the only available timber land, he said.

Piquette said the province should set aside at least the 25 square kilometres the Lubicon wants for their reserve.

Liberal leader Nick Taylor said the entire development should have gone through extensive public hearings considering the size of the management area involved.

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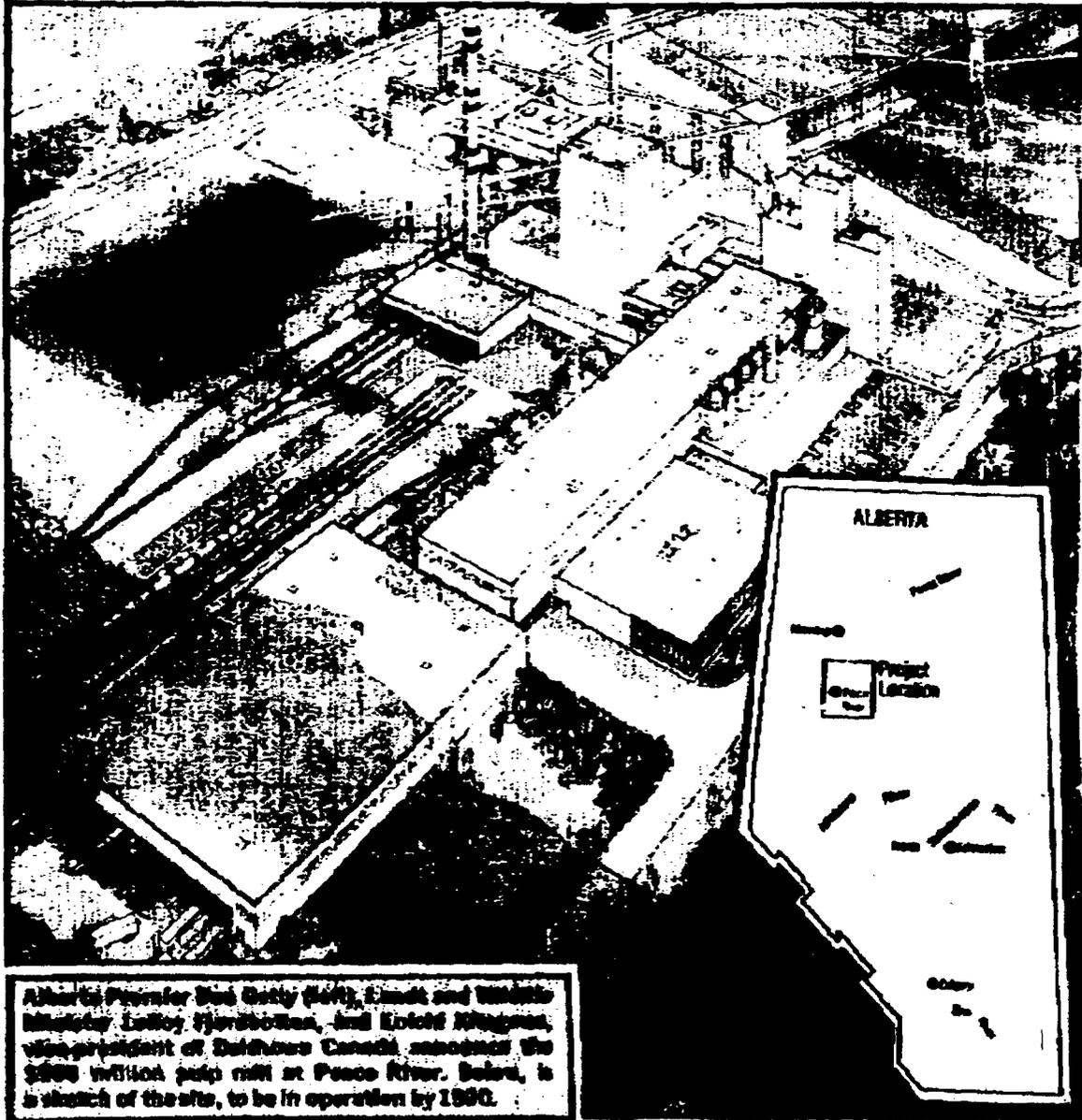
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Alberta Premier Don Getty (left), Energy and Utilities Minister Lloyd Hargrave, and Enbridge vice-president of Dalhousie Canada, announce the \$800 million pulp mill at Peace River. Below, is a sketch of the site, to be in operation by 1990.

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Information Release, February 1988

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NEWS

The New Democrats



Room 205, Legislature Building, Edmonton, Alberta T5K 1S6

(403) 427-2236

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LAND FOR LUBICONS, NOT JAPANESE BUSINESS

Leo Piquette, MLA Athabasca - Leo La Biche
Official Opposition Native Affairs Critic

John Younie, MLA Edmonton Clargarry
Official Opposition Forestry Critic

12:00 noon, Tuesday, February 9, 1988

EDMONTON

The Getty government should not be giving disputed Lubicon Lake band territory to Japanese business interests said New Democrat MLAs Leo Piquette and John Younie.

"The Lubicon band has been guarding this land against development by anyone, but the government has callously awarded it to foreign business interests without even consulting or informing band leaders."

The Japanese firm of Daishowa Paper Manufacturing Co. Ltd. has been awarded forestry management rights to 29,008 sq. km. of territory that overlies 235 sq. km. disputed by the Lubicon Lake band. Timber from the area will supply the \$500 million pulp and paper mill at Peace River announced yesterday.

"Land claimed by the Lubicons should be immediately pulled out of the lease negotiation arrangement with Daishowa until the land claim dispute is resolved."

"A wildlife management program must be put in place to ensure the integrity of the environment surrounding land claimed by the Lubicons so that the livelihood of the band is not destroyed along with the forest."

-ND-

For additional information contact (427-2236):

Leo Piquette, MLA
John Younie, MLA

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MINISTER ACCUSED OF BREACH OF TRUST

By PETER STOCKLAND
Star Ottawa Bureau

OTTAWA — Indian Affairs Minister Bill McKnight was accused yesterday of being in a "breach of trust" for giving Alberta \$15 million to harvest pulp wood in land claimed by the Lubicon Indians.

And NDP native affairs critic Jim Fulton lambasted both McKnight and Alberta Premier Getty yesterday for "writing off" the Lubicon band simply to buy votes in Alberta.

"It's the crassest, lowest form of politics by Getty and McKnight that you can find," Fulton fumed. "What they have done is basically written off the Lubicon band because there are more votes in western diversification."

In the Commons, Fulton and Liberal counterpart Keith Penner said McKnight owes Parliament an explanation for threatening to sue Alberta over the band's land claim one week, then handing the province \$15 million a week later for a pulp mill that will harvest trees on the same land.

Monday, McKnight turned over the grant from the Western Diversification Fund to Alberta. The money will be used for infrastructure a Japanese firm needs to operate a \$300-million pulp mill 16 km north of Peace River.

The plant, owned by Dainippon Canada Co. Ltd., will get its aspen and poplar feedstock from a huge tract of land which completely surrounds the 65.9 sq. km. of land that the Alberta government earmarked as the Lubicon reserve.

McKnight wasn't in the Commons yesterday to answer questions on the issue, and acting native affairs minister John Epp would say only that he's been told the harvesting area for the mill doesn't involve land claimed by the Lubicon.

However, Fulton claimed that as a "sneak attack" and referred the acting minister to an Edmonton Sun story quoting Alberta Forests Minister LeRoy Pardon as confirming the land involved is part of the Lubicon dispute.

The B.C. New Democrat then rose on a point of privilege and charged McKnight has committed a "breach of trust" by being both native affairs minister and the minister responsible for the Western Diversification Program.

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PEREIRA

Bargaining in bad faith?

Talk about bargaining in bad faith! To the extent that the Alberta government can be said to be bargaining at all over the land claim of the Lubicon Lake Cree band, the phrase is totally appropriate.

While pretending to negotiate with both the Lubicon band and Ottawa, the government of this province has concluded a forest-management agreement which gives a Japanese firm control of the surface rights on land claimed by the band.

The very land which is the subject of the supposed negotiations with Ottawa and the band.

For shame!

Not only is this a betrayal of both the other parties, but it was absolutely unnecessary.

The Lubicon claim amounts to 230 sq. km. The forestry block comprises 29,000 sq. km.

Don't anyone try any song and dance to the effect it would have been impossible to exclude the Lubicon claim from the 29,000 sq. km. and tack on another 230 sq. km. somewhere else.

Don't bother trying to convince me that without that particular 230 sq. km. the Japanese deal would have collapsed.

Never more downright foolish

Forestry Minister LeRoy Fjordbotten has never sounded more downright foolish than when he said "They (the Lubicons) are claiming 10 per cent of the province."

Unless it was when he went on to add that "Holding up the creation of 2,000 jobs because they are claiming 10 per cent of the province is not reasonable."

Listen to who's talking about reason.

Fjordbotten says that in one breath, and in the next he says there is no conflict with the Lubicon land claim because more forest land can be set aside for the forestry agreement.

So why not set it aside now, and allow the Japanese to play Paul Bunyan on any part of the claim not included in the final award? (After all, the 230 sq. km. was allegedly "earmarked" by the government in 1930.)

That would make some sort of sense. Instead, the government has behaved stupidly — and not least with respect to its own timing.

Anyone else trying to put over a fast one would have waited until the Olympic Winter Games were over.

Instead, the government has handed the Lubicon band more fuel with which to fire its protest against the Games.

This gang can't even pull a sneaky trick properly.

Fjordbotten says he expects the natives will work out a forest-harvesting agreement with the Japanese company covering the trees on their lands.

Which lands are those, LeRoy?

How in the name of time are they supposed to negotiate the harvesting of aspen poplar or anything else on land they don't own?

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And Ottawa's not blameless

Ottawa is not entirely blameless in this matter. While threatening to take Alberta to court in order to force a settlement, the national government has become a party to an arrangement which calls for it to pay the Japanese firm certain "infrastructure" grants.

The worst feature of the whole thing, though, is that while the province continues to take royalty on the petroleum underneath whatever land is finally awarded the Lubicon band, it now plans to take royalty on the forest cover as well.

This province agreed in 1930, when it got control of the public lands held up until then by Ottawa, that reserve allocations called for by the settlement of any native land claims still unresolved at that time would come out of these public lands.

In the late '30s Alberta and Ottawa reached an agreement respecting the Lubicon claim. But after almost 50 years the band still has no reserve land.

Fifty years!

It happens that I feel the Lubicon Cree, by boycotting the Winter Olympics, are misdirecting their protest energies. But that's beside the point here: Surely no one ever had stronger provocation to protest.

And if they didn't have grounds before they sure as hell have now.

Shame, shame on the government of Alberta.

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Two PCs want Fulton as Lubicon mediator

Journal Staff Writers

OTTAWA — Two Tories on a parliamentary committee turned a deaf ear to Indian Affairs Minister Bill McKnight Tuesday and recommended that E. Davie Fulton mediate the Lubicon land claims.

McKnight and the Alberta government oppose the appointment of Fulton, a former judge and former Conservative cabinet minister, because they feel he's prejudiced in favor of the Lubicon Indians.

A spokesman for McKnight said Tuesday the government hasn't changed its view that Fulton won't be asked to get involved.

"For us to accept a mediator, we have to be satisfied as well as the Lubicon that it's a process that we think will be fair," Greg Fyffe said in an interview.

Fulton studied the Lubicon problem for the government and reported last fall.

Two Tory members of the aboriginal

affairs committee sided with the opposition, saying the 46-year-old land claim has gone on long enough.

Thomas Sault of the Northwest Territories and Guy St-Julien of Quebec rejected a proposal by their party colleagues to hold off their vote until McKnight and the Alberta government had a chance to present their views to the committee.

St-Julien said those views are well known and there was no indication Alberta would appear before the committee.

In Edmonton, Forestry Minister LeRoy Fjordbotten said he doubts Alberta will agree to the request.

The province is still reviewing the federal government's latest proposal for settling the dispute, he said.

Intergovernmental Affairs Minister Jim Flanagan, responsible for natives, said he wants to hear from the committee before considering its request.

But he rejected the recommendation that Fulton be the mediator. Fulton has already taken a position, he said.

"Would you like to go before a judge who'd already made up his mind?" he asked reporters.

Fulton told the Commons committee he isn't prejudiced, "just sympathetic to the Lubicons, based on the facts."

Liberal and NDP members of the committee also claimed McKnight is in a conflict of interest for providing money to a Japanese pulp and paper project that will remove logs from land the Lubicon claim should be part of their reserve.

Liberal member Keith Penner told the House of Commons Tuesday that

McKnight is clearly in a conflict by supporting the Daishowa project.

Daishowa Canada Co. Ltd. announced Monday it will begin work this spring on a \$500-million pulp mill for Peace River. The federal Western Diversification Office is putting \$9.5 million toward the project.

Penner said McKnight is going to have to decide "whether he is the minister of Indian Affairs honoring the trust obligation that the Constitution gives him or whether he is the minister for western diversification mainly interested in pulp and paper companies."

Lubicon chief Bernard Ominayak said in an interview the Lubicons may ask for McKnight's resignation.

"It's a direct conflict of interest, from our point of view," he said.

"The guy can't even live up to his responsibility, and here they go and do something like that."

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CDC ANNOUNCEMENT

The Alberta Minister of Forestry is defending the decision by the
provincial government to award a contract to a private company for
the construction of a pulp mill. The company is expected to begin
operations in 1998. The minister says the mill will create jobs
and that the government's decision was based on the fact that the
project will create jobs.

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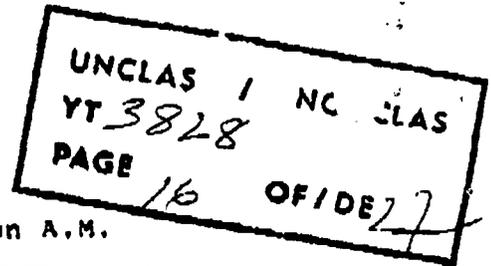
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Transcript of CBC Radio News Broadcast
Tuesday, February 29, 1988

CBC Announcer

The Alberta Minister of Forests is defending the decision by the Province to award timber cutting rights on land claimed by the Lubicons. Alberta has awarded cutting rights on 29,000 sq. kilometers to a Japanese company. The company is building a pulp mill near Peace River. The Minister contends that the pulp mill project will create jobs.

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Transcript of CBC Radio News Broadcast, Edmonton A.M.
Tuesday, February 09, 1988

Ruth Anderson, CBC, Edmonton A.M.

Promo Announcement

New plans for a pulp mill near the town of Peace River has been announced. A Japanese company is going to build that pulp mill. But the Chief of the Lubicon Indian Band is very upset about that. He says that the mill is going to be built on land which the Lubicons have claimed. Of course the Lubicons have not settled their land claim yet. A little bit later we'll be speaking with Bernard Ominayak, the Chief of the Lubicon Indians.

Promo Announcement

As was mentioned on the news, there's a new pulp mill planned for near Peace River. The Japanese logging company which plans to build that plans to cut down trees on land in that area. Now this is land that the Lubicon Indians say is theirs. In the next few minutes we'll hear from the Chief of the Lubicon Indians, Bernard Ominayak.

Dennis Sherbanuk, CBC, Edmonton A.M.

The Provincial Government has announced plans to cut down trees on land claimed by the Lubicon Indians. The Daishowa Canada Company will build a \$500 million pulp mill in the Peace River area. The company will have logging rights on a block of forest which includes land the Lubicons say is theirs. Bernard Ominayak is the Chief of the Lubicon Cree.

Ruth Anderson

Good morning, Mr. Ominayak.

Chief Bernard Ominayak, Lubicon Lake Band

Good morning.

Ruth Anderson

How much of the land you claim does this logging agreement cover?

Bernard Ominayak

I'm not sure as to how much it will cover. But what we are sure

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of is that we're not going to allow anybody to come in and cut our trees down within our traditional lands. Judging from the information that we've got so far, I think that there are probably a lot of trees that are outside of our area that this particular company would have access to.

Ruth Anderson

You mean some of it is area that you would traditionally hunt on but is not necessarily in the boundaries of the reserve you're claiming.

Bernard Ominayak

No, what I am saying is that we're not going to allow anybody to take any more resources off our traditional lands.

Ruth Anderson

How are you going to fight this. I mean, you haven't had great success yet fighting for that land you want.

Bernard Ominayak

No, we haven't had any great success. I guess, you know, we've sat back and tried to deal with the Federal Government for the last 48 years and we find ourselves in the situation where both levels of Government are more interested in the resources our lands contain rather than to try to deal with us. The oil development has done a lot of damage already. Now we find that our trees are going to be something that they're interested in.

Ruth Anderson

But Chief Ominayak, I want to know what you'll do? How far would you go to prevent this logging?

Bernard Ominayak

It just depends on how hard the other side is going to push. We basically decided that we're going to start asserting our own jurisdiction. Now they announce this pulp mill and also that they're going to be leasing all the timber rights or trees that are going to be needed for the pulp mill that we have on our traditional lands.

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Edmonton A.M., 02/29/88, page 3

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Ruth Anderson

But I'm still not sure how you can fight this. I mean, are you going to resort to violence to stop this latest assault on what you claim is your land?

Bernard Ominayak

Well our preference would be not to get into violence. But again, it all depends on how forceful the other side wants to be. But whatever it takes, that's what we're going to do.

Ruth Anderson

Would you consider any other kind of protest?

Bernard Ominayak

No, I think we're in the situation where we either stand up for what we believe in and also know what is ours. We've tried to utilize the negotiation route and that isn't working.

Ruth Anderson

I know that a lot of your land is not all that good for hunting anymore anyway. Could you not see this is as a job creation project which might help some of the people in your band, if they could get jobs through this project?

Bernard Ominayak

They talk about all kinds of job opportunities or how many jobs it's going to create. But at the same time, these lands are ours. We've never given up our land to anybody. And until they are prepared to sit down with us and start dealing with us in some proper manner, then I don't see how they can keep continuing to take the resources out and not deal with us in any proper manner.

Ruth Anderson

I was just going to ask you, how is all of this going to affect your claim negotiations with the Federal and Provincial Governments?

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Edmonton A.M., 02/09/88, page 4

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Bernard Ominayak

I think both levels of Government thought they would be able to wipe us out when they wiped out the economy of our people and forced them onto welfare but they found out that we're still...(end of tape)...(there and that we're not going to give up).

Ruth Anderson

Thank you, Chief Ominayak.

Dennis Sherbanuk

Lloyd Fjordbotten, the Minister of Forestry Lands and Wildlife, could not be reached for comment this morning.

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02 TUESDAY, FEBRUARY 9, 1988

Ottawa, Alberta to

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REPORT ON BUSINESS

spend \$75 million on mill

BY MATTHEW FISHER
The Globe and Mail

EDMONTON

The Alberta and federal governments will spend \$75-million on the infrastructure for a new pulp mill near Peace River in the northwest part of the province.

Alberta will provide Daishowa Paper Manufacturing Co. Ltd. with \$25-million toward the cost of a \$300-million hardwood pulp mill the Japanese company will start building this spring.

Through its Western Diversification Program, the federal Government will contribute \$5.5-million, the largest single payment the office has made since the fund was created last August by Prime Minister Brian Mulroney.

The government money will go toward building a railway spur line, roads and part of a bridge near the site of the pulp mill, government officials said.

In announcing their approval of

Daishowa Paper Manufacturing Co. of Japan will receive \$65-million from the Alberta Government toward the cost of a new pulp mill in the northwest part of the province. Ottawa will spend \$9.5-million on the mill.

the Peace River pulp mill, Forestry, Lands and Wildlife Minister LeRoy Fjordbotten and Premier Donald Getty defended the Government's contribution, saying it was a successful effort to diversify Alberta's economy.

"We wouldn't spend money if we didn't have to," Mr. Fjordbotten

said. "As the Premier says, 'We had to fight for it.'"

The Peace River mill is further proof that Alberta's economy has "turned the corner," Mr. Getty said. "This is a large vote of confidence in the province of Alberta and in the future of our forest resource."

Since it started trying to attract forestry investment to the province in mid-1987, the Alberta Government has approved about \$1-million in projects and will announce "another billion dollars over the next two to three years," Mr. Fjordbotten.

The Daishowa pulp mill will produce 1,000 metric tons a day, or 350,000 tons a year, of bleached hardwood kraft pulp. Set up to use some of the aspen that is in abundant supply in northern Alberta, it will be the largest hardwood operation in Canada, and one of the largest pulp mills of any kind in the country.

About 2,000 workers will be involved in the construction of the

mill, which is to be built 16 kilometres north of Peace River on the west bank of the Peace River.

When completed in 1990, the mill will employ 330 workers. Another 300 workers will be hired to cut trees and transport them to the mill. The Government officials estimated that the plant would generate enough economic activity to indirectly employ another 1,200 workers in the Peace River Country.

Koichi Kitagawa, president and general manager of Vancouver-based Daishowa Canada Co. Ltd., said "labour is a big factor" in his company's decision to locate in Alberta, but the single greatest reason for locating the plant there was that there was an assured supply of aspen trees. Another important reason was convenient access to a good water supply.

"It is primarily because of the resource," he said. "We considered a similar project in British Columbia, but it did not have any forests capable of sustaining production of 340,000 metric tons of hardwood bleached kraft pulp and softwood.

When asked whether there would be a union at the Peace River plant, Mr. Kitagawa said: "As a company policy, we know which way we'd go," but he refused to elaborate. "We try to follow the Canadian way of doing things," he said. "If we can put in any Japanese management ideas, we will."

Daishowa's Japanese paper mills would consume between 60 and 70 per cent of the Peace River operation's initial output, Mr. Kitagawa

said. Markets in the United States, Canada, Southeast Asia and Europe would share the rest of the output equally. It was the largest investment overseas that Daishowa has yet made.

Daishowa's primary consultant on the project, H. A. Simons of Vancouver, would be retained during the construction and startup of the plant. Other consultants from Alberta would also be hired, Mr. Kitagawa said. Construction would begin this spring with the target date for the plant opening set for August or September, 1990. Negotiations to purchase materials and machinery for the plant are to be undertaken immediately with procurement offices in Peace River and Edmonton. Between 30 and 50 per cent of the capital cost would be spent in Alberta.

All the speakers at yesterday's announcement said the mill will be the cleanest and most environmentally safe in Canada.

Mr. Fjordbotten said negotiations to build a long-awaited newsprint mill at Whitecourt, Alta., are continuing.

"A number of proposals are on the table and we're giving serious consideration to two or three of them," he said. "I think there is room for two or three paper mills in Alberta."

The Forestry Minister denied there were any hangups in the Whitecourt negotiations. "We've made excellent progress, but it will be a time yet before we will be making an announcement."

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THE GLOBE AND MAIL, TUESDAY, FEBRUARY 9, 1988

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McKnight under fire over pulp mill grant

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BY GRAHAM FRASER
The Globe and Mail
with Canadian Press

OTTAWA

Opposition MPs and a lawyer for Alberta's Lubicon Lake Cree band yesterday attacked Indian and Northern Affairs Minister William McKnight for giving money to a planned \$300-million pulp mill project located on land sought by the band.

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

The federal grant, made in conjunction with a \$65-million provincial grant, is coming from the Western Diversification Program.

"The timber is to be drawn from lands that are traditionally Lubicon lands," said Liberal Keith Penner, MP for Cochrane-Superior in Ontario.

"This western diversification scheme by the minister just shows that he's in a total conflict of interest," said James O'Reilly, a lawyer representing the Lubicon.

"It substantiates what the band has been feeling all along: that he is

more interested in helping Alberta than in discharging his constitutional responsibilities as trustee for the Indians of Canada."

New Democratic Party MP James Fulton, member for Skeena in British Columbia, also said that Mr. McKnight is in a conflict of interest over the decision.

Mr. Fulton unsuccessfully raised the alleged conflict as a question of privilege in the House of Commons.

He then called the decision to help finance the mill "the crassest, the lowest form of politics by Mr. (Alberta Premier Donald) Getty and Mr. McKnight" to present the issue as a choice between jobs and Indians.

To encourage construction of the mill, the Alberta Government has awarded the Japanese forest products giant a massive forest management agreement that includes lands claimed by the destitute Lubicon band.

Alberta Forestry Minister LeRoy Fjordbotten confirmed on Monday night that the huge forestry bloc overlaps the portion of northern Alberta bush that the Lubicon band claims it is entitled to.

"The Lubicon land claim is in that general area," Mr. Fjordbotten said.

The plant's aspen poplar feed-stock will come from a huge tract of land east of the Peace River which completely surrounds the approximately 65 square kilometres of land that the Alberta Government has earmarked as the Lubicon reserve. The Indian band, which was missed by federal officials negotiating treaty settlements in the early 1900s, argues that it is entitled to 230 square kilometres.

Chief Bernard Ominayak said his band will fight attempts to cut trees on land the Indians view as their own. But he did not specify what measures the Lubicons are prepared to take.

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THE GLOBE AND MAIL, WEDNESDAY, FEBRUARY 10, 1988

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SUPPLEMENT NO. 9 TO COMMUNICATION NO. 167/1984

28 MARCH 1988

COMMENTS ON THE 3 MARCH 1988 RESPONSE OF THE
GOVERNMENT OF CANADA

I. INTRODUCTION

Chief Bernard Ominayak and the Lubicon Lake Band respectfully submit the following comments for the purpose of clarifying certain points raised by the Government of Canada in its Response of 3 March 1988.

II. NEW DEVELOPMENTS

With respect to the "offer" of the Canadian Minister of Indian Affairs and Northern Development of an "interim transfer" to the Band of 25.4 square miles, the Committee may wish to note the following points.

1. **The Lubicon Lake Band was not a party to the negotiation of the settlement offer.**

Contrary to all prior aboriginal land rights precedent in Canada, Lubicon membership and land rights are being settled between the Minister of Indian Affairs and the Provincial Government with no involvement of the Lubicon people.

2. **The offer rests on a highly prejudicial view of the Band's rights under Canadian law and an equally prejudicial determination of Lubicon membership.**

In reaching his decision on the "interim transfer," the Minister of Indian Affairs is employing a formula which specifically denies the Band's aboriginal rights and which utilizes criteria for determining Lubicon Band membership never before employed in Canadian history; criteria which would effectively disenfranchise more than half of the Lubicon people, literally tearing Lubicon families apart. In fact, the amount of land offered by the Minister of Indian Affairs is less than half of that which similar groups of aboriginal people in Canada have been allowed to retain for reserve purposes.

3. **Canada would negotiate non-land issues with fewer than half of the Lubicon Band.**

Assuming Canada honored the Minister's offer to negotiate non-land issues, such as housing, under these circumstances such negotiations would unavoidably result in housing for less than half of the Lubicon people.

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-2-

Canada has leased all but 25.4 square miles of the Band's traditional land for development in conjunction with a pulp mill.

The author of Canada's Response neglects to note that two days before the Minister of Indian Affairs and Northern Development announced his offer of an "interim transfer," the Federal and Provincial Governments announced their approval of a \$500 million pulp mill to be constructed by the Daishowa Canada Company Limited near Peace River, Alberta. Canada's Minister of Indian Affairs and Northern Development, on behalf of the Federal Government, contributed almost \$10 million to this project, which encompasses the entire area of the Lubicon Lake Band's traditional lands with the exception of the 25.4 square miles set aside for the "interim transfer," and which will take a substantial portion of its wood from the traditional lands of the Lubicon Lake Band,

5. The Daishowa pulp mill project wipes out any hope of the continuation of some traditional activity by Band members.

Even if the Band were to accept the Minister of Indian Affairs' offer of a "without prejudice interim transfer," the pulp mill project, which will entail clear-cutting of large tracts in the Band's traditional area, renders futile any attempt by the Band to negotiate a larger land settlement or hunting and trapping rights in its traditional lands for the purpose of pursuing its traditional life style.

6. The Parliamentary Standing Committee on Aboriginal Affairs, the official oversight committee of the Canadian Parliament with respect to such matters, does not support the approach to settlement being taken by the Minister of Indian Affairs and Northern Development.

While the Minister of Indian Affairs was "negotiating" a settlement of the Lubicon issue in total disregard of the recommendations of Mr. E. Davie Fulton, Canada's Parliamentary Standing Committee on Aboriginal Affairs, in two Motions adopted December 17, 1987 and February 9, 1988, urged the Government of Canada to enter bilateral negotiations with the Band, and to involve Mr. Fulton in the negotiations.

III. EXHAUSTION OF DOMESTIC REMEDIES

As has been pointed out, in the Band's past submissions to the Committee, the Band's domestic court actions rest essentially on aboriginal rights claims. In light of the decision in Chief Joe

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V. R. (1983), 49 N.R. 190, affirmed S.C.C. (1986), 2 S.C.R. 145, such claims must be brought in Provincial court. On 22 October 1987, the Alberta Court of Queens Bench, the relevant Provincial court, denied the Band's application to add the Federal Government as a party to its Provincial action. Therefore, with respect to its aboriginal rights claims, which represent the essential part of its court actions, the Band has been denied redress against the Federal Government of Canada.

As is pointed out in Section I above, the Government of Canada is not seeking to resolve this matter through negotiations with the Band.

IV. ABUSE OF PROCESS

Canada complains of the Band's use of the media to publicize its position with regard to this matter. The Band respectfully submits the following comments on Canada's charge that the Band has abused the process available to it under the Optional Protocol.

1. The Canadian press and some members of the international press have been actively involved in the public debate surrounding the Lubicon issues.

As the Committee is aware, the pressure of public opinion provides the only effective means available to the Band for seeking a just settlement of its claim. Therefore, while not intending to show disrespect for the confidentiality of the Committee's proceedings, the Band has felt obligated to be as responsive as possible to inquiries by the press. Furthermore, both parties to this action have kept the press informed of their respective statements to the Committee.

2. The Band's submissions to the Committee contain nothing that is not already public information.

In responding to media inquiries which resulted in the 18 and 21 January 1988 newspaper articles, the Band did no more than inform the press of the already public information being provided to the Committee. The Band was also unaware at the time that the Committee had not forwarded a copy of the Band's most recent submission to the Government of Canada. However, the Band did deliver a copy of that submission to Canada's Secretary of State for External Affairs on 21 January.

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which Canada complains of media coverage, it attaches the following to its Response:

... of Federal news releases...
... of newspapers across Alberta...
... of Canada's only...
... of the media before being...
... of the media during the recent Calgary Winter Olympics.

To thus prime the media with a huge propaganda campaign and then criticize the...
media inquiries about the latest developments...
say the least.

4. Canada's supporting documents contain a misleading misrepresentation of the Tubicon membership issue.

... subsequent statements set forth on page 12 of that Appendix are highly misleading. The joint genealogical survey conducted by the Federal Government of Canada identified approximately 450 members of the Tubicon Lake Band. The inaccurate figures contained in the Band's early court documents resulted from the fact that at that time the Band's attorneys did not have complete information on the Band's membership...
... position is simply that the Province has no jurisdiction over the survey results, provided to it by the Federal Government.

5. Other abuse of process charges

a. Federal response to the tuberculosis outbreak

The disease was identified in July 1987. The first meeting with Federal representatives did not occur until 18 September, and Federal medical personnel did not arrive on the scene until 6 November. The personnel and other services listed in Canada's Response have been put in place since 6 November, as part of a continuing effort by the Tubicon people themselves to bring the disease under control.

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b. 21 deaths

The charges referred to are true. The circumstances have been documented by a variety of credible independent investigators. The Lubicon people are also prepared to provide details of the 21 unnatural deaths resulting directly or indirectly from the destruction of the traditional Lubicon economy and way of life.

c. Other charges

All other charges raised by Canada are the subject of lengthy discussion in previous submissions by both parties and therefore do not raise any new issues. See Supplement 8 to Communication 167/1984.

v. CONCLUSION

Contrary to Canada's assertion that its offer of an "interim transfer" brings it into conformity with the International Covenant on Civil and Political Rights, the Lubicon Lake Band respectfully submits that the above outlined circumstances represent a continuation of Canada's past bad faith and disregard for the human rights the Lubicon Lake Band. The "interim transfer" is intended only to alleviate the domestic and international pressure mounting against Canada with regard to this issue. Once that pressure is gone, Canada will no longer have an incentive to engage in further discussions with the Band. Furthermore, if the Lubicon Lake Band accepts this offer, negotiated without their involvement, half of their members will be left without homes and the remainder will be left without a future - stranded powerless in the middle of an environmentally destitute land.

Finally, as the Daishowa project demonstrates, Canada continues to disregard the Committee's 22 July 1987 request pursuant to rule 86 of its provisional rules of procedure. Far from taking interim measures to avoid irreparable harm to the Band, Canada has agreed to a project which will further degrade the Band's traditional lands. Moreover, Canada, through its Minister of Indian Affairs and Northern Development, seeks to force on the Band a settlement which, if accepted, would effectively sound the death knell of the Lubicon people.

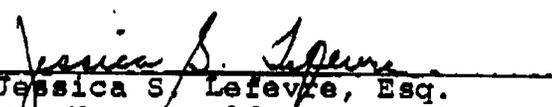
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The author of this communication is prepared to provide further information or clarification which may be desired, and reserves the right under Provisional Rule 93(3) to submit additional information and observations after receiving the reply of the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

Submitted by:


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

Prepared with the assistance of:


Jessica S. Lefevre, Esq.
Van Ness / Feldman, Sutcliffe & Curtis
1050 Thomas Jefferson St., N.W.
7th Floor
Washington, D.C. 20007

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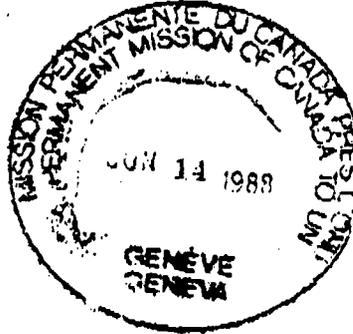
UNITED NATIONS OFFICE AT GENEVA
CENTRE FOR HUMAN RIGHTS



Télégrammes: UNATIONS, GENEVE
Télex: 28 98 98
Téléphone: 34 60 11 3102 11
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(à rappeler dans la réponse)
167/1984

Palais des Nations
CH-1211 GENEVE 10

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PAGE 2 07/07/27



The Secretariat of the United Nations (Centre for Human Rights) presents its compliments to the Permanent Mission of Canada to the United Nations Office at Geneva and has the honour to transmit herewith, for information and in order to complete the files of the State party, the text of two further letters, dated 16 February and 28 March 1988, and enclosures, concerning communication No. 167/1984 (B. Ominayak and the Lubicon Lake Band v. Canada), which is before the Human Rights Committee under the Optional Protocol to the International Covenant on Civil and Political Rights.

hbg 13 June 1988

*2 copies
2-11-88*

VAN NESS, FELDMAN, SUTCLIFFE & CURTIS

A PROFESSIONAL CORPORATION
1050 THOMAS JEFFERSON STREET, N. W.
SEVENTH FLOOR
WASHINGTON, D. C. 20007

(202) 298-1800
WRITER'S DIRECT DIAL NUMBER

S. LYNN SUTCLIFFE
HOWARD J. FELDMAN
WILLIAM J. VAN NESS, JR.
BEN YAMAGATA
ROBERT G. SZABO
GRENVILLE GARSIDE
ROSS D. AIN
ALAN L. MINTZ
ROBERT R. NORDHAUS
CHARLES S. CURTIS
ADAM WENNER
PETER D. DICKSON
GARY D. BACHMAN
SUSAN TOMASKY

LISA A. SHAPIRO
CYNTHIA INGERSOLL
JESSICA S. LEFEVRE
LYNN MINNA
MARGARET A. MOORE
DONALD F. SANTA, JR.
MICHAEL A. SWIGER
KYLE J. ZIMMER
SAM KALEN
BRUCE S. DEMING
ANTHONY A. TARGAN
JOANNE P. DUDLEY
BENJAMIN L. ISRAEL*
ANTHONY WILSON*
STEPHEN C. POTIS*
NOREEN M. TAMA*

OF COUNSEL
HOWARD ELIOT SHAPIRO
ARTHUR JOHN ARMSTRONG
JACOB J. LEW
*NOT ADMITTED IN DISTRICT OF COLUMBIA

February 16, 1988

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PAGE 3 OF 127

Mr. Jakob Th. Moller
Chief, Communications Unit
Center for Human Rights
Palais des Nations
CH-1211
Geneve 10, SWITZERLAND

Dear Mr. Moller:

Thank you for your recent transmittal. Enclosed please find copies of several news articles pertaining to Canada's recent announcement of its agreement to lease a large tract of land in Alberta, including land claimed by the Lubicon Lake Band, for logging and timber development.

Sincerely,

Jessica S. Lefevre
Jessica S. Lefevre

Enclosures

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Canada Alberta

News Release/Communiqué

N.R. 055

FOR RELEASE: Monday, February 8, 1988

MAJOR DIVERSIFICATION INITIATIVE WITH NEW \$600 MILLION PULP MILL APPROVED FOR PEACE RIVER AREA

EDMONTON -- Premier Don Getty and Forestry, Lands and Wildlife Minister LeRoy Fjordbotten today announced provincial government approval for Daishowa Canada Co. Ltd. to construct a major greenfield bleached kraft pulp mill 16 km north of the Town of Peace River. The mill will cost more than \$600 million, and will create almost 2,000 new jobs.

The new plant will be the largest single user of aspen. It will create 630 mill and woodland jobs, and 1,260 indirect jobs. Design engineering and detailed planning for the plant will begin in the spring of this year and the mill is expected to start operating in September, 1990. Pulp mill construction will require 1600 man years with a peak manpower requirement of approximately 1300 early in 1990.

Premier Don Getty said, "This major investment by Daishowa, its largest overseas investment ever, will provide vital development and employment opportunities for Northern Alberta and is indicative of our government's commitment to the forest industry sector of our economy and to our overall economic diversification strategy."

Mr. Fjordbotten said, "The Alberta government will be building rail and road access and other infrastructure to cost \$68.2 million over the next five years, a necessary requirement to proceed in this relatively remote location. Lack of such access has long been an impediment to development of the forest industry in Northern Alberta."

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MAJOR DIVERSIFICATION INITIATIVE ...

PAGE TWO

The Federal Western Diversification Office at the same time announced a \$9.5 million contribution to facilitate Daishowa's infrastructure leading to the mill gate.

"The Western Diversification Office is pleased to assist in facilitating Daishowa's infrastructure development for this major forestry project," stated Stan Schellenberger, Parliamentary Secretary to the Hon. Bill McKnight, Federal Western Diversification Minister. "This project demonstrates how two governments can work together with the private sector to make a significant contribution towards the development and diversification of the Alberta economy."

The Vice President and General Manager of Daishowa Canada Co. Ltd., Mr. Koichi Kitagawa said, "The majority of the pulp produced will be shipped to Japan for consumption at Daishowa's paper mills, however, some volumes will be available for sale in the domestic and international markets. One of the strong features of this location is the excellent opportunities for a major expansion of bleached kraft pulp based on the abundant supply of available timber resources."

"Environmentally, the mill will be the cleanest bleached kraft pulp mill in Canada, and it will be one of the most pollution-free in North America," said Mr. Fjordbotten.

Both Premier Getty and Mr. Fjordbotten congratulated Daishowa for demonstrating its confidence in the province of Alberta, its economy and its people. The Premier concluded, "This is a very exciting project and we look forward to many others. The Alberta government is committed to encouraging utilization of the province's timber resource and fully recognizes the contribution to Alberta's economy that forestry makes."

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MAJOR DIVERSIFICATION INITIATIVE ...

PAGE THREE

For reference:

Geoff Davey
Office of the Premier
Edmonton, Alberta

(403) 427-2261

Koichi Kitagawa
Vice President and General Manager
Daishowa Canada Co. Ltd.
650 West Georgia Street
Vancouver, B.C. V6B 4N8

(604) 689-1919

Hugh Calder
Public Affairs Officer
Public Communications
Forestry, Lands and Wildlife

(403) 427-8836

Anne Mauch
Western Diversification Office
Edmonton, Alberta

(403) 420-4164

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Lobicon area now off-limits

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By Kathy Kerr
and Mark Lowey

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EDMONTON — The Lobicon Lake Indian band's proposed reserve will be off-limits to logging until the band's 48-year claim is settled, Forestry Minister Lloyd Pfordhotten said Tuesday.

The provincial government has granted timber rights to Japanese forestry firm Daishowa on a huge tract of land east of Peace River. It encircles 66 square kilometres that the province recognizes as a future Lobicon reserve.

But Pfordhotten said there will be no logging on a larger disputed area of about 188 square kilometres, including the 66-square-kilometre parcel. Daishowa will be given an alternate cutting area until the claim is settled, he said.

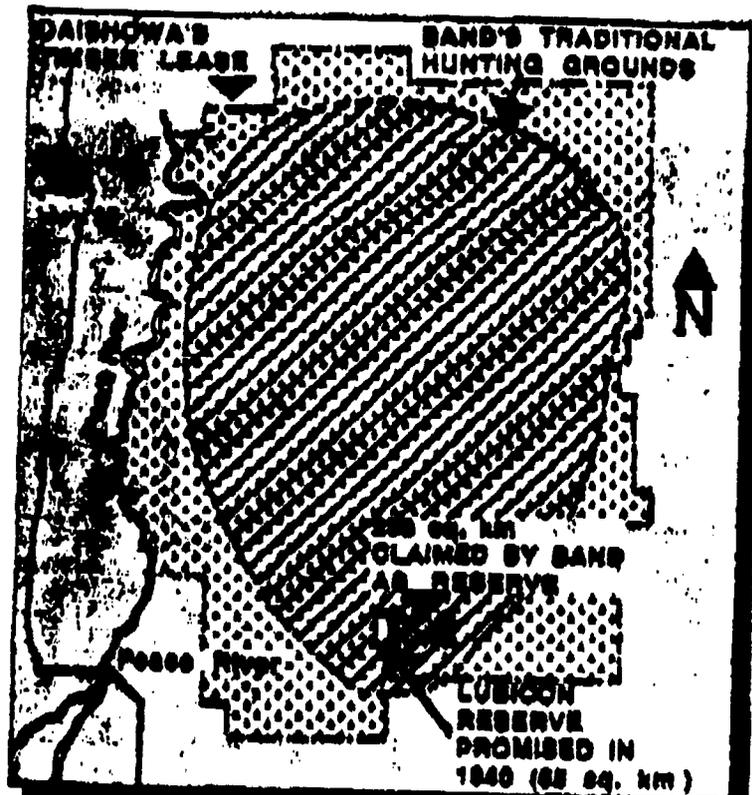
The Lobicons claim a reserve of about 233 square kilometres.

But Pfordhotten said the province is operating on Ottawa's recommendation that 155 square kilometres would be the maximum for the reserve.

"There could be all kinds of claims on all kinds of land. It was our best judgment to move forward with that," he said. "There wouldn't be any cutting of timber in that particular area that's been recommended by the federal government."

The Lobicons were not informed of the forestry management area, expected to provide feedback for Daishowa's \$600-million pulp mill near Peace River — scheduled to be operating by 1993.

Lobicon chief Bernard Omi-nayak accused the province of



Nelson Dennis, Calgary Herald

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rying to finish off his Cree band, which is on welfare and afflicted by tuberculosis.

"I think the province's intention is to come in for the kill," he said, adding the traditional trapping and hunting economy has already been destroyed by intensive oil and gas development.

"They know what they're doing to our people, and yet they go ahead and do something like this. It just brings us closer to confronting these guys on the ground."

Ominoyak said if the province permits logging, it will ruin any chance of the band securing the 36-square-kilometre parcel as an interim settlement with no strings attached.

"There's no way that we're going to allow anybody to come

in there and knock our trees down," he said.

But Fjordbotten said he sees no bad faith in awarding the timber rights while the Lubicon claim is still in dispute.

"Once the land claim is settled there's an economic opportunity for the Lubicon, in that they can approach Daishowa to sell some of that timber resource to the plant."

There will also be job opportunities during the construction and operational phases of the pulp plant, Fjordbotten said.

Lubicon adviser Fred Lennarson blasted the province's tactic, which he said is consistent with previous actions to undermine the band.

The Alberta government first passed retroactive legislation so the Lubicon couldn't file a claim against the land, then tried

to establish a provincial ban on logging in the area, Lennarson said.

He noted that Indian Affairs Minister Bill McKnight is also minister for the Western Diversification Fund, which will contribute \$9.5 million to the Daishowa project. The province will spend \$60.8 million on roads and railway lines.

"I do not think either level of government is interested in negotiating a settlement. I think the name of the game is crush the Lubicon," Lennarson said.

Ed Gillespie, assistant director of timber management for the province, refused to say why timber rights were approved when the land is being contested. But he said Ominoyak's allegation it was done deliberately to wipe out the band is ridiculous.

Daishowa spokesman Tom Hamacka said the province told

the company the Lubicon claim was being negotiated. He said he didn't know the claim was 48 years old.

Daishowa would respect any reserve boundaries once the claim is settled, and could find aspen trees in other areas if it isn't retained, he said.

New Democrat native affairs critic Leo Piquette blasted the province for renegeing to the job creation argument in infringing on the band's claim. The disputed land is not the only available timber land, he said.

Piquette said the province should set aside at least the 250 square kilometres the Lubicon want for their reserve.

Liberal Leader Nick Taylor said the entire development should have gone through extensive public hearings considering the size of the management area involved.

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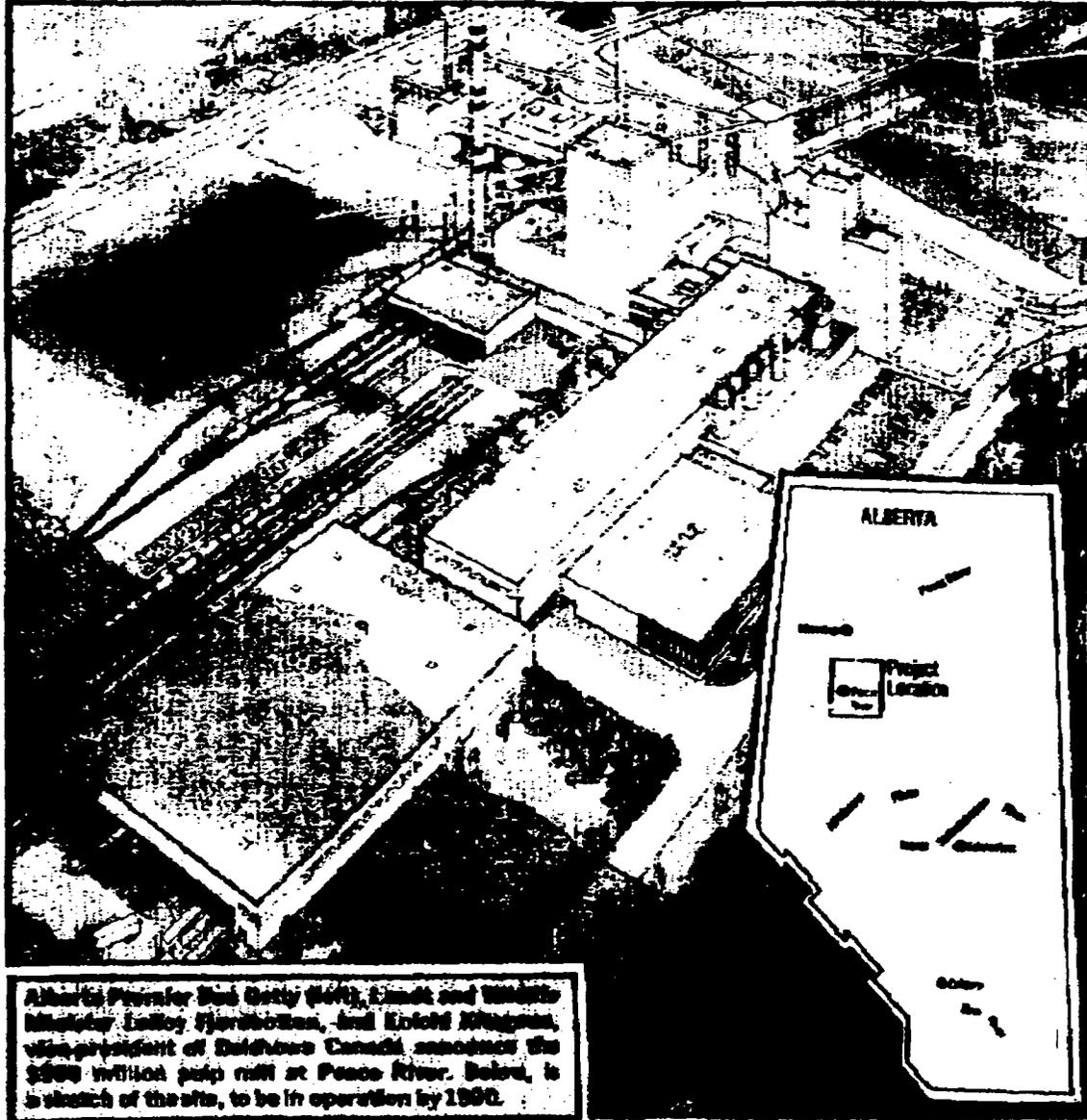
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Alberta Premier Don Getty (left), Energy and Mines Minister Ian Storer (center), and Enbridge vice-president of Dalhousie Canada announce the \$500 million pulp mill at Peace River. Below, is a sketch of the site, to be in operation by 1990.

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Information from this document is for

page 2

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NEWS

The New Democrats



Room 205, Legislature Building, Edmonton, Alberta T9K 2B6 (403) 427-2236

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LAND FOR LUBICONS, NOT JAPANESE BUSINESS

Leo Piquette, MLA Athabasca - Leo La Biche
Official Opposition Native Affairs Critic

John Younie, MLA Edmonton Glengarry
Official Opposition Forestry Critic

12:00 noon, Tuesday, February 9, 1988

EDMONTON

The Getty government should not be giving disputed Lubicon Lake band territory to Japanese business interests said New Democrat MLAs Leo Piquette and John Younie.

"The Lubicon band has been guarding this land against development by anyone, but the government has callously awarded it to foreign business interests without even consulting or informing band leaders."

The Japanese firm of Daishowa Paper Manufacturing Co. Ltd. has been awarded forestry management rights to 29,000 sq. km. of territory that overlaps 235 sq. km. disputed by the Lubicon Lake band. Timber from the area will supply the \$500 million pulp and paper mill at Peace River announced yesterday.

"Land claimed by the Lubicons should be immediately pulled out of the lease negotiation arrangement with Daishowa until the land claim dispute is resolved."

"A wildlife management program must be put in place to ensure the integrity of the environment surrounding land claimed by the Lubicons so that the livelihood of the band is not destroyed along with the forest."

-ND-

For additional information contact (427-2236):

Leo Piquette, MLA
John Younie, MLA

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MINISTER ACCUSED OF BREACH OF TRUST

By PETER STOCKLAND
Star Ottawa Bureau

OTTAWA — Indian Affairs Minister ENR McKnight was accused yesterday of being in a "breach of trust" for giving Alberta \$15 million to harvest pulp wood in land claimed by the Lubicon Indians.

And NDP native affairs critic Jim Fulton lambasted both McKnight and Alberta Premier Getty yesterday for "writing off" the Lubicon band simply to buy votes in Alberta.

"It's the crassest, lowest form of politics by Getty and McKnight that you can find," Fulton lashed. "What they have done is basically written off the Lubicon band because there are more votes in western diversification."

In the Commons, Fulton and Liberal counterpart Keith Porter said McKnight owes Parliament an explanation for threatening to sue Alberta over the band's land claim one week, then handing the province \$15 million a week later for a pulp mill that will harvest trees on the same land.

Monday, McKnight turned over the grant from the Western Diversification Fund to Alberta. The money will be used for infrastructure a Japanese firm needs to operate a \$300-million pulp mill 16 km north of Peace River.

The plant, owned by Daishowa Canada Co. Ltd., will get its aspen and poplar feedstock from a huge tract of land which completely surrounds the 65.8 sq km of land that the Alberta government earmarked as the Lubicon reserve.

McKnight wasn't in the Commons yesterday to answer questions on the issue, and acting native affairs minister John Epp would say only that he's been told the harvesting area for the mill doesn't involve land claimed by the Lubicon.

However, Fulton dismissed that as a "smokescreen," and referred the acting minister to an Edmonton Star story quoting Alberta Forests Minister LeRoy Fjordhusen as confirming the land involved is part of the Lubicon dispute.

The B.C. New Democrat then rose on a point of privilege and charged McKnight has committed a "breach of trust" by being both native affairs minister and the minister responsible for the Western Diversification Program.

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PEREIRA

Bargaining in bad faith?

Talk about bargaining in bad faith!
To the extent that the Alberta government can be said to be bargaining at all over the land claim of the Lubicon Lake Cree band, the phrase is totally appropriate.

While pretending to negotiate with both the Lubicon band and Ottawa, the government of this province has concluded a forest-management agreement which gives a Japanese firm control of the surface rights on land claimed by the band.

The very land which is the subject of the supposed negotiations with Ottawa and the band.

For shame!
Not only is this a betrayal of both the other parties, but it was absolutely unnecessary.

The Lubicon claim amounts to 220 sq. km. The forestry block comprises 29,000 sq. km.

Don't anyone try any song and dance to the effect it would have been impossible to exclude the Lubicon claim from the 29,000 sq. km. and tack on another 220 sq. km. somewhere else.

Don't bother trying to convince me that without that particular 220 sq. km. the Japanese deal would have collapsed.

Never more downright foolish

Forestry Minister LeRoy Fjordbotten has never sounded more downright foolish than when he said "They (the Lubicons) are claiming 10 per cent of the province."

Unless it was when he went on to add that "Holding up the creation of 2,000 jobs because they are claiming 10 per cent of the province is not reasonable."

Listen to who's talking about reason.
Fjordbotten says that in one breath, and in the next he says there is no conflict with the Lubicon land claim because more forest land can be set aside for the forestry agreement.

So why not set it aside now, and allow the Japanese to play Paul Bunyan on any part of the claim not included in the final award? (After all, the 220 sq. km. was allegedly "earmarked" by the government in 1930.)

That would make some sort of sense. Instead, the government has behaved stupidly — and not least with respect to its own timing.

Anyone else trying to put over a fast one would have waited until the Olympic Winter Games were over.

Instead, the government has handed the Lubicon band more fuel with which to fire its protest against the Games.

This gang can't even pull a sneaky trick properly.
Fjordbotten says he expects the natives will work out a forest-harvesting agreement with the Japanese company covering the trees on their lands.

Which lands are those, Leroy?
How is the name of time are they supposed to negotiate the harvesting of aspen poplar or anything else on land they don't own?

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And Ottawa's not blameless

Ottawa is not entirely blameless in this matter. While threatening to take Alberta to court in order to force a settlement, the national government has become a party to an arrangement which calls for it to pay the Japanese firm certain "infrastructure" grants.

The worst feature of the whole thing, though, is that while the province continues to take royalty on the petroleum underneath whatever land is finally awarded the Lubicon band, it now plans to take royalty on the forest cover as well.

This province agreed in 1930, when it got control of the public lands held up until then by Ottawa, that reserve allocations called for by the settlement of any native land claims still unresolved at that time would come out of those public lands.

In the late '30s Alberta and Ottawa reached an agreement respecting the Lubicon claim. But after almost 50 years the band still has no reserve land.

Fifty years!
It happens that I feel the Lubicon Cree, by boycotting the Winter Olympics, are misdirecting their protest energies. But that's beside the point here: Surely no one ever had stronger provocation to protest.

And if they didn't have grounds before they sure as hell have now.

Shame, shame on the government of Alberta.

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Two PCs want Fulton as Lubicon mediator

Journal Staff Writers

OTTAWA — Two Tories on a parliamentary committee turned a deaf ear to Indian Affairs Minister Bill McKnight Tuesday and recommended that E. David Fulton mediate the Lubicon land claim.

McKnight and the Alberta government oppose the appointment of Fulton, a former judge and former Conservative cabinet minister, because they feel he's prejudiced in favor of the Lubicon Indians.

A spokesman for McKnight said Tuesday the government hasn't changed its view that Fulton won't be asked to get involved.

"...or us to accept a mediator, we have to be satisfied as well as the Lubicon that it's a process that we think will be fair," Greg Fyffe said in an interview.

Fulton studied the Lubicon problem for the government and reported last fall.

Two Tory members of the aboriginal

affairs committee sided with the opposition, saying the 48-year-old land claim has gone on long enough.

Thomas Sault of the Northwest Territories and Guy St-Julien of Quebec rejected a proposal by their party colleagues to hold off their vote until McKnight and the Alberta government had a chance to present their views to the committee.

St-Julien said those views are well known and there was no indication Alberta would appear before the committee.

In Edmonton, Forestry Minister LeRoy Fjordbotten said he doubts Alberta will agree to the request.

The province is still reviewing the federal government's latest proposal for settling the dispute, he said.

Intergovernmental Affairs Minister Jim Florsman, responsible for natives, said he wants to hear from the committee before considering its request.

But he rejected the recommendation that Fulton be the mediator. Fulton has already taken a position, he said.

"Would you like to go before a judge who'd already made up his mind?" he asked reporters.

Fulton told the Commons committee he isn't prejudiced, "just sympathetic to the Lubicons, based on the facts."

Liberal and NDP members of the committee also claimed McKnight is in a conflict of interest for providing money to a Japanese pulp and paper project that will remove logs from land the Lubicon claim should be part of their reserve.

Liberal member Keith Penner told the House of Commons Tuesday that

McKnight is clearly in a conflict by supporting the Daishowa project.

Daishowa Canada Co. Ltd. announced Monday it will begin work this spring on a \$500-million pulp mill for Peace River. The federal Western Diversification Office is putting \$9.5 million toward the project.

Penner said McKnight is going to have to decide "whether he is the minister of Indian Affairs honoring the trust obligation that the Constitution gives him or whether he is the minister for western diversification mainly interested in pulp and paper companies."

Lubicon chief Bernard Ominayak said in an interview the Lubicons may ask for McKnight's resignation.

"It's a direct conflict of interest, from our point of view," he said.

"The guy can't even live up to his responsibility, and here they go and do something like that."

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CBC Announces

The Alberta Minister of Forestry is defending the decision by the
Cabinet to award a logging contract to a private company. The
Minister says the company is providing a pulp mill project
which will create jobs.

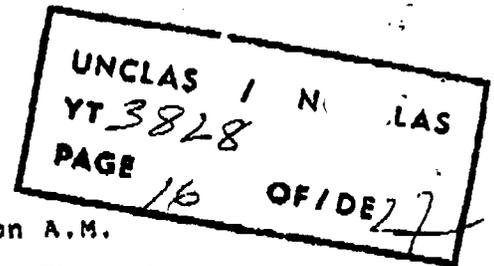
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Transcript of CBC Radio News Broadcast
Tuesday, February 09, 1990

CBC Announcer

The Alberta Minister of Forests is defending the decision by the Province to award timber cutting rights on land claimed by the Lubicon. Alberta has awarded cutting rights on 29,000 sq. kilometers to a Japanese company. The company is building a pulp mill near Peace River. The Minister contends that the pulp mill project will create jobs.



Transcript of CBC Radio News Broadcast, Edmonton A.M.
Tuesday, February 09, 1988

Ruth Anderson, CBC, Edmonton A.M.

Promo Announcement

New plans for a pulp mill near the town of Peace River has been announced. A Japanese company is going to build that pulp mill. But the Chief of the Lubicon Indian Band is very upset about that. He says that the mill is going to be built on land which the Lubicons have claimed. Of course the Lubicons have not settled their land claim yet. A little bit later we'll be speaking with Bernard Ominayak, the Chief of the Lubicon Indians.

Promo Announcement

As was mentioned on the news, there's a new pulp mill planned for near Peace River. The Japanese logging company which plans to build that plans to cut down trees on land in that area. Now this is land that the Lubicon Indians say is theirs. In the next few minutes we'll hear from the Chief of the Lubicon Indians, Bernard Ominayak.

Dennis Sherbanuk, CBC, Edmonton A.M.

The Provincial Government has announced plans to cut down trees on land claimed by the Lubicon Indians. The Daishowa Canada Company will build a \$500 million pulp mill in the Peace River area. The company will have logging rights on a block of forest which includes land the Lubicons say is theirs. Bernard Ominayak is the Chief of the Lubicon Cree.

Ruth Anderson

Good morning, Mr. Ominayak.

Chief Bernard Ominayak, Lubicon Lake Band

Good morning.

Ruth Anderson

How much of the land you claim does this logging agreement cover?

Bernard Ominayak

I'm not sure as to how much it will cover. But what we are sure

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EDMONTON A.M., 04/09/88, page 2

of is that we're not going to allow anybody to come in and cut our trees down within our traditional lands. Judging from the information that we've got so far, I think that there are probably a lot of trees that are outside of our area that this particular company would have access to.

Ruth Anderson

You mean some of it is area that you would traditionally hunt on but is not necessarily in the boundaries of the reserve you're claiming.

Bernard Ominayak

No, what I am saying is that we're not going to allow anybody to take any more resources off our traditional lands.

Ruth Anderson

How are you going to fight this. I mean, you haven't had great success yet fighting for that land you want.

Bernard Ominayak

No, we haven't had any great success. I guess, you know, we've sat back and tried to deal with the Federal Government for the last 48 years and we find ourselves in the situation where both levels of Government are more interested in the resources our lands contain rather than to try to deal with us. The oil development has done a lot of damage already. Now we find that our trees are going to be something that they're interested in.

Ruth Anderson

But Chief Ominayak, I want to know what you'll do? How far would you go to prevent this logging?

Bernard Ominayak

It just depends on how hard the other side is going to push. We basically decided that we're going to start asserting our own jurisdiction. Now they announce this pulp mill and also that they're going to be leasing all the timber rights or trees that are going to be needed for the pulp mill that we have on our traditional lands.

Edmonton A.M., 02/29/88, page 3

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Ruth Anderson

But I'm still not sure how you can fight this. I mean, are you going to resort to violence to stop this latest assault on what you claim is your land?

Bernard Ominayak

Well our preference would be not to get into violence. But again, it all depends on how forceful the other side wants to be. But whatever it takes, that's what we're going to do.

Ruth Anderson

Would you consider any other kind of protest?

Bernard Ominayak

No, I think we're in the situation where we either stand up for what we believe in and also know what is ours. We've tried to utilize the negotiation route and that isn't working.

Ruth Anderson

I know that a lot of your land is not all that good for hunting anymore anyway. Could you not see this as a job creation project which might help some of the people in your band, if they could get jobs through this project?

Bernard Ominayak

They talk about all kinds of job opportunities or how many jobs it's going to create. But at the same time, these lands are ours. We've never given up our land to anybody. And until they are prepared to sit down with us and start dealing with us in some proper manner, then I don't see how they can keep continuing to take the resources out and not deal with us in any proper manner. —

Ruth Anderson

I was just going to ask you, how is all of this going to affect your claim negotiations with the Federal and Provincial Governments?

Edmonton A.M., 02/09/88, page 4

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Bernard Ominayak

I think both levels of Government thought they would be able to wipe us out when they wiped out the economy of our people and forced them onto welfare but they found out that we're still...(and of tape)...(there and that we're not going to give up).

Ruth Anderson

Thank you, Chief Ominayak.

Dennis Sherbanuk

Lloyd Fjordbotten, the Minister of Forestry Lands and Wildlife, could not be reached for comment this morning.

TUESDAY, FEBRUARY 9, 1988

Ottawa, Alberta to

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REPORT ON BUSINESS

spend \$75 million on mill

BY MATTHEW FISHER
The Globe and Mail

EDMONTON

The Alberta and federal governments will spend \$75-million on the infrastructure for a new pulp mill near Peace River in the northwest part of the province.

Alberta will provide Daishowa Paper Manufacturing Co. Ltd. with \$25-million toward the cost of a \$500-million hardwood pulp mill the Japanese company will start building this spring.

Through its Western Diversification Program, the federal Government will contribute \$9.5-million, the largest single payment the office has made since the fund was created last August by Prime Minister Brian Mulroney.

The government money will go toward building a railway spur line, roads and part of a bridge near the site of the pulp mill, government officials said.

In announcing their approval of

Daishowa Paper Manufacturing Co. of Japan will receive \$65-million from the Alberta Government toward the cost of a new pulp mill in the northwest part of the province. Ottawa will spend \$9.5-million on the mill.

the Peace River pulp mill. Forestry, Lands and Wildlife Minister LeRoy Fjordbotton and Premier Donald Getty defended the Government's contribution, saying it was a successful effort to diversify Alberta's economy.

"We wouldn't spend money if we didn't have to," Mr. Fjordbotton

said. "As the premier says, 'We had to fight for it.'"

The Peace River mill is further proof that Alberta's economy has "turned the corner," Mr. Getty said. "This is a large vote of confidence in the province of Alberta and in the future of our forest resource."

Since it started trying to attract forestry investment to the province in mid-1987, the Alberta Government has approved about \$1-million in projects and will announce "another billion dollars over the next two to three years," Mr. Fjordbotton.

The Daishowa pulp mill will produce 1,000 metric tons a day, or 350,000 tons a year, of bleached hardwood kraft pulp. Set up to use aspen of the aspen that is an abundant supply in northern Alberta, it will be the largest hardwood operation in Canada, and one of the largest pulp mills of any kind in the country.

About 2,000 workers will be involved in the construction of the

mill, which is to be built 16 kilometres north of Peace River on the west bank of the Peace River.

When completed in 1990, the mill will employ 330 workers. Another 300 workers will be hired to cut trees and transport them to the mill. The Government officials estimated that the plant would generate enough economic activity to indirectly employ another 1,200 workers in the Peace River Country.

Koji Kitagawa, president and general manager of Vancouver-based Daishowa Canada Co. Ltd., said "labour is a big factor" in his company's decision to locate in Alberta, but the single greatest reason for locating the plant there was that there was an assured supply of aspen trees. Another important reason was convenient access to a good water supply.

"It is primarily because of the resource," he said. "We considered a similar project in British Columbia," but it did not have any forests capable of sustaining production of 340,000 metric tons of hardwood bleached kraft pulp and softwood.

When asked whether there would be a union at the Peace River plant, Mr. Kitagawa said: "As a company policy, we know which way we'd go," but he refused to elaborate. "We try to follow the Canadian way of doing things," he said. "If we can put in any Japanese management ideas, we will."

Daishowa's Japanese paper mills would consume between 60 and 70 per cent of the Peace River operation's initial output, Mr. Kitagawa

said. Markets in the United States, Canada, Southeast Asia and Europe would share the rest of the output equally. It was the largest investment overseas that Daishowa has yet made.

Daishowa's primary consultant on the project, H. A. Simons of Vancouver, would be retained during the construction and startup of the plant. Other consultants from Alberta would also be hired, Mr. Kitagawa said. Construction would begin this spring with the target date for the plant opening set for August or September, 1990. Negotiations to purchase materials and machinery for the plant are to be undertaken immediately with procurement offices in Peace River and Edmonton. Between 30 and 50 per cent of the capital cost would be spent in Alberta.

All the speakers at yesterday's announcement said the mill will be the cleanest and most environmentally safe in Canada.

Mr. Fjordbotton said negotiations to build a long-awaited newsprint mill at Whitecourt, Alta., are continuing.

"A number of proposals are on the table and we're giving serious consideration to two or three of them," he said. "I think there is room for two or three paper mills in Alberta."

The Forestry Minister denied there were any hangups in the Whitecourt negotiations. "We've made excellent progress, but it will be a time yet before we will be making an announcement."

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THE GLOBE AND MAIL, TUESDAY, FEBRUARY 9, 1988

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McKnight under fire over pulp mill grant

BY GRAHAM FRASER
The Globe and Mail
with Canadian Press

OTTAWA

Opposition MPs and a lawyer for Alberta's Lubicon Lake Cree band yesterday attacked Indian and Northern Affairs Minister William McKnight for giving money to a planned \$50-million pulp mill project located on land sought by the band.

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

The federal grant, made in conjunction with a \$65-million provincial grant, is coming from the Western Diversification Program.

"The timber is to be drawn from lands that are traditionally Lubicon lands," said Liberal Keith Penner, MP for Cochrane-Superior in Ontario.

"This western diversification scheme by the minister just shows that he's in a total conflict of interest," said James O'Reilly, a lawyer representing the Lubicon.

"It substantiates what the band has been feeling all along: that he is

more interested in helping Alberta than in discharging his constitutional responsibilities as trustee for the Indians of Canada."

New Democratic Party MP James Fulton, member for Skeena in British Columbia, also said that Mr. McKnight is in a conflict of interest over the decision.

Mr. Fulton unsuccessfully raised the alleged conflict as a question of privilege in the House of Commons.

He then called the decision to help finance the mill "the crassest, the lowest form of politics by Mr. (Alberta Premier Donald) Getty and Mr. McKnight" to present the issue as a choice between jobs and Indians.

To encourage construction of the mill, the Alberta Government has awarded the Japanese forest products giant a massive forest management agreement that includes lands claimed by the destitute Lubicon band.

Alberta Forestry Minister LeRoy Fjordbotten confirmed on Monday night that the huge forestry bloc (overlaps the portion of northern Alberta bush that the Lubicon band claims it is entitled to).

"The Lubicon land claim is in that general area," Mr. Fjordbotten said.

The plant's aspen poplar feedstock will come from a huge tract of land east of the Peace River which completely surrounds the approximately 85 square kilometres of land that the Alberta Government has earmarked as the Lubicon reserve. The Indian band, which was missed by federal officials negotiating treaty settlements in the early 1900s, argues that it is entitled to 230 square kilometres.

Chief Bernard Ominayak said his band will fight attempts to cut trees on land the Indians view as their own. But he did not specify what measures the Lubicons are prepared to take.

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SUPPLEMENT NO. 9 TO COMMUNICATION NO. 167/1984

28 MARCH 1988

COMMENTS ON THE 3 MARCH 1988 RESPONSE OF THE
GOVERNMENT OF CANADA

I. INTRODUCTION

Chief Bernard Ominayak and the Lubicon Lake Band respectfully submit the following comments for the purpose of clarifying certain points raised by the Government of Canada in its Response of 3 March 1988.

II. NEW DEVELOPMENTS

With respect to the "offer" of the Canadian Minister of Indian Affairs and Northern Development of an "interim transfer" to the Band of 25.4 square miles, the Committee may wish to note the following points.

1. **The Lubicon Lake Band was not a party to the negotiation of the settlement offer.**

Contrary to all prior aboriginal land rights precedent in Canada, Lubicon membership and land rights are being settled between the Minister of Indian Affairs and the Provincial Government with no involvement of the Lubicon people.

2. **The offer rests on a highly prejudicial view of the Band's rights under Canadian law and an equally prejudicial determination of Lubicon membership.**

In reaching his decision on the "interim transfer," the Minister of Indian Affairs is employing a formula which specifically denies the Band's aboriginal rights and which utilizes criteria for determining Lubicon Band membership never before employed in Canadian history; criteria which would effectively disenfranchise more than half of the Lubicon people, literally tearing Lubicon families apart. In fact, the amount of land offered by the Minister of Indian Affairs is less than half of that which similar groups of aboriginal people in Canada have been allowed to retain for reserve purposes.

3. **Canada would negotiate non-land issues with fewer than half of the Lubicon Band.**

Assuming Canada honored the Minister's offer to negotiate non-land issues, such as housing, under these circumstances such negotiations would unavoidably result in housing for less than half of the Lubicon people.

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Canada has leased all but 25.4 square miles of the Band's traditional land for development in conjunction with a pulp mill.

The author of Canada's Response neglects to note that two days before the Minister of Indian Affairs and Northern Development announced his offer of an "interim transfer," the Federal and Provincial Governments announced their approval of a \$500 million pulp mill to be constructed by the Daishowa Canada Company Limited near Peace River, Alberta. Canada's Minister of Indian Affairs and Northern Development, on behalf of the Federal Government, contributed almost \$10 million to this project, which encompasses the entire area of the Lubicon Lake Band's traditional lands with the exception of the 25.4 square miles set aside for the "interim transfer," and which will take a substantial portion of its wood from the traditional lands of the Lubicon Lake Band.

5. The Daishowa pulp mill project wipes out any hope of the continuation of some traditional activity by Band members.

Even if the Band were to accept the Minister of Indian Affairs' offer of a "without prejudice interim transfer," the pulp mill project, which will entail clear-cutting of large tracts in the Band's traditional area, renders futile any attempt by the Band to negotiate a larger land settlement or hunting and trapping rights in its traditional lands for the purpose of pursuing its traditional life style.

6. The Parliamentary Standing Committee on Aboriginal Affairs, the official oversight committee of the Canadian Parliament with respect to such matters, does not support the approach to settlement being taken by the Minister of Indian Affairs and Northern Development.

While the Minister of Indian Affairs was "negotiating" a settlement of the Lubicon issue in total disregard of the recommendations of Mr. E. Davie Fulton, Canada's Parliamentary Standing Committee on Aboriginal Affairs, in two Motions adopted December 17, 1987 and February 9, 1988, urged the Government of Canada to enter bilateral negotiations with the Band, and to involve Mr. Fulton in the negotiations.

III. EXHAUSTION OF DOMESTIC REMEDIES

As has been pointed out, in the Band's past submissions to the Committee, the Band's domestic court actions rest essentially on aboriginal rights claims. In light of the decision in Chief Joe

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V. R. (1985), 49 N.R. 190, affirmed S.C.C. (1986), 2 S.C.R. 145, such claims must be brought in Provincial court. On 22 October 1987, the Alberta Court of Queens Bench, the relevant Provincial court, denied the Band's application to add the Federal Government as a party to its Provincial action. Therefore, with respect to its aboriginal rights claims, which represent the essential part of its court actions, the Band has been denied redress against the Federal Government of Canada.

As is pointed out in Section I above, the Government of Canada is not seeking to resolve this matter through negotiations with the Band.

IV. ABUSE OF PROCESS

Canada complains of the Band's use of the media to publicize its position with regard to this matter. The Band respectfully submits the following comments on Canada's charge that the Band has abused the process available to it under the Optional Protocol.

1. The Canadian press and some members of the international press have been actively involved in the public debate surrounding the Lubicon issues.

As the Committee is aware, the pressure of public opinion provides the only effective means available to the Band for seeking a just settlement of its claim. Therefore, while not intending to show disrespect for the confidentiality of the Committee's proceedings, the Band has felt obligated to be as responsive as possible to inquiries by the press. Furthermore, both parties to this action have kept the press informed of their respective statements to the Committee.

2. The Band's submissions to the Committee contain nothing that is not already public information.

In responding to media inquiries which resulted in the 18 and 21 January 1988 newspaper articles, the Band did no more than inform the press of the already public information being provided to the Committee. The Band was also unaware at the time that the Committee had not forwarded a copy of the Band's most recent submission to the Government of Canada. However, the Band did deliver a copy of that submission to Canada's Secretary of State for External Affairs on 21 January.

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which Canada complains of media coverage, it attaches the following to its Response.

This page designates as relevant to the Federal government the newspaper across Alberta, the Province of Alberta, the Province of Saskatchewan, the Province of Manitoba, the Province of Ontario, the Province of Quebec, the Province of New Brunswick, the Province of Nova Scotia, the Province of Prince Edward Island, the Province of Newfoundland and Labrador, the Province of Yukon, the Northwest Territories, and the Nunavut Territory. The Province of Alberta, the Province of Saskatchewan, the Province of Manitoba, the Province of Ontario, the Province of Quebec, the Province of New Brunswick, the Province of Nova Scotia, the Province of Prince Edward Island, the Province of Newfoundland and Labrador, the Province of Yukon, the Northwest Territories, and the Nunavut Territory. The Province of Alberta, the Province of Saskatchewan, the Province of Manitoba, the Province of Ontario, the Province of Quebec, the Province of New Brunswick, the Province of Nova Scotia, the Province of Prince Edward Island, the Province of Newfoundland and Labrador, the Province of Yukon, the Northwest Territories, and the Nunavut Territory.

To thus prime the media with a huge propaganda campaign and then criticize the participants for responding to resulting media inquiries about the latest developments is disingenuous to say the least.

4. Canada's supporting documents contain a misleading misrepresentation of the Tubercular membership issue.

The subsequent statements set forth on page 12 of that Appendix are highly misleading. The John Genealogical survey conducted by the Federal Government of Canada identified approximately 450 members of the Tubercular Lake Band. The inaccurate figures contained in the Band's early court documents resulted from the fact that at that time the Band's attorneys did not have complete information on the Band's membership. The Province of Alberta has jurisdiction over the genealogical survey results in Alberta. The Province of Alberta position is simply that the Province has no jurisdiction over the survey results, provided to it by the Federal Government.

5. Other abuse of process charges

a. Federal response to the tuberculosis outbreak

The disease was identified in July 1997. The first meeting with Federal representatives did not occur until 18 September, and Federal medical personnel did not arrive on the scene until 6 November. The personnel and other services listed in Canada's Response have been put in place since 6 November, as part of a continuing effort by the Tubercular people themselves to bring the disease under control.

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b. 21 deaths

The charges referred to are true. The circumstances have been documented by a variety of credible independent investigators. The Lubicon people are also prepared to provide details of the 21 unnatural deaths resulting directly or indirectly from the destruction of the traditional Lubicon economy and way of life.

c. Other charges

All other charges raised by Canada are the subject of lengthy discussion in previous submissions by both parties and therefore do not raise any new issues. See Supplement 8 to Communication 167/1984.

v. CONCLUSION

Contrary to Canada's assertion that its offer of an "interim transfer" brings it into conformity with the International Covenant on Civil and Political Rights, the Lubicon Lake Band respectfully submits that the above outlined circumstances represent a continuation of Canada's past bad faith and disregard for the human rights the Lubicon Lake Band. The "interim transfer" is intended only to alleviate the domestic and international pressure mounting against Canada with regard to this issue. Once that pressure is gone, Canada will no longer have an incentive to engage in further discussions with the Band. Furthermore, if the Lubicon Lake Band accepts this offer, negotiated without their involvement, half of their members will be left without homes and the remainder will be left without a future - stranded powerless in the middle of an environmentally destitute land.

Finally, as the Daishowa project demonstrates, Canada continues to disregard the Committee's 22 July 1987 request pursuant to rule 86 of its provisional rules of procedure. Far from taking interim measures to avoid irreparable harm to the Band, Canada has agreed to a project which will further degrade the Band's traditional lands. Moreover, Canada, through its Minister of Indian Affairs and Northern Development, seeks to force on the Band a settlement which, if accepted, would effectively sound the death knell of the Lubicon people.

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

Submitted by:



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

Prepared with the assistance of:



Jessica S. Lefevre, Esq.
Van Ness / Feldman, Sutcliffe & Curtis
1050 Thomas Jefferson St., N.W.
7th Floor
Washington, D.C. 20007

Canada

Canada

Security Classification - Cote de sécurité
File number - numéro de dossier 277269
Date June 14, 1988

MEMORANDUM/NOTE DE SERVICE

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TO/À:

FROM/DE:

Counsel
Human Rights Law Section

ACC

FILE
45-CDA-13-1-3-Lubicon
Lk Band

SUBJECT/OBJET:

LUBICON LAKE BAND - COMMUNICATION TO THE HUMAN RIGHTS COMMITTEE

Comments/Remarques

Attached is a draft communication to the UN Human Rights Committee in the above-noted matter, advising them of recent domestic developments, and in particular, the federal government's Statement of Claim. I would appreciate your reviewing this document and providing me with any comments you might have. As the Committee begins its next sitting early in July, I would appreciate your comments by June 16, 1988.

Thank you for your assistance in this matter.



Irit Weiser

IW/jp

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June 14, 1988

FURTHER SUBMISSION OF THE GOVERNMENT OF CANADA
IN RESPECT OF THE COMMUNICATION OF CHIEF BERNARD OMINAYAK
AND THE LUBICON LAKE BAND TO THE HUMAN RIGHTS COMMITTEE

I. GENERAL

The Government of Canada transmitted to the Secretary-General of the United Nations a response dated March 3, 1988, to the submissions of the communicant dated October 7, 1987 and January 12, 1988 (G/SO 215/51 CANA (38) 167/1984).

In its response, the Government of Canada outlined recent developments concerning the current communication. Briefly, these developments concerned a demand letter sent by the Minister of Indian Affairs and Northern Development on February 3, 1988, to the Attorney General of Alberta formally requesting reserve land for the Lubicon Lake Band. Subsequently, on March 2, 1988, the federal and provincial governments concluded an agreement in principal for the interim transfer of 25.4 square miles of reserve land for the Band, including mines and minerals. This agreement was without prejudice to the position of all parties involved, including the Band. It was intended that a more formal agreement would be signed once final wording was agreed upon.

II. RECENT DEVELOPMENTS

On March 3, 1988, the Government of Canada advised Chief Ominayak of the agreement in principle referred to above, and requested the Band's input to determine the location of the reserve land. On March 11, 1988, the Band refused this interim offer.

Since that date, discussions seeking a resolution of the matter have taken place between the federal government, the province of Alberta and the communicant. However, efforts to come to an agreement have been unsuccessful, due to preconditions set by the communicant and Alberta prior to the signing and delivery of a formal text for the agreement in principle. As a consequence, on May 17, 1988, the federal government initiated legal proceedings against the province of Alberta and the Lubicon Lake Band in order to enable Canada to meet its lawful obligations to the Band under Treaty 8. The Statement of Claim, commencing the legal action, asks the Court of Queen's Bench of Alberta for a declaration that the Lubicon Lake Band is entitled to a reserve and a determination of the size of that reserve. It also asks that the province of Alberta be declared in breach of the Constitution Act, 1930. (See Appendix 1).

On June 9, 1988 the Lubicon Lake Band filed a Statement of Defence and Counterclaim. On June 10, 1988, all parties to

the dispute appeared before Chief Justice Moore of the Alberta Court of Queen's Bench and agreed that best efforts should be made to fast track this case with a preliminary trial date being set for January 16, 1989. (See Appendix 2, Notice of Motion. The final order, which will not vary significantly from the terms contained in the Notice of Motion, will be sent to the Committee once it is finalized).

The Government of Canada wishes to re-emphasize that it acknowledges its obligation to provide a reserve for the Lubicon Lake Band pursuant to Treaty 8. It is submitted that the issue that forms the basis of the domestic dispute and the current communication, concerns the amount of land to be set aside as a reserve and related issues. As such, the Government of Canada submits that the communication does not properly fall within any of the provisions of the Covenant and cannot therefore form the basis of a violation.

III. CONCLUSION

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

Office of the
Secretary of State
for External Affairs



Cabinet du
Secrétaire d'État
aux Affaires extérieures

Memorandum for:
Mémoire pour:

Dan -

Will this do for the
U.N. - Bob Coulter
suggests that we (you)
should liaise with
Martin Lowe at Justice
on this.

Lusan N

RECEIVED - REÇU
JUN 8 1988
I M H

IN THE COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL DISTRICT OF CALGARY

B E T W E E N:

THE ATTORNEY GENERAL OF CANADA

Plaintiff

- and -

HER MAJESTY THE QUEEN IN RIGHT OF ALBERTA

and

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,
FLEURY MICHEL (MICHAEL) LABOUCAN, band
councillor and LARRY OMINAYAK, band coun-
cillor, on their own behalf and on behalf of
the Lubicon Lake Band

Defendants

STATEMENT OF CLAIM

1. The Attorney General of Canada represents Canada and the Minister of Indian and Northern Affairs whose office is the successor of the Superintendent General of Indian Affairs, referred to in Section 10 of the Memorandum of Agreement with Alberta and exhibited as Schedule 2 to The Constitution Act, 1930.

2. Her Majesty the Queen in right of Alberta has the administration and control of public lands in Alberta within

- 2 -

the meaning of section 10 of Schedule 2 of the Constitution Act, 1930.

3. The Lubicon Lake Band (hereafter the "Band") is a Band of Indians within the meaning of the Indian Act, R.S.C. 1970, Chapter I-6, and within the meaning of Treaty No. 8.

4. Chief Bernard Ominayak, Fleury Michel (Michael) Laboucan and Larry Ominayak, are the Chief and councillors of the Lubicon Lake Band, and are sued on their own behalf and on behalf of all other members of the Band.

5. Treaty No. 8 was entered into in the year 1899 between David Laird, J.H. Ross and J.A.J. McKenna, Treaty Commissioners, on behalf of Her Majesty the Queen in right of Canada, and the Indians who lived within the following limits, generally known as the Athabasca district:

"Commencing at the source of the main branch of the Red Deer River in Alberta, thence due west to the central range of the Rocky Mountains, thence northwesterly along the said range to the point where it intersects the 60th parallel of north latitude, thence east along said parallel to the point where it intersects Hay River, thence northeasterly down said river to the south shore of Great Slave Lake, thence along the said shore northeasterly (and including such rights to the islands in said lakes as the Indians mentioned in the treaty may possess), and thence easterly and northeasterly along the south shores of Christie's Bay and McLeod's Bay to old Fort Reliance near the mouth of Lockhart's River, thence southeasterly in a straight line to and including Black Lake, thence southwesterly up the stream from Cree Lake, thence including said lake southwesterly along the height of land between the Athabasca and Churchill

- 3 -

Rivers to where it intersects the northern boundary of Treaty Six, and along the said boundary easterly, northerly and southwesterly, to the place of commencement."

6. Treaty No. 8 provided, inter alia:

"And Her Majesty the Queen hereby agrees and undertakes to lay aside reserves for such bands as desire reserves, the same not to exceed in all one square mile for each family of five for such number of families as may elect to reside on reserves, or in that proportion for larger or smaller families; and for such families or individual Indians as may prefer to live apart from band reserves, Her Majesty undertakes to provide land in severalty to the extent of 160 acres to each Indian, the land to be conveyed with a proviso as to non-alienation without the consent of the Governor General in Council of Canada, the selection of such reserves, and lands in severalty, to be made in the manner following, namely, the Superintendent General of Indian Affairs shall depute and send a suitable person to determine and set apart such reserves and lands, after consulting with the Indians concerned as to the locality which may be found suitable and open for selection."

7. Treaty No. 8 was approved by the Governor General in Council on February 20, 1900, and thereupon the lands therein referred to became disencumbered of all native or aboriginal title and in lieu thereof Canada has assumed an obligation to make lands available to the bands who lived within the area covered by the Treaty as provided in the Treaty.

8. In 42 Victoria, Chapter 31, Parliament provided

- 4 -

that:

"125. The following powers are hereby delegated to the Governor in Council:-

...

e. To satisfy any claims existing in connection with the extinguishment of the Indian title, preferred by half-breeds resident in the North-West Territories outside of the limits of Manitoba, on the fifteenth day of July, one thousand eight hundred and seventy, by granting land to such persons, to such extent and on such terms and conditions, as may be deemed expedient;"

9. On or about May 6, 1899, a commission known as the "Half Breed Commission", was established by the Governor in Council in order to extinguish the "Indian title" preferred by the half breed residents of the Northwest Territories outside of the limits of Manitoba, and the Attorney General of Canada pleads and relies upon the Dominion Lands Act 42 Vict. Ch. 31, and amendments thereto, including 46 Vict., Ch. 17, ss. 80, 81; R.S.C. 1886 Ch. 54, ss. 62, 90(f); R.S.C. 1906 Ch. 55, ss. 6(f), 216; S.C. 1908 Ch. 20, ss. 76(f) and Orders in Council passed pursuant to the said Dominion Lands Acts in respect of the settlement of the "Half-Breed" claims, including P.C. 688 (March 30, 1885); P.C. 918 (May 6, 1899); P.C. 438 (March 2, 1900); P.C. 596 (March 13, 1900) and P.C. 273 (February 25, 1903).

- 5 -

10. In the year 1899 the "Half Breed Commission" issued 1,195 money scrip certificates worth \$286,000, and 48 land scrip certificates totalling 11,500 acres in extinguishment of those persons' native title. Many of the ancestors of the members of the Lubicon Lake Band received money or land scrip.

11. On or about December 14, 1929, the Dominion of Canada and the Province of Alberta agreed as follows:

"1. In order that the Province may be in the same position as the original Provinces of Confederation are in virtue of section one hundred and nine of the British North America Act, 1867, the interest of the Crown in all Crown lands, mines, minerals (precious and base) and royalties derived therefrom within the Province, and all sums due or payable for such lands, mines, minerals or royalties, shall, from and after the coming into force of this agreement and subject as therein otherwise provided, belong to the Province, subject to any trusts existing in respect thereof, and to any interest other than that of the Crown in the same, and the said lands, mines, minerals and royalties shall be administered by the Province for the purposes thereof, subject, until the Legislature of the Province otherwise provides, to the provisions of any Act of the Parliament of Canada relating to such administration;..."

and

"10. All lands included in Indian reserves within the Province, including those selected and surveyed but not yet confirmed, as well as those confirmed, shall continue to be vested in the Crown and administered by the Government of Canada for the purposes of Canada, and the Province will from time to time, upon the request of the Superintendent General of Indian Affairs, set

- 6 -

aside, out of the unoccupied Crown lands hereby 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 fulfill 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 hereof."

12. The agreement referred to in paragraph 8 herein has the force of law by reason of the Constitution Act, 1930.

13. The Band was formally constituted as a band for the purposes of the Indian Act, supra, in 1940, and since that time Her Majesty the Queen in right of Canada has paid such members of the Band as were entitled to be members of the Band, annuity and other benefits pursuant to Treaty No. 8, and the members of the Band have accepted the said annuities and benefits.

14. From time to time Canada, or subsequent to 1930, Alberta, has made lands available to members or ancestors of members of the Band, pursuant to Canada's and Alberta's obligations under the agreement of 1929 or the Constitution Act, 1930.

15. The Band made a number of requests for a reserve within the meaning of Treaty No. 8 commencing in the year 1939, and subsequently the Band, and members of the Band,

- 7 -

have commenced an action in the Federal Court of Canada, action number T-2048-80 against Her Majesty the Queen in right of Canada and others, claiming inter alia that Her Majesty 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...."

16. As a result of the facts set out herein, Canada has an obligation to the Band under Treaty No. 8, and it is now necessary that the Province provide sufficient lands out of the unoccupied Crown lands transferred in 1930 to enable Canada to fulfill its obligations under the said Treaty No. 8.

17. On the 3rd day of February, 1988, the Honourable Bill McKnight, Minister of Indian Affairs and Northern Development, delivered a written request to the Honourable James D. Horsman, Q.C., Attorney General and Minister of Federal and Intergovernmental Affairs, and as such the "appropriate Minister of the Province" within the meaning of s. 10 of schedule 2 of the Constitution Act, 1930, for lands necessary to enable Canada to fulfil its obligation to the

- 8 -

Band under Treaty No. 8 as follows:

"A. Land is to be provided up to the total quantum that results from the application of the following criteria which are to be applied against the Band's list of members as of March 16, 1987:

- i) That all persons registered or entitled to be registered as Indians on the Indian Registry as members of the Band be counted plus any subsequent births and less any subsequent deaths up to the date when lands for a reserve are surveyed for the first time;
- ii) From the quantum of land that results from the application of i) above, there shall be deducted such quantum of land, or scrip which Alberta can establish to my satisfaction as having been set aside and reserved or issued, as the case may be, in respect of any of the persons or ancestors of persons listed in paragraph i);
- iii) That all persons who were members of other bands on March 16, 1987 and also claimed by the Lubicon Lake Band as members not be counted;
- iv) In recognition of the right of Indians described in paragraph i) to choose land in severalty rather than reside with the band as provided for by Treaty No. 8, that, in the event such elections are made, 128 acres shall be deducted for each such election from the quantum of land to be transferred to Canada for the Band. It will be ascertained by Canada who, if anyone, will choose land in severalty. In the event that such elections are made, 160 acres will be made available by Alberta to each of those who might choose land in severalty. It is understood that those Indians or

- 9 -

those whose ancestors have already received land or scrip may not elect land in severalty;

- v) Land will not be requested for persons who cannot be registered as Indians by the Indian Registrar; and
- vi) Validation of actual entitlement for registration as an Indian will be carried out by the Indian Registrar pursuant to the Indian Act.

- B. The 25.4 square mile parcel of land identified for the Band as a reserve in 1940 ("the Original Reserve Lands") should be transferred plus such other additional lands as may be necessary to meet Canada's obligation as described in paragraph 'A'.
- C. Full subsurface rights are to be included in the transfer of lands."

18. At March 16, 1987, the number of persons who were purportedly listed on the membership list maintained by the Band numbered 450.

19. The Band has asserted that it is entitled to receive land calculated by multiplying 128 acres by the number of persons registered on the membership list maintained by the Band, resulting in approximately 92 square miles of land to be situated around the Lubicon Lake area, but Alberta has refused and continues to refuse to make lands available as demanded by the Band.

20. Canada, Alberta and the Lubicon Lake Band have been unable to agree on the amount of land the Band, or

- 10 -

those members of the Band who chose to take land in severalty are now entitled to receive.

21. The Plaintiff proposes that the trial of this action take place at the City of Calgary in the Province of Alberta.

Wherefor the Attorney General of Canada, on behalf of Canada, claims as follows:

- (a) a declaration that the Lubicon Band is entitled to a reserve in the province of Alberta;
- (b) a declaration that the Lubicon Lake Band is entitled to a reserve in accordance with the following formula:

A. Land is to be provided up to the total quantum that results from the application of the following criteria which are to be applied against the Band's list of members as of March 16, 1987:

- i) That all persons registered or entitled to be registered as Indians on the Indian Registry as members of the Band be counted plus any subsequent births and less any subsequent deaths up to the date when lands for a reserve are surveyed for the first time;
- ii) From the quantum of land that results from the application of i)

- 11 -

above, there shall be deducted such quantum of land, or scrip which Alberta can establish to the satisfaction of the Minister of Indian Affairs and Northern Development, as having been set aside and reserved or issued, as the case may be, in respect of any of the persons or ancestors of persons listed in paragraph i);

iii) That all persons who were members of other bands on March 16, 1987, and also claimed by the Lubicon Lake Band as members not be counted;

iv) In recognition of the right of Indians described in paragraph i) to choose land in severalty rather than reside with the band as provided for by Treaty No. 8, that, in the event such elections are made, 128 acres shall be deducted for each such election from the quantum of land to be transferred to Canada for the Band. It will be ascertained by Canada who, if anyone, will choose land in severalty. In the event that such elections are made, 160 acres will be made available by Alberta to each of those who might choose land in severalty. It is understood that those Indians or those whose ancestors have already received land or scrip may not elect land in severalty;

v) Land will not be requested for persons who cannot be registered as Indians by the Indian Registrar.

(c) a declaration as to the size of the reserve the Lubicon Lake Band is entitled to;

- 12 -

- (d) subject to any elections by individual Band members as to land in severalty, a declaration that the Province of Alberta is in breach of the Constitution Act, 1930;
- (e) costs.

DATED at the City of OTTAWA in the Province of Ontario this 17 day of May, A.D. 1988, and delivered by Ivan G. Whitehall, Q.C., on behalf of the Deputy Attorney General of Canada, solicitor for the plaintiff herein, whose address is Department of Justice, 239 Wellington Street, Ottawa, Ontario, K1A 0H8, and whose address for service in Alberta is in care of J. Brian Malone, Q.C., Black & Company, Barristers and Solicitors, 1600, 530 - 8th Avenue S.W., Calgary, Alberta, T2P 3S8.

ISSUED out of the Office of the Clerk of the Court of Queen's Bench of Alberta, Judicial District of Calgary this 17 day of May, A.D. 1988.

UM MALONE

Clerk of the Court of Queen's
Bench of Alberta



NOTICE

No. 6401-07584 A.D. 19

To the Defendants:

HER MAJESTY THE QUEEN IN RIGHT OF ALBERTA

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

and

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

BETWEEN:

THE ATTORNEY GENERAL OF CANADA
Plaintiff

and

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

- and -

HER MAJESTY THE QUEEN IN RIGHT OF ALBERTA

FLEURY MICHEL (MICHAEL) LABOUCAN, band councillor

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

LARRY OMINAYAK, band councillor

and
CHIEF BERNARD OMINAYAK, Chief of the Lubicon Lake Band of Little Buffalo Lake, Alberta, FLEURY MICHEL (MICHAEL) LABOUCAN, band councillor and LARRY OMINAYAK, band councillor, on their own behalf and on behalf of the Lubicon Lake Band

Defendants

You are hereby notified that the Plaintiff may enter judgment in accordance with this Statement of Claim or such judgment as, according to the practice of the Court, he is entitled to, without any further notice to you unless within fifteen (15) days after service hereof upon you, excluding the day of service, you cause to be filed in the office of the Clerk of the Court from which the 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 be served upon the Plaintiff or his Solicitor at his stated address for service.

STATEMENT OF CLAIM

This Statement of Claim is issued by BLACK & COMPANY, Solicitors for the Plaintiff whose address for service is in care of the said solicitors at:

1600, 530 - 8th Avenue S.W.
Calgary, Alberta, T2P 3S8

and is addressed to the Defendants.

File #22462-71001-7 JBM

CLERK OF THE COURT
MAY 17 10 13 AM '88
CALGARY



Government
of Canada

Gouvernement
du Canada

news release

Date

For release

1 - 8821

Canada Refers Lubicon Lake Band Land Claim to the Courts

OTTAWA (May 17, 1988) -- The Government of Canada announced today that it has initiated legal proceedings against the Government of Alberta and the Lubicon Lake Indian Band in order to enable Canada to meet its lawful obligations to the Band under Treaty 8.

This step follows a February 2, 1988 request by Bill McKnight, Minister of Indian Affairs and Northern Development, to the Attorney General of Alberta, Jim Horsman. In his correspondence, the federal Minister outlined Canada's lawful obligations to the Band and requested land from Alberta under the Constitution Act, 1930 to meet these obligations. The Statement of Claim, filed in the Court of Queen's Bench of Alberta, asks the Court for a declaration that the Lubicon Lake Band is entitled to a reserve and its appropriate size. The Statement of Claim also asks that the province be declared in breach of the 1930 Act.

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- 2 -

Background:

Despite ongoing and intensive efforts to resolve the Band's long-standing claim through negotiations, the Government of Canada finds it necessary to take this course of action because agreement can not be reached with either the Province of Alberta or the Band.

On April 27, the federal negotiator, Brian Malone, wrote to his provincial counterpart, John T. McCarthy, in a final effort to reach an agreement with Alberta. At that time, Mr. Malone reiterated Mr. McKnight's earlier statements that lack of final agreement between the governments would leave him with no option, save the Courts. There was no substantive response from the provincial negotiator.

On March 17, Mr. McKnight indicated before the Standing Committee on Aboriginal Affairs and Northern Development why a much-publicized mediation tribunal would not help settle the claim. Moreover, there has been no proposal made to Canada outlining the proposed mediation process since the Premier of Alberta and the Chief first met some two and one-half months ago. Canada believes the Band and the province have left it no alternative -- it has to turn to the courts for assistance in resolving these matters.

The Minister of Indian Affairs and Northern Development said he would have preferred to resolve the long-standing land claim of the Lubicon Lake Band through face-to-face negotiations with the Band and with the Province, which owns the lands sought by the Band. However, negotiations proved impossible.

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- 3 -

"We all want to see a fair and binding resolution of this claim which has eluded us far too long", the Minister said. "In the absence of prospects for a negotiated settlement, this can only be achieved with the assistance of the courts".

Canada will take all necessary steps to have an early hearing of this case. However, the action taken today does not prevent Alberta from signing the agreement-in-principle on an interim reserve of 25.4 square miles reached between government negotiators on March 2, 1988.

- 30 -

Ref: Brian Malone
Federal Negotiator
(403) 234-7200

Attachments:

March 3 announcement

March 17th package

Horsman's letter of February 11

McCarthy's letter of March 2

Malone's letter of April 27

Alberta



ATTORNEY GENERAL
FEDERAL AND
INTERGOVERNMENTAL AFFAIRS

MINISTER'S OFFICE
BUREAU
DU MINISTRE

Office of the Minister

403/427-2339 - 427-2585
Room 320 Legislature Building
Edmonton, Alberta, Canada T5K 2B6

Our File: 7900-3-5

February 11, 1988

Honourable Bill McKnight
Minister of Indian Affairs and
Northern Development
Parliament Buildings
OTTAWA, Ontario
K1A 0A6

Dear Mr. McKnight:

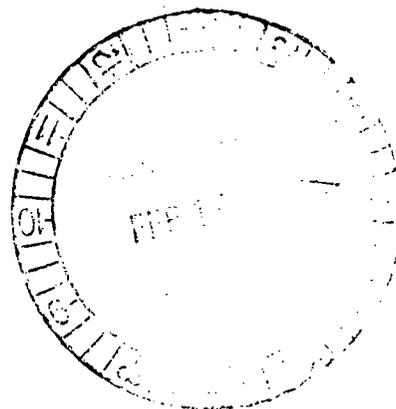
Re: LUBICON LAKE LAND CLAIM

I am in receipt of your letter, dated February 2, 1988, in which you outline the Government of Canada's latest approach with respect to the claims of the Lubicon Lake Indian Band.

Although I am not in a position at this time to respond to the substance of your proposals, I am nonetheless compelled to raise our serious concern with the process you are suggesting. In particular, we are concerned with the apparent abandonment of the negotiation process and the roles we had assigned to our negotiators in October, 1987.

In our view, contemplating further litigation would be premature prior to the prospects for productive discussions between our negotiators having been fully exhausted. My preference, as you are aware, has been, and continues to be, to proceed by way of negotiations with all parties to those negotiations being fully informed with respect to the facts underlying the claim.

Notwithstanding these concerns, we will be examining your most recent proposals with appropriate care and, once that examination has been completed, will be



Honourable Bill McKnight

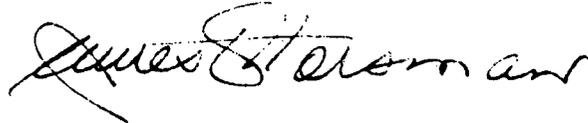
- 2 -

Our File: 7900-3-5
February 11, 1988

providing you with our response. Given both the complexities of your proposals and the need to clarify a number of important aspects, it would be unreasonable to expect us to provide a response by February 24, 1988 as you have requested. We will, however, endeavour to be in a position to respond by the end of March.

As a final matter, to ensure that we fully understand your current position, I have requested Mr. McCarthy, the Alberta negotiator, to meet with your negotiator in order to clarify several aspects of your proposals prior to these matters being given consideration by our government.

Yours truly,



James D. Horsman, Q.C.
Attorney General and
Minister of Federal and
Intergovernmental Affairs

JDH/dn

cc. John T. McCarthy



FEDERAL AND
INTERGOVERNMENTAL AFFAIRS
Ottawa Office

Suite 1110, Royal Bank Centre, 90 Sparks Street, Ottawa, Ontario, Canada K1P 5B4 613/237-2615 Telex 053-3717

March 2, 1988

Mr. Brian Malone
Federal Negotiator
Lubicon Land Claim
Ottawa, Ontario

Dear Sir:

Further to our meetings please be advised that Alberta is prepared to do the following:

- 1) Alberta is prepared to enter into a "without prejudice" interim agreement whereby Alberta would transfer to Canada 25.4 square miles, including mines and minerals, subject to conditions which would include the following:
 - (a) The offer and any subsequent transfer of land would be "without prejudice" to the positions of the parties involved, including the Lubicon Band; and
 - (b) Prior to any transfer, Canada will be responsible for satisfying third party surface and subsurface interests.

The draft agreement provided to you by the writer would serve as the basis for the negotiation of a final text.

- 2) Alberta would be prepared to negotiate an adjustment of the location of the 25.4 square mile area, which the Province offered in 1985, in order to accommodate both the Lubicon Band's desire to establish a community on the point of the south shore of Lubicon Lake and the federal government's offer to finance the infrastructure required to establish this community (i.e. roads, housing, water and sewer, school, health station, etc.).

.../2

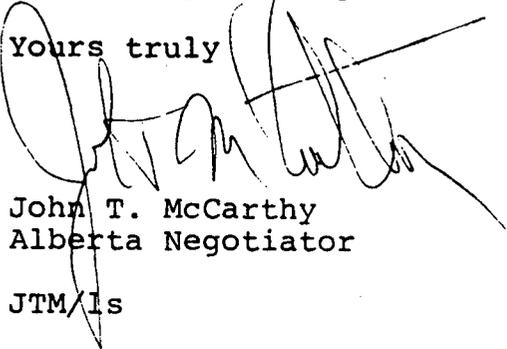
- 2 -

- 3) Alberta is prepared to continue to negotiate with the federal government in an effort to determine what might be required to obtain from Canada a release of the Province in regard to our obligations under the Natural Resources Transfer Agreement.

The above-noted offer is conditional on it remaining confidential until Mr. McKnight and Mr. Horsman have agreed on the timing and content of a joint public announcement.

We await your response.

Yours truly



John T. McCarthy
Alberta Negotiator

JTM/lis



Indian and Northern
Affairs Canada

Affaires indiennes
et du Nord Canada

April 27, 1988

Mr. John T. McCarthy
Macleod, Lyle, Smith, McManus
Barristers & Solicitors
2200 Bow Valley Square IV
250 - 6th Avenue S.W.
CALGARY, Alberta
T2P 3H7

Dear Mr. McCarthy:

Further to our Ottawa meeting on Monday, April 25th, I am writing to confirm several points made by the Government of Canada at that time.

1. Interim Letter Agreement

You will recall that on March 2nd we signed an interim letter agreement on behalf of our respective principals providing among other things that a more formal agreement would be signed once final wording was agreed upon. That was completed on March 15th. Based on the interim letter agreement, and in anticipation that Alberta would transfer to the administration and control of Canada 25.4 square miles, the Government of Canada has made certain commitments and continues to make commitments to third parties.

2. Formal Interim Agreement

As we noted at our meeting, Canada has been prepared to work towards a final agreement without further delay. However, it seems to us that our efforts have, to some extent, been frustrated by an apparent understanding between Premier Getty and Chief Ominayak setting certain pre-conditions prior to the signing and delivery of the final text of our interim agreement. Specifically, we understand that the Premier has undertaken not to permit the execution of the final interim documentation without the consent of Chief Ominayak first having been obtained. Further, we understand that the Chief's consent will not be forthcoming unless the parties can settle on a mediation process leading to the resolution of the outstanding issues. As to what these issues are, we are not at all certain, but they may well address questions beyond land entitlement under Treaty No. 8 and get into the specifics of compensation, damages and issues relating to the band's aboriginal claim.

.../2

- 2 -

3. The Mediation Tribunal Concept

You have asked for our views on the concept of a mediation tribunal. As indicated by Mr. McKnight in a speech to the House of Commons Standing Committee on Aboriginal Affairs on March 17th the suggestion of mediation is surely premature given that negotiations have yet to commence. The band's lawyer, Mr. O'Reilly, indicated to me on March 10th that the mediation tribunal was to be advisory only, that the matter of head count and land entitlement could not involve Alberta and that the band's genealogy was not relevant or producible. In essence, the thrust of the process would be to negotiate a new treaty with Canada under the scrutiny of the House of Commons Standing Committee. Canada is not prepared to do this.

I repeat again all of the concerns raised in my letter to you dated March 11th. First of all the Minister cannot legally delegate the question of head count to a third party. Secondly, any procedure involving settlement discussions in the presence of a reporting third party waives the without prejudice protection normally afforded litigants. Thirdly, the absence of legal precedent to guide the parties on the question of land entitlement poses a significant hurdle in reaching any sort of agreement that Alberta would accept as binding assuming that bilateral negotiations between Canada and the band were successful.

In addition to the above, Canada does not wish to establish a precedent whereby all future land claims would have to be resolved using a mediation tribunal. This must also be of concern to Alberta. In the past, land claims have always been successfully concluded by direct negotiations.

4. Final Agreement

I would next like to address your question as to the form a final agreement may take. In your draft of April 18th you have requested that Canada give a full release to Alberta under the 1930 legislation. For reasons discussed at Monday's meeting, absent the band's consent, we could not give you such release even if we were satisfied that your offer met Alberta's statutory obligation. We suggested, however, that in the event Alberta offers to transfer to Canada 45 square miles or more for reserve purposes (and to convey lands in severalty if so required), Canada would be prepared to acknowledge that in its view, this meets Alberta's constitutional obligation. Alternatively, we suggested that a tri-party agreement with Alberta, Canada and the band as parties may be feasible, provided it contained a clause, that the agreement remains an offer only until all three signatures have been secured. We also noted that the question of lands in severalty would also have to be addressed before a final agreement is reached. The

.../3

- 3 -

mechanism we proposed was that any offer Alberta may cause to make should be subject to a condition that Canada will obtain the consent of the band at a referendum to be conducted pursuant to the Indian Act.

5. Conclusion

We are of the view that Alberta now has all the elements it requires to enable it to make a concrete proposal to Canada and the band in accordance with its obligations under the Constitution Act of 1930. If Alberta is prepared to meet the band's request for 92 square miles, minerals included, then in the view of Canada an immediate settlement of this problem is possible, and Canada would be prepared to give a full release to Alberta, acknowledging that Alberta has met its obligations to Canada vis-à-vis the Lubicon Lake Band.

As indicated on Monday, Canada would be prepared to set aside a reserve in accordance with any quantum of land agreed to by Alberta and the band pursuant to Treaty 8. I understand that the point has also been made in a separate conversation between Mr. Whitehall and Mr. O'Reilly. It is noted that Premier Getty and Chief Ominayak have agreed to a further meeting and you may wish to specifically make that point to Mr. Horsman and the Premier.

I remind you that the Lubicon Lake Band has rejected all my initiatives under Treaty 8 to provide an interim reserve, to negotiate the full reserve, and to negotiate all non-land issues. The band claims aboriginal title to some 7,000 square miles of Alberta and has sued your client for it. I understand that on March 14th, Mr. Horsman again confirmed that Alberta does not accept any claim for aboriginal title. Mr. McKnight has publicly referred to the rejection of Treaty 8 by the band, and of aboriginal title by the province as being an impasse that the federal government cannot unilaterally resolve. In our view the positions are mutually exclusive since the band cannot be under Treaty 8 and claim aboriginal title.

My client is of the view that these discussions have lasted far longer than necessary. Therefore I am instructed to advise you that unless Canada receives the signed formal interim agreement and a concrete offer from Alberta by May 16th addressing the outstanding Treaty 8 entitlement of the band, it will commence proceedings in the Court of Queen's Bench of Alberta.

Yours very truly,

J. Brian Malone, Q.C.
Federal Negotiator



Speech

3-8802

REMARKS BY THE HONOURABLE BILL MCKNIGHT, P.C., M.P.

MINISTER OF INDIAN AFFAIRS AND NORTHERN DEVELOPMENT

TO THE

HOUSE OF COMMONS STANDING COMMITTEE ON

ABORIGINAL AFFAIRS AND NORTHERN DEVELOPMENT

ON THE LUBICON LAKE BAND LAND CLAIM

OTTAWA, ONTARIO

MARCH 17, 1988

I HAVE A FEW REMARKS TO MAKE REGARDING RECENT EVENTS ASSOCIATED WITH THE LUBICON LAKE BAND CLAIM. I ALSO WISH TO PROVIDE THE COMMITTEE WITH THE FORMULA I PLACED BEFORE ALBERTA TO DETERMINE THE SIZE OF THE FULL RESERVE.

I SHALL MAKE REFERENCE TO A NUMBER OF DOCUMENTS AND COPIES OF THEM CAN BE TABLED WITH THE COMMITTEE.

I THINK IT WOULD BE USEFUL IF I WERE TO REVIEW WHAT RESPONSIBILITIES FALL TO ME AS MINISTER OF INDIAN AFFAIRS AND NORTHERN DEVELOPMENT IN A CASE SUCH AS THE LUBICON LAKE BAND CLAIM.

- I MUST FIRST DETERMINE IF A RESERVE FOR THE BAND IS WARRANTED BY THE FACTS OF ITS CLAIM, AND IN THIS INSTANCE THE ANSWER IS CLEARLY YES.

- 2 -

- I MUST DETERMINE THE BASIS FOR CALCULATING THE SIZE OF THE RESERVE TO WHICH THE BAND IS ENTITLED. IN THIS INSTANCE THE BASIS IS DETERMINED BY THE PROVISIONS OF TREATY 8 AND IS 128 ACRES FOR EACH ELIGIBLE BAND MEMBER.

- I MUST THEN MAKE A FORMAL REQUEST FOR LAND TO THE APPROPRIATE MINISTER OF THE GOVERNMENT OF ALBERTA PURSUANT TO THE CONSTITUTION ACT OF 1930.

- FOLLOWING THAT, I MUST SETTLE WITH THE BAND AS TO WHAT INFRASTRUCTURE, WHAT INVESTMENTS IN HOUSING, SCHOOLS, MEDICAL FACILITIES, WATER SYSTEMS, SEWERS, AND ROADS, ETC. ARE NEEDED AND ARE TO BE CONSTRUCTED.

- I MUST RECOMMEND THE ESTABLISHMENT OF THE RESERVE BY ORDER-IN-COUNCIL ONCE THE LAND HAS BEEN TRANSFERRED FROM THE PROVINCE OF ALBERTA.

- FINALLY I MUST WORK WITH THE BAND TO BUILD THE RESERVE COMMUNITY.

I ACCEPT ALL OF THESE AS BEING OBLIGATIONS PLACED UPON ME AS MINISTER AND I HAVE ACTED RESPONSIBLY TO CARRY THEM OUT. IN SEPTEMBER 1987 I APPOINTED A NEW NEGOTIATOR, MR. BRIAN MALONE, TO REPRESENT ME AND TO NEGOTIATE WITH THE BAND AND WITH THE GOVERNMENT OF ALBERTA, AND TO BRING THESE MATTERS TO A CONCLUSION.

- 3 -

FOLLOWING NUMEROUS MEETINGS BETWEEN THE FEDERAL AND PROVINCIAL NEGOTIATORS, I MET WITH THE ALBERTA ATTORNEY GENERAL ON DECEMBER 22, 1987 TO DISCUSS A PROPOSAL FOR AN INTERIM SETTLEMENT AND TO EXPLORE WAYS OF RESOLVING THIS CLAIM. THIS MEETING WAS UNSUCCESSFUL.

ON JANUARY 21, 1988 THE SECRETARY OF STATE FOR EXTERNAL AFFAIRS AND I MET WITH THE CHIEF AND HIS ADVISORS IN AN ATTEMPT TO OVERCOME THE BAND'S REJECTION OF NEGOTIATIONS. THIS MEETING WAS UNSUCCESSFUL.

THE PROVINCE REFUSED TO NEGOTIATE ANY OF MY PROPOSALS WITHOUT THE BAND BEING PRESENT; AND THE BAND REFUSED TO NEGOTIATE ANY PROPOSALS WITH ALBERTA PRESENT. I WAS LEFT WITH NO ALTERNATIVE BUT TO MAKE A FORMAL REQUEST OF ALBERTA FOR LAND FOR A RESERVE BASED ON THE LEGAL OBLIGATIONS PLACED ON ME BY THE PROVISIONS OF TREATY 8. I DID SO IN A LETTER TO THE ATTORNEY-GENERAL OF ALBERTA, DATED FEBRUARY 2, 1988. IN THAT REQUEST, I ALSO ASKED FOR A 25.4 SQUARE MILES INTERIM RESERVE SO THAT IMMEDIATE PROGRESS COULD BE MADE IN ESTABLISHING A RESERVE EVEN IF NEGOTIATIONS WERE PROTRACTED. SO AS NOT TO LOSE TIME, ON FEBRUARY 10, 1988 MR. MALONE WROTE TO MR. O'REILLY, THE BAND'S LEGAL ADVISOR, PROPOSING BILATERAL NEGOTIATIONS ON ALL NON-LAND ISSUES WHICH MAKE UP THE BALANCE OF THE BAND'S CLAIM. HE ALSO ASKED FOR THE BAND'S VIEWS WITH REGARDS TO AN INTERIM RESERVE OF 25.4 SQUARE MILES ON A "WITHOUT PREJUDICE" BASIS.

- 4 -

MR. O'REILLY REPLIED ON FEBRUARY 29, 1988 REJECTING NEGOTIATIONS ON THE NON-LAND ISSUES BUT, INDICATING THAT THE BAND WOULD CONSIDER A PROPOSAL FOR AN INTERIM RESERVE.

IN RESPONSE TO MY LETTER TO MR. HORSMAN OF FEBRUARY 2, 1988, DISCUSSIONS COMMENCED WITH ALBERTA ON MARCH 1 AND AN AGREEMENT-IN-PRINCIPLE WAS REACHED FOR AN INTERIM RESERVE OF 25.4 SQUARE MILES WHICH WAS OFFERED TO THE BAND ON MARCH 3. ON MARCH 11, 1988 THE BAND REFUSED THE OFFER. THE OFFER OF AN INTERIM RESERVE OF 25.4 SQUARE MILES "WITHOUT PREJUDICE" CONTINUES TO BE OPEN TO THE BAND.

THE REQUEST FOR LAND FROM ALBERTA IS BASED UPON A FORMULA WHICH, IN ITS ESSENTIALS, ASKS FOR 128 ACRES FOR:

- EACH PERSON REGISTERED OR ENTITLED TO BE REGISTERED AS AN INDIAN ON THE INDIAN REGISTRY AS A MEMBER OF THE BAND ON MARCH 16, 1987, BUT NOT INCLUDING MEMBERS OF OTHER BANDS:

- LESS SUCH LAND OR SCRIP WHICH HAS ALREADY BEEN SET ASIDE AND RESERVED OR ISSUED IN RESPECT OF THE PERSONS OR ANCESTORS OF THE PERSONS ABOVE.

- 5 -

I THINK THE APPROACH IS FAIR AND REASONABLE TO ALL PARTIES, AND ESTIMATE THAT THE APPLICATION OF THE CRITERIA WILL RESULT IN A FULL RESERVE OF ABOUT 45 SQUARE MILES.

IT IS A SIMPLE FORMULA AND I CAN'T BELIEVE THAT ANYONE WOULD EXPECT THAT RESERVE LAND SHOULD BE PROVIDED FOR NON-INDIANS, OR INDIANS WHO ARE LEGITIMATELY MEMBERS OF OTHER BANDS.

THE DISCUSSIONS WITH ALBERTA ARE PROCEEDING IN ACCORDANCE WITH THE FEBRUARY 2ND REQUEST AND I EXPECT AN AGREEMENT-IN-PRINCIPLE ON THE SIZE OF THE FULL RESERVE CAN BE REACHED SHORTLY. THAT FULL RESERVE WILL BE OFFERED TO THE BAND.

IF THE BAND ACCEPTS THE OFFER, THERE IS A BASIS FOR SETTLEMENT. IF THE BAND REJECTS THE OFFER (OR IF THE PROVINCE AND CANADA CANNOT AGREE ON THE FULL RESERVE SIZE) THE MATTER WILL BE REFERRED TO THE COURT OF QUEEN'S BENCH OF ALBERTA FOR A BINDING DETERMINATION. I WOULD EXPECT THE BAND'S 1982 ACTION AGAINST ALBERTA WOULD BE ADDRESSED AS WELL.

THE BAND WOULD BE WELCOME PARTICIPANTS IN ALL DISCUSSIONS AND NEGOTIATIONS. THEY NEED ONLY NOTIFY MR. MALONE.

- 6 -

I MUST ADMIT SOME FRUSTRATION WITH THE BAND'S PERIODIC EXPRESSIONS OF INTEREST IN NEGOTIATIONS WHICH HAVE BEEN FOLLOWED BY PERSISTENT REFUSALS TO NEGOTIATE. THEY HAVE REFUSED TO CONSIDER AN INTERIM RESERVE, REFUSED TO NEGOTIATE NON-LAND MATTERS, AND IT WOULD APPEAR, EVEN REFUSED TO PURSUE THEIR OWN COURT CASES. THE REFUSAL TO PURSUE THE COURT CASE IS PARTICULARLY PERPLEXING BECAUSE AN EX-GRATIA PAYMENT OF \$1,500,000 WAS MADE TO THE BAND IN 1986 TO ASSIST IT IN COVERING ITS COSTS WHICH INCLUDED APPROXIMATELY \$880,000 FOR LEGAL EXPENSES.

THE BAND IS, IN FACT, ATTEMPTING TO FOLLOW TWO MUTUALLY EXCLUSIVE PROCESSES - A SETTLEMENT UNDER TREATY 8 AND A SETTLEMENT IN ABORIGINAL TITLE.

PUBLIC ATTENTION HAS FOCUSED ON THE NUMEROUS ATTEMPTS TO FIND A NEGOTIATION PROCESS ACCEPTABLE TO ALL PARTIES, SO THAT A RESERVE COULD BE SET ASIDE UNDER THE TREATY 8 FORMULA OF 128 ACRES PER ELIGIBLE BAND MEMBER.

AT THE SAME TIME THE BAND HAS INITIATED, BUT NOT PURSUED, A NUMBER OF COURT ACTIONS ASSERTING THE BAND IS NOT COVERED BY TREATY 8, AND CLAIMING ABORIGINAL TITLE OVER SOME 7,000 SQUARE MILES OF NORTHERN ALBERTA. THE ACTION REGARDING DAISHOWA REPEATED THIS CLAIM.

THE BAND HAS NOW REJECTED ALL RECENT INITIATIVES TO NEGOTIATE UNDER THE TREATY 8 PROCESS AND APPARENTLY INTENDS TO PURSUE ITS CASE AGAINST THE PROVINCE OF ALBERTA FOR ABORIGINAL TITLE. THAT IS THEIR RIGHT.

THERE HAS BEEN CONSIDERABLE DISCUSSION IN VARIOUS QUARTERS REGARDING MEDIATION WITH PARTICULAR REFERENCE TO A POSSIBLE ROLE FOR THE HONOURABLE E. DAVIE FULTON. THIS COMMITTEE HAS EXPRESSED SOME VIEWS ON THIS ASPECT OF THE MATTER.

IF NEGOTIATIONS WERE BEING PURSUED UNDER TREATY 8, SOME FORM OF MEDIATION MIGHT HAVE BEEN USEFUL. HOWEVER, ONE USUALLY NEGOTIATES IN GOOD FAITH BEFORE CONCLUDING THAT MEDIATION IS NECESSARY.

I WOULD HAVE PREFERRED DIRECT NEGOTIATIONS BETWEEN THE PARTIES AS THE QUICKEST METHOD OF ARRIVING AT A SETTLEMENT. BUT IF THERE WERE TO BE A NEED FOR MEDIATION AT SOME POINT, IT SEEMS TO ME THAT THE MEDIATION PROCESS MUST BE EQUALLY ACCEPTABLE TO ALL THE PARTIES.

I HAVE HAD SOME EXPERIENCE IN A FORMER PORTFOLIO WITH MEDIATION, AND I HAVE NEVER SEEN AN INSTANCE WHERE ONE PARTY NAMED THE MEDIATOR. BECAUSE OF THE ROLE THEY MUST PLAY ON BEHALF OF ALL PARTIES, MEDIATORS ARE EITHER ACCEPTABLE TO ALL PARTIES OR THEY ARE NOT ACCEPTABLE AT ALL.

- 8 -

ADDITIONALLY, I DO NOT SEE HOW "WITHOUT PREJUDICE" NEGOTIATIONS CAN BE CARRIED ON WITH A REPORTING MECHANISM THAT MAKES THOSE NEGOTIATIONS PUBLIC. PARTIES DO NOT SEEK CREATIVE SOLUTIONS IN SUCH CIRCUMSTANCES.

IN THE END ANALYSIS, THE LUBICON LAKE BAND CONTENDS THAT IT IS NOT COVERED BY OR BOUND BY TREATY 8. IN THESE CIRCUMSTANCES THE QUESTION OF A MEDIATOR IS IRRELEVANT. THE LUBICON LAKE BAND ASSERTS ABORIGINAL TITLE OVER SOME 7,000 SQUARE MILES OF NORTHERN ALBERTA AND HAS CHALLENGED THE PRESENT OWNERS OF THAT LAND - THE PROVINCE OF ALBERTA - IN A LEGAL ACTION THAT WAS BEGUN BY THE BAND IN 1982. GIVEN THAT THE BAND IS PURSUING A CLAIM TO ABORIGINAL TITLE, MEDIATION OF ANY KIND WOULD NOT INVOLVE CANADA.

IT IS CANADA'S VIEW THAT THE LUBICON LAKE BAND IS PART OF TREATY 8. WE HAVE OFFERED AN INTERIM RESERVE OF 25.4 SQUARE MILES FOR THE BAND. I EXPECT TO SOON FINISH DISCUSSIONS WITH ALBERTA FOR A FULL RESERVE. IF NECESSARY, I SHALL REFER THE DETERMINATION OF THE FULL RESERVE TO THE COURT OF QUEEN'S BENCH OF ALBERTA FOR A BINDING DECISION.

THE GOVERNMENT OF CANADA IS PREPARED TO ESTABLISH A RESERVE AND NEGOTIATE ALL OUTSTANDING ISSUES SO THAT THIS LONG-STANDING GRIEVANCE CAN BE FAIRLY AND HONOURABLY SETTLED.

- 9 -

I UNDERSTAND THAT THE ACTION OR INACTION OF PAST GOVERNMENTS HAS GIVEN RISE TO MISTRUST. I REPEAT THAT THIS GOVERNMENT WANTS A FAIR SETTLEMENT, AND HAS SPENT A GREAT DEAL OF TIME TRYING TO GET ONE.

IF THE BAND WANTS A NEGOTIATED SETTLEMENT I URGE THEM TO SET ASIDE PRECONDITIONS, AND THEIR ABORIGINAL CLAIMS CASES, AND BEGIN DIRECT DISCUSSIONS.

IF THE BAND WISHES TO PURSUE ABORIGINAL TITLE IN COURT, I URGE THEM TO PROCEED SO THAT THE COURTS CAN FINALLY DECLARE WHETHER TREATY 8 DOES OR DOES NOT APPLY TO THE LUBICON BAND.

FURTHER DELAY SERVES NO ONE.

Minister of Indian Affairs
and Northern Development



Ministre des Affaires
indiennes et du Nord canadien

February 2, 1988

The Honourable James D. Horsman, Q.C.
Attorney General and
Minister of Federal and Intergovernmental Affairs
Legislature Building, Room 320
EDMONTON, Alberta
T5K 2B6

Dear Mr. Horsman:

Alberta is aware that Canada has an unfulfilled obligation under Treaty No. 8 to provide lands for a reserve for the Lubicon Lake Indian Band (the "band"). Pursuant to Section 10 of the schedule to the Constitution Act, 1930 the Government of Canada ("Canada") requests that the Government of Alberta ("Alberta") set aside out of the unoccupied Crown lands transferred to Alberta for Alberta's administration in 1930, such further areas as necessary in order to enable Canada to fulfill its obligation to the band under Treaty No. 8. Accordingly, the quantum of land requested by the Government of Canada for the band's reserve is the result of the application of the following principles:

- A. Land is to be provided up to the total quantum that results from the application of the following criteria which are to be applied against the band's list of members as of March 16, 1987:
 - i) That all persons registered or entitled to be registered as Indians on the Indian Registry as members of the band be counted plus any subsequent births and less any subsequent deaths up to the date when lands for a reserve are surveyed for the first time;

.../2

- 2 -

- ii) From the quantum of land that results from the application of i) above, there shall be deducted such quantum of land or scrip which Alberta can establish to my satisfaction as having been set aside and reserved or issued, as the case may be, in respect of any of the persons or ancestors of persons listed in paragraph i);
 - iii) That all persons who were members of other bands on March 16, 1987 and also claimed by the Lubicon Lake Band as members not be counted;
 - iv) In recognition of the right of Indians described in paragraph i) to choose land in severalty rather than reside with the band as provided for by Treaty No. 8, that, in the event such elections are made, 128 acres shall be deducted for each such election from the quantum of land to be transferred to Canada for the band. It will be ascertained by Canada who, if anyone, will choose land in severalty. In the event that such elections are made, 160 acres will be made available by Alberta to each of those who might choose land in severalty. It is understood that those Indians or those whose ancestors have already received land or scrip may not elect land in severalty;
 - v) Land will not be requested for persons who cannot be registered as Indians by the Indian Registrar; and
 - vi) Validation of actual entitlement for registration as an Indian will be carried out by the Indian Registrar pursuant to the Indian Act.
- B. The 25.4 square mile parcel of land identified for the Band as a reserve in 1940 ("the Original Reserve Lands") should be transferred plus such other additional lands as may be necessary to meet Canada's obligation as described in paragraph "A" above.
- C. Full subsurface rights are to be included in the transfer of lands.

We understand that the application of the criteria set out above would result in a transfer to Canada of about forty-five square miles of land.

.../3

- 3 -

In the absence of a positive response by your government before February 24, 1988, the Government of Canada will pursue its remedies in the courts. In that event, I would ask your government to consider as an interim measure the immediate transfer of the Original Reserve Lands without prejudice to Canada's right to demonstrate by legal action that the band is entitled to a greater land area. This interim reserve area would permit the Government of Canada to begin immediately on its program of capital construction within the Original Reserve Lands.

As you are aware, confidentiality restrictions presently prevent the Government of Canada from releasing the joint genealogy study completed by the band and the federal government in 1984. I regret that neither Canada nor Alberta will have this information available in establishing a reserve area.

I am ready at any time to discuss with you any concerns the Province of Alberta might have that my request in these special circumstances could constitute a precedent in dealing with other bands.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Bill McKnight". The signature is stylized and includes a large initial "B" and a flourish at the end.

Bill McKnight



Indian and Northern Affairs Canada
Affaires indiennes et du Nord Canada

WITHOUT PREJUDICE

Your file / Votre référence

Our file / Notre référence

February 10, 1988

Mr. James O'Reilly
Byers Casgrain
Barristers and Solicitors
1 Place Ville Marie, Suite 3900
MONTREAL, Québec
H3B 4M7

Dear Mr. O'Reilly:

On February 3, 1988, the Minister of Indian Affairs and Northern Development delivered to Alberta a formal request for reserve land for the Lubicon Lake Band. This request is based on a formula developed by Canada to deal fairly and equitably with this longstanding claim.

This formula is not negotiable and should Alberta refuse to comply, litigation must follow. In either event, Mr. McKnight has asked Mr. Horsman, the Attorney General of Alberta, to consider transferring immediately the 25.4 square mile original reserve area to Canada as an interim measure without prejudice to negotiations or any court action.

While land issues may require an extended period of litigation to reach a satisfactory conclusion, Canada feels that the parties should be able to settle all other aspects of this claim. To start negotiations on these matters, Canada wishes to enter into negotiations and hereby makes the following offer to your client:

1. Reserve Planning

Canada will provide \$300,000 for reserve planning purposes in order to maximize benefits flowing from this offer.

.../2

- 2 -

2. Treaty Benefits

Canada is prepared to pay \$500,000 for the loss of other Treaty Benefits.

3. Health Facilities

The Department of National Health & Welfare is prepared to commit \$350,000 towards a permanent facility on the reserve.

4. Capital Construction Program

Canada is prepared to negotiate with the band for a capital construction program. This program would include the provision of housing and community infrastructure including water, sewers, roads, electrification and educational facilities. The band's immediate co-operation is necessary to expedite construction at the earliest possible date.

5. Self-Government

Canada is prepared to enter into negotiations regarding self-government for the Lubicon Lake Band.

6. Past Oil and Gas Revenues from Original Reserve Area

Owing to the unique circumstances of this claim, Canada is prepared to canvas with Alberta the subject of past lease and rental payments accumulated by the province from the original reserve area since 1940. The band should be aware that pursuant to Section 11 of the Constitution Act, 1930 Alberta may be entitled to 50% of all monies gained from the sale, lease or other disposition of minerals on Indian reserves transferred after 1930.

7. Wildlife Management

Canada is prepared to jointly develop with the band and Alberta a program which would allow the band a voice in the management of wildlife in a specific area beyond the reserve proposed in this offer.

.../3

- 3 -

8. Hunting and Trapping

Canada is prepared to negotiate with the band and Alberta for the modification of the existing Alberta Trappers' Compensation Program for the ongoing benefit of the band or for the establishment of a new program for the ongoing benefit of the band.

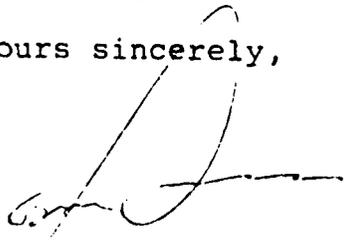
9. Economic and Training Opportunities

Canada is prepared to negotiate a package of economic and training programs within federal resource allocations so as to better meet the band's needs and, as elements of this issue fall with provincial jurisdiction, to negotiate with Alberta for the provision of an integrated package to the band.

Items 6, 7, 8, and 9 are within provincial jurisdiction and will of necessity require the participation of the Province of Alberta.

Please contact me if the band wishes to deal with any of the foregoing items in formal negotiations.

Yours sincerely,



J. Brian Malone
Federal Negotiator

B8865/27

MONTREAL

POST OFFICE BOX 1270
POSTAL STATION B
MONTREAL, QUEBEC H3B 3K9
SUITE 3900, 1 PLACE VILLE MARIE
TELEPHONE (514) 878-8800
TELECOPIER (514) 866-2241
TELEX 05-24195 CABLE "MAGEE"

BYERS CASGRAIN

BARRISTERS AND SOLICITORS

OTTAWA

TENTH FLOOR
GILLIN BUILDING
141 LAURIER AVE. WEST
OTTAWA, CANADA
K1P 5J3
TELEPHONE (613) 236-9442
TELECOPIER (613) 236-7942

MAR 7 9 15 AM '88

DIRECT DIAL:

WITHOUT PREJUDICE

Montréal, February 29, 1988

Mr. J. Brian D. Malone
Federal Negotiator
Lubicon Lake Band Claim
c/o Mr. Fred Drummie
ADM IAB
21st floor, 10 Wellington Street
Hull, Québec

Dear Mr. Malone:

This has reference to your letter of February 10, 1988 and is to confirm our telephone conversation of February 16, 1988 and Mr. Fred Lennarson's telephone conversation with you on February 17.

The Band's position respecting negotiations is public and has been conveyed to you personally on a number of occasions.

Moreover, any negotiations with or proposals to the Band which exclude the Band's involvement in the crucial issue of land are unacceptable to the Band. The proposal for negotiations and the offer mentioned in your letter of February 10, 1988 have therefore been rejected by the Band.

It is also of interest to note that the "offer" to our client, the Lubicon Lake Band, is not only a repudiation of the Fulton Discussion Paper, which was to serve as the basis of any negotiations; it is also inferior to the proposals, in respect of the items covered, made by Mr. Tassé in July of 1986 which were communicated to the Human Rights Committee of the United Nations and were referred to in the misleading document published by External Affairs in the Fall of 1987.

Mr. J. Brian D. Malone
February 29, 1988
Page 2

With respect to any possible interim transfer of the 25.4 square miles original reserve area without prejudice to negotiations or any court action, our client has instructed us to inform you that it is prepared to consider any proposal in connection with the transfer of reserve land if and when made and without prejudice to its rights.

As we have already informed you, the proposed community of the Band is situated outside the 25.4 square miles originally set aside as a reserve.

Moreover, you will appreciate that the circumstances of the dispute as to the process of negotiations, the lack of consultation with the Band and the totally unknown features or conditions of any interim reserve land proposal prevent our client from taking a more formal position on this matter at this time.

Yours very truly,

BYERS CASGRAIN


James O'Reilly

JOR/mb



Indian and Northern
Affairs Canada

Affaires indiennes
et du Nord Canada

March 3, 1988

Your file *Votre référence*

Our file *Notre référence*

Chief Bernard Ominayak
Lubicon Lake Band
3536-106 Street
EDMONTON, Alberta
T6J 1A4

Dear Mr. Ominayak:

Your counsel, Mr. James O'Reilly, wrote to me on February 29, 1988 indicating that your band is prepared to consider any proposal in connection with the transfer of reserve land if and when made and without prejudice to its rights. Armed with this information I was able to carry out useful discussions with Alberta's negotiator, Mr. John McCarthy, last Tuesday and Wednesday.

I can advise you that Alberta is prepared to enter into an interim agreement whereby the province would transfer to Canada 25.4 square miles, including mines and minerals, subject to the following:

- (a) The offer and any subsequent transfer of land would be "without prejudice" to the positions of all parties involved, including your band; and
- (b) Prior to any transfer, Canada will be responsible for satisfying third party surface and subsurface interests.

You should also be aware that Alberta would be prepared to negotiate an adjustment of the location of the 25.4 square mile area, which the province offered in 1985 in order to accommodate your band's desire to establish a community on the point of the south shore of Lubicon Lake and the federal government's recent offer to finance the capital infrastructure required to establish a permanent community. In that connection, I wish to consult with you and Mr. O'Reilly as to the locality which may be suitable and open for selection.

Yours very truly,

J. Brian Malone
Federal Negotiator

Canada

MONTREAL

POST OFFICE BOX 1870
POSTAL STATION D
MONTREAL QUEBEC H2D 3K0
SUITE 2000, 1 PLACE VILLE MARIE
TELEPHONE (514) 870-0000
TELECOPIER (514) 800-2244
TELEX 00-24100 GADLQ "MAGRE"

BYERS CASGRAIN

BARRISTERS AND SOLICITORS

OTTAWA

TENTH FLOOR
BILLYN BUILDING
141 LAURIER AVE. WEST
OTTAWA, CANADA
K1P 6J2
TELEPHONE (613) 838-8448
TELECOPIER (613) 838-7048

DIRECT DIAL

WITHOUT PREJUDICE

Montréal, March 11, 1988

Mr. J. Brian D. Malone
Federal Negotiator
Lubicon Lake Band Claim
c/o Black & Company
Suite 1600, 830 - 8th Avenue S.W.
Calgary, Alberta
T2P 2S8

Dear Mr. Malone:

As you have requested, the following is to confirm in writing the information transmitted to you by my secretary, Manon Blanchot, today, March 11, 1988.

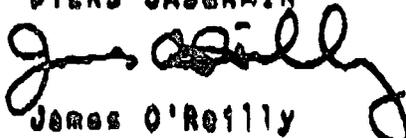
Chief Bernard Ominayak asked me to inform you that the Band takes the position that any discussions pertaining to land must take place in the context of bilateral negotiations between the Federal Government and the Band with the involvement of the Honourable E. David Fulton as an independent mediator responsible to the Parliamentary Committee on Aboriginal Affairs and Northern Development, or, alternatively, under the Tribunal Process proposed by Premier Don Getty.

I shall therefore be returning the maps you gave to me yesterday while I was at the Justice Building in Ottawa on other business.

Chief Ominayak asked me to transmit this message to you immediately in order to avoid any possible misunderstanding.

Yours very truly,

BYERS CASGRAIN


James O'Reilly

BLACK & COMPANY

BARRISTERS & SOLICITORS

ROBERT G. BLACK, O.C.
G. PATRICK H. VERNON, O.C.
J. BRIAN MALONE
D. MURRAY PATON
EDWARD P. KERWIN
PETER D. QUINN
KEITH F. GROVES
STEPHEN D. A. CLARK
CHERYL L. JAMES
CAROLYN DAHL REES
BRUCE E. HARVEY
DAVID F. PHILLIPS
DONALD M. TODESCO

BASIL R. CHEESEMAN, O.C.
L. THOMAS FORBES, O.C.
BRYAN D. NEWTON
NEIL G. CAMERON
RICHARD A. SHAW
BARBARA E. ROMAINE
DAVID W. ROSS
DONALD J. BLACKETT
CLIFFORD D. JOHNSON
CLAUDIA L. MCKINNON
KENNETH R. MCKINNON
DALE E. SKINNER

LEONARD B. BANNICKE
JAMES C. MCCARTNEY, O.C.
DOUGLAS S. EWENS
ROSS O. DRYSDALE
G. BLAIR COWPER-SMITH
BRADLEY T. MCMANUS
WILLIAM H. SMITH
J. GLENN FRIESEN
BRIAN C. KELSALL
STEPHEN R. MURISON
DOUGLAS G. COLE
KAREN L. WIWCHAR

SUITE 1600
530 EIGHT AVENUE S.W.
CALGARY, ALBERTA
T2P 3S8

TELEPHONE (403) 234-7200
FACSIMILE (403) 234-7208
TELEX 03-822046

COUNSEL: JOHN B. ZAOZIRNY, O.C.

March 16, 1988

Mr. John T. McCarthy
MacLeod Lyle Smith McManus
Barristers & Solicitors
2200,, 250 - 6th Avenue S.W.
Calgary, Alberta
T2P 3H7

Dear Mr. McCarthy:

Re: Lubicon Lake Indian Band Settlement Negotiations

You have asked that I outline for you the Federal Government's position in regard to the negotiating process to be used to resolve the Lubicon Lake Band claim.

On March 11, 1988 the Band's lawyer James O'Reilly wrote to inform me that "the Band takes the position that any discussions pertaining to land must take place in the context of bilateral negotiations between the Federal Government and the Band with the involvement of the Honourable E. Davie Fulton as an independent mediator responsible to the Parliamentary Committee on Aboriginal Affairs and Northern Developments, or, alternatively, under the Tribunal Process proposed by Premier Don Getty."

Canada's response to this ultimatum is as follows:

(a) The Independent Mediator

Canada and Alberta have already rejected the involvement of E. Davie Fulton on the basis that he has already expressed a public opinion and is not indifferent between the Band and both governments. In addition, Canada will not accept the concept of a mediator who has a reporting function. The basis of this refusal is that such public reporting waives the normal "without prejudice" protection that exists for all litigants in settlement discussions, with the result that all settlement proposals could be subsequently disclosed in open

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court. One should not lose sight of the fact that Fulton's fact finding report was originally confidential and "without prejudice", yet it was mysteriously leaked to the press in 1986.

(b) The Getty Tribunal Process

On March 10, 1988, Mr. Ivan Whitehall, Q.C. and myself met with Mr. O'Reilly to hear an explanation of the Band's position relative to the Premier's proposal for a mediation tribunal.

The essence of their position is that the Band will only discuss land issues with the Federal Government and that those discussions must revolve around aboriginal title. In other words, Canada must be prepared to make a new treaty with the Band in 1988 and ignore Treaty No. 8 signed in 1899. This is unacceptable to Canada, as under Canadian law, the questions of aboriginal title must of necessity involve primarily the province that owns the land. Further, Canada's position is that the Lubicon Lake Band is subject to Treaty No. 8. Clearly, no mediation tribunal could negotiate a settlement with Canada and the Band on a matter of provincial jurisdiction.

Secondly and equally important is the Band's insistence that the mediation tribunal bind Canada and the Band; a concept contrary to Canadian law, as a minister of the Crown cannot delegate his statutory duty to a third party.

Thirdly, the process as presented by the Band would not involve Alberta and therefore Alberta's rights and obligations would remain unsettled.

Lastly, the Band refuses to consider dropping its United Nations grievance or the cluster of lawsuits that it has filed in the Canadian courts. In summary, instead of bringing certainty and finality to the negotiating process, the proposed mediation tribunal would become just another forum to confuse issues further and delay final settlement.

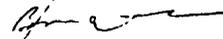
We look forward to our meetings next week to determine whether the Province's genealogical information is sufficient to define Canada's and Alberta's legal position under Treaty No. 8 in regard to land. In the event that this is not possible the matter will be referred to the Alberta courts; a forum that can

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adjudicate a binding settlement. Canada would be prepared to approach Chief Justice Moore for an Order directing expedited discoveries and an early trial date. Obviously, your client's cooperation would be needed in that regard.

Yours very truly,



J. Brian Malone, Q.C.
Federal Negotiator

JBDM/evm

Government
of Canada

Gouvernement
du Canada

news release

Date

For release

1-8806

Lubicon Lake Band Land Claim

OTTAWA (March 3, 1988) -- Yesterday, the Governments of Canada and Alberta reached an interim agreement on the Lubicon Lake Band land claim.

"In the interest of achieving an equitable and just settlement for the Lubicon Lake Band, Alberta has offered to transfer to Canada a 25.4 square mile area including mines and minerals. This transfer of land would be "without prejudice" to the positions of the parties involved, and would not affect the right of the band to seek additional reserve lands through negotiation or court action", explained Jim Horsman, Alberta Attorney General and Minister of Alberta Federal and Intergovernmental Affairs.

Additionally, Alberta is prepared to adjust the location of the 25.4 square mile area, which the province offered in 1985, in order to accommodate the Band's desire to establish a new community on the point of the south shore of Lubicon Lake. Canada will immediately confer with the band on the actual boundaries of the proposed interim reserve area.

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Canada

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As soon as the transfer is completed, Canada will set aside the land as a reserve for the Lubicon Lake Band. "With this reserve, band members will begin building a community and identifying economic development opportunities. We're prepared to start putting in the roads, and water and sewage systems; building their homes, a school, a health care station, and other facilities," Bill McKnight, Minister of Indian Affairs and Northern Development, stated. "Canada also will accept responsibility for satisfying reasonable third party surface and subsurface interests through various arrangements with those involved. Both governments feel it is important that affected third parties, including the Métis, be given fair consideration and compensation.

Both governments are pleased that a significant step has been taken as a result of negotiations to date and are committed to continuing this process.

- 30 -

For further information, contact:

Pam Forward
Special Assistant, Media Relations
Office of the Honourable Bill McKnight
(819) 997-0002

Barb Deters
Executive Director, Communications
Alberta Public Affairs Bureau
(403) 427-4806

ORGANISATION DES NATIONS UNIES A GENÈVE
CENTRE POUR LES DROITS DE L'HOMME



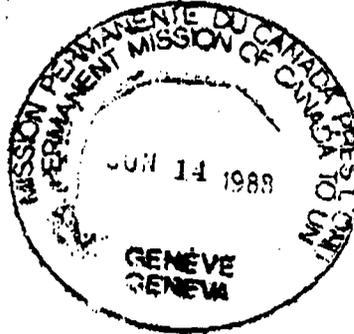
UNITED NATIONS OFFICE AT GENEVA
CENTRE FOR HUMAN RIGHTS



Télégrammes: UNATIONS, GENEVE
Télex: 28 98 98
Téléphone: 34 80 11 3102 11
REF. N°: G/SO 215/51 CANA (38)
(à rappeler dans la réponse)
167/1984

Palais des Nations
CH-1211 GENEVE 10

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The Secretariat of the United Nations (Centre for Human Rights) presents its compliments to the Permanent Mission of Canada to the United Nations Office at Geneva and has the honour to transmit herewith, for information and in order to complete the files of the State party, the text of two further letters, dated 16 February and 28 March 1988, and enclosures, concerning communication No. 167/1984 (B. Ominayak and the Lubicon Lake Band v. Canada), which is before the Human Rights Committee under the Optional Protocol to the International Covenant on Civil and Political Rights.

ALG 13 June 1988

ACC. 76
FILE 45-CDA-13-1-3-Lubicon Lake Band DOSSIER

*2 copies
7-11 agents*

VAN NESS, FELDMAN, SUTCLIFFE & CURTIS

A PROFESSIONAL CORPORATION
1050 THOMAS JEFFERSON STREET, N. W.
SEVENTH FLOOR
WASHINGTON, D. C. 20007
(202) 298-1800
WRITER'S DIRECT DIAL NUMBER

S. LYNN SUTCLIFFE
HOWARD J. FELDMAN
WILLIAM J. VAN NESS, JR.
BEN YAMAGATA
ROBERT G. SZABO
GRENVILLE GARSIDE
ROSS D. AIN
ALAN L. MINTZ
ROBERT R. NORDHAUS
CHARLES B. CURTIS
ADAM WENNER
PETER D. DICKSON
JARY D. BACHMAN
EUSAN TOMASKY

LISA A. SHAPIRO
CYNTHIA INGERSOLL
JESSICA S. LEFEVRE
LYNN MINNA
MARGARET A. MOORE
DONALD F. SANTA, JR.
MICHAEL A. SWIGER
KYLE J. ZIMMER
SAM KALEN
BRUCE S. DEMING
ANTHONY A. TARGAN
JOANNE P. DUDLEY
BENJAMIN L. ISRAEL*
ANTHONY WILSON*
STEPHEN C. POTIS*
NOREEN M. TAMA*

OF COUNSEL
HOWARD ELIOT SHAPIRO
ARTHUR JOHN ARMSTRONG
JACOB J. LEW
*NOT ADMITTED IN DISTRICT OF COLUMBIA

February 16, 1988

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PAGE 3 OF 1 DE 27

Mr. Jakob Th. Moller
Chief, Communications Unit
Center for Human Rights
Palais des Nations
CH-1211
Geneve 10, SWITZERLAND

Dear Mr. Moller:

Thank you for your recent transmittal. Enclosed please find copies of several news articles pertaining to Canada's recent announcement of its agreement to lease a large tract of land in Alberta, including land claimed by the Lubicon Lake Band, for logging and timber development.

Sincerely,

Jessica S. Lefevre
Jessica S. Lefevre

Enclosures

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Canada Alberta

News Release/Communiqué

N.R. 055

FOR RELEASE: Monday, February 8, 1988

MAJOR DIVERSIFICATION INITIATIVE WITH NEW \$500 MILLION PULP MILL APPROVED FOR PEACE RIVER AREA

EDMONTON -- Premier Don Getty and Forestry, Lands and Wildlife Minister LeRoy Fjordbotten today announced provincial government approval for Dalshowa Canada Co. Ltd. to construct a major greenfield bleached kraft pulp mill 16 km north of the Town of Peace River. The mill will cost more than \$500 million, and will create almost 2,000 new jobs.

The new plant will be the largest single user of aspen. It will create 630 mill and woodland jobs, and 1,350 indirect jobs. Design engineering and detailed planning for the plant will begin in the spring of this year and the mill is expected to start operating in September, 1990. Pulp mill construction will require 1600 man years with a peak manpower requirement of approximately 1300 early in 1990.

Premier Don Getty said, "This major investment by Dalshowa, its largest overseas investment ever, will provide vital development and employment opportunities for Northern Alberta and is indicative of our government's commitment to the forest industry sector of our economy and to our overall economic diversification strategy."

Mr. Fjordbotten said, "The Alberta government will be building rail and road access and other infrastructure to cost \$68.2 million over the next five years, a necessary requirement to proceed in this relatively remote location. Lack of such access has long been an impediment to development of the forest industry in Northern Alberta."

- more -

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MAJOR DIVERSIFICATION INITIATIVE ...

PAGE TWO

The federal Western Diversification Office at the same time announced a \$9.5 million contribution to facilitate Daishowa's infrastructure leading to the mill gate.

"The Western Diversification Office is pleased to assist in facilitating Daishowa's infrastructure development for this major forestry project," stated Stan Schellenberger, Parliamentary Secretary to the Hon. Bill McKnight, Federal Western Diversification Minister. "This project demonstrates how two governments can work together with the private sector to make a significant contribution towards the development and diversification of the Alberta economy."

The Vice President and General Manager of Daishowa Canada Co. Ltd., Mr. Koichi Kitagawa said, "The majority of the pulp produced will be shipped to Japan for consumption at Daishowa's paper mills, however, some volumes will be available for sale in the domestic and international markets. One of the strong features of this location is the excellent opportunities for a major expansion of bleached kraft pulp based on the abundant supply of available timber resources."

"Environmentally, the mill will be the cleanest bleached kraft pulp mill in Canada, and it will be one of the most pollution-free in North America," said Mr. Fjordbotten.

Both Premier Getty and Mr. Fjordbotten congratulated Daishowa for demonstrating its confidence in the province of Alberta, its economy and its people. The Premier concluded, "This is a very exciting project and we look forward to many others. The Alberta government is committed to encouraging utilization of the province's timber resources and fully recognizes the contribution to Alberta's economy that forestry makes."

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MAJOR DIVERSIFICATION INITIATIVE ...

PAGE THREE

For reference:

Geoff Davey
Office of the Premier
Edmonton, Alberta

(403) 427-2281

Koichi Kitagawa
Vice President and General Manager
Daishowa Canada Co. Ltd.
650 West Georgia Street
Vancouver, B.C. V6B 4N8

(604) 689-1918

Hugh Calder
Public Affairs Officer
Public Communications
Forestry, Lands and Wildlife

(403) 427-8636

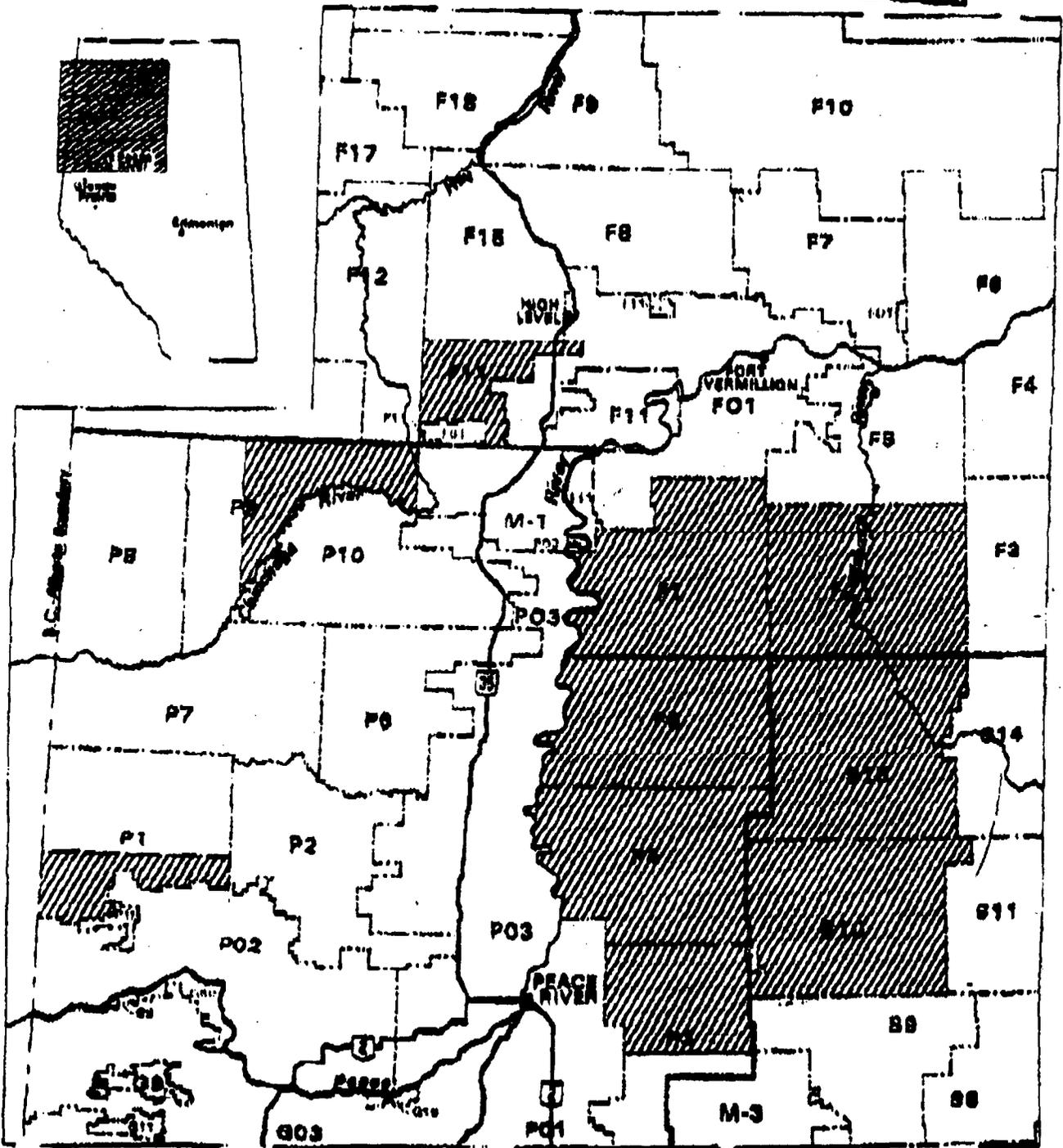
Anne Mauch
Western Diversification Office
Edmonton, Alberta

(403) 420-4164

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DAISHOWA CANADA CO. LTD.

 **PROPOSED FOREST MANAGEMENT AREA**

Lobicon area now off-limits

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PAGE 8 OF IDE 27

By Kathy Kerr
and Mark Lowey
(News Staff Report)

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EDMONTON — The Lobicon Lake Indian band's proposed reserve will be off-limits to logging until the band's 40-year claim is settled, Forestry Minister Laloy Fjordhotten said Tuesday.

The provincial government has granted timber rights to Japanese forestry firm Daishowa on a huge tract of land east of Peace River. It encircles 66 square kilometres that the province recognizes as a future Lobicon reserve.

But Fjordhotten said there will be no logging on a larger disputed area of about 156 square kilometres, including the 66-square-kilometre parcel. Daishowa will be given an alternate cutting area until the claim is settled, he said.

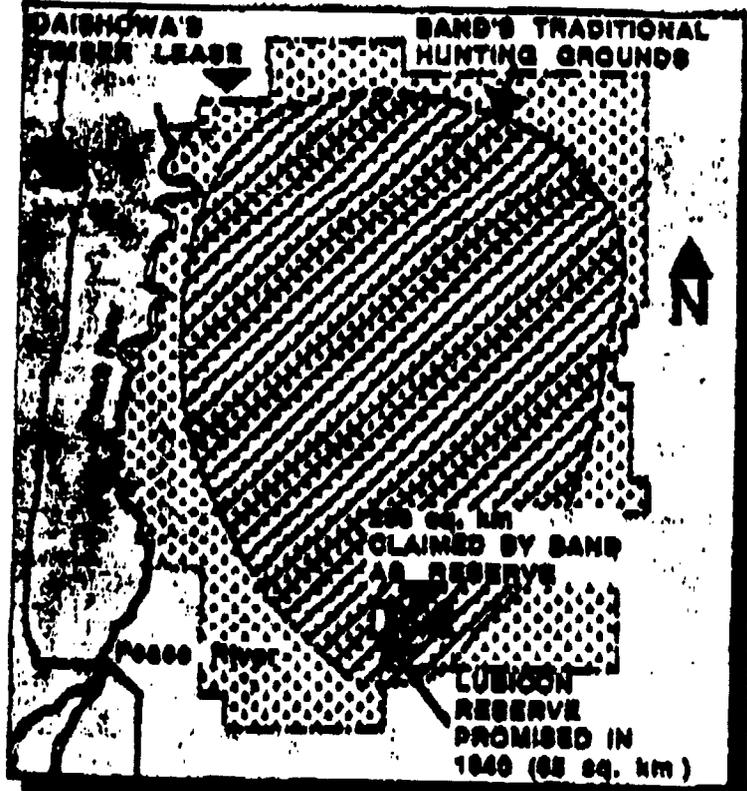
The Lobicons claim a reserve of about 233 square kilometres.

But Fjordhotten said the province is operating on Ottawa's recommendation that 156 square kilometres would be the maximum for the reserve.

"There could be all kinds of claims on all kinds of land. It was our best judgment to move forward with that," he said. "There wouldn't be any cutting of timber in that particular area that's been recommended by the federal government."

The Lobicons were not informed of the forestry management area, expected to provide feedstock for Daishowa's \$500-million pulp mill near Peace River — scheduled to be operating by 1990.

Lobicon chief Bernard Omi-nayak accused the province of



News Service, Calgary Herald

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rying to finish off his Cree band, which is on welfare and afflicted by tuberculosis.

"I think the province's intention is to come in for the kill," he said, adding the traditional trapping and hunting economy has already been destroyed by intensive oil and gas development.

"They know what they're doing to our people, and yet they go ahead and do something like this. It just brings us closer to confronting these guys on the ground."

Ominoyak said if the province permits logging, it will ruin any chance of the band accepting the 8-square-kilometre parcel as an interim settlement with no strings attached.

"There's no way that we're going to allow anybody to come

in there and knock our trees down," he said.

But Fjordbottom said he sees so bad faith in awarding the timber rights while the Lubicon claim is still in dispute.

"Once the land claim is settled there's an economic opportunity for the Lubicons, in that they can approach Daishowa to sell some of that timber resource to the plant."

There will also be job opportunities during the construction and operational phases of the pulp plant, Fjordbottom said.

Lubicon adviser Fred Lennarson blasted the province's tactic, which he said is consistent with previous actions to undermine the band.

The Alberta government first passed retroactive legislation so the Lubicons couldn't file a claim against the land, then tried

to establish a provincial hamlet in the area, Lennarson said.

He noted that Indian Affairs Minister Bill McKnight is also minister for the Western Diversification Fund, which will contribute \$9.5 million to the Daishowa project. The province will spend \$80.8 million on roads and railway lines.

"I do not think either level of government is interested in negotiating a settlement. I think the name of the game is crush the Lubicon," Lennarson said.

Ed Gillespie, assistant director of timber management for the province, refused to say why timber rights were approved when the land is being contested. But he said Ominoyak's allegation it was done deliberately to wipe out the band is ridiculous.

Daishowa spokesman Tom Ramenka said the province told

the company the Lubicon claim was being negotiated. He said he didn't know the claim was 48 years old.

Daishowa would respect any reserve boundaries once the claim is settled, and could find sapwood trees in other areas if it isn't settled, he said.

New Democrat native affairs critic Leo Piquette blasted the province for resorting to the job creation argument in infringing on the band's claim. The disputed land is not the only available timber land, he said.

Piquette said the province should set aside at least the 235 square kilometres the Lubicons want for their reserve.

Liberal leader Nick Taylor said the entire development should have gone through extensive public hearings considering the size of the management area involved.

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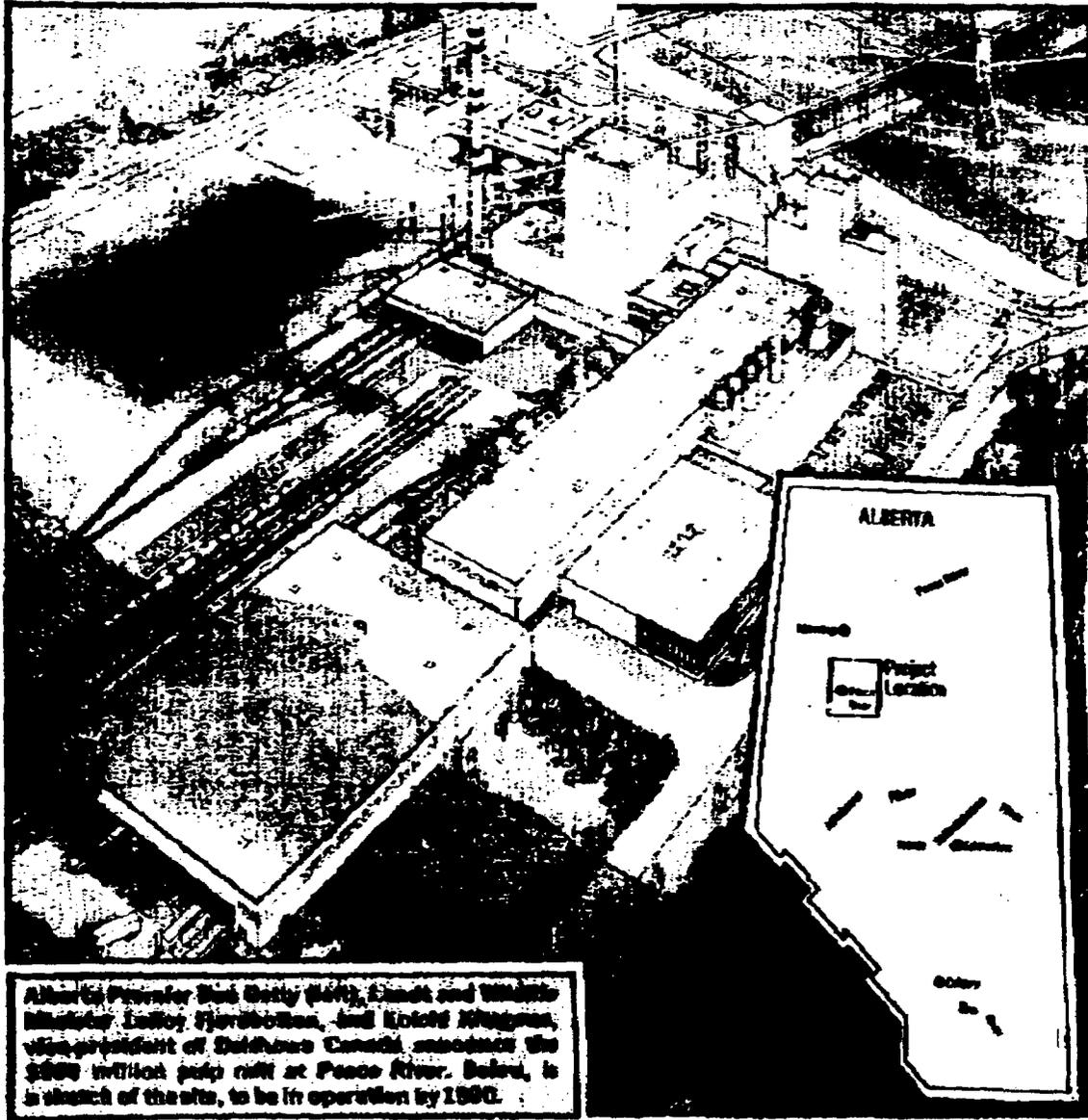
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NEWS

The New Democrats



Room 205, Legislature Building, Edmonton, Alberta T5K 2B6

(403) 427-2236

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LAND FOR LUBICONS, NOT JAPANESE BUSINESS

Leo Piquette, MLA Athabasca - Leo La Biche
Official Opposition Native Affairs Critic

John Younie, MLA Edmonton Glengarry
Official Opposition Forestry Critic

12:00 noon, Tuesday, February 9, 1988

EDMONTON

The Getty government should not be giving disputed Lubicon Lake band territory to Japanese business interests said New Democrat MLAs Leo Piquette and John Younie.

"The Lubicon band has been guarding this land against development by anyone, but the government has callously awarded it to foreign business interests without even consulting or informing band leaders."

The Japanese firm of Daishowa Paper Manufacturing Co. Ltd. has been awarded forestry management rights to 29,008 sq. km. of territory that overlies 235 sq. km. disputed by the Lubicon Lake band. Timber from the area will supply the \$500 million pulp and paper mill at Peace River announced yesterday.

"Land claimed by the Lubicons should be immediately pulled out of the lease negotiation arrangement with Daishowa until the land claim dispute is resolved."

"A wildlife management program must be put in place to ensure the integrity of the environment surrounding land claimed by the Lubicons so that the livelihood of the band is not destroyed along with the forest."

-ND-

For additional information contact (427-2236):

Leo Piquette, MLA
John Younie, MLA

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MINISTER ACCUSED OF BREACH OF TRUST

By PETER STOCKLAND

Star Ottawa Bureau

OTTAWA — Indian Affairs Minister Bill McKnight was accused yesterday of being in a "breach of trust" for giving Alberta \$15 million to harvest pulp wood in land claimed by the Lubicon Indians.

And NDP native affairs critic Jim Fulton lambasted both McKnight and Alberta Premier Getty yesterday for "writing off" the Lubicon band simply to buy votes in Alberta.

"It's the crassest, lowest form of politics by Getty and McKnight that you can find," Fulton fumed. "What they have done is basically written off the Lubicon band because there are more votes in western diversification."

In the Commons, Fulton and Liberal counterpart Keith Penner said McKnight owes Parliament an explanation for threatening to sue Alberta over the band's land claim one week, then handing the province \$15 million a week later for a pulp mill that will harvest trees on the same land.

Monday, McKnight turned over the grant from the Western Diversification Fund to Alberta. The money will be used for infrastructure: a Japanese firm needs to operate a \$300-million pulp mill 16 km north of Peace River.

The plant, owned by Daishowa Canada Co. Ltd., will get its aspen and poplar feedstock from a huge tract of land which completely surrounds the 658 sq. km. of land that the Alberta government earmarked as the Lubicon reserve.

McKnight wasn't in the Commons yesterday to answer questions on the issue, and acting native affairs minister John Epp would say only that he's been told the harvesting area for the mill doesn't involve land claimed by the Lubicon.

However, Fulton dismissed that as a "non-answer," and referred the acting minister to an Edmonton Star story quoting Alberta Forests Minister LeRoy Fjardhoften as confirming the land involved is part of the Lubicon dispute.

The B.C. New Democrat then rose on a point of privilege and charged McKnight has committed a "breach of trust" by being both native affairs minister and the minister responsible for the Western Diversification Program.

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Bargaining in bad faith?

Talk about bargaining in bad faith! To the extent that the Alberta government can be said to be bargaining at all over the land claim of the Lubicon Lake Cree band, the phrase is totally appropriate.

While pretending to negotiate with both the Lubicon band and Ottawa, the government of this province has concluded a forest-management agreement which gives a Japanese firm control of the surface rights on land claimed by the band.

The very land which is the subject of the supposed negotiations with Ottawa and the band.

For shame!

Not only is this a betrayal of both the other parties, but it was absolutely unnecessary.

The Lubicon claim amounts to 230 sq. km. The forestry block comprises 29,000 sq. km.

Don't anyone try any song and dance to the effect it would have been impossible to exclude the Lubicon claim from the 29,000 sq. km. and tack on another 230 sq. km. somewhere else.

Don't bother trying to convince me that without that particular 230 sq. km. the Japanese deal would have collapsed.

Never more downright foolish

Forestry Minister LeRoy Fjordbotten has never sounded more downright foolish than when he said "They (the Lubicons) are claiming 10 per cent of the province."

Unless it was when he went on to add that "Holding up the creation of 2,000 jobs because they are claiming 10 per cent of the province is not reasonable."

Listen to who's talking about reason.

Fjordbotten says that in one breath, and in the next he says there is no conflict with the Lubicon land claim because more forest land can be set aside for the forestry agreement.

So why not set it aside now, and allow the Japanese to play Paul Bunyan on any part of the claim not included in the final award? (After all, the 230 sq. km. was allegedly "earmarked" by the government in 1936.)

That would make some sort of sense. Instead, the government has behaved stupidly — and not least with respect to its own timing.

Anyone else trying to put over a fast one would have waited until the Olympic Winter Games were over.

Instead, the government has handed the Lubicon band more fuel with which to fire its protest against the Games.

This gang can't even pull a sneaky trick properly.

Fjordbotten says he expects the natives will work out a forest-harvesting agreement with the Japanese company covering the trees on their lands.

Which lands are those, Leroy?

How in the name of time are they supposed to negotiate the harvesting of aspen poplar or anything else on land they don't own?

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And Ottawa's not blameless

Ottawa is not entirely blameless in this matter. While threatening to take Alberta to court in order to force a settlement, the national government has become a party to an arrangement which calls for it to pay the Japanese firm certain "infrastructure" grants.

The worst feature of the whole thing, though, is that while the province continues to take royalty on the petroleum underneath whatever land is finally awarded the Lubicon band, it now plans to take royalty on the forest cover as well.

This province agreed in 1930, when it got control of the public lands held up until then by Ottawa, that reserve allocations called for by the settlement of any native land claims still unresolved at that time would come out of those public lands.

In the late '30s Alberta and Ottawa reached an agreement respecting the Lubicon claim. But after almost 50 years the band still has no reserve land.

Fifty years!

It happens that I feel the Lubicon Cree, by boycotting the Winter Olympics, are misdirecting their protest energies. But that's beside the point here: Surely no one ever had stronger provocation to protest.

And if they didn't have grounds before they sure as hell have now.

Shame, shame on the government of Alberta.

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Two PCs want Fulton as Lubicon mediator

Journal Staff Writers

OTTAWA — Two Tories on a parliamentary committee turned a deaf ear to Indian Affairs Minister Bill McKnight Tuesday and recommended that E. David Fulton mediate the Lubicon land claims.

McKnight and the Alberta government oppose the appointment of Fulton, a former judge and former Conservative cabinet minister, because they feel he's prejudiced in favor of the Lubicon Indians.

A spokesman for McKnight said Tuesday the government hasn't changed its view that Fulton won't be asked to get involved.

"...or us to accept a mediator, we have to be satisfied as well as the Lubicon that it's a process that we think will be fair," Greg Fyffe said in an interview.

Fulton studied the Lubicon problem for the government and reported last fall.

Two Tory members of the aboriginal

affairs committee sided with the opposition, saying the 48-year-old land claim has gone on long enough.

Thomas Sulek of the Northwest Territories and Gray St-Julien of Quebec rejected a proposal by their party colleagues to hold off their vote until McKnight and the Alberta government had a chance to present their views to the committee.

St-Julien said those views are well known and there was no indication Alberta would appear before the committee.

In Edmonton, Forestry Minister LeRoy Fjordbotten said he doubts Alberta will agree to the request.

The province is still reviewing the federal government's latest proposal for settling the dispute, he said.

Intergovernmental Affairs Minister Jim Hrusman, responsible for natives, said he wants to hear from the committee before considering its request.

But he rejected the recommendation that Fulton be the mediator. Fulton has already taken a position, he said.

"Would you like to go before a judge who'd already made up his mind?" he asked reporters.

Fulton told the Commons committee he isn't prejudiced, "just sympathetic to the Lubicons, based on the facts."

Liberal and NDP members of the committee also claimed McKnight is in a conflict of interest for providing money to a Japanese pulp and paper project that will remove logs from land the Lubicon claim should be part of their reserve.

Liberal member Keith Penner told the House of Commons Tuesday that

McKnight is clearly in a conflict by supporting the Daishowa project.

Daishowa Canada Co. Ltd. announced Monday it will begin work this spring on a \$500-million pulp mill for Peace River. The federal Western Diversification Office is putting \$9.5 million toward the project.

Penner said McKnight is going to have to decide "whether he is the minister of Indian Affairs honoring the trust obligation that the Constitution gives him or whether he is the minister for western diversification mainly interested in pulp and paper companies."

Lubicon chief Bernard Ominayak said in an interview the Lubicons may ask for McKnight's resignation.

"It's a direct conflict of interest, from our point of view," he said.

"The guy can't even live up to his responsibility, and here they go and do something like that."

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CBC ANNOUNCEMENT

The Alberta Minister of Forestry is defending the decision by the
provincial government to award a logging contract to a private company
in Alberta. The province has awarded logging rights on 27,000 sq
miles of Crown land to a private company. The company is building a pulp
mill near Peace River. The Minister contends that the pulp mill
project will create jobs.

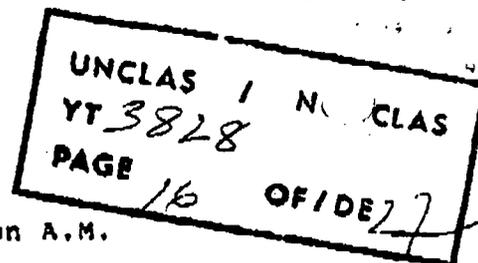
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Transcript of CBC Radio News Broadcast
Tuesday, February 09, 1988

CBC Announcer

The Alberta Minister of Forests is defending the decision by the Province to award timber cutting rights on land claimed by the Lubicon. Alberta has awarded cutting rights on 29,000 sq. kilometers to a Japanese company. The company is building a pulp mill near Peace River. The Minister contends that the pulp mill project will create jobs.



Transcript of CBC Radio News Broadcast, Edmonton A.M.
Tuesday, February 09, 1988

Ruth Anderson, CBC, Edmonton A.M.

Promo Announcement

New plans for a pulp mill near the town of Peace River has been announced. A Japanese company is going to build that pulp mill. But the Chief of the Lubicon Indian Band is very upset about that. He says that the mill is going to be built on land which the Lubicons have claimed. Of course the Lubicons have not settled their land claim yet. A little bit later we'll be speaking with Bernard Ominayak, the Chief of the Lubicon Indians.

Promo Announcement

As was mentioned on the news, there's a new pulp mill planned for near Peace River. The Japanese logging company which plans to build that plans to cut down trees on land in that area. Now this is land that the Lubicon Indians say is theirs. In the next few minutes we'll hear from the Chief of the Lubicon Indians, Bernard Ominayak.

Dennis Sherbanuk, CBC, Edmonton A.M.

The Provincial Government has announced plans to cut down trees on land claimed by the Lubicon Indians. The Daishowa Canada Company will build a \$500 million pulp mill in the Peace River area. The company will have logging rights on a block of forest which includes land the Lubicons say is theirs. Bernard Ominayak is the Chief of the Lubicon Cree.

Ruth Anderson

Good morning, Mr. Ominayak.

Chief Bernard Ominayak, Lubicon Lake Band

Good morning.

Ruth Anderson

How much of the land you claim does this logging agreement cover?

Bernard Ominayak

I'm not sure as to how much it will cover. But what we are sure

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EDMONTON A.M., 04/09/88, page 2

of is that we're not going to allow anybody to come in and cut our trees down within our traditional lands. Judging from the information that we've got so far, I think that there are probably a lot of trees that are outside of our area that this particular company would have access to.

Ruth Anderson

You mean some of it is area that you would traditionally hunt on but is not necessarily in the boundaries of the reserve you're claiming.

Bernard Ominayak

No, what I am saying is that we're not going to allow anybody to take any more resources off our traditional lands.

Ruth Anderson

How are you going to fight this. I mean, you haven't had great success yet fighting for that land you want.

Bernard Ominayak

No, we haven't had any great success. I guess, you know, we've sat back and tried to deal with the Federal Government for the last 48 years and we find ourselves in the situation where both levels of Government are more interested in the resources our lands contain rather than to try to deal with us. The oil development has done a lot of damage already. Now we find that our trees are going to be something that they're interested in.

Ruth Anderson

But Chief Ominayak, I want to know what you'll do? How far would you go to prevent this logging?

Bernard Ominayak

It just depends on how hard the other side is going to push. We basically decided that we're going to start asserting our own jurisdiction. Now they announce this pulp mill and also that they're going to be leasing all the timber rights or trees that are going to be needed for the pulp mill that we have on our traditional lands.

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Edmonton A.M., 02/29/88, page 3

Ruth Anderson

But I'm still not sure how you can fight this. I mean, are you going to resort to violence to stop this latest assault on what you claim is your land?

Bernard Ominayak

Well our preference would be not to get into violence. But again, it all depends on how forceful the other side wants to be. But whatever it takes, that's what we're going to do.

Ruth Anderson

Would you consider any other kind of protest?

Bernard Ominayak

No, I think we're in the situation where we either stand up for what we believe in and also know what is ours. We've tried to utilize the negotiation route and that isn't working.

Ruth Anderson

I know that a lot of your land is not all that good for hunting anymore anyway. Could you not see this is as a job creation project which might help some of the people in your band, if they could get jobs through this project?

Bernard Ominayak

They talk about all kinds of job opportunities or how many jobs it's going to create. But at the same time, these lands are ours. We've never given up our land to anybody. And until they are prepared to sit down with us and start dealing with us in some proper manner, then I don't see how they can keep continuing to take the resources out and not deal with us in any proper manner. —

Ruth Anderson

I was just going to ask you, how is all of this going to affect your claim negotiations with the Federal and Provincial Governments?

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Edmonton A.M., 02/09/88, page 4

Bernard Ominayak

I think both levels of Government thought they would be able to wipe us out when they wiped out the economy of our people and forced them onto welfare but they found out that we're still...(end of tape)...(there and that we're not going to give up).

Ruth Anderson

Thank you, Chief Ominayak.

Dennis Sherbanuk

Lloyd Fjordbotten, the Minister of Forestry Lands and Wildlife, could not be reached for comment this morning.

08 TUESDAY, FEBRUARY 9, 1988

Ottawa, Alberta to

REPORT ON BUSINESS

BEST AVAILABLE COPY

spend \$75 million on mill

UNCLAS / UNCLAS
YT 382-8
PAGE 20 OF 1 DE 27

BY MATTHEW FISHER
The Globe and Mail

EDMONTON

The Alberta and federal governments will spend \$75-million on the infrastructure for a new pulp mill near Peace River in the northwest part of the province.

Alberta will provide Daishowa Paper Manufacturing Co. Ltd. with \$25-million toward the cost of a \$500-million hardwood pulp mill the Japanese company will start building this spring.

Through its Western Diversification Program, the federal Government will contribute \$50-million, the largest single payment the office has made since the fund was created last August by Prime Minister Brian Mulroney.

The government money will go toward building a railway spur line, roads and part of a bridge near the site of the pulp mill, government officials said.

In announcing their approval of

Daishowa Paper Manufacturing Co. of Japan will receive \$65-million from the Alberta Government toward the cost of a new pulp mill in the northwest part of the province. Ottawa will spend \$9.5-million on the mill.

the Peace River pulp mill, Forestry, Lands and Wildlife Minister LeRoy Fjordbotten and Premier Donald Getty defended the Government's contribution, saying it was a successful effort to diversify Alberta's economy.

"We wouldn't spend money if we didn't have to," Mr. Fjordbotten

said. "As the premier says, 'We had to fight for it.'"

The Peace River mill is further proof that Alberta's economy has "turned the corner," Mr. Getty said. "This is a large vote of confidence in the province of Alberta and in the future of our forest resource."

Since it started trying to attract forestry investment to the province in mid-1987, the Alberta Government has approved about \$1-million in projects and will announce "another billion dollars over the next two to three years," Mr. Fjordbotten.

The Daishowa pulp mill will produce 1,000 metric tons a day, or 350,000 tons a year, of bleached hardwood kraft pulp. Set up to use some of the aspen that is in abundant supply in northern Alberta, it will be the largest hardwood operation in Canada, and one of the largest pulp mills of any kind in the country.

About 2,000 workers will be involved in the construction of the

mill, which is to be built 16 kilometres north of Peace River on the west bank of the Peace River.

When completed in 1990, the mill will employ 330 workers. Another 300 workers will be hired to cut trees and transport them to the mill. The Government officials estimated that the plant would generate enough economic activity to indirectly employ another 1,200 workers in the Peace River Country.

Kotchi Kitagawa, president and general manager of Vancouver-based Daishowa Canada Co. Ltd., said "labour is a big factor" in his company's decision to locate in Alberta, but the single greatest reason for locating the plant there was that there was an assured supply of aspen trees. Another important reason was convenient access to a good water supply.

"It is primarily because of the resource," he said. "We considered a similar project in British Columbia," but it did not have any forests capable of sustaining production of 340,000 metric tons of hardwood bleached kraft pulp and softwood.

When asked whether there would be a union at the Peace River plant, Mr. Kitagawa said: "As a company policy, we know which way we'd go," but he refused to elaborate. "We try to follow the Canadian way of doing things," he said. "If we can put in any Japanese management ideas, we will."

Daishowa's Japanese paper mills would consume between 60 and 70 per cent of the Peace River operation's initial output, Mr. Kitagawa

said. Markets in the United States, Canada, Southeast Asia and Europe would share the rest of the output equally. It was the largest investment overseas that Daishowa has yet made.

Daishowa's primary consultant on the project, H.A. Simons of Vancouver, would be retained during the construction and startup of the plant. Other consultants from Alberta would also be hired, Mr. Kitagawa said. Construction would begin this spring with the target date for the plant opening set for August or September, 1990. Negotiations to purchase materials and machinery for the plant are to be undertaken immediately with procurement offices in Peace River and Edmonton. Between 20 and 50 per cent of the capital cost would be spent in Alberta.

All the speakers at yesterday's announcement said the mill will be the cleanest and most environmentally safe in Canada.

Mr. Fjordbotten said negotiations to build a long-awaited newspaper mill at Whitecourt, Alta., are continuing.

"A number of proposals are on the table and we're giving serious consideration to two or three of them," he said. "I think there is room for two or three paper mills in Alberta."

The Forestry Minister denied there were any hangups in the Whitecourt negotiations. "We've made excellent progress, but it will be a time yet before we will be making an announcement."

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THE GLOBE AND MAIL, TUESDAY, FEBRUARY 9, 1988

BEST AVAILABLE COPY

McKnight under fire over pulp mill grant

BY GRAHAM FRAGER
The Globe and Mail
with Canadian Press

OTTAWA

Opposition MPs and a lawyer for Alberta's Lubicon Lake Cree band yesterday attacked Indian and Northern Affairs Minister William McKnight for giving money to a planned \$300-million pulp mill project located on land sought by the band.

On Monday, Mr. McKnight announced a \$3.5-million grant to Dai-showa Paper Manufacturing Co. Ltd. of Japan, which is to start construction this spring on a hardwood pulp mill near the town of Peace River, 400 kilometres northwest of Edmonton.

The federal grant, made in conjunction with a \$65-million provincial grant, is coming from the Western Diversification Program.

"The timber is to be drawn from lands that are traditionally Lubicon lands," said Liberal Keith Penner, MP for Cochrane-Superior in Ontario.

"This western diversification scheme by the minister just shows that he's in a total conflict of interest," said James O'Reilly, a lawyer representing the Lubicon.

"It substantiates what the band has been feeling all along: that he is

more interested in helping Alberta than in discharging his constitutional responsibilities as trustee for the Indians of Canada."

New Democratic Party MP James Fulton, member for Skeena in British Columbia, also said that Mr. McKnight is in a conflict of interest over the decision.

Mr. Fulton unsuccessfully raised the alleged conflict as a question of privilege in the House of Commons.

He then called the decision to help finance the mill "the crassest, the lowest form of politics by Mr. (Alberta Premier Donald) Getty and Mr. McKnight" to present the issue as a choice between jobs and Indians.

To encourage construction of the mill, the Alberta Government has awarded the Japanese forest products giant a massive forest management agreement that includes lands claimed by the destitute Lubicon band.

Alberta Forestry Minister LeRoy Fjordbotten confirmed on Monday night that the huge forestry bloc overlaps the portion of northern Alberta bush that the Lubicon band claims it is entitled to.

"The Lubicon land claim is in that general area," Mr. Fjordbotten said.

The plant's aspen poplar feed-stock will come from a huge tract of land east of the Peace River which completely surrounds the approximately 65 square kilometres of land that the Alberta Government has earmarked as the Lubicon reserve. The Indian band, which was missed by federal officials negotiating treaty settlements in the early 1900s, argues that it is entitled to 230 square kilometres.

Chief Bernard Ominayak said his band will fight attempts to cut trees on land the Indians view as their own. But he did not specify what measures the Lubicons are prepared to take.

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SUPPLEMENT NO. 9 TO COMMUNICATION NO. 167/1984

28 MARCH 1988

COMMENTS ON THE 3 MARCH 1988 RESPONSE OF THE
GOVERNMENT OF CANADA

I. INTRODUCTION

Chief Bernard Ominayak and the Lubicon Lake Band respectfully submit the following comments for the purpose of clarifying certain points raised by the Government of Canada in its Response of 3 March 1988.

II. NEW DEVELOPMENTS

With respect to the "offer" of the Canadian Minister of Indian Affairs and Northern Development of an "interim transfer" to the Band of 25.4 square miles, the Committee may wish to note the following points.

1. The Lubicon Lake Band was not a party to the negotiation of the settlement offer.

Contrary to all prior aboriginal land rights precedent in Canada, Lubicon membership and land rights are being settled between the Minister of Indian Affairs and the Provincial Government with no involvement of the Lubicon people.

2. The offer rests on a highly prejudicial view of the Band's rights under Canadian law and an equally prejudicial determination of Lubicon membership.

In reaching his decision on the "interim transfer," the Minister of Indian Affairs is employing a formula which specifically denies the Band's aboriginal rights and which utilizes criteria for determining Lubicon Band membership never before employed in Canadian history; criteria which would effectively disenfranchise more than half of the Lubicon people, literally tearing Lubicon families apart. In fact, the amount of land offered by the Minister of Indian Affairs is less than half of that which similar groups of aboriginal people in Canada have been allowed to retain for reserve purposes.

3. Canada would negotiate non-land issues with fewer than half of the Lubicon Band.

Assuming Canada honored the Minister's offer to negotiate non-land issues, such as housing, under these circumstances such negotiations would unavoidably result in housing for less than half of the Lubicon people.

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PAGE 23 OF/DE 27

-2-

Canada has leased all but 25.4 square miles of the Band's traditional land for development in conjunction with a pulp mill.

The author of Canada's Response neglects to note that two days before the Minister of Indian Affairs and Northern Development announced his offer of an "interim transfer," the Federal and Provincial Governments announced their approval of a \$500 million pulp mill to be constructed by the Daishowa Canada Company Limited near Peace River, Alberta. Canada's Minister of Indian Affairs and Northern Development, on behalf of the Federal Government, contributed almost \$10 million to this project, which encompasses the entire area of the Lubicon Lake Band's traditional lands with the exception of the 25.4 square miles set aside for the "interim transfer," and which will take a substantial portion of its wood from the traditional lands of the Lubicon Lake Band.

5. The Daishowa pulp mill project wipes out any hope of the continuation of some traditional activity by Band members.

Even if the Band were to accept the Minister of Indian Affairs' offer of a "without prejudice interim transfer," the pulp mill project, which will entail clear-cutting of large tracts in the Band's traditional area, renders futile any attempt by the Band to negotiate a larger land settlement or hunting and trapping rights in its traditional lands for the purpose of pursuing its traditional life style.

6. The Parliamentary Standing Committee on Aboriginal Affairs, the official oversight committee of the Canadian Parliament with respect to such matters, does not support the approach to settlement being taken by the Minister of Indian Affairs and Northern Development.

While the Minister of Indian Affairs was "negotiating" a settlement of the Lubicon issue in total disregard of the recommendations of Mr. E. Davie Fulton, Canada's Parliamentary Standing Committee on Aboriginal Affairs, in two Motions adopted December 17, 1987 and February 9, 1988, urged the Government of Canada to enter bilateral negotiations with the Band, and to involve Mr. Fulton in the negotiations.

III. EXHAUSTION OF DOMESTIC REMEDIES

As has been pointed out in the Band's past submissions to the Committee, the Band's domestic court actions rest essentially on aboriginal rights claims. In light of the decision in Chief Joe

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V. R. (1983), 49 N.R. 198, affirmed S.C.C. (1986), 2 S.C.R. 145, such claims must be brought in Provincial court. On 22 October 1987, the Alberta Court of Queens Bench, the relevant Provincial court, denied the Band's application to add the Federal Government as a party to its Provincial action. Therefore, with respect to its aboriginal rights claims, which represent the essential part of its court actions, the Band has been denied redress against the Federal Government of Canada.

As is pointed out in Section I above, the Government of Canada is not seeking to resolve this matter through negotiations with the Band.

IV. ABUSE OF PROCESS

Canada complains of the Band's use of the media to publicize its position with regard to this matter. The Band respectfully submits the following comments on Canada's charge that the Band has abused the process available to it under the Optional Protocol.

1. The Canadian press and some members of the international press have been actively involved in the public debate surrounding the Lubicon issues.

As the Committee is aware, the pressure of public opinion provides the only effective means available to the Band for seeking a just settlement of its claim. Therefore, while not intending to show disrespect for the confidentiality of the Committee's proceedings, the Band has felt obligated to be as responsive as possible to inquiries by the press. Furthermore, both parties to this action have kept the press informed of their respective statements to the Committee.

2. The Band's submissions to the Committee contain nothing that is not already public information.

In responding to media inquiries which resulted in the 18 and 21 January 1988 newspaper articles, the Band did no more than inform the press of the already public information being provided to the Committee. The Band was also unaware at the time that the Committee had not forwarded a copy of the Band's most recent submission to the Government of Canada. However, the Band did deliver a copy of that submission to Canada's Secretary of State for External Affairs on 21 January.

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which Canada complains of media coverage. it attaches the following to its Response.
The following page newspaper coverage of the Federal government in newspapers across Alberta and in the Federal government from Alberta, Edmonton, and the United States of Canada. The following is a list of the media coverage being received by the Band.
The following is a list of the media coverage being received by the Band during the recent Calgary winter Olympics.

To thus prime the media with a huge propaganda campaign and then criticize the criticism, for according to media inquiries about the latest developments is disingenuous to say the least.

4. Canada's supporting documents contain a misleading misrepresentation of the Tubicon membership issue.

The subsequent statements set forth on page 12 of that Appendix are highly misleading. The joint genealogical survey conducted by the Federal Government of Canada identified approximately 450 members of the Tubicon Lake Band. The inaccurate figures contained in the Band's early court documents resulted from the fact that at that time the Band's attorneys did not have complete information on the Band's membership. With respect to the Band's refusal to release the genealogical survey results to Alberta, the correct position is simply that the Province has no jurisdiction over the survey results, provided to it by the Federal Government.

5. Other abuse of process charges

a. Federal response to the tuberculosis outbreak

The disease was identified in July 1987. The first meeting with Federal representatives did not occur until 18 September, and Federal medical personnel did not arrive on the scene until 6 November. The personnel and other services listed in Canada's Response have been put in place since 6 November, as part of a continuing effort by the Tubicon people themselves to bring the disease under control.

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b. 21 deaths

The charges referred to are true. The circumstances have been documented by a variety of credible independent investigators. The Lubicon people are also prepared to provide details of the 21 unnatural deaths resulting directly or indirectly from the destruction of the traditional Lubicon economy and way of life.

c. Other charges

All other charges raised by Canada are the subject of lengthy discussion in previous submissions by both parties and therefore do not raise any new issues. See Supplement 8 to Communication 167/1984.

v. CONCLUSION

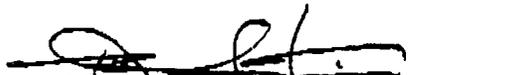
Contrary to Canada's assertion that its offer of an "interim transfer" brings it into conformity with the International Covenant on Civil and Political Rights, the Lubicon Lake Band respectfully submits that the above outlined circumstances represent a continuation of Canada's past bad faith and disregard for the human rights the Lubicon Lake Band. The "interim transfer" is intended only to alleviate the domestic and international pressure mounting against Canada with regard to this issue. Once that pressure is gone, Canada will no longer have an incentive to engage in further discussions with the Band. Furthermore, if the Lubicon Lake Band accepts this offer, negotiated without their involvement, half of their members will be left without homes and the remainder will be left without a future - stranded powerless in the middle of an environmentally destitute land.

Finally, as the Daishowa project demonstrates, Canada continues to disregard the Committee's 22 July 1987 request pursuant to rule 86 of its provisional rules of procedure. Far from taking interim measures to avoid irreparable harm to the Band, Canada has agreed to a project which will further degrade the Band's traditional lands. Moreover, Canada, through its Minister of Indian Affairs and Northern Development, seeks to force on the Band a settlement which, if accepted, would effectively sound the death knell of the Lubicon people.

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PAGE 27 OF / DE 27

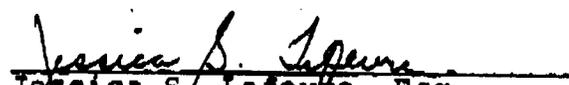
The author of this communication is prepared to provide further information or clarification which may be desired, and reserves the right under Provisional Rule 93(3) to submit additional information and observations after receiving the reply of the government of Canada.

Submitted by:



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

Prepared with the assistance of:



Jessica S. Lefevre, Esq.
Van Ness, Feldman, Sutcliffe & Curtis
1050 Thomas Jefferson St., N.W.
7th Floor
Washington, D.C. 20007

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PAGE 1 OF/DE 2 7

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ATTACHED IS NOTE FROM CENTRE PROVIDING COPY OF LATEST
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2.HYNES WILL PHONE LIVERMORE THIS EVENING RE JULY SESSION
OF CTTEE (FURTHER TO RECENT TELECONS).

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JUN 16 1988
Legal Operations Division (JLO)
Direction des Opérations juridiques

Vertical stamp: 05 JUN 1988 03 23

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R HYNES

TELEPHONE NBR

APPROVED/APProuvé

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REF YOURTEL IMH0902 03JUN

---PLEDGE AT STKHM MTG TO ASSIST LUBICON
HAVE NOT/NOT BEEN ABLE TO IDENTIFY MTG MENTIONED IN REFTTEL,
NOR/NOR ANY MTG IN SWEDEN DURING WEEK OF 23MAY REGARDING
ABORIGINAL PEOPLES.

2.THERE WAS MTG OF NORDIC SAMI UNION, HELD IN FINLAND, ATTENDED
BY VARIETY OF NATIVE PEOPLES ORGANIZATIONS IN NORWAY, SWEDEN,
AND FINLAND. OUR CONTACT INDICATED THAT DISCUSSIONS OF ISSUES
OUTSIDE NORDIC AREA WERE ON BRAZIL NATIVES, NOT/NOT CDN.

3.CAN YOU PROVIDE MORE INFO ON REPORTED MTG IN SWEDEN?

CCC/072 091200Z UDGR1091



External Affairs
Canada

Affaires extérieures
Canada

MESSAGE

Accession/Référence	557888
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JUSTOTT/FREEMAN /HUDSON DE OTT

DISTR MINA/NORQUAY RWR RBR

---PLEDGE AT STOCKHOLM MEETING TO ASSIST LUBICON

CDN PRESS REPORTED ON JUNE 1 THAT AT MEETING LAST WEEK IN SWEDEN

QUOTE COALITION OF 23 ORGANIZATIONS FROM 11 COUNTRIES DISCUSSED

PLIGHT OF ABORIGINAL PEOPLE UNQUOTE.CP STORY QUOTED CHIEF

OMINAYAK OF LUBICON LAKE BAND AS CLAIMING THAT DELEGATES PLEDGED

TO SEND ONE PERSON FROM EACH GROUP TO HELP LUBICON BAND QUOTE TO

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WAS FURTHER QUOTED AS SAYING THAT QUOTE AFTER SEIZING

CONTROL,BAND COULD BLOCK ACCESS TO AREA UNQUOTE.

2.WE WOULD APPRECIATE ANY INFO YOU CAN PROVIDE ON MEETING

REFERRED TO ABOVE.IN PARTICULAR WOULD YOU ADVISE ON WHETHER PAR 1

ACCURATELY REFLECTS WHAT WAS DECIDED AT MEETING AND WHAT ELSE WAS

DISCUSSED ,NUMBER OF DELEGATIONS AND PEOPLE WHO TOOK PART IN

CONFERENCE,NAMES, NATURE AND NATIONALITY OF PARTICIPATING GROUPS

AND YOUR ASSESSMENT OF LIKELIHOOD OF THREATENED ACTION

MATERIALIZING.

DRAFTER/RÉDACTEUR

DIVISION/DIRECTION

TELEPHONE

APPROVED/APPROUVÉ

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Government
of Canada

Gouvernement
du Canada

news release

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MAY 24 1988

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Date

For release

Canada Refers Lubicon Lake Band Land Claim to the Courts

OTTAWA (May 17, 1988) -- The Government of Canada announced today that it has initiated legal proceedings against the Government of Alberta and the Lubicon Lake Indian Band in order to enable Canada to meet its lawful obligations to the Band under Treaty 8.

This step follows a February 2, 1988 request by Bill McKnight, Minister of Indian Affairs and Northern Development, to the Attorney General of Alberta, Jim Horsman. In his correspondence, the federal Minister outlined Canada's lawful obligations to the Band and requested land from Alberta under the Constitution Act, 1930 to meet these obligations. The Statement of Claim, filed in the Court of Queen's Bench of Alberta, asks the Court for a declaration that the Lubicon Lake Band is entitled to a reserve and its appropriate size. The Statement of Claim also asks that the province be declared in breach of the 1930 Act.

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Lubicon LK Band		

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- 2 -

Background:

Despite ongoing and intensive efforts to resolve the Band's long-standing claim through negotiations, the Government of Canada finds it necessary to take this course of action because agreement can not be reached with either the Province of Alberta or the Band.

On April 27, the federal negotiator, Brian Malone, wrote to his provincial counterpart, John T. McCarthy, in a final effort to reach an agreement with Alberta. At that time, Mr. Malone reiterated Mr. McKnight's earlier statements that lack of final agreement between the governments would leave him with no option, save the Courts. There was no substantive response from the provincial negotiator.

On March 17, Mr. McKnight indicated before the Standing Committee on Aboriginal Affairs and Northern Development why a much-publicized mediation tribunal would not help settle the claim. Moreover, there has been no proposal made to Canada outlining the proposed mediation process since the Premier of Alberta and the Chief first met some two and one-half months ago. Canada believes the Band and the province have left it no alternative -- it has to turn to the courts for assistance in resolving these matters.

The Minister of Indian Affairs and Northern Development said he would have preferred to resolve the long-standing land claim of the Lubicon Lake Band through face-to-face negotiations with the Band and with the Province, which owns the lands sought by the Band. However, negotiations proved impossible.

.../3

- 3 -

"We all want to see a fair and binding resolution of this claim which has eluded us far too long", the Minister said. "In the absence of prospects for a negotiated settlement, this can only be achieved with the assistance of the courts".

Canada will take all necessary steps to have an early hearing of this case. However, the action taken today does not prevent Alberta from signing the agreement-in-principle on an interim reserve of 25.4 square miles reached between government negotiators on March 2, 1988.

- 30 -

Ref: Brian Malone
Federal Negotiator
(403) 234-7200

Attachments:

March 3 announcement

March 17th package

Horsman's letter of February 11

McCarthy's letter of March 2

Malone's letter of April 27



ATTORNEY GENERAL
FEDERAL AND
INTERGOVERNMENTAL AFFAIRS

MINISTER OF JUSTICE
LE MINISTRE DE LA JUSTICE

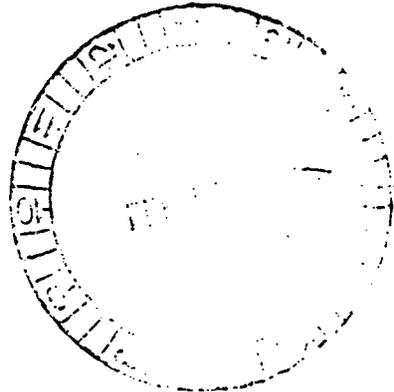
Office of the Minister

403/427-2339 - 427-2585
Room 320 Legislature Building
Edmonton, Alberta, Canada T5K 2B6

Our File: 7900-3-5

February 11, 1988

Honourable Bill McKnight
Minister of Indian Affairs and
Northern Development
Parliament Buildings
OTTAWA, Ontario
K1A 0A6



Dear Mr. McKnight:

Re: LUBICON LAKE LAND CLAIM

I am in receipt of your letter, dated February 2, 1988, in which you outline the Government of Canada's latest approach with respect to the claims of the Lubicon Lake Indian Band.

Although I am not in a position at this time to respond to the substance of your proposals, I am nonetheless compelled to raise our serious concern with the process you are suggesting. In particular, we are concerned with the apparent abandonment of the negotiation process and the roles we had assigned to our negotiators in October, 1987.

In our view, contemplating further litigation would be premature prior to the prospects for productive discussions between our negotiators having been fully exhausted. My preference, as you are aware, has been, and continues to be, to proceed by way of negotiations with all parties to those negotiations being fully informed with respect to the facts underlying the claim.

Notwithstanding these concerns, we will be examining your most recent proposals with appropriate care and, once that examination has been completed, will be

Honourable Bill McKnight

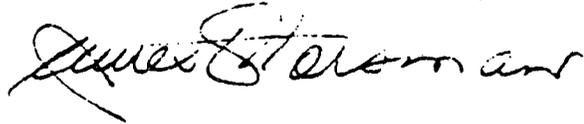
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Our File: 7900-3-5
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providing you with our response. Given both the complexities of your proposals and the need to clarify a number of important aspects, it would be unreasonable to expect us to provide a response by February 24, 1988 as you have requested. We will, however, endeavour to be in a position to respond by the end of March.

As a final matter, to ensure that we fully understand your current position, I have requested Mr. McCarthy, the Alberta negotiator, to meet with your negotiator in order to clarify several aspects of your proposals prior to these matters being given consideration by our government.

Yours truly,



James D. Horsman, Q.C.
Attorney General and
Minister of Federal and
Intergovernmental Affairs

JDH/dn

cc. John T. McCarthy



FEDERAL AND
INTERGOVERNMENTAL AFFAIRS
Ottawa Office

Suite 1110, Royal Bank Centre, 90 Sparks Street, Ottawa, Ontario, Canada K1P 5B4 613/237-2615 Telex 053-3717

March 2, 1988

Mr. Brian Malone
Federal Negotiator
Lubicon Land Claim
Ottawa, Ontario

Dear Sir:

Further to our meetings please be advised that Alberta is prepared to do the following:

- 1) Alberta is prepared to enter into a "without prejudice" interim agreement whereby Alberta would transfer to Canada 25.4 square miles, including mines and minerals, subject to conditions which would include the following:
 - (a) The offer and any subsequent transfer of land would be "without prejudice" to the positions of the parties involved, including the Lubicon Band; and
 - (b) Prior to any transfer, Canada will be responsible for satisfying third party surface and subsurface interests.

The draft agreement provided to you by the writer would serve as the basis for the negotiation of a final text.

- 2) Alberta would be prepared to negotiate an adjustment of the location of the 25.4 square mile area, which the Province offered in 1985, in order to accommodate both the Lubicon Band's desire to establish a community on the point of the south shore of Lubicon Lake and the federal government's offer to finance the infrastructure required to establish this community (i.e. roads, housing, water and sewer, school, health station, etc.).

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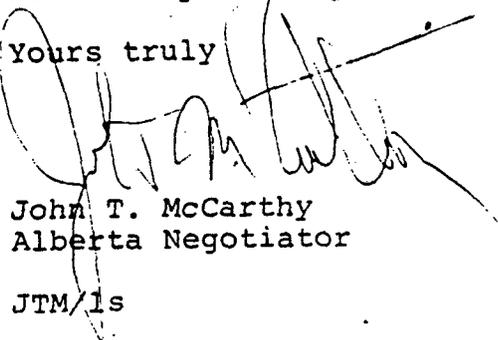
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- 3) Alberta is prepared to continue to negotiate with the federal government in an effort to determine what might be required to obtain from Canada a release of the Province in regard to our obligations under the Natural Resources Transfer Agreement.

The above-noted offer is conditional on it remaining confidential until Mr. McKnight and Mr. Horsman have agreed on the timing and content of a joint public announcement.

We await your response.

Yours truly



John T. McCarthy
Alberta Negotiator

JTM/is

External and Northern Affairs
Affaires extérieures et du Nord Canada

April 27, 1988

Mr. John T. McCarthy
Macleod, Lyle, Smith, McManus
Barristers & Solicitors
2200 Bow Valley Square IV
250 - 6th Avenue S.W.
CALGARY, Alberta
T2P 3H7

Dear Mr. McCarthy:

Further to our Ottawa meeting on Monday, April 25th, I am writing to confirm several points made by the Government of Canada at that time.

1. Interim Letter Agreement

You will recall that on March 2nd we signed an interim letter agreement on behalf of our respective principals providing among other things that a more formal agreement would be signed once final wording was agreed upon. That was completed on March 15th. Based on the interim letter agreement, and in anticipation that Alberta would transfer to the administration and control of Canada 25.4 square miles, the Government of Canada has made certain commitments and continues to make commitments to third parties.

2. Formal Interim Agreement

As we noted at our meeting, Canada has been prepared to work towards a final agreement without further delay. However, it seems to us that our efforts have, to some extent, been frustrated by an apparent understanding between Premier Getty and Chief Ominayak setting certain pre-conditions prior to the signing and delivery of the final text of our interim agreement. Specifically, we understand that the Premier has undertaken not to permit the execution of the final interim documentation without the consent of Chief Ominayak first having been obtained. Further, we understand that the Chief's consent will not be forthcoming unless the parties can settle on a mediation process leading to the resolution of the outstanding issues. As to what these issues are, we are not at all certain, but they may well address questions beyond land entitlement under Treaty No. 8 and get into the specifics of compensation, damages and issues relating to the band's aboriginal claim.

.../2

Canada

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3. The Mediation Tribunal Concept

You have asked for our views on the concept of a mediation tribunal. As indicated by Mr. McKnight in a speech to the House of Commons Standing Committee on Aboriginal Affairs on March 17th the suggestion of mediation is surely premature given that negotiations have yet to commence. The band's lawyer, Mr. O'Reilly, indicated to me on March 10th that the mediation tribunal was to be advisory only, that the matter of head count and land entitlement could not involve Alberta and that the band's genealogy was not relevant or producible. In essence, the thrust of the process would be to negotiate a new treaty with Canada under the scrutiny of the House of Commons Standing Committee. Canada is not prepared to do this.

I repeat again all of the concerns raised in my letter to you dated March 11th. First of all the Minister cannot legally delegate the question of head count to a third party. Secondly, any procedure involving settlement discussions in the presence of a reporting third party waives the without prejudice protection normally afforded litigants. Thirdly, the absence of legal precedent to guide the parties on the question of land entitlement poses a significant hurdle in reaching any sort of agreement that Alberta would accept as binding assuming that bilateral negotiations between Canada and the band were successful.

In addition to the above, Canada does not wish to establish a precedent whereby all future land claims would have to be resolved using a mediation tribunal. This must also be of concern to Alberta. In the past, land claims have always been successfully concluded by direct negotiations.

4. Final Agreement

I would next like to address your question as to the form a final agreement may take. In your draft of April 18th you have requested that Canada give a full release to Alberta under the 1930 legislation. For reasons discussed at Monday's meeting, absent the band's consent, we could not give you such release even if we were satisfied that your offer met Alberta's statutory obligation. We suggested, however, that in the event Alberta offers to transfer to Canada 45 square miles or more for reserve purposes (and to convey lands in severalty if so required), Canada would be prepared to acknowledge that in its view, this meets Alberta's constitutional obligation. Alternatively, we suggested that a tri-party agreement with Alberta, Canada and the band as parties may be feasible, provided it contained a clause, that the agreement remains an offer only until all three signatures have been secured. We also noted that the question of lands in severalty would also have to be addressed before a final agreement is reached. The

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mechanism we proposed was that any offer Alberta may cause to make should be subject to a condition that Canada will obtain the consent of the band at a referendum to be conducted pursuant to the Indian Act.

5. Conclusion

We are of the view that Alberta now has all the elements it requires to enable it to make a concrete proposal to Canada and the band in accordance with its obligations under the Constitution Act of 1930. If Alberta is prepared to meet the band's request for 92 square miles, minerals included, then in the view of Canada an immediate settlement of this problem is possible, and Canada would be prepared to give a full release to Alberta, acknowledging that Alberta has met its obligations to Canada vis-à-vis the Lubicon Lake Band.

As indicated on Monday, Canada would be prepared to set aside a reserve in accordance with any quantum of land agreed to by Alberta and the band pursuant to Treaty 8. I understand that the point has also been made in a separate conversation between Mr. Whitehall and Mr. O'Reilly. It is noted that Premier Getty and Chief Ominayak have agreed to a further meeting and you may wish to specifically make that point to Mr. Horsman and the Premier.

I remind you that the Lubicon Lake Band has rejected all my initiatives under Treaty 8 to provide an interim reserve, to negotiate the full reserve, and to negotiate all non-land issues. The band claims aboriginal title to some 7,000 square miles of Alberta and has sued your client for it. I understand that on March 14th, Mr. Horsman again confirmed that Alberta does not accept any claim for aboriginal title. Mr. McKnight has publicly referred to the rejection of Treaty 8 by the band, and of aboriginal title by the province as being an impasse that the federal government cannot unilaterally resolve. In our view the positions are mutually exclusive since the band cannot be under Treaty 8 and claim aboriginal title.

My client is of the view that these discussions have lasted far longer than necessary. Therefore I am instructed to advise you that unless Canada receives the signed formal interim agreement and a concrete offer from Alberta by May 16th addressing the outstanding Treaty 8 entitlement of the band, it will commence proceedings in the Court of Queen's Bench of Alberta.

Yours very truly,

J. Brian Malone, Q.C.
Federal Negotiator



Speech

3-8802

REMARKS BY THE HONOURABLE BILL MCKNIGHT, P.C., M.P.

MINISTER OF INDIAN AFFAIRS AND NORTHERN DEVELOPMENT

TO THE

HOUSE OF COMMONS STANDING COMMITTEE ON

ABORIGINAL AFFAIRS AND NORTHERN DEVELOPMENT

ON THE LUBICON LAKE BAND LAND CLAIM

OTTAWA, ONTARIO

MARCH 17, 1988

I HAVE A FEW REMARKS TO MAKE REGARDING RECENT EVENTS ASSOCIATED WITH THE LUBICON LAKE BAND CLAIM. I ALSO WISH TO PROVIDE THE COMMITTEE WITH THE FORMULA I PLACED BEFORE ALBERTA TO DETERMINE THE SIZE OF THE FULL RESERVE.

I SHALL MAKE REFERENCE TO A NUMBER OF DOCUMENTS AND COPIES OF THEM CAN BE TABLED WITH THE COMMITTEE.

I THINK IT WOULD BE USEFUL IF I WERE TO REVIEW WHAT RESPONSIBILITIES FALL TO ME AS MINISTER OF INDIAN AFFAIRS AND NORTHERN DEVELOPMENT IN A CASE SUCH AS THE LUBICON LAKE BAND CLAIM.

- I MUST FIRST DETERMINE IF A RESERVE FOR THE BAND IS WARRANTED BY THE FACTS OF ITS CLAIM, AND IN THIS INSTANCE THE ANSWER IS CLEARLY YES.

- 2 -

- I MUST DETERMINE THE BASIS FOR CALCULATING THE SIZE OF THE RESERVE TO WHICH THE BAND IS ENTITLED. IN THIS INSTANCE THE BASIS IS DETERMINED BY THE PROVISIONS OF TREATY 8 AND IS 128 ACRES FOR EACH ELIGIBLE BAND MEMBER.

- I MUST THEN MAKE A FORMAL REQUEST FOR LAND TO THE APPROPRIATE MINISTER OF THE GOVERNMENT OF ALBERTA PURSUANT TO THE CONSTITUTION ACT OF 1930.

- FOLLOWING THAT, I MUST SETTLE WITH THE BAND AS TO WHAT INFRASTRUCTURE, WHAT INVESTMENTS IN HOUSING, SCHOOLS, MEDICAL FACILITIES, WATER SYSTEMS, SEWERS, AND ROADS, ETC. ARE NEEDED AND ARE TO BE CONSTRUCTED.

- I MUST RECOMMEND THE ESTABLISHMENT OF THE RESERVE BY ORDER-IN-COUNCIL ONCE THE LAND HAS BEEN TRANSFERRED FROM THE PROVINCE OF ALBERTA.

- FINALLY I MUST WORK WITH THE BAND TO BUILD THE RESERVE COMMUNITY.

I ACCEPT ALL OF THESE AS BEING OBLIGATIONS PLACED UPON ME AS MINISTER AND I HAVE ACTED RESPONSIBLY TO CARRY THEM OUT. IN SEPTEMBER 1987 I APPOINTED A NEW NEGOTIATOR, MR. BRIAN MALONE, TO REPRESENT ME AND TO NEGOTIATE WITH THE BAND AND WITH THE GOVERNMENT OF ALBERTA, AND TO BRING THESE MATTERS TO A CONCLUSION.

FOLLOWING NUMEROUS MEETINGS BETWEEN THE FEDERAL AND PROVINCIAL NEGOTIATORS, I MET WITH THE ALBERTA ATTORNEY GENERAL ON DECEMBER 22, 1987 TO DISCUSS A PROPOSAL FOR AN INTERIM SETTLEMENT AND TO EXPLORE WAYS OF RESOLVING THIS CLAIM. THIS MEETING WAS UNSUCCESSFUL.

ON JANUARY 21, 1988 THE SECRETARY OF STATE FOR EXTERNAL AFFAIRS AND I MET WITH THE CHIEF AND HIS ADVISORS IN AN ATTEMPT TO OVERCOME THE BAND'S REJECTION OF NEGOTIATIONS. THIS MEETING WAS UNSUCCESSFUL.

THE PROVINCE REFUSED TO NEGOTIATE ANY OF MY PROPOSALS WITHOUT THE BAND BEING PRESENT; AND THE BAND REFUSED TO NEGOTIATE ANY PROPOSALS WITH ALBERTA PRESENT. I WAS LEFT WITH NO ALTERNATIVE BUT TO MAKE A FORMAL REQUEST OF ALBERTA FOR LAND FOR A RESERVE BASED ON THE LEGAL OBLIGATIONS PLACED ON ME BY THE PROVISIONS OF TREATY 8. I DID SO IN A LETTER TO THE ATTORNEY-GENERAL OF ALBERTA, DATED FEBRUARY 2, 1988. IN THAT REQUEST, I ALSO ASKED FOR A 25.4 SQUARE MILES INTERIM RESERVE SO THAT IMMEDIATE PROGRESS COULD BE MADE IN ESTABLISHING A RESERVE EVEN IF NEGOTIATIONS WERE PROTRACTED. SO AS NOT TO LOSE TIME, ON FEBRUARY 10, 1988 MR. MALONE WROTE TO MR. O'REILLY, THE BAND'S LEGAL ADVISOR, PROPOSING BILATERAL NEGOTIATIONS ON ALL NON-LAND ISSUES WHICH MAKE UP THE BALANCE OF THE BAND'S CLAIM. HE ALSO ASKED FOR THE BAND'S VIEWS WITH REGARDS TO AN INTERIM RESERVE OF 25.4 SQUARE MILES ON A "WITHOUT PREJUDICE" BASIS.

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MR. O'REILLY REPLIED ON FEBRUARY 29, 1988 REJECTING NEGOTIATIONS ON THE NON-LAND ISSUES BUT, INDICATING THAT THE BAND WOULD CONSIDER A PROPOSAL FOR AN INTERIM RESERVE.

IN RESPONSE TO MY LETTER TO MR. HORSMAN OF FEBRUARY 2, 1988, DISCUSSIONS COMMENCED WITH ALBERTA ON MARCH 1 AND AN AGREEMENT-IN-PRINCIPLE WAS REACHED FOR AN INTERIM RESERVE OF 25.4 SQUARE MILES WHICH WAS OFFERED TO THE BAND ON MARCH 3. ON MARCH 11, 1988 THE BAND REFUSED THE OFFER. THE OFFER OF AN INTERIM RESERVE OF 25.4 SQUARE MILES "WITHOUT PREJUDICE" CONTINUES TO BE OPEN TO THE BAND.

THE REQUEST FOR LAND FROM ALBERTA IS BASED UPON A FORMULA WHICH, IN ITS ESSENTIALS, ASKS FOR 128 ACRES FOR:

- EACH PERSON REGISTERED OR ENTITLED TO BE REGISTERED AS AN INDIAN ON THE INDIAN REGISTRY AS A MEMBER OF THE BAND ON MARCH 16, 1987, BUT NOT INCLUDING MEMBERS OF OTHER BANDS:

- LESS SUCH LAND OR SCRIP WHICH HAS ALREADY BEEN SET ASIDE AND RESERVED OR ISSUED IN RESPECT OF THE PERSONS OR ANCESTORS OF THE PERSONS ABOVE.

- 5 -

I THINK THE APPROACH IS FAIR AND REASONABLE TO ALL PARTIES, AND ESTIMATE THAT THE APPLICATION OF THE CRITERIA WILL RESULT IN A FULL RESERVE OF ABOUT 45 SQUARE MILES.

IT IS A SIMPLE FORMULA AND I CAN'T BELIEVE THAT ANYONE WOULD EXPECT THAT RESERVE LAND SHOULD BE PROVIDED FOR NON-INDIANS, OR INDIANS WHO ARE LEGITIMATELY MEMBERS OF OTHER BANDS.

THE DISCUSSIONS WITH ALBERTA ARE PROCEEDING IN ACCORDANCE WITH THE FEBRUARY 2ND REQUEST AND I EXPECT AN AGREEMENT-IN-PRINCIPLE ON THE SIZE OF THE FULL RESERVE CAN BE REACHED SHORTLY. THAT FULL RESERVE WILL BE OFFERED TO THE BAND.

IF THE BAND ACCEPTS THE OFFER, THERE IS A BASIS FOR SETTLEMENT. IF THE BAND REJECTS THE OFFER (OR IF THE PROVINCE AND CANADA CANNOT AGREE ON THE FULL RESERVE SIZE) THE MATTER WILL BE REFERRED TO THE COURT OF QUEEN'S BENCH OF ALBERTA FOR A BINDING DETERMINATION. I WOULD EXPECT THE BAND'S 1982 ACTION AGAINST ALBERTA WOULD BE ADDRESSED AS WELL.

THE BAND WOULD BE WELCOME PARTICIPANTS IN ALL DISCUSSIONS AND NEGOTIATIONS. THEY NEED ONLY NOTIFY MR. MALONE.

- 6 -

I MUST ADMIT SOME FRUSTRATION WITH THE BAND'S PERIODIC EXPRESSIONS OF INTEREST IN NEGOTIATIONS WHICH HAVE BEEN FOLLOWED BY PERSISTENT REFUSALS TO NEGOTIATE. THEY HAVE REFUSED TO CONSIDER AN INTERIM RESERVE, REFUSED TO NEGOTIATE NON-LAND MATTERS, AND IT WOULD APPEAR, EVEN REFUSED TO PURSUE THEIR OWN COURT CASES. THE REFUSAL TO PURSUE THE COURT CASE IS PARTICULARLY PERPLEXING BECAUSE AN EX-GRATIA PAYMENT OF \$1,500,000 WAS MADE TO THE BAND IN 1986 TO ASSIST IT IN COVERING ITS COSTS WHICH INCLUDED APPROXIMATELY \$880,000 FOR LEGAL EXPENSES.

THE BAND IS, IN FACT, ATTEMPTING TO FOLLOW TWO MUTUALLY EXCLUSIVE PROCESSES - A SETTLEMENT UNDER TREATY 8 AND A SETTLEMENT IN ABORIGINAL TITLE.

PUBLIC ATTENTION HAS FOCUSED ON THE NUMEROUS ATTEMPTS TO FIND A NEGOTIATION PROCESS ACCEPTABLE TO ALL PARTIES, SO THAT A RESERVE COULD BE SET ASIDE UNDER THE TREATY 8 FORMULA OF 128 ACRES PER ELIGIBLE BAND MEMBER.

AT THE SAME TIME THE BAND HAS INITIATED, BUT NOT PURSUED, A NUMBER OF COURT ACTIONS ASSERTING THE BAND IS NOT COVERED BY TREATY 8, AND CLAIMING ABORIGINAL TITLE OVER SOME 7,000 SQUARE MILES OF NORTHERN ALBERTA. THE ACTION REGARDING DAISHOWA REPEATED THIS CLAIM.

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THE BAND HAS NOW REJECTED ALL RECENT INITIATIVES TO NEGOTIATE UNDER THE TREATY 8 PROCESS AND APPARENTLY INTENDS TO PURSUE ITS CASE AGAINST THE PROVINCE OF ALBERTA FOR ABORIGINAL TITLE. THAT IS THEIR RIGHT.

THERE HAS BEEN CONSIDERABLE DISCUSSION IN VARIOUS QUARTERS REGARDING MEDIATION WITH PARTICULAR REFERENCE TO A POSSIBLE ROLE FOR THE HONOURABLE E. DAVIE FULTON. THIS COMMITTEE HAS EXPRESSED SOME VIEWS ON THIS ASPECT OF THE MATTER.

IF NEGOTIATIONS WERE BEING PURSUED UNDER TREATY 8, SOME FORM OF MEDIATION MIGHT HAVE BEEN USEFUL. HOWEVER, ONE USUALLY NEGOTIATES IN GOOD FAITH BEFORE CONCLUDING THAT MEDIATION IS NECESSARY.

I WOULD HAVE PREFERRED DIRECT NEGOTIATIONS BETWEEN THE PARTIES AS THE QUICKEST METHOD OF ARRIVING AT A SETTLEMENT. BUT IF THERE WERE TO BE A NEED FOR MEDIATION AT SOME POINT, IT SEEMS TO ME THAT THE MEDIATION PROCESS MUST BE EQUALLY ACCEPTABLE TO ALL THE PARTIES.

I HAVE HAD SOME EXPERIENCE IN A FORMER PORTFOLIO WITH MEDIATION, AND I HAVE NEVER SEEN AN INSTANCE WHERE ONE PARTY NAMED THE MEDIATOR. BECAUSE OF THE ROLE THEY MUST PLAY ON BEHALF OF ALL PARTIES, MEDIATORS ARE EITHER ACCEPTABLE TO ALL PARTIES OR THEY ARE NOT ACCEPTABLE AT ALL.

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ADDITIONALLY, I DO NOT SEE HOW "WITHOUT PREJUDICE" NEGOTIATIONS CAN BE CARRIED ON WITH A REPORTING MECHANISM THAT MAKES THOSE NEGOTIATIONS PUBLIC. PARTIES DO NOT SEEK CREATIVE SOLUTIONS IN SUCH CIRCUMSTANCES.

IN THE END ANALYSIS, THE LUBICON LAKE BAND CONTENDS THAT IT IS NOT COVERED BY OR BOUND BY TREATY 8. IN THESE CIRCUMSTANCES THE QUESTION OF A MEDIATOR IS IRRELEVANT. THE LUBICON LAKE BAND ASSERTS ABORIGINAL TITLE OVER SOME 7,000 SQUARE MILES OF NORTHERN ALBERTA AND HAS CHALLENGED THE PRESENT OWNERS OF THAT LAND - THE PROVINCE OF ALBERTA - IN A LEGAL ACTION THAT WAS BEGUN BY THE BAND IN 1982. GIVEN THAT THE BAND IS PURSUING A CLAIM TO ABORIGINAL TITLE, MEDIATION OF ANY KIND WOULD NOT INVOLVE CANADA.

IT IS CANADA'S VIEW THAT THE LUBICON LAKE BAND IS PART OF TREATY 8. WE HAVE OFFERED AN INTERIM RESERVE OF 25.4 SQUARE MILES FOR THE BAND. I EXPECT TO SOON FINISH DISCUSSIONS WITH ALBERTA FOR A FULL RESERVE. IF NECESSARY, I SHALL REFER THE DETERMINATION OF THE FULL RESERVE TO THE COURT OF QUEEN'S BENCH OF ALBERTA FOR A BINDING DECISION.

THE GOVERNMENT OF CANADA IS PREPARED TO ESTABLISH A RESERVE AND NEGOTIATE ALL OUTSTANDING ISSUES SO THAT THIS LONG-STANDING GRIEVANCE CAN BE FAIRLY AND HONOURABLY SETTLED.

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I UNDERSTAND THAT THE ACTION OR INACTION OF PAST GOVERNMENTS HAS GIVEN RISE TO MISTRUST. I REPEAT THAT THIS GOVERNMENT WANTS A FAIR SETTLEMENT, AND HAS SPENT A GREAT DEAL OF TIME TRYING TO GET ONE.

IF THE BAND WANTS A NEGOTIATED SETTLEMENT I URGE THEM TO SET ASIDE PRECONDITIONS, AND THEIR ABORIGINAL CLAIMS CASES, AND BEGIN DIRECT DISCUSSIONS.

IF THE BAND WISHES TO PURSUE ABORIGINAL TITLE IN COURT, I URGE THEM TO PROCEED SO THAT THE COURTS CAN FINALLY DECLARE WHETHER TREATY 8 DOES OR DOES NOT APPLY TO THE LUBICON BAND.

FURTHER DELAY SERVES NO ONE.

Minister of Indian Affairs
and Northern Development



Ministre des Affaires
indiennes et du Nord canadien

February 2, 1988

The Honourable James D. Horsman, Q.C.
Attorney General and
Minister of Federal and Intergovernmental Affairs
Legislature Building, Room 320
EDMONTON, Alberta
T5K 2B6

Dear Mr. Horsman:

Alberta is aware that Canada has an unfulfilled obligation under Treaty No. 8 to provide lands for a reserve for the Lubicon Lake Indian Band (the "band"). Pursuant to Section 10 of the schedule to the Constitution Act, 1930 the Government of Canada ("Canada") requests that the Government of Alberta ("Alberta") set aside out of the unoccupied Crown lands transferred to Alberta for Alberta's administration in 1930, such further areas as necessary in order to enable Canada to fulfill its obligation to the band under Treaty No. 8. Accordingly, the quantum of land requested by the Government of Canada for the band's reserve is the result of the application of the following principles:

- A. Land is to be provided up to the total quantum that results from the application of the following criteria which are to be applied against the band's list of members as of March 16, 1987:
 - i) That all persons registered or entitled to be registered as Indians on the Indian Registry as members of the band be counted plus any subsequent births and less any subsequent deaths up to the date when lands for a reserve are surveyed for the first time;

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- ii) From the quantum of land that results from the application of i) above, there shall be deducted such quantum of land or scrip which Alberta can establish to my satisfaction as having been set aside and reserved or issued, as the case may be, in respect of any of the persons or ancestors of persons listed in paragraph i);
 - iii) That all persons who were members of other bands on March 16, 1987 and also claimed by the Lubicon Lake Band as members not be counted;
 - iv) In recognition of the right of Indians described in paragraph i) to choose land in severalty rather than reside with the band as provided for by Treaty No. 8, that, in the event such elections are made, 128 acres shall be deducted for each such election from the quantum of land to be transferred to Canada for the band. It will be ascertained by Canada who, if anyone, will choose land in severalty. In the event that such elections are made, 160 acres will be made available by Alberta to each of those who might choose land in severalty. It is understood that those Indians or those whose ancestors have already received land or scrip may not elect land in severalty;
 - v) Land will not be requested for persons who cannot be registered as Indians by the Indian Registrar; and
 - vi) Validation of actual entitlement for registration as an Indian will be carried out by the Indian Registrar pursuant to the Indian Act.
- B. The 25.4 square mile parcel of land identified for the Band as a reserve in 1940 ("the Original Reserve Lands") should be transferred plus such other additional lands as may be necessary to meet Canada's obligation as described in paragraph "A" above.
- C. Full subsurface rights are to be included in the transfer of lands.

We understand that the application of the criteria set out above would result in a transfer to Canada of about forty-five square miles of land.

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In the absence of a positive response by your government before February 24, 1988, the Government of Canada will pursue its remedies in the courts. In that event, I would ask your government to consider as an interim measure the immediate transfer of the Original Reserve Lands without prejudice to Canada's right to demonstrate by legal action that the band is entitled to a greater land area. This interim reserve area would permit the Government of Canada to begin immediately on its program of capital construction within the Original Reserve Lands.

As you are aware, confidentiality restrictions presently prevent the Government of Canada from releasing the joint genealogy study completed by the band and the federal government in 1984. I regret that neither Canada nor Alberta will have this information available in establishing a reserve area.

I am ready at any time to discuss with you any concerns the Province of Alberta might have that my request in these special circumstances could constitute a precedent in dealing with other bands.

Yours sincerely,



Bill McKnight



Indian and Northern
Affairs Canada

Affaires indiennes
et du Nord Canada

WITHOUT PREJUDICE

February 10, 1988

Mr. James O'Reilly
Byers Casgrain
Barristers and Solicitors
1 Place Ville Marie, Suite 3900
MONTREAL, Québec
H3B 4M7

Dear Mr. O'Reilly:

On February 3, 1988, the Minister of Indian Affairs and Northern Development delivered to Alberta a formal request for reserve land for the Lubicon Lake Band. This request is based on a formula developed by Canada to deal fairly and equitably with this longstanding claim.

This formula is not negotiable and should Alberta refuse to comply, litigation must follow. In either event, Mr. McKnight has asked Mr. Horsman, the Attorney General of Alberta, to consider transferring immediately the 25.4 square mile original reserve area to Canada as an interim measure without prejudice to negotiations or any court action.

While land issues may require an extended period of litigation to reach a satisfactory conclusion, Canada feels that the parties should be able to settle all other aspects of this claim. To start negotiations on these matters, Canada wishes to enter into negotiations and hereby makes the following offer to your client:

1. Reserve Planning

Canada will provide \$300,000 for reserve planning purposes in order to maximize benefits flowing from this offer.

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Canada

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2. Treaty Benefits

Canada is prepared to pay \$500,000 for the loss of other Treaty Benefits.

3. Health Facilities

The Department of National Health & Welfare is prepared to commit \$350,000 towards a permanent facility on the reserve.

4. Capital Construction Program

Canada is prepared to negotiate with the band for a capital construction program. This program would include the provision of housing and community infrastructure including water, sewers, roads, electrification and educational facilities. The band's immediate co-operation is necessary to expedite construction at the earliest possible date.

5. Self-Government

Canada is prepared to enter into negotiations regarding self-government for the Lubicon Lake Band.

6. Past Oil and Gas Revenues from Original Reserve Area

Owing to the unique circumstances of this claim, Canada is prepared to canvas with Alberta the subject of past lease and rental payments accumulated by the province from the original reserve area since 1940. The band should be aware that pursuant to Section 11 of the Constitution Act, 1930 Alberta may be entitled to 50% of all monies gained from the sale, lease or other disposition of minerals on Indian reserves transferred after 1930.

7. Wildlife Management

Canada is prepared to jointly develop with the band and Alberta a program which would allow the band a voice in the management of wildlife in a specific area beyond the reserve proposed in this offer.

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8. Hunting and Trapping

Canada is prepared to negotiate with the band and Alberta for the modification of the existing Alberta Trappers' Compensation Program for the ongoing benefit of the band or for the establishment of a new program for the ongoing benefit of the band.

9. Economic and Training Opportunities

Canada is prepared to negotiate a package of economic and training programs within federal resource allocations so as to better meet the band's needs and, as elements of this issue fall with provincial jurisdiction, to negotiate with Alberta for the provision of an integrated package to the band.

Items 6, 7, 8, and 9 are within provincial jurisdiction and will of necessity require the participation of the Province of Alberta.

Please contact me if the band wishes to deal with any of the foregoing items in formal negotiations.

Yours sincerely,



J. Brian Malone
Federal Negotiator

MONTREAL

POST OFFICE BOX 1270
POSTAL STATION B
MONTREAL, QUEBEC H3B 3K9
SUITE 3900, 1 PLACE VILLE MARIE
TELEPHONE (514) 878-8800
TELECOPIER (514) 866-2241
TELEX 05-24195 CABLE "MAGEE"

BYERS & CASGRAIN

BARRISTERS AND SOLICITORS

OTTAWA

TENTH FLOOR,
GILLIN BUILDING
141 LAURIER AVE. WEST
OTTAWA, CANADA
K1P 5J3
TELEPHONE (613) 236-9442
TELECOPIER (613) 236-7942

MAR 7 9 15 AM '88

DIRECT DIAL:

WITHOUT PREJUDICE

Montréal, February 29, 1988

Mr. J. Brian D. Malone
Federal Negotiator
Lubicon Lake Band Claim
c/o Mr. Fred Drummie
ADM IAB
21st floor, 10 Wellington Street
Hull, Québec

Dear Mr. Malone:

This has reference to your letter of February 10, 1988 and is to confirm our telephone conversation of February 16, 1988 and Mr. Fred Lennarson's telephone conversation with you on February 17.

The Band's position respecting negotiations is public and has been conveyed to you personally on a number of occasions.

Moreover, any negotiations with or proposals to the Band which exclude the Band's involvement in the crucial issue of land are unacceptable to the Band. The proposal for negotiations and the offer mentioned in your letter of February 10, 1988 have therefore been rejected by the Band.

It is also of interest to note that the "offer" to our client, the Lubicon Lake Band, is not only a repudiation of the Fulton Discussion Paper, which was to serve as the basis of any negotiations; it is also inferior to the proposals, in respect of the items covered, made by Mr. Tassé in July of 1986 which were communicated to the Human Rights Committee of the United Nations and were referred to in the misleading document published by External Affairs in the Fall of 1987.

.../ 2

J. Brian D. Malone
February 29, 1988
Page 2

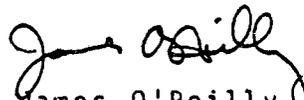
With respect to any possible interim transfer of the 25.4 square miles original reserve area without prejudice to negotiations or any court action, our client has instructed us to inform you that it is prepared to consider any proposal in connection with the transfer of reserve land if and when made and without prejudice to its rights.

As we have already informed you, the proposed community of the Band is situated outside the 25.4 square miles originally set aside as a reserve.

Moreover, you will appreciate that the circumstances of the dispute as to the process of negotiations, the lack of consultation with the Band and the totally unknown features or conditions of any interim reserve land proposal prevent our client from taking a more formal position on this matter at this time.

Yours very truly,

BYERS CASGRAIN


James O'Reilly

JOR/mb

MONTREAL

POST OFFICE BOX 1870
POSTAL STATION 5
MONTREAL, QUEBEC H3B 2H0
SUITE 2000, 1 PLACE VILLE MARIE
TELEPHONE (514) 378-0000
TELECOPIER (514) 388-2004
TELEX 08124188 CABLE "MAGNET"

BYERS CASGRAIN

BARRISTERS AND SOLICITORS

OTTAWA

TENTH FLOOR
BILLYN BUILDING
141 LAURIER AVE. WEST
OTTAWA, CANADA
K1P 6J3
TELEPHONE (613) 238-6443
TELECOPIER (613) 236-7048

DIRECT DIAL

WITHOUT PREJUDICE

Montréal, March 11, 1988

Mr. J. Brian D. Malone
Federal Negotiator
Lubicon Lake Band Claim
c/o Black & Company
Suite 1600, 530 - 5th Avenue S.W.
Calgary, Alberta
T2P 3E8

BEST AVAILABLE COPY

Dear Mr. Malone:

As you have requested, the following is to confirm in writing the information transmitted to you by my secretary, Manon Blanchet, today, March 11, 1988.

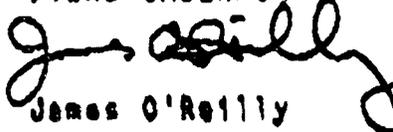
Chief Bernard Ominayak asked me to inform you that the Band takes the position that any discussions pertaining to land must take place in the context of bilateral negotiations between the Federal Government and the Band with the involvement of the Honourable E. Davie Fulton as an independent mediator responsible to the Parliamentary Committee on Aboriginal Affairs and Northern Development, or, alternatively, under the Tribunal Process proposed by Premier Don Getty.

I shall therefore be returning the maps you gave to me yesterday while I was at the Justice Building in Ottawa on other business.

Chief Ominayak asked me to transmit this message to you immediately in order to avoid any possible misunderstanding.

Yours very truly,

BYERS CASGRAIN


James O'Reilly

BEST AVAILABLE COPY

JOR/mb

BLACK & COMPANY

BARRISTERS & SOLICITORS

ROBERT G BLACK, O.C.
G PATRICK H VERNON, O.C.
J BRIAN MALONE
D MURRAY PATON
EDWARD F KERWIN
PETER D QUINN
KEITH F GROVES
STEPHEN D. A CLARK
CHERYL L JAMES
CAROLYN DAHL REES
BRUCE E HARVEY
DAVID F PHILLIPS
DONALD M TODESCO

BASIL R CHEESEMAN, O.C.
L THOMAS FORBES, O.C.
BRYAN D NEWTON
NEIL G CAMERON
RICHARD A. SHAW
BARBARA E ROMAINE
DAVID W ROSS
DONALD J BLACKFETT
CLIFFORD D JOHNSON
CLAUDIA L MCKINNON
KENNETH R MCKINNON
DALE E SKINNER

LEONARD B BANNICKE
JAMES C MCCARTNEY, O.C.
DOUGLAS S. EWENS
ROSS C DRYSDALE
G BLAIR COWPER-SMITH
BRADLEY T MCMANUS
WILLIAM H SMITH
J GLENN FRIESEN
BRIAN C KELSALL
STEPHEN R. MURISON
DOUGLAS G COLE
KAREN L WIWCHAR

SUITE 1600
530 EIGHT AVENUE S.W.
CALGARY, ALBERTA
T2P 3S8

TELEPHONE (403) 234-7200
FACSIMILE (403) 234-7208
TELEX 03-822046

March 16, 1988

COUNSEL JOHN B ZAOZIRNY, O.C.

Mr. John T. McCarthy
MacLeod Lyle Smith McManus
Barristers & Solicitors
2200,, 250' - 6th Avenue S.W.
Calgary, Alberta
T2P 3H7

Dear Mr. McCarthy:

Re: Lubicon Lake Indian Band Settlement Negotiations

You have asked that I outline for you the Federal Government's position in regard to the negotiating process to be used to resolve the Lubicon Lake Band claim.

On March 11, 1988 the Band's lawyer James O'Reilly wrote to inform me that "the Band takes the position that any discussions pertaining to land must take place in the context of bilateral negotiations between the Federal Government and the Band with the involvement of the Honourable E. Davie Fulton as an independent mediator responsible to the Parliamentary Committee on Aboriginal Affairs and Northern Developments, or, alternatively, under the Tribunal Process proposed by Premier Don Getty."

Canada's response to this ultimatum is as follows:

(a) The Independent Mediator

Canada and Alberta have already rejected the involvement of E. Davie Fulton on the basis that he has already expressed a public opinion and is not indifferent between the Band and both governments. In addition, Canada will not accept the concept of a mediator who has a reporting function. The basis of this refusal is that such public reporting waives the normal "without prejudice" protection that exists for all litigants in settlement discussions, with the result that all settlement proposals could be subsequently disclosed in open

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- 2 -

court. One should not lose sight of the fact that Fulton's fact finding report was originally confidential and "without prejudice", yet it was mysteriously leaked to the press in 1986.

(b) The Getty Tribunal Process

On March 10, 1988, Mr. Ivan Whitehall, Q.C. and myself met with Mr. O'Reilly to hear an explanation of the Band's position relative to the Premier's proposal for a mediation tribunal.

The essence of their position is that the Band will only discuss land issues with the Federal Government and that those discussions must revolve around aboriginal title. In other words, Canada must be prepared to make a new treaty with the Band in 1988 and ignore Treaty No. 8 signed in 1899. This is unacceptable to Canada, as under Canadian law, the questions of aboriginal title must of necessity involve primarily the province that owns the land. Further, Canada's position is that the Lubicon Lake Band is subject to Treaty No. 8. Clearly, no mediation tribunal could negotiate a settlement with Canada and the Band on a matter of provincial jurisdiction.

Secondly and equally important is the Band's insistence that the mediation tribunal bind Canada and the Band; a concept contrary to Canadian law, as a minister of the Crown cannot delegate his statutory duty to a third party.

Thirdly, the process as presented by the Band would not involve Alberta and therefore Alberta's rights and obligations would remain unsettled.

Lastly, the Band refuses to consider dropping its United Nations grievance or the cluster of lawsuits that it has filed in the Canadian courts. In summary, instead of bringing certainty and finality to the negotiating process, the proposed mediation tribunal would become just another forum to confuse issues further and delay final settlement.

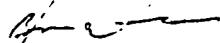
We look forward to our meetings next week to determine whether the Province's genealogical information is sufficient to define Canada's and Alberta's legal position under Treaty No. 8 in regard to land. In the event that this is not possible the matter will be referred to the Alberta courts; a forum that can

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- 3 -

adjudicate a binding settlement. Canada would be prepared to approach Chief Justice Moore for an Order directing expedited discoveries and an early trial date. Obviously, your client's cooperation would be needed in that regard.

Yours very truly,



J. Brian Malone, Q.C.
Federal Negotiator

JBDM/evm



Government
of Canada

Gouvernement
du Canada

news release

Date

1-8806

For release

Lubicon Lake Band Land Claim

OTTAWA (March 3, 1988) -- Yesterday, the Governments of Canada and Alberta reached an interim agreement on the Lubicon Lake Band land claim.

"In the interest of achieving an equitable and just settlement for the Lubicon Lake Band, Alberta has offered to transfer to Canada a 25.4 square mile area including mines and minerals. This transfer of land would be "without prejudice" to the positions of the parties involved, and would not affect the right of the band to seek additional reserve lands through negotiation or court action", explained Jim Horsman, Alberta Attorney General and Minister of Alberta Federal and Intergovernmental Affairs.

Additionally, Alberta is prepared to adjust the location of the 25.4 square mile area, which the province offered in 1985, in order to accommodate the Band's desire to establish a new community on the point of the south shore of Lubicon Lake. Canada will immediately confer with the band on the actual boundaries of the proposed interim reserve area.

.../2

- 2 -

As soon as the transfer is completed, Canada will set aside the land as a reserve for the Lubicon Lake Band. "With this reserve, band members will begin building a community and identifying economic development opportunities. We're prepared to start putting in the roads, and water and sewage systems; building their homes, a school, a health care station, and other facilities," Bill McKnight, Minister of Indian Affairs and Northern Development, stated. "Canada also will accept responsibility for satisfying reasonable third party surface and subsurface interests through various arrangements with those involved. Both governments feel it is important that affected third parties, including the Métis, be given fair consideration and compensation.

Both governments are pleased that a significant step has been taken as a result of negotiations to date and are committed to continuing this process.

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For further information, contact:

Pam Forward
Special Assistant, Media Relations
Office of the Honourable Bill McKnight
(819) 997-0002

Barb Deters
Executive Director, Communications
Alberta Public Affairs Bureau
(403) 427-4806



External Affairs
Canada

Affaires extérieures
Canada

MESSAGE

Accession/Référence

File/Dossier

45-CDR-13-1-3-

Lubicon Band

Align first character of Security Classification under this arrow
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SECURITY
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---LUBICON BAND

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NON CLASSIFIE

ATTACHED CLIPPING REFERS TO FEDERAL DECISION TO BRING LUBICON
LAKE BAND DISPUTE TO COURT OF ALBERTA'S QUEEN BENCH.

(COMCENTRE PLEASE FAC THE ATTACHED 1 PAGE)

DRAFTER/RÉDACTEUR

DIVISION/DIRECTION

TELEPHONE

APPROVED/APPROUVÉ

M. CLEARY

IMH

2-2022

ED PILLABELLA

SIG

Cleary

SIG

[Signature]

002602

UNCLASSIFIED
NON CLASSIFIÉ

8/2

The Ottawa
City
May 18

Canada

Land dispute going to court

Southam and CP

The federal government is suing Alberta in an attempt to force the province to resolve a long-standing dispute with the Lubicon Lake Indian band over its right to a reserve.

The decision to sue both Alberta and the Lubicon band was made after Indian Affairs Minister Bill McKnight decided that a stalemate had been reached in the lengthy and acrimonious three-way negotiations, the federal government said in a statement Tuesday.

The federal statement of claim asks the Court of Queen's Bench of Alberta for a declaration that the Lubicon band is entitled to a reserve and a ruling that the province has breached its obligations under the Constitution Act of 1930.

It also asks the court to determine the appropriate size of a re-

Frustrated federal minister sues Lubicons, Alberta govt.

serve, one of the key elements in the protracted dispute.

The Lubicon — a band of several hundred Cree Indians from northern Alberta — have been fighting for the land since the federal government formally recognized the band in 1940. At that time — 48 years ago — it promised the band a reserve.

A spokesman for the Lubicon Tuesday accused McKnight of going to court to frustrate the land claim rather than settle it.

"Mr. McKnight's approach is not intended to result in settlement of Lubicon land rights at all," said Fred Lennarson, adviser to Chief Bernard Ominayak. "It's intended to avoid public responsi-

bility for frustrating a settlement."

Alberta Premier Don Getty said he was disappointed McKnight rejected the three-party mediation tribunal he and Ominayak proposed when they met 2½ months ago.

Negotiations have been complicated by provincial ownership — under the 1930 act — of the Crown land claimed by the band. And the talks have proceeded under a cloud of mistrust and suspicion.

The band refuses to accept the province's right to be involved in the negotiations since Indian affairs are a federal responsibility, and it has accused both govern-

ments of negotiating in bad faith.

The province — aware of the lucrative oil and gas royalties in the area — has refused to surrender more than a fraction of the land the band claims. And both governments say the band is inflating its membership list to almost 500 names in an attempt to get more land.

The Alberta and federal governments agreed in March to give the band an "interim" reserve of 25.4 square miles until the dispute was resolved. But that offer was rejected by the band.

Federal negotiator Brian Malone said in a letter April 27 that the federal government was prepared to support the band's request for 92 square miles of land and mineral rights if Alberta agreed. Malone warned his Alberta counterpart, John McCarthy, that the case would go to court if the province didn't give a "crete offer" by May 18. 002603

J. TROTTIER/IMH-0801/992-6664

Department of External Affairs



Canada

Ministère des Affaires extérieures

Ottawa, Ontario
K1A 0G2

May 13, 1988

Mr. Magnus Isacsson
5827 Jeanne Mance
Apt. 4
Montreal, Quebec
H2V 4K9

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

Dear Mr. Isacsson:

I refer to your undated letter to the Secretary of State for External Affairs concerning the Lubicon Lake Indian Band. The Secretary of State has asked me to reply on his behalf.

The document to which you referred was a fact sheet concerning the claim of the Lubicon Lake Indian Band; it was distributed to various Canadian missions in 1987. Attached, please find a copy.

Contrary to your assertion, the Secretary of State has, in fact, indicated that the fact sheet would be reviewed in order to ensure that it contained no errors of fact or misrepresentation. This review has been carried out. Though the document remains generally accurate, it should be viewed as describing the situation that existed at the time of publication. Since then there have been a number of actions by the various parties which, of course, are not reflected in the 1987 document but which would be incorporated in any subsequent fact sheet.

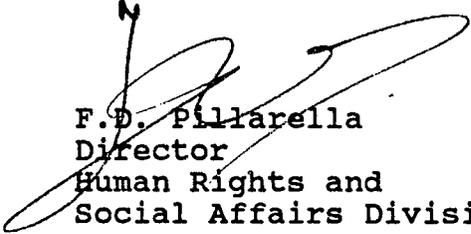
I might note that the document does not state, as you claim, that the Lubicon Lake Band members are as well off as most other Canadians. It does however note on page 11 that the "level of social services delivered to Band members is comparable to those provided to other Indians in Canada and is comparable to those available to other Canadians." It then goes on to describe some of those social services. I might add that benefits provided to the community include a cumulative total of \$1,500,000 of government funds for housing. In addition some \$1,700,000 has been provided to the Band to defray the legal costs of pursuing its land claim.

- 2 -

In closing, allow me to note that the Canadian Government has never denied that the Lubicon Lake Band has a legitimate and outstanding land claim. The Government is committed to seeking a fair and just resolution of the claim. The dispute between the parties concerns the quantum of land.

I trust that the above comments have allayed your concerns about the issues raised.

Yours sincerely,



F.D. Pillarella
Director
Human Rights and
Social Affairs Division

Canada



External Affairs Affaires extérieures
Canada Canada

LUBICON LAKE BAND LAND CLAIM

Summary:

The outstanding land claim of the Lubicon Lake Indian Band has been recognized by the Government of Canada, as well as by the Province of Alberta. The claim remains unresolved, however, despite a number of attempts to come to grips with key issues and principles surrounding it. Negotiations between the Band and Canada were interrupted by the Band in 1986, and have yet to be resumed. The Government of Canada has, however, made repeated offers to return to the negotiating table. A Canadian proposal conveyed to the Band at the time of the break-down in negotiations includes a variety of provisions of potential long-term benefit to the Band.

The Band has devoted much of the past four years to a variety of national and international public relations activities designed to call attention to its grievances, and it has launched legal actions which are still pending. The Band has called for a boycott of the 1988 Calgary Winter Games and a related cultural exhibit to be held at the Glenbow Museum. A number of allegations have been made with respect to both events which merit comment by the Government of Canada. There is no inherent linkage between the Band's grievances and these two events, and the Government of Canada regrets that the Band has chosen this avenue rather than the potentially more productive avenue of negotiations.

- 2 -

LUBICON LAKE BAND LAND CLAIM

Introduction

The Lubicon Lake Indian Band has an outstanding land claim against the Government of Canada and the Province of Alberta. In order to call attention to this land claim, the Band and a number of its support organizations have engaged in a variety of national and international public relations activities. These have included a call for an international boycott of the Calgary 1988 Olympic Winter Games and the concurrent exhibition of Indian and Inuit artifacts at the Glenbow Museum.

This information sheet sets out the following:

- the background of the Lubicon Lake Band land claim;
- information on the Band's public relations activities;
- basic information on negotiations between the Band and the Government of Canada;
- the Canadian position on the linkage question.

Further information on Canadian government policy in the field of aboriginal affairs is available through the Department of External Affairs and its network of Embassies and Consulates.

Lubicon Lake Band land claim

The Lubicon Lake Band land claim dates to the 1930s, when fourteen Indian families living in the Lubicon Lake area of northern Alberta petitioned for a new reserve on the basis of Treaty Number Eight of 1899. This treaty, signed between the Government of Canada and the Indians of northern Alberta, provided for the surrender of traditional hunting grounds in exchange for reserves and other privileges, in the interests of recognizing the rights of aboriginal peoples while providing for orderly settlement. After the signing of Treaty Eight, some Indian bands chose to remain nomadic and delay their acceptance of reserve land to later dates, as in the case of the indigenous populations in and around Lubicon Lake.

- 3 -

In 1940 the Government of Canada agreed in principle to the request for reserve lands in respect of the 127 Indians living at Lubicon Lake and nearby Little Buffalo Lake. At the same time, the Lubicon Lake Band was recognized as a separate group entitled to educational, medical and social assistance in accordance with Treaty obligations and federal Government policy. At that time, the Province of Alberta agreed to transfer 128 acres for each Indian (or a total of 25.4 square miles of Crown land) to the Government of Canada. This territory was to have become a reserve in accordance with the provisions of Treaty Eight. Because the transfer of land did not occur, however, the reserve was not established, and in the 1950s the land ceased to be set aside for the purposes of the Band.

In 1980, the Band filed a Statement of Claim in the Federal Court of Canada against the Governments of Canada and Alberta and certain corporate entities. It alleged "aboriginal title" to some 8,500 square miles of land in northern Alberta, and sought one billion dollars in compensation for some 450 persons claimed to be members of the Lubicon Lake Band. This case has been pursued only intermittently by the Band in intervening years, and is currently on hold pending other court action. In 1982 the Band also applied for a court injunction to stop oil and gas exploration in and around Lubicon Lake, on lands claimed by the Band. This application was rejected by the Court of Queen's Bench in 1983 (of the Province of Alberta), but is still being pursued by the Band as part of its overall strategy of litigation.

The Band's Public Relations Activities

After its initial attempts to pursue its claim by way of the Canadian court system, the Band turned to national and international public relations activities. It invited groups of Canadian church persons and others sympathetic to the Indian cause to visit lands under dispute, and began to allege genocidal policies by Canadian authorities. In 1983 and 1984, at the instigation of the Band, the World Council of Churches took up the Lubicon Lake Band cause, and wrote to federal and provincial governments with specific complaints. In response to the allegations of the World Council, the Ombudsman of Alberta, the Reverend Randall Ivany, was invited to undertake an investigation.

The Ombudsman, an expert totally independent of the provincial government, published his report in August, 1984, after direct investigation by his staff. He

- 4 -

concluded that the unresolved land claim was "the underlying issue" and hoped that it could be resolved. But, with respect to the specific charges of Canadian groups and the World Council of Churches, he concluded that "there is no evidence to support most of the charges which have been made". With respect to the serious allegation of cultural genocide, he wrote: "I have not been provided with any evidence, either from the members of the Band or from other sources, that could substantiate such a serious accusation." (The complete text of the Ombudsman's report is available through Canadian Embassies or the Department of External Affairs.)

In 1984 the Band also initiated proceedings against Canada in the United Nations Human Rights Committee. Basing its arguments on Article 1 of the International Covenant on Civil and Political Rights, the head of the Band, Chief Bernard Ominayak, alleged in a communication that Canada had violated the Lubicon's right to self-determination. In 1987 this communication was heard by the Human Rights Committee, and the argument based on Article 1 was rejected. However, a procedural decision was reached which allowed the communication to stand in respect of other possible grounds for complaint. The Government of Canada is now requesting reconsideration of the decision on admissibility, and the Committee will not decide on the merits of the substance of the contention for some time.

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

One year later, in April and May, 1986, the Band announced that it would seek a boycott of the 1988 Calgary Winter Games and the land-mark cultural exhibit associated with the Games at the Glenbow Museum. In the Fall of 1986 and the spring of 1987, Band representatives and non-native advisers travelled to Western Europe to meet support organizations and to rally support for its cause. Early in 1987 the Band also threatened legal action to halt the 1988 Winter Olympics, and suggested the

- 5 -

possibility of disrupting the Olympic Torch relay across Canada, which passes through a number of Indian reserves. Despite the fact that both the Winter Olympics and the Glenbow exhibition are proceeding as scheduled, the Band has determined on a reinvigorated boycott campaign, using the three-year-old slogan "The Last Stand of the Lubicon".

Towards a Negotiated Settlement

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

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

Later in 1986, the Government of Canada requested negotiations to deal with the outstanding claim, and in June of that year the Band agreed to participate in bilateral negotiations with Canada through Canada's negotiator, Mr. Roger Tassé, a former deputy Minister of Justice. At that time, the Band and Mr. Tassé agreed that he would also undertake parallel negotiations with the Province of Alberta, because, under Canada's constitutional arrangements, Alberta would have to be a party to at least some elements of a final agreement. Mr. Tassé and the Band also agreed to use the Fulton Report as the basis for negotiations.

On July 8, 1986, after only one meeting, the Band withdrew from the bilateral negotiations over the question of the amount of land to which the Band is entitled under the provisions of Treaty Eight. The Government of Canada contended that the Band was entitled to 128 acres for each of the 200 Indians registered under the Indian Act. The Band, on the other hand, maintained that, since it had control over its membership as provided for by Bill C-31, it was entitled to 128 acres for each of 457 persons on

- 6 -

its membership list, irrespective of whether some of these persons were eligible under the provisions of Treaty Eight for land purposes.

At the time of the withdrawal of the Band from negotiations, the Canadian negotiator tabled with the Band a comprehensive proposal for resolving the claim. This proposal included the following provisions:

- (a) approximately 40 square miles of land for a reserve with full mineral rights. Additionally, a commitment was offered to increase this quantum of land for persons claimed by the Lubicon Lake Band as members and who were then registered as members of other Bands, provided that these persons had not already been counted for land purposes with another Band or had not previously received Métis scrip;
- (b) the payment of \$300,000 for reserve planning purposes. This was intended to allow the Band to maximize the benefits flowing from a settlement;
- (c) a commitment to develop jointly with the Band and Alberta a program allowing the Band a significant voice in the management of wildlife within a specific area beyond that set aside for a reserve. This element of the offer was considered critical by Canada to conserve and enhance future wildlife stocks in Northern Alberta, for the purpose of maintaining the Band's traditional land based economy;
- (d) a commitment to negotiate a package of economic and training programs to assist the Band in achieving its future goals;
- (e) a commitment by Canada to seek the payment, with interest, by the Province of Alberta to the Band of all oil and gas revenues gained by Alberta from the 25.4 square mile area identified for the Band in 1940. This revenue was gained by Alberta largely from the sale of exploration rights. It is very important to note that no oil and gas have actually been extracted from the area sought by the Band for a reserve;
- (f) the payment by Canada to the Band of compensation for the loss of any Treaty 8 benefits the Band might have incurred;

- 7 -

- (g) a commitment by Canada to negotiate with the Band and the Province of Alberta the modification of the existing Alberta Trappers' Compensation Program, or the establishment of a new program, for the benefit of the Band;
- (h) a commitment by Canada to negotiate with the Band the payment of compensation for expenses incurred by it in presenting its claim. To date Canada has made available to the Band \$1,742,000.00 to assist it in its legal costs;
- (i) a commitment by Canada to provide the Band with a "catch up" capital program for construction of a new community on the proposed reserve. This would include funding for housing, water and sewer systems, electricity, roads, and educational facilities; and
- (j) a commitment by Canada to negotiate with the Band on its proposal for self-government.

In addition to tabling the proposal, the Canadian negotiator wrote to the Band indicating that Canada was flexible on many of the provisions and terms of the draft accord.

The Band's claim is complicated by a number of factors. First, the method of calculating Band membership proposed by the Band would result in persons being counted twice for the purposes of determining land entitlement. It would allow the Band to claim as members persons who are now members of other Bands, persons whose ancestors were counted in determining land entitlements for other bands, and persons whose ancestors took Métis script. For this reason, Canada cannot agree in principle to the number of roughly 450 persons claimed by the Band, although it is willing to address these problems in negotiations. Second, the lands currently sought by the Lubicon Lake Band are now occupied in part by other native people. Owing to their long residence on the lands in question, these native people have a conflicting interest, which will need to be resolved in a fair and equitable manner.

Because the Government of Canada has emphasized that negotiations are the best framework for settling the outstanding land claim, Canada has made repeated efforts to get the Band to the negotiating table. The Minister of Indian Affairs and Northern Development, the Honourable

- 8 -

Bill McKnight, publicly urged the Band in 1986 to resume negotiations, and in 1987 he wrote to the Chief of the Band with a formal request to re-open the disrupted talks. Finally, in July, 1987, the Band agreed to the Minister's initiative, and talks may resume within a few months, if the Band continues to agree. For details of the Minister's correspondence, see Annex A, attached.

With respect to a negotiated settlement, the position of the Canadian Government has been clear for the past two years. Canada believes that a framework is in place which will permit productive negotiations leading to a solution. To this end the Government of Canada is prepared to negotiate in good faith and in flexible fashion on the points contained in the original Canadian offer of 1986. Canada has taken the lead in urging a return to the bargaining table, and the Government is prepared to negotiate at any time with the Band or its representatives. While the Band is free to pursue other alternatives, including court action, the Band's representatives should acknowledge that the responsibility of replying to the Canadian Government's offer is wholly in their hands.

Linkage of Olympics and Glenbow Museum

At the breakdown of the negotiations in 1986, the Band's representatives indicated that they would be re-instituting their legal actions against the Governments of Canada and Alberta. As well, the Band decided to escalate their national and international public relations campaigns, including the boycott of the 1988 Calgary Winter Games and the Glenbow Museum exhibition "The Spirit Sings". Although the Band has recently agreed to a request by the Government of Canada to return to negotiations, it is still proceeding with the boycott campaign, and is renewing its activities in Western Europe and among its support organizations.

The boycott campaign has resulted in a number of articles and stories which contain serious misrepresentations about the situation of Indians in Canada, the particular case of the Lubicon Lake Band, or the Olympic Games and the Glenbow Exhibit. In the case of at least one Western European support organization, a pamphlet has been circulated which contains various factual errors and several questionable interpretations of recent events. These errors stem basically from a lack of knowledge about aboriginal peoples in Canada, their current situation and the avenues available to them to seek recourse against perceived grievances.

- 9 -

With respect to the 1988 Calgary Winter Games, it has been alleged that the Olympic Games will take place on lands claimed by the Lubicon Lake Band. As will be evident by consulting a map of the Province of Alberta (available in Canadian Embassies), Lubicon Lake is located approximately 600 kms north of Calgary, nowhere near the Olympic site. Moreover, the Lubicon Lake Band is composed of aboriginal peoples associated with Treaty Eight, whereas the Indians of the southern half of Alberta belong to Treaty Seven. A similar allegation, to the effect that the construction of the Olympic site involved the desecration of Indian burial places, is also without foundation. Treaty Seven Indians in and around Calgary are part of the Olympic preparations, and will participate in the sporting and cultural activities associated with the Games.

With respect to the Glenbow Exhibit, "The Spirit Sings", there have been several unfortunate allegations stemming from the Band's boycott campaign. One allegation is that the mounting of the exhibit is in violation of a resolution of the Inter-Governmental Committee on Museums. The relevant resolution states in part that "museums which are engaged in activities relating to living ethnic groups should, whenever possible, consult with the appropriate member of those groups, and such museums should avoid using ethnic materials in any way which might be detrimental to the group that produced them;..."

It is difficult to see how the text of this resolution is relevant to the Glenbow Museum situation. The Glenbow exhibition does not purport to use materials from the Lubicon Lake Indian Band. In fact, it draws extensively upon materials from all Indian and Inuit cultures from several centuries, but contains no artifacts from the Lubicon Lake area. Second, this resolution obviously applies to ethnographic and anthropological research rather than the display purposes of the Glenbow Exhibition. No one has seriously argued that the Glenbow Museum has or will violate the spirit of this resolution or the ICOM code of professional ethics.

It has also been alleged that museums which loan their artifacts to the Glenbow Museum run the risk of seizure in the Canadian courts and lengthy court battles over questions of provenance and ownership. It should be pointed out, however, that both Alberta and Ontario, the two provinces of Canada where the exhibition will be on display, have provincial legislation preventing such court

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action. Moreover, both provinces have now passed the requisite orders-in-council protecting this exhibition from seizure in its entirety. The Government of Canada recognizes that foreign museums possess a significant quantity of heritage materials reflecting the culture and evolution of Canada's aboriginal peoples. However, Canada has taken all necessary steps to ensure that artifacts in the possession of foreign museums are fully respected and protected while on exhibit in Canada.

More recently, questions have been raised about security for the Glenbow exhibit. Suggestions have been raised about the possibility of terrorist activity or violent protest and consequent dangers to irreplaceable objects. Several points should be noted. First, the Lubicon Lake Band has never made any threats of violent action, nor has it in any way alleged that participating museums would endanger their artifacts through participation in the exhibition. Second, the type of violent protest or terrorist activity to which allusions have been made is virtually unknown in Canada. While Western Europeans have had to live with domestic terrorism for many years, it is not a problem in Canada, nor is it likely to become a problem. Third, even in the remote possibility that violent actions are attempted, the security precautions undertaken by the Glenbow Museum are world-class. Finally, there is close and effective cooperation among police and security authorities in Canada, designed especially to meet the special requirements of a major international event. This cooperation is designed to deter any attempt at violent protests, especially those intended to disrupt the Olympic Games or the Glenbow cultural activities.

It has also been alleged that there is widespread support for the boycott of cultural events, particularly among museum communities in Western Europe. It should be noted that the Glenbow Museum approached some 120 museums with requests that they participate in the exhibit. Only some 20 museums decided against participating in the exhibition, and those that made such a decision did so for a variety of reasons. Some linked non-participation to the lobbying efforts of the Lubicon Lake Band. However, a larger number expressed willingness to lend artifacts, but cited allegations of violence or threats of seizure as reasons for concern. In several cases, museum authorities in Western Europe and other countries were provided with misleading or incorrect information on the Glenbow Exhibition. Canadian authorities have been able to correct these misrepresentations in some instances to the full satisfaction of prospective lending institutions.

- 11 -

Present Socio-Economic Situation of the Band

Although the Band has endeavoured to portray itself as impoverished and near extinction, this is hardly the case. The Government of Canada now provides to, or pays on behalf of the Band, about \$1,130,000 annually for the delivery of social services to Band members. Among the services provided are the following: social assistance, education, housing, band governance and administration, including community maintenance, economic development, and adult training. The level of social services delivered to Band members is comparable to those provided to other Indians in Canada and is comparable to those available to all Canadians. For instance, social assistance payments to Band members are the same as those available to all residents of the Province of Alberta, both Indian and non-Indian. Also, the 48 school age members of the Band are offered the same standards of education as non-Indian Albertans.

As Indians, members of the Lubicon Lake Band also have access to other federal social programs not generally available to other Canadians. These include free medical and dental care and free post-secondary education. It should also be noted that Band members also have full access to all social programs universally available to all Canadians. These in part include: family allowance payments, unemployment insurance benefits, old age pensions, the Canada Pension Plan and, where applicable, Veteran's benefits.

Moreover, the Government of Canada has long recognized the outstanding grievances of the Band, and has endeavoured for more than a year to re-open negotiations which could lead to a settlement of all questions. The Government is prepared to return to the negotiating table at any time, and this offer has been conveyed to the Band in clear terms at the Ministerial level.

ANNEX A

The Minister of Indian Affairs and Northern Development has, in correspondence, stated the following to Chief Bernard Ominayak of the Lubicon Lake Band:

"I sincerely regret that you withdrew from negotiations with Mr. Tassé in early July. I continue to be of the view that much could have been accomplished had you remained at the negotiating table. In the negotiations the federal government has recognized the longstanding grievances of your Band. I believe the Government has offered a substantial settlement in an honest effort to find a fair and just resolution of your grievances.

"Mr. Tassé has indicated to your band that Canada remains flexible on many of the claims made, including the amount of the land to be set aside as a reserve. I would urge you to return to the negotiating table to further explore the offer.

"...I would propose that our respective negotiators meet again for the purpose of clearly identifying those aspects of the heads of the claim set out by Mr. Fulton upon which agreement can be secured and clearly identifying those aspects where differences remain. I would also propose, where difficulties remain on key questions, that sufficient time be taken for both parties to fully understand and appreciate the complexities of each other's positions and arguments and that alternatives to our respective positions be explored in detail.

"You raise in your letter the question of my instructions to my negotiator, Mr. Tassé. I believe that the instructions I have provided to Mr. Tassé are sufficient for him to reach a fair and just resolution of your claim. As I previously indicated, we have some flexibility on the initial proposal tabled by Mr. Tassé with you. If, however, during the course of negotiations, it is determined that these instructions are insufficient, I can provide you my assurance that I am prepared to review the facts and legal interpretations upon which these instructions are now based. By the same token, I trust you will be prepared to modify your current position and instructions to your negotiating team should they become convinced such modifications are warranted." (February 6, 1987)

- ii -

"I think you would agree with me that a fair and just resolution of your Band's outstanding land claim is achievable through negotiations. Clearly, if this resolution is to occur, face to face discussions between our respective negotiating teams on what you accurately describe in your letter as 'the key issue of membership' must occur. On this key issue, and its related impact on land quantum, I have some flexibility on the initial proposal tabled with you last July. This flexibility can, however, only be fully explored through frank, open, bilateral discussions which have a sufficient degree of commitment behind them to ensure they are not walked away from by either side at the first sign of disagreement. I can assure you that the Government of Canada is firmly committed to such talks.

"You have before you my proposal of February 6, 1987 for a resumption of negotiations. My proposal still stands. I would again urge you to accept it." (May 1, 1987).

"I trust that when you state you are prepared to reenter serious negotiations with the federal government at any time, you are fully prepared to do so without conditions which could in any way impede progress on the addressing of the substantive issues raised by your claim. I also trust that the aim of our negotiations will be firstly, a successful, fair and just resolution of your claim and secondly, the establishment of a permanent, viable community for the members of your band." (August 25, 1987)

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45-COR-13-1-3-		APR 29 1988
Lubicon of Band		IMH

Press Statement
 Bernard Ominayak, Chief
 Lubicon Lake Indian Band
 Wednesday, April 27, 1988

RE: Presentation of "The Spirit Sings" exhibit by the Canadian Museum of Civilization in Ottawa.

The Lubicon Lake Indian people join with aboriginal people from across the country in protesting presentation of "The Spirit Sings" exhibit of North American Indian and Inuit "artifacts". We oppose the exhibit because it was organized and financed by Government and oil company interests who are actively seeking to destroy our aboriginal lands and way of life. We oppose it because these same Government and oil company interests are trying to use this exhibit to seek undeserved respectability and to cover-up the truth about what they're doing to aboriginal people in Canada. We oppose it because the interests associated with this exhibit have made crystal clear that they have absolutely no respect for aboriginal people and are only concerned with our "artifacts" as trophies or conversation-piece curiosities.

All major aboriginal organizations support this protest including the Assembly of First Nations, the Metis National Council, the Native Council of Canada, the National Congress of American Indians and the World Council of Indigenous Peoples. Prominent church and labour leaders support it. Twenty-six prestigious international museums have refused to loan to an exhibit of aboriginal "artifacts" overwhelmingly opposed by aboriginal people. The International Council of Museums has passed a resolution opposing use of aboriginal materials in any way detrimental and/or offensive to aboriginal people. And the Canadian Ethnology Society has passed a resolution specifically supporting "the Lubicon Lake Cree and other Native peoples in Canada in their opposition to... 'The Spirit Sings'".

The Canadian Museum of Civilization plans to open "The Spirit Sings" on June 30th -- the eve of Canada Day -- a day of great symbolic significance for aboriginal people and other Canadians alike. Because the CMC didn't organize the exhibit, but are rather receiving it on loan from those who did, the people at the CMC imply that their hands are clean, that they are sympathetic to the plight of aboriginal people in Canada, and that opposition to the exhibit has nothing to do with them. That's not true and they know it. They've been involved with organization of the exhibit from the very beginning. The CMC is a major sponsor of the exhibit and donated \$300,000 to it. While others debated the ethics of participating in such an exhibit and took principled positions with regard to doing so, the CMC simply echoed the line of exhibit organizers that display of aboriginal "artifacts" is good for aboriginal people whether aboriginal people know it or not. Moreover the CMC is by far the single largest contributor of "artifacts" to the exhibit.

Press Statement, 04/27/88, page 2

Under such circumstances the Lubicon people wish to make clear that we don't accept CMC claims of innocence, nor expressions of sympathy for the plight of aboriginal people in Canada, nor condescending pronouncements about what's good for us, nor suggestions tht "The Spirit Sings" controversy has nothing to do with the CMC. In a struggle involving lives and the survival of entire societies, it's not possible to justify sitting on the fence. The only real question is which side you're on, and the CMC has clearly chosen to side with the enemies of aboriginal people -- the murderers of our children. That's the ugly reality, and it can't be covered-up nor prettied-up nor changed with empty rhetoric and self-serving rationalizations. Neither will it be forgotten.



National Indian Brotherhood

ASSEMBLY OF FIRST NATIONS

HEAD OFFICE:

TERRITORY OF AKWESASNE
HAMILTON'S ISLAND
SUMMERSTOWN, ONTARIO
K0C 2E0
TEL.: (613) 931-1012

OTTAWA OFFICE:

47 CLARENCE STREET, SUITE 300
OTTAWA, ONTARIO
K1N 9K1
TEL.: (613) 236-0673
TELEX 053-3202

MUSEUM OF CIVILIZATION CHALLENGED BY FIRST NATIONS OVER "THE SPIRIT SINGS"

OTTAWA (April 28, 1988) -- "Had the original situation been different, First Nations might be supporting the presentation and display of our art and sacred objects in "The Spirit Sings", said Assembly of First Nations National Chief Georges Erasmus. "However, it is clear that the corporate goals of Shell Oil, and the political goals of the federal Government, in sponsoring this exhibition, outweigh any other considerations."

"The Canadian Museum is departing from its own policy in the case of this exhibition", said Chief Billy Two Rivers of the Mohawk Nation of Kahnawake, Quebec. "Iroquois false face masks in possession of the national museum are not displayed, but have been replicated for public showing; yet the false face which was the subject of our injunction in Calgary, will be on public display here in Ottawa," continued Chief Two Rivers. "This is sacrilege."

National Chief Erasmus went on to say, "The desperate situation of the Crees of Lubicon Lake, which led them and their leaders to organize the Winter Olympic boycott, remains unresolved; in every region of Canada, First Nations lands and jurisdiction still face serious threats from vested economic and political interests. We have solutions, but what we desperately need are the opportunities to present them. "The Spirit Sings" is a national embodiment of our concerns, and therefore a legitimate vehicle for expression and discussions."

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- 2 -

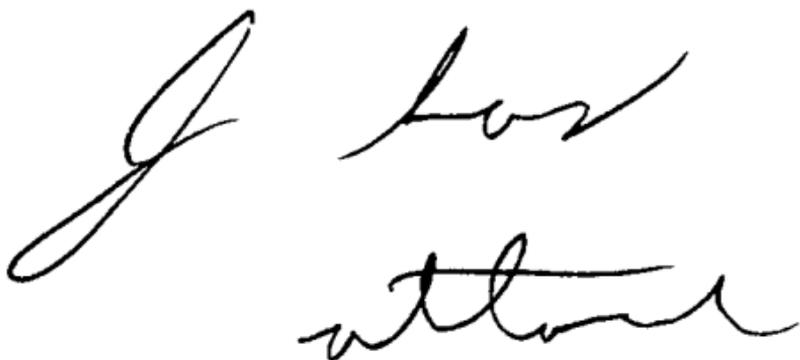
"The response of the international community is clear and unequivocal--twenty six eminent museums, and their curators, around the world refused to donate articles to the Glenbow for this show. Their professional and academic credentials are unquestioned, and their responses to our concerns were made in clear conscience. It is well past time that these concerns were seriously addressed in our homeland."

The Assembly of First Nations will be organizing a symposium for later this year in Ottawa, to discuss issues including the handling, display, and repatriation of First Nations artifacts and sacred objects, the role of First Nations in the fields of museology, as well as corporate sponsorship.

- 30 -

For more information contact:

Ted Montour, Assembly of First Nations
(613) 236-0673

A handwritten signature in black ink, consisting of a large, stylized initial 'J' followed by the name 'L. Ross' and the word 'attorney' written below it.

002623

BICD

RECEIVED - REÇU
 APR 29 1988
 I M H

Press Statement
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 Lubicon Lake Indian Band
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ACC	DATE
FILE	DOSSIER
45-Cda-13-1-3- Lubicon	

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- 30 -

For more information contact:

Ted Montour, Assembly of First Nations
(513) 236-0673

with the
compliments of

avec les
hommages de

Susan Norquay

Special Assistant

Office of the
Secretary of State
for External Affairs



CANADA

Adjoint spécial

Cabinet du
Secrétaire d'État
aux Affaires extérieures

Lester B. Pearson Building
Ottawa, Canada
K1A 0G2

Édifice Lester B. Pearson
Ottawa, Canada
K1A 0G2

Magnus Isacsson

28/4/88

REALISATEUR
PRODUCER - DIRECTOR

5827 JEANNE MANCE APT. 4 MONTREAL, QUEBEC, CANADA H2V 4K9 TEL 514-278-9460

Hon. Joe Clark
External Affairs Minister
House of Commons
Ottawa

ACC	REF	DATE
FILE		DOSSIER
45-10A-13-1-3-INFO		A-02 849-881MD Bcm MINP Lubicon Lk Band

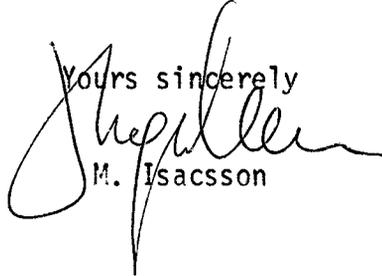
Sir,

According to a February 28 article in the Edmonton Journal which has just been brought to my attention, a document distributed by External Affairs to all Canada's embassies abroad states that the Lubicon Lake Cree of northern Alberta are as well off as most other Canadians. The Journal's staff writer further informs us that you decided not to revise the document, although you had promised to do so if it contained anything that was misleading or inaccurate.

Although I'm extremely critical of Canadian government policy concerning native people - and hardly surprised to see evidence of official hypocrisy in this area - I was astounded by the above-mentioned article. I have visited the Lubicon Lake Band, on assignment for the French network of the CBC, and I am very familiar with the situation there. However, it is hardly necessary to go through the trouble of travelling all the way to Little Buffalo to realize that the statement in your departmental document is an outrageous and insulting lie. ("Misleading" of "inaccurate" would be kind understatements) It is truly shameful for an official government document to make such ludicrous statements, and it is equally shameful for you to refuse to correct them.

The Cree of Lubicon Lake don't have running water and ^(flush)toilets. There land has been devastated by the oil companies. Two levels of governments are refusing to settle their land claims. But I found them and their leaders to have some crucial qualities which seem to be quickly vanishing among our own political leaders: basic honesty and a sense of justice.

I would very much appreciate a copy of the departmental document referred to in the Edmonton Journal article, as well as an explanation of your own attitude in regard to it.

Yours sincerely

M. Isacsson

cc. Edmonton Journal
Bernard Ominayak/ Lubicon Lake Band
Jim Fulton, NDP aboriginal affairs critic
Keith Penner, Liberal

OFFICE OF THE SECRETARY OF STATE FOR EXTERNAL AFFAIRS
CABINET DU SECRETAIRE D'ETAT AUX AFFAIRES EXTERIEURES

ACTION REQUEST/FICHE DE SERVICE

From/De : 'MAGNUS' ISACSSON

No. : A-02849-88

Subject/ LUBICON LAKE:DISPUTES EXTAFF PUBLICATION
Objet: INDIGENOUS PEOPLES * PEUPLES INDIGENES

Action div./Dir. resp.: ~~IMD~~ / M H
Info div(s)/Dir(s) informee(s): BCM * MINP

Let./Tel. dated	Date sent to division	Deadline date
Let./Tel. en date du	Date d'envoi a la direction	Echeance
=====	=====	=====
0 / /	28 APR 88	**12 MAY 88**

26 MAY 88

Comments/Commentaires

*- Sp Deadline extended, but the MINP wanted interim reply.
This is final not interim reply. 17*

ACTION REQUIRED/SUITE A DONNER

FOR DIVISIONAL USE
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| <input type="checkbox"/> Reply for signature of SSEA
Reponse pour la signature du SEAE | Date received/Date recue |
| <input type="checkbox"/> Reply for the signature of
Reponse pour la signature de | Action officer/Agent resp. |
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| <input type="checkbox"/> For information and any necessary action
Pour examen et suite a donner, s'il y a lieu | REPLY SENT MAY 13 |
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CAMPAGNE: Reponse pour la signature du SEAE | |
| <input type="checkbox"/> CAMPAIGN: Reply by division
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| <input type="checkbox"/> CAMPAIGN: For information and any necessary action
CAMPAGNE: Pour examen et suite a donner, s'il y a lieu | |

ALL TRANSFERS TO BE REPORTED TO MINA RECORDS	995-1047 OR/OU
LES ARCHIVES DE MINA DOIVENT ETRE AVISEES DE TOUT CHANGEMENT	992-6428

White - Return to MINA registry when action completed	
Blanche Retourner aux archives de MINA lorsque suite a ete donnee	
Yellow - Divisional secretary	Green - File with original incoming letter
Jaune - Secretaire de direction	Verte - Au dossier avec la lettre recue

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**ACTION
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RE JUSTOTT/FREEMAN/HUDSON/LOW DE OTT INAHULL/WHITAKER/POTTER DE OTT

---HUMAN RIGHTS CTTEE:LUBICON AND MIK MAQ COMMUNICATIONS

NOTWITHSTANDING RUMOURS TO THE CONTRARY, JAKOB MOLLER OF CENTRE FOR HUMAN RIGHTS ADVISED US TODAY ON RETURNING FROM NEW YORK THAT NO/NO

ACTION WAS TAKEN BY HUMAN RIGHTS CTTEE AT ITS RECENT SESSION ON

EITHER LUBICON OR MIK MAQ CASES. CTTEE MEMBERS CONSIDERED THAT, IN

LIGHT OF RECENT DEVELOPMENTS ON LUBICON DISPUTE (GOVT OFFER OF

PRELIMINARY LAND SETTLEMENT), IT WOULD BE ADVISABLE TO POSTPONE

CONSIDERATION OF CDN GOVT REQUEST FOR REVIEW OF LAST YEARS

ADMISSIBILITY DECISION. AS FOR MIK MAQ COMPLAINT, THIS APPEARS TO BE

CONNECTED IN THINKING OF MANY CTTEE MEMBERS TO LUBICON ADMISSIBILITY ISSUE.

CCC/131 181434Z YTGR2257

FILE
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